

Climate Change Act 2008

2008 CHAPTER 27

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

[26th November 2008]

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

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) introduce the Act in the following terms—

"The Act sets up a framework for the UK to achieve its long-term goals of reducing greenhouse gas 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. The Act establishes an economically credible emissions reduction pathway to 2050 and beyond by putting into statute medium and long-term targets. In addition, the Act introduces a system of carbon budgeting which constrains the total amount of emissions in a given time period. ...
- A new reporting framework. The Act provides for a system of annual reporting by the Government on the UK's greenhouse gas emissions. ...
- The creation of an independent advisory body. The Act creates a new independent body, "the Committee on Climate Change", to advise the Government and devolved administrations ...

- Trading scheme powers. The Act includes powers to enable the Government and the devolved administrations to introduce new domestic trading schemes to reduce emissions through secondary legislation.
- Adaptation. The Act sets 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...
- Policy measures which reduce emissions. The Act will be used to support emissions reductions through several specific policy measures: amendments to improve the operation of the Renewable Transport Fuel Obligations; a power to introduce charges for single use carrier bags; a power to pilot local authority incentive schemes to encourage household waste minimisation and recycling; amendments relating to the Certified Emissions Reductions Scheme; powers and duties relating to the reporting of emissions by companies and other persons; a duty to make annual reports on the efficiency and contribution to sustainability of buildings on the civil estate.

Part 1 CARBON TARGET AND BUDGETING

The target for 2050

1 The target for 2050

- (1) It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.
- (2) “The 1990 baseline” means the aggregate amount of—
 - (a) net UK emissions of carbon dioxide for that year, and
 - (b) net UK emissions of each of the other targeted greenhouse gases for the year that is the base year for that gas.

Section 1

Introduction:

This section introduces Part 1 of the Act, which deals with carbon targets and budgets. It sets a target for the year 2050 for reduction of targeted greenhouse gas emissions.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

“It is the duty of ...” – This is a modern equivalent of what would once have routinely been expressed as “the Secretary of State shall ...” It imposes an obligation for which there is no express sanction, and which is further qualified by the fact that the duty may be impossible to fulfil, since emissions and their effect depend on a combination of many factors, not all of which are within the Secretary of State’s control. The duty therefore has to be read as a duty to take reasonable steps, in the exercise of the Secretary of State’s existing functions and by new kinds of action reasonably within what would normally be expected of a Government department, towards ensuring that the target is met. Failure to comply with that duty would be enforceable through action for judicial review.

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? Answer: Probably not; but a change of language always invites construction, and it is possible that someone might

try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

See General Note: Secretary of State

“Net UK carbon account” - see section 27.

Subsection (2):

“Net UK emissions” - see section 29

Targeted greenhouse gases - see s.24.

Base years for each targeted greenhouse gas other than carbon dioxide are specified in section 25

2 Amendment of 2050 target or baseline year

- (1) The Secretary of State may by order—
 - (a) amend the percentage specified in section 1(1);
 - (b) amend section 1 to provide for a different year to be the baseline year.
- (2) The power in subsection (1)(a) may only be exercised—
 - (a) if it appears to the Secretary of State that there have been significant developments in—
 - (i) scientific knowledge about climate change, or
 - (ii) European or international law or policy,that make it appropriate to do so, or
 - (b) in connection with the making of—
 - (i) an order under section 24 (designation of further greenhouse gases as targeted greenhouse gases), or
 - (ii) regulations under section 30 (emissions from international aviation or international shipping).
- (3) The developments in scientific knowledge referred to in subsection (2) are—
 - (a) in relation to the first exercise of the power in subsection (1)(a), developments since the passing of this Act;
 - (b) in relation to a subsequent exercise of that power, developments since the evidential basis for the previous exercise was established.
- (4) The power in subsection (1)(b) may only be exercised if it appears to the Secretary of State that there have been significant developments in European or international law or policy that make it appropriate to do so.
- (5) An order under subsection (1)(b) may make consequential amendments of other references in this Act to the baseline year.
 - (6) An order under this section is subject to affirmative resolution procedure.

