

Climate Change Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Environment, Food and Rural Affairs, are published separately as HL Bill 9 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Rooker has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Climate Change Bill [HL] are compatible with the Convention rights.

Climate Change Bill [HL]

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Set a target for the year 2050 for the reduction of targeted greenhouse gas emissions; to provide for a system of carbon budgeting; to establish a Committee on Climate Change; to confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere; to make provision about adaptation to climate change; to confer powers to make schemes for providing financial incentives to produce less domestic waste and to recycle more of what is produced; to amend the provisions of the Energy Act 2004 about renewable transport fuel obligations; to make other provision about climate change; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

PART 1

CARBON TARGET AND BUDGETING

The target for 2050

1 The target for 2050

- (1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 60% lower than the 1990 baseline. 5
- (2) “The 1990 baseline” means the amount of net UK emissions of targeted greenhouse gases for the year 1990.

2 Amendment of 2050 target or baseline year

- (1) The Secretary of State may by order – 10
- (a) amend the percentage specified in section 1(1);
- (b) amend section 1 to provide for a different year to be the baseline year.

-
- (2) The power in subsection (1)(a) may only be exercised –
- (a) if it appears to the Secretary of State that there have been significant developments in –
 - (i) scientific knowledge about climate change, or
 - (ii) European or international law or policy, 5
 that make it appropriate to do so, or
 - (b) in connection with the making of –
 - (i) an order under section 19 (designation of further greenhouse gases as targeted greenhouse gases), or
 - (ii) regulations under section 25 (emissions from international aviation or international shipping). 10
- (3) The developments in scientific knowledge referred to in subsection (2) are –
- (a) in relation to the first exercise of the power in subsection (1)(a), developments since June 2000 (the date of the Royal Commission on Environmental Pollution's 22nd Report, “Energy - the Changing Climate”); 15
 - (b) in relation to a subsequent exercise of that power, developments since the evidential basis for the previous exercise was established.
- (4) The power in subsection (1)(b) may only be exercised if it appears to the Secretary of State that there have been significant developments in European or international law or policy that make it appropriate to do so. 20
- (5) An order under subsection (1)(b) may make consequential amendments of other references in this Act to the baseline year.
- (6) An order under this section is subject to affirmative resolution procedure.
- 3 Consultation on order amending 2050 target or baseline year** 25
- (1) Before laying before Parliament a draft of a statutory instrument containing an order under section 2 (order amending the 2050 target or the baseline year), the Secretary of State must –
- (a) obtain, and take into account, the advice of the Committee on Climate Change, and
 - (b) take into account any representations made by the other national authorities. 30
- (2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities.
- (3) The Secretary of State may proceed to lay such a draft statutory instrument before Parliament without having received a national authority’s representations if the authority does not provide them before the end of the period of three months beginning with the date the Committee’s advice was sent to the authority. 35
- (4) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities. 40
- (5) The statement may be published in such manner as the Secretary of State thinks fit. 45

Carbon budgeting

- 4 Carbon budgets**
- (1) It is the duty of the Secretary of State –
- (a) to set for each succeeding period of five years beginning with the period 2008-2012 (“budgetary periods”) an amount for the net UK carbon account (the “carbon budget”), and 5
 - (b) to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget.
- (2) The carbon budget for a budgetary period may be set at any time after this Part comes into force, and must be set – 10
- (a) for the periods 2008-12, 2013-2017 and 2018-2022, before 28th February 2009;
 - (b) for any later period, not later than 30th June in the 12th year before the beginning of the period in question.
- 5 Level of carbon budgets** 15
- (1) The carbon budget –
- (a) for the budgetary period including the year 2020, must be such that the annual equivalent of the carbon budget for the period is at least 26%, but not more than 32%, lower than the 1990 baseline;
 - (b) for the budgetary period including the year 2050, must be such that the annual equivalent of the carbon budget for the period is lower than the 1990 baseline by at least the percentage specified in section 1 (the target for 2050); 20
 - (c) for the budgetary period including any later year specified by order of the Secretary of State, must be such that the annual equivalent of the carbon budget for the period is – 25
 - (i) lower than the 1990 baseline by at least the percentage so specified, or
 - (ii) at least the minimum percentage so specified, and not more than the maximum percentage so specified, lower than the 1990 baseline. 30
- (2) The “annual equivalent”, in relation to the carbon budget for a period, means the amount of the carbon budget for the period divided by the number of years in the period.
- (3) An order under this section is subject to affirmative resolution procedure. 35
- 6 Amendment of target percentages**
- (1) The Secretary of State may by order amend –
- (a) the percentages specified in section 5(1)(a);
 - (b) any percentage specified under section 5(1)(c).
- (2) That power may only be exercised – 40
- (a) if it appears to the Secretary of State that there have been significant developments in –
 - (i) scientific knowledge about climate change, or
 - (ii) European or international law or policy,

- that make it appropriate to do so, or
- (b) in connection with the making of—
- (i) an order under section 19 (designation of further greenhouse gases as targeted greenhouse gases), or
 - (ii) regulations under section 25 (emissions from international aviation or international shipping). 5
- (3) The developments in scientific knowledge referred to in subsection (2)(a) are—
- (a) in relation to the first exercise of the power conferred by this section in relation to the percentages specified in section 5(1)(a), developments since June 2000 (the date of the Royal Commission on Environmental Pollution's 22nd Report, “Energy - the Changing Climate”); 10
 - (b) in relation to the first exercise of the power conferred by this section in relation to any percentage specified under section 5(1)(c), developments since the evidential basis for the order setting that percentage was established; 15
 - (c) in relation to a subsequent exercise of any of those powers, developments since the evidential basis for the previous exercise was established.
- (4) An order under this section is subject to affirmative resolution procedure.
- 7 Consultation on order setting or amending target percentages 20**
- (1) Before laying before Parliament a draft of a statutory instrument containing an order under section 5(1)(c) (order setting target percentage) or section 6 (order amending target percentage), the Secretary of State must—
- (a) obtain, and take into account, the advice of the Committee on Climate Change, and 25
 - (b) take into account any representations made by the other national authorities.
- (2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities.
- (3) The Secretary of State may proceed to lay such a draft statutory instrument before Parliament without having received a national authority’s representations if the authority does not provide them before the end of the period of three months beginning with the date the Committee’s advice was sent to the authority. 30
- (4) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities. 35
- (5) The statement may be published in such manner as the Secretary of State thinks fit. 40
- 8 Setting of carbon budgets for budgetary periods**
- (1) The Secretary of State must set the carbon budget for a budgetary period by order.
- (2) The carbon budget for a period must be set with a view to meeting—
- (a) the target in section 1 (the target for 2050), and 45

(b) the requirements of section 5 (requirements as to level of carbon budgets),
and complying with the European and international obligations of the United Kingdom.

(3) An order setting a carbon budget is subject to affirmative resolution procedure. 5

9 Consultation on carbon budgets

(1) Before laying before Parliament a draft of a statutory instrument containing an order under section 8 (order setting carbon budget), the Secretary of State must—

(a) obtain, and take into account, the advice of the Committee on Climate Change, and 10

(b) take into account any representations made by the other national authorities.

(2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities. 15

(3) The Secretary of State may proceed to lay such a draft statutory instrument before Parliament without having received a national authority's representations if the authority does not provide them before the end of the period of three months beginning with the date the Committee's advice was sent to the authority. 20

(4) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities.

(5) If the order sets the carbon budget at a different level from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision. 25

(6) A statement under this section may be published in such manner as the Secretary of State thinks fit.

10 Matters to be taken into account in connection with carbon budgets 30

(1) The following matters must be taken into account—

(a) by the Secretary of State in coming to any decision under this Part relating to carbon budgets, and

(b) by the Committee on Climate Change in considering its advice in relation to any such decision. 35

(2) The matters to be taken into account are—

(a) scientific knowledge about climate change;

(b) technology relevant to climate change;

(c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy; 40

(d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;

	(e) social circumstances, and in particular the likely impact of the decision on fuel poverty;	
	(f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;	
	(g) differences in circumstances between England, Wales, Scotland and Northern Ireland;	5
	(h) circumstances at European and international level.	
(3)	Nothing in this section is to be read as restricting the matters that the Secretary of State or the Committee may take into account.	
11	Duty to report on proposals and policies for meeting carbon budgets	10
(1)	As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period.	15
(2)	So far as the report relates to proposals and policies of the Scottish Ministers, the Welsh Ministers or a Northern Ireland department, it must be prepared in consultation with that authority.	
(3)	The Secretary of State must send a copy of the report to those authorities.	
	<i>Determination whether objectives met</i>	20
12	Annual statement of UK emissions	
(1)	It is the duty of the Secretary of State to lay before Parliament in respect of each year, beginning with the year 2008, a statement containing the following information.	
(2)	In respect of each greenhouse gas (whether or not a targeted greenhouse gas), it must –	25
	(a) state the amount for the year of UK emissions, UK removals and net UK emissions of that gas,	
	(b) identify the methods used to measure or calculate those amounts, and	
	(c) state whether any of those amounts represents an increase or decrease compared to the equivalent amount for the previous year.	30
(3)	It must state the aggregate amount for the year of UK emissions, UK removals and net UK emissions of all greenhouse gases.	
(4)	If in accordance with international carbon reporting practice a change of method is such as to require adjustment of an amount for an earlier year in the same budgetary period, it must specify the adjustment required and state the adjusted amount.	35
(5)	If emissions of a greenhouse gas from international aviation or from international shipping are not required to be included in the statement by virtue of subsection (2), it must state any amounts relating to such emissions that the United Kingdom is required to report for the year in accordance with international carbon reporting practice.	40
(6)	It must –	

- (a) state the total amount of carbon units that have been credited to or debited from the net UK carbon account for the budgetary period in which the year falls, and
 - (b) give details of the number and type of those carbon units.
- (7) It must state the amount of the net UK carbon account for that budgetary period. 5
- (8) The amounts referred to in subsections (6) and (7) must be stated as at the latest date before the date of the statement as is reasonably practicable.
- (9) The statement required by this section must be laid before Parliament not later than 31st March in the second year following that to which it relates. 10
- (10) The Secretary of State must send a copy of the statement to the other national authorities.

13 Powers to carry amounts from one budgetary period to another

- (1) The Secretary of State may decide to carry back part of the carbon budget for a budgetary period to the preceding budgetary period. 15
The carbon budget for the later period is reduced, and that for the earlier period increased, by the amount carried back.
- (2) The amount carried back under subsection (1) must not exceed 1% of the carbon budget for the later period.
- (3) The Secretary of State may decide to carry forward the whole or part of any amount by which the carbon budget for a budgetary period exceeds the net UK carbon account for the period. 20
The amount of the carbon budget for the next budgetary period is increased by the amount carried forward.
- (4) Before deciding to carry an amount back or forward under this section, the Secretary of State – 25
 - (a) must consult the other national authorities, and
 - (b) must obtain, and take into account, the advice of the Committee on Climate Change.
- (5) Any such decision must be made no later than 31st May in the second year after the end of the earlier of the two budgetary periods affected. 30

14 Final statement for budgetary period

- (1) It is the duty of the Secretary of State to lay before Parliament in respect of each budgetary period a statement containing the following information.
- (2) In respect of each targeted greenhouse gas, it must state the final amount for the period of UK emissions, UK removals and net UK emissions of that gas. 35
That is the total of the amounts (or adjusted amounts) stated under section 12 (annual statement of UK emissions) in respect of that gas for the years included in the period.
- (3) It must – 40
 - (a) state the final amount of carbon units that have been credited to or debited from the net UK carbon account for the period, and
 - (b) give details of the number and type of those carbon units.

-
- (4) It must state the final amount of the net UK carbon account for the period.
- (5) It must state whether the Secretary of State has decided to carry an amount back under section 13(1) (power to carry amount back from the budget for the next budgetary period), and if so what amount.
- (6) It must state the amount of the carbon budget for the period. 5
That is the amount originally set, subject to any exercise of the powers conferred by section 13 (powers to carry amounts from one budgetary period to another) and any alteration of the budget under section 16
- (7) Whether the carbon budget for a period has been met shall be determined by reference to the figures given in the statement laid before Parliament under this section in respect of that period. 10
- (8) If the carbon budget for the period has not been met, the statement must explain why it has not been met.
- (9) The statement required by this section must be laid before Parliament not later than 31st May in the second year following the end of the period to which it relates. 15
- (10) The Secretary of State must send a copy of the statement to the other national authorities.
- 15 Final statement for 2050**
- (1) It is the duty of the Secretary of State to lay before Parliament in respect of the year 2050 a statement containing the following information. 20
- (2) In respect of each targeted greenhouse gas, it must state the amount for that year of UK emissions, UK removals and net UK emissions of that gas.
That is the amount stated for that year in respect of that gas under section 12 (annual statement of UK emissions). 25
- (3) It must—
- (a) state the amount of carbon units that have been credited to or debited from the net UK carbon account for the year, and
 - (b) give details of the number and type of those carbon units.
- (4) It must state the amount of the net UK carbon account for that year. 30
- (5) Whether the target in section 1 (the target for 2050) has been met shall be determined by reference to the figures given in the statement laid before Parliament under this section.
- (6) If the target has not been met, the statement must explain why it has not been met. 35
- (7) The statement required by this section must be laid before Parliament not later than 31st May 2052.
- (8) The Secretary of State must send a copy of the statement to the other national authorities.

