

## CLIMATE CHANGE BILL [HL]

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### EXPLANATORY NOTES

#### INTRODUCTION

1. These explanatory notes relate to the Climate Change Bill [HL] as introduced in the House of Lords on 14th November 2007. They have been prepared by the Department for Environment, Food and Rural Affairs and the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### SUMMARY

3. This Bill sets up a framework for the UK to achieve its long-term goals of reducing carbon dioxide emissions and to ensure steps are taken towards adapting to the impact of climate change. Its main elements are as follows:

- **Setting emissions reduction targets in statute and carbon budgeting.** It is intended that the Bill will establish an economically credible emissions reduction pathway to 2050 and beyond, by putting into statute medium and long-term targets. These targets already exist on a non-statutory basis. In addition, a system of carbon budgeting is proposed which constrains the total amount of emissions in a given time period. The Bill proposes that carbon budget periods should last five years, beginning with the period 2008-2012, and be set three periods ahead. This approach is more flexible than annual targets would be, but nonetheless with emissions in each year counting towards the budget.
- **The creation of an independent advisory body.** The Bill proposes to create a new institutional framework with which to manage the UK's carbon budgets, through establishing a new independent body, "the Committee on Climate Change", to advise the Government and devolved administrations on how to reduce emissions over time and across the economy. This expert body will advise on the optimum trajectory to 2050, the level of carbon budgets, and on how much effort should be made by the part

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of the economy covered by trading schemes and by the rest of the economy, as well as reporting on progress.

- **Trading scheme powers.** The Bill includes new powers to enable the Government and the devolved administrations to introduce new domestic trading schemes to reduce emissions through secondary legislation. This increases the policy options which the Government could use to meet the medium and long-term targets in the Bill.
- **A new reporting framework.** The Bill will provide for a system of annual reporting on the UK's greenhouse gas emissions by the Government. The Committee on Climate Change will have a specific role in reporting annually on progress, with the Government required to lay before Parliament a response to this progress report.
- **Adaptation.** The Bill will set out a procedure for assessing the risks of the impact of climate change for the UK, and a requirement on the Government to develop an adaptation programme on matters for which it is responsible. The programme must contribute to sustainable development.
- **Policy measures to reduce emissions.** The Bill will be used to support emissions reductions through several specific policy measures: implementation of the Carbon Reduction Commitment – a mandatory cap-and-trade scheme covering energy use emissions from large, non-energy-intensive organisations; improving the operation of the Renewable Transport Fuel Obligation; and providing a power to pilot local authority incentives for household waste minimisation and recycling.

## **BACKGROUND**

4. The science of climate change is indisputable – climate change is an issue of critical importance and urgent action is needed both at home and internationally to tackle it.

5. The 2006 Stern Review sets out the economic case for action on climate change, and concludes that the cost of inaction will be far higher than tackling climate change now. It also makes clear that the costs are lowest in the context of multilateral action.

6. While the Government has already set out significant steps to strengthen the domestic programme on climate change – most recently by publishing the UK Climate Change Programme and Energy White Paper – it is clear that the urgency of the need to tackle climate change requires further concerted action. In October 2006 the Government announced its intention to publish legislation on Climate Change, and a draft Climate Change Bill was published for public consultation and pre-legislative scrutiny in March 2007. The revised Bill as introduced into Parliament on 14th November 2007 aims to take into account findings from the parliamentary scrutiny and public consultation processes.

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## **THE BILL**

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

7. This Part of the Bill gives the Secretary of State a duty to reduce the net UK carbon account for the year 2050 to at least 60% below the level of net UK emissions of targeted greenhouse gases in 1990. The term “targeted greenhouse case” is defined in clause 19 and the term “net UK carbon account” is defined in clause 22.

8. It also requires the Secretary of State to set “carbon budgets” representing UK emissions for five year periods beginning with the period 2008-2012, taking account of any “carbon units” which are credited or debited to the net UK carbon account under a system of “carbon accounting”. Part 1 of the Bill includes a duty on the Secretary of State to report UK emissions levels to Parliament, and to report on the measures the Government will take to meet the objectives in Part 1.

9. Part 1 makes further provision relating to the target and to budgets, including provision on how to calculate whether the target for 2050 has been met and how carbon budgets are to be set. It requires that the carbon budget for 2018-22 is set in a way that is consistent with the Government’s target to reduce emissions by between 26% and 32% by 2020, against 1990 levels. It makes provision on the amendment of certain aspects of Part 1 of the Bill in certain circumstances, and gives a duty to make regulations about how carbon units are to be used to ensure that the net carbon account is within budget.

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

10. Part 2 and Schedule 1 establish a new independent non-departmental public body, the Committee on Climate Change (“the Committee”).

11. Part 2 gives the Committee duties to advise the Secretary of State on the levels of carbon budgets, and on the apportionment of effort between reductions in domestic emissions levels and the use of carbon units. The Committee must also advise on the amount of effort to be made by sectors of the economy in trading schemes, and other sectors of the economy. The Committee is required to publish this advice as soon as reasonably practicable after giving it.

12. The Committee is also given a function of making an annual report to Parliament and the devolved legislatures on the progress that is being made towards meeting the objectives in Part 1 of the Bill. After the end of each budget period, the Committee must include in its annual report its views on the way in which the budget for the period was or was not met and action taken during the period to reduce net UK emissions of targeted greenhouse gases.

13. Part 2 also gives the Committee the powers it needs to deliver its advisory and reporting functions, and the Secretary of State and the devolved administrations are given powers to make grants to the Committee and to issue guidance and directions to the Committee. Schedule 1 sets out the Committee’s constitution.

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***Part 3: Trading Schemes***

14. Part 3 and Schedules 2, 3 and 4 provide the Secretary of State and the devolved administrations with powers to set up trading schemes relating to greenhouse gas emissions through secondary legislation. Trading schemes may limit activities that directly or indirectly lead to emissions of greenhouse gases (for example, by capping emissions from a particular set of activities and allow trading of emissions within the cap), or they may encourage activities that directly or indirectly lead to a reduction in greenhouse gas emissions or the removal of greenhouse gases from the atmosphere.

15. Before making regulations to establish a trading scheme the Secretary of State and/or devolved administration concerned must seek and take into account the advice of the Committee on Climate Change, and must consult those likely to be affected by the regulations.

16. The first use of the enabling powers will be to implement the Carbon Reduction Commitment, a mandatory cap-and-trade scheme covering energy use emissions from large, non-energy-intensive organisations.

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

17. Part 4 places a duty on the Secretary of State to carry out an assessment of the risks to the UK from the impact of climate change; the first report must be made within three years, with subsequent reports at least every five years. Each risk assessment must be followed by the publication of a Government programme of adaptation measures. There is a parallel requirement on the relevant Northern Ireland department to publish an adaptation programme in Northern Ireland.

***Part 5: other provisions***

18. Part 5 makes provisions, including specific measures to reduce emissions:

- Waste reduction schemes: the provisions amend the Environmental Protection Act 1990, allowing waste collection authorities designated by the Secretary of State to introduce pilot waste reduction schemes. Following the operation of pilot schemes, the Secretary of State must carry out a review and report to Parliament. After the review of and report on the pilot schemes, the provisions allow the Secretary of State to roll out the provisions for use by other waste collection authorities (with any necessary amendments) or to repeal the provisions.
- Renewable Transport Fuel Obligations: the provisions amend Chapter 5 of Part 2 of the Energy Act 2004 which provides for the Secretary of State by order to set up a renewable transport fuel obligations scheme. The amendments will introduce a new power to replace the Administrator with a new Administrator, who may be the Secretary of State, and to transfer functions accordingly; amend the provisions which determine how sums received by the Administrator are to be dealt with; give the Secretary of State a power to issue written directions to the Administrator; impose a

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duty on the Administrator to promote the supply of sustainable fuel which has a beneficial environmental effect; and set up an information gateway to allow disclosure of information by Her Majesty's Revenue and Customs to the Administrator.

- Reporting requirements in Wales: the Welsh Ministers are to publish from time to time a report on their objectives, actions and priorities in relation to greenhouse gas emissions and the impact of climate change in Wales. The provisions also make amendments to the Climate Change and Sustainable Energy Act 2006, transferring to Welsh Ministers the responsibility for publishing guidance for local authorities in Wales on climate change, currently a Government responsibility.
- Offsetting: the provisions give the Government and the devolved administrations the power to offset greenhouse gas emissions by acquiring units representing emissions reductions, units representing removals of greenhouse gases from the atmosphere, or units in schemes which cap emissions levels.
- Making a minor amendment to section 105(2) of the Clean Neighbourhoods and Environment Act 2005 to enable an increase in fines for pollution offences.

***Part 6: General supplementary provisions***

19. This part defines the territorial scope of provisions in the Bill, sets out requirements for making orders or regulations under the Bill, and defines terms used in the Bill.

**TERRITORIAL EXTENT**

20. Clauses 51 to 54, 57 and 60 of the Bill extend only to England and Wales. All other clauses extend to the whole of the United Kingdom.

21. At Introduction, the Bill contains provisions that trigger the Sewel convention. The provisions relate to the establishment of the Committee on Climate Change under Part 2 of the Bill, the conferral of powers on the Scottish Ministers under Part 3 of the Bill, the preparation by the Secretary of State of a UK-wide report on the impact of climate change under clause 48 and the power to acquire units relating to greenhouse gas emissions under clause 59. Part 1 of the Bill, although it imposes duties only on the Secretary of State, may also be viewed as affecting devolved matters in relation to setting targets and carbon budgets for Scotland. The Sewel convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

22. By similar convention, the consent of the Northern Ireland Assembly has been sought in relation to the same aspects of the Bill and also the duty on the relevant Northern Ireland

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department to prepare a programme on adaptation to climate change under clause 50 in Part 4 of the Bill.

## **TERRITORIAL APPLICATION**

23. The Bill confers the following functions on the Welsh Ministers:

- Part 2 and Schedule 1: powers to seek advice from Committee on Climate Change and functions in relation to its joint sponsorship;
- Part 3 and Schedules 2, 3 and 4: the power to make trading schemes covering certain activities in Wales, and to require information from electricity suppliers and distributors and potential participants in a trading scheme;
- Part 5, clause 56: the duty to draw up a report on climate change in Wales and to lay it before the National Assembly for Wales;
- Part 5, clause 57: the function of preparing a climate change measures report in Wales; this clause inserts a new, Wales-specific section 3A into the Climate Change and Sustainable Energy Act 2006 (c.19).

24. Clauses 51 to 54 (waste reduction schemes) apply to England only, but clause 60 (fines for offences relating to pollution) applies to England and Wales.

## **COMMENTARY ON CLAUSES**

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

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

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

25. *Subsection (1)* of this clause imposes a duty on the Secretary of State to ensure that “the net UK carbon account” for 2050 is at least 60% lower than the “1990 baseline”, which is defined in *subsection (2)* as the net amount of “targeted greenhouse gases” emitted in the UK in 1990.

26. The target for 2050 is set by reference to a 1990 baseline rather than a particular quantum of emissions because the baseline itself is subject to revision as understanding of historic emissions improves. This is the baseline used for emissions of greenhouse gases under the Kyoto Protocol, an international agreement to limit emissions of greenhouse gases, to which the UK is party.

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27. The term “the net UK carbon account” is defined in clause 22. For 2050, it means the level of net UK emissions of targeted greenhouse gases in 2050 after numbers of “carbon units” have been added and subtracted in accordance with carbon accounting regulations. The commentary on clauses 21 and 22 provides a more detailed explanation of carbon accounting and the net UK carbon account.

28. The term “targeted greenhouse gas” is defined in clause 19. To begin with, the only targeted greenhouse gas is carbon dioxide. But clause 19 gives the Secretary of State the power to add other greenhouse gases to the list in due course. The commentary on clause 19 provides more details of the process.

**Clause 2: Amendment of 2050 target or baseline year**

29. *Subsection (1)* allows the Secretary of State, by order, to amend the 2050 target and the baseline year.

30. *Subsection (2)* sets out the circumstances in which the Secretary of State can amend the 2050 target:

- paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;
- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target or emissions from international aviation or shipping are added to the target.

31. *Subsection (3)* makes special provision on the meaning of “developments in scientific knowledge about climate change”. The first time the Secretary of State amends the 2050 target or the baseline, he will be able to rely on scientific developments since June 2000 to justify the change; he will not be restricted to considering only scientific developments which have taken place after the Bill receives Royal Assent. June 2000 is the date the Royal Commission on Environmental Pollution recommended that UK emissions should be cut by 60% by 2050, so the intention is to allow the Secretary of State to consider all scientific developments since that date. But when making any subsequent amendment, the Secretary of State will only be able to take into account scientific developments since the target or baseline was last changed.

32. *Subsection (4)* provides that the baseline year can only be amended if there have been significant developments in scientific knowledge about climate change or in European Community or international law or policy which make an amendment appropriate.