Section 2

Introduction:

This section allows the Secretary of State to amend the targets in section 1.

Note:

See also section 33, which provides that the Committee on Climate change must, not later than 1st December 2008, provide advice on a review the level of the 2050 budget.

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

See General Note: Secretary of State.

“By order” – to be made by statutory instrument – see s.90(1). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

The original baseline year under section 1 is 1990.

Subsection (2):

“If it appears to ...” – see General Note: Levels of Certainty.

European Law - see s.97.

European Policy - see s.97.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "For example, this power might be used in the event of a new international treaty on climate change".

Section 30 - allows the Secretary of State to make regulations specifying the circumstances in which, and the extent to which, emissions from international aviation and international shipping count as emissions from sources in the United Kingdom.

Subsection (3):

“The passing of this Act” – 26th November 2008.

Subsection (5):

See General Note: Consequential Amendments.

Subsection (6):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

3 Consultation on order amending 2050 target or baseline year

(1) Before laying before Parliament a draft of a statutory instrument containing an order under section 2 (order amending the 2050 target or the baseline year), the Secretary of State must—

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

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

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

(3) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.

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

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

(6) If the order makes provision different from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision.

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

Section 3

Introduction:

This section requires the Secretary of State to consult before making an order under section 2 changing targets.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

See General Note: Laying before Parliament

See General Note: Statutory Instruments

See General Note: Secretary of State

“Obtain, and take into account” – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

National Authority - see s.95.

Subsection (3):

“Considers appropriate”. Question: What difference of substance is intended between “considers appropriate” here and “thinks fit” later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (4):

The result of this subsection and subsection (1)(b) is that if the national authorities all make representations during the 3-month period, the Secretary of State may proceed as soon as those representations have been considered; otherwise, the Secretary of State must wait until the end of the 3-month period, but can then act immediately without waiting for the national authorities. Does the Secretary of State have to take account of representations made after the 3-month period? Not strictly under this section – but it is likely that a decision to ignore late representations would be vulnerable to challenge as unreasonable on Wednesbury grounds, particularly if there were respectable reasons why they were late and if there was no compelling reason for acting before taking account of them.

Subsection (7):

“Thinks fit” – See Question on “Considers appropriate” above.

Note:

“May be published” in this subsection does not indicate a discretion, because subsections (5) and (6), which this subsection amplifies, are expressly duties.

4 Carbon budgets

- (1) It is the duty of the Secretary of State—
- (a) to set for each succeeding period of five years beginning with the period 2008– 2012 (“ budgetary periods”) an amount for the net UK carbon account (the “ carbon budget”), and
 - (b) to ensure that the net UK carbon account for a budgetary period does not exceed the carbon budget.
- (2) The carbon budget for a budgetary period may be set at any time after this Part comes into force, and must be set—
- (a) for the periods 2008– 2012, 2013– 2017 and 2018– 2022, before 1st June 2009;
 - (b) for any later period, not later than 30th June in the 12th year before the beginning of the period in question.
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Section 4

Introduction:

This section requires the Secretary of State to set carbon budgets for five-year periods.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

“It is the duty of ...” – This is a modern equivalent of what would once have routinely been expressed as “the Secretary of State shall ...” It imposes an obligation for which there is no express sanction, and which is further qualified by the fact that the duty under para.(b) may be impossible to fulfil, since carbon accounts depend on a combination of many factors, not all of which are within the Secretary of State’s control. The duty therefore has to be read as a duty to take reasonable steps, in the exercise of the Secretary of State’s existing functions and by new kinds of action reasonably within what would normally be expected of a Government department, towards ensuring that the target is met. Failure to comply with that duty would be enforceable through action for judicial review.

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? **Answer:**

Probably not; but a change of language always invites construction, and it is possible that someone might try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

See General Note: Secretary of State.

“To set” – by order under s.8.

“Net UK carbon account” - see s.27

Note:

This section is susceptible to amendment by order under s.23.