Alteration of budgets or budgetary periods

- 16 Alteration of carbon budgets**
- (1) An order setting the carbon budget for a period may not be revoked after the date by which a budget for the period was required to be set.
 - (2) An order setting the carbon budget for a period may be amended after the date by which a budget for the period was required to be set only if it appears to the Secretary of State that, since the budget was originally set (or previously altered), there have been significant changes affecting the basis on which the previous decision was made. 5
 - (3) An order setting the carbon budget for a period may be amended after the period has begun only if it appears to the Secretary of State that there have been such changes since the period began. 10
 - (4) An order revoking or amending an order setting a carbon budget is subject to affirmative resolution procedure.
- 17 Consultation on alteration of carbon budgets** 15
- (1) Before laying before Parliament a draft of a statutory instrument containing an order under section 16 (alteration of carbon budgets), the Secretary of State must –
 - (a) obtain, and take into account, the advice of the Committee on Climate Change, and 20
 - (b) take into account any representations made by the other national authorities.
 - (2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities.
 - (3) The Secretary of State may proceed to lay such a draft statutory instrument before Parliament without having received a national authority’s representations if the authority does not provide them before the end of the relevant period. 25
 - (4) The relevant period is –
 - (a) if the budgetary period to which the order relates has begun, one month beginning with the date the Committee’s advice was sent to the authority, or 30
 - (b) otherwise, three months beginning with that date.
 - (5) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities. 35
 - (6) The statement may be published in such manner as the Secretary of State thinks fit.
- 18 Alteration of budgetary periods** 40
- (1) The Secretary of State may by order amend section 4(1)(a) so as to alter –
 - (a) the length of the budgetary periods, or

- (b) the dates in the calendar year on which the budgetary periods begin and end.
- (2) This power may only be exercised if it appears to the Secretary of State necessary to do so in order to keep the budgetary periods under this Part in line with similar periods under any agreement at European or international level to which the United Kingdom is a party. 5
- (3) The power may not be exercised in such a way that any period falls outside a budgetary period.
- (4) An order may make such consequential amendments of the provisions of this Act as appear to the Secretary of State to be necessary or expedient. 10
- (5) Before making an order under this section the Secretary of State must consult the other national authorities.
- (6) An order under this section is subject to affirmative resolution procedure.

Targeted greenhouse gases

19 Targeted greenhouse gases 15

- (1) In this Part a “targeted greenhouse gas” means –
- (a) carbon dioxide, and
 - (b) any other greenhouse gas designated as a targeted greenhouse gas by order made by the Secretary of State.
- (2) An order under this section may only have effect for budgetary periods beginning on or after the date it is made. 20
- (3) The order may make such consequential amendments of the provisions of this Act as appear to the Secretary of State to be necessary or expedient.
- (4) Before making an order under this section the Secretary of State –
- (a) must consult the other national authorities, and
 - (b) must obtain, and take into account, the advice of the Committee on Climate Change. 25
- (5) An order under this section is subject to affirmative resolution procedure.

20 Base years for targeted greenhouse gases other than CO2

- (1) The Secretary of State may make provision by order as to the manner of determining, in the case of a targeted greenhouse gas other than carbon dioxide, the amount of net UK emissions for the year 1990. 30
- (2) An order may, in particular –
- (a) designate a different base year, or
 - (b) designate a number of base years, 35
- and provide for the net UK emissions of the gas for that year, or the average amount of net UK emissions of the gas for those years, to be taken into account as if they were net UK emissions of the gas for the year 1990.
- (3) An order under this section may only have effect for budgetary periods beginning on or after the date it is made. 40

- (4) An order under this section is subject to affirmative resolution procedure.

Carbon units, carbon accounting and the net UK carbon account

21 Carbon units and carbon accounting

- (1) In this Part a “carbon unit” means a unit of a kind specified in regulations made by the Secretary of State and representing – 5
- (a) a reduction in an amount of greenhouse gas emissions,
 - (b) the removal of an amount of greenhouse gas from the atmosphere, or
 - (c) an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions.
- (2) The Secretary of State may make provision by regulations for a scheme – 10
- (a) for registering or otherwise keeping track of carbon units, or
 - (b) for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred, by the Secretary of State.
- The regulations may, in particular, provide for an existing scheme to be adapted for these purposes. 15
- (3) The regulations may make provision –
- (a) appointing a body to administer the scheme;
 - (b) establishing a body for that purpose and making such provision in relation to the appointment of members, staffing, expenditure, procedure and otherwise as the Secretary of State considers appropriate; 20
 - (c) conferring power on the Secretary of State to give guidance or directions to the body administering the scheme;
 - (d) conferring power on the Secretary of State to delegate the performance of any of the functions conferred or imposed on the Secretary of State by the regulations; 25
 - (e) requiring the payment by persons using the scheme of charges (of an amount determined by or under the regulations) towards the cost of operating it. 30
- (4) If an existing body is appointed to administer the scheme, the regulations may make such modifications of any enactment relating to that body as the Secretary of State considers appropriate.

22 Net UK carbon account

- (1) In this Part the “net UK carbon account” for a period means the amount of net UK emissions of targeted greenhouse gases for the period – 35
- (a) reduced by the amount of carbon units credited to the net UK carbon account for the period in accordance with regulations under this section, and
 - (b) increased by the amount of carbon units that in accordance with such regulations are to be debited from the net UK carbon account for the period. 40
- (2) The Secretary of State must make provision by regulations about –

-
- (a) the circumstances in which carbon units may be credited to the net UK carbon account for a period,
 - (b) the circumstances in which such units must be debited from that account for a period, and
 - (c) the manner in which this is to be done. 5
- (3) The regulations must contain provision for ensuring that carbon units that are credited to the net UK carbon account for a period cease to be available to offset other greenhouse gas emissions.
- (4) The regulations must contain provision –
- (a) for determining whether the total amount of carbon units allocated to the United Kingdom for each budgetary period under schemes or arrangements imposing a limit on emissions from sources in the United Kingdom represent an amount of net UK emissions of targeted greenhouse gases for the period greater than the carbon budget for the period, and 10
 - (b) for ensuring that, if this is the case, carbon units representing the amount of such emissions in excess of the budget are not used to offset greenhouse gas emissions in the United Kingdom or elsewhere. 15
- 23 Consultation and parliamentary procedure for regulations**
- (1) The following provisions apply in relation to regulations under section 21 (carbon units and carbon accounting) or 22 (net UK carbon account). 20
- (2) The regulations are subject to affirmative resolution procedure if –
- (a) they are the first regulations to be made under those sections, or
 - (b) they make modifications of an enactment contained in primary legislation. 25
- (3) Otherwise the regulations are subject to negative resolution procedure.
- (4) The Secretary of State must consult the other national authorities –
- (a) in the case of regulations subject to affirmative resolution procedure, before laying before Parliament a draft of a statutory instrument containing the regulations; 30
 - (b) in the case of regulations subject to negative resolution procedure, before making the regulations.
- (5) Before laying before Parliament a draft of a statutory instrument containing the first regulations under those sections, the Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change. 35

Other supplementary provisions

24 UK emissions and removals of greenhouse gases

- (1) In this Part –
- (a) “UK emissions”, in relation to a greenhouse gas, means emissions of that gas from sources in the United Kingdom; 40
 - (b) “UK removals”, in relation to a greenhouse gas, means removals of that gas from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom;

- (c) the “net UK emissions” for a period, in relation to a greenhouse gas, means the amount of UK emissions of that gas for the period reduced by the amount for the period of UK removals of that gas.
- (2) The amount of UK emissions and UK removals of a greenhouse gas for a period must be determined consistently with international carbon reporting practice. 5

25 Emissions from international aviation or international shipping

- (1) Emissions of greenhouse gases from international aviation or international shipping do not count as emissions from sources in the United Kingdom for the purposes of this Part, except as provided by regulations under this section. 10
- (2) The Secretary of State may by order define what is to be regarded for this purpose as international aviation or international shipping. Any such order is subject to negative resolution procedure.
- (3) The Secretary of State may make provision by regulations as to the circumstances in which, and the extent to which, emissions from international aviation or international shipping are to be regarded for the purposes of this Part as emissions from sources in the United Kingdom. 15
- (4) Such provision may be made only –
 - (a) in relation to emissions of a targeted greenhouse gas, and
 - (b) if it appears to the Secretary of State appropriate in consequence of or in connection with a change in European or international law or policy relating to emissions from international aviation or shipping. 20
- (5) Regulations under this section may make provision –
 - (a) as to the period or periods (whether past or future) in which emissions of the targeted greenhouse gas are to be taken into account as UK emissions of that gas, and 25
 - (b) as to the manner in which such emissions are to be taken into account in determining the 1990 baseline in relation to those periods.
- (6) They may, in particular –
 - (a) designate a different base year, or 30
 - (b) designate a number of base years,and provide for the emissions in that year, or the average amount of emissions in those years, to be taken into account as if part of the 1990 baseline.
- (7) Regulations under this section are subject to affirmative resolution procedure.

PART 2 35

THE COMMITTEE ON CLIMATE CHANGE

The Committee

26 The Committee on Climate Change

- (1) There shall be a body corporate to be known as the Committee on Climate Change or, in Welsh, as y Pwyllgor ar Newid Hinsawdd (referred to in this Part as “the Committee”). 40

- (2) Schedule 1 contains further provisions about the Committee.

Functions of the Committee

27 Advice in connection with carbon budgets

- (1) It is the duty of the Committee to advise the Secretary of State, in relation to each budgetary period, on— 5
- (a) the level of the carbon budget for the period,
 - (b) the extent to which the carbon budget for the period should be met—
 - (i) by reducing the amount of net UK emissions of targeted greenhouse gases, or
 - (ii) by the use of carbon units that in accordance with regulations under sections 21 and 22 may be credited to the net UK carbon account for the period, and 10
 - (c) the respective contributions towards meeting the carbon budget for the period that should be made—
 - (i) by the sectors of the economy covered by trading schemes (taken as a whole); 15
 - (ii) by the sectors of the economy not so covered (taken as a whole).
- (2) In relation to the budgetary period 2008-2012, the Committee must also advise the Secretary of State on— 20
- (a) whether it would be consistent with its advice on the level of the carbon budget for the period to set a carbon budget such that the annual equivalent for the period was lower than the 1990 baseline by 20%, and
 - (b) the costs and benefits of setting such a budget.
- (3) Advice given by the Committee under this section must also contain the reasons for that advice. 25
- (4) The Committee must give its advice under this section— 30
- (a) for the budgetary periods 2008-2012, 2013-2017 and 2018-2022, before 1st September 2008;
 - (b) for any later period, not later than six months before the last date for setting the carbon budget for the period (see section 4(2)(b)).
- (5) The Committee must, at the time it gives its advice under this section to the Secretary of State, send a copy to the other national authorities.
- (6) As soon as is reasonably practicable after giving its advice under this section the Committee must publish that advice in such manner as it considers appropriate. 35
- (7) This does not require the Committee to publish— 40
- (a) information it could refuse to disclose in response to a request under—
 - (i) the Freedom of Information Act 2000 (c. 36), or
 - (ii) the Environmental Information Regulations 2004 (S.I. 2004/3391) or any regulations replacing those regulations;
 - (b) information whose disclosure is prohibited by any enactment.

28 Reports on progress

- (1) It is the duty of the Committee to lay before Parliament and each of the devolved legislatures each year, beginning with the year 2009, a report setting out the Committee's views on the progress made towards meeting –
 - (a) the carbon budgets set under Part 1, and 5
 - (b) the target in section 1 (the target for 2050).
- (2) The Committee's report in the second year after the end of a budgetary period must also set out the Committee's general views on –
 - (a) the way in which the budget for the period was or was not met, and
 - (b) action taken during the period to reduce net UK emissions of targeted greenhouse gases. 10
- (3) A report under this section must be laid before Parliament and the devolved legislatures not later than 30th June in the year in which it is made.
- (4) The Secretary of State may by order extend that period.
- (5) Before making such an order the Secretary of State must consult the other national authorities. 15
- (6) Any such order is subject to negative resolution procedure.

29 Response to Committee's reports on progress

- (1) The Secretary of State must lay before Parliament a response to each report of the Committee on Climate Change under section 28 (reports on progress). 20
- (2) Before doing so, the Secretary of State must consult the other national authorities on a draft of the response.
- (3) The response must be laid before Parliament not later than 15th October in the year in which the Committee's report is made.
- (4) The Secretary of State may by order extend that period. 25
- (5) Any such order is subject to negative resolution procedure.

30 Duty to provide advice or other assistance on request

- (1) The Committee must, at the request of a national authority, provide advice, analysis, information or other assistance to the authority in connection with –
 - (a) the authority's functions under this Act, 30
 - (b) the progress made towards meeting the objectives set by or under this Act, or
 - (c) climate change generally.
- (2) In particular, the Committee must, at the request of a national authority –
 - (a) advise the authority about any limit proposed to be set by a trading scheme on the total amount of the activities to which the scheme applies, or 35
 - (b) assist the authority in connection with the preparation of statistics relating to greenhouse gas emissions.
- (3) The Committee must, at the request of a national authority other than the Secretary of State, provide advice, analysis, information or other assistance to 40

the authority in connection with any target, budget or similar requirement relating to emissions of greenhouse gas that has been adopted by the authority or to which the authority is otherwise subject.

