

# CLIMATE CHANGE ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Carbon Target and Budgeting**

##### **The target for 2050**

##### *Section 1: The target for 2050*

25. *Subsection (1)* of this section imposes a duty on the Secretary of State to ensure that “the net UK carbon account” for 2050 is at least 80% lower than the “1990 baseline”.
26. *Subsection (2)* defines “the 1990 baseline” to mean the aggregate amount of: net UK emissions of carbon dioxide in 1990; and net UK emissions of the other targeted greenhouse gases in the “base year” for each gas.
27. The term “targeted greenhouse gas” refers to the gases which are covered by the targets and budgets in the Act as set out in section 24(1); the “base year” for each targeted greenhouse gas other than carbon dioxide is set out in section 25(1). The targeted greenhouse gases, and their base years, are: carbon dioxide (1990), methane (1990), nitrous oxide (1990), hydrofluorocarbons (1995), perfluorocarbons (1995) and sulphur hexafluoride (1995). Under section 24, the Secretary of State is given the power to add more gases – the commentary on that section provides details of the process. The commentary on section 25 provides more details on base years.
28. The term “the net UK carbon account” is defined in section 27. For 2050, it means the level of net UK emissions of targeted greenhouse gases in 2050 after numbers of “carbon units” have been added and subtracted in accordance with carbon accounting regulations. The commentary on sections 26 and 27 provides a more detailed explanation of carbon accounting and the net UK carbon account.
29. The target for 2050 is set by reference to a 1990 baseline rather than a particular quantum of emissions because the baseline emissions are subject to revision as understanding of historic emissions improves. 1990 is the baseline year used for emissions of carbon dioxide under the Kyoto Protocol, an international agreement to limit emissions of greenhouse gases, to which the UK is party; where a gas has a different base year, emissions of the gas in the base year are treated as being emissions of the gas in 1990.

##### *Section 2: Amendment of 2050 target or baseline year*

30. *Subsection (1)* allows the Secretary of State, by order, to amend the 2050 target and to amend the baseline year.
31. *Subsection (2)* sets out the circumstances in which the Secretary of State can amend the 2050 target:
  - paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy

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or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;

- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target (see section 24) or if emissions from international aviation or international shipping are added to the target (see section 30).
32. *Subsection (3)* provides more detail on the meaning of “developments in scientific knowledge about climate change”. The first time the Secretary of State amends the 2050 target, he will be able to rely only on scientific developments occurring after Royal Assent. But when making any subsequent amendment, the Secretary of State will be able to take into account scientific developments only since the target was last changed.
33. *Subsection (4)* provides that the baseline year can be amended only if there have been significant developments in European Community or international law or policy which make an amendment appropriate.
34. *Subsections (5) and (6)* provide that an order amending the target is to be made by statutory instrument subject to the affirmative resolution procedure (that is, a draft of the order must be approved by both Houses of Parliament). An order that changes the baseline year may also amend other references in the Act to “the 1990 baseline”.
35. See also section 33, which provides that the Committee on Climate Change must, not later than 1st December 2008, provide advice on a review the level of the 2050 target.

***Section 3: Consultation on order amending 2050 target or baseline year***

36. This section sets out the procedures that the Secretary of State must follow before amending the 2050 target or the baseline year.
37. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change (a new non-departmental public body which is created by Part 2 of the Act). The Secretary of State also has to consider the views of the devolved administrations (the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department).
38. *Subsections (2) to (7)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can lay the draft order only after the three month period has expired;
  - *Subsection (5)* places a duty on the Secretary of State, at the same time as he lays the draft order, to publish a statement that sets out whether and how he has taken account of the devolved administrations’ views;
  - *Subsection (6)* places a duty on the Secretary of State, if amending the 2050 target or baseline year in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision;
  - *Subsection (7)* allows the Secretary of State to publish a statement under subsection (5) or (6) (that is, on taking account of the devolved administrations’

views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

## **Carbon budgeting**

### ***Section 4: Carbon budgets***

39. *Subsection (1)* of this section places a duty on the Secretary of State to set five-year "carbon budgets", defined as an amount for the net UK carbon account for a given period (a "budgetary period"). The Secretary of State is also placed under a duty to ensure that the net UK carbon account stays within the budget for each period.
40. *Subsection (2)* requires the Secretary of State to set three consecutive carbon budgets for the periods 2008–2012, 2013–2017 and 2018–2022 by 1st June 2009. It also creates a duty to set subsequent carbon budgets at least 1½ years before the start of the budgetary period. The intent of the section is to provide certainty in respect of the UK's carbon budgets in the medium term.

### ***Section 5: Level of carbon budgets***

41. This section sets limits on the levels of certain carbon budgets.
42. *Subsection (1)* sets out the requirement for carbon budgets to be consistent with certain emissions levels in particular years:
  - paragraph (a) requires that the "annual equivalent" of the carbon budget for the carbon budget covering the year 2020 must be at least 26% lower than the 1990 baseline;
  - paragraph (b) requires that the "annual equivalent of the carbon budget" for the carbon budget covering the year 2050 is no more than the level specified in section 1 compared with the 1990 baseline (80% below 1990 levels, unless amended under section 2);
  - paragraph (c) gives the Secretary of State a power to set, by order, further percentage targets or target percentage ranges for years after 2050.
43. *Subsection (2)* provides that the "annual equivalent" of a given carbon budget is the total carbon budget for a period divided by the number of years in that period. *Subsection (3)* provides that an order setting a target percentage or percentage range for a year after 2050 must be made using the affirmative resolution procedure.
44. *Subsection (4)* makes further provision in relation to the cap on the budget which includes the year 2020, as set out in subsection (1)(a). It provides that only carbon dioxide emissions are to be taken in considering the level of the cap. Paragraph (a) provides that only so much of the budget as the Secretary of State considers relates to carbon dioxide emissions should be considered, and paragraph (b) provides that only so much of the 1990 baseline (see section 1(2)) as relates to carbon dioxide should be used as the comparator.

### ***Section 6: Amendment of target percentages***

45. This section sets out when and how the target percentages in section 5 can be amended.
46. *Subsection (1)* gives the Secretary of State the power to amend the target percentage for 2020 (in section 5(1)(a), and any target percentage or percentage range set for a year after 2050 (in section 5(1)(c)).
47. *Subsection (2)* sets out the circumstances in which those percentages can be amended:
  - paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy

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or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;

- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target or emissions from international aviation or international shipping are added to the target.
48. *Subsection (3)* makes special provision on the meaning of “developments in scientific knowledge about climate change”. The first time the Secretary of State amends the target percentage for 2020, he will be able to rely on scientific developments since June 2000 to justify the change; he will not be restricted to considering only scientific developments which have taken place after the Act receives Royal Assent. If the Secretary of State wants to amend a target percentage or percentage range for a year after 2050, he will be allowed to rely only on scientific developments that occur after the percentage or range is set. When making any subsequent amendment to a target percentage or percentage range, the Secretary of State will be able to take into account scientific developments only since the percentage or range was last changed.
49. *Subsection (4)* allows the Secretary of State to repeal section 5(4) when he makes an order amending the target percentage for 2020. It has the effect of allowing the Secretary of State to set a target percentage for 2020 that covers all targeted greenhouse gases; section 5(4) provides that all gases other than carbon dioxide are left out of account in relation to the target percentage for 2020 – its repeal would mean that all targeted greenhouse gases count towards the target.
50. *Subsection (5)* prescribes that orders made under subsection (1) are subject to affirmative resolution procedure.

***Section 7: Consultation on order setting or amending target percentages***

51. This section sets out the procedures that the Secretary of State must follow before amending the 2020 target percentage or a target percentage or percentage range for a year after 2050.
52. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.
53. *Subsections (2) to (7)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views before the three month period has expired, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the three month period has expired;
  - *Subsection (5)* places a duty on the Secretary of State, at the same time as he lays the draft order, to publish a statement that sets out whether and how he has taken account of the devolved administrations’ views;
  - *Subsection (6)* places a duty on the Secretary of State, if amending the 2020 target or any post-2050 target or range in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision;

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- *Subsection (7)* allows the Secretary of State to publish a statement under subsection (5) or (6) (on taking account of the devolved administrations' views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

### ***Section 8: Setting of carbon budgets for budgetary periods***

54. *Subsections (1) and (3)* require the Secretary of State to set carbon budgets using affirmative resolution orders.
55. *Subsection (2)* provides that every carbon budget must be set with a view to meeting the 2050 target, the 2020 target and any percentage target or percentage range for a year after 2050. Budgets must also be set with a view to complying with the UK's European Community and international obligations (any international treaties to which the UK is a signatory).

### ***Section 9: Consultation on carbon budgets***

56. This section sets out the procedures that the Secretary of State must follow before setting a carbon budget.
57. *Subsection (1)* places a duty on the Secretary of State to take into account advice from the Committee on Climate Change (as provided for in section 34). The Secretary of State also has to consider any views of the devolved administrations.
58. *Subsections (2) to (5)* set out the stages of the process:
- *Subsection (2)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he may lay the draft order only after the three month period has expired;
  - *Subsections (3) to (5)* place a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views. If the budget is not set at the level recommended by the Committee, the Secretary of State must publish a statement explaining why not. The Secretary of State must publish the statements when he lays the order, in any way he thinks is appropriate.

### ***Section 10: Matters to be taken into account in connection with carbon budgets***

59. This section sets out matters that the Secretary of State must take into account when making decisions about carbon budgets and which the Committee on Climate Change must take into account in advising the Secretary of State on those decisions.
60. *Subsection (2)* sets out the list of matters to be taken into account. This is intended to give examples of the broad range of relevant factors that will inform any decision relating to carbon budgeting. The matters are not listed in any particular order; the order of the matters has no legal significance. *Subsection (7)* makes it explicit that this section does not prevent the Secretary of State or the Committee on Climate Change from taking other matters into account; nor does it limit the general requirement for the Secretary of State and the Committee to take all relevant matters into account.
61. Subsections (3) to (6) make provision in relation to the matter in subsection (2)(i), which requires the Secretary of State to take into account "the estimated amount of reportable emissions from international aviation and international shipping" for the budgetary period or periods under consideration.
62. *Subsection (3)* defines the term "the estimated amount of reportable emissions from international aviation and international shipping" as meaning the aggregate amount of emissions of all greenhouse gases from those sectors which the Secretary of State

or the Committee estimates that the UK will be required to report in accordance with international carbon reporting practice (see section 94). *Subsection (4)* allows the Secretary of State and the Committee to use any reasonable method or methods they choose to estimate those emissions.

63. *Subsection (5)* provides that the Secretary of State and the Committee do not have to consider the factor in subsection (2)(i) if, and to the extent that, any regulations have been made under section 30 which mean that emissions from international aviation or international shipping are already included in the budget that is being considered. See the notes on sections 30 and 31 for details on the process and procedure for making such regulations. *Subsection (6)* makes it clear that section 30(1), which provides that emissions from international aviation and international shipping do not count as emissions from sources in the UK, does not prevent the Secretary of State and the Committee from taking them into account in relation to carbon budgets.

## **Limit on the use of carbon units**

### ***Section 11: Limit on the use of carbon units***

64. This section places a duty on the Secretary of State to set a limit on the “net amount of carbon units” that can be credited to the net UK carbon account in each budgetary period. *Subsection (3)* provides that the limit for each budgetary period must be set 18 months before the beginning of each period; exceptionally, the limit for the first budget must be set no later than 1st June 2009 (the date before which the first budget must be set – see section 4).
65. *Subsection (2)* defines the term “net amount of carbon units” to mean the amount of carbon units credited to the net UK carbon account in accordance with regulations made under section 27, minus the amount of units credited to the net UK carbon account under those regulations. See the notes on section 27 for more information on the net UK carbon account and regulations on the crediting and debiting of carbon units.
66. *Subsection (4)* provides that the limit must be set by order (a type of statutory instrument) and *subsection (6)* provides that the order is subject to the approval of both Houses of Parliament under the affirmative resolution procedure.
67. *Subsection (5)* allows the Secretary of State to exclude specified descriptions of units from the calculation of the limit. The Secretary of State must describe the units to be excluded in the order setting the limit.
68. *Subsection (7)* requires the Secretary of State to take into account the Committee on Climate Change’s advice under section 34(1)(b) (advice on the extent to which a budget should be met by reducing domestic emissions and by the use of carbon units), and to consult the devolved administrations, before setting the limit.

## **Indicative annual ranges**

### ***Section 12: Duty to provide indicative annual ranges for net UK carbon account***

69. This section places a duty on the Secretary of State to lay a report before Parliament setting out an “indicative annual range” for the net UK carbon account for each year of a budgetary period. This section aims to enhance the transparency regarding progress within each budgetary period, so that Parliament is clear about performance towards meeting the budget each year.
70. *Subsection (2)* defines an “indicative annual range” as the range within which the Secretary of State expects the amount of the net UK carbon account for the year in question to fall.
71. *Subsection (3)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation

to the indicative annual ranges set out in the report. *Subsection (4)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

## **Proposals and policies for meeting carbon budgets**

### ***Section 13: Duty to prepare proposals and policies for meeting carbon budgets***

72. This section places a duty on the Secretary of State to prepare such proposals and policies as the Secretary of State considers will enable carbon budgets that have been set to be met. The proposals and policies must also be prepared with a view to meeting the target for 2050 (under section 1) and any target set for later years (under section 5(1)(c)).
73. *Subsection (3)* imposes a requirement that the proposals and policies, taken as a whole, must contribute to sustainable development. *Subsection (4)* allows the Secretary of State to take into account proposals and policies which he considers may be prepared by the other national authorities.

### ***Section 14: Duty to report on proposals and policies for meeting carbon budgets***

74. This section places a duty on the Secretary of State to lay a report before Parliament setting out proposals and policies for meeting the current and future carbon budgets. This section will ensure that Parliament is clear about how the Government intends to meet its obligations under the Act.
75. *Subsection (2)* requires the report to set out the Secretary of State's current proposals and policies for meeting carbon budgets (which must be prepared under section 13). The report must also explain how the proposals and policies affect different sectors of the economy (*subsection (3)*).
76. *Subsection (4)* provides that the report must set out what implications the proposals and policies in the report have as regards the use that will be made of carbon units in meeting the carbon budgets covered by the report. See also section 34(1)(b), which requires the Committee on Climate Change to advise on the use of carbon units, and section 11, which requires the Secretary of State to set a limit on the use of carbon units for each budgetary period.
77. *Subsection (5)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation to any part of the report covering their proposals and policies. *Subsection (6)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

### ***Section 15: Duty to have regard to need for UK domestic action on climate change***

78. *Subsection (1)* of this section requires the Secretary of State to have regard to the need for "UK domestic action on climate change" when exercising any functions under Part 1 of the Act involving consideration of how to meet the 2050 target (under section 1) and any carbon budget. So, in particular, the Secretary of State must have regard to the need for UK domestic action on climate change when preparing proposals and policies for meeting carbon budgets (with a view to meeting the 2050 target) as required by section 13.
79. *Subsection (2)* defines the term "UK domestic action on climate change" as covering both reductions in UK emissions of targeted greenhouse gases and increases in UK removals of those gases. The terms "UK emissions" and "UK removals" are defined in section 29 – see the commentary on that section for more detail.