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33. *Subsections (5) and (6)* provide that an order amending the target is to be made by affirmative resolution statutory instrument (i.e. before the order is made, there must be a debate and vote approving it in both Houses of Parliament). An order that changes the baseline year can also amend other references in the Bill to “the 1990 baseline”.

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

34. This clause sets out the procedures that the Secretary of State must follow before amending the 2050 target or the baseline year.

35. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change (a new non-departmental public body which is created by Part 2 of the Bill). The Secretary of State also has to consider the views of the devolved administrations (the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department).

36. *Subsections (2) to (5)* set out the stages of the process:

- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
- *Subsection (3)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the three month period has expired;
- *Subsection (4)* places a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations’ views. The Secretary of State can publish the statement in any way he thinks is appropriate, but it has to be published when he lays the draft order (*subsection (5)*).

***Carbon budgeting***

**Clause 4: Carbon budgets**

37. *Subsection (1)* of this clause places a duty on the Secretary of State to set five-year “carbon budgets”, defined as an amount for the net UK carbon account for a given period (i.e. a “budgetary period”). The Secretary of State is also placed under a duty to ensure that the net UK carbon account stays within the budget for each period.

38. *Subsection (2)* requires the Secretary of State to set three consecutive carbon budgets for the periods 2008-2012, 2013-2017 and 2018-2022 by the end of February 2009. It also creates a duty to set subsequent carbon budgets at least 11½ years ahead. The intent of the clause is to provide certainty around the UK’s carbon budgets in the medium term.

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**Clause 5: Level of carbon budgets**

39. This clause sets limits on the levels of carbon budgets.

40. *Subsection (1)* sets out the requirement for carbon budgets to be consistent with certain emissions levels in particular years:

- paragraph (a) requires that the “annual equivalent of the carbon budget” for the carbon budget covering the year 2020 must be at least 26% and no more than 32% lower than the 1990 baseline;
- paragraph (b) requires that the “annual equivalent of the carbon budget” for the carbon budget covering the year 2050 is no more than the level specified in clause 1 compared with the 1990 baseline (60% below 1990 levels, unless amended under clause 2);
- paragraph (c) gives the Secretary of State a power to set, by order, further percentage targets or target percentage ranges for years after 2050.

41. *Subsection (2)* explains that the “annual equivalent” of a given carbon budget is the total carbon budget for a period divided by the number of years in that period. *Subsection (3)* provides that an order setting a target percentage or percentage range for a year after 2050 must be made using the affirmative resolution procedure (i.e. before the order is made, there must be a debate and vote approving it in both Houses of Parliament).

**Clause 6: Amendment of target percentages**

42. This clause sets out when and how the target percentages in clause 5 can be amended.

43. *Subsection (1)* gives the Secretary of State the power to amend the target percentage range for 2020 (in clause 5(1)(a), and any target percentage or percentage range set for a year after 2050 (in clause 5(1)(c)).

44. *Subsection (2)* sets out the circumstances in which those percentages can be amended:

- paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;
- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target or emissions from international aviation or shipping are added to the target.

45. *Subsection (3)* makes special provision on the meaning of “developments in scientific knowledge about climate change” and mirrors the rules for amendment of the 2050 target.

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The first time the Secretary of State amends the target percentage range for 2020, he will be able to rely on scientific developments since June 2000 to justify the change; he will not be restricted to considering only scientific developments which have taken place after the Bill receives Royal Assent. If the Secretary of State wants to amend a target percentage or percentage range for a year after 2050, he will only be allowed to rely on scientific developments that occur after the range is set. When making any subsequent amendment to a target percentage or percentage range, the Secretary of State will only be able to take into account scientific developments since the percentage or range was last changed.

46. *Subsection (4)* prescribes that orders made under subsection (1) are subject to affirmative resolution procedure.

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

47. This clause sets out the procedures that the Secretary of State must follow before amending the 2020 percentage range or a target percentage or percentage range for a year after 2050.

48. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.

49. *Subsections (2) to (5)* set out the stages of the process:

- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations.
- *Subsection (3)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views before the three month period has expired, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the three month period has expired.
- *Subsection (4)* places a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views. The Secretary of State can publish the statement in any way he thinks is appropriate, but it has to be published when he lays the draft order (*subsection (5)*).

**Clause 8: Setting of carbon budgets for budgetary periods**

50. *Subsections (1) and (3)* require the Secretary of State to set carbon budgets using affirmative resolution orders.

51. *Subsection (2)* provides that every carbon budget must be set with a view to meeting the 2050 target, the target percentage range for 2020 and any target percentage range for a

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year after 2050. Budgets must also be set with a view to complying with the UK's European Community and international obligations (e.g. any international treaties to which the UK is a signatory).

**Clause 9: Consultation on carbon budgets**

52. This clause sets out the procedures that the Secretary of State must follow before setting a carbon budget.

53. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.

54. *Subsections (2) to (6)* set out the stages of the process:

- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations.
- *Subsection (3)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the three month period has expired.
- *Subsections (4) to (6)* place a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views. If the budget is not set at the level recommended by the Committee, the Secretary of State must also publish a statement explaining why not. The Secretary of State can publish the statements in any way he thinks is appropriate, but they must be published when he lays the draft order.

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

55. This clause sets out matters that the Secretary of State must take into account when making decisions about carbon budgets and which the Committee on Climate Change must take into account in advising the Secretary of State on those decisions.

56. *Subsection (2)* sets out the list of matters to be taken into account. This is intended to give examples of the broad range of relevant factors that will inform any decision relating to carbon budgeting. The matters are not listed in any particular order; the order of the matters has no legal significance. *Subsection (3)* makes it explicit that this clause does not limit the general requirement for the Secretary of State and the Committee on Climate Change to take *all* relevant matters into account.

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**Clause 11: Duty to report on proposals and policies for meeting carbon budgets**

57. This clause places a duty on the Secretary of State to lay a report before Parliament setting out proposals and policies for meeting the current and future carbon budgets. This clause aims to enshrine transparency in the system, so that Parliament is clear about how the Government intends to meet its new obligations.

58. *Subsection (2)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation to any part of the report covering their proposals and policies. *Subsection (3)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

***Determination whether objectives met***

**Clause 12: Annual statement of UK emissions**

59. This clause places a duty on the Secretary of State to lay a statement before Parliament on UK emissions in respect of every year from 2008 onwards. Finalised figures for UK emissions, including a full inventory report, are currently produced, and submitted to the EU by the Government on 15th March each year, 14½ months after the end of calendar year in question. *Subsection (9)* therefore provides that the report under this clause must be laid no later than the 31st March in the second year after the year to which it relates (i.e. the report for 2008 must be laid by 31st March 2010).

60. *Subsections (2) and (3)* specify that the statement must set out UK emissions, UK removals and net UK emissions. These terms are defined in clause 24; they include emissions of all greenhouse gases (whether or not they are “targeted greenhouse gases” included in the 2050 and other targets), and the statement must show the total figures for emissions of each gas and aggregate figures. The statement must also explain how the figures were measured or calculated, and must say whether they represent an increase or decrease when compared with the figures for the previous year. See, also, clause 58, which repeals a similar reporting requirement under section 2(b) of the Climate Change and Sustainable Energy Act 2006 (c.19).

61. *Subsection (4)* provides that where there has been a change in the international method of calculating emissions levels that requires the adjustment of emissions levels in earlier years in the budgetary period, then the report should set out the adjusted figures.

62. *Subsection (5)* requires the Secretary of State to report the levels of emissions from international aviation or international shipping in the statement, calculated in the same way as is required under international carbon reporting practice, unless those emissions are already included in the figures required by subsection (2). Emissions from international aviation or international shipping will be included in the figures reported under subsection (2) if regulations are made under clause 25 which have that effect; the commentary on clause 25 gives more detail on the circumstances in which that can happen.

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63. *Subsection (6)* specifies that the report must set out the cumulative total of carbon units (as defined in clause 21) credited to or debited from the net UK carbon account up to the date of the report, and give details of the number and type of those carbon units. *Subsection (7)* provides that the report must also state the net UK carbon account for the relevant budgetary period. The amounts stated under subsections (6) and (7) must be stated as at the latest date that is as reasonably practicable before the publication of the report (*subsection (8)*).

64. *Subsection (9)* gives the date by which the statement must be laid before Parliament and *subsection (10)* requires the Secretary of State to send a copy of the statement to each of the devolved administrations.

**Clause 13: Powers to carry amounts from one budgetary period to another**

65. This clause provides a power for the Secretary of State to ‘bank’ and ‘borrow’ emissions between budgetary periods.

66. *Subsection (1)* allows the Secretary of State to ‘borrow’ part of the next budget. In the language of the Bill, an amount from the next budget is ‘carried back’ to the budget preceding it. Where this power is used, the next budget (which will already have been set by order) is reduced by the amount that has been borrowed.

67. *Subsection (2)* limits the amount that can be borrowed under subsection (1) to no more than 1% of the next budget.

68. *Subsection (3)* allows the Secretary of State to carry forward any part of the carbon budget that exceeds the net UK carbon account for that period (i.e. to ‘bank’ a budget surplus, but not necessarily all of it). The banked amount is added to the next budget.

69. *Subsection (4)* requires the Secretary of State to obtain the advice of the Committee on Climate Change, and take this advice into account, before exercising powers under this clause, i.e. before banking or borrowing. The Secretary of State is also obliged to consult the devolved administrations before banking or borrowing.

70. *Subsection (5)* places a back-stop on when the banking and borrowing powers can be used. A decision to bank or borrow must be taken no later than 31st May in the second year after the earlier budget period ends (e.g. for the 2008-2012 budget, no later than 31st May 2014). This is also the date on which an assessment is made of whether the budget has been met (see clause 14).

**Clause 14: Final statement for budgetary period**

71. This clause places a duty on the Secretary of State to report the final figures for the net UK carbon account during a budgetary period; these figures are used to determine whether a budget has been met.

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72. *Subsections (2) to (6)* place a duty on the Secretary of State to report:

- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for each targeted greenhouse gas (i.e each of the gases included in the target – see clause 19). The final amounts may differ slightly from the sum of the emissions figures in the annual reports for the budgetary period because this statement will take account of any changes in the international methodology used to work out the 1990 baseline and emissions for each year;
- under *subsection (3)*, the final amount of carbon units that have been credited to or debited from the UK carbon account in that budgetary period, and details of the number and type of those units;
- under *subsection (4)*, the final amount of the net UK carbon account for the budgetary period;
- under *subsection (5)*, whether the Secretary of State has decided to borrow from the next budget (using the power in clause 13(1)) and, if so, the amount borrowed; and
- under *subsection (6)*, the amount of the budget for the period, which will be the level of the budget as originally set, subject to any banking or borrowing under clause 13 and any alternation of the budget under clause 16.

73. *Subsection (7)* provides that the determination of whether the budget has been met should be made by reference to the figures in the statement.

74. *Subsection (8)* provides that if the budget has not been met, then the statement must include an explanation of the reasons why not.

75. *Subsection (9)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than the 31st May in the second year after the end of a budgetary period (e.g. for the 2008-2012 budget, no later than 31st May 2014). *Subsection (10)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

**Clause 15: Final statement for 2050**

76. This clause places a duty on the Secretary of State to report to Parliament the final figures for the net UK carbon account in 2050.

77. *Subsections (2) to (4)* place a duty on the Secretary of State to report:

- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for 2050 for each targeted greenhouse gas;

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- under *subsection (3)*, the amount of carbon units that have been credited to and debited from the net UK carbon account, and details of the number and type of those units;
- under *subsection (4)*, the amount of the net UK carbon account for 2050.

78. *Subsection (5)* provides that the question of whether the 2050 target has been met is to be answered by referring to the figures in the statement.

79. *Subsection (6)* provides that if the budget has not been met, the statement must explain the reasons why not.

80. *Subsection (7)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than the 31st May in the second year after the 2050 (i.e. by 31st May 2052). *Subsection (8)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

***Alteration of budgets or budgetary periods***

**Clause 16: Alteration of carbon budgets**

81. This clause gives the Secretary of State a power, using an affirmative resolution statutory instrument, to amend the level of carbon budgets in certain circumstances. The clause also limits the conditions in which orders setting carbon budgets can be revoked.

82. *Subsection (1)* prevents an order setting a carbon budget being revoked after the final date by which it had to be set in accordance with clause 4(2).

83. *Subsection (2)* gives the Secretary of State the power to amend budgets, but limits the circumstances in which such an order can be made. A budget may only be amended if there have been significant changes in the factors on the basis of which the decision to set, or previously amend, the budget was made.

84. *Subsection (3)* limits the circumstances in which an order amending a budget after the start of the relevant budgetary period can be made. A budget may only be amended after the start of the budgetary period if there have been significant changes, since the budget period began, in the factors on the basis of which the decision to set or previously amend the budget was made. This is a more stringent test than in subsection (2) because there will typically have been less time for a significant change to happen.

85. *Subsection (4)* requires any order amending budgets to follow the affirmative resolution order procedure.

