

*These notes refer to the Climate Change Act 2008 (c.27)  
which received Royal Assent on 26th November 2008*

# CLIMATE CHANGE ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 6: General supplementary provisions**

#### **Territorial scope of provisions relating to greenhouse gas emissions**

##### *Section 89: Territorial scope of provisions relating to greenhouse gas emissions*

480. This section provides that emissions from sources or other matters occurring in, above or below “UK coastal waters” or on the “UK sector of the continental shelf” count as emissions from the UK.
481. *Subsection (2)* defines “UK coastal waters” as areas on the land side of the seaward limit of the territorial sea adjacent to the UK (i.e. out to 12 nautical miles), and “the UK sector of the continental shelf” by reference to section 1(7) of the Continental Shelf Act 1964 (broadly, out to 200 nautical miles or the half-way point between countries, whichever is closer).
482. *Subsection (3)* provides that this section is subject to section 30, which provides that emissions from international aviation and international shipping are not to be regarded as emissions from UK sources for the purposes of Part 1 of the Act, unless regulations have been made to bring them in.

#### **Orders and regulations**

##### *Section 90: Orders and regulations*

483. This section makes general provision in respect of powers to make orders or regulations under the Act. *Subsection (3)* allows orders or regulations to include supplementary, incidental and consequential provision and to make transitional provision and savings. *Subsections (4) and (5)* provide that any provision that may be made by order may instead be made by regulations, and vice versa; this is a matter of administrative convenience – the precise form of the instrument has no legal significance.

##### *Section 91: Affirmative and negative resolution procedure*

484. This section defines the terms “affirmative resolution procedure” and “negative resolution procedure” as they apply to instruments made by the Secretary of State. *Subsection (3)* provides that the affirmative resolution procedure may be used wherever the negative resolution procedure is stipulated; this will allow provisions which would otherwise have to be made using different procedures to be made in the same instrument. *Subsection (4)* provides that this section does not apply to instruments making trading schemes (see section 49 and Schedule 3) or instruments in relation to single use carrier bags (see section 77 and Schedule 6), both of which have their own specific procedures.

## **Interpretation**

### ***Section 92: Meaning of “greenhouse gas”***

485. This section defines the term “greenhouse gas” to include:
- carbon dioxide (CO<sub>2</sub>);
  - methane (CH<sub>4</sub>);
  - nitrous oxide (N<sub>2</sub>O);
  - hydrofluorocarbons (HFCs);
  - perfluorocarbons (PFCs);
  - sulphur hexafluoride (SF<sub>6</sub>).
486. The definition of greenhouse gases follows that used in the Kyoto Protocol. Note that the term “targeted greenhouse gas”, used in relation to the targets and budgets in Part 1 of the Act, is defined separately in section 24; for the time being, the lists of gases are identical.
487. *Subsections (2) to (4)* give the Secretary of State a power to amend the definition of “greenhouse gas” by negative resolution order. But the power can only be exercised if the Secretary of State considers that an international agreement has been reached which recognises that the gas contributes to climate change.

### ***Section 93: Measurement of emissions etc by reference to carbon dioxide equivalent***

488. This section provides that emissions of greenhouse gases are to be measured or calculated in “tonnes of carbon dioxide equivalent” (defined in *subsection (2)*); this is to allow for the differing relative forcing effects and atmospheric lifetimes of differing greenhouse gases – for example, over 100 years, a tonne of methane has 23 times the global warming effect of carbon dioxide. These factors are known as “global warming potentials”, and are to be calculated consistently with international carbon reporting practice (defined in section 94).

### ***Section 94: Meaning of “international carbon reporting practice”***

489. This section defines the term “international carbon reporting practice” as accepted practice under the United Nations Framework Convention on Climate Change (UNFCCC) or other international agreements which the Secretary of State may specify using a negative resolution statutory instrument. For example, a post-2012 agreement may be specified for the purposes of this section. An order may supplement or replace the requirement to follow UNFCCC practices.

### ***Section 95: Meaning of “national authority”***

490. This section defines the term “national authority” to mean the Secretary of State, the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department (see section 96). *Subsection (2)* provides that functions conferred on “the national authorities” are to be exercised jointly: they must agree on the way the function should be exercised and act together.

### ***Section 96: Meaning of “relevant Northern Ireland department”***

491. This section defines the term “relevant Northern Ireland department”. Different Northern Ireland departments deal with different administrative matters in Northern Ireland; this section provides that any given function is to be performed by the department which is responsible for the relevant matter. Where two or more departments are responsible, then the term refers to both of them (*subsection (2)*).

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*Subsection (3)* explains the process for answering a question as to which department is responsible for a matter.

### ***Section 97: Minor definitions***

492. This section defines the other terms used in the Act. In particular, this section defines “emissions” as meaning emissions of a given greenhouse gas into the atmosphere that are attributable to human activity; non-anthropogenic emissions are excluded.

### ***Section 98: Index of defined expressions***

493. This section contains an index of the expressions which are defined in the Act and refers the reader to where the definition can be found.

## **Final Provisions**

### ***Section 99: Extent***

494. Apart from the sections and Schedules listed below, the Act extends to the whole of the United Kingdom (for more information see the notes on territorial application above):

- Sections 71 to 76, 81 and 88, and Schedule 5, extend to England and Wales only;
- Section 77 and Schedule 6 extend to England and Wales and Northern Ireland only;
- Section 79 and Schedule 8 extend to England and Wales and Scotland only.

### ***Section 100: Commencement***

495. This Act has been drafted so that the provisions will come into force as follows:

- Part 1 (carbon target and budgeting), Part 2 (the Committee on Climate Change) and Part 6 (general supplementary provisions) come into force on Royal Assent;
- section 71(1) and Schedule 5 (waste reduction schemes) come into force in accordance with sections 72 to 75 (which make provision about piloting such schemes);
- section 81 (climate change measures reports in Wales) comes into force on a day to be appointed by the Welsh Ministers;
- section 82 (repeal of previous reporting provision) comes into force on 1st January 2009 (so that the reporting requirements under section 2 of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#) apply in 2008);
- the rest of the Act comes into force two months after Royal Assent.