## **Determination whether objectives met**

### ***Section 16: Annual statement of UK emissions***

80. This section places a duty on the Secretary of State to lay a statement before Parliament on UK emissions in respect of every year from 2008 onwards. Finalised figures for UK emissions, including a full inventory report, are currently produced, and submitted to the EU by the Government on 15th March each year, 14½ months after the end of calendar year in question. *Subsection (10)* therefore provides that the report under this section must be laid no later than the 31st March in the second year after the year to which it relates (the report for 2008 must be laid by 31st March 2010).
81. *Subsections (2) and (3)* specify that the statement must set out UK emissions, UK removals and net UK emissions. These terms are defined in section 29; they include emissions of all greenhouse gases (whether or not they are “targeted greenhouse gases” included in the 2050 and other targets), and the statement must show the total figures for emissions of each gas and also aggregate figures. The statement must also explain how the figures were measured or calculated, and must say whether they represent an increase or decrease when compared with the figures for the previous year. See, also, section 82, which repeals a similar reporting requirement under section 2(b) of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#).
82. *Subsection (4)* provides that where there has been a change in the international method of calculating emissions levels that requires the adjustment of emissions levels in earlier years in the budgetary period, then the report should set out the adjusted figures.
83. *Subsection (5)* requires the Secretary of State to report the levels of emissions from international aviation and international shipping in the statement, calculated in the same way as is required under international carbon reporting practice, unless those emissions are already included in the figures required by subsection (2). Emissions from international aviation and international shipping will be included in the figures reported under subsection (2) if regulations are made under section 30 which have that effect; the commentary on section 30 gives more detail on the circumstances in which that can happen.
84. *Subsection (6)* specifies that the report must set out the cumulative total of carbon units (as defined in section 26(1)) credited to or debited from the net UK carbon account for the year, and give details of the number and type of those carbon units. *Subsection (7)* provides that the report must also state the net UK carbon account for the year.
85. *Subsection (8)* specifies that the statement must set out the amount of net UK emissions of carbon dioxide for the year 1990, and the amount of net UK emissions for each of the other targeted greenhouse gases in their base years. The report must also state the baseline amount for greenhouse gases which are not “targeted”; the baseline amount may be equal to emissions of the gas in 1990 or another year, or average net UK emissions for a number of years (*subsection (9)*).
86. *Subsection (10)* gives the date by which the statement must be laid before Parliament and *subsection (11)* requires the Secretary of State to send a copy of the statement to each of the devolved administrations.

### ***Section 17: Powers to carry amounts from one budgetary period to another***

87. This section provides a power for the Secretary of State to “bank” and “borrow” emissions between budgetary periods.
88. *Subsection (1)* allows the Secretary of State to “borrow” part of the next budget. In the language of the Act, an amount from the next budget is “carried back” to the budget preceding it. Where this power is used, the next budget (which will already have been set by order) is reduced by the amount that has been borrowed.



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89. *Subsection (2)* limits the amount that can be borrowed under subsection (1) to no more than 1% of the next budget.
90. *Subsection (3)* allows the Secretary of State to carry forward any part of the carbon budget that exceeds the net UK carbon account for that period (i.e. to “bank” a budget surplus, but not necessarily all of it). The banked amount is added to the next budget.
91. *Subsection (4)* requires the Secretary of State to obtain the advice of the Committee on Climate Change, and take this advice into account, before exercising powers under this section (that is, before banking or borrowing). The Secretary of State is also obliged to consult the devolved administrations before banking or borrowing.
92. *Subsection (5)* places a back-stop on when the banking and borrowing powers can be used. A decision to bank or borrow must be taken no later than 31st May in the second year after the earlier budget period ends (so, for the 2008–2012 budget, no later than 31st May 2014). This is also the date on which a assessment is made of whether the budget has been met (see section 18).

***Section 18: Final statement for budgetary period***

93. This section places a duty on the Secretary of State to report the final figures for the net UK carbon account during a budgetary period; these figures are used to determine whether a budget has been met.
94. *Subsections (2) to (6)* place a duty on the Secretary of State to report:
- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for each targeted greenhouse gas (each of the gases included in the target – see section 24). The final amounts may differ slightly from the sum of the emissions figures in the annual reports for the budgetary period because this statement will take account of any changes in the international methodology used to work out the 1990 baseline and emissions for each year;
  - under *subsection (3)*, the final amount of carbon units that have been credited to or debited from the UK carbon account in that budgetary period, and details of the number and type of those units;
  - under *subsection (4)*, the final amount of the net UK carbon account for the budgetary period;
  - under *subsection (5)*, whether the Secretary of State has decided to borrow from the next budget (using the power in section 17(1)) and, if so, the amount borrowed;
  - under *subsection (6)*, the amount of the budget for the period, which will be the level of the budget as originally set, subject to any banking or borrowing under section 17 and any alteration of the budget under section 21.
95. *Subsection (7)* provides that the determination of whether the budget has been met should be made by reference to the figures in the statement.
96. *Subsection (8)* provides that if the budget has not been met, then the statement must include an explanation of the reasons why not.
97. *Subsection (9)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than the 31st May in the second year after the end of a budgetary period (so, for the 2008–2012 budget, no later than 31st May 2014). *Subsection (10)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

***Section 19: Duty to report on proposals and policies for compensating for budget excess***

98. This section places a duty on the Secretary of State to lay a report before Parliament setting out proposals and policies to compensate in future periods for excess emissions, if a report under section 18 shows that the net UK carbon account has exceeded the carbon budget for a period.
99. *Subsection (2)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation to any part of the report covering their proposals and policies. *Subsection (3)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

***Section 20: Final statement for 2050***

100. This section places a duty on the Secretary of State to report to Parliament the final figures for the net UK carbon account in 2050.
101. *Subsections (2) to (4)* place a duty on the Secretary of State to report:
- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for 2050 for each targeted greenhouse gas;
  - under *subsection (3)*, the amount of carbon units that have been credited to and debited from the net UK carbon account, and details of the number and type of those units;
  - under *subsection (4)*, the amount of the net UK carbon account for 2050.
102. *Subsection (5)* provides that the question of whether the 2050 target has been met is to be answered by referring to the figures in the statement.
103. *Subsection (6)* provides that if the budget has not been met, the statement must explain the reasons why not.
104. *Subsection (7)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than 31st May 2052. *Subsection (8)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

**Alteration of budgets or budgetary periods**

***Section 21: Alteration of carbon budgets***

105. This section gives the Secretary of State a power, using an affirmative resolution statutory instrument, to amend the level of carbon budgets in certain circumstances. The section also limits the conditions in which orders setting carbon budgets can be revoked.
106. *Subsection (1)* prevents an order setting a carbon budget being revoked after the final date by which it had to be set in accordance with section 4(2).
107. *Subsection (2)* gives the Secretary of State the power to amend budgets, but limits the circumstances in which such an order may be made. A budget may be amended only if there have been significant changes in the factors on the basis of which the decision to set, or previously amend, the budget was made.
108. *Subsection (3)* limits the circumstances in which an order amending a budget after the start of the relevant budgetary period can be made. A budget may be amended only after the start of the budgetary period if there have been significant changes, since the budget period began, in the factors on the basis of which the decision to set or previously amend the budget was made. This is a more stringent test than in subsection (2) because there will typically have been less time for a significant change to happen.

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109. *Subsection (4)* stipulates that the level of a carbon budget may not be amended after the budgetary period has ended.
110. *Subsection (5)* requires any order amending budgets to follow the affirmative resolution order procedure.

### ***Section 22: Consultation on alteration of carbon budgets***

111. This section sets out the procedures that the Secretary of State must follow before altering a carbon budget.
112. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.
113. *Subsections (2) to (8)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4) and (5)* provide that the devolved administrations have one month to send the Secretary of State their views if the budget period has already begun, and three months if the budget period has not started yet. If the devolved administrations send their views within the relevant period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can lay the draft order only after the relevant period has expired;
  - *Subsection (6)* places a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views;
  - *Subsection (7)* places a duty on the Secretary of State, if altering a carbon budget in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision;
  - *Subsection (8)* allows the Secretary of State to publish a statement under subsection (6) or (7) (on taking account of the devolved administrations' views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

### ***Section 23: Alteration of budgetary periods***

114. This section allows, in certain circumstances, the duration of budgetary periods and their start and end dates to be changed by affirmative resolution statutory instrument.
115. *Subsection (2)* prescribes the circumstances when this power can be exercised. These are when a change to the budgetary periods is needed to keep them in line with similar periods under European or international agreements to which the UK is a party. *Subsection (3)* prevents alterations that would leave a period of time outside the carbon budget system.
116. *Subsection (4)* allows an order under subsection (1) to make consequential amendments to other parts of the Act in order to ensure coherence of the provisions.
117. *Subsection (5)* requires the Secretary of State to consult the devolved administrations before making such an order.

## **Targeted greenhouse gases**

### ***Section 24: Targeted greenhouse gases***

118. This section defines the term “targeted greenhouse gas”, which is the term used to describe the gases covered by the targets and budgets in the Act.
119. *Subsection (1)* defines the term “targeted greenhouse gas” as meaning 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>) and any other greenhouse gas added later by the Secretary of State by order. The term “greenhouse gas” is defined in section 92 by reference to a list of gases (which, for the time being, is identical).
120. *Subsection (7)* provides that an order adding a new gas or gases must be made using the affirmative resolution procedure. *Subsection (2)* allows the Secretary of State to make any necessary consequential amendments to the Act when he makes the order.
121. *Subsection (3)* requires the Secretary of State to consult the devolved administrations, and also to obtain and consider advice from the Committee on Climate Change, before adding a new gas or gases to the list.
122. *Subsection (4)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
123. *Subsection (5)* places a duty on the Secretary of State, if amending the list of targeted greenhouse gases in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision. *Subsection (6)* allows the Secretary of State to publish this statement in any way he thinks is appropriate.

### ***Section 25: Base years for targeted greenhouse gases other than CO<sub>2</sub>***

124. This section sets out the base years for targeted greenhouse gases other than carbon dioxide and allows the Secretary of State to set base years for new targeted greenhouse gases added at a later date. A “base year” is the year used as the reference point against which reductions in emissions of the gas are to be measured for the purposes of the targets and budgets in the Act.
125. *Subsection (1)* contains a table showing the base years for targeted greenhouse gases other than carbon dioxide. Hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride have a base year of 1995, which is the base year used for UK emissions of those gases under the Kyoto Protocol.
126. *Subsection (2)* allows the Secretary of State to amend the table, by order, to specify the base year for any new gas designated as a targeted greenhouse gases in accordance with section 24. It also allows the Secretary of State to amend the base years of the gases which are already in the table in subsection (1).
127. *Subsection (3)* provides that the Secretary of State may either designate a single base year or may designate a number of base years and use the average of the emissions of the gas in those years.
128. *Subsection (4)* restricts the use of the power to amend the base years that are set out in the table in subsection (1). Those base years can only be amended if there have been significant developments in European or international law or policy that make it appropriate to do so, for example if an international agreement was reached that required every country to use a particular base year for a gas.
129. *Subsection (5)* requires the Secretary of State to consult the devolved administrations, and also to obtain and consider advice from the Committee on Climate Change, before making an order designating a base year or years.

130. *Subsection (6)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
131. *Subsection (7)* places a duty on the Secretary of State, if setting a base year in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision. *Subsection (8)* allows the Secretary of State to publish this statement in any way he thinks is appropriate.
132. *Subsection (9)* provides that an order under subsection (2) must be made using the affirmative resolution procedure.

## **Carbon units, carbon accounting and the net UK carbon account**

### ***Section 26: Carbon units and carbon accounting***

133. In addition to the level of "net UK emissions" (which is defined in section 29 (1)(c)), the "net UK carbon account" (as determined in accordance with section 27) is affected by the addition and subtraction of "carbon units" through a process of "carbon accounting". This section, and section 27, allow the Secretary of State to determine what carbon units should be added to and subtracted from the net UK carbon account and how "carbon accounting" will work.
134. *Subsection (1)* allows the Secretary of State to make regulations setting out specifically what "carbon units" can be used for carbon accounting purposes. "Carbon units" in the regulations can only be:
- units representing a reduction in the amount of greenhouse gas emissions;
  - units representing the removal of greenhouse gas from the atmosphere; or
  - units representing greenhouse gas emissions which are allowed under a scheme or arrangement which limits total emissions of greenhouse gases (for example, under certain kinds of emissions trading scheme).
135. *Subsection (2)* allows the Secretary of State to make regulations which contain details of how carbon units should be registered and kept track of, and allows him to establish and maintain accounts containing carbon units. Carbon units can be moved between accounts. The intention is to establish an accounting system broadly similar to, and compatible and co-ordinated with, that used to keep track of the UK's assigned amount units (AAUs) and other units issued under the Kyoto Protocol; subsection (2) specifically provides that the Secretary of State can use an existing system as the basis of the carbon accounting system.
136. *Subsection (3)* gives more detail of what the regulations can say. The Secretary of State is allowed to appoint a body to operate the accounting scheme, to set up a new body for that purpose, to make provision allowing him to give guidance and directions to the body and to require users of the scheme to pay charges towards the cost of operating the scheme.
137. *Subsection (4)* provides that if an existing body is appointed to operate the accounting scheme, then the Secretary of State can make any necessary amendments to relevant enactments.
138. The procedures relating to the regulations are set out in section 28.

### ***Section 27: Net UK carbon account***

139. *Subsection (1)* defines the term "net UK carbon account" for a budgetary period as being net UK emissions (as defined in section 29(1)(c)) as decreased by a number of carbon units to be credited to the account and increased by a number of carbon units to be debited from the account in accordance with regulations made by the Secretary of State.

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

140. *Subsection (2)* provides that the net amount of carbon units credited to the net UK carbon account must not exceed the limit for the period set by order under section 11. See the notes on section 11 for details of how the “net amount of carbon units” is calculated.
141. *Subsection (3)* requires the Secretary of State to make regulations setting out the circumstances in which carbon units are to be credited to and debited from the net UK carbon account, and the manner in which it is to be done. For example, the regulations could provide that units purchased through the EU Emissions Trading Scheme can be treated as units to be credited to the net UK carbon account.
142. *Subsection (4)* provides that where carbon units are to be credited to the net UK carbon account, then provision must be made so that they are no longer available to offset other greenhouse gases: they must be put beyond use so that they cannot be double-counted.
143. *Subsection (5)* provides that the regulations must make specific provision for dealing with the situation where the UK has a cap on emissions under a European or international scheme or arrangement that is less stringent than the carbon budget for a period, for example, if the UK’s target under the first commitment period of the Kyoto Protocol (2008–2012) is less stringent than the domestic carbon budget for that period. In that situation, the regulations must provide that the excess allowances are not used to offset greenhouse gas emissions in the UK or elsewhere.

***Section 28: Procedure for regulations under section 26 or 27***

144. This section sets out the procedure that must be followed when carbon accounting regulations are made under section 26 or section 27.
145. *Subsection (2)* provides that the affirmative resolution procedure must be used in the following cases:
- for the first set of carbon accounting regulations;
  - if the regulations specify a new kind of carbon unit;
  - if the regulations alter the value of a carbon unit;
  - if the regulations modify primary legislation.
146. *Subsection (3)* provides that the negative resolution procedure applies in all other situations.
147. *Subsection (4)* requires the Secretary of State to consult the devolved administrations before laying or making the regulations (depending on which Parliamentary process is being used).
148. *Subsection (5)* requires the Secretary of State to consult the Committee on Climate Change on the first set of regulations and whenever subsequent regulations specify a new kind of carbon unit or alter the value of a carbon unit.

**Other supplementary provisions**

***Section 29: UK emissions and removals of greenhouse gases***

149. This section defines the terms “UK emissions”, “UK removals” and “net UK emissions” used in Part 1 of the Act. “UK emissions” are emissions of gases from sources in the United Kingdom; “UK removals” are removals of gases from the atmosphere as a result of land use, land-use change or forestry; “net UK emissions” of a gas are calculated by subtracting the amount of UK removals of the gas from the amount of UK emissions of the gas.

150. *Subsection (2)* provides that UK emissions and UK removals are to be determined by following international protocols, such as the United Nations Framework Convention on Climate Change (UNFCCC) Reporting Guidelines on Annual Inventories. Emissions only count for the purposes of this Act if they are emissions of greenhouse gases from anthropogenic sources; non-anthropogenic sources of greenhouse gases (for example, emissions from volcanic activity) are not included in the figures (see the definition of “emissions” in section 97).