*These notes refer to the Climate Change Bill [HL]  
as introduced in the House of Lords on 14th November 2007 [HL Bill 9]*

**Clause 17: Consultation on alteration of carbon budgets**

86. This clause sets out the procedures that the Secretary of State must follow before altering a carbon budget.

87. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.

88. *Subsections (2) to (6)* set out the stages of the process:

- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations.
- *Subsection (3) and (4)* provide that the devolved administrations have one month to send the Secretary of State their views if the budget period has already begun, and three months if the budget period has not started yet. If the devolved administrations send their views within the relevant period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the relevant period has expired.
- *Subsection (5)* places a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views. The Secretary of State can publish the statement in any way he thinks is appropriate, but it must be published when he lays the draft order (*subsection (6)*).

**Clause 18: Alteration of budgetary periods**

89. This clause allows, in certain circumstances, the duration of budgetary periods and their start and end dates to be changed by affirmative resolution statutory instrument.

90. *Subsection (2)* prescribes the circumstances when this power can be exercised. These are when a change to the budgetary periods is needed to keep them in line with similar periods under European or international agreements to which the UK is a party. *Subsection (3)* prevents alterations that would leave a period of time outside the carbon budget system.

91. *Subsection (4)* allows an order under subsection (1) to make consequential amendments to other parts of the Bill in order to ensure coherence of the provisions.

92. *Subsection (5)* requires the Secretary of State to consult the devolved administrations before making such an order.

*These notes refer to the Climate Change Bill [HL]  
as introduced in the House of Lords on 14th November 2007 [HL Bill 9]*

### ***Targeted greenhouse gases***

#### **Clause 19: Targeted greenhouse gases**

93. This clause defines the term “targeted greenhouse gas”, which is the term used to describe the gases covered by the targets and budgets in the Bill.

94. *Subsection (1)* defines the term “targeted greenhouse gas” as meaning carbon dioxide and any other greenhouse gas added later by the Secretary of State by order. The term “greenhouse gas” is defined in clause 64 by reference to a list of gases. *Subsection (5)* provides that the order must be made using the affirmative resolution procedure.

95. *Subsection (2)* provides that an order adding a new gas or gases to the list can only take effect from the start of a future budgetary period. This is intended to prevent the addition of new gases to the targets in the middle of a budget. *Subsection (3)* allows the Secretary of State to make any necessary consequential amendments when he makes the order.

96. *Subsection (4)* requires the Secretary of State to consult the devolved administrations, and also to obtain and consider advice from the Committee on Climate Change, before adding a new gas or gases to the list.

#### **Clause 20: Base years for targeted greenhouse gases other than CO<sub>2</sub>**

97. This clause allows the Secretary of State to make provision to deal with the situation where he wants to add a gas to the list of targeted greenhouse gases but, under international carbon reporting practice, the base year for measuring emissions of the gas is not 1990 (i.e. where the base year used for the gas is different from the base year used for the percentage targets in the Bill). For example, the UK has chosen a base year of 1995 for emissions of hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride for the purposes of the Kyoto Protocol.

98. *Subsection (1)* gives the Secretary of State a power to make provision, by affirmative resolution order, setting out how to calculate what the emissions of a non-CO<sub>2</sub> greenhouse gas were in 1990.

99. *Subsection (2)* specifically allows the Secretary of State to assign a different base year to a gas (i.e. not 1990), or to assign a number of base years to a gas. Having assigned a base year (or base years), the Secretary of State is allowed to treat the emissions in that year (or the average for the years) as though they were emissions in 1990.

100. *Subsections (3) and (4)* provide that an order under subsection (1) can only take effect from the beginning of a future budget period, and that the order must be made using the affirmative resolution procedure.

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

**Clause 21: Carbon units and carbon accounting**

101. In addition to the level of “net UK emissions” (which is defined in clause 24(1)(c)), the “net UK carbon account” (as determined in accordance with clause 22) is affected by the addition and subtraction of “carbon units” through a process of “carbon accounting”. This clause, and clause 22, allow the Secretary of State to determine what carbon units should be added to and subtracted from the net UK carbon account and how “carbon accounting” will work.

102. *Subsection (1)* allows the Secretary of State to make regulations setting out specifically what “carbon units” can be used for carbon accounting purposes. “Carbon units” in the regulations can only be:

- units representing a reduction in the amount of greenhouse gas emissions;
- units representing the removal of greenhouse gas from the atmosphere; or
- units representing greenhouse gas emissions which are allowed under a scheme or arrangement which limits total emissions of greenhouse gases (e.g. under certain kinds of emissions trading scheme).

103. *Subsection (2)* allows the Secretary of State to make regulations which contain details of how carbon units should be registered and kept track of, and allowing him to establish and maintain accounts containing carbon units. Carbon units can be moved between accounts. The intention is to establish an accounting system broadly similar to that used to keep track of the UK’s assigned amount units (AAUs) and other units issued under the Kyoto Protocol; subsection (2) specifically provides that the Secretary of State can use an existing system as the basis of the carbon accounting system.

104. *Subsection (3)* gives more detail of what the regulations can say. The Secretary of State is allowed to appoint a body to operate the accounting scheme, to set up a new body for that purpose, to make provision allowing him to give guidance and directions to the body and to require users of the scheme to pay charges towards the cost of operating the scheme.

105. *Subsection (4)* provides that if an existing body is appointed to operate the accounting scheme, then the Secretary of State can make any necessary amendments to relevant enactments.

106. The procedures relating to the regulations are set out in clause 23.

*These notes refer to the Climate Change Bill [HL]  
as introduced in the House of Lords on 14th November 2007 [HL Bill 9]*

**Clause 22: Net UK carbon account**

107. *Subsection (1)* defines the term “net UK carbon account” for a budgetary period as net UK emissions (as defined in clause 24(1)(c)) as decreased by a number of carbon units to be credited to the account and increased by a number of carbon units to be debited from the account in accordance with regulations made by the Secretary of State.

108. *Subsection (2)* requires the Secretary of State to make regulations setting out the circumstances in which carbon units are to be credited to and debited from the net UK carbon account, and the manner in which it is to be done. For example, the regulations could provide that units purchased through the EU Emissions Trading Scheme can be treated as units to be credited to the net UK carbon account.

109. *Subsection (3)* provides that where carbon units are to be credited to the net UK carbon account, then provision must be made so that they are no longer available to offset other greenhouse gases, i.e. they must be put beyond use so that they cannot be double-counted.

110. *Subsection (4)* provides that the regulations must make specific provision for dealing with the situation where the UK has a cap on emissions under a European or international scheme or arrangement that is less stringent than the carbon budget for a period, e.g. where the UK’s target under the first commitment period of the Kyoto Protocol (2008-12) is less stringent than the domestic carbon budget for that period. In that situation, the regulations must provide that the excess allowances are not used to offset greenhouse gas emissions in the UK or elsewhere.

**Clause 23: Consultation and parliamentary procedure for regulations**

111. This clause sets out the procedure that must be followed when carbon accounting regulations are made under clause 21 or clause 22.

112. *Subsection (2)* provides that the affirmative resolution procedure must be used for the first set of regulations and for any regulations that amend or repeal primary legislation. *Subsection (3)* provides that the negative resolution procedure applies in all other situations.

113. *Subsection (4)* requires the Secretary of State to consult the devolved administrations before laying or making the regulations (depending on which Parliamentary process is being used).

114. *Subsection (5)* requires the Secretary of State to consult the Committee on Climate Change before making the first regulations.

***Other supplementary provisions***

**Clause 24: UK emissions and removals of greenhouse gases**

115. This clause defines the terms “UK emissions”, “UK removals” and “net UK emissions” used in Part 1 of the Bill. *Subsection (2)* provides that UK emissions and UK removals are to be determined by following international protocols, such as the United Nations Framework Convention on Climate Change (UNFCCC) Reporting Guidelines on Annual Inventories. Emissions only count for the purposes of this Bill if they are emissions of greenhouse gases from anthropogenic sources; non-anthropogenic sources of greenhouse gases (e.g. emissions from volcanic activity) are not included in the figures (see the definition of “emissions” in clause 69).

**Clause 25: Emissions from international aviation or international shipping**

116. This clause makes provision about greenhouse gas emissions from international aviation or international shipping. *Subsection (1)* provides that those emissions do not count as UK emissions for the targets and budgeting in Part 1, unless regulations make provision for them to do so. Until such time as regulations are made, clause 12(5) requires the Secretary of State to report the levels of emissions from international aviation and international shipping in his annual statement.

117. *Subsection (2)* allows the Secretary of State to define in more detail what is meant by “international aviation or shipping” by negative resolution order.

118. *Subsections (3) and (4)* give the Secretary of State the power to make regulations that would allow emissions of targeted greenhouse gases (defined in clause 19) from international aviation or shipping to count as UK emissions. This power may only be exercised if there is a change in European Community or international law or policy that relates to emissions from international aviation or shipping. *Subsection (7)* provides that regulations must be made using the affirmative resolution procedure.

119. *Subsection (5)* specifically allows the Secretary of State to make provision in the regulations about which time periods should be used when calculating UK emissions from international aviation or shipping, and how emissions for the 1990 baseline should be calculated. *Subsection (6)* allows the Secretary of State to assign a different base year for this purpose (i.e. not 1990), or to assign a number of base years. Having assigned a base year (or base years), the Secretary of State is allowed to treat the emissions in that year (or the average for the years) as though they were emissions in 1990.

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

### *The Committee*

#### **Clause 26 and Schedule 1: The Committee on Climate Change**

120. This clause establishes the Committee on Climate Change (in Welsh, y Pwyllgor ar Newid Hinsawdd) and introduces Schedule 1.

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

121. *Schedule 1* makes further provision about the Committee, including provision on its membership, staff, procedures and other administrative requirements.

122. *Paragraphs 1 and 2* make provision in respect of the membership of the Committee on Climate Change. The Committee will have a chairperson and between 5 and 8 members (one of whom may be appointed as the deputy chair) who will be appointed jointly by the Secretary of State the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department (together, the “national authorities”) after consultation with the chairperson. The Secretary of State may, with the consent of the other national authorities, amend the number of members by negative resolution order. Paragraph 1(3) gives a list, in alphabetical order, of the areas of experience and knowledge that are desirable in the Committee’s membership, taken as a whole.

123. *Paragraph 3* provides that a person will be a member of the Committee on the terms which are set when he is appointed (which will include terms about the length of time the person is to serve on the Committee). *Paragraphs 4 to 7* make provision about how members can resign, the situations in which they can be removed from their posts, and allows the reappointment of members.

124. *Paragraphs 8 to 10* allow the national authorities to pay remuneration and allowances to members, and allow the national authorities to provide pensions for members or to make payments towards the provision of pensions. They also allow payments of compensation to outgoing members in special circumstances.

125. *Paragraphs 11 to 14* relate to the Committee’s employees. The Committee must appoint a chief executive who has been approved by the national authorities. It may also appoint other employees. These paragraphs make provision about employees’ pay and pensions, and allow employees to be pensionable under the Principal Civil Service Pension Scheme.

126. *Paragraphs 15 to 20* make provision about how the Committee may operate. The Committee can set up sub-committees, which can include people who are not members of the Committee (and they may be paid remuneration and allowances). The Committee is allowed

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to regulate its own procedure (including quorum) and sub-committee procedures. The Committee is required to publish the minutes of its meetings in any manner it considers appropriate, but that does not require it to publish anything it is prohibited from publishing or that it would not be required to publish under the Freedom of Information Act 2000 (c.36) or the Environmental Information Regulations 2004 (S.I. 2004/3391). The Committee can authorise a sub-committee, member or employee to exercise its functions.

127. *Paragraphs 21 to 24* require the Committee to prepare annual reports and annual statements of accounts; reports and accounts must be laid before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The Committee's accounts will be audited by the National Audit Office. The Committee is placed under a duty to keep proper records, and must provide information to the national authorities on request.

128. *Paragraph 25* provides that the Committee is not a Crown body. It will be a statutory non-departmental public body, and its employees will not be civil servants.

129. *Paragraphs 26 to 33* make amendments to, and provision in relation to, several enactments relating to public bodies; these have several effects, including that the body is subject to freedom of information laws, that the chair and members cannot be members of Parliament, and that the Committee's activities can be subject to investigation by the Scottish Parliament and the appropriate Parliamentary ombudsman.

### ***Functions of the Committee***

#### **Clause 27: Advice in connection with carbon budgets**

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

131. *Subsection (1)(a)* provides that the Committee must advise on the levels at which carbon budgets should be set. *Subsection (1)(b)* requires the Committee to advise on the extent to which budgets should be met by reducing the level of net UK emissions or by the use of carbon units credited to the net UK carbon account. *Subsection (1)(c)* gives the Committee a duty to advise on the contributions towards meeting carbon budgets that should be made by sectors of the economy covered by trading schemes (taken as a whole) and by other sectors (taken as a whole).