Supplementary provisions

- | | | |
|-----------|---|----|
| 31 | General ancillary powers | 5 |
| | (1) The Committee may do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions. | |
| | (2) In particular the Committee may – | |
| | (a) carry out or commission research, | |
| | (b) enter into contracts, | 10 |
| | (c) acquire, hold and dispose of property, | |
| | (d) borrow money, | |
| | (e) accept gifts, and | |
| | (f) invest money. | |
| 32 | Grants to the Committee | 15 |
| | A national authority may make grants to the Committee of such amount and subject to such conditions as the authority thinks fit. | |
| 33 | Powers to give guidance | |
| | (1) The national authorities may give the Committee guidance as to the matters it is to take into account in the exercise of – | 20 |
| | (a) its functions generally, or | |
| | (b) any of its functions under Schedule 1. | |
| | (2) The Secretary of State may give the Committee guidance as to the matters it is to take into account in the exercise of its functions under – | |
| | (a) Part 1 (carbon target and budgeting), | 25 |
| | (b) section 27 (advice in connection with carbon budgets), or | |
| | (c) section 28 (reports on progress). | |
| | Before giving such guidance, the Secretary of State must consult the other national authorities. | |
| | (3) A national authority that requests the Committee to provide advice, analysis, information or other assistance under – | 30 |
| | (a) section 30 (duty to provide advice or assistance on request), or | |
| | (b) section 40 (advice on trading scheme regulations), | |
| | may give the Committee guidance as to the matters it is to take into account in responding to that request. | 35 |
| | If the request is made by two or more national authorities, the guidance must be given by them jointly. | |
| | (4) The power to give guidance under this section includes power to vary or revoke it. | |
| | (5) In performing its functions the Committee must have regard to any guidance given under this section. | 40 |

34 Powers to give directions

- (1) The national authorities may give the Committee directions as to the exercise of –
 - (a) its functions generally, or
 - (b) any of its functions under Schedule 1. 5
- (2) The Secretary of State may give the Committee directions as to the exercise of its functions under –
 - (a) Part 1 (carbon target and budgeting),
 - (b) section 27 (advice in connection with carbon budgets), or
 - (c) section 28 (reports on progress). 10

Before giving such directions, the Secretary of State must consult the other national authorities.
- (3) A national authority that requests the Committee to provide advice, analysis, information or other assistance under –
 - (a) section 30 (duty to provide advice or assistance on request), or 15
 - (b) section 40 (advice on trading scheme regulations),

may give the Committee directions as to the exercise of its functions in responding to that request.

If the request is made by two or more national authorities, the directions must be given by them jointly. 20
- (4) The power to give directions under this section does not include power to direct the Committee as to the content of any advice or report.
- (5) The power to give directions under this section includes power to vary or revoke the directions.
- (6) The Committee must comply with any directions given under this section. 25

Interpretation

35 Interpretation of Part 2

Expressions used in this Part that are defined in Part 1 (carbon target and budgeting) have the same meaning as in that Part.

PART 3 30

TRADING SCHEMES

Trading schemes

36 Trading schemes

- (1) The relevant national authority may make provision by regulations for trading schemes relating to greenhouse gas emissions. 35
- (2) A “trading scheme” is a scheme that operates by –
 - (a) limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or

- (b) encouraging activities that consist of, or that cause or contribute, directly or indirectly, to reductions in greenhouse gas emissions or the removal of greenhouse gas from the atmosphere.

37 Activities to which trading schemes may apply

- (1) For the purposes of this Part activities are regarded as indirectly causing or contributing to greenhouse gas emissions if they involve, in particular – 5
- (a) the consumption of energy,
 - (b) the use of materials in whose production energy was consumed,
 - (c) the disposal otherwise than for recycling of materials in whose production energy was consumed, or 10
 - (d) the production or supply of anything whose subsequent use directly causes or contributes to greenhouse gas emissions.
- (2) Correspondingly, for the purposes of this Part activities are regarded as indirectly causing or contributing to the reduction of greenhouse gas emissions if they involve a reduction under any of those heads. 15
- (3) This Part applies to activities carried on in the United Kingdom, regardless of where the related emissions, reductions or removals of greenhouse gas occur.

38 Matters that may or must be provided for in regulations

- (1) Schedule 2 specifies matters that may or must be provided for in regulations under section 36. 20
- (2) In that Schedule –
- Part 1 deals with schemes that operate by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions;
 - Part 2 deals with schemes that operate 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 gas from the atmosphere; 25
 - Part 3 deals with administration and enforcement.
- (3) Regulations under section 36 may also make provision about the application of the regulations to the Crown. 30

Authorities and regulations

39 Relevant national authorities

- (1) This section identifies “the relevant national authority” for the purposes of this Part. 35
- (2) The Scottish Ministers are the relevant national authority in relation to matters within the legislative competence of the Scottish Parliament.
- (3) The Welsh Ministers are the relevant national authority in relation to matters that –
- (a) are within the legislative competence of the National Assembly for Wales, or 40

- (b) relate to limiting or encouraging the limitation of activities in Wales that consist of the emission of greenhouse gas, other than activities in connection with offshore oil and gas exploration and exploitation.
- (4) In subsection (3)(b) –
 - “Wales” has the same meaning as in the Government of Wales Act 2006; and
 - “offshore oil and gas exploration and exploitation” has the same meaning as in the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958).
- (5) The Secretary of State or the relevant Northern Ireland department is the relevant authority in relation to reserved matters within the meaning of the Northern Ireland Act 1998 (c. 47).
- (6) The relevant Northern Ireland department is the relevant authority in relation to all other matters within the legislative competence of the Northern Ireland Assembly.
- (7) The Secretary of State is the relevant national authority in relation to all other matters.

40 Procedure for making regulations

- (1) Before making regulations under this Part, a national authority must –
 - (a) obtain, and take into account, the advice of the Committee on Climate Change, and
 - (b) consult such persons likely to be affected by the regulations as the authority considers appropriate.
- (2) In particular, before making regulations under this Part that set a limit on the total amount of the activities to which a trading scheme applies for a trading period or periods, a national authority must obtain, and take into account, the advice of the Committee on Climate Change on the amount of that limit.
- (3) Regulations under this Part are subject to affirmative resolution procedure if they contain provision –
 - (a) setting up a trading scheme,
 - (b) extending the class of participants or activities to which a trading scheme applies,
 - (c) extending the duration of a trading scheme,
 - (d) making the overall requirements of a trading scheme significantly more onerous,
 - (e) conferring new powers to enforce the requirements of a trading scheme,
 - (f) creating an offence or increasing the penalties for an existing offence, or
 - (g) amending or repealing a provision of an enactment contained in primary legislation.
- (4) Other regulations under this Part are subject to negative resolution procedure.
- (5) The relevant Northern Ireland department may only make regulations under this Part dealing with a reserved matter within the meaning of the Northern Ireland Act 1998 with the consent of the Secretary of State.

41 Further provisions about regulations

- (1) Schedule 3 makes further provision about regulations under this Part.
- (2) In that Schedule—
 - Part 1 relates to regulations made by a single national authority;
 - Part 2 relates to regulations made by two or more national authorities; and
 - Part 3 confers power to make provision by Order in Council.

*Other supplementary provisions***42 Information**

- (1) Schedule 4 confers powers to require information for the purposes of enabling a trading scheme to be established. 10
- (2) Paragraphs 1 to 5 of that Schedule shall cease to have effect on 1st January 2011.

43 Powers to give guidance

- (1) The relevant national authority may give guidance to the administrator of a trading scheme.
- (2) The power to give guidance under this section includes power to vary or revoke it. 15
- (3) The administrator must have regard to any guidance given under this section.

44 Powers to give directions

- (1) The relevant national authority may give directions to the administrator of a trading scheme. 20
- (2) The power to give directions under this section includes power to vary or revoke the directions.
- (3) The administrator must comply with any directions given under this section.

45 Grants to administrators and participants

- (1) A national authority may make, or arrange for the making of, grants to— 25
 - (a) the administrator of a trading scheme, or
 - (b) the participants in a trading scheme.
- (2) A grant under this section may be made subject to such conditions as may be determined by, or in accordance with arrangements made by, the national authority that makes the grant. 30

46 Power to make consequential provision

- A national authority may by regulations—
- (a) make such provision amending, repealing or revoking any enactment as the authority considers appropriate in consequence of provision made by that authority by regulations under section 36 (trading schemes); 35

- (b) make such transitional provision and savings as the authority considers appropriate in connection with the coming into effect of such provision.

Interpretation

47 Interpretation of Part 3

- In this Part— 5
- “administrator”, in relation to a trading scheme, means a person appointed as the administrator of the scheme by regulations under paragraph 21 of Schedule 2;
 - “participant”, in relation to a trading scheme, means a person to whom the scheme applies by virtue of regulations under paragraph 4 or 15 of Schedule 2; 10
 - “trading period”, in relation to a trading scheme, means a period by reference to which the scheme is to operate by virtue of regulations under paragraph 2 or 13 of Schedule 2.

PART 4 15

IMPACT OF AND ADAPTATION TO CLIMATE CHANGE

48 Report on impact of climate change

- (1) It is the duty of the Secretary of State to lay before Parliament from time to time a report containing an assessment of the risks for the United Kingdom of the current and predicted impact of climate change. 20
- (2) The first report under this section must be laid before Parliament no later than three years after this section comes into force.
- (3) Subsequent reports must be laid before Parliament no later than five years after the previous report was so laid.
- (4) The Secretary of State may extend the period for laying any such report, but must publish a statement setting out the reasons for the delay and specifying when the report will be laid before Parliament. 25
- (5) The Secretary of State must send a copy of each report under this section to the other national authorities.

49 Programme for adaptation to climate change 30

- (1) It is the duty of the Secretary of State to lay before Parliament from time to time a programme setting out —
 - (a) the objectives of Her Majesty’s Government in the United Kingdom in relation to adaptation to climate change,
 - (b) the Government’s proposals and policies for meeting those objectives, and 35
 - (c) the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under section 48.
- (2) The objectives, proposals and policies must be such as to contribute to sustainable development. 40

- (3) The second and each subsequent programme under this section must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in earlier programmes.
- (4) Each programme under this section must be laid before Parliament as soon as is reasonably practicable after the laying of the report under section 48 to which it relates. 5
- (5) The Secretary of State must send a copy of each programme under this section to the other national authorities.

50 Programme for adaptation to climate change: Northern Ireland

- (1) It is the duty of the relevant Northern Ireland department to lay before the Northern Ireland Assembly from time to time a programme setting out – 10
 - (a) the objectives of the department in relation to adaptation to climate change,
 - (b) the department’s proposals and policies for meeting those objectives, and 15
 - (c) the time-scales for introducing those proposals and policies, addressing the risks identified in the most recent report under section 48.
- (2) The objectives, proposals and policies must be such as to contribute to sustainable development.
- (3) The second and each subsequent programme under this section must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in earlier programmes. 20
- (4) Each programme under this section must be laid before the Northern Ireland Assembly as soon as is reasonably practicable after the laying before Parliament of the report under section 48 to which it relates. 25
- (5) The relevant Northern Ireland department must send a copy of each programme under this section to the other national authorities.

PART 5

OTHER PROVISIONS

Waste reduction schemes 30

51 Waste reduction schemes

- (1) Schedule 5 to this Act amends the Environmental Protection Act 1990 (c. 43) to provide for the making of waste reduction schemes.
- (2) The provisions inserted by that Schedule may only be brought into force in accordance with sections 52 to 54 below. 35
- (3) In those sections “the waste reduction provisions” means the provisions inserted by that Schedule and any subordinate legislation made under those provisions.

52 Waste reduction provisions: piloting

- (1) If a waste collection authority submits to the Secretary of State proposals for a waste reduction scheme and the proposals are approved by the Secretary of State as suitable for piloting one or more aspects of the waste reduction provisions – 5
 - (a) the Secretary of State may by order designate the area of that authority as a pilot area, and
 - (b) the authority may make a scheme in accordance with the proposals.
- (2) Not more than five areas may be so designated.
- (3) The order designating a pilot area shall provide that the waste reduction provisions have effect in relation to that area, for the purpose of enabling the authority to make and operate the proposed scheme, for such period as may be specified in the order. 10
- (4) Any power to make subordinate legislation or issue guidance under the waste reduction provisions – 15
 - (a) may be exercised so as to make different provision for different pilot areas, and
 - (b) may be exercised in relation to a pilot area at the same time as an order is made designating that area.
- (5) If a draft of an instrument containing such subordinate legislation would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 20

53 Waste reduction provisions: report and review

- (1) The Secretary of State shall lay before Parliament a report on the operation of the waste reduction provisions in each pilot area. 25
- (2) The report must contain, in respect of each pilot area to which it relates –
 - (a) a description of the scheme and of the respects in which the provision made by it differed from that made by the schemes in other pilot areas;
 - (b) a copy of the order made by the Secretary of State under section 52; 30
 - (c) a description of the respects in which the relevant enactments and guidance applying in that area differed from that applying –
 - (i) in other pilot areas, and
 - (ii) in areas not designated as pilot areas; and
 - (d) an assessment of the scheme’s success or otherwise. 35
- (3) The report must also contain a review of the waste reduction provisions in the light of their operation in the pilot area or areas to which the report relates.

54 Waste reduction provisions: roll-out or repeal

- (1) The following provisions apply after section 53 has been complied with in relation to one or more pilot areas. 40
- (2) The Secretary of State may by order –
 - (a) provide that the waste reduction provisions shall come into force generally on such date as is specified in the order; or

- (b) make such amendments of the waste reduction provisions as appear to the Secretary of State to be necessary or expedient having regard to the operation of the provisions in the pilot areas, and provide that those provisions as amended shall come into force generally on such date as is specified in the order. 5
- (3) The amendments may include provision conferring power on the Secretary of State to make subordinate legislation.
- (4) If the Secretary of State decides not to make an order under subsection (2), the Secretary of State must make an order repealing the waste reduction provisions. 10
- (5) Any order under subsection (2)(b) or (4) is subject to affirmative resolution procedure.

Renewable transport fuel obligations

55 Renewable transport fuel obligations

Schedule 6 contains amendments to the provisions of the Energy Act 2004 (c. 20) relating to renewable transport fuel obligations. 15

Miscellaneous

56 Report on climate change: Wales

- (1) It is the duty of the Welsh Ministers to lay before the National Assembly for Wales from time to time a report on— 20
- (a) the objectives of the Welsh Ministers in relation to greenhouse gas emissions and the impact of climate change in Wales,
- (b) the action that has been taken by the Welsh Ministers and others to deal with such emissions and that impact, and
- (c) the future priorities for the Welsh Ministers and others for dealing with such emissions and that impact. 25
- (2) The second and each subsequent report under this section must contain an assessment of the progress made towards implementing the objectives mentioned in the earlier reports.
- (3) In this section “Wales” has the same meaning as in the Government of Wales Act 2006 (c. 32). 30

57 Climate change measures reports in Wales

- (1) The Climate Change and Sustainable Energy Act 2006 (c. 19) is amended as follows.
- (2) After section 3 insert— 35
- “3A Local authorities in Wales to have regard to climate change measures reports**
- (1) The Welsh Ministers must from time to time publish a climate change measures report.

