

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

CLIMATE CHANGE ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Trading Schemes

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.

- *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,

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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.