***Section 30: Emissions from international aviation or international shipping***

151. This section makes provision about greenhouse gas emissions from international aviation or international shipping. *Subsection (1)* provides that those emissions do not count as emissions from sources in the United Kingdom (so they do not count as “UK emissions” under section 29(1)(a)) for the targets and budgeting in Part 1, unless regulations make provision for them to do so.
152. Until such time as regulations are made under subsection (1), section 16(5) requires the Secretary of State to report the levels of emissions from international aviation and international shipping, calculated in accordance with international carbon reporting practice (see section 90), in his annual statement to Parliament. See also section 10(2) (i), which requires the Secretary of State to take into account the estimated amount of reportable emissions from international aviation and international shipping in relation to carbon budgets – see the notes on section 10 for more details.
153. *Subsection (2)* allows the Secretary of State to define in more detail what is meant by “international aviation or shipping” by affirmative resolution order.
154. *Subsection (3)* requires the Secretary of State, by 31st December 2012, either:
- to make provision by regulations setting out the circumstances and extent to which emissions from international aviation or international are to be regarded as being emissions from sources in the United Kingdom. Under the mechanisms in the Act, any emissions regarded as being from sources in the United Kingdom are “UK emissions” (see section 29(1)(a)) and count towards calculating and meeting the 2050 target and the carbon budgets, or
  - to lay before Parliament a report saying why he has not made any regulations.
155. *Subsection (4)* makes it clear that even after the five-year period has expired the Secretary of State is still allowed to make regulations setting out the circumstances and extent to which emissions from international aviation or international shipping are to be regarded as being from sources in the United Kingdom.
156. *Subsection (5)* provides that regulations under this section can only deal with emissions of “targeted greenhouse gases” (see section 24). It also provides that the regulations can, in particular, provide that emissions from international aviation or international shipping will only count as UK emissions if they relate to the transport of passengers or goods to or from the United Kingdom.
157. *Subsection (6)* specifically allows the Secretary of State to make provision in the regulations about which time periods should be used when calculating UK emissions from international aviation and international shipping, and how emissions in the base year for the gas should be calculated. *Subsection (7)* allows the Secretary of State to assign a different base year for this purpose, or to assign a number of base years and to treat the average amount of emissions in those years as emissions in the base year. *Subsection (8)* explains that the base year for carbon dioxide is 1990 (referred to as the “1990 baseline” in section 1).

***Section 31: Procedure for regulations under section 30***

158. This section sets out the procedures that the Secretary of State must follow before making regulations on emissions from international aviation or international shipping under section 30.
159. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. *Subsection (2)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
160. *Subsection (3)* places a duty on the Secretary of State, if making regulations in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision. The statement may be published in any way the Secretary of State thinks is appropriate (*subsection (4)*).
161. *Subsection (5)* provides that regulations made under section 30 are subject to the affirmative resolution procedure.

**Part 2: The Committee on Climate Change**

**The Committee**

***Section 32 and Schedule 1: The Committee on Climate Change***

162. This section establishes a new, independent, non-departmental public body, the Committee on Climate Change (in Welsh, y Pwyllgor ar Newid Hinsawdd) and introduces Schedule 1.

***Schedule 1: The Committee on Climate Change***

163. *Schedule 1* makes further provision about the Committee, including provision on its membership, staff, procedures and other administrative requirements.
164. *Paragraphs 1 and 2* make provision in respect of the membership of the Committee on Climate Change. The Committee will have a chair and between five and eight members (one of whom may be appointed as the deputy chair) who will be appointed jointly by the Secretary of State the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department (together, the "national authorities") after consultation with the chairperson. The Secretary of State may, with the consent of the other national authorities, amend the number of members by negative resolution order. Paragraph 1(3) gives a list, in alphabetical order, of the areas of experience and knowledge that are desirable in the Committee's membership, taken as a whole.
165. *Paragraph 3* provides that a person will be a member of the Committee on the terms which are set upon appointment (which will include terms about the length of time the person is to serve on the Committee). *Paragraphs 4 to 7* make provision about how members can resign, the situations in which they can be removed from their posts, and allows the reappointment of members.
166. *Paragraphs 8 to 10* allow the national authorities to pay remuneration and allowances to members, and allow the national authorities to provide pensions for members or to make payments towards the provision of pensions. They also allow payments of compensation to outgoing members in special circumstances.
167. *Paragraphs 11 to 14* relate to the Committee's employees. The Committee must appoint a chief executive who has been approved by the national authorities. It may also appoint other employees. These paragraphs make provision about employees' pay and pensions, and allow employees to be pensionable under the Principal Civil Service Pension Scheme.



168. *Paragraphs 15 to 21* make provision about how the Committee may operate. The Committee can set up sub-committees, which can include people who are not members of the Committee (and they may be paid remuneration and allowances).
169. *Paragraph 16* establishes a sub-committee of the Committee to be known as the Adaptation Sub-Committee or, in Welsh, as yr Is-bwyllgor Addasu; it is referred to in the rest of paragraph 16 as “the ASC”. The ASC will have a chair and not less than 5 other members appointed by the national authorities. Before appointing the ASC chair, the national authorities must consult the chair of the Committee; the ASC chair must be consulted before ASC members are appointed. Paragraph 16(4) provides that the ASC’s role is to provide the Committee with such advice, analysis, information or other assistance as it may require in exercising its functions under sections 38(1)(c) (advice on adaptation requested by national authorities), 57 (advice on report on impact of climate change) and 59 (reporting on progress in connection with adaptation).
170. The Committee is allowed to regulate its own procedure (including quorum) and sub-committee procedures. The Committee is required to publish the minutes of its meetings in any manner it considers appropriate. The Committee may authorise a sub-committee, member or employee to exercise its functions.
171. *Paragraphs 22 to 25* require the Committee to prepare annual reports and annual statements of accounts; reports and accounts must be laid before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The Committee’s accounts will be audited by the National Audit Office. The Committee is placed under a duty to keep proper records, and must provide information to the national authorities on request.
172. *Paragraph 26* provides that the Committee is not required to publish anything it is prohibited from publishing or that it would not be required to publish under the [Freedom of Information Act 2000 \(c.36\)](#) or the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#).
173. *Paragraph 27* provides that the Committee is not a Crown body. It will be a statutory non-departmental public body, and its employees will not be civil servants.
174. *Paragraphs 28 to 35* make amendments to, and provision in relation to, several enactments relating to public bodies; these have several effects, including that the body is subject to freedom of information laws, that the chair and members cannot be members of Parliament, and that the Committee’s activities can be subject to investigation by the Scottish Parliament and the appropriate Parliamentary ombudsman.

## **Functions of the Committee**

### ***Section 33: Advice on level of 2050 target***

175. This section places a duty on the Committee on Climate Change to advise the Secretary of State on whether the 2050 target in section 1(1) should be amended and if so what the amended percentage should be. *Subsection (2)* requires the Committee to provide the reasons for its advice under this section, and *subsection (3)* requires the Committee to provide its advice no later than 1st December 2008.
176. *Subsection (4)* requires the Committee to send a copy of the report to each of the devolved administrations. *Subsection (5)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.

### ***Section 34: Advice in connection with carbon budgets***

177. This section sets out the Committee on Climate Change’s advisory duties in relation to carbon budgets, and the timing of the advice that must be given.

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which received Royal Assent on 26th November 2008*

178. *Subsection (1)* requires the Committee to give advice on carbon budgets. The Committee must advise on the levels at which carbon budgets should be set and on the extent to which budgets should be met by reducing the level of net UK emissions or by the use of carbon units credited to the net UK carbon account. The Committee must advise on the contributions towards meeting carbon budgets that should be made by sectors of the economy covered by trading schemes (taken as a whole) and by other sectors (taken as a whole). The Committee is also required to advise on sectors of the economy in which there are particular opportunities for contributions to be made towards meeting carbon budgets through reductions in emissions of targeted greenhouse gases.
179. *Subsection (2)* gives the Committee an advisory duty that only applies to the 2008–2012 budget period. The Committee is required to advise the Secretary of State on whether its advice on the level of the 2008 –2012 budget is consistent with meeting a separate target of reducing emissions to an annual equivalent (as defined in section 5(2)) of 20% below the 1990 baseline, and to set out what the costs and benefits would be of setting a budget consistent with that target.
180. *Subsection (3)* requires the Committee to set out the reasons for its advice and *subsection (4)* makes provision on the timing of the advice.
181. *Subsection (5)* imposes upon the Committee a duty to send copies of the advice to the devolved administrations at the same time as it gives its advice to the Secretary of State. *Subsection (6)* gives the Committee a duty to publish its advice in any manner it considers appropriate.

***Section 35: Advice on emissions from international aviation and international shipping***

182. *Subsection (1)* of this section places a duty on the Committee on Climate Change to advise the Secretary of State on the consequences of treating emissions from international aviation and international shipping as UK emissions for the purposes of the targets and budgets in the Act.
183. *Subsection (2)* provides that the duty does not apply if, and to the extent that, the Secretary of State has already made regulations under section 30 which provide for emissions from international aviation and international shipping to be treated as UK emissions.
184. *Subsection (3)* requires the Committee on Climate Change to provide reasons with its advice. *Subsection (4)* makes provision on the timing of the advice, requiring the Committee on Climate Change to give its first advice under this section when it advises on the carbon budget for 2023 –2027 (which must be given by 31st December 2010, as calculated in accordance with sections 34(4)(b) and 4(2)(b)). Subsequent advice must be given at the same time as its advice on carbon budgets.
185. *Subsection (5)* requires the Committee on Climate Change to send a copy of its advice to the devolved administrations, and *subsection (6)* requires it to publish its advice, in such manner as it considers appropriate, as soon as is reasonably practicable after it has given it to the Secretary of State.

***Section 36: Reports on progress***

186. *Subsection (1)* requires the Committee on Climate Change to make an annual report to Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly containing its assessment of the progress that has been made towards meeting the carbon budgets already set and the 2050 target (that is, unless amended, to reduce the net UK carbon account to at least 80% below 1990 levels); the further progress that is needed to meet the budgets and that target; and whether the budgets and that target are likely to be met.

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which received Royal Assent on 26th November 2008*

187. *Subsection (2)* applies to progress reports in the second year after the end of each budget period (for example, for the 2008–2012 budget period, in 2014; the final figures for a budget period are not available until the second year after it ends). In those reports, the Committee is required to give its views on the manner in which the budget was or was not met, and its views on the action taken to reduce net UK emissions during the budgetary period.
188. *Subsection (3)* provides that the first report under this section must be laid by 30th September 2009, to take into account the fact that the Secretary of State is required to set the first three budgets by 1st June 2009 (see section 4(2)). *Subsection (4)* provides that each subsequent report under this section, other than the one in the second year after the end of a budgetary period, must be laid by 30th June in the year in which it is made.
189. *Subsection (5)* requires that each report in the second year after the end of a budgetary period must be laid by 15th July in the year in which it is made.
190. *Subsections (6) to (8)* allow the Secretary of State to amend the timing of the report by negative resolution order after consulting the devolved administrations.
191. See also section 59, which requires the Committee to provide progress reports on the implementation of the UK Government’s adaptation programmes under section 58. See the notes on section 59 for more detail on the timing of those progress reports.

***Section 37: Response to Committee’s reports on progress***

192. This section places a duty on the Secretary of State to lay before Parliament a response to the points raised by each of the Committee on Climate Change’s annual progress reports.
193. *Subsection (2)* requires the Secretary of State to consult the devolved administrations on a draft of the response. *Subsection (3)* provides that the response to the Committee’s first report must be laid no later than 15th January 2010. *Subsection (4)* provides that each subsequent report must be laid by 15th October in the year the Committee’s report was made.
194. *Subsections (5) and (6)* allow the Secretary of State to change the deadline by negative resolution order. This provision is to allow flexibility (it might, for example, be used to allow for the consequences of future international treaties on climate change necessitating a change to the date when the Committee makes its report).
195. This section will also require the Secretary of State to respond to any points raised by the Committee in its progress reports under section 59 in relation to progress made in implementing the adaptation programmes under section 58. See the notes on section 59 on the timing of those reports. Also of relevance is section 82, which repeals a reporting requirement under section 2(a) of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#).

***Section 38: Duty to provide advice or other assistance on request***

196. *Subsection (1)* requires the Committee on Climate Change to provide advice, analysis, information or other assistance, when requested to do so, to the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department (together, the “national authorities”). Any request can be made if it relates to an authority’s functions under the Act, the progress that is being made towards meeting objectives set under the Act, to adaptation to climate change or to climate change generally.
197. *Subsection (2)* gives specific examples of what may be required of the Committee, including advice on caps on activities under trading schemes or assistance in the preparation of statistics.

198. *Subsection (3)* gives the Committee a duty to provide a devolved administration (not the Secretary of State), when requested to do so, with advice, analysis, information or other assistance on a target, budget or similar requirement it has adopted (whether or not the target, budget or similar requirement is contained in legislation) or which has been imposed on it. For example, the Committee would, if requested to do so, be required to advise the Scottish Ministers in relation to any target adopted under an Act of the Scottish Parliament.

## **Supplementary provisions**

### ***Section 39: General ancillary powers***

199. *Subsection (1)* gives the Committee on Climate Change the power to do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions. *Subsections (2) and (3)* set out examples to illustrate the scope of the power. Ancillary powers are not freestanding; they may be used only to facilitate the exercise of formal functions. *Subsection (4)* requires the Committee to have regard to the desirability of involving the public in the exercise of its functions.

### ***Section 40: Grants to the Committee***

200. This section enables each national authority (the Secretary of State, the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department) to fund the Committee on Climate Change. National authorities may impose conditions when giving a grant (for example, a condition requiring the Committee to supply a financial memorandum or enter into a management agreement).

### ***Section 41: Powers to give guidance***

201. This section makes provision on how the Committee on Climate Change can be given guidance on how to carry out its functions. The Committee is required to “have regard” to guidance (see *subsection (5)*) – this means that the Committee must take the guidance into account when exercising the function.

- *Subsection (1)* provides that any guidance on the Committee’s functions generally or its functions under Schedule 1 is to be given by the national authorities (and this means that such guidance must be given jointly by all the national authorities: see section 95(2));
- *Subsection (2)* provides that any guidance given on the Committee’s functions under Part 1 of the Act (for example, the function of advising on an amendment of the 2050 target), on its advice on the level of the 2050 target and on carbon budgets under sections 33 and 34, in connection with international aviation and international shipping under section 35, on the report on the impact of climate change under section 57 or on its duty to make progress reports under section 36 or 59 is to be given by the Secretary of State. Unless he is only issuing guidance in relation to the Committee’s functions under section 59, the Secretary of State must consult the devolved administrations;

*Subsection (3)* provides that any guidance given on the Committee’s duty to provide advice or other assistance under section 38 or on trading schemes under section 48 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the guidance must be given jointly.

### ***Section 42: Powers to give directions***

202. This section makes provision on how the Committee on Climate Change can be given directions on how to carry out its functions. The Committee is required to comply with

the directions (see *subsection (6)*), but the Committee cannot be given directions as to the content of any advice or report (see *subsection (4)*).

- *Subsection (1)* provides that any direction on the Committee's functions generally or its functions under Schedule 1 is to be given (jointly) by the national authorities;
- *Subsection (2)* provides that any direction given on the Committee's functions under Part 1 of the Act (for example, the function of advising on an amendment of the 2050 target), on its advice on the level of the 2050 target and on carbon budgets under sections 33 and 34, in connection with international aviation and international shipping under section 35, on the report on the impact of climate change under section 57 or on its duty to make progress reports under section 36 or 59 is to be given by the Secretary of State. Unless he is only issuing directions in relation to the Committee's functions under section 59, the Secretary of State must consult the devolved administrations;
- *Subsection (3)* provides that any direction given on the Committee's duty to provide advice and other assistance under section 38 or on trading schemes under section 48 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the directions must be given jointly.

### **Part 3: Trading Schemes**

#### **Trading schemes**

##### ***Section 44: Trading schemes***

203. This section provides the relevant national authority (defined in section 47 as the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department) with the power to set up trading schemes relating to greenhouse gas emissions using secondary legislation.
204. *Subsection (2)(a)* provides for trading schemes which limit activities that consist of the emission of greenhouse gases, or that directly or indirectly lead to such emissions (for example, "cap and trade schemes" which cap emissions from a particular set of activities and allow trading of emissions within the cap). *Subsection (2)(b)* provides for trading schemes which encourage activities that directly or indirectly lead to a reduction in greenhouse gas emissions or the removal of greenhouse gases from the atmosphere.