-
- (2) A local authority in Wales must, in exercising its functions, have regard to any current climate change measures report.
- (3) A “climate change measures report” means a report containing information about the local authority measures the Welsh Ministers consider would or might have any of the following effects – 5
- (a) improving efficiency in the use of any description or source of energy;
 - (b) increasing the amount of energy generated, or heat produced, by microgeneration;
 - (c) increasing the amount of energy generated, or heat produced, by plant that relies wholly or mainly on a source of energy or a technology listed in section 26(2); 10
 - (d) reducing emissions of greenhouse gases;
 - (e) reducing the number of households in which one or more persons are living in fuel poverty; 15
 - (f) addressing the impact of climate change.
- (4) Before publishing a climate change measures report, the Welsh Ministers must consult such representatives of local government, and such other persons, as the Welsh Ministers consider appropriate.
- (5) The Secretary of State’s consent is required to the publication in a climate change measures report of information about a local authority measure to which subsection (6) applies. 20
- (6) This subsection applies to a local authority measure if the Secretary of State has a function in relation to the measure of – 25
- (a) making subordinate legislation,
 - (b) issuing guidance or directions, or
 - (c) making determinations or hearing appeals,
- and that function is exercisable in relation to Wales.
- (7) In this section – 30
- “local authority” means any of the following –
 - (a) a county council;
 - (b) a county borough council;
 - (c) a community council;
 - “local authority measure” means anything a local authority in Wales may do in the exercise of its functions (including deciding not to exercise a power).” 35
- (3) In section 3 of that Act (local authorities to have regard to information on energy in exercising functions) – 40
- (a) for the heading substitute “Local authorities in England to have regard to energy measures reports”;
 - (b) in subsection (2), after “local authority” insert “in England”,
 - (c) in subsection (4), in the definition of “local authority measure”, for “a local authority” substitute “a local authority in England”,
 - (d) in subsection (5) omit “the National Assembly for Wales and”, and
 - (e) in subsection (6) omit paragraphs (b) and (h). 45

58 Repeal of previous reporting obligation

Section 2 of the Climate Change and Sustainable Energy Act 2006 (c. 19) (annual report on greenhouse gas emissions) is repealed.

59 Power of Ministers and departments to offset greenhouse gas emissions

- (1) An authority to which this section applies may acquire units representing – 5
- (a) a reduction in an amount of greenhouse gas emissions,
 - (b) the removal of an amount of greenhouse gas from the atmosphere, or
 - (c) an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions.
- (2) This section applies to – 10
- (a) any Minister of the Crown or government department;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) any Northern Ireland department.

60 Fines for offences relating to pollution 15

In section 105(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) (which postpones the increase by subsection (1)(b) in maximum fines under regulations under the Pollution Prevention and Control Act 1999 (c. 24) pending the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44)), for “Subsection (1)” substitute “Subsection (1)(a)”. 20

PART 6

GENERAL SUPPLEMENTARY PROVISIONS

*Territorial scope of provisions relating to greenhouse gas emissions***61 Territorial scope of provisions relating to greenhouse gas emissions**

- (1) The provisions of this Act relating to emissions of greenhouse gases apply to emissions from sources or other matters occurring in, above or below – 25
- (a) UK coastal waters, or
 - (b) the UK sector of the continental shelf,
- as they apply to emissions from sources or matters occurring in the United Kingdom. 30
- (2) In subsection (1) –
- “UK coastal waters” means areas landward of the seaward limit of the territorial sea adjacent to the United Kingdom;
 - “the UK sector of the continental shelf” means the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29). 35
- (3) This section is subject to section 25 (emissions from international aviation or international shipping not to count as emissions from UK sources for the purposes of Part 1, except as provided by regulations).

Orders and regulations

62 Orders and regulations

- (1) Orders and regulations under this Act must be made by statutory instrument, subject as follows.
- (2) The power of a Northern Ireland department to make regulations under Part 3 (trading schemes) –
 - (a) is exercisable by statutory instrument if the instrument also contains regulations under that Part made or to be made by another national authority, and
 - (b) otherwise, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An order or regulations under this Act may –
 - (a) make different provision for different cases or circumstances,
 - (b) include supplementary, incidental and consequential provision, and
 - (c) make transitional provision and savings.
- (4) Any provision that may be made by order under this Act may be made by regulations.
- (5) Any provision that may be made by regulations under this Act may be made by order.

63 Affirmative and negative resolution procedure

- (1) Where orders or regulations under this Act are subject to “affirmative resolution procedure” the order or regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (2) Where orders or regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the order or regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any provision that may be made by an order or regulations under this Act subject to negative resolution procedure may be made by an order or regulations subject to affirmative resolution procedure.
- (4) This section does not apply to regulations under Part 3 (trading schemes) (but see Schedule 3).

Interpretation

64 Meaning of “greenhouse gas”

- (1) In this Act “greenhouse gas” means any of the following –
 - (a) carbon dioxide (CO₂),
 - (b) methane (CH₄),
 - (c) nitrous oxide (N₂O),
 - (d) hydrofluorocarbons (HFCs),

-
- (e) perfluorocarbons (PFCs),
 - (f) sulphur hexafluoride (SF₆).
- (2) The Secretary of State may by order amend the definition of “greenhouse gas” in subsection (1) to add to the gases listed in that definition.
 - (3) That power may only be exercised if it appears to the Secretary of State that an agreement or arrangement at European or international level recognises that the gas to be added contributes to climate change. 5
 - (4) An order under this section is subject to negative resolution procedure.
- 65 Measurement of emissions etc by reference to carbon dioxide equivalent**
- (1) For the purposes of this Act greenhouse gas emissions, reductions of such emissions and removals of greenhouse gas from the atmosphere shall be measured or calculated in tonnes of carbon dioxide equivalent. 10
 - (2) A “tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice). 15
- 66 Meaning of “international carbon reporting practice”**
- (1) In this Act “international carbon reporting practice” means accepted practice in relation to reporting for the purposes of the protocols to the United Nations Framework Convention on Climate Change or such other agreements or arrangements at European or international level as the Secretary of State may specify by order. 20
 - (2) An order under this section is subject to negative resolution procedure.
- 67 Meaning of “national authority”**
- (1) In this Act “national authority” means any of the following – 25
 - (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) the relevant Northern Ireland department.
 - (2) Functions conferred or imposed by this Act on “the national authorities” are to be exercised by all of them jointly. 30
- 68 Meaning of “relevant Northern Ireland department”**
- (1) In this Act “the relevant Northern Ireland department”, in relation to a matter or provision, means the Northern Ireland department responsible for the matter or, as the case may be, for the matters to which the provision relates. 35
 - (2) If more than one department is responsible, the reference is to all of them.
 - (3) Any question as to the Northern Ireland department responsible for a matter is to be determined by the Department of Finance and Personnel in Northern Ireland.

69 Minor definitions

In this Act –

“devolved legislature” means –

- (a) the Scottish Parliament,
- (b) the National Assembly for Wales, or 5
- (c) the Northern Ireland Assembly;

“emissions”, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity;

“enactment” includes –

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30), 10
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and 15
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“European law” means –

- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties, and 20
- (b) all the remedies and procedures from time to time provided for by or under the Community Treaties,

and “European policy” has a corresponding meaning;

“primary legislation” means – 25

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation.

70 Index of defined expressions 30

In this Act the following expressions are defined or otherwise explained by the provisions indicated –

“the 1990 baseline” (in Parts 1 and 2)	section 1(2)	
“administrator” (in Part 3)	section 47	
“affirmative resolution procedure” (except in Part 3)	section 63(1)	35
“annual equivalent”, in relation to the carbon budget for a period (in Parts 1 and 2)	section 5(2)	
“budgetary periods” (in Parts 1 and 2)	section 4(1)	40
“carbon budget” (in Parts 1 and 2)	section 4(1)	
“carbon unit” (in Parts 1 and 2)	section 21(1)	

“the chair” (in Schedule 1)	paragraph 1(1) of Schedule 1	
“the Committee” (in Part 2)	section 26	
“the deputy chair” (in Schedule 1)	paragraph 2 of Schedule 1	
“devolved legislature”	section 69	
“electricity distributor” (in Schedule 4)	paragraph 2(3) of Schedule 4	5
“electricity supplier” (in Schedule 4)	paragraph 2(2) of Schedule 4	
“emissions”	section 69	
“enactment”	section 69	
“environmental authority” (in Schedule 4)	paragraph 1(2) of Schedule 4	10
“European law”	section 69	
“European policy”	section 69	
“financial year” (in Schedule 1)	paragraph 22 of Schedule 1	
“greenhouse gas”	section 64	
“international carbon reporting practice”	section 66	15
“national authority”	section 67	
“negative resolution procedure” (except in Part 3)	section 63(2)	
“net UK carbon account” (in Parts 1 and 2)	section 22(1)	20
“net UK emissions” for a period, in relation to a greenhouse gas (in Parts 1 and 2)	section 24(1)	
“participant” (in Part 3)	section 47	25
“potential participant” (in Schedule 4)	paragraph 3(2) of Schedule 4	
“primary legislation”	section 69	
“the relevant national authority” (in Part 3)	section 39	
“the relevant Northern Ireland department”	section 68	30
“targeted greenhouse gas” (in Parts 1 and 2)	section 19(1)	
“trading period” (in Part 3)	section 47	
“trading scheme”	section 36(2)	35

“UK emissions”, in relation to a greenhouse gas (in Part 1)	section 24(1)	
“UK removals”, in relation to a greenhouse gas (in Part 1)	section 24(1)	
“the waste reduction provisions” (in sections 52 to 54)	section 51(3)	5

Final provisions

71 Extent

- (1) This Act, apart from the provisions listed in subsection (2), extends to the whole of the United Kingdom. 10
- (2) The following provisions of this Act extend to England and Wales only –
 - (a) sections 51 to 54 and Schedule 5 (waste reduction schemes);
 - (b) section 57 (climate change measures reports in Wales);
 - (c) section 60 (fines for offences relating to pollution).

72 Commencement

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- (1) Parts 1 (carbon target and budgeting) and this Part come into force on the day this Act is passed.
- (2) Part 2 (the Committee on Climate Change) comes into force on such day as may be appointed by order made by the Secretary of State.
- (3) Section 51(1) and Schedule 5 (waste reduction schemes) come into force in accordance with sections 52 to 54. 20
- (4) Section 57 (climate change measures reports in Wales) comes into force on such day as may be appointed by order made by the Welsh Ministers.
- (5) Section 58 (repeal of previous reporting obligation) comes into force on 1st January 2009. 25
- (6) The other provisions of this Act come into force at the end of two months beginning with the day it is passed.

73 Short title

The short title of this Act is the Climate Change Act 2007.

SCHEDULES

SCHEDULE 1

Section 26

THE COMMITTEE ON CLIMATE CHANGE

Membership

- | | | |
|---|---|----|
| 1 | (1) The Committee shall consist of – | 5 |
| | (a) a person appointed by the national authorities to chair the Committee (“the chair”), and | |
| | (b) not less than five and not more than eight other members appointed by the national authorities. | |
| | (2) The national authorities must consult the chair before appointing the other members. | 10 |
| | (3) In appointing a member, the national authorities must have regard to the desirability of securing that the Committee (taken as a whole) has experience in or knowledge of the following – | |
| | (a) business competitiveness; | 15 |
| | (b) climate change policy, and in particular the social impacts of such policy; | |
| | (c) climate science; | |
| | (d) differences in circumstances between England, Wales, Scotland and Northern Ireland and the capacity of national authorities to take action in relation to climate change; | 20 |
| | (e) economic analysis and forecasting; | |
| | (f) emissions trading; | |
| | (g) energy production and supply; | |
| | (h) financial investment; | 25 |
| | (i) technology development and diffusion. | |
| | (4) The Secretary of State may by order amend sub-paragraph (1)(b) so as to alter the minimum or maximum number of members of the Committee. | |
| | (5) Such an order may only be made with the consent of the other national authorities. | 30 |
| | (6) Any such order is subject to negative resolution procedure. | |
| 2 | The national authorities may, after consulting the chair, appoint one of the members as deputy to the chair (“the deputy chair”). | |

Term of office

- | | | |
|---|---|----|
| 3 | A member holds and vacates office in accordance with the terms of the member’s appointment. | 35 |
|---|---|----|

-
- 4 A member may resign by giving written notice to the Secretary of State.
- 5 The national authorities may remove a member –
- (a) who has been absent from meetings of the Committee without its permission for a period of 6 months or more,
 - (b) who has become bankrupt or has made an arrangement with creditors, 5
 - (c) whose estate has been sequestrated in Scotland or who, under Scots law, has made a composition or arrangement with, or granted a trust deed for, creditors, or
 - (d) who in the opinion of the national authorities is otherwise unable or unfit to carry out the duties of that member. 10
- 6 A person ceases to be the chair or the deputy chair if the person –
- (a) resigns that office by giving written notice to the Secretary of State, or
 - (b) ceases to be a member.
- 7 A person who – 15
- (a) ceases to be a member, or
 - (b) ceases to be the chair or the deputy chair,
- may be reappointed to that office.

