

*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 5: Other provisions

Waste reduction schemes

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

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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.

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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 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

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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.