##### ***Section 45: Activities to which trading schemes may apply***

205. This section sets out what activities are regarded as indirectly causing or contributing to greenhouse gas emissions or reductions in greenhouse gas emissions. It also makes provision in relation to the location of activities and emissions covered by this Part.
206. *Subsection (1)* sets out the types of activity which are considered to be indirect causes of, or contributors to, greenhouse gas emissions, such as activities which involve the use of energy or those involving the supply of something the use of which would lead to greenhouse gas emissions. For example, the supply of a heating fuel would be regarded as indirectly causing emissions because it leads to emissions at the point of use by the consumer. *Subsection (2)* provides that reductions in the level of those activities are to be regarded as indirectly causing or contributing to reductions in greenhouse gas emissions.
207. *Subsection (3)* provides that Part 3 of the Act applies to activities carried out in the United Kingdom, regardless of where emissions, or reductions in emissions, actually occur.

***Section 46 and Schedule 2: Matters that may or must be provided for in trading schemes***

208. *Subsections (1) and (2)* introduce Schedule 2 to the Act, which gives further details about regulations establishing trading schemes. *Subsection (3)* provides that regulations may also contain provision about their application to the Crown.

***Schedule 2: Trading schemes***

209. *Schedule 2* makes specific provision on what may or must be included in regulations establishing trading schemes. Parts 1 and 2 make provision, respectively, in relation to trading schemes operating to achieve different results; but it is possible to make trading schemes that operate to achieve both types of results by combining different elements of those Parts.
210. *Part 1 of Schedule 2* contains details of what can or must be included in a trading scheme which operates by limiting, or encouraging the limitation of, activities that consist of or lead to emissions of greenhouse gases. For example, the Carbon Reduction Commitment, a proposed scheme to reduce energy use, would be a scheme under Part 1 of Schedule 2.
211. A trading scheme under Part 1 must operate by having trading periods (*paragraph 2*), by defining the activities covered by the scheme (*paragraph 3(1)*) and by specifying scheme “units” (which may be specified by reference to the activities themselves, things consumed or used for their purposes, things produced by the activities or other consequences of the activities) (*paragraph 3(3) and (4)*). The scheme must define the participants covered by it; participants may be defined by reference to criteria (*paragraph 4*).
212. A scheme under Part 1 may provide for allowances to be allocated to participants; allowances represent the right to carry out a specified amount of the activity covered by the scheme. But the regulations cannot provide for allowances to be allocated in return for payment (*paragraph 5*). Any provisions for auctioning allowances would be contained in different legislation (for example, a Finance Act).
213. The scheme rules may require a participant to have or acquire a certain number of allowances to cover his activities in a trading period (*paragraph 6*). A scheme may also allow or require the participant to purchase defined credits to offset his activities, but the regulations can also place limits on the use of credits (*paragraph 7*). A scheme might also operate by requiring payments to be made if the participant did not hold a sufficient number of allowances or credits (*paragraph 8*).
214. A scheme under Part 1 must allow trading in allowances or credits under the scheme, and the scheme must set out the circumstances in which trading will operate. Third parties (who would not otherwise be participants) may also be allowed to trade (*paragraph 9*). A trading scheme may also specify that activities can only be carried out if the participant holds a permit (*paragraph 10*) and may allow recognition of allowances, credits, certificates or other units issued under other trading schemes (whether at domestic, European or international level) (*paragraph 11*).
215. *Part 2 of Schedule 2* contains details of what can or must be included in a trading scheme which operates by encouraging activities that consist of, or that cause or contribute (directly or indirectly) to reductions in greenhouse gas emissions or the removal of greenhouse gases from the atmosphere.
216. A trading scheme under Part 2 must operate by having trading periods (*paragraph 13*), by defining the activities covered by the scheme (*paragraph 14(1)*) and by specifying scheme “units” (which may be specified by reference to the activities themselves, things consumed or used for their purposes, things produced by the activities or other consequences of the activities) (*paragraph 14(3) and (4)*). The scheme must define

the participants covered by it; participants can be defined by reference to criteria (*paragraph 15*).

217. A scheme under Part 2 must set targets for participants to achieve in the trading period (*paragraph 16*). They must provide for the issue of certificates to participants; certificates act as evidence of the amount of the activity that has carried on, but can also be used as evidence of the activity of another person. The scheme must require each participant to have, at the end of a trading period, enough certificates to meet his target (*paragraph 17*), and may provide that a participant who does not have enough certificates should have to make payments (*paragraph 18*).
218. A scheme under Part 2 must allow trading in certificates under the scheme, and the scheme must set out the circumstances in which trading will operate. Third parties (who would not otherwise be participants) may also be allowed to trade (*paragraph 19*). A trading scheme may allow recognition of allowances, credits, certificates or other units issued under other trading schemes (whether at domestic, European or international level) (*paragraph 20*).
219. *Part 3 of Schedule 2* makes provision on the administration and enforcement of trading schemes.
220. The regulations may appoint an administrator of the scheme and impose functions on him; the administrator must be one of the national authorities or a public body, or a combination of any of these (*paragraph 21*). The administrator of a trading scheme is the body which operates the scheme on a day-to-day basis.
221. The regulations can require the disclosure of information to the administrator, national authorities or participants (*paragraph 22*). A scheme may provide for the creation and maintenance of registers to keep track of participants, their obligations, trading and other information in the scheme (*paragraph 23*). The regulations can allow certain information to be published (*paragraph 24*); for example, they might provide for the publication of a list showing participants' performance in the scheme.
222. The scheme can allow the administrator to buy trading units in other schemes, which may be schemes made under the Act or other similar schemes such as the EU Emissions trading scheme (*paragraph 25*). The scheme may also require the payment of charges covering all or part of the costs of the scheme; the charges may be imposed on participants and other people eligible to trade in allowances, credits or certificates (*paragraph 26*).
223. The scheme can include provision setting out how compliance with the scheme is to be monitored and on the keeping of records by participants, the provision of information, audit and the inspection of premises (*paragraph 27*). The scheme can also make further provision for enforcement of the scheme where it is reasonably believed that there has been a failure to comply with the scheme's requirements (*paragraph 28*).
224. The scheme can make provision for the imposition of civil financial penalties or other types of penalty for failure to comply with the scheme rules (*paragraph 29*) and creating criminal offences relating to the scheme (*paragraph 30*). A scheme may also make provision for appeals against decisions and enforcement action, and allow those appeals to be heard by independent appointed persons (*paragraph 31*).

## **Authorities and regulations**

### ***Section 47: Relevant national authorities***

225. This section defines who is the "relevant national authority" in relation to trading schemes, and in doing so sets out the scope of the powers available to each national authority.

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

- *Subsection (2)* allows the Scottish Ministers to make trading schemes within the scope of the legislative competence of the Scottish Parliament (that is, to the extent that the Scottish Parliament would have been able to make a trading scheme of its own accord).
- *Subsection (3)* allows the Welsh Ministers to make trading schemes in relation to matters that relate to limiting, or encouraging the limiting of, activities in Wales that consist of the emission of greenhouse gases, with the exception of activities in connection with offshore oil and gas exploration and exploitation. If the National Assembly for Wales gains legislative competence that would enable it to make trading schemes of its own accord, the power of the Welsh Ministers to make trading schemes under this Part will extend to match the scope of that legislative competence. *Subsection (4)* defines “offshore oil and gas exploration and exploitation” to have the same meaning it has in the [National Assembly for Wales \(Transfer of Functions\) Order 2005 \(S.I. 2005/1958\)](#) and defines “Wales”, for the purpose of subsection (3), by reference to section 158(1) of the [Government of Wales Act 2006 \(c.32\)](#). This definition includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.
- *Subsection (5)* allows the Secretary of State or the relevant Northern Ireland department to make trading schemes in relation to reserved matters under the [Northern Ireland Act 1998 \(c.47\)](#); the relevant Northern Ireland department may make trading schemes covering reserved matters, but only with the Secretary of State’s consent (see section 48(6)).
- *Subsection (6)* allows the relevant Northern Ireland department to make trading schemes in relation to all other matters within the scope of the legislative competence of the Northern Ireland Assembly (that is, to the extent that the Northern Ireland Assembly would have been able to make a trading scheme of its own accord on “transferred matters” under the Northern Ireland Act 1998).
- *Subsection (7)* provides that the Secretary of State has the power to make trading schemes in relation to all other matters.

***Section 48: Procedure for making regulations***

226. This section sets out the procedure which must be followed when regulations under Part 3 containing a trading scheme are made or amended. It includes a requirement to consult persons likely to be affected by the scheme, a requirement to seek advice from the Committee on Climate Change and rules on parliamentary procedure.
227. *Subsection (1)* provides that before making regulations about trading schemes, the relevant national authority must consult such persons as it considers are likely to be affected by the regulations, and also that it must seek, and take account of, advice from the Committee on Climate Change. In the case of schemes limiting activities, the authority must in particular obtain the Committee’s advice on the appropriate level of the limit (*subsection (2)*).
228. *Subsection (3)* sets out the circumstances in which the affirmative resolution procedure applies to the making of regulations (such as where a new scheme is established, the application of an existing scheme is extended, the burden on participants is increased, where enforcement powers are strengthened or where the regulations amend primary legislation). *Subsection (4)* requires that the affirmative resolution procedure also applies to the first set of regulations which contain provisions relating to appeals.
229. *Subsection (5)* provides that the negative resolution procedure applies at all other times.
230. *Subsection (6)* makes special provision in relation to “reserved matters” in Northern Ireland. The relevant Northern Ireland department is allowed to make provision in a



trading scheme dealing with a reserved matter under the [Northern Ireland Act 1998 \(c.47\)](#) only if it has obtained the Secretary of State's consent.

### ***Section 49 and Schedule 3: Further provisions about regulations***

231. This section introduces Schedule 3, which makes further provision on the procedures to be followed when making regulations containing trading schemes.

### ***Schedule 3: Trading schemes regulations: further provisions***

232. *Part 1* of Schedule 3 sets out the procedure to be followed where regulations are made by a single national authority. *Paragraph 2* sets out the affirmative resolution procedure applying in Parliament and the devolved legislatures. *Paragraph 3* sets out the negative resolution procedure applying in Parliament and the devolved legislatures. *Paragraph 4* allows any regulations that could be made using the negative resolution procedure to be made using the affirmative resolution procedure; this will allow, say, amendments which would otherwise have to be made using different procedures to be made in the same instrument.
233. *Part 2* of Schedule 3 sets out the process where regulations are made jointly between the Secretary of State and/or the Welsh Ministers and/or the relevant Northern Ireland department. The affirmative and resolution procedures apply as they do in Part 1 of Schedule 3. Where the affirmative resolution procedure applies, if either House of Parliament or the relevant devolved legislature does not approve the instrument, then the instrument cannot be made. Where the negative resolution procedure applies, if either House of Parliament or the relevant devolved legislature resolves that the regulations should be annulled, then nothing further can be done under the instrument and it may be revoked by Order in Council.
234. *Part 3* of Schedule 3 sets out the process for making joint trading schemes by Her Majesty by Order in Council. The Order in Council procedure is to be used in two situations. First, where a scheme extends or applies both to Scotland and to one or more of England, Wales and Northern Ireland. Secondly, where a scheme relates to matters which are within the legislative competence of the Scottish Parliament and also to other matters which are not within its legislative competence. Where the affirmative resolution procedure would apply to regulations making the same provision, Her Majesty cannot make an Order in Council unless all the relevant legislatures have passed a resolution approving a draft of the Order in Council. Where the negative resolution procedure would apply to regulations making the same provision, the Order in Council is laid before all the relevant legislatures; if any of them resolves that the Order in Council should be annulled, then nothing further can be done under the Order in Council and Her Majesty may revoke it.

## **Other supplementary provisions**

### ***Section 50 and Schedule 4: Information***

235. This section introduces Schedule 4 to the Act, which contains powers to enable the collection of information for the purpose of developing a trading scheme. Schedule 4 allows the national authorities and certain agencies to require, by notice, electricity suppliers and potential participants in a trading scheme to provide information required for the establishment of the scheme.
236. *Subsection (2)* is a “sunset” provision. It provides that the information-gathering (but not the information-sharing) powers in Schedule 4 will cease to have effect on 1st January 2011, the date by which it is anticipated that they will no longer be required.

***Schedule 4: Trading schemes: powers to require information***

237. *Schedule 4* contains powers that could be contained in regulations made under Part 3 of the Act. The intention behind providing these specific powers on the face of the Act is to allow information to be gathered for the establishment of the Carbon Reduction Commitment, a new trading scheme, within a relatively short time-scale.
238. *Schedule 4* makes provision about who is able to exercise the information gathering powers; these are the national authorities, the Environment Agency and the Scottish Environment Protection Agency, collectively referred to as the “environmental authorities” (*paragraph 1*).
239. It provides that the environmental authorities can seek information, for the purposes of enabling a trading scheme to be established, from electricity suppliers and distributors (*paragraph 2*) and from the potential participants in a trading scheme (*paragraph 3*). The information that may be collected includes, among other things, information about contact details, electricity meters, levels of electricity consumption and any climate change agreements (within the meaning of Schedule 6 to the *Finance Act 2000 (c.17)*) that have been entered into.
240. If an environmental authority requests information (in writing) from a person under this Schedule, and the person does not comply with the request within 28 days, the authority may issue a formal notice requesting the information. *Paragraph 4* sets out the requirements relating to such formal notices. A person who fails, without reasonable excuse, to comply with a notice, or who provides false or misleading information (either knowingly, or suspecting that it is false or misleading) is guilty of a summary offence and liable to a fine not exceeding level 5 on the standard scale (currently £5000). (*paragraph 5*).
241. *Paragraph 6* allows information collected using the powers in Schedule 4 to be shared with the other environmental authorities or with the administrator of the trading scheme. This is the only paragraph in the Schedule which is not subject to the sunset provision in section 50(2).

***Section 51: Powers to give guidance***

242. This section gives the relevant national authority (see section 47) the power to give guidance to an administrator of a trading scheme about how to carry out its functions. The administrator is required to have regard to guidance issued to it.

***Section 52: Powers to give directions***

243. This section gives the relevant national authority (see section 47) the power to give general or specific directions to an administrator of a trading scheme. The administrator must comply with directions given under this section.

***Section 53: Grants to administrators and participants***

244. This section enables the relevant national authority (see section 47) to make grants to participants of trading schemes and impose conditions when giving a grant.

***Section 54: Power to make consequential provision***

245. This section gives the relevant national authority (see section 47) the power to make regulations amending, repealing or revoking primary or secondary legislation as a consequence of regulations made under this Part of the Act, and to make any transitional and saving provisions in connection with such amendments, repeals and revocations.

## **Interpretation**

### ***Section 55: Interpretation of Part 3***

246. This section defines the terms “administrator”, “participant” and “trading period” used in Part 3.

## **Part 4: Impact of and adaptation to climate change**

### **National reports and programmes**

#### ***Section 56: Report on impact of climate change***

247. This section places a duty on the Secretary of State to lay reports before Parliament assessing the risks of the current and predicted impact of climate change for the UK, which might include the risks to the natural environment, to infrastructure, to the economy, to society or any other risks.
248. *Subsections (2) and (3)* require the Secretary of State to lay the first report before Parliament no later than three years after the section comes into force, and subsequent reports at intervals of no more than five years. *Subsection (4)* allows the Secretary of State to extend the period for laying a report, but requires him to publish a statement setting out his reasons and saying when the report will be laid.
249. *Subsection (5)* requires the Secretary of State to take the Committee on Climate Change’s advice under section 57 into account before laying the report before Parliament and *subsection (6)* places a duty on the Secretary of State to send a copy of the report to the other national authorities (defined in section 95 as the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department).

#### ***Section 57: Advice of Committee on Climate Change on impact report***

250. *Subsection (1)* of this section requires the Committee on Climate Change to provide the Secretary of State with advice in relation to his reports assessing the risks of climate change to the United Kingdom under section 56. Section 56(5) requires the Secretary of State to take the Committee’s advice into account before laying his reports before Parliament.
251. *Subsection (2)* requires the Committee to give its advice at least six months before the Secretary of State is required to lay his reports before Parliament – under section 56, the first report must be laid before Parliament within 3 years after the Act receives Royal Assent, with subsequent reports at least every five years.
252. *Subsection (3)* requires the Committee to send copies of its advice to the other national authorities (see section 95) at the same time as it gives its advice to the Secretary of State and *subsection (4)* requires it to publish its advice in an appropriate manner as soon as is reasonably practical after that.