Remuneration and pensions etc

- 8 The Committee may pay to the members such remuneration and allowances as the national authorities may determine. 20
- 9 The Committee must, if required to do so by the national authorities –
- (a) pay such pensions, gratuities or allowances as the national authorities may determine to or in respect of any person who is or has been a member, or 25
 - (b) pay such sums as the national authorities may determine towards provision for the payment of pensions, gratuities or allowances to or in respect of such a person.
- 10 If the national authorities consider there are special circumstances which make it right for a person who has ceased to be a member to receive compensation, the Committee must pay the person such compensation as the national authorities may determine. 30

Staff

- 11 (1) The Committee must appoint a person to be chief executive, but may only appoint a person who has been approved by the national authorities. 35
- (2) The chief executive is an employee of the Committee.
- 12 The Committee may appoint other employees.
- 13 The Committee must, if required to do so by the national authorities –
- (a) pay such pensions, gratuities or allowances as the national authorities may determine to or in respect of any employee or former employee, or 40
 - (b) pay such sums as the national authorities may determine towards provision for the payment of pensions, gratuities or allowances to or in respect of any employee or former employee.

- 14 (1) In Schedule 1 to the Superannuation Act 1972 (c. 11) (kinds of employment to which section 1 of that Act applies) in the list of other bodies at the appropriate place insert –
“The Committee on Climate Change.”
- (2) The Committee must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 5

Sub-committees

- 15 (1) The Committee may establish sub-committees. 10
- (2) A sub-committee may include persons who are not members of the Committee.
- (3) The Committee may pay such remuneration and allowances as the national authorities may determine to any person who –
(a) is a member of a sub-committee, but 15
(b) is not a member of the Committee.

Proceedings

- 16 The Committee may regulate –
(a) its own procedure (including quorum), and
(b) the procedure of any sub-committee (including quorum). 20
- 17 The validity of anything done by the Committee or any sub-committee is not affected by –
(a) any vacancy in the membership of the Committee or sub-committee, or
(b) any defect in the appointment of any member of the Committee or sub-committee. 25
- 18 (1) The Committee must publish the minutes of its meetings in such manner as it considers appropriate.
- (2) This does not require the Committee to publish –
(a) information it could refuse to disclose in response to a request under – 30
(i) the Freedom of Information Act 2000 (c. 36), or
(ii) the Environmental Information Regulations 2004 (S.I. 2004/3391) or any regulations replacing those regulations;
(b) information whose disclosure is prohibited by any enactment. 35

Discharge of functions

- 19 The Committee may authorise a sub-committee, member or employee to exercise any of the Committee’s functions.

Application of seal and proof of documents

- 20 (1) The application of the Committee’s seal must be authenticated by the signature of – 40

- (a) a member of the Committee who is authorised (generally or specially) for that purpose, or
 - (b) an employee who is so authorised.
- (2) A document purporting to be duly executed under the seal of the Committee or to be signed on behalf of the Committee shall be received in evidence and treated as so executed or signed unless the contrary is shown. 5
- (3) This paragraph does not apply in relation to Scotland.

Reports and accounts

- 21 (1) For each financial year the Committee must – 10
- (a) prepare an annual report on the discharge of its functions during the year, and
 - (b) send a copy to the national authorities within such period as the national authorities may direct.
- (2) A copy of each report received under this paragraph must be laid – 15
- (a) by the Secretary of State before Parliament,
 - (b) by the Scottish Ministers before the Scottish Parliament,
 - (c) by the Welsh Ministers before the National Assembly for Wales, and
 - (d) by the relevant Northern Ireland department before the Northern Ireland Assembly.
- 22 In this Schedule “financial year” means – 20
- (a) the period beginning with the day the Committee is established and ending with the next 31st March, and
 - (b) each subsequent period of 12 months ending with 31st March.
- 23 (1) The Committee must keep proper accounts and proper records in relation to the accounts. 25
- (2) For each financial year the Committee must –
- (a) prepare a statement of accounts in respect of that financial year, and
 - (b) send a copy of the statement to the national authorities and the Comptroller and Auditor General within such period as the national authorities direct. 30
- (3) The statement must be in such form as the national authorities may direct.
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the statement, and
 - (b) send a copy of the certified statement and the report to the national authorities as soon as possible. 35
- (5) A copy of each statement received under sub-paragraph (4) must be laid –
- (a) by the Secretary of State before Parliament,
 - (b) by the Scottish Ministers before the Scottish Parliament,
 - (c) by the Welsh Ministers before the National Assembly for Wales, and
 - (d) by the relevant Northern Ireland department before the Northern Ireland Assembly. 40

Information

- 24 (1) The Committee must provide the national authorities with such information as they may request about its property.
- (2) The Committee must provide the Secretary of State with such information as the Secretary of State may request about the exercise or proposed exercise of its functions under – 5
- (a) Part 1 (carbon target and budgeting),
 - (b) section 27 (advice in connection with carbon budgets), or
 - (c) section 28 (reports on progress).
- (3) The Committee must provide a national authority with such information as the national authority may request about the exercise or proposed exercise of the Committee’s functions under – 10
- (a) section 30 (duty to provide advice or assistance on request), or
 - (b) section 40 (advice on trading scheme regulations),
- in relation to that national authority. 15
- If the information relates to the exercise or proposed exercise of those functions in relation to two or more national authorities, the request must be made by all of them jointly.
- (4) The Committee must provide the national authorities with such information as they may request about the exercise or proposed exercise of any of its other functions. 20
- (5) The Committee must also –
- (a) permit any person authorised by a national authority to inspect and make copies of any accounts or other documents of the Committee, and 25
 - (b) provide such explanation of them as that person or the national authority may require.
- (6) Before exercising a function under sub-paragraph (5), the national authority must consult the other national authorities.

Status 30

- 25 (1) The Committee is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (2) The Committee is to be treated as a cross-border public authority within the meaning of the Scotland Act 1998 (c. 46) for the purposes of the following provisions of that Act – 35
- (a) section 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to attend to give evidence or produce documents);
 - (b) section 70(6) (legislation of Scottish Parliament not to require certain cross-border public authorities to prepare accounts).

Public Records Act 1958 (c. 51) 40

- 26 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert –

“The Committee on Climate Change.”

Parliamentary Commissioner Act 1967 (c. 13)

- 27 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) –
- (a) at the appropriate place insert –
“The Committee on Climate Change.”, and 5
 - (b) in the notes at the appropriate place insert –
“*Committee on Climate Change*
In the case of the Committee on Climate Change, no investigation is to be conducted in respect of any action taken by or on behalf of the Committee – 10
 - (a) in the exercise in or as regards Scotland of any function to the extent that the function is exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998), or 15
 - (b) in connection with functions of the Committee in relation to Wales (within the meaning of the Government of Wales Act 2006).”

House of Commons Disqualification Act 1975 (c. 24)

- 28 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert – 20
“The Committee on Climate Change.”

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 29 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert – 25
“The Committee on Climate Change.”

Race Relations Act 1976 (c. 74)

- 30 In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty), at the appropriate place insert – 30
“The Committee on Climate Change.”

Freedom of Information Act 2000 (c. 36)

- 31 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities), at the appropriate place insert – 35
“The Committee on Climate Change.”

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 32 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.
(2) In section 7 (matters which may be investigated: restrictions), after 40

subsection (6B) insert –

“(6C) The Ombudsman must not investigate action taken by or on behalf of the Committee on Climate Change in the exercise in or as regards Scotland of any function to the extent that the function is not exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998).” 5

(3) In Schedule 2 (persons liable to investigation), after paragraph 91A insert –
“91B The Committee on Climate Change.”

Public Services Ombudsman (Wales) Act 2005 (c. 10)

33 In Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (listed authorities), after the heading “Environment” insert – 10
“The Committee on Climate Change.”

SCHEDULE 2

Section 38

TRADING SCHEMES

PART 1 15

SCHEMES LIMITING ACTIVITIES

Introductory

1 This Part deals with trading schemes that operate by limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions. 20

Trading periods

2 The regulations must specify the period or periods by reference to which the scheme is to operate (a “trading period”).

Activities

3 (1) The regulations must identify the activities to which the trading scheme applies. 25

(2) The regulations may identify the activities by reference to any, or any combination of, criteria and in particular – 30
(a) may identify the activities by reference to the locations or locations at which they are carried on, or
(b) may be expressed to apply to all activities of a particular kind carried on in the United Kingdom or a part of the United Kingdom.

(3) The regulations must specify the units of measurement of the activities for the purposes of the scheme.

(4) The regulations may specify units of measurement by reference to – 35
(a) the activities themselves,

- (b) anything consumed or used for the purposes of the activities,
 - (c) anything produced by the activities, or
 - (d) any other consequence of the activities.
- (5) The regulations may, in particular, make provision—
- (a) for activities to be measured by reference to the amount (in tonnes of carbon dioxide equivalent) of the greenhouse gas emissions for which those activities are to be regarded as responsible; and 5
 - (b) as to the method by which that amount is to be measured or calculated.
- (6) The regulations may make different provision in relation to different descriptions of activity to which the scheme applies. 10

Participants

- 4 (1) The regulations must identify the persons to whom the trading scheme applies (the “participants”).
- (2) The regulations— 15
- (a) may identify the participants by reference to any, or any combination of, criteria, or
 - (b) provide for their identification by a specified person or body.
- (3) The regulations may, in particular, identify or provide for the identification of the participants by reference to their responsibility for activities to which the trading scheme applies. 20
- (4) The regulations may provide for more than one person to be treated as a single participant.
- (5) The regulations may provide for persons to cease to be participants in circumstances specified in the regulations. 25

Allocation of allowances

- 5 (1) The regulations may provide for the allocation among the participants of allowances representing the right to carry on a specified amount of the activities in a trading period.
- (2) The regulations may set a limit on— 30
- (a) the total amount of the activities for a trading period, and
 - (b) the total amount of the allowances to be allocated for the period.
- (3) The regulations may specify the method of allocation or provide for it to be determined in accordance with the regulations.
- (4) The regulations may not provide for allowances to be allocated in return for consideration. 35

Use of allowances

- 6 (1) The regulations may require each participant to have or acquire enough allowances to match the participant’s activities in a trading period, subject to any offsetting in accordance with provision made under paragraph 7. 40
- (2) The regulations—

-
- (a) may permit allowances held by a participant at the end of a trading period in excess of the participant's activities in the period to be used to cover the participant's activities in a later trading period,
 - (b) may permit allowances allocated to a participant for a trading period to be used to cover the participant's activities in an earlier trading period, and 5
 - (c) may in either case provide for such use of allowances to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations.
- (3) The regulations must contain provision for ensuring that allowances used by a participant for the purposes of a trading scheme cannot be used by the participant for any other purpose. 10
- (4) The regulations –
- (a) may provide for the expiry of allowances after such period as may be specified in or determined in accordance with the regulations; 15
 - (b) may enable allowances to be cancelled by a person by whom they are held instead of being used for the purposes of a trading scheme.

Credits

- 7 (1) The regulations may enable participants to offset the carrying on of the activities in a trading period by acquiring credits representing – 20
- (a) a reduction in an amount of greenhouse gas emissions, or
 - (b) the removal of an amount of greenhouse gas from the atmosphere.
- (2) Regulations that make provision under this paragraph for a trading period must set a limit on the total amount of the activities for the period.
- (3) If the regulations also provide for the allocation of allowances for the period, they must – 25
- (a) set a limit on the total amount of the allowances to be allocated for the period, and
 - (b) require each participant to acquire enough credits to offset any activities carried on by the participant in the period in excess of those for which the participant has or has acquired allowances. 30
- (4) Otherwise, such regulations must –
- (a) set a limit on the amount of the activities that each participant may carry on in the period, and
 - (b) require each participant to acquire enough credits to offset any activities carried on by the participant in the period in excess of that limit. 35
- (5) The regulations must specify –
- (a) the descriptions of credits that may be used for offsetting a participant's activities, 40
 - (b) the value of different descriptions of credit as regards the amount of the activities they are treated as offsetting, and
 - (c) the circumstances in which credits of any description may be used for the purposes of the trading scheme.
- (6) The regulations – 45

- (a) must contain provision for ensuring that credits used to offset activities under a trading scheme cannot be used by the participant for any other purpose;
- (b) may enable credits to be cancelled by a person by whom they are held instead of being used for that purpose.

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Payments

- 8 (1) The regulations may provide that a participant who does not have or acquire enough allowances or credits to match or offset the participant's activities in a trading period must pay an amount specified in or determined in accordance with the regulations within the period so specified.
- (2) The regulations may require the payment to be made to –
- (a) the administrator, or
 - (b) such other person as the regulations may specify.
- (3) The provision that may be made about the amount of the payment includes, in particular, provision –
- (a) for the amount to be determined by the administrator or a national authority;
 - (b) in a case where the payment is not made within the period specified in the regulations, for the amount to increase at the rate so specified until payment;
 - (c) for the amount of the payment, or of any amount by reference to which it is to be calculated, to be adjusted from time to time by reference to inflation or some other factor.
- (4) Provision within sub-paragraph (3)(c) may refer, in particular, to an index or data specified in the regulations (including as modified from time to time after the regulations come into force).
- (5) If the regulations provide for payments to be made to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

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Trading

- 9 (1) The regulations must provide for the participants in a trading scheme to trade in any allowances or credits under the scheme.
- (2) The regulations may also provide for trading in the allowances or credits by third parties authorised in accordance with the regulations.
- (3) The regulations must specify the circumstances in which trading is permitted.
- (4) The regulations may require trading to be notified to the administrator of the trading scheme.

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Permits

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- 10 (1) The regulations may provide that participants may only carry on activities to which the trading scheme applies, or specified activities to which the scheme applies, if they hold a permit.