132. *Subsection (2)* gives the Committee an advisory duty that only applies to the 2008-2012 budget period. The Committee is required to advise the Secretary of State on whether its advice on the level of the 2008-2012 budget is consistent with meeting a separate target of reducing emissions to an annual equivalent (as defined in clause 5(2)) of 20% below the 1990 baseline, and to set out what the costs and benefits would be of setting a budget consistent with that target.

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133. *Subsection (3)* requires the Committee to set out the reasons for its advice and *subsection (4)* makes provision on the timing of the advice. *Subsection (5)* gives the Committee a duty to send copies of the advice to the devolved administrations at the same time as it gives its advice to the Secretary of State.

134. *Subsection (6)* gives the Committee a duty to publish its advice in any manner it considers appropriate. *Subsection (7)* qualifies this by providing that the Committee is not required to publish any information that it is not allowed to disclose or information that it could choose not to disclose if it was asked to do so under the Freedom of Information Act 2000 (c. 36) or under the Environmental Information Regulations 2004 (S.I. 2004/3391).

**Clause 28: Reports on progress**

135. *Subsection (1)* requires the Committee on Climate Change to make an annual report to Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly containing its assessment of the progress which is being made towards meeting the carbon budgets already set and the 2050 target (i.e. unless amended, to reduce the net UK carbon account to at least 60% below 1990 levels).

136. *Subsection (2)* applies to progress reports in the second year after the end of each budget period (e.g. for the 2008–2012 budget period, in 2014; the final figures for a budget period are not available until the second year after it ends). In those reports, the Committee is required to give its views on the manner in which the budget was or was not met, and its views on the action taken to reduce net UK emissions during the budgetary period.

137. *Subsection (3)* provides that reports under this clause must be made by 30th June each year. *Subsections (4) to (6)* allow the Secretary of State to amend the timing of the report by negative resolution order after consulting the devolved administrations.

**Clause 29: Response to Committee's reports on progress**

138. This clause places a duty on the Secretary of State to lay before Parliament a response to each of the Committee on Climate Change's annual progress reports.

139. *Subsection (2)* requires the Secretary of State to consult the devolved administrations on a draft of the response. *Subsection (3)* provides that the response must be laid no later than the 15th October in the year the Committee's report was made.

140. *Subsections (4) and (5)* allow the Secretary of State to change the deadline by negative resolution order. This provision is to allow flexibility (e.g. it might be used to allow for the consequences of future international treaties on climate change necessitating a change to the date when the Committee makes its report).

141. See also clause 58, which repeals a similar reporting requirement under section 2(a) of the Climate Change and Sustainable Energy Act 2006 (c.19).

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as introduced in the House of Lords on 14th November 2007 [HL Bill 9]*

**Clause 30: Duty to provide advice or other assistance on request**

142. *Subsection (1)* requires the Committee on Climate Change to provide advice, analysis, information or other assistance, when requested to do so, to the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department (together, the “national authorities”). Any request can be made if it relates to an authority’s functions under the Bill, the progress that is being made towards meeting objectives set under the Bill or if it relates to climate change generally.

143. *Subsection (2)* gives specific examples of what may be required of the Committee, including advice on caps on activities under trading schemes or assistance in the preparation of statistics.

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

***Supplementary provisions***

**Clause 31: General ancillary powers**

145. *Subsection (1)* gives the Committee on Climate Change the power to do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions. *Subsection (2)* sets out examples to illustrate the scope of the power. Ancillary powers are not freestanding; they can only be used to facilitate the exercise of formal functions.

**Clause 32: Grants to the Committee**

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

**Section 33: Powers to give guidance**

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

- *Subsection (1)* provides that any guidance on the Committee’s functions generally or its functions under Schedule 1 is to be given by the national authorities (and this means

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that such guidance must be given jointly by all the national authorities: see clause 67(2)).

- *Subsection (2)* provides that any guidance given on the Committee's functions under Part 1 of the Bill (e.g. the function of advising on an amendment of the 2050 target), on its advice on carbon budgets under clause 27 or on its duty to make progress reports under clause 28 is to be given by the Secretary of State, but only after he has consulted the devolved administrations.
- *Subsection (3)* provides that any guidance given on the Committee's duty to provide advice and other assistance under clause 30 or on trading schemes under clause 40 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the guidance must be given jointly.

### **Clause 34: Powers to give directions**

148. This clause makes provision on how the Committee on Climate Change can be given directions on how to carry out its functions. The Committee is required to comply with the directions (see *subsection (6)*), but the Committee cannot be given directions as to the content of any advice or report (see *subsection (4)*).

- *Subsection (1)* provides that any directions on the Committee's functions generally or its functions under Schedule 1 is to be given (jointly) by the national authorities.
- *Subsection (2)* provides that any directions given on the Committee's functions under Part 1 of the Bill (e.g. the function of advising on an amendment of the 2050 target), on its advice on carbon budgets under clause 27 or on its duty to make progress reports under clause 28 is to be given by the Secretary of State, but only after he has consulted the devolved administrations.
- *Subsection (3)* provides that any directions given on the Committee's duty to provide advice and other assistance under clause 30 or on trading schemes under clause 40 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the directions must be given jointly.

## **Part 3: Trading Schemes**

### *Trading schemes*

### **Clause 36: Trading schemes**

149. This clause provides the relevant national authority (defined in clause 39 as the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern

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Ireland department) with the power to set up trading schemes relating to greenhouse gas emissions using secondary legislation.

150. *Subsection (2)(a)* provides for trading schemes which limit activities that consist of the emission of greenhouse gases, or that directly or indirectly lead to such emissions (for example, “cap and trade schemes” which cap emissions from a particular set of activities and allow trading of emissions within the cap). *Subsection (2)(b)* provides for trading schemes which encourage activities that directly or indirectly lead to a reduction in greenhouse gas emissions or the removal of greenhouse gases from the atmosphere.

**Clause 37: Activities to which trading schemes may apply**

151. This clause sets out what activities are regarded as indirectly causing or contributing to greenhouse gas emissions or reductions in greenhouse gas emissions. It also makes provision in relation to the location of activities and emissions covered by this Part.

152. *Subsection (1)* sets out the types of activity which are considered to be indirect causes of, or contributors to, greenhouse gas emissions, such as activities which involve the use of energy or those involving the supply of something the use of which would lead to greenhouse gas emissions. For example the supply of a heating fuel would be regarded as indirectly causing emissions because it leads to emissions at the point of use by the consumer. *Subsection (2)* provides that reductions in the level of those activities are to be regarded as indirectly causing or contributing to reductions in greenhouse gas emissions.

153. *Subsection (3)* provides that Part 3 of the Bill applies to activities carried out in the United Kingdom, regardless of where emissions, or reductions in emissions, actually occur.

**Clause 38 and Schedule 2: Matters that may or must be provided for in trading schemes**

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

*Schedule 2: Trading schemes*

155. *Schedule 2* makes specific provision on what must or may be included in regulations establishing trading schemes. Parts 1 and 2 make provision, respectively, in relation to trading schemes operating to achieve different results; but it is possible to make trading schemes that operate to achieve both types of results by combining different elements of those Parts.

156. *Part 1 of Schedule 2* contains details of what can or must be included in a trading scheme which operates by limiting, or encouraging the limitation of, activities that consist of or lead to emissions of greenhouse gases. For example, the Carbon Reduction Commitment would be a scheme under Part 1 of Schedule 2.

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157. A trading scheme under Part 1 must operate by having trading periods (*paragraph 2*), by defining the activities covered by the scheme (*paragraph 3(1)*) and by specifying scheme “units” (which may be specified by reference to the activities themselves, things consumed or used for their purposes, things produced by the activities or other consequences of the activities) (*paragraph 3(3) and (4)*). The scheme must define the participants covered by it; participants can be defined by reference to criteria (*paragraph 4*).

158. A scheme under Part 1 may provide for allowances to be allocated to participants; allowances represent the right to carry out a specified amount of the activity covered by the scheme. But the regulations cannot provide for allowances to be allocated in return for payment (*paragraph 5*). Any provisions for auctioning allowances would be contained in different legislation (e.g. a Finance Act).

159. The scheme rules may require a participant to have or acquire a certain number of allowances to cover his activities in a trading period (*paragraph 6*). A scheme may also allow or require the participant to purchase defined credits to offset his activities, but the regulations can also place limits on the use of credits (*paragraph 7*). A scheme might also operate by requiring payments to be made if the participant does not hold a sufficient number of allowances or credits (*paragraph 8*).

160. A scheme under Part 1 must allow trading in allowances or credits under the scheme, and the scheme must set out the circumstances in which trading will operate. Third parties (who would not otherwise be participants) may also be allowed to trade (*paragraph 9*). A trading scheme may also specify that activities can only be carried out if the participant holds a permit (*paragraph 10*) and may allow recognition of allowances, credits, certificates or other units issued under other trading schemes (*paragraph 11*).

161. *Part 2 of Schedule 2* contains details of what can or must be included in a trading scheme which operates by encouraging activities that consist of, or that cause or contribute (directly or indirectly) to reductions in greenhouse gas emissions or the removal of greenhouse gases from the atmosphere.

162. A trading scheme under Part 2 must operate by having trading periods (*paragraph 13*), by defining the activities covered by the scheme (*paragraph 14(1)*) and by specifying scheme “units” (which may be specified by reference to the activities themselves, things consumed or used for their purposes, things produced by the activities or other consequences of the activities) (*paragraph 14(3) and (4)*). The scheme must define the participants covered by it; participants can be defined by reference to criteria (*paragraph 15*).

163. A scheme under Part 2 must set targets for participants to achieve in the trading period (*paragraph 16*). They must provide for the issue of certificates to participants; certificates act as evidence of the amount of the activity that has carried on, but can also be used as evidence of the activity of another person. The scheme must require each participant to have, at the end of a trading scheme, enough certificates to meet his target (*paragraph 17*), and may provide

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that a participant who does not have enough certificates should have to make payments (*paragraph 18*).

164. A scheme under Part 2 must allow trading in certificates under the scheme, and the scheme must set out the circumstances in which trading will operate. Third parties (who would not otherwise be participants) may also be allowed to trade (*paragraph 19*). A trading scheme may allow recognition of allowances, credits, certificates or other units issued under other trading schemes (*paragraph 20*).

165. Part 3 of Schedule 2 makes provision on the administration and enforcement of trading schemes.

166. The regulations may appoint an administrator of the scheme and impose functions on him; the administrator must be one of the national authorities or a public body, or a combination of any of these (*paragraph 21*). The administrator of a trading scheme is the body which operates the scheme on a day-to-day basis.

167. The regulations can require the disclosure of information to the administrator, national authorities or participants (*paragraph 22*). A scheme may provide for the creation and maintenance of registers to keep track of participants, their obligations, trading and other information in the scheme (*paragraph 23*). The regulations can allow certain information to be published (*paragraph 24*); for example, they might provide for the publication of a list showing participants' performance in the scheme.

168. The scheme can allow the administrator to buy trading units in other schemes, which may be schemes made under the Bill or other similar schemes such as the EU Emissions trading scheme (*paragraph 25*). The scheme may also require the payment by participants of charges covering all or part of the costs of the scheme (*paragraph 26*).

169. The scheme can include provision setting out how compliance with the scheme is to be monitored and on the keeping of records by participants, the provision of information, audit and the inspection of premises (*paragraph 27*). The scheme can also make further provision for enforcement of the scheme where it is reasonably believed that there has been a failure to comply with the scheme's requirements (*paragraph 28*).

170. The scheme can make provision on the imposition of civil financial penalties or other types of penalty for failure to comply with the scheme rules (*paragraph 29*) and creating criminal offences relating to the scheme (*paragraph 30*). A scheme can also make provision on appeals against decisions and enforcement action, and allow those appeals to be heard by independent appointed persons (*paragraph 31*).

### ***Supplementary provisions***

#### **Clause 39: Authorities and regulations**

171. This clause defines who is the “relevant national authority” in relation to trading schemes, and in doing so sets out the scope of the powers available to each national authority.

- *Subsection (2)* allows the Scottish Ministers to make trading schemes within the scope of the legislative competence of the Scottish Parliament (i.e. to the extent that the Scottish Parliament would have been able to make a trading scheme of its own accord).
- *Subsection (3)* allows the Welsh Ministers to make trading schemes in relation to matters that relate to limiting, or encouraging the limiting of, activities in Wales that consist of the emission of greenhouse gases, with the exception of activities in connection with offshore oil and gas exploration and exploitation. If the National Assembly for Wales gains legislative competence that would enable it to make trading schemes of its own accord, the power of the Welsh Ministers to make trading schemes under this Part will extend to match the scope of that legislative competence. *Subsection (4)* defines “offshore oil and gas exploration and exploitation” to have the same meaning it has in the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958) and defines “Wales”, for the purpose of subsection (3), by reference to section 158(1) of the Government of Wales Act 2006 (c.32). This definition includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.
- *Subsection (5)* allows the Secretary of State or the relevant Northern Ireland department to make trading schemes in relation to reserved matters under the Northern Ireland Act 1998 (c.47); the relevant Northern Ireland department can only make trading schemes covering reserved matters with the Secretary of State’s consent (see clause 40(5)).
- *Subsection (6)* allows the relevant Northern Ireland department to make trading schemes in relation to all other matters within the scope of the legislative competence of the Northern Ireland Assembly (i.e. to the extent that the Northern Ireland Assembly would have been able to make a trading scheme of its own accord on “transferred matters” under the Northern Ireland Act 1998).
- *Subsection (7)* provides that the Secretary of State has the power to make trading schemes in relation to all other matters.