#### ***Section 58: Programme for adaptation to climate change***

253. This section requires the Secretary of State to prepare UK Government adaptation programmes.
254. *Subsection (1)* places a duty on the Secretary of State to lay before Parliament adaptation programmes covering the Government’s objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives (indicating an appropriate timescale). The programme should address the risks identified in the most recent report under section 56.
255. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development.

256. *Subsection (3)* requires the Secretary of State to lay the adaptation programme before Parliament as soon as is reasonably practicable after laying his report on the risks of climate change under section 56. *Subsection (4)* requires him to send a copy of each programme to the other national authorities.

***Section 59: Reporting on progress in connection with adaptation***

257. This section places a duty on the Committee on Climate Change to report to Parliament on its assessment of the progress made towards the implementation of the objectives, proposals and policies in the Secretary of State's adaptation programmes under section 58.
258. *Subsection (1)* sets out the basic duty, and provides that progress reports on adaptation should be contained in the reports on progress towards meeting carbon budgets and the 2050 target required by section 36.
259. *Subsection (2)* sets out the timing of the progress reports under this section. The first progress report is to be made in the second year after the Secretary of State lays his first adaptation programme under section 58. This means that if the first adaptation programme is laid before Parliament in 2012, the Committee's first report on the progress made towards implementing must be laid before Parliament by 30th June 2014 (as required, for 2014, by section 36(4)). In accordance with section 37(4), the Secretary of State would be obliged to respond to that report by 15th October 2014.
260. *Subsection (3)* provides that subsequent progress reports are to be laid before Parliament every two years, unless the Secretary of State makes an order under *subsection (4)* to require annual progress reporting. *Subsection (5)* states that the negative resolution procedure (see section 91) applies to orders made under *subsection (4)*.

***Section 60: Programme for adaptation to climate change: Northern Ireland***

261. This section requires the relevant Northern Ireland department to prepare adaptation programmes.
262. *Subsection (1)* places a duty on the relevant Northern Ireland department to lay before the Northern Ireland Assembly adaptation programmes covering its objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives (indicating an appropriate timescale). The programme should address the risks identified in the most recent report under section 56.
263. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development. *Subsection (3)* provides that subsequent programmes must include an assessment of the progress made towards implementing the objectives, proposals and policies in the earlier programmes.
264. *Subsection (4)* requires the relevant Northern Ireland department to lay the adaptation programme before the Northern Ireland Assembly as soon as is reasonably practicable after the report under section 56 has been laid before Parliament and *subsection (5)* requires the department to send a copy of it to the Secretary of State, the Scottish Ministers and the Welsh Ministers.

**Reporting authorities: non-devolved functions**

***Section 61: Guidance by Secretary of State to reporting authorities***

265. This section gives the Secretary of State a power to issue guidance to "reporting authorities". The term "reporting authority" is defined in section 70(1) to mean any person or body with functions of a public nature, and statutory undertakers.
266. *Subsection (1)* gives the Secretary of State the power to issue guidance. It provides that the guidance may deal with how reporting authorities should assess the current and

predicted impact of climate change, how they should prepare proposals and policies to adapt to climate change and how they should co-operate with other reporting authorities when assessing the impact of climate change and preparing those proposals and policies.

267. *Subsection (2)* means that the guidance will not apply to a reporting authority's "devolved functions". Section 70 sets out how to determine what a reporting authority's "devolved functions" are – see the notes on that section for more detail.

### ***Section 62: Directions by Secretary of State to prepare reports***

268. This section allows the Secretary of State to require reporting authorities, individually or jointly with other reporting authorities, to prepare reports on adaptation.
269. *Subsection (1)* provides that the Secretary of State may require a reporting authority to prepare a report covering any or all of the following matters:
- an assessment of the current and predicted impact of climate change on the authority's functions;
  - a statement setting out the authority's proposals and policies for adapting to climate change, and its timescales for introducing the proposals and policies;
  - an assessment of the progress the authority has made towards implementing any proposals and policies contained in an earlier report.
270. *Subsection (2)* allows the Secretary of State to require two or more authorities to prepare a joint report. *Subsection (3)* allows the Secretary of State to give directions to the reporting authority about the timing of the report and the matters it should cover, and allows the Secretary of State to limit the report's coverage to a particular geographical area.
271. *Subsection (4)* has the effect that the Secretary of State cannot require an authority to produce a report dealing with how it will adapt to the impact of climate change in relation to its "devolved functions" (defined in section 70 – see the notes on that section for more information). But the Secretary of State can require the report to cover all of the authority's other, non-devolved, functions.

### ***Section 63: Compliance with Secretary of State's directions***

272. This section requires any reporting authority issued with directions under section 62 to comply with them and sets out other details of how they must prepare their reports.
273. *Subsection (1)* sets out the basic duty on reporting authorities to comply with directions. *Subsection (2)* provides that where two or more reporting authorities have been directed to prepare a joint report, then they must take reasonable steps to cooperate with one another in preparing it.
274. *Subsection (3)* lists a number of reports and programmes that all reporting authorities must have regard to when preparing their own reports following a direction from the Secretary of State:
- the Secretary of State's most recent report on the current and predicted risks of climate change under section 56;
  - the Secretary of State's most recent adaptation programme under section 58; and
  - any guidance issued by the Secretary of State under section 61.

But reporting authorities need have regard to those reports and programmes only so far as they are relevant.

275. *Subsection (4)* applies where the Secretary of State directs a reporting authority which has functions exercisable in or as regards Wales or which has "devolved Welsh

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which received Royal Assent on 26th November 2008*

functions” (as defined in subsections (6) and (7) of section 70). In those circumstances, the authority must also have regard, so far as is relevant, to:

- any guidance issued by the Welsh Ministers under section 66;
- the Welsh Ministers’ most recent report on climate change under section 80.

276. *Subsection (5)* requires a reporting authority to send a copy of its report to the Secretary of State. *Subsection (6)* requires the Secretary of State to publish the report in such manner as he considers appropriate, but subject to the exceptions in subsection (7). Under *subsection (7)*, the Secretary of State is not required to publish anything that he could refuse to disclose under the [Freedom of Information Act 2000 \(c.36\)](#) or under the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#) or which he is prohibited from disclosing by any enactment.

277. *Subsection (8)* requires reporting authorities to have regard to their own reports in the exercise of all of their functions other than their “devolved functions” (see section 70 for the definition).

***Section 64: Consent of, or consultation with, devolved authorities***

278. This section deals with situations where one or more of the “devolved authorities” (as defined in section 70(3)) has an interest or is involved in a function covered by the Secretary of State’s guidance under section 61 or in directions given by the Secretary of State under section 62. For example, the Secretary of State may wish to issue guidance to reporting authorities in an area where he would normally only have the power to act with the consent of, or following consultation with, one or more of the devolved authorities; this section sets out the procedures the Secretary of State must follow.

279. *Subsection (1)* sets out two situations in which the Secretary of State is required to obtain the consent of a devolved authority before issuing guidance under section 61 or directions under section 62:

- the first situation, under paragraph (a), is where the guidance or directions relate to a function of a reporting authority in relation to which a function is exercisable jointly by the devolved authority and a Minister of the Crown. For example, certain functions on the Welsh border are exercisable jointly by the Secretary of State and the Welsh Ministers; before issuing guidance relating to those functions, the Secretary of State would be required to obtain the consent of the Welsh Ministers;
- the second situation, under paragraph (b), is where a function of a reporting authority relates to a function exercisable by a Minister of the Crown but only with the agreement of the devolved authority.

280. *Subsection (2)* sets out two situations in which the Secretary of State is required to consult a devolved authority before issuing guidance under section 61 or directions under section 62:

- the first situation, under paragraph (a), is where a devolved authority has a function which relates to a reporting authority’s function, but in exercising its function the devolved authority is not required to do so jointly with a Minister of the Crown. This covers situations where a devolved authority and a Minister of the Crown have concurrent functions which cover the same or similar ground but are exercisable independently;
- the second situation, under paragraph (b), is where a reporting authority’s function relates to a function of a Minister of the Crown which may only be exercised after consulting the devolved authority.

***Section 65: Report on exercise of power to give directions***

281. *Subsection (1)* of this section requires the Secretary of State to lay reports before Parliament setting out how he intends to exercise his powers under section 62.
282. *Subsection (2)* provides that the Secretary of State must state the circumstances in which he is likely to give directions to reporting authorities, and the authorities (or kinds of authorities) to whom directions should be given as a matter of priority; *subsection (3)* provides that this does not affect the Secretary of State's general discretion as to how he may exercise his power to issue directions.
283. *Subsection (4)* requires the Secretary of State to consult, as appropriate, persons likely to be affected by his report before he lays it before Parliament.
284. *Subsection (5)* requires the Secretary of State to lay his first report before Parliament within 12 months of the Act obtaining Royal Assent. *Subsection (6)* provides that subsequent reports must be laid before Parliament no later than the time he lays his adaptation programme under section 58 before Parliament (this means that there will be reports at least every 5 years).
285. *Subsection (7)* requires the Secretary of State to send a copy of each report to each of the other national authorities.

**Reporting authorities: devolved Welsh functions**

***Section 66: Guidance by Welsh Ministers to reporting authorities***

286. This section gives the Welsh Ministers a power to issue guidance to reporting authorities in relation to their devolved Welsh functions. It provides that the guidance may deal with how reporting authorities should assess the current and predicted impact of climate change, how they should prepare proposals and policies to adapt to climate change, and how they should co-operate with other reporting authorities when adapting to climate change.
287. Subsections (6) and (7) of section 70 set out how to determine what a reporting authority's "devolved Welsh functions" are – see the notes on section 70 for more detail.

***Section 67: Directions by Welsh Ministers to prepare reports***

288. This section allows the Welsh Ministers to require reporting authorities, individually or jointly with other reporting authorities, to prepare reports on adaptation in relation to their devolved Welsh functions.
289. *Subsection (1)* provides that the Welsh Ministers may require a reporting authority to prepare a report covering any or all of the following matters:
- an assessment of the current and predicted impact of climate change on the authority's devolved Welsh functions;
  - a statement setting out the authority's proposals and policies for adapting to climate change in relation to its devolved Welsh functions and its timescales for introducing the proposals and policies;
  - an assessment of the progress the authority has made towards implementing any proposals and policies contained in an earlier report.
290. *Subsection (2)* allows the Welsh Ministers to require two or more authorities to prepare a joint report. *Subsection (3)* allows the Welsh Ministers to give directions to the reporting authority about the timing of the report and the matters it should cover, and allows the Welsh Ministers to limit the report's coverage to a particular geographical area.

291. The Welsh Ministers can only require a reporting authority to produce a report dealing with the authority's "devolved Welsh functions". See the notes on subsections (6) and (7) of section 70 for an explanation of what this covers.

***Section 68: Compliance with Welsh Ministers' directions***

292. This section requires any reporting authority issued with directions under section 67 to comply with them and sets out other details of how they must prepare their reports.
293. *Subsection (1)* sets out the basic duty on reporting authorities to comply with directions. *Subsection (2)* provides that where two or more reporting authorities have been directed to prepare a joint report, then they must take reasonable steps to cooperate with one another in preparing it.
294. *Subsection (3)* lists a number of reports and programmes that all reporting authorities must have regard to when preparing their own reports following a direction from the Welsh Ministers:
- the Secretary of State's most recent report on the current and predicted risks of climate change under section 56;
  - the Secretary of State's most recent adaptation programme under section 58;
  - any guidance issued by the Secretary of State under section 61;
  - any guidance issued by the Welsh Ministers under section 66;
  - the Welsh Ministers' most recent report on climate change under section 80.

But reporting authorities need have regard only to those reports and programmes so far as they are relevant.

295. *Subsection (4)* requires a reporting authority to send a copy of its report to the Welsh Ministers. *Subsection (5)* requires the Welsh Ministers to publish the report in such manner as they consider appropriate, but subject to the exceptions in subsection (7). Under *subsection (6)*, the Welsh Ministers are not required to publish anything that they could refuse to disclose under the [Freedom of Information Act 2000 \(c.36\)](#) or under the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#) or which they are prohibited from disclosing by any enactment.
296. *Subsection (7)* requires reporting authorities to have regard to their own reports in the exercise of all of their "devolved Welsh functions" (see section 70 for the definition).

***Section 69: Consent of, or consultation with, Secretary of State***

297. This section deals with situations where the Secretary of State has an interest or is involved in a function covered by the Welsh Ministers' guidance under section 66 or in directions given by the Welsh Ministers under section 67. For example, the Welsh Ministers may wish to issue guidance to reporting authorities in an area where they would otherwise have the power to act only with the consent of, or following consultation with, a Minister of the Crown; this section sets out the procedures the Welsh Ministers must follow.
298. *Subsection (1)* sets out two situations in which the Welsh Ministers are required to obtain the consent of the Secretary of State before issuing guidance under section 66 or directions under section 67:
- the first situation, under paragraph (a), is where the guidance or directions relate to a function of a reporting authority in relation to which a function is exercisable jointly by a Minister of the Crown and the Welsh Ministers, the First Minister or the Counsel General. For example, certain functions on the Welsh border are exercisable jointly by the Secretary of State and the Welsh Ministers; before issuing



guidance relating to those functions, the Welsh Ministers would be required to obtain the consent of the Secretary of State;

- the second situation, under paragraph (b), is where a function of a reporting authority relates to a function exercisable by the Welsh Ministers, the First Minister or the Counsel General but only with the agreement of a Minister of the Crown.

299. *Subsection (2)* sets out two situations in which the Welsh Ministers are required to consult the Secretary of State before issuing guidance under section 66 or directions under section 67:

- the first situation, under paragraph (a), is where a Minister of the Crown has a function which relates to a reporting authority's function, but in exercising his function the Minister of the Crown is not required to do so jointly with the Welsh Ministers, the First Minister or the Counsel General. This covers situations where the Welsh Ministers and a Minister of the Crown have concurrent functions which cover the same or similar ground but are exercisable independently;
- the second situation, under paragraph (b), is where a reporting authority's function relates to a function of the Welsh Ministers, the First Minister or the Counsel General which may be exercised only after consulting a Minister of the Crown.

## **Interpretation**

### ***Section 70: Interpretation***

300. *Subsection (1)* of this section defines the term "reporting authority" as used in sections 61 to 69. The term covers any person or body with functions of a public nature (all public sector bodies, except those in subsection (2)) and persons who are, or are deemed to be, "statutory undertakers" under the relevant town and country planning legislation applicable in the different parts of the United Kingdom (for example, many utilities providers).

301. *Subsection (2)* expressly provides that some persons or bodies who would otherwise be covered are not "reporting authorities", namely any Minister of the Crown, either House of Parliament, any devolved authority (as defined in subsection (3)) and any devolved legislature (as defined in section 97).

302. *Subsection (3)* defines the term "devolved authority", for the purposes of sections 61 to 69 and this section, to mean:

- the Welsh Ministers, the First Minister or the Counsel General;
- the Scottish Ministers, the First Minister, the Lord Advocate or the Solicitor General for Scotland; and
- a Minister within the meaning of the [Northern Ireland Act 1998 \(c.47\)](#) or a Northern Ireland department.

303. *Subsection (4)* defines what is meant by a reporting authority's "devolved functions" for the purposes of sections 61 to 69 and this section. This term covers functions of a reporting authority which are already effectively governed (or are capable of being governed) by the devolved administrations or devolved legislatures, or where the devolved administrations have related functions, and where no related functions are retained by a Minister of the Crown. This provision includes flexibility so that it will continue to reflect the devolution settlements in the future (for example, if the National Assembly for Wales is given further legislative competence).

304. *Subsection (5)* sets out the situations where functions which are exercisable by a Minister of the Crown are not to be treated as preventing a reporting authority's function being a "devolved function" under subsection (4). Paragraph (a) covers situations where a Minister of the Crown only has a listed continuing or intervention function. Paragraph

(b) covers situations where a Minister of the Crown is only required to agree to the exercise of a function by the devolved authority and paragraph (c) covers situations where a Minister of the Crown's only function is to be consulted by the devolved authority.