- (2) The regulations may make provision about the issue, variation, transfer, surrender and revocation of permits.
- (3) The regulations may provide for conditions to be attached to permits.
- (4) References in this Schedule to the requirements of the scheme include requirements imposed by conditions attached to a permit. 5

Units under other schemes

- 11 (1) The regulations may make provision for recognising any of the following as equivalent to allowances or credits under the trading scheme –
- (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part; 10
 - (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.
- (2) The regulations may provide –
- (a) for determining the value for the purposes of the scheme of any such allowances, credits, certificates or units, and 15
 - (b) for the use for the purposes of the scheme of any such allowances, credits, certificates or units to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations. 20

PART 2

SCHEMES ENCOURAGING ACTIVITIES

Introductory

- 12 This Part deals with trading schemes that operate by encouraging activities that consist of, or that cause or contribute, directly or indirectly to – 25
- (a) reductions in greenhouse gas emissions, or
 - (b) the removal of greenhouse gas from the atmosphere.

Trading periods

- 13 The regulations must specify the period or periods by reference to which the scheme is to operate (a “trading period”). 30

Activities

- 14 (1) The regulations must identify the activities to which the trading scheme applies.
- (2) The regulations may identify the activities by reference to any, or any combination of, criteria and in particular – 35
- (a) may identify the activities by reference to the locations or locations at which they are carried on, or
 - (b) may be expressed to apply to all activities of a particular kind carried on in the United Kingdom or a part of the United Kingdom.

- (3) The regulations must specify the units of measurement of the activities for the purposes of the scheme.
- (4) The regulations may specify units of measurement by reference to –
 - (a) the activities themselves,
 - (b) anything consumed or used for the purposes of the activities, 5
 - (c) anything produced by the activities, or
 - (d) any other consequence of the activities.
- (5) The regulations may, in particular, make provision –
 - (a) for activities to be measured by reference to the amount (in tonnes of carbon dioxide equivalent) of the reduction of greenhouse gas emissions, or removals of greenhouse gas from the atmosphere, for which those activities are to be regarded as responsible; and 10
 - (b) as to the method by which that amount is to be measured or calculated.
- (6) The regulations may make different provision in relation to different descriptions of activity to which the scheme applies. 15

Participants

- 15 (1) The regulations must identify the persons to whom the trading scheme applies (the “participants”).
- (2) The regulations – 20
 - (a) may identify the participants by reference to any, or any combination of, criteria, or
 - (b) provide for their identification by a specified person or body.
- (3) The regulations may provide for more than one person to be treated as a single participant. 25
- (4) The regulations may provide for persons to cease to be participants in circumstances specified in the regulations.

Targets and obligations

- 16 The regulations must, for each trading period –
 - (a) set a target for the total amount of the activities, and 30
 - (b) impose, or provide for the imposition of, an obligation on each participant in relation to the carrying on of a specified amount of the activities in the period.

Certificates

- 17 (1) The regulations must provide for the issue of certificates evidencing the carrying on of the activities in a trading period. 35
- (2) The regulations may provide for certificates to evidence the carrying on of the activities –
 - (a) by the participant in question,
 - (b) by another participant in the trading scheme, or 40
 - (c) by a third party authorised in accordance with the regulations to obtain certificates for the purposes of the scheme.

- (3) The regulations must require each participant to have enough certificates at the end of each trading period to comply with the participant's obligations under the trading scheme.
- (4) The regulations must contain provision for ensuring that certificates used by a participant for that purpose cannot be used by the participant for any other purpose. 5
- (5) The regulations –
- (a) may provide for the expiry of certificates after such period as may be specified in or determined in accordance with the regulations;
 - (b) may enable certificates to be cancelled by a person by whom they are held instead of being used for the purposes of a trading scheme. 10

Payments

- 18 (1) The regulations may provide that a participant who does not have enough certificates at the end of a trading period to comply with the participant's obligations under the trading scheme must pay an amount specified in or determined in accordance with the regulations within the period so specified. 15
- (2) The regulations may require the payment to be made to –
- (a) the administrator, or
 - (b) such other person as the regulations may specify. 20
- (3) The provision that may be made about the amount of the payment includes, in particular, provision –
- (a) for the amount to be determined by the administrator or a national authority;
 - (b) in a case where the payment is not made within the period specified in the regulations, for the amount to increase at the rate so specified until payment; 25
 - (c) for the amount of the payment, or of any amount by reference to which it is to be calculated, to be adjusted from time to time by reference to inflation or some other factor. 30
- (4) Provision within sub-paragraph (3)(c) may refer, in particular, to an index or data specified in the regulations (including as modified from time to time after the regulations come into force).
- (5) If the regulations provide for payments to be made to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations. 35

Trading

- 19 (1) The regulations must provide for the participants in a trading scheme to trade in certificates. 40
- (2) The regulations may also provide for trading in certificates by third parties authorised in accordance with the regulations.
- (3) The regulations must specify the circumstances in which trading is permitted.

- (4) The regulations may require trading to be notified to the administrator of the trading scheme.

Units under other schemes

- 20 (1) The regulations may make provision for recognising any of the following as equivalent to certificates under the trading scheme – 5
- (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part;
 - (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions. 10
- (2) The regulations may provide –
- (a) for determining the value for the purposes of the scheme of any such allowances, credits, certificates or units, and
 - (b) for the use for the purposes of the scheme of any such allowances, credits, certificates or units to be subject to such conditions and limitations as may be specified in or determined in accordance with the regulations. 15

PART 3

ADMINISTRATION AND ENFORCEMENT

The administrator 20

- 21 (1) The regulations may appoint a person as the administrator of a trading scheme.
- (2) The regulations may confer or impose functions on the administrator for the purposes of the scheme.
- (3) Only the following may be appointed as the administrator of a trading scheme – 25
- (a) the Secretary of State,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers,
 - (d) the relevant Northern Ireland department, 30
 - (e) a body established by an enactment, or
 - (f) any combination of the above.
- (4) The same person may be appointed as the administrator of more than one trading scheme.
- (5) More than one person may be appointed as the administrator of the same trading scheme. 35

Information

- 22 (1) The regulations may require such information as may be specified in or determined in accordance with the regulations to be provided to – 40
- (a) the administrator of a trading scheme,
 - (b) a national authority, or
 - (c) participants or potential participants in the scheme,

for purposes connected with the scheme.

- (2) The regulations may confer power on the administrator of a trading scheme to require information to be provided to any of those persons for those purposes.
- (3) The regulations must provide for a requirement by the administrator to provide information to be notified in writing to the person to whom it is made. 5
- (4) If the regulations confer functions on the administrator for the purposes of this paragraph, they may provide for the administrator to delegate the performance of any of those functions. 10
- (5) The regulations may provide for information held by or on behalf of the administrator of a trading scheme in connection with the administrator's functions to be disclosed to—
- (a) any other administrator of the scheme,
 - (b) the administrator of another trading scheme, or 15
 - (c) a national authority.

Registers

- 23 (1) The regulations may provide for the creation and maintenance of a register or registers of information relating to a trading scheme and, in particular, for the register or registers to keep track of any of the following— 20
- (a) the participants in a trading scheme;
 - (b) any limits on or obligations applying to the participants' activities under the scheme;
 - (c) any allocation of allowances among the participants;
 - (d) the allowances, credits, certificates or other units held by the participants or others; 25
 - (e) trading in allowances, credits, certificates or other units;
 - (f) the use by the participants or others of allowances, credits, certificates or other units for the purposes of the scheme;
 - (g) the cancellation of allowances, credits, certificates or other units; 30
 - (h) permits held by the participants, and any conditions attached to those permits.
- (2) The regulations may, in particular, provide for the establishment and maintenance of accounts in which allowances, credits, certificates or other units may be held by the participants, the administrator or others and between which they may be transferred. 35
- (3) The regulations may provide for the same register to operate in relation to more than one trading scheme.
- (4) The regulations may make provision for the disclosure of information held in or derived from a register relating to a trading scheme— 40
- (a) for the purposes of the administration of another trading scheme for which provision is made by regulations under this Part, or
 - (b) for the purposes of the administration of any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions. 45

Publication of information

- 24 The regulations may confer or impose functions on the administrator of a trading scheme in relation to the publication of information relating to the scheme or its participants (including, in particular, information supplied to the administrator by the participants and others). 5

Acquisition of units by the administrator

- 25 The regulations may confer powers on the administrator of a trading scheme to acquire –
- (a) allowances, credits or certificates under another trading scheme for which provision is made by regulations under this Part, or 10
 - (b) units under any other trading scheme (at United Kingdom, European or international level) relating to greenhouse gas emissions.

Charges

- 26 (1) The regulations may – 15
- (a) require the payment by participants of charges of an amount determined by or under the regulations by reference to the costs of operating the scheme, and
 - (b) provide for such charges to be imposed by – 20
 - (i) a national authority,
 - (ii) the administrator of the scheme, or
 - (iii) such other person as may be specified in or determined in accordance with the regulations.
- (2) If the regulations provide for charges to be payable to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations. 25

Monitoring compliance

- 27 (1) The regulations may make provision for monitoring compliance with the requirements of a trading scheme. 30
- (2) The regulations may, in particular, make provision about –
- (a) the keeping of records by the participants,
 - (b) the provision of information by the participants and others,
 - (c) the audit and verification of that information, and
 - (d) the inspection of premises. 35
- (3) If the regulations confer functions on the administrator of the scheme for the purposes of this paragraph, they may provide for the administrator to delegate the performance of any of those functions.

Enforcement

- 28 (1) The regulations may confer powers on a person to whom this paragraph applies to – 40
- (a) require the production of documents or the provision of information,

- (b) question the officers of a company,
 - (c) enter premises with a warrant, or
 - (d) seize documents or records.
- (2) The regulations must provide that the power in question may only be exercised where the person on whom it is conferred reasonably believes there has been a failure to comply with the requirements of a trading scheme. 5
- (3) This paragraph applies to –
- (a) a national authority,
 - (b) the administrator of the scheme, and 10
 - (c) such other person as may be specified in or determined in accordance with the regulations.

Penalties

- 29 (1) The regulations may provide that a person is liable to a financial or other penalty if the person fails to comply with the requirements of a trading scheme. 15
- (2) The regulations may –
- (a) specify the amount of any financial penalty, or
 - (b) provide for the amount of any financial penalty to be determined in accordance with the regulations. 20
- (3) If the regulations provide for financial penalties to be payable to a person other than a national authority, they must provide for that person to pay the sums received to the national authority or authorities specified in or determined in accordance with the regulations.

Offences 25

- 30 (1) The regulations may create offences relating to trading schemes.
- (2) The regulations may provide for such an offence to be triable –
- (a) only summarily, or
 - (b) either summarily or on indictment.
- (3) The regulations may provide for such an offence to be punishable on summary conviction – 30
- (a) with imprisonment for a term not exceeding such period as is specified in the regulations (which may not exceed the normal maximum term),
 - (b) with a fine not exceeding such amount as is so specified (which may not exceed £50,000), or 35
 - (c) with both.
- (4) The “normal maximum term” means –
- (a) in relation to England and Wales –
 - (i) in the case of an offence triable only summarily, 51 weeks, 40
 - and
 - (ii) in the case of an offence triable either summarily or on indictment, twelve months;
 - (b) in relation to Scotland –

- (i) in the case of an offence triable only summarily, 6 months, and
 - (ii) in the case of an offence triable either summarily or on indictment, twelve months;
- (c) in relation to Northern Ireland, six months. 5
- (5) Regulations that –
 - (a) are made before the date on which section 281(5) of the Criminal Justice Act 2003 (c. 44) comes into force, and
 - (b) in relation to England and Wales, make provision for a summary offence to be punishable with a term of imprisonment exceeding six months, 10must provide that, where the offence is committed before that date, it is punishable with imprisonment for a term not exceeding six months.
- (6) Regulations that –
 - (a) are made before the date on which section 154(1) of the Criminal Justice Act 2003 comes into force, and 15
 - (b) in relation to England and Wales, make provision for an offence triable either summarily or on indictment to be punishable on summary conviction with a term of imprisonment exceeding six months, 20must provide that, where the offence is committed before that date, it is punishable on summary conviction with imprisonment for a term not exceeding six months.
- (7) The regulations may provide for an offence to be punishable on indictment – 25
 - (a) with imprisonment for a term not exceeding such period as is specified in the regulations (which may not exceed five years),
 - (b) with a fine, or
 - (c) with both.
- (8) The regulations may – 30
 - (a) provide for defences against offences, and
 - (b) make provision about matters of procedure and evidence in proceedings relating to offences.

Appeals

- 31 (1) The regulations may confer rights of appeal against – 35
 - (a) decisions made in relation to a trading scheme, and
 - (b) civil penalties imposed or enforcement action taken for failure to comply with the requirements of a trading scheme.
- (2) The regulations must specify the court, tribunal or person who is to hear and determine appeals in relation to a trading scheme. 40
- (3) The regulations may, in particular, provide for appeals in relation to a trading scheme to be heard by –
 - (a) a national authority, if not the administrator of the trading scheme, or
 - (b) a person appointed by a national authority for that purpose. 45

- (4) They may provide for an appeal to be determined by a person other than the person by whom the appeal was heard.