#### **Clause 40: Procedure for making regulations**

172. This clause sets out the procedure which must be followed when regulations containing a trading scheme are made or amended. It includes a requirement to consult persons likely to be affected by the scheme, a requirement to seek advice from the Committee on Climate Change and rules on parliamentary procedure.

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173. *Subsection (1)* provides that before making regulations about trading schemes, the relevant national authority must consult such persons as it considers are likely to be affected by the regulations, and also that it must seek, and take account of, advice from the Committee on Climate Change. In the case of schemes limiting activities, the authority must in particular obtain the Committee's advice on the appropriate level of the limit (*subsection (2)*).

174. *Subsection (3)* sets out the circumstances in which the affirmative resolution procedure applies to the making of regulations (such as where a new scheme is established, the application of an existing scheme is extended, the burden on participants is increased, where enforcement powers are strengthened or where the regulations amend primary legislation), and *subsection (4)* provides that the negative resolution procedure applies at all other times.

175. *Subsection (5)* makes special provision in relation to "reserved matters" in Northern Ireland. The relevant Northern Ireland department is only allowed to make provision in a trading scheme dealing with a reserved matter under the Northern Ireland Act 1998 (c.47), if it has obtained the Secretary of State's consent.

**Clause 41 and Schedule 3: Other supplementary provisions**

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

*Schedule 3*

177. *Part 1* of Schedule 3 sets out the procedure to be followed where regulations are made by a single national authority. *Paragraph 2* sets out the affirmative resolution procedure applying in Parliament and the devolved legislatures. *Paragraph 3* sets out the negative resolution procedure applying in Parliament and the devolved legislatures. *Paragraph 4* allows any regulations that could be made using the negative resolution to be made using the affirmative resolution procedure; this will allow, say, amendments which would otherwise have to be made using different procedures to be made in the same instrument.

178. *Part 2* of Schedule 3 sets out the process where regulations are made jointly between the Secretary of State and/or the Welsh Ministers and/or the relevant Northern Ireland department. The affirmative and resolution procedures apply as they do in Part 1. Where the affirmative resolution procedure applies, if either House of Parliament or the relevant devolved legislature does not approve the instrument, then the instrument cannot be made. Where the negative resolution procedure applies, if either House of Parliament or the relevant devolved legislature resolves that the regulations should be annulled, then nothing further can be done under the instrument and it may be revoked by Order in Council.

179. *Part 3* of Schedule 3 sets out the process for making joint trading schemes by Her Majesty by Order in Council. The Order in Council procedure is to be used in two situations. First, where a scheme extends or applies both to Scotland and to one or more of England,

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Wales and Northern Ireland. Secondly, where a scheme relates to matters which are within the legislative competence of the Scottish Parliament and also to other matters which are not within its legislative competence. Where the affirmative resolution procedure applies, Her Majesty cannot make an Order in Council unless all the relevant legislatures have passed a resolution approving a draft of the Order in Council. Where the negative resolution procedure applies, the Order in Council is laid before all the relevant legislatures; if any of them resolves that the Order in Council should be annulled, then nothing further can be done under the Order in Council and Her Majesty may revoke it.

#### **Clause 42 and Schedule 4: Information**

180. This clause introduces Schedule 4 to the Bill, which contains powers to enable the collection of information for the purpose of developing a trading scheme. Schedule 4 allows the national authorities and certain agencies to require, by notice, electricity suppliers and potential participants in a trading scheme to provide information required for the establishment of the scheme.

181. *Subsection (2)* is a “sunset” provision. It provides that the information-gathering (but not the information-sharing) powers in Schedule 4 will cease to have effect on 1st January 2011, the date by which it is anticipated that they will no longer be required.

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

182. *Schedule 4* contains powers that could be contained in regulations made under Part 3 of the Bill. The intention behind providing these specific powers on the face of the Bill is to allow information to be gathered for the establishment of the Carbon Reduction Commitment, a new trading scheme, within a relatively short time-scale. For more details of the Carbon Reduction Commitment, visit the dedicated page on Defra’s website:

<http://www.defra.gov.uk/environment/climatechange/uk/business/crc/index.htm>

183. Schedule 4 makes provision about who is able to exercise the information gathering powers; these are the national authorities, the Environment Agency and the Scottish Environment Protection Agency, collectively referred to as the “environmental authorities” (*paragraph 1*).

184. It provides that the environmental authorities can seek information, for the purposes of enabling a trading scheme to be established, from electricity suppliers and distributors (*paragraph 2*) and from the potential participants in a trading scheme (*paragraph 3*). The information that may be collected includes, among other things, information about contact details, electricity meters, levels of electricity consumption and any climate change agreements (within the meaning of Schedule 6 to the Finance Act 2000 (c.17)) that have been entered into.

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185. If an environmental authority requests information (in writing) from a person under this Schedule, and the person does not comply with the request within 28 days, the authority may issue a formal notice requesting the information. *Paragraph 4* sets out the requirements relating to such formal notices. A person who fails, without reasonable excuse, to comply with a notice, or who provides false or misleading information (either knowingly, or suspecting that it is false or misleading) is guilty of a summary offence and liable to a fine not exceeding level 5 on the standard scale (currently £5000). (*paragraph 5*).

186. *Paragraph 6* allows information collected using the powers in Schedule 4 to be shared with the other environmental authorities or with the administrator of the trading scheme. This is the only paragraph in the Schedule which is not subject to the sunset provision in clause 42(2).

**Clause 43: Powers to give guidance**

187. This clause gives the relevant national authority (see clause 39) the power to give guidance to an administrator of a trading scheme about how to carry out its functions. The administrator is required to have regard to guidance issued to it.

**Clause 44: Powers to give directions**

188. This clause gives the relevant national authority (see clause 39) the power to give general or specific directions to an administrator of a trading scheme. The administrator must comply with directions given under this clause.

**Clause 45: Grants to administrators and participants**

189. This clause enables the relevant national authority (see clause 39) to make grants to participants of trading schemes and impose conditions when giving a grant.

**Clause 46: Power to make consequential provision**

190. This clause gives the relevant national authority (see clause 39) the power to make regulations amending, repealing or revoking primary or secondary legislation as a consequence of regulations made under this Part of the Bill, and to make any transitional and saving provisions in connection with such amendments, repeals and revocations.

***Interpretation***

**Clause 47: Interpretation of Part 3**

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

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

##### **Clause 48: Report on impact of climate change**

192. This clause places a duty on the Secretary of State lay a report before Parliament, from time to time, setting out an assessment of the risks of the current and predicted impact of climate change for the UK.

193. *Subsections (2) and (3)* require the Secretary of State to lay the first report before Parliament no later than three years after the Act comes into force, and subsequent reports at intervals of no more than five years. *Subsection (4)* allows the Secretary of State to extend the period for laying a report, but requires him to publish a statement setting out his reasons and saying when the report will be laid.

194. *Subsection (5)* places a duty on the Secretary of State to send a copy of the report to each of the devolved administrations.

##### **Clause 49: Programme for adaptation to climate change**

195. This clause requires the Secretary of State to prepare a Government adaptation programme.

196. *Subsection (1)* places a duty on the Secretary of State to lay before Parliament an adaptation programme covering the Government's objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives (indicating an appropriate timescale). The programme should be based on the report on climate change risks under clause 48.

197. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development.

198. *Subsection (3)* provides that subsequent reports must include an assessment of the progress made towards implementing the objectives, proposals and policies in the earlier reports. *Subsection (4)* requires the Secretary of State to lay the adaptation programme before Parliament as soon as is reasonably practicable after laying his report under clause 48 and *subsection (5)* requires him to send a copy of it to each of the devolved administrations.

##### **Clause 50: Programme for adaptation to climate change: Northern Ireland**

199. This clause requires the relevant Northern Ireland department to prepare an adaptation programme.

200. *Subsection (1)* places a duty on the relevant Northern Ireland department to lay before the Northern Ireland Assembly an adaptation programme covering its objectives in relation to adaptation to climate change, and its proposals and policies for meeting these objectives

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(indicating an appropriate a timescale). The programme should be based on the report on climate change risks under clause 48.

201. *Subsection (2)* provides that the objectives, proposals and policies should contribute to sustainable development.

202. *Subsection (3)* provides that subsequent reports must include an assessment of the progress made towards implementing the objectives, proposals and policies in the earlier reports. *Subsection (4)* requires the relevant Northern Ireland department to lay the adaptation programme before the Northern Ireland Assembly as soon as is reasonably practicable after the report under clause 48 has been laid before Parliament and *subsection (5)* requires the department to send a copy of it to the Secretary of State, the Scottish Ministers and the Welsh Ministers.

## **Part 5: Other provisions**

### ***Waste reduction schemes***

#### **Clause 51 and Schedule 5: Waste reduction schemes**

203. This clause and Schedule 5 (which it introduces) allow for the making of waste reduction schemes, which are schemes to incentivise occupiers of domestic premises to produce less waste and recycle more of what they produce.

204. *Subsection (1)* provides for Schedule 5 to amend the Environmental Protection Act 1990 (c.43). It does so by adding to that Act a new section 60A, which provides that a waste collection authority whose area is in England may make a waste reduction scheme in accordance with a new Schedule to that Act, Schedule 2AA. It is Schedule 2AA which details what a waste reduction scheme is and how it must be made.

205. *Subsection (2)* provides that Schedule 5 may only be brought into force in accordance with clauses 52 and 54, which allow the Secretary of State to designate certain areas where waste collection authorities may make waste reduction schemes on a pilot basis; following the pilots waste reduction schemes may subsequently be rolled out to all other areas in England, if the Secretary of State so decides.

206. *Subsection (3)* provides that for the purposes of clauses 52 and 54, “the waste reduction provisions” means the provisions inserted by Schedule 5 and any subordinate legislation made under those provisions.

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*Schedule 5: Waste reduction schemes*

207. *Paragraph 1* inserts new section 60A into the Environmental Protection Act 1990, allowing a waste collection authority in England to make a scheme in accordance with new Schedule 2AA.

208. *Paragraph 2* inserts a new Schedule 2AA into the Environmental Protection Act 1990.

209. *Paragraph 3* inserts new wording into section 161(4) of the Environmental Protection Act 1990 (instruments subject to affirmative resolution) to include certain orders which may be made under the new Schedule 2AA.

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

210. *New Schedule 2AA*, consisting of sixteen paragraphs, sets out the detail on waste reduction schemes.

211. *Paragraph 1(1)* describes the purpose of a waste reduction scheme, being to provide a financial incentive to produce less domestic waste and recycle more of what is produced, thus reducing the amount of residual domestic waste. *Paragraph 1(2) and (3)* provide that a scheme may cover the whole or any part of the area of a waste collection authority, and that it may apply to all domestic premises, to domestic premises other than those of a description specified in the scheme, or to those domestic premises whose descriptions are specified in the scheme.

212. *Paragraph 2(1)* sets out certain conditions which a waste collection authority must have satisfied before it puts a scheme into effect, being (a) that a good recycling service is available to the occupiers of premises within the scheme, and (b) that the scheme takes account of the needs of groups who might be unduly disadvantaged by it, and (c) that the authority has a strategy for preventing, minimising or otherwise dealing with the unauthorised deposit or disposal of waste.

213. *Paragraph 2(2)(a)* defines a “recycling service” as arrangements for the collection of recyclable domestic waste from premises separately from other waste, and *paragraph 2(2)(b)* defines a “good” recycling service as a service which meets the standards specified in guidance issued by the Secretary of State. *Paragraph 2(3)* allows the Secretary of State by order to amend paragraph 2(1) and (2).

214. *Paragraphs 3 to 7* deal with the rules on how authorities may impose charges and give rebates or make payments within a scheme.

215. *Paragraph 3(1)* states that a waste reduction scheme must provide for a financial incentive which the authority considers will be effective to achieve the purpose of the scheme.

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By *paragraph 3(2)*, this incentive may be provided by means of rebates from council tax or by other payments, or by means of charges under paragraph 4 or 5, or by any combination of those means.

216. *Paragraph 4(1)* allows a waste reduction scheme to require occupiers to place residual domestic waste for collection in receptacles of a specified kind, and allows for a charge to be made by the authority in respect of those receptacles. *Paragraph 4(2)* specifies that any charge made for receptacles provided must be related to the size or number of the receptacles (or both), but need not be related to the authority's costs in providing them. *Paragraph 4(3)* allows the scheme to make provision as to the person who must pay any such charge. *Paragraph 4(4)* provides that a charge made under this paragraph is in addition to any charge which an authority may make under section 46 in respect of the cost of providing the receptacle.