305. *Subsection (6)* defines what is meant by a reporting authority's "devolved Welsh functions". This term covers functions of a reporting authority which are already effectively governed (or are capable of being governed) by the Welsh Ministers or the National Assembly for Wales, or in relation to which the Welsh Ministers, the First Minister or the Counsel General have related functions.
306. *Subsection (7)* sets out some situations in which a reporting authority's functions are not to be treated as "devolved Welsh functions". These are situations in which the Welsh Ministers, the First Minister or the Counsel General have the function only of giving or withholding consent to exercise of functions by, or being consulted by, a Minister of the Crown.

## **Part 5: Other provisions**

### **Waste reduction schemes**

#### ***Section 71 and Schedule 5: Waste reduction schemes***

307. This section and Schedule 5 (which it introduces) allow for the making of waste reduction schemes, which are schemes to incentivise occupiers of domestic premises to produce less waste and recycle more of what they produce.
308. *Subsection (1)* provides for Schedule 5 to amend the [Environmental Protection Act 1990 \(c.43\)](#). It does so by adding to that Act a new section 60A, which provides that a waste collection authority whose area is in England may make a waste reduction scheme in accordance with a new Schedule to that Act, Schedule 2AA. It is Schedule 2AA which details what a waste reduction scheme is and how it must be made.
309. *Subsection (2)* provides that Schedule 5 may only be brought into force in accordance with sections 72 to 75, which allow the Secretary of State to designate certain areas where waste collection authorities may make waste reduction schemes on a pilot basis. Following the pilots, the power for authorities to make waste reduction schemes may be rolled out to all other areas in England, if the Secretary of State so decides.
310. *Subsection (3)* provides that for the purposes of sections 72 to 75, "the waste reduction provisions" means the provisions inserted by Schedule 5 and any subordinate legislation made under those provisions.

#### ***Schedule 5: Waste reduction schemes***

311. *Paragraph 1* inserts a new section, section 60A, into the Environmental Protection Act 1990, allowing a waste collection authority in England to make a scheme in accordance with new Schedule 2AA.
312. *Paragraph 2* inserts a new Schedule, Schedule 2AA, into the Environmental Protection Act 1990 (see below).
313. *Paragraph 3* amends the Environmental Protection Act 1990 by inserting two new subsections into section 46 (receptacles for household waste) and making consequential amendments to section 46. Section 46 allows local authorities to serve a notice requiring occupiers to place waste for collection in receptacles of a kind and number specified. The amendments allow local authorities which are operating waste reduction schemes to require occupiers to place waste for collection in receptacles identified by specified means, either in addition or as an alternative to requiring them to place waste in specified receptacles.

314. *Paragraph 4* amends section 161 of the Environmental Protection Act 1990 (regulations, orders and directions) in order to specify which Parliamentary procedure shall apply to certain statutory instruments made pursuant to the waste reduction provisions. *Paragraph 4(2)* inserts new section 161(2ZA), which, in combination with paragraph 16(5) of Schedule 2AA, provides that a statutory instrument containing regulations made under paragraph 11 of Schedule 2AA (power to make provision as to administration etc) which modify an Act of Parliament shall be subject to the affirmative resolution procedure. *Paragraph 4(3)* inserts new section 161(4)(aa), which provides that the following orders made pursuant to Schedule 2AA shall be subject to the affirmative resolution procedure: those orders made under paragraph 2(3) (conditions for making waste reduction scheme), 6(2) (requirement of revenue-neutrality), 15(2) (interpretation), or an order made under paragraph 5(1) (charging: supplementary provisions) where paragraph 16(3) applies.

### **New Schedule 2AA of the Environmental Protection Act 1990**

315. *New Schedule 2AA*, consisting of sixteen paragraphs, sets out the detailed rules regarding waste reduction schemes.
316. *Paragraph 1(1)* describes the purpose of a waste reduction scheme, being to provide a financial incentive to produce less domestic waste and recycle more of what is produced, thus reducing the amount of residual domestic waste. *Paragraph 1(2)* provides that a scheme may cover the whole or any part of the area of a waste collection authority, and that it may apply to all domestic premises, to domestic premises other than those of a description specified in the scheme, or to those domestic premises whose descriptions are specified in the scheme.
317. *Paragraph 2(1)* sets out certain conditions which a waste collection authority must have satisfied before it puts a scheme into effect, being (a) that a good recycling service is available to the occupiers of premises within the scheme, and (b) that the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and (c) that the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.
318. *Paragraph 2(2)(a)* defines a “recycling service” as arrangements for the collection of recyclable domestic waste from premises separately from other waste, and *paragraph 2(2)(b)* defines a “good” recycling service as a service which meets the standards specified in guidance issued by the Secretary of State. *Paragraph 2(3)* allows the Secretary of State by order, subject to the affirmative resolution procedure, to amend paragraph 2(1) and (2).
319. *Paragraphs 3 to 6* deal with the rules on how authorities may impose charges and give rebates or make payments within a scheme.
320. *Paragraph 3(1)* states that a waste reduction scheme must provide for a financial incentive which the authority considers will be effective to achieve the purpose of the scheme. Under *paragraph 3(2)*, this incentive may be provided by means of rebates from council tax or by other payments, or by means of charges under paragraph 4, or by any combination of those means.
321. *Paragraph 4(1)* allows a waste reduction scheme to include provision for charging occupiers by reference to the amount of residual waste collected, the size of receptacles used, the number of receptacles, or the frequency of collection, or by any combination of these factors. *Paragraph 4(2)* allows that the scheme may in particular require occupiers, by notice under section 46 of the Environmental Protection Act 1990, to place residual waste in receptacles of a specified kind and/or to identify such receptacles in a specified way.
322. *Paragraph 4(3)* specifies that a charge under paragraph 4 in respect of a receptacle is in addition to any charge under section 46 of the Environmental Protection Act 1990 in

respect of the cost of providing the receptacle. *Paragraph 4(4)* specifies that the amount of any charge under paragraph 4 need not be related to the authority's costs.

323. *Paragraph 4(5)* allows a scheme to provide as to the person or persons by whom any charge is payable. *Paragraph 4(6)* allows a scheme to require any charge to be paid in advance on the basis of an estimate of the amount likely to be payable, or to require payments to be made on account or by instalments.
324. *Paragraph 5* sets out supplementary provisions in relation to charging. *Paragraph 5(1)* allows the Secretary of State by order to limit the amount of a charge under paragraph 4 that may be imposed in respect of any premises in any financial year. Paragraph 16(2) and (3) provides that an order under paragraph 5(1) is subject to the negative resolution procedure, except where it is the first such order to be made or if, on subsequent occasions, it increases the charge limit by more than is necessary to reflect changes in the value of money.
325. *Paragraph 5(2)* provides that where an occupier fails to pay a charge under paragraph 4 this does not affect an authority's duty under section 45(1)(a) of the Environmental Protection Act 1990 to arrange for collection of the occupier's household waste.
326. *Paragraph 5(3)* provides that section 45(3) of the Environmental Protection Act 1990, which places a general prohibition on charging for collection of household waste, takes effect subject to the ability of authorities to make charges under paragraph 4.
327. *Paragraph 6(1)* provides that from year to year, and taking one year with another, the aggregate amount of charges under a waste reduction scheme must not exceed the aggregate amount of the rebates or other payments under the scheme. This means that where the payment of charges is required, schemes must be revenue neutral. *Paragraph 6(2)* allows the Secretary of State by order to amend paragraph 6(1). *Paragraph 6(3)* stipulates that any such order amending paragraph 6(1) may also make consequential amendments to paragraph 4(4). Any order under paragraph 6 will be subject to the affirmative resolution procedure.
328. *Paragraph 7(1)* states that an authority must comply with the requirements in paragraph 7(2) and (3) on communicating the provisions of a scheme, before the scheme comes into operation. *Paragraph 7(2)* provides that an authority must publish the scheme in such manner as it considers appropriate. *Paragraph 7(3)* provides that an authority must send to the occupier of any premises within a scheme a notice detailing the requirements of the scheme with regard to collection, any rebates or other payments available and the manner in which they are to be made, and any charges and the manner in which they are to be collected.
329. *Paragraph 8* provides that a scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme.
330. *Paragraph 9(1)* provides that an authority must keep a separate account of any rebates or other payments under the scheme and any charges received by it under the scheme. *Paragraph 9(2)* allows any person interested to inspect the account and make copies of it or any part of it, at any reasonable time and without payment. *Paragraph 9(3) and (4)* provide that it is an offence for any person having custody of the account to obstruct intentionally a person exercising their rights under paragraph 9(2), and that a person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (currently £1000).
331. *Paragraph 10(1)* provides that where a waste collection authority that operates a scheme is not also the waste disposal authority for that area, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority which is attributable to the scheme. The possibility of such payments by the disposal authority has been provided for because a disposal authority may benefit from a scheme by having

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less waste to deal with, but such a benefit would arise from the implementation of a waste reduction scheme by the collection authority.

332. *Paragraph 10(2)* provides that the collection authority must supply information to the disposal authority to enable the disposal authority to determine the appropriate level of payment under paragraph 10(1).
333. *Paragraph 11* gives the Secretary of State the power to make regulations as to the administration of waste reduction schemes. Regulations under this paragraph are subject to the negative resolution procedure unless they amend an Act of Parliament (section 161(2ZA) of the Environmental Protection Act 1990).
334. *Paragraph 11(1)* enables such regulations to make provision about how the amount of any rebate or other payment is to be determined and how it is to be given, and how the amount of any charge is to be determined and how it is to be collected or enforced.
335. *Paragraph 11(2)* makes clear that such regulations may in particular provide for appeals against determination or any failure to make a determination, for the appointment of persons or bodies to hear appeals, and for charges to be recoverable, if a county court so orders, as if they were payable under a county court order,
336. *Paragraph 11(3)* allows the regulations to provide that the administration of a waste reduction scheme may be integrated with the administration of council tax (and by sub-paragraph (3)(b) the regulations may provide for consequential modification of council tax legislation). *Paragraph 11(4)* provides further detail on this: in particular, the regulations may provide: (a) for including material relating to the scheme in the council tax demand notice, (b) for applying the procedure for appeals about liability to council tax to questions arising under the scheme, and (c) for applying the procedures on enforcement of council tax liability to any liability under the scheme.
337. *Paragraph 12* allows an authority to use information it obtains under council tax legislation for the purposes of administering a waste reduction scheme.
338. *Paragraph 13(1)* allows an authority to amend or revoke its scheme. *Paragraph 13(2)* provides that, before bringing an amendment into operation, the authority must publish the amended scheme in such manner as it thinks appropriate and, if the amendment affects any matters previously notified to occupiers, send a notice to the occupier of any premises within the scheme explaining the effect of the amendment.
339. *Paragraph 13(3)* states that the amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect. *Paragraph 13(4)* states that the revocation of a scheme does not affect the duty of an authority to comply with paragraph 6(1), the requirement of revenue-neutrality.
340. *Paragraph 14(1)* allows the Secretary of State to issue guidance to waste collection authorities and waste disposal authorities as to the exercise of their functions in relation to waste reduction schemes. *Paragraph 14(2)* provides that any such guidance must be published in such manner as the Secretary of State considers appropriate and may be amended or replaced by further guidance, or revoked. *Paragraph 14(3)* provides that waste collection authorities and waste disposal authorities must have regard to any such guidance.
341. *Paragraph 15(1)* defines the terms “domestic premises”, “domestic waste”, “enactment”, “recyclable waste”, “residual domestic waste” and “specified” used in Schedule 2AA. *Paragraph 15(2)* allows the Secretary of State by order, subject to affirmative resolution, to amend the definition of “domestic premises”. *Paragraph 15(3)* states that references in Schedule 2AA to recycling include re-using and composting.

342. *Paragraph 16* sets out the details of which Parliamentary procedure applies to certain powers within Schedule 2AA to make order and regulations.
343. *Paragraph 16(1)* provides that the affirmative resolution procedure applies to an order made under paragraph 2(3) (amending the conditions for making a scheme), paragraph 6(2) (amending the requirement of revenue-neutrality) or paragraph 15(2) (amending the definition of “domestic premises”).
344. *Paragraph 16(2)* and *paragraph 16(3)* provide that the negative resolution procedure applies to an order made under paragraph 5(1) (setting a limit on the amount of the charge), except where it is the first such order to be made or where it increases the limit by more than is necessary to reflect changes in the value of money since the limit was previously set, in which cases the affirmative resolution procedure applies.
345. *Paragraph 16(4)* and *paragraph 16(5)* provide that the negative resolution procedure applies to regulations made under paragraph 11 (making provision as to administration), except where they modify an Act of Parliament, in which case the affirmative resolution procedure applies.
346. *Paragraph 16(6)* provides that where an order or regulations are subject to the affirmative resolution procedure, they must be approved by each House of Parliament before they are made.

### ***Section 72: Waste reduction provisions: piloting***

347. This section provides for the piloting of waste reduction schemes.
348. *Subsection (1)* provides that a waste collection authority which wishes to make a pilot waste reduction scheme in its area must submit its proposals to the Secretary of State for approval. If the Secretary of State considers that the proposals are suitable for piloting one or more aspects of the waste reduction provisions, the Secretary of State may make an order designating the area of that authority as a pilot area, so that the authority may make a scheme in accordance with the approved proposals.
349. *Subsection (2)* provides that a maximum of five areas can be designated as pilot areas.
350. *Subsection (3)* stipulates what the Secretary of State’s order designating a pilot area must provide. The order must state that the waste reduction provisions shall have effect in relation to that area for the purpose of enabling the authority to make and operate the proposed scheme, and state the period for which the waste reduction provisions are to be allowed to take effect.
351. *Subsection (4)* allows the Secretary of State, in making subordinate legislation or issuing guidance about waste reduction schemes, to make different provision for different pilot areas, and the Secretary of State may exercise these powers at any time after section 72 has come into force (see section 100 – section 72 comes into force two months after the Act receives Royal Assent).
352. *Subsection (5)* provides that, where subordinate legislation in draft would otherwise be treated as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

### ***Section 73: Waste reduction provisions: report and review***

353. *Subsection (1)* imposes on the Secretary of State a duty to lay before Parliament a report on how the waste reduction provisions have operated in each pilot area.
354. *Subsection (2)* provides that the report must contain: a description of the scheme and how it compares with other schemes, a copy of the designation order, a description of how the relevant enactments and guidance in that pilot area differed from that applying in other pilot areas and in areas not designated, and an assessment of whether a scheme has been successful.

355. *Subsection (3)* provides that the Secretary of State's report must also review the waste reduction provisions in the light of their operation in the relevant pilot area or areas.

***Section 74: Waste reduction provisions: interim report***

356. *Subsection (1)* provides that, if the Secretary of State considers that it will not be possible to lay a report under section 73 in relation to a pilot area within three years of this Act being passed, the Secretary of State must lay an interim report within the three years.
357. *Subsection (2)* provides that the interim report must contain: a description of the scheme and how it differs from other such schemes, a copy of the designating order, and a description of how the enactments and guidance applying in that pilot area differ from those applying in other pilot areas and in non-pilot areas.
358. *Subsection (3)* provides that, where a scheme has not yet been implemented, the interim report must describe progress towards its implementation.
359. *Subsection (4)* provides that, where a scheme has been implemented, the interim report must describe its operation and assess progress towards its objectives, if such an assessment can reasonably be made.

***Section 75: Waste reduction provisions: roll-out or repeal***

360. *Subsection (1)* states that subsections (2) to (6), which provide for the Secretary of State to roll out or repeal the waste reduction provisions, apply after the Secretary of State has laid a report before Parliament in accordance with section 73.
361. *Subsection (2)* provides two options should the Secretary of State wish to roll out the waste reduction provisions generally so as to allow a scheme to be made for any area. Subsection (2)(a) allows the Secretary of State to make an order providing that the provisions shall come into force generally on a date specified in the order. Alternatively, subsection (2)(b) allows the Secretary of State to make an order making such amendments to the provisions as appear necessary or expedient in the light of how they operated in the pilot areas, and to provide that the provisions as so amended shall come into force generally on a date specified in the order.
362. *Subsection (3)* and *subsection (4)* provide that amendments made by an order under subsection (2)(b) may include provision for the Secretary of State to make subordinate legislation, in which case the amendments should also provide for such subordinate legislation to be subject to either the negative resolution procedure or the affirmative resolution procedure, as the Secretary of State thinks fit.
363. *Subsection (5)* provides that, should the Secretary of State decide not to make an order under subsection (2) which rolls out the waste reduction provisions generally, he must make an order repealing the provisions.
364. *Subsection (6)* provides that any order made under subsection (2)(b) or (5) must be made by affirmative resolution.