SCHEDULE 3

Section 41

TRADING SCHEMES REGULATIONS: FURTHER PROVISIONS

PART 1

5

REGULATIONS MADE BY A SINGLE NATIONAL AUTHORITY

- | | | |
|---|--|----|
| 1 | This Part of this Schedule applies in relation to an instrument containing regulations under this Part of this Act made by a single national authority. | |
| 2 | (1) Where the instrument contains regulations that – | |
| | (a) are to be made by the Secretary of State, and | 10 |
| | (b) are subject to affirmative resolution procedure,
the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. | |
| | (2) Where the instrument contains regulations that – | 15 |
| | (a) are to be made by a national authority other than the Secretary of State, and | |
| | (b) are subject to affirmative resolution procedure,
the regulations must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the relevant devolved legislature. | 20 |
| 3 | (1) An instrument containing regulations made by the Secretary of State that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of either House of Parliament. | |
| | (2) An instrument containing regulations made by the Scottish Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the Scottish Parliament. | 25 |
| | (3) An instrument containing regulations made by the Welsh Ministers that are subject to negative resolution procedure is subject to annulment in pursuance of a resolution of the National Assembly for Wales. | 30 |
| | (4) An instrument containing regulations made by a Northern Ireland department that are subject to negative resolution procedure is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act. | 35 |
| 4 | Any provision that may be made by regulations subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure. | |

PART 2

REGULATIONS MADE BY TWO OR MORE NATIONAL AUTHORITIES

- 5 This Part of this Schedule applies in relation to an instrument containing regulations under this Part of this Act made or to be made by any two or more of— 5
- (a) the Secretary of State,
 - (b) the Welsh Ministers, and
 - (c) a Northern Ireland department.
- 6 If any of the regulations are subject to affirmative resolution procedure, all of them are subject to that procedure. 10
- 7 Paragraphs 2 and 3 (affirmative and negative resolution procedure) apply to the instrument as they apply to an instrument containing regulations made by a single national authority.
- 8 (1) If in accordance with paragraph 3 (negative resolution procedure)— 15
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
 - (b) a devolved legislature resolves that an instrument containing regulations made by a national authority be annulled,
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument. 20
- (2) This is without prejudice to the validity of anything previously done under the instrument or to the making of a new instrument.
- (3) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution. 25

PART 3

POWER TO MAKE PROVISION BY ORDER IN COUNCIL

- 9 (1) Her Majesty may by Order in Council make provision for trading schemes.
- (2) That power may only be exercised to make an Order in Council— 30
- (a) that extends or applies both to Scotland and to one or more of England, Wales and Northern Ireland, or
 - (b) that extends to Scotland only and contains both provision within the legislative competence of the Scottish Parliament and provision outside that competence.
- (3) The provision that may be made by an Order in Council under this paragraph includes any provision that may be made by a national authority by regulations under this Part of this Act. 35
- 10 No recommendation is to be made to Her Majesty in Council to make an Order in Council under paragraph 9 unless the requirements of section 40(1) and (2) as to advice and consultation have been complied with. 40
- 11 (1) This paragraph applies to an Order in Council under paragraph 9 containing any provision that, were it to be made by regulations under this Part of this Act, would be subject to affirmative resolution procedure.

-
- (2) No recommendation is to be made to Her Majesty in Council to make an Order in Council to which this paragraph applies unless –
- (a) in the case of an Order in Council containing provision that may be made by the Secretary of State by regulations under this Part of this Act, a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, each House of Parliament, and 5
 - (b) in the case of an Order in Council containing provision that may be made by a national authority other than the Secretary of State by regulations under this Part of this Act, a draft of the statutory instrument containing the Order in Council has been laid before, and approved by a resolution of, the relevant devolved legislature. 10
- 12 (1) This paragraph applies to an Order in Council under paragraph 9 other than one to which paragraph 11 applies.
- (2) An Order in Council to which this paragraph applies containing provision that may be made by the Secretary of State by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of either House of Parliament. 15
 - (3) An Order in Council to which this paragraph applies containing provision that may be made by the Scottish Ministers by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament. 20
 - (4) An Order in Council to which this paragraph applies containing provision that may be made by the Welsh Ministers by regulations under this Part of this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 25
 - (5) An Order in Council to which this paragraph applies containing provision that may be made by a Northern Ireland department by regulations under this Part of this Act is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act. 30
- 13 (1) If in accordance with paragraph 12 –
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an Order in Council be annulled, or
 - (b) a devolved legislature resolves that an Order in Council be annulled, nothing further is to be done under the Order in Council after the date of the resolution and Her Majesty may by Order in Council revoke it. 35
- (2) This is without prejudice to the validity of anything previously done under the Order in Council or to the making of a new Order in Council.
 - (3) This paragraph applies in place of provision made by any other enactment about the effect of such a resolution. 40

SCHEDULE 4

Section 42

TRADING SCHEMES: POWERS TO REQUIRE INFORMATION

Introductory

- 1 (1) The powers conferred by this Schedule are exercisable by the following authorities – 5
- (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the relevant Northern Ireland department;
 - (d) the Welsh Ministers;
 - (e) the Environment Agency; 10
 - (f) the Scottish Environment Protection Agency.
- (2) References in this Schedule to an “environmental authority” are to any of those authorities.

Information from electricity suppliers and distributors

- 2 (1) An environmental authority may, for the purposes of enabling a trading scheme to be established, by notice require an electricity supplier or electricity distributor to provide any of the following information – 15
- (a) information about the electricity meters and metering systems for which the supplier or distributor is responsible, including (in particular) their locations and any identifying features; 20
 - (b) information about the persons to whom electricity measured by those meters or systems is supplied or who purchase such electricity;
 - (c) information about the consumption by those persons of that electricity;
 - (d) any other information that the environmental authority considers necessary for identifying the potential participants in the scheme. 25
- (2) An “electricity supplier” –
- (a) in relation to England and Wales and Scotland means an authorised supplier within the meaning of the Electricity Act 1989 (c. 29) (see section 64(1) of that Act); 30
 - (b) in relation to Northern Ireland means –
 - (i) an electricity supplier within the meaning of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231) (N.I. 1) (see Article 3 of that Order), or
 - (ii) a person who may supply electricity to premises without a licence by virtue of an exemption under Article 9 of that Order. 35
- (3) An “electricity distributor” –
- (a) in relation to England and Wales and Scotland means an authorised distributor within the meaning of the Electricity Act 1989 (see section 64(1) of that Act); 40
 - (b) in relation to Northern Ireland means an electricity distributor within the meaning of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231) (N.I. 1) (see Article 3 of that Order).

- (4) References in this Schedule to an electricity supplier or electricity distributor include an agent of such a supplier or distributor.

Information from potential participants in a trading scheme

- 3 (1) An environmental authority may, for the purposes of enabling a trading scheme to be established, by notice require a potential participant in the scheme to provide any of the following information – 5
- (a) information about whether the criteria specified in the notice are met by the potential participant, either alone or together with any other person or persons;
 - (b) information identifying any potential co-participant; 10
 - (c) contact details for the potential participant and any potential co-participant;
 - (d) information about the meters that measure electricity supplied to or purchased by the potential participant or any potential co-participant; 15
 - (e) information about the consumption of electricity by the potential participant and any potential co-participant;
 - (f) information about any climate change agreement (within the meaning of Schedule 6 to the Finance Act 2000 (c. 17)) entered into by or on behalf of the potential participant or any potential co-participant. 20
- (2) A “potential participant”, in relation to a trading scheme, means a person who the environmental authority considers –
- (a) will or may be a participant in the scheme, or
 - (b) will or may fall to be treated together with any other person or persons (a “potential co-participant”) as such a participant. 25

Requirements for a valid notice

- 4 (1) A notice under this Schedule must comply with the following requirements.
- (2) The notice must –
- (a) be in writing, 30
 - (b) specify the information to be provided,
 - (c) specify the name and address of the person to whom the information is to be provided,
 - (d) specify the date by which the information is to be provided, and
 - (e) explain the consequences of failure to comply with the notice. 35
- (3) An environmental authority must not give a notice requiring information from a person unless –
- (a) the authority has previously sent the person a request in writing for the information, and
 - (b) the person has failed to provide the information within the period of 28 days beginning with the day on which the request was sent. 40

Failure to comply with notice etc an offence

- 5 (1) A person who –

- (a) fails without reasonable excuse to comply with a notice under this Schedule, or
 - (b) provides information in response to such a notice that the person knows or suspects to be false or misleading,
commits an offence. 5
- (2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Disclosure of information

- 6 (1) This paragraph applies to information obtained by an environmental authority (whether or not pursuant to a notice under this Schedule) from – 10
- (a) an electricity supplier or electricity distributor, or
 - (b) a potential participant,
- for the purposes of enabling a trading scheme to be established.
- (2) The information may be disclosed for the purposes of or in connection with the establishment, operation or enforcement of a trading scheme – 15
- (a) by an environmental authority to another environmental authority or the administrator of the scheme, or
 - (b) by the administrator of the scheme to any other administrator of the scheme or an environmental authority.
- (3) This does not affect any other right to disclose information within sub-paragraph (1) apart from this paragraph. 20

SCHEDULE 5

Section 51

WASTE REDUCTION SCHEMES

- 1 After section 60 of the Environmental Protection Act 1990 (c. 43) insert –
- “Waste reduction schemes* 25
- 60A Waste reduction schemes**
- A waste collection authority whose area is in England may make a waste reduction scheme in accordance with Schedule 2AA to this Act.”.

- 2 After Schedule 2A to that Act insert – 30
- “SCHEDULE 2AA**
- WASTE REDUCTION SCHEMES

Introductory

- 1 (1) The purpose of a waste reduction scheme is to provide a financial incentive – 35
- (a) to produce less domestic waste, and
 - (b) to recycle more of what is produced,

and accordingly to reduce the amount of residual domestic waste.

- (2) A waste reduction scheme –
- (a) may cover the whole or any part of the area of a waste collection authority, and
 - (b) may apply to all domestic premises, to domestic premises other than those of a specified description or to specified descriptions of domestic premises. 5
- (3) In sub-paragraph (2) “specified” means specified in the scheme.

Conditions for making waste reduction scheme

- 2 (1) A waste collection authority may make a waste reduction scheme only if – 10
- (a) a good recycling service is available to the occupiers of premises to which the scheme applies,
 - (b) the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and 15
 - (c) the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.
- (2) In sub-paragraph (1)(a) above –
- (a) a “recycling service” means arrangements for the collection of recyclable domestic waste from premises separately from other waste; and 20
 - (b) a “good” recycling service means a recycling service that meets the standards specified for the purposes of this definition in guidance issued by the Secretary of State. 25
- (3) The Secretary of State may by order amend sub-paragraphs (1) and (2) above.

Incentive under waste reduction scheme

- 3 (1) A waste reduction scheme must provide for a financial incentive that the authority considers will be effective to achieve the purpose of the scheme. 30
- (2) The scheme may provide for the incentive to be provided –
- (a) by means of rebates from council tax or by other payments, or
 - (b) by means of charges under paragraph 4 or 5, or by any combination of those means. 35

Option to charge in respect of receptacles for residual domestic waste

- 4 (1) A waste reduction scheme may include provision –
- (a) for occupiers of premises to which the scheme applies to be required (by notice under section 46) to place residual domestic waste for collection in receptacles of a specified kind, and 40
 - (b) for a charge to be made by the authority in respect of those receptacles.

- (2) The amount of any charge under this paragraph—
 - (a) must be related to the size or number of the receptacles (or both), and
 - (b) need not be related to the authority’s costs.
- (3) The scheme may make provision as to the person by whom any charge is payable. 5
- (4) A charge under this paragraph is in addition to any charge under section 46 in respect of the cost of providing the receptacle.

Option to impose charge in respect of amount of residual domestic waste

- 5 (1) A waste reduction scheme may include provision for a charge in respect of residual domestic waste collected from premises to which the scheme applies. 10
- (2) The amount of any charge under this paragraph—
 - (a) must be related to the amount of residual domestic waste collected from the premises, and 15
 - (b) need not be related to the authority’s costs.
- (3) The scheme may make provision as to the person by whom any charge is payable.
- (4) The scheme may—
 - (a) require any charge to be paid in advance on the basis of an estimate of the amount of residual domestic waste that is likely to be collected from the premises; or 20
 - (b) require payments in respect of any charge to be made on account or by instalments.

Charging: supplementary provisions 25

- 6 (1) The Secretary of State may by order set a limit on the amount of the charge under paragraph 4 or 5 that may be imposed in respect of any premises in any financial year.
- (2) A failure to comply with provision made by virtue of paragraph 4 or 5 does not affect the authority’s duty under section 45(1)(a) (general duty to arrange for collection of household waste). 30
- (3) Section 45(3) (general prohibition on charging for collection of household waste) has effect subject to paragraphs 4 and 5.

Requirement of revenue neutrality

- 7 (1) From year to year, and taking one year with another, the aggregate amount of charges under paragraph 4 or 5 must not exceed the aggregate amount of the rebates or other payments under the scheme. 35
- (2) The Secretary of State may by order amend sub-paragraph (1) above. 40
- (3) Any such order may make any amendments of paragraph 4(2) or 5(2) that appear to the Secretary of State to be necessary or

expedient in consequence of, or in connection with, the amendment of sub-paragraph (1) above.

Procedure for putting scheme in place

- 8 (1) The authority must comply with the following requirements after making a waste reduction scheme and before it is brought into operation. 5
- (2) The authority must publish the scheme in such manner as it considers appropriate.
- (3) The authority must send to the occupier of any premises to which the scheme applies a notice setting out – 10
- (a) the requirements applicable under the scheme in relation to the collection of domestic waste from premises to which the scheme applies, and
- (b) any rebates or other payments available under the scheme and the manner in which they are to be made; 15
- (c) any charges provided for by the scheme and the manner in which they are to be collected.

Appeals

- 9 A waste reduction 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. 20

Separate account to be kept

- 10 (1) A waste collection authority that operates a waste reduction scheme must keep a separate account of – 25
- (a) any rebates or other payments under the scheme, and
- (b) any charges received by it under the scheme.
- (2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.
- (3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by subsection (2) above commits an offence. 30
- (4) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Contributions by waste disposal authority 35

- 11 (1) Where a waste collection authority that operates a waste reduction scheme is not also the waste disposal authority, 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 attributable to the scheme. 40

- (2) The collection authority must supply to the disposal authority, such information as the disposal authority may reasonably require for the purpose of determining amounts under this paragraph.