Subsection (2):

“This part comes into force” – 26th November 2008.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: “[Subsection (2)] also creates a duty to set subsequent carbon budgets at least 11½ years before the start of the budgetary period. The intent of the section is to provide certainty in respect of the UK’s carbon budgets in the medium term.”

5 Level of carbon budgets

(1) The carbon budget—

(a) for the budgetary period including the year 2020, must be such that the annual equivalent of the carbon budget for the period is at least [34%]¹ lower than the 1990 baseline;

(b) for the budgetary period including the year 2050, must be such that the annual equivalent of the carbon budget for the period is lower than the 1990 baseline by at least the percentage specified in section 1 (the target for 2050);

(c) for the budgetary period including any later year specified by order of the Secretary of State, must be such that the annual equivalent of the carbon budget for the period is—

(i) lower than the 1990 baseline by at least the percentage so specified, or

(ii) at least the minimum percentage so specified, and not more than the maximum percentage so specified, lower than the 1990 baseline.

(2) The “annual equivalent”, in relation to the carbon budget for a period, means the amount of the carbon budget for the period divided by the number of years in the period.

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

[...]²

Section 5

Introduction:

This section sets maximum levels for carbon budgets for budgetary periods under section 4.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

“Carbon budget” – see s.4(1).

“Budgetary period” - see s.4(1).

“The 1990 baseline” - see s.1(1).

“By order” – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

See General Note: Secretary of State

See Explanatory Note: 8

Subsection (3):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

Subsection (4):

“Determine” – no procedure is prescribed for this, as a result of which determinations may be made entirely informally and will have legal effect, subject only to the possibility of challenge on grounds of unreasonableness or procedural impropriety by way of judicial review.

Targeted greenhouse gases - see s.24.

“As is attributable” – unlike the power to determine in paragraph (a) this is apparently an objective concept, the result of which is that on a challenge by way of judicial review the court could go further than reviewing the propriety and reasonableness of the Secretary of State’s opinion, but could substitute an opinion which seemed preferable to the court, based on expert evidence adduced.

1. Figure substituted by Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009/1258 art.2(2) (May 31, 2009)

2. Repealed by Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009/1258 art.2(3) (May 31, 2009)

6 Amendment of target percentages

- (1) The Secretary of State may by order amend—
 - (a) the percentage specified in section 5(1)(a);
 - (b) any percentage specified under section 5(1)(c).
 - (2) That power may only be exercised—
 - (a) if it appears to the Secretary of State that there have been significant developments in—
 - (i) scientific knowledge about climate change, or
 - (ii) European or international law or policy,that make it appropriate to do so, or
 - (b) in connection with the making of—
 - (i) an order under section 24 (designation of further greenhouse gases as targeted greenhouse gases), or
 - (ii) regulations under section 30 (emissions from international aviation or international shipping).
 - (3) The developments in scientific knowledge referred to in subsection (2)(a) are—
 - (a) in relation to the first exercise of the power conferred by this section in relation to the percentage specified in section 5(1)(a), developments since June 2000 (the date of the Royal Commission on Environmental Pollution's 22nd Report, “Energy — the Changing Climate”);
 - (b) in relation to the first exercise of the power conferred by this section in relation to any percentage specified under section 5(1)(c), developments since the evidential basis for the order setting that percentage was established;
 - (c) in relation to a subsequent exercise of any of those powers, developments since the evidential basis for the previous exercise was established.
 - (4) The power conferred by this section to amend the percentage in section 5(1)(a) includes power to amend or repeal section 5(4) (which directs that targeted greenhouse gases other than carbon dioxide are to be left out of account for the purposes of that provision). (5) An order under this section is subject to affirmative resolution procedure.
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Section 6

Introduction:

This section allows maximum levels of carbon budget under section 5 to be amended by the Secretary of State.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

“By order” – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

See General Note: Secretary of State

European Law - see s.97

European Policy - see s.97

Subsection (2):

“If it appears to ...” – see General Note: Levels of Certainty.