**Collection of household waste**

***Section 76: Collection of household waste***

365. **Section 76** amends section 46 of the Environmental Protection Act 1990 to insert a new subsection (11), which provides that a waste collection authority is not obliged to collect household waste placed for collection in contravention of a requirement under section 46. The amendment applies in both England and Wales.

## **Charges for single use carrier bags**

### ***Section 77 and Schedule 6: Charges for single use carrier bags***

366. This section introduces Schedule 6 and allows for the making of regulations about charges for single-use carrier bags.
367. *Subsection (3)* defines who is the relevant national authority for the purposes of making regulations under the Schedule; this is the Secretary of State in relation to England, the Welsh Ministers in relation to Wales and the Department of the Environment in Northern Ireland in relation to Northern Ireland.
368. *Subsection (4)* sets out the circumstances in which the affirmative procedure applies to the making of regulations (that is, where the first set of regulations is made by the relevant national authority under the Schedule, where the regulations contain provisions imposing or providing for the imposition of new civil sanctions, where the regulations increase the maximum amount of a monetary penalty or change the basis on which it is to be determined and where the regulations amend or repeal primary legislation). Otherwise, regulations under the Schedule are subject to the negative resolution procedure.

### ***Schedule 6: Charges for single use carrier bags***

369. *Part 1 of Schedule 6* contains enabling powers to make regulations about charges for single use carrier bags.
370. *Paragraph 1* provides a general power for the relevant national authority (defined in section 77(3)) to make regulations about charging by sellers of goods for the supply of single use carrier bags. Powers to define what is meant by “sellers” and by “single use carrier bags” are set out in paragraphs 3 and 5.
371. *Paragraph 2* provides that the regulations may require sellers of goods to charge for single use carrier bags supplied either at the place where the goods are sold, or for the purpose of delivering goods.
372. *Paragraph 3* provides that “sellers” of goods are to be defined in the regulations, including by reference to one or more of the following: a person’s involvement in selling goods or a person’s interest in the goods or in the premises at or from which the goods are sold. It provides that the regulations may apply to a range of different sellers, including all sellers of goods, sellers named in the regulations and sellers identified by reference to factors specified in the regulations. The factors that may be specified in the regulations may include the place from which the goods are sold, the type and value of goods supplied and the seller’s turnover.
373. *Paragraph 4* provides that the regulations may specify the minimum amount that sellers must charge for each single use bag or provide for that amount to be determined in accordance with the regulations.
374. *Paragraph 5* provides that the definition of a ‘single-use carrier bag’ is to be included in the regulations, which may be by reference to technical specifications such as a bag’s size, thickness or composition and/or its intended use.
375. *Paragraph 6* contains powers to appoint an administrator to administer the provisions made by the regulations. It also provides that the regulations may confer powers and duties on the administrator to enable it to carry out its functions.
376. *Paragraph 7* provides that the regulations may require records to be kept in relation to charges made for single use carrier bags, including records relating to the amounts received by the seller by way of charges and the uses to which the proceeds of the charge are put. The regulations may also require that this information is published and



is made available to the relevant national authority, an administrator or members of the public upon request.

377. *Paragraph 8* provides that the regulations may confer powers and duties on an administrator in order to enforce the regulations and in particular, to enable the administrator to obtain relevant documents and information where the administrator reasonably believes that there has been a breach of the regulations.
378. *Part 2 of Schedule 6* sets out the provision that may or must be made in relation to civil sanctions for breaches of other aspects of the regulations made under the Schedule.
379. *Paragraph 9* contains a power for the relevant national authority to include in regulations civil sanctions to deal with breaches of requirements in the regulations. Civil sanctions may take the form of fixed monetary penalties (defined in paragraph 10) and discretionary requirements (defined in paragraph 12).
380. *Paragraph 10* provides that the regulations may grant an administrator a power to issue fixed penalty notices not exceeding £5,000 to any person who breaches the regulations. The notices may only be issued in cases where the administrator is satisfied on the balance of probabilities that a breach of the regulations has occurred.
381. *Paragraph 11* specifies certain minimum requirements that regulations providing for fixed monetary penalties must include. In particular, before the administrator can impose a penalty it must first issue a 'notice of intent'. The person subject to this notice will then have the opportunity to make written representations and objections against the penalty. Alternatively, the person could choose to discharge liability for the penalty by paying a discharge payment of a specified amount which must be no more than the penalty. Any representations or discharge payment must be made within 28 days of receipt of the notice, or such shorter period as prescribed by the notice of intent. If a discharge payment is made, no further action will be taken against that person.
382. After this period, if the administrator chooses to impose the penalty, it must issue a 'final notice' setting out certain specified information such as the grounds for imposing the penalty and how payment may be made. Paragraph 11 also sets out the provision that may be made by regulations as to the right of appeal against the decision to impose a fixed penalty notice and the minimum grounds on which an appeal may be brought.
383. *Paragraph 12* provides that the regulations may grant an administrator the power to impose, by notice, one or more requirements ("discretionary requirements") on a person. These requirements are:
- The payment of a monetary penalty of an amount that the administrator will determine ("variable monetary penalty");
  - To take such steps as may be specified by an administrator within such time period as the administrator may specify to ensure that the incident of non-compliance does not continue or recur ("non-monetary discretionary requirement").
384. The administrator must be satisfied on the balance of probabilities that a person has breached the regulations before imposing such a requirement. The regulations must provide that variable monetary penalties are capped to a maximum amount to be specified in, or determined in accordance with, the regulations.
385. *Paragraph 13* specifies certain minimum requirements that regulations providing for discretionary requirements must include. In particular, the provisions must require the administrator to serve a notice on the person of its intention to impose discretionary requirements on that person and the time within which the recipient can make representations and objections (which cannot be less than 28 days from receipt of the notice) against the proposed sanction.

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386. After the end of the time for making representations and objections, the administrator can then decide whether to impose, withdraw or vary the discretionary requirement or replace it with a different requirement.
387. Where the administrator decides to impose a discretionary requirement, this must be done by way of a notice. The final notice must contain the information set out in sub-paragraph (4), including the person's right of appeal against the sanction.
388. Sub-paragraph (5) sets out the minimum grounds for appeal against the discretionary requirement that must be available.
389. By virtue of [paragraph 14](#), the regulations providing for discretionary requirements may also allow an administrator to issue a monetary penalty by notice for the failure to comply with a non-monetary discretionary requirement (a "non-compliance penalty"). Non-compliance penalties are not available for failure to pay a variable monetary penalty. Failure to pay any monetary penalty can lead to the administrator recovering the amount due through civil debt procedures or as if payable under court order (see [paragraph 16](#)).
390. [Paragraph 15](#) provides that an administrator cannot be granted power to impose both a fixed monetary penalty and a discretionary requirement in relation to the same breach.
391. [Paragraph 16](#) provides that regulations providing for civil sanctions may make provision for discounts for early payment of a monetary penalty and for the payment of interest or a financial penalty for late payment of the original penalty. The total amount of any late payment penalty must not exceed the total amount of the penalty imposed. It provides for the enforcement of unpaid penalties (and any interest or late payment charges) through the civil courts. It also allows the regulations to create a more streamlined process of recovery by treating the penalty as if it were payable under a court order.
392. [Paragraph 17](#) provides that regulations may confer power on the administrator to recover its costs, by notice, from a person on whom a discretionary requirement is imposed. The costs are those incurred by the administrator in relation to the imposition of the sanction, up to the point of its imposition, and include investigation costs, administration costs and the costs of obtaining expert (including legal) advice. The person is not required to pay any costs he can show have been unnecessarily incurred. It requires that, where a costs notice is served, the person subject to the notice has a right of appeal against the decision of the administrator regarding payment of costs.
393. [Paragraph 18](#) contains certain procedural provisions for appeals from civil penalties. In particular, it provides that appeals must be heard by the First-tier Tribunal (established under the [Tribunals, Courts and Enforcement Act 2007 \(c.15\)](#)) or another tribunal created under an enactment.
394. [Paragraph 19](#) provides that the regulations may confer a power on an administrator to issue a publicity notice to a person on whom a civil sanction has been imposed. Such a notice would require the recipient to publicise, at their own cost, that a sanction has been imposed, as well as such other information as may be specified in the regulations. If the person fails to publish the notice as required, the regulations may provide for the administrator to publish the notice and to recover the costs from the person to whom the notice relates.
395. [Paragraph 20](#) provides that the regulations may make provision for officers of a body corporate and partners of a partnership to be liable to civil sanctions.
396. [Paragraph 21](#) provides that where an administrator is to have the power to impose civil sanctions, there is to be a corresponding duty on the administrator to publish guidance containing certain information about how it will use its civil sanction powers, including details about fixed monetary penalties and discretionary requirements such as: when they are likely to be imposed, how fixed and variable monetary penalties

will be determined, how liability for penalties may be discharged and the effect of a discharge and on rights of appeal.

397. *Paragraph 22* provides that regulations providing for civil sanctions must secure the publication of reports by the administrator on the use of civil sanctions.
398. *Paragraph 23* provides that civil sanction powers may not be conferred on an administrator in regulations unless the relevant national authority is satisfied that the administrator will comply with better regulation requirements.
399. *Paragraph 24* requires the relevant national authority to review the operation of the civil sanction provisions set out in regulations three years after they come into force and to publish the results of the review.
400. *Paragraph 25* provides the relevant national authority with the power to suspend an administrator's powers to impose civil penalties in certain circumstances by issuing a direction to the administrator. Such directions may be revoked by the relevant national authority. Before issuing a direction, the relevant national authority must consult the administrator and such other persons as it considers appropriate. Any directions issued must be laid before Parliament and must be published.
401. *Paragraph 26* provides for money received from penalties to go to the relevant national authority's Consolidated Fund.
402. *Part 3 of Schedule 6* makes further provision about the procedures to be followed when making regulations about charges for single use carrier bags.
403. *Paragraph 27* set out the procedure to be followed where regulations are made by a single national authority. Sub-paragraphs (2) and (3) set out the affirmative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraphs (4) to (6) set out the negative resolution procedure applying in Parliament and the devolved legislatures. Sub-paragraph (7) allows any regulations that could be made using the negative resolution procedure to be made using the affirmative procedure; this will allow, say, amendments which would otherwise have to be made using different procedures to be made in the same instrument.
404. *Paragraph 28* sets out the procedure where regulations are made jointly between the Secretary of State and/or the Welsh Ministers and/or the Department of the Environment in Northern Ireland. The affirmative and negative procedures apply as they do in paragraph 27. If either House of Parliament or the relevant devolved legislature does not approve the instrument, then the instrument cannot be made.
405. *Paragraph 29* provides that where regulations made under the Schedule would otherwise be treated as a hybrid instrument under the standing orders of either House of Parliament, the instrument is to proceed as if it were not a hybrid instrument.

## **Renewable transport fuel obligations**

### ***Section 78 and Schedule 7: Renewable transport fuel obligations***

406. This section introduces Schedule 7 to the Act. Schedule 7 amends Chapter 5 of Part 2 of the Energy Act 2004 which enables the Secretary of State to set up a renewable transport fuel obligations scheme ("RTFO scheme") by order ("RTF order").
407. An RTFO scheme is a scheme that requires specified transport fuel suppliers to produce evidence that for a specified period a specified amount of renewable transport fuel has been supplied at or for delivery to places in the United Kingdom. "Specified" for these purposes means specified in or determined in accordance with the RTF order. A "transport fuel supplier" means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom. Renewable transport fuel means:

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- a) biofuel (a liquid or gaseous fuel that is produced wholly from biomass);
  - b) blended biofuel (a liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel);
  - c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced wholly by energy from a renewable source or wholly by a process powered wholly by such energy; or
  - d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel.
408. The Renewable Transport Fuel Obligations Order 2007 (“2007 order”) was made under existing powers in the Energy Act 2004 on 25th October 2007. The 2007 order set up an RTFO scheme with the first obligation period to commence on 15th April 2008. The 2007 order also established the Office of the Renewable Fuels Agency (a non-departmental public body) (“RFA”) and appointed the RFA as Administrator of the scheme.
409. The main changes to the Energy Act 2004 contained in Schedule 5 are explained in the following paragraphs. Some of the changes will enable the RTFO scheme to be altered by order in the future. These include the powers to appoint a new Administrator and transfer functions accordingly (in new section 125C) and the provisions about payments received by the Administrator under the scheme (in section 128 as amended). Other amendments will apply in relation to the scheme as soon as they come into force, such as the duty on the Administrator to promote renewable fuels which have a beneficial environmental effect (in new section 125A), the powers for the Secretary of State to give directions (in new section 125B and section 126 as amended) and the provisions for disclosure of information to the Administrator by Her Majesty’s Revenue and Customs (in new sections 131A to 131C).
410. *Paragraph 2* substitutes new sections 125, 125A, 125B and 125C of the Energy Act 2004 for the existing section 125 of that Act.
411. New section 125 deals with the appointment of the first Administrator of the RTFO scheme. The 2007 order appointed the RFA as the Administrator under section 125 as it currently stands. New section 125 replicates the provision currently in section 125 allowing an RTF order to establish a body corporate and to appoint that body as the Administrator. It will preserve the effect of the 2007 order.
412. New section 125A allows an RTFO order to confer or impose functions on the Administrator. It also imposes a new duty on the Administrator to promote the supply of renewable transport fuel which by its production, supply or use, causes or contributes to the reduction of carbon emissions and contributes to sustainable development or to environmental protection or enhancement.
413. New section 125B(1) makes further provision about the functions of the Administrator. Paragraphs (a) and (b) re-enact the provision currently in section 125(3)(a) and (b) of the Energy Act in enabling powers to be conferred on the Administrator to require information from fuel suppliers; paragraph (c) re-enacts the provision currently in section 125(3)(c) of the Energy Act in enabling powers to be conferred on the Administrator to impose charges on fuel suppliers. Subsection (2) creates a new power for the Secretary of State to give written directions to the Administrator about the exercise of his powers conferred by virtue of subsection (1)(a) or (b). The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to collect information in a particular form or using a particular methodology to show the carbon savings achieved by renewable transport fuel supplied and certificated under the RTFO scheme.

*These notes refer to the Climate Change Act 2008 (c.27)  
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414. New section 125B(5) replaces the provisions of section 125 of the Energy Act 2004 which set out what the Administrator must do with money that he receives from charges imposed on transport fuel suppliers by an RTF order (although the 2007 order does not impose any such charges). It alters the current requirement that any such charges must be used to meet the Administrator's costs by providing that if the Administrator is the Secretary of State any charges must be paid into the Consolidated Fund.
415. New section 125C creates a new power for the Secretary of State by order to replace an existing Administrator with a new Administrator and to provide for the transfer of functions, staff, property, rights and liabilities from the old to the new Administrator. The new Administrator can be the Secretary of State or an existing statutory body or a body corporate established under this new power.
416. The new power is subject to the negative resolution procedure unless it is used to establish a new body corporate or to modify an Act of Parliament, Act of the Scottish Parliament, Act or Measure of the National Assembly for Wales or an Act of the Northern Ireland Assembly, in which case the affirmative resolution procedure will apply.
417. *Paragraph 3* amends section 126 of the Energy Act 2004 which enables an RTF order to make provision about how amounts of transport fuel may count towards discharging obligations imposed by an RTFO scheme. New section 126(5) means that if a future RTF order makes such provision by reference to a document it may provide for references to the document to have effect as references to it as revised or re-issued from time to time. This will enable reference to be made to international standards for carbon and sustainability without the need to amend the order whenever those standards are revised.
418. *Paragraph 3* also amends section 126 of the Energy Act 2004 to create a new power for the Secretary of State to give written directions to the Administrator about the exercise of any of the Administrator's functions in connection with counting or determining amounts of transport fuel for the purpose of the RTFO scheme. The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to use a particular methodology if a future RTF order requires amounts of transport fuel to be counted or determined by reference to its effects on carbon emissions or sustainable development.
419. *Paragraph 4* amends the provisions of the Energy Act 2004 which set out what the Administrator must do with money he receives when administering the RTFO scheme from buy-out payments.
420. Currently, the powers in section 128 of the Energy Act 2004 mean that the Administrator may (if an RTF order so provides, as the 2007 order does) receive buy-out payments from transport fuel suppliers who choose to buy-out their obligation rather than supply the specified amount of renewable transport fuel. By section 128(7) such sums must be paid to transport fuel suppliers under a system of allocation specified in the RTF order (subject to first meeting the costs of the Administrator if the RTF order so provides under the power in section 128(6), which the 2007 order does not).
421. As a result of amendments to section 128 by paragraph 4, where the Administrator is the Secretary of State new section 128(6)(a) will require the buy-out payments to be paid into the Consolidated Fund. But new section 128(6)(b) will allow (but not require) the RTF order to provide for the Secretary of State to make payments to transport fuel suppliers under a system of allocation specified in the order. The RTF order must ensure that the total paid out does not at any time exceed the total of the buy-out payments received up to that time (new section 128(7)).
422. If the Administrator is a person other than the Secretary of State, it will be possible for the RTF order to provide instead that the Administrator must use some or all of the

buy-out payments to meet his costs or must pay some or all of the buy-out payments to the Secretary of State (in which case they will be payable by him into the Consolidated Fund) (new section 128(8)). To the extent that the payments are not dealt with in this way, they will have to be paid to transport fuel suppliers under a system of allocation specified in the RTF order (new section 128(9)).