Power to make provision as to administration etc

- 12 (1) The Secretary of State may by regulations make provision as to— 5
- (a) the manner in which the amount of any rebate or other payment is to be determined, and any rebate or payment is to be given, and
 - (b) the manner in which— 10
 - (i) the amount of any charge is to be determined, and
 - (ii) any charge is to be collected or enforced.
- (2) The regulations may include provision—
- (a) for integrating the administration of the scheme with the administration of council tax, and
 - (b) for that purpose modifying, to such extent as appears to the Secretary of State to be necessary or expedient, any of the enactments relating to council tax. 15
- In paragraph (b) “modifying” includes making additions, amendments or omissions.
- (3) The regulations may in particular provide— 20
- (a) for including material relating to the scheme in the notice containing the council tax demand,
 - (b) for applying to questions arising under the scheme the procedure for appeals about liability to council tax, and
 - (c) for applying to any liability under the scheme the procedures for the enforcement of liability for council tax. 25

Use of information obtained for council tax purposes

- 13 An authority may use for the purpose of administering a waste reduction scheme information it has obtained for the purpose of carrying out its functions under the enactments relating to council tax. 30

Amendment or revocation of waste reduction scheme

- 14 (1) An authority that has made a waste reduction scheme may amend or revoke the scheme.
- (2) After amending a scheme and before bringing the amendment into operation, the authority must— 35
- (a) publish the amended scheme in such manner as it thinks appropriate, and
 - (b) if the amendment affects any of the matters previously notified to occupiers, send to the occupier of any premises to which the scheme applies a notice setting out the effect of the amendment. 40

- (3) 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.
- (4) The revocation of a scheme does not affect the duty of the authority to comply with paragraph 7(1). 5

Guidance

- 15 (1) The Secretary of State may issue guidance to waste collection authorities and waste disposal authorities as respects the exercise of their functions under this Schedule.
- (2) Any such guidance issued – 10
- (a) must be published in such manner as the Secretary of State considers appropriate, and
- (b) may be amended or replaced by further guidance, or revoked.
- (3) In exercising their functions under this Schedule waste collection authorities and waste disposal authorities must have regard to any guidance in force under this paragraph. 15

Interpretation

- 16 (1) In this Schedule –
- “domestic premises” means – 20
- (a) a building or self-contained part of a building which is used wholly for the purposes of living accommodation,
- (b) a caravan (as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960 (c. 2)) that usually and for the time being is situated on a caravan site (within the meaning of that Act), or 25
- (c) a moored vessel used wholly for the purposes of living accommodation;
- “domestic waste” means household waste from domestic premises; 30
- “enactment” includes an enactment contained in subordinate legislation;
- “recyclable waste” means waste that is capable of being recycled; 35
- “residual domestic waste” means domestic waste that is not –
- (a) waste meeting the conditions for collection by the authority as recyclable waste, or
- (b) waste for which a charge may be made by virtue of regulations under section 45(3) (power to charge for collection of household waste in prescribed cases). 40
- (2) The Secretary of State may by order amend the definition of “domestic premises” in sub-paragraph (1).
- (3) References in this Schedule to recycling include re-using and composting.”. 45

- 3 In section 161(4) of that Act (instruments subject to affirmative resolution), after paragraph (a) (and before the word “or” following it) insert –
- “(aa) which contains an order under paragraph 2(3), 7(2) or 16(2) of Schedule 2AA to this Act,”.

SCHEDULE 6

Section 55

5

RENEWABLE TRANSPORT FUEL OBLIGATIONS

Introductory

- 1 Chapter 5 of Part 2 of the Energy Act 2004 (c. 20) (renewable transport fuel obligations) is amended as follows.

The Administrator

10

- 2 For section 125 (the Administrator) substitute –

“125 Appointment of the Administrator

- (1) For the purposes of provision made by or under this Chapter, an RTF order may –
- (a) establish a body corporate, and 15
- (b) appoint that body as the Administrator.
- (2) An RTF order may –
- (a) make provision for the appointment of members of the body;
- (b) make provision in relation to the staffing of the body;
- (c) make provision in relation to the expenditure of the body; 20
- (d) make provision regulating the procedure of the body;
- (e) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of the body.
- (3) The provision that may be made by an RTF order by virtue of this section includes, in particular, provision conferring discretions on – 25
- (a) the Secretary of State;
- (b) the body itself; or
- (c) members or staff of the body.

125A General functions of the Administrator

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- (1) An RTF order may –
- (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter,
- (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to the Administrator’s powers and duties; and 35
- (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties (including, in particular, duties framed by reference to determinations made by the Administrator). 40

- (2) It is the duty of the Administrator to promote the supply of renewable transport fuel whose production, supply or use –
- (a) causes or contributes to the reduction of carbon emissions, and
 - (b) contributes to sustainable development or the protection or enhancement of the environment generally. 5

125B Functions of the Administrator: supplementary

- (1) The powers that may be conferred on the Administrator by virtue of section 125A(1) include, in particular –
- (a) power to require a transport fuel supplier to provide the Administrator with such information as the Administrator may require for purposes connected with the carrying out of the Administrator’s functions; 10
 - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided; 15
 - (c) power to imposes charges of specified amounts on transport fuel suppliers.
- (2) The Secretary of State may give written directions to the Administrator about the exercise of any power conferred on the Administrator by virtue of subsection (1)(a) or (b). 20
- (3) The power to give directions under subsection (2) includes power to vary or revoke the directions.
- (4) The Administrator must comply with any directions given under that subsection. 25
- (5) Sums received by the Administrator by virtue of provision within subsection (1)(c) –
- (a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
 - (b) otherwise, must be used for the purpose of meeting costs incurred in carrying out the Administrator’s functions. 30
- (6) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

125C Transfer of functions to new Administrator

- (1) The Secretary of State may by order – 35
- (a) appoint a person as the Administrator (“the new Administrator”) in place of a person previously so appointed by order under this Chapter (“the old Administrator”), and
 - (b) provide for the transfer of the functions of the old Administrator to the new Administrator. 40
- (2) Only the following persons may be appointed as the Administrator by order under this section –
- (a) the Secretary of State;
 - (b) a body or other person established or appointed by or under any enactment to carry out other functions; 45

- (c) a body corporate established by the order for appointment as the Administrator.
- (3) An order under this section that establishes a body for appointment as the Administrator may make any provision that may be made by an RTF order by virtue of section 125. 5
- (4) An order under this section may provide for the transfer of staff of the old Administrator, and of any property, rights or liabilities to which the old Administrator is entitled or subject, to the new Administrator and may, in particular –
 - (a) provide for the transfer of any property, rights or liabilities to have effect subject to exceptions or reservations specified in or determined under the order; 10
 - (b) provide for the creation of interests in, or rights over, property transferred or retained or for the creation of new rights and liabilities; 15
 - (c) provide for the order to have effect in spite of anything that would prevent or restrict the transfer of the property, rights or liabilities otherwise than by the order.
- (5) The order may, in particular –
 - (a) provide for anything done by or in relation to the old Administrator to have effect as if done by or in relation to the new Administrator; 20
 - (b) permit anything (which may include legal proceedings) which is in the process of being done by or in relation to the old Administrator when the transfer takes effect to be continued by or in relation to the new Administrator; 25
 - (c) provide for a reference to the old Administrator in an instrument or other document to be treated as a reference to the new Administrator;
 - (d) where the old Administrator was established by order under this Chapter, make provision for the dissolution of the old Administrator; 30
 - (e) make such modifications of any enactment relating to the old Administrator or the new Administrator as the Secretary of State considers appropriate for the purpose of facilitating the transfer. 35
- (6) An order under this section that provides for the transfer of staff of the old Administrator to the new Administrator must make provision for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) to apply to the transfer. 40
- (7) Subject to subsection (8), an order under this section is subject to the negative resolution procedure.
- (8) The power to make an order under this section is subject to the affirmative resolution procedure if the order – 45
 - (a) contains provision by virtue of subsection (2)(c), or
 - (b) makes any modification of an enactment contained in –
 - (i) an Act of Parliament,
 - (ii) an Act of the Scottish Parliament,

- (iii) a Measure or Act of the National Assembly for Wales,
or
- (iv) Northern Ireland legislation.”.

Determination of amounts of transport fuel

- | | | |
|---|---|----|
| 3 | In section 126 (determination of amounts of transport fuel), after subsection (4) insert – | 5 |
| | “(5) If an RTF order makes provision for the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter by reference to any 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. | 10 |
| | (6) The Secretary of State may give written directions to the Administrator about the exercise of any of the Administrator’s functions in connection with the counting or determination of amounts of transport fuel for the purposes of provision made by or under this Chapter. | 15 |
| | (7) The power to give directions under subsection (6) includes power to vary or revoke the directions. | |
| | (8) The Administrator must comply with any directions given under that subsection.”. | 20 |

Discharge of obligation by payment

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|---|---|----|
| 4 | In section 128 (discharge of obligation by payment), for subsections (6) and (7) substitute – | |
| | “(6) Where the Administrator is the Secretary of State – | |
| | (a) sums received by the Administrator by virtue of this section must be paid into the Consolidated Fund, and | 25 |
| | (b) an RTF order may make provision for sums to be paid by the Administrator to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation. | 30 |
| | (7) Such an order must contain provision ensuring that the total of the sums so paid by the Administrator does not at any time exceed the total of the sums so received by the Administrator up to that time. | |
| | (8) Where the Administrator is a person other than the Secretary of State, an RTF order may – | 35 |
| | (a) require the Administrator to use, to the specified extent, sums received by the Administrator by virtue of this section for the purpose of meeting costs incurred in carrying out the Administrator’s functions, or | |
| | (b) require the Administrator to pay, to the specified extent, sums so received to the Secretary of State. | 40 |
| | (9) Sums so received which are not dealt with in accordance with provision made under subsection (8) must be paid by the Administrator to transport fuel suppliers, or to transport fuel | |

suppliers of a specified description, in accordance with the specified system of allocation.

- (10) The Secretary of State must pay sums received by the Secretary of State by virtue of provision made under subsection (8)(b) into the Consolidated Fund.”.

5

Civil penalties

- 5 In section 129 (imposition of civil penalties), for subsection (7) substitute –

- “(7) Sums received by the Administrator by virtue of this section –
(a) where the Administrator is the Secretary of State, must be paid into the Consolidated Fund, and
(b) otherwise, must be paid to the Secretary of State, who must pay them into the Consolidated Fund.”.

10

Disclosure of information

- 6 After section 131 insert –

“131A Disclosure of information held by Revenue and Customs

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- (1) This section applies to information held by or on behalf of the Commissioners for Her Majesty’s Revenue and Customs in connection with their functions under or by virtue of the Hydrocarbon Oil Duties Act 1979.
- (2) Such information may be disclosed to –
(a) the Administrator, or
(b) an authorised person,
for the purposes of or in connection with the Administrator’s functions.
- (3) In this Chapter “authorised person” means a person who –
(a) provides services to, or exercises functions on behalf of, the Administrator, and
(b) is authorised by the Administrator to receive information to which this section applies.
- (4) The Administrator may authorise such a person to receive information to which this section applies either generally or for a specific purpose.

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131B Further disclosure of information

- (1) This section applies to information disclosed under section 131A, other than information which is also provided to the Administrator or an authorised person otherwise than under that section.
- (2) Information to which this section applies may not be disclosed –
(a) by the Administrator,
(b) by an authorised person, or
(c) by any other person who obtains it in the course of providing services to, or exercising functions on behalf of, the Administrator,
except as permitted by the following provisions of this section.

35

40

- (3) Subsection (2) does not apply to a disclosure made –
- (a) by the Administrator to an authorised person,
 - (b) by an authorised person to the Administrator, or
 - (c) by an authorised person to another authorised person,
- for the purposes of, or in connection with, the discharge of the Administrator’s functions. 5
- (4) Subsection (2) does not apply to a disclosure if it is –
- (a) authorised by an enactment,
 - (b) made in pursuance of an order of a court,
 - (c) made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions, 10
 - (d) made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Administrator has functions, 15
 - (e) made with the consent of the Commissioners for Her Majesty’s Revenue and Customs, or
 - (f) made with the consent of each person to whom the information relates. 20

131C Wrongful disclosure

- (1) A person commits an offence if –
- (a) he discloses information about a person in contravention of section 131B(2), and
 - (b) the person’s identity is specified in the disclosure or can be deduced from it. 25
- (2) In subsection (1) “information about a person” means revenue and customs information relating to a person within the meaning of section 19(2) of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure). 30
- (3) It is a defence for a person charged with an offence under this section to prove that he reasonably believed –
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public. 35
- (4) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum or both. 40
- (5) A prosecution for an offence under this section –
- (a) may be brought in England and Wales only with the consent of the Director of Public Prosecutions;
 - (b) may be brought in Northern Ireland only with the consent of the Director of Public Prosecutions for Northern Ireland. 45
- (6) In the application of this section –

- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
 - (b) in Northern Ireland,
- the reference in subsection (4)(b) to twelve months is to be read as a reference to six months.”. 5

Interpretation

- 7 (1) Section 132(1) (interpretation of Chapter 5 of Part 2) is amended as follows.
- (2) For the definition of “Administrator” substitute—
- ““Administrator” means the person for the time being appointed as the Administrator by order under this Chapter;”.
- 10
- (3) In the appropriate place insert—
- ““authorised person” has the meaning given by section 131A(3);”;
- 15
- ““enactment” includes—
- (a) an enactment contained in subordinate legislation,
 - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
 - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
 - (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;”.

20

(4) In section 196(1) of the Energy Act 2004 (c. 20) (general interpretation), in the definition of “enactment”, after ““enactment”” insert “(except in Chapter 5 of Part 2)”. 25

Climate Change Bill [HL]

A

B I L L

To set a target for the year 2050 for the reduction of targeted greenhouse gas emissions; to provide for a system of carbon budgeting; to establish a Committee on Climate Change; to confer powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere; to make provision about adaptation to climate change; to confer powers to make schemes for providing financial incentives to produce less domestic waste and to recycle more of what is produced; to amend the provisions of the Energy Act 2004 about renewable transport fuel obligations; to make other provision about climate change; and for connected purposes.

Lord Rooker

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