217. *Paragraph 5(1)* allows for a scheme to impose a charge in respect of residual domestic waste collected from premises within the scheme. *Paragraph 5(2)* specifies that the amount of any charge under paragraph 5(1) must be related to the amount of residual domestic waste collected, and need not be related to the authority's costs. *Paragraph 5(3)* allows the scheme to make provision as to the person who must pay any such charge.

218. *Paragraph 5(4)* allows for the scheme either (a) to 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 (b) to require payments in respect of any charge to be made on account or by instalments.

219. *Paragraph 6* sets out supplementary provisions in relation to charging. *Paragraph 6(1)* allows the Secretary of State by order to limit the amount of a charge under paragraph 4 or 5 that may be imposed in respect of any premises in any financial year. An order under this paragraph would be subject to annulment following a resolution of either House of Parliament (negative resolution procedure), as paragraph 6 is not included in the amendment to section 161(4) of the Environmental Protection Act 1990 (see paragraph 3 of Schedule 5 to the Bill, discussed above).

220. *Paragraph 6(2)* provides that where an occupier does not comply with provisions of a scheme made under paragraph 4 or 5 (i.e. where an occupier fails to pay a charge imposed by a waste reduction scheme), this does not affect an authority's duty under section 45(1)(a) of the Environmental Protection Act 1990 to arrange for collection of his household waste.

221. *Paragraph 6(3)* provides that section 45(3) of the Environmental Protection Act 1990, which places a general prohibition on charging for collection of household waste, takes effect subject to the ability of authorities to make charges under paragraphs 4 and 5.

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222. *Paragraph 7(1)* provides that 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. This means that where the payment of charges is required, schemes must be revenue neutral. *Paragraph 7(2)* allows the Secretary of State by order to amend paragraph 7(1). *Paragraph 7(3)* stipulates that any such order amending paragraph 7(1) may also make consequential amendments to paragraph 4(2) or paragraph 5(2).

223. *Paragraph 8(1)* states that an authority must comply with the requirements in paragraph 8(2) and (3) on communicating the provisions of a scheme, before the scheme comes into operation. *Paragraph 8(2)* provides that an authority must publish the scheme in such manner as it considers appropriate. *Paragraph 8(3)* provides that an authority must send to the occupier of any premises within a scheme a notice detailing the requirements of the scheme with regard to collection, any rebates or other payments available and the manner in which they are to be made, and any charges and the manner in which they are to be collected.

224. *Paragraph 9* provides that a scheme must contain provision enabling a person to appeal against any decision affecting, directly or indirectly, that person's entitlement to a rebate or other payment, or liability to pay a charge, under the scheme.

225. *Paragraph 10(1)* provides that an authority must keep a separate account of any rebates or other payments under the scheme and any charges received by it under the scheme. *Paragraph 10(2)* allows any person interested to inspect the account and make copies of it or any part of it, at any reasonable time and without payment. *Paragraph 10(3) and (4)* provide that it is an offence for any person having custody of the account to obstruct intentionally a person exercising their rights under paragraph 10(2), and that a person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (currently £1000).

226. *Paragraph 11(1)* provides that where a waste collection authority that operates a scheme is not also the waste disposal authority for that area, the waste disposal authority may pay to the collection authority contributions of such amounts as the disposal authority may determine towards expenditure of the collection authority which is attributable to the scheme. The possibility of such payments by the disposal authority has been provided for because a disposal authority may benefit from a scheme by having less waste to deal with, but such a benefit would arise from the implementation of a waste reduction scheme by the collection authority.

227. *Paragraph 11(2)* provides that the collection authority must supply information to the disposal authority to enable the disposal authority to determine the appropriate level of payment under paragraph 11(1).

228. *Paragraph 12* gives the Secretary of State the power to make regulations as to the administration of waste reduction schemes. Regulations under this paragraph would be made

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under negative resolution procedure (see section 161(2) of the Environmental Protection Act 1990).

229. *Paragraph 12(1)* enables such regulations to make provision about how the amount of any rebate or other payment is to be determined and how it is to be given, and how any charge is to be determined and how it is to be collected or enforced.

230. *Paragraph 12(2)* allows the regulations to provide that the administration of a waste reduction scheme may be integrated with the administration of council tax (and by subparagraph (2)(b) the regulations may provide for consequential modification of council tax legislation). *Paragraph 12(3)* provides further detail on this: in particular, the regulations may provide: (a) for including material relating to the scheme in the council tax demand notice, (b) for applying the procedure for appeals about liability to council tax to questions arising under the scheme, and (c) for applying the procedures on enforcement of council tax liability to any liability under the scheme.

231. *Paragraph 13* allows an authority to use information it obtains under council tax legislation for the purposes of administering a waste reduction scheme.

232. *Paragraph 14(1)* allows an authority to amend or revoke its scheme. *Paragraph 14(2)* provides that, before bringing an amendment into operation, the authority must publish the amended scheme in such manner as it thinks appropriate and, if the amendment affects any matters previously notified to occupiers, send a notice to the occupier of any premises within the scheme explaining the effect of the amendment.

233. *Paragraph 14(3)* states that the amendment or revocation of a scheme does not affect any entitlement or liability under the scheme in respect of a period before the amendment or revocation takes effect. *Paragraph 14(4)* states that the revocation of a scheme does not affect the duty of an authority to comply with paragraph 7(1), the requirement of revenue-neutrality.

234. *Paragraph 15(1)* allows the Secretary of State to issue guidance to waste collection authorities and waste disposal authorities as to the exercise of their functions in relation to waste reduction schemes. *Paragraph 15(2)* provides that any such guidance must be published in such manner as the Secretary of State considers appropriate and may be amended or replaced by further guidance, or revoked. *Paragraph 15(3)* provides that waste collection authorities and waste disposal authorities must have regard to any such guidance.

235. *Paragraph 16(1)* defines the terms “domestic premises”, “domestic waste”, “enactment”, “recyclable waste” and “residual domestic waste” used in Schedule 2AA. *Paragraph 16(2)* allows the Secretary of State by order to amend the definition of “domestic premises”. *Paragraph 16(3)* states that references in Schedule 2AA to recycling include re-using and composting.

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**Clause 52: Waste reduction provisions: piloting**

236. This clause provides for the piloting of waste reduction schemes.

237. *Subsection (1)* provides that a waste collection authority which wishes to make a pilot waste reduction scheme in its area must submit its proposals to the Secretary of State for approval. If the Secretary of State considers that the proposals are suitable for piloting one or more aspects of the waste reduction provisions, the Secretary of State may make an order designating the area of that authority as a pilot area, so that the authority may make a scheme in accordance with the approved proposals.

238. *Subsection (2)* provides that not more than five areas may be designated as pilot areas.

239. *Subsection (3)* stipulates what the Secretary of State's order designating a pilot area must provide. The order must state that the waste reduction provisions shall have effect in relation to that area for the purpose of enabling the authority to make and operate the proposed scheme, and state the period for which the waste reduction provisions are to be allowed to take effect.

240. *Subsection (4)* allows the Secretary of State, in making subordinate legislation or issuing guidance about waste reduction schemes, to make different provision for different pilot areas, and the Secretary of State may exercise these powers at the same time as he makes the order designating that area as a pilot area. The effect of this provision is to allow the Secretary of State to bring the whole regime for a pilot area, including guidance, into force at once.

241. *Subsection (5)* provides that, where a draft order designating a pilot area under clause 54 would otherwise be treated as a hybrid instrument under the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

**Clause 53: Waste reduction provisions: report and review**

242. *Subsection (1)* imposes on the Secretary of State a duty to lay before Parliament a report on the operation of the waste reduction provisions in each pilot area.

243. *Subsection (2)* details what the report must contain, being a description of the scheme and how it compares with other schemes, a copy of the designation order made under clause 52, a description of how the relevant enactments and guidance in that pilot area differed from that applying in other pilot areas and in areas not designated, and an assessment of whether a scheme has been a success.

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

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**Clause 54: Waste reduction provisions: roll-out or repeal**

245. *Subsection (1)* states that subsections (2) to (5), which provide for the Secretary of State to roll out or repeal the waste reduction provisions, apply after the Secretary of State has laid a report before Parliament in accordance with clause 53.

246. *Subsection (2)* provides two options should the Secretary of State wish to roll-out the waste reduction provisions generally, so as to allow a scheme to be made for any area. Subsection (2)(a) allows the Secretary of State to make an order providing that the provisions shall come into force generally on a date specified in the order. Alternatively, subsection (2)(b) allows the Secretary of State to make an order making such amendments to the provisions as appear necessary and expedient in the light of how they operated in the pilot areas, and to provide that the provisions as so amended shall come into force generally on a date specified in the order.

247. *Subsection (3)* provides that amendments made by an order under subsection (2)(b) may include provision for the Secretary of State to make subordinate legislation.

248. *Subsection (4)* provides that, should the Secretary of State decide not to make an order under subsection (2) which rolls out the waste reduction provisions generally, he must make an order repealing the provisions.

249. *Subsection (5)* provides that any order made under subsection (2)(b) or (4) must be made by affirmative resolution.

***Renewable transport fuel obligations***

**Clause 55 and Schedule 6: Renewable transport fuel obligations**

250. Clause 54 introduces Schedule 6 to the Bill. Schedule 6 amends Chapter 5 of Part 2 of the Energy Act 2004 which enables the Secretary of State to set up a renewable transport fuel obligations scheme (“RTFO scheme”) by order (“RTF order”).

251. An RTFO scheme is a scheme that requires specified transport fuel suppliers to produce evidence that for a specified period a specified amount of renewable transport fuel has been supplied at or for delivery to places in the United Kingdom. “Specified” for these purposes means specified in or determined in accordance with the RTF order. A “transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom. Renewable transport fuel means:

- a) biofuel (a liquid or gaseous fuel that is produced wholly from biomass);
- b) blended biofuel (a liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel);

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- c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced wholly by energy from a renewable source or wholly by a process powered wholly by such energy; or
- d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel.

252. The Renewable Transport Fuel Obligations Order 2007 (“2007 order”) was made under existing powers in the Energy Act 2004 on 25th October 2007. The 2007 order set up an RTFO scheme with the first obligation period to commence on 15th April 2008. The 2007 order also established the Office of the Renewable Fuels Agency (a non-departmental public body) (“RFA”) and appointed the RFA as Administrator of the scheme.

253. The main changes to the Energy Act 2004 contained in Schedule 5 are explained in the following paragraphs. Some of the changes will enable the RTFO scheme to be altered by order in the future. These include the powers to appoint a new Administrator and transfer functions accordingly (in new section 125C) and the provisions about payments received by the Administrator under the scheme (in section 128 as amended). Other amendments will apply in relation to the scheme as soon as they come into force, such as the duty on the Administrator to promote renewable fuels which have a beneficial environmental effect (in new section 125A), the powers for the Secretary of State to give directions (in new section 125B and section 126 as amended) and the provisions for disclosure of information to the Administrator by Her Majesty’s Revenue and Customs (in new sections 131A to 131C).

254. *Paragraph 2* substitutes new sections 125, 125A, 125B and 125C of the Energy Act 2004 for the existing section 125 of that Act.

255. New section 125 deals with the appointment of the first Administrator of the RTFO scheme. The 2007 order appointed the RFA as the Administrator under section 125 as it currently stands. New section 125 replicates the provision currently in section 125 allowing an RTF order to establish a body corporate and to appoint that body as the Administrator. It will preserve the effect of the 2007 order.

256. New section 125A allows an RTFO order to confer or impose functions on the Administrator. It also imposes a new duty on the Administrator to promote the supply of renewable transport fuel which by its production, supply or use, causes or contributes to the reduction of carbon emissions and contributes to sustainable development or to environmental protection or enhancement.

257. New section 125B(1) makes further provision about the functions of the Administrator. Paragraphs (a) and (b) re-enact the provision currently in section 125(3)(a) and (b) of the Energy Act in enabling powers to be conferred on the Administrator to require information from fuel suppliers; paragraph (c) re-enacts the provision currently in section 125(3)(c) of the Energy Act in enabling powers to be conferred on the Administrator to

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impose charges on fuel suppliers. Subsection (2) creates a new power for the Secretary of State to give written directions to the Administrator about the exercise of his powers conferred by virtue of subsection (1)(a) or (b). The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to collect information in a particular form or using a particular methodology to show the carbon savings achieved by renewable transport fuel supplied and certificated under the RTFO scheme.

258. New section 125B(5) replaces the provisions of section 125 of the Energy Act 2004 which set out what the Administrator must do with money that he receives from charges imposed on transport fuel suppliers by an RTF order (although the 2007 order does not impose any such charges). It alters the current requirement that any such charges must be used to meet the Administrator's costs by providing that if the Administrator is the Secretary of State any charges must be paid into the Consolidated Fund.