423. *Paragraph 5* amends section 129(7) of the Energy Act 2004 which currently provides that civil penalties received by the Administrator under an RTF order must be paid to the Secretary of State for payment into the Consolidated Fund. The amendment makes it clear that, if the Secretary of State is the Administrator, he is to pay those sums into the Consolidated Fund directly.
424. *Paragraph 6* inserts into the Energy Act 2004 new sections 131A, 131B and 131C which make provision enabling information to be disclosed by Her Majesty's Revenue and Customs ("HMRC") to the Administrator, as well as prohibiting further disclosure of the information. The information in question is restricted to information held in connection with HMRC's functions under or by virtue of the Hydrocarbon Oil Duties Act 1979. This is to limit the information to that which is relevant to the Administrator's functions.
425. New section 131A permits the information to be disclosed to the Administrator or an authorised person (a person who provides services to or acts on behalf of the Administrator and is authorised by the Administrator to receive the information).
426. New section 131B prohibits the disclosure of the information by the Administrator, an authorised person or any other person who obtains it in the course of providing services to or acting on behalf of the Administrator, except in certain specified cases (for example a disclosure required by a court order). The restrictions on further disclosure only apply to information received under new section 131A that has not also been received by the Administrator or an authorised person by another means.
427. Wrongful disclosure contrary to new section 131B is an offence under new section 131C if the information is about a person who is identified in or identifiable from the disclosure. The offence is triable either summarily or on indictment. Section 131C provides that a person convicted on indictment may be imprisoned for up to 2 years or fined or both, and that on summary conviction a person is liable to imprisonment for up to 12 months or to a fine not exceeding the statutory maximum (currently £5000) or both. It also provides that, in England and Wales, the penalty on summary conviction of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force will be 6 months' imprisonment. The same penalty will apply in Northern Ireland. A person charged with an offence under new section 131C has a defence if he can prove that he reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain.

## **Carbon emissions reduction targets**

### ***Section 79 and Schedule 8: Carbon emissions reduction targets***

428. This section introduces Schedule 8 to the Act, which makes amendments to the provisions of section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000 which relate to powers of the Secretary of State to set carbon emission reduction targets.

### ***Schedule 8: Carbon emissions reduction targets***

429. *Paragraph 1* makes amendments to section 33BC of the Gas Act 1986.
430. *Paragraph 1(1)* introduces the amendments to section 33BC of the Gas Act 1986. Section 33BC is the enabling power which allows the Secretary of State to impose carbon emissions reduction obligations on those gas companies falling within its scope.

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431. [Paragraph 1\(2\)](#) inserts a new subsection (1A) into section 33BC of the Gas Act 1986. Subsection (1A) allows the Secretary of State to exercise the power (to impose carbon emissions reduction obligations) so as to impose more than one obligation on a person in relation to the same period or periods which may overlap.
432. [Paragraph 1\(3\)](#) inserts a new paragraph (ba) into section 33BC(5) of the Gas Act 1986. The new paragraph gives the Secretary of State the power to require the whole or any part of a carbon emissions reduction target to be met by action promoted to persons of a specified description, action promoted in specified areas or a combination of the two.
433. [Paragraph 1\(4\)](#) inserts a definition of “specified” into section 33BC (13). This is necessary as a result of the new paragraph (ba) (introduced by paragraph 1(3)) allowing the Secretary of State to specify persons to whom or areas in which action must be promoted by those under a carbon emissions reduction obligation.
434. [Paragraphs 2 and 3](#) make amendments to the Electricity Act 1989.
435. [Paragraph 2](#) inserts a definition of “electricity generators” into section 6(9) of the Electricity Act 1989.
436. [Paragraph 3\(1\)](#) introduces amendments to section 41A of the Electricity Act 1989. Section 41A is the enabling power which allows the Secretary of State to impose carbon emissions reduction obligations on those electricity companies falling within its scope.
437. [Paragraph 3\(2\)](#) widens the scope of the enabling power in section 41A(1) so that it includes electricity generators. This is achieved by the insertion of a new paragraph (za) into section 41A(1). As a result of this amendment the Secretary of State may exercise the enabling power so as to impose a carbon emissions reduction obligation on electricity generators, electricity distributors and electricity suppliers. To date, under section 41A, the Secretary of State has only exercised the power in relation to electricity suppliers.
438. [Paragraph 3\(3\)](#) makes a similar amendment to that made by paragraph 1(2).
439. [Paragraph 3\(4\)](#) makes a consequential amendment to section 41A(3) which is necessary as a result of bringing electricity generators within the scope of section 41A(1).
440. [Paragraph 3\(5\)](#) makes consequential amendments to section 41A(4) which are necessary as a result of bringing electricity generators within the scope of section 41A(1).
441. [Paragraph 3\(6\)](#) contains a mixture of consequential amendments to section 41A(5) which are necessary as a result of bringing electricity generators within the scope of section 41A(1) but also introduces a new provision. Paragraph 3(6)(b) introduces a new paragraph (ba) into section 41A(5) which reflects the amendment made by paragraph 1(3).
442. [Paragraphs 3\(7\), 3\(8\), 3\(9\), and 3\(10\)](#) make consequential amendments to sections 41A(6), (7)(d), (8)(d) and (11) respectively. All of these amendments are necessary as a result of bringing electricity generators within the scope of section 41A(1).
443. [Paragraph 3\(11\)](#) inserts a definition of “specified” into section 41A(13). This is necessary as a result of the new paragraph (ba) (introduced by paragraph 3(6)(b) into section 41A(5)) allowing the Secretary of State to specify persons to whom or areas in which action must be promoted by those under a carbon emissions reduction obligation.
444. [Paragraph 3\(12\)](#) amends the heading of section 41A so that it reflects the scope of the provision as a result of electricity generators being brought within its scope.
445. [Paragraph 4](#) makes amendments to section 42AA of the Electricity Act 1989.
446. [Paragraph 4\(1\)](#) introduces amendments to section 42AA of the Electricity Act 1989. Section 42AA requires the National Consumer Council to publish information on the

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standards of performance of electricity suppliers and electricity distributors relating to any carbon emissions reduction obligation imposed on them under section 41A.

447. [Paragraphs 4\(2\) and 4\(3\)](#) make consequential amendments to section 42AA so as to ensure that electricity generators are within its scope and that the National Consumer Council can publish information relating to their standards of performance relating to any carbon emissions reduction obligation placed upon them in the future.
448. [Paragraph 5](#) makes a consequential amendment to section 64(1) of the Electricity Act 1989 which is necessary as a result of bringing electricity generators within the scope of the power in section 41A. Paragraph 5 amends the definition of “electricity distributor” and “electricity supplier” in section 64(1) so as to include “electricity generator”.
449. [Paragraph 6](#) makes amendments to section 103 of the Utilities Act 2000.
450. [Paragraph 6\(1\)](#) introduces amendments to section 103 of the Utilities Act 2000. Section 103 contains a power which relates to the exercise of power under section 33BC of the Gas Act 1986 and section 41A of the Electricity Act 1989. Section 103 provides the Secretary of State with the power to set overall carbon emissions reduction targets.
451. [Paragraph 6\(2\)](#) makes a consequential amendment to section 103(1)(b) which is necessary as a result of electricity generators being brought within the scope of the enabling power in section 41A of the Electricity Act 1989.
452. [Paragraph 6\(3\)](#) inserts a new subsection (1A) into section 103 of the Utilities Act 2000. In light of the amendments introduced by paragraphs 1(2) and 3(3) which allow the Secretary of State to impose more than one carbon emissions reduction obligation on those persons falling within the scope of the enabling powers, paragraph 6(3) introduces a new subsection (1A) which allows the Secretary of State to specify more than one overall carbon emissions reduction target in relation to the same period or periods which overlap to any extent.
453. [Paragraphs 6\(4\) and 6\(5\)](#) introduce consequential amendments which are necessary as a result of electricity generators being brought within the scope of the enabling power in section 41A of the Electricity Act 1989.

## **Miscellaneous**

### ***Section 80: Report on climate change: Wales***

454. This section requires the Welsh Ministers to lay before the National Assembly for Wales, from time to time, a report on greenhouse gas emissions and the impacts of climate change on Wales.
455. *Subsection (1)* requires the Welsh Ministers to include in their report their objectives in relation to greenhouse gas emissions and the impacts of climate change in Wales, the action they (and others) have taken to deal with those emissions and impacts and their future priorities for dealing with them.
456. *Subsection (2)* requires the Welsh Ministers to set out how they intend to exercise their power to issue directions to reporting authorities under section 67. *Subsection (3)* provides that this does not affect the Welsh Ministers’ general discretion as to how they may exercise their power to issue directions
457. *Subsection (4)* makes it a requirement that the second and subsequent report under this section should include an assessment of the progress made towards implementing the objectives in earlier reports.
458. *Subsection (5)* defines “Wales”, for the purpose of this section, by reference to section 158(1) of the [Government of Wales Act 2006 \(c.32\)](#). This definition includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.



***Section 81: Climate change measures reports in Wales***

459. This section devolves to the Welsh Ministers the function under section 3 of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#) of preparing an energy measures report in relation to Wales. It also widens the obligation to cover certain other measures and provides that the Secretary of State's consent is required in relation to certain elements of a report.
460. *Subsection (2)* inserts a new section 3A after section 3 of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#). New section 3A requires the Welsh Ministers to prepare a "climate change measures report", which is a report containing information for Welsh local authorities in relation to measures which they may take and which would or might have certain effects, including (in contrast to section 3) the effect of addressing the impacts of climate change. *Subsection (5)* of new section 3A requires the Secretary of State's consent where the report contains information about local authority measures in relation to which the Secretary of State has certain functions, exercisable in relation to Wales (for example, the function of making building regulations).

***Section 82: Repeal of previous reporting obligation***

461. This section repeals section 2 of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#). The reporting requirements under that section are substantially replicated by the reporting requirements in sections 16 and 36 in Parts 1 and 2 of the Act.

***Section 83: Guidance on reporting***

462. *Subsection (1)* of this section requires the Secretary of State to publish guidance on how greenhouse gas emissions can be measured or calculated by persons responsible for activities which lead to those emissions. The intention behind the guidance is to support businesses wishing to report on their emissions and to improve the consistency of emissions reporting by those businesses, so that the reports can be more easily understood and compared.
463. *Subsection (2)* requires the Secretary of State to publish the guidance by 1st October 2009 and *subsection (3)* allows the Secretary of State to revise the guidance from time to time. *Subsection (4)* places the Secretary of State under an obligation to consult the other national authorities (see section 95) before publishing or revising any guidance and *subsection (5)* allows the Secretary of State to publish the guidance in any manner he considers appropriate.

***Section 84: Report on contribution of reporting to climate change objectives***

464. *Subsection (1)* of this section requires the Secretary of State to carry out a review of the contribution that reporting of greenhouse gas emissions could make to the UK Government's objectives in relation to climate change, and report the conclusions of the review to Parliament by 1st December 2010 (*subsection (2)*). It is expected that the review will explore the costs and benefits of the reporting of greenhouse gas emissions by businesses, public sector organisations and others.
465. *Subsection (3)* requires the Secretary of State to carry out his review in consultation with the other national authorities (as defined in section 95).

***Section 85: Regulations about reporting by companies***

466. *Subsection (1)* of this section places a duty on the Secretary of State, by 6th April 2012, either to make regulations under section 416(4) of the [Companies Act 2006 \(c.46\)](#) requiring companies to include in their Directors' Report such information about emissions as the regulations may require, or to lay before Parliament explaining why he has not done so.

467. *Subsection (2)* provides that the duty to make regulations is complied with if they concern any specified type of company or any specified category of emissions. The regulations do not have to apply to all of the emissions of all companies.

***Section 86: Report on the civil estate***

468. This section places a duty on the Treasury to make an annual report to Parliament on the progress made towards improving the efficiency and contribution to sustainability of buildings which form part of the Government's civil estate.
469. *Subsection (1)* sets out the basic duty to make a report to Parliament in respect of each year, beginning with 2008. *Subsection (2)* provides that the report must contain two specific elements: it must set out the progress made towards reducing the size of the civil estate and progress made towards ensuring that buildings that become part of the civil estate fall within the top quartile of energy performance.
470. *Subsection (3)* places a duty on the Treasury to include in the report a statement explaining why, if a building which has become part of the civil estate does not fall within the top quartile of energy performance, the building has nevertheless become part of the estate.
471. *Subsection (4)* provides that each report must be laid before Parliament by 1st June in the year after the year it relates to. So the report in respect of 2008 must be laid before Parliament by 1st June 2009.
472. *Subsection (5)* provides that the word "building" in this section only applies to buildings which do not use energy for heating or cooling any part of their interior. *Subsection (6)* provides that a building only forms part of the "civil estate" for the purposes of this section if it is used for central government administration (as opposed to operational activities) and, on the date the Act receives Royal Assent, it is of a description of buildings for which the Treasury has responsibilities in relation to efficiency and sustainability.
473. *Subsections (7) and (8)* give the Treasury the power to provide, by affirmative resolution order, that buildings of a specified description are or are not to be considered to form part of the civil estate for the purposes of this section.

***Section 87: Power of Ministers and departments to offset greenhouse gas emissions***

474. This section authorises any Minister of the Crown or government department, the Scottish Ministers, the Welsh Ministers and any Northern Ireland department to acquire units, or interests in units, representing reductions in emissions of greenhouse gases, removals of greenhouse gases from the atmosphere and units under cap-and-trade trading schemes.
475. This section therefore enables Her Majesty's Government and the devolved administrations to offset emissions through the purchase of units (often referred to as "carbon credits") or interests in units (such as the right to buy units at a fixed price at some point in the future). It also allows central government and the devolved administrations to purchase units or interests in units, by arrangement, for other public bodies which do not have to power to do so of their own accord. Units acquired using this power which meet the requirements of regulations under section 26 (carbon units and carbon accounting) may be used to reduce the level of the net UK carbon account (see section 27).
476. *Subsection (3)* provides that units or interests in units purchased by the Treasury are to be treated as being held by the persons who constitute the Treasury at that time.

### ***Section 88: Fines for offences relating to pollution***

477. *Subsection (1)* of this section amends section 105(2) of the [Clean Neighbourhoods and Environment Act 2005 \(c.16\)](#) to enable an increase in the maximum fines on summary conviction that can be provided for under the [Pollution Prevention and Control Act 1999 \(c.24\)](#).
478. This subsection will enable the maximum fines on summary conviction under regulations made under the [Pollution Prevention and Control Act 1999](#) to be brought into line with the equivalent maximum fines under section 33(8) of the [Environmental Protection Act 1990 \(c.43\)](#) in order to ensure consistency in this area of regulation.
479. *Subsection (2)* amends the [Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#) so that such a change is made to those Regulations immediately on commencement of the section. This makes the penalties consistent with those which were imposed for offences against the [Waste Management Licensing Regulations 1994 \(S.I. 1994/1056\)](#).

## **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.