

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Carbon Target and Budgeting

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 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;

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- *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;
- *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

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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.