259. New section 125C creates a new power for the Secretary of State by order to replace an existing Administrator with a new Administrator and to provide for the transfer of functions, staff, property, rights and liabilities from the old to the new Administrator. The new Administrator can be the Secretary of State or an existing statutory body or a body corporate established under this new power.

260. The new power is subject to the negative resolution procedure unless it is used to establish a new body corporate or to modify an Act of Parliament, Act of the Scottish Parliament, Act or Measure of the National Assembly for Wales or an Act of the Northern Ireland Assembly, in which case the affirmative resolution procedure will apply.

261. *Paragraph 3* amends section 126 of the Energy Act 2004 which enables an RTF order to make provision about how amounts of transport fuel may count towards discharging obligations imposed by an RTFO scheme. New section 126(5) means that if a future RTF order makes such provision by reference to a document it may provide for references to the document to have effect as references to it as revised or re-issued from time to time. This will enable reference to be made to international standards for carbon and sustainability without the need to amend the order whenever those standards are revised.

262. *Paragraph 3* also amends section 126 of the Energy Act 2004 to create a new power for the Secretary of State to give written directions to the Administrator about the exercise of any of the Administrator's functions in connection with counting or determining amounts of transport fuel for the purpose of the RTFO scheme. The Administrator must comply with any such directions. The power includes power to revoke or vary any directions given. This power may be used for example to direct the Administrator to use a particular methodology if a future RTF order requires amounts of transport fuel to be counted or determined by reference to its effects on carbon emissions or sustainable development.

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263. *Paragraph 4* amends the provisions of the Energy Act 2004 which set out what the Administrator must do with money he receives when administering the RTFO scheme from buy-out payments.

264. Currently, the powers in section 128 of the Energy Act 2004 mean that the Administrator may (if an RTF order so provides, as the 2007 order does) receive buy-out payments from transport fuel suppliers who choose to buy-out their obligation rather than supply the specified amount of renewable transport fuel. By section 128(7) such sums must be paid to transport fuel suppliers under a system of allocation specified in the RTF order (subject to first meeting the costs of the Administrator if the RTF order so provides under the power in section 128(6), which the 2007 order does not).

265. As a result of amendments to section 128 by paragraph 4, where the Administrator is the Secretary of State new section 128(6)(a) will require the buy-out payments to be paid into the Consolidated Fund. But new section 128(6)(b) will allow (but not require) the RTF order to provide for the Secretary of State to make payments to transport fuel suppliers under a system of allocation specified in the order. The RTF order must ensure that the total paid out does not at any time exceed the total of the buy-out payments received up to that time (new section 128(7)).

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

267. *Paragraph 5* amends section 129(7) of the Energy Act 2004 which currently provides that civil penalties received by the Administrator under an RTF order must be paid to the Secretary of State for payment into the Consolidated Fund. The amendment makes it clear that, if the Secretary of State is the Administrator, he is to pay those sums into the Consolidated Fund directly.

268. *Paragraph 6* inserts into the Energy Act 2004 new sections 131A, 131B and 131C which make provision enabling information to be disclosed by Her Majesty's Revenue and Customs ("HMRC") to the Administrator, as well as prohibiting further disclosure of the information. The information in question is restricted to information held in connection with HMRC's functions under or by virtue of the Hydrocarbon Oil Duties Act 1979. This is to limit the information to that which is relevant to the Administrator's functions.

269. New section 131A permits the information to be disclosed to the Administrator or an authorised person (a person who provides services to or acts on behalf of the Administrator and is authorised by the Administrator to receive the information).

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270. New section 131B prohibits the disclosure of the information by the Administrator, an authorised person or any other person who obtains it in the course of providing services to or acting on behalf of the Administrator, except in certain specified cases (for example a disclosure required by a court order). The restrictions on further disclosure only apply to information received under new section 131A that has not also been received by the Administrator or an authorised person by another means.

271. Wrongful disclosure contrary to new section 131B is an offence under new section 131C if the information is about a person who is identified in or identifiable from the disclosure. The offence is triable either summarily or on indictment. Section 131C provides that a person convicted on indictment may be imprisoned for up to 2 years or fined or both, and that on summary conviction a person is liable to imprisonment for up to 12 months or to a fine not exceeding the statutory maximum (currently £5000) or both. It also provides that, in England and Wales, the penalty on summary conviction of an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force will be 6 months' imprisonment. The same penalty will apply in Northern Ireland. A person charged with an offence under new section 131C has a defence if he can prove that he reasonably believed that the disclosure was lawful or that the information was already lawfully in the public domain.

***Miscellaneous***

**Clause 56: Report on climate change: Wales**

272. This clause requires the Welsh Ministers to lay before the National Assembly for Wales, from time to time, a report on greenhouse gas emissions and the impacts of climate change on Wales.

273. *Subsection (1)* requires the Welsh Ministers to include in their report their objectives in relation to greenhouse gas emissions and the impacts of climate change in Wales, the action they (and others) have taken to deal with those emissions and impacts and their future priorities for dealing with them.

274. *Subsection (2)* makes it a requirement that the second and subsequent report should include an assessment of the progress made towards implementing the objectives in earlier reports.

275. *Subsection (3)* defines "Wales", for the purpose of this clause, by reference to section 158(1) of the Government of Wales Act 2006 (c.32). This definition includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea.

276. See also clause 57, which imposes on Welsh Ministers a duty to publish a climate change measures report by inserting a new section 3A into the Climate Change and Sustainable Energy Act 2006 (c.19).

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**Clause 57: Climate change measures reports in Wales**

277. This clause devolves to the Welsh Ministers the function under section 3 of the Climate Change and Sustainable Energy Act 2006 (c.19) of preparing an energy measures report in relation to Wales. It also widens the obligation to cover certain other measures and provides that the Secretary of State's consent is required in relation to certain elements of a report.

278. *Subsection (2)* inserts a new section 3A after section 3 of the Climate Change and Sustainable Energy Act 2006 (c.19). New section 3A requires the Welsh Ministers to prepare a "climate change measures report", which is a report containing information for Welsh local authorities in relation to measures which they may take and which would or might have certain effects, including (in contrast to section 3) the effect of addressing the impacts of climate change. *Subsection (5)* of new section 3A requires the Secretary of State's consent where the report contains information about local authority measures in relation to which the Secretary of State has certain functions, exercisable in relation to Wales (e.g. the function of making building regulations).

**Clause 58: Repeal of previous reporting obligation**

279. This clause repeals section 2 of the Climate Change and Sustainable Energy Act 2006 (c.19). The reporting requirements under that section are substantially replicated by the reporting requirements in clauses 12 and 29 in Part 1 of the Bill.

**Clause 59: Power of Ministers and departments to offset greenhouse gas emissions**

280. This clause authorises any Minister of the Crown or government department, the Scottish Ministers, the Welsh Ministers and any Northern Ireland department to acquire units representing reductions in emissions of greenhouse gases, removals of greenhouse gases from the atmosphere and units under cap-and-trade trading schemes.

281. This clause therefore enables Her Majesty's Government and the devolved administrations to offset emissions through the purchase of units (often referred to as "carbon credits"). It also allows central government and the devolved administrations to purchase units, by arrangement, for other public bodies which do not have to power to do so of their own accord. Units acquired using this power which meet the requirements of regulations under clause 21 (carbon units and carbon accounting) may be used to reduce the level of the net UK carbon account (see clause 22).

**Clause 60: Fines for offences relating to pollution**

282. This clause amends section 105(2) of the Clean Neighbourhoods and Environment Act 2005 (c.16) to enable an increase in the maximum fines on summary conviction that can be provided for under the Pollution Prevention and Control Act 1999 (c.24).

283. This provision will enable the maximum fines on summary conviction under regulations made under the Pollution Prevention and Control Act 1999 to be brought into line

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with the equivalent maximum fines under section 33(8) of the Environmental Protection Act 1990 (c. 43) in order to ensure consistency in this area of regulation.

## **Part 6: General supplementary provisions**

### ***Territorial scope provisions relating to greenhouse gas emissions***

#### **Clause 61: Territorial scope of provisions relating to greenhouse gas emissions**

284. This clause provides that emissions from sources or other matters occurring in, above or below “UK coastal waters” or on the “UK sector of the continental shelf” count as emissions from the UK.

285. *Subsection (2)* defines “UK coastal waters” as areas on the land side of the seaward limit of the territorial sea adjacent to the UK (i.e. out to 12 nautical miles), and “the UK sector of the continental shelf” by reference to section 1(7) of the Continental Shelf Act 1964 (i.e. broadly, out to 200 nautical miles or the half-way point between countries, whichever is closer).

286. *Subsection (3)* provides that this clause is subject to clause 25, which provides that emissions from international aviation and shipping are not to be regarded as emissions from UK sources for the purposes of Part 1 of the Bill, unless regulations have been made to bring them in.

### ***Orders and regulations***

#### **Clause 62: Orders and regulations**

287. This clause makes general provision in respect of any statutory instruments (orders or regulations) to be made under the Bill. *Subsection (3)* allows orders or regulations to include supplementary, incidental and consequential provision and to make transitional provision and savings. *Subsections (4) and (5)* provide that any provision that may be made by order may instead be made by regulations, and vice versa; this is a matter of administrative convenience – the precise form of the instrument has no legal significance.

#### **Clause 63: Affirmative and negative resolution procedure**

288. This clause defines the terms “affirmative resolution procedure” and “negative resolution procedure” as they apply to instruments made by each of the national authorities. *Subsection (3)* provides that the affirmative resolution procedure may be used wherever the negative resolution procedure is stipulated, at a national authority’s discretion; this will allow provisions which would otherwise have to be made using different procedures to be made in the same instrument. *Subsection (4)* provides that this clause does not apply to instruments making trading schemes, as to which see clause 41.

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### ***Interpretation***

#### **Clause 64: Meaning of “greenhouse gas”**

289. This clause defines the term “greenhouse gas” to include:

- carbon dioxide (CO<sub>2</sub>);
- methane (CH<sub>4</sub>);
- nitrous oxide (N<sub>2</sub>O);
- hydrofluorocarbons (HFCs);
- perfluorocarbons (PFCs); and
- sulphur hexafluoride (SF<sub>6</sub>).

290. The definition of greenhouse gases follows that used in the Kyoto Protocol. Note that the term “targeted greenhouse gas”, used in relation to the targets and budgets in Part 1 of the Bill, is defined separately in clause 19.

291. *Subsections (2) to (4)* give the Secretary of State a power to amend the definition of “greenhouse gas” by negative resolution order. But the power can only be exercised to add gases to the list, and can only be exercised if the Secretary of State considers that an international agreement has been reached that the gas contributes to climate change.

#### **Clause 65: Measurement of emissions etc by reference to carbon dioxide equivalent**

292. This clause provides that emissions of greenhouse gases are to be measured or calculated in “tonnes of carbon dioxide equivalent” (defined in *subsection (2)*); this is to allow for the differing relative forcing effects and atmospheric lifetimes of differing greenhouse gases – for example, over 100 years, a tonne of methane has 23 times the global warming effect of carbon dioxide. These factors are known as “global warming potentials”, and are to be calculated consistently with international carbon reporting practice (defined in clause 66).

#### **Clause 66: Meaning of “international carbon reporting practice”**

293. This clause defines the term “international carbon reporting practice” as accepted practice under the United Nations Framework Convention on Climate Change (UNFCCC) or other international agreements which the Secretary of State may specify using a negative resolution statutory instrument. For example, a post-2012 agreement may be specified for the purposes of this clause. An order may supplement or replace the requirement to follow UNFCCC practices.

#### **Clause 67: Meaning of “national authority”**

294. This clause defines the term “national authority” to mean the Secretary of State, the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department (see clause 68). *Subsection (2)* provides that functions conferred on “the national authorities” are to be exercised jointly, i.e. they must agree on the way the function should be exercised and act together.

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**Clause 68: Meaning of “relevant Northern Ireland department”**

295. This clause defines the term “relevant Northern Ireland department”. Different Northern Ireland departments deal with different administrative matters in Northern Ireland; this clause provides that any given function is to be performed by the department which is responsible for the relevant matter. Where two or more departments are responsible, then the term refers to both of them (*subsection (2)*). *Subsection (3)* explains the process for answering a question as to which department is responsible for a matter.

**Clause 69: Minor definitions**

296. This clause defines the other terms used in the Bill, where appropriate by reference to specific clauses in the Bill that give the definition in its context.

297. In particular, this clause defines “emissions” as meaning emissions of a given greenhouse gas into the atmosphere that are attributable to human activity; non-anthropogenic emissions are excluded.

**Clause 70: Index of defined expressions**

298. This clause contains an index of the expressions which are defined in the Bill and refers the reader to where the definition can be found.

***Final Provisions***

**Clause 71: Extent**

299. Apart from clauses 51 to 54, 57 and 60, the Bill extends to the whole of the UK: for more information see the sections on territorial extent above and territorial application below. Clauses 51 to 54, 57 and 60 extend to England and Wales only.