Section 30 - allows the Secretary of State to make regulations specifying the circumstances in which, and the extent to which, emissions from international aviation and international shipping count as emissions from sources in the United Kingdom.

Subsection (3):

See <http://www.rcep.org.uk/newenergy.htm> for more information about The Royal Commission on Environmental Pollution’s 22nd Report: *Energy - The Changing Climate*.

Subsection (4):

See General Note: Repeal

The Government's Explanatory Notes (see General Note: Explanatory Notes) say that this subsection “has the effect of allowing the Secretary of State to set a target percentage for 2020 that covers all targeted greenhouse gases; section 5(4) provides that all gases other than carbon dioxide are left out of account in relation to the target percentage for 2020-its repeal would mean that all targeted greenhouse gases count towards the target.”

Subsection (5):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft affirmative Procedure.

7 Consultation on order setting or amending target percentages

(1) Before laying before Parliament a draft of a statutory instrument containing an order under section 5(1)(c) (order setting target percentage) or section 6 (order amending target percentage), the Secretary of State must—

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

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

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

(3) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.

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

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

(6) If the order makes provision different from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision.

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

Section 7

Introduction:

This section requires the Secretary of State to consult before making an order under section 5 or 6 setting or amending a target.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

See General Note: Laying Before Parliament

See General Note: Statutory Instruments.

See General Note: Secretary of State

“Obtain, and take into account” - see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

National Authority - see s.95.

Subsection (3):

“Considers appropriate”. Question: What difference of substance is intended between “considers appropriate” here and “thinks fit” later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (4):

The result of this subsection and subsection (1)(b) is that if the national authorities all make representations during the 3-month period, the Secretary of State may proceed as soon as those representations have been considered; otherwise, the Secretary of State must wait until the end of the 3-month period, but can then act immediately without waiting for the national authorities. Does the Secretary of State have to take account of representations made after the 3-month period? Not strictly under this section – but it is likely that a decision to ignore late representations would be vulnerable to challenge as unreasonable on Wednesbury grounds, particularly if there were respectable reasons why they were late and if there was no compelling reason for acting before taking account of them.

Subsection (7):

“Thinks fit” – See Question on “Considers appropriate” above.

Note: “May be published” in this subsection does not indicate a discretion, because subsections (5) and (6), which this subsection amplifies, are expressly duties.)

8 Setting of carbon budgets for budgetary periods

- (1) The Secretary of State must set the carbon budget for a budgetary period by order.
 - (2) The carbon budget for a period must be set with a view to meeting—
 - (a) the target in section 1 (the target for 2050), and
 - (b) the requirements of section 5 (requirements as to level of carbon budgets),and complying with the European and international obligations of the United Kingdom.
 - (3) An order setting a carbon budget is subject to affirmative resolution procedure.
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Section 8

Introduction:

This section sets out the procedure for setting carbon budgets under s.4.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

See General Note: Secretary of State.

Budgetary period - see s.4(1).

“By order” – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (2):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Budgets must also be set with a view to complying with the UK's European Community and international obligations (any international treaties to which the UK is a signatory)." (See also the definition of European Law – see s.97.)

Subsection (3):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

9 Consultation on carbon budgets

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

(a) take into account the advice of the Committee on Climate Change under section 34 (advice in connection with carbon budgets), and

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

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

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

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

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

Section 9

Introduction:

This section requires the Secretary of State to consult before making an order under section 8 setting a carbon budget.

Note:

Section 10 sets out matters to be taken into account by the Secretary of State and the Committee on Climate Change in making decisions about carbon budgets.

Subsection (1):

See General Note: Laying Before Parliament

See General Note: Statutory Instruments.

See General Note: Secretary of State

“Take into account” – see General Note: Have Regard To.

Committee on Climate Change – see s.32.

National Authority - see s.95.

Subsection (2):

The result of this subsection and subsection (1)(b) is that if the national authorities all make representations during the 3-month period, the Secretary of State may proceed as soon as those representations have been considered; otherwise, the Secretary of