**Clause 72: Commencement**

300. This Bill has been drafted so that the provisions will come into force as follows:

- Part 1 (carbon target and budgeting) and Part 6 (general supplementary provisions) come into force on Royal Assent;
- Part 2 (the Committee on Climate Change) comes into force on a day to be appointed by the Secretary of State (this allows the Secretary of State to choose a “vesting day” for the Committee’s creation, to simplify administrative arrangements);
- section 51(1) and Schedule 5 (waste reduction schemes) come into force in accordance with sections 52 to 54 (which make provision about piloting such schemes);
- section 57 (climate change measures reports in Wales) comes into force on a day to be appointed by the Welsh Ministers;

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- section 58 (annual report on greenhouse gas emissions) comes into force on 1st January 2009 (so that the reporting requirements under section 2 of the Climate Change and Sustainable Energy Act 2006 (c.19) apply in 2008);
- the rest of the Bill comes into force two months after Royal Assent.

## **FINANCIAL EFFECTS AND EFFECTS ON THE NUMBER OF PEOPLE WORKING IN PUBLIC SERVICE**

301. The final Impact Assessment accompanying this Bill has only identified very small direct changes in public service manpower, with the new Committee on Climate Change creating roughly 20 new posts. Similarly, the direct effect of the Bill on public expenditure is small, with the Committee on Climate Change requiring approximately £2.73m in its first year as a statutory body. This is expected to fall to around £2.6m in later years.

302. The Bill sets the framework for managing down greenhouse gas emissions from the UK. As such the Bill will also have indirect impacts associated with policy interventions associated with managing emissions and adapting to the impact of climate change, each of which will be subject to assessments of expenditure, staffing and regulatory impact, but which are set out at high level in the Impact Assessment that accompanies the Bill.

## **SUMMARY OF THE IMPACT ASSESSMENT**

303. The final Impact Assessment accompanying this Bill builds on a partial Regulatory Impact Assessment carried out for the draft Bill. It contains a high level discussion of the costs and benefits of action to mitigate climate change to realise statutory reductions in CO<sub>2</sub> emissions of at least 60% by 2050 and 26-32% by 2020 (compared to 1990 levels), together with an analysis of the key drivers and uncertainties surrounding these assessments to inform the development of detailed policies in the Bill.

304. The analysis suggests that there is a strong case for the Bill arising from the potential for domestic commitments to help foster the conditions for broader and deeper international cooperation, create greater predictability for UK households and firms, and improve the capacity of the Government to manage uncertainty when establishing mitigation objectives. Policies to reduce domestic emissions are also likely to have positive ancillary effects in the form of increased energy security, improved air quality and reduced fuel poverty.

305. It is likely that there will be long and short-run costs associated with a transition to a low carbon economy. Analysis conducted for the 2007 Energy White Paper suggests that the costs of achieving our 60% goal would mean a reduction in GDP of 0.3%-1.5% by 2050. The analysis also suggests that the short run GDP costs of a 30% reduction in CO<sub>2</sub> (consistent with the 26-32% range) in 2020 could be around 1.6%. However, the package of policies

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announced in the Energy White Paper identified significant energy efficiency savings that may mitigate these short-run costs.

306. Overall, the distribution of impacts from implementing the proposed carbon management framework is likely to be uneven, with a small number of energy-intensive industries affected substantially more than other areas of the economy, such as the commercial and residential sectors. In addition, sectors of the economy such as environmental consultancy and financial services may benefit from more robust mitigation frameworks, especially if these are replicated internationally. The distributional effects are likely to be strongly influenced by the choice of policy instrument to meet the targets and budgets: regulation, market mechanisms and fiscal incentives will have divergent distributional impacts.

307. Renewable Transport Fuel Obligations: The Impact Assessment for the Renewable Transport Fuel Obligations provisions in the Bill has assessed them as reducing the administrative burden on business and Government. In particular, the provision to create an information gateway from Her Majesty's Revenue and Customs should reduce the requirement to audit fuel suppliers' records of fuel sales, leading to a reduced administrative cost to business of around £135,000 per year. The impact on small businesses is assessed as positive.

308. If the power in the Bill to remove 'recycling' of monies received from companies buying out of the obligation were used at some future point, it would have a financial impact on business, as this money would then accrue to the Consolidated Fund, rather than being returned to transport fuel suppliers. These are policy costs rather than administrative burdens. It is unlikely that the buy-out fund will contain a significant amount of money, at least in the early years.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

309. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention rights (as defined by section 1 of that Act). Lord Rooker has made the following statement:

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

310. *Part 1* of the Bill creates a framework of powers and duties setting a framework for the reduction of greenhouse gas emissions. Nothing in *Part 1* of the Bill directly affects the rights or obligations of any person in such a way as to engage their Convention rights.

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311. *Part 2* of the Bill creates a new, independent, non-departmental public body and confers functions on it. It also confers related functions on the Secretary of State, the Welsh Ministers, the Scottish Ministers and the relevant Northern Ireland department. Neither the creation of a public body nor the creation of any of the functions in *Part 2* has any direct effect on the rights or obligations of any person in such a way as to engage their Convention rights.

312. *Part 3* of the Bill creates a power to make trading schemes in regulations. The creation of a power does not, in itself, affect any person's convention rights; it is only in the exercise of the power that a person's rights may be engaged. The power to make trading schemes is conferred on public authorities (the Secretary of State, the Welsh Ministers, the Scottish Ministers and the relevant Northern Ireland department), and they are required by section 6 of the 1998 Act to act in a way that is compatible with the Convention rights, including when they are making regulations using the power in *Part 3* of the Bill. Nevertheless, there are issues in *Part 3* that may have human rights implications.

313. There may be concern, in principle, that the creation of a trading scheme might engage Article 1 of the First Protocol, the right to the peaceful enjoyment of one's possessions. The Government does not consider that the carrying out activities that emit, or which lead to the emission of, greenhouse gases amounts to an "existing possession" for the purposes of Article 1 of the First Protocol: while there may be an economic benefit in carrying out those activities, there is no legal entitlement to do so and there is no legitimate expectation that such activities will remain lawful.

314. A trading scheme may fall into the category of a control over the use of property, but this does not amount to an "interference" for the purposes of Article 1 of the First Protocol. A limit on the use of the property (to the extent that a trading scheme does limit use) is very unlikely to amount to a deprivation of the right to carry on the activity. Even if there were an interference with a person's right under Article 1 of the First Protocol, the Government considers that the introduction of a trading scheme would strike a fair balance between the interests of the community and the protection of an affected person's rights.

315. The introduction of the powers in *Part 3* also gives rise to the possibility of an interference with the rights under Article 8. This could arise in relation to the collection, retention and disclosure of information under paragraphs 22, 23 and 24 of Schedule 2, and the entry into and inspection of premises under paragraph 28 of Schedule 2. Similar issues arise in relation to the collection and sharing of information using the powers in Schedule 4.

316. The powers in *Part 3* are likely to be used only in relation to businesses, but it is possible that an individual operating a business using his ordinary name or from his home might be affected by regulations made using the power. To the extent that such persons are likely to be participants in a trading scheme, the authority making the scheme will be required to take their particular circumstances into account. The Data Protection Act 1998 provides safeguards in relation to personal data, and any entry into or inspection of premises may only be carried out under a warrant.

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317. Interferences with Article 8 rights are permitted where they are “in accordance with the law and necessary in a democratic society ... for the prevention of crime and disorder”. It is well-established that entry into property is justified by this exception where investigations are being carried out to ensure that legal obligations are being met.

318. Permitting the seizure of documents under paragraph 28 of Schedule 2 (enforcement of trading schemes) may also engage Article 1 of the First Protocol. The Government believes that such a power, if exercised proportionately, would be justified by reference to the public or general interest; the examination and taking of documents, information and records are proportionate to the general interest in the maintenance of public order and the control of crime.

319. The imposition of civil penalties and the creation of criminal offences under paragraphs 29 and 30 of Schedule 2 give rise to issues relating to the right to a fair trial under Article 6. If such provisions are included in regulations, then the person making the scheme will be under a duty to ensure that there is no interference with the convention rights. Paragraph 31 of Schedule 2 gives the person making the scheme a power to put in place appeals mechanisms relating to civil penalties and enforcement action; the requirement to act compatibly with the Convention rights under section 6 of the 1998 Act effectively makes this a duty wherever such appeals are appropriate. Such appeals, together with the opportunity for judicial review, ensure compatibility with the convention rights.

320. Where a criminal penalty is created, the criminal justice system’s procedures ensure compatibility with Article 6. This also ensures that a person’s rights are protected in relation to the criminal penalty created in paragraph 5 of Schedule 4.

321. *Part 4* of the Bill creates reporting duties on public bodies, and contains no provision which could interfere with any person’s Convention rights.

322. *Part 5* of the Bill contains provisions on waste reduction schemes and Renewable Transport Fuel Obligations (“RTFO”) which may give rise to human rights issues.

323. The provisions on waste reduction schemes may raise human rights issues. But the Government does not consider that the exercise of the powers should unlawfully interfere with any person’s Convention rights.

324. Waste reduction schemes will be made by waste collection authorities in exercise of a power conferred on them by the Bill. The conferral of a power does not, in itself, affect any person’s Convention rights. Waste collection authorities are “public authorities” for the purposes of section 6 of the Human Rights Act 1998. That means that they are not allowed to act in a way which is incompatible with the Convention rights, including when they are putting a waste reduction scheme in place. Nevertheless, the powers do raise questions in relation to Article 8, Article 1 of the First Protocol and Article 6.

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325. An authority's actions in establishing a scheme might engage the Article 8 right to respect for a person's private and family life by the inspection, recording and monitoring of the type and amount of waste generated by a household, and the use that is made of information gathered in the process. However, the authority will be required to act proportionately and will be bound by the Data Protection Act 1998 to prevent the disclosure of personal information. Authorities are also required to put in place measures to protect people who might be unduly disadvantaged by the introduction of a scheme.

326. The Article 8 right is a qualified right, and interferences with it must be proportionate, in accordance with the law and in the interests of legitimate objectives including public safety, the protection of health and the economic wellbeing of the country. To the extent that there may be any interference with the Article 8 right, the Government considers that the introduction of waste reduction schemes is in the interest of the legitimate objective of reducing the amount of waste going to landfill and thereby reducing methane emissions and their effects on the environment.

327. By requiring payments (even in a revenue-neutral system), a waste reduction scheme may engage Article 1 of the First Protocol, the right to the peaceful enjoyment of possessions. However, the right under Article 1 of the First Protocol is a qualified right, and an individual may be deprived of his possessions in the interests of the community. The Government has a wide margin of discretion over what is in the interests of the community and it is well-established that the protection of the environment can meet the test. The Government considers that requirement to make payments in a scheme intended to improve the environment strikes the right balance.

328. The right to a fair hearing under Article 6 is engaged by the civil rights and obligations created by the provisions and by the creation of a criminal offence. But paragraph 9 of new Schedule 2AA requires an authority to include appeal mechanisms in a waste reduction scheme; the Government considers that those mechanisms, combined with judicial review, will ensure compliance with Article 6. The criminal offence will be subject to the procedures under the criminal justice system, which will ensure that a person's rights under Article 6 are protected.

329. In relation to RTFO, while Article 1 of the First Protocol to the Convention might be engaged by the provision in Schedule 6 for buy-out payments made under the RTFO scheme not to be recycled to transport fuel suppliers, it is not so engaged because no rights to the buy-out payments have vested. The amount of any such payments and who might be entitled to them is presently unascertained and unascertainable.

330. The information gateway in Schedule 6 potentially engages Articles 6 and 8 of the Convention. In relation to the rights of privacy under Article 8, the information gateway can be justified as necessary in the interests of the economic well-being of the country because it will reduce the opportunity for fraud which could otherwise jeopardise the policy objective of the RTFO scheme (to increase the proportion of renewable transport fuel supplied). It will

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also produce cost savings and efficiencies for the Administrator and for suppliers because figures provided by suppliers will not need to be independently verified.

331. Article 6 is potentially engaged because new section 131C provides a defence to the criminal offence of wrongful disclosure of information provided through the information gateway which reverses the normal burden of proof. The clause uses wording which has been used in other recent primary legislation and similar reversals of the burden of proof have been found by the courts to be compatible with the presumption of innocence and the right to a fair trial. The reversed burden of proof relates to matters of the defendant's reasonable belief which it is more appropriate for the defendant to prove than the prosecution. It can be justified under Article 6 as a proportionate means of achieving the legitimate objective of protecting government-held financial information, and protecting the privacy of the persons to whom the information relates.

332. The Government does not consider that any of the other provisions in *Part 5*, or any of the provisions in *Part 6*, give rise to any concerns as to their compatibility with the Convention rights.

#### **COMMENCEMENT DATE**

333. See clause 72 of the Bill and the commentary above. The majority of provisions come into force on Royal Assent or two months later. Two clauses come into force on days to be appointed and one clause comes into force on 1st January 2009.

# CLIMATE CHANGE BILL [HL]

## EXPLANATORY NOTES

*These notes refer to the Climate Change Bill [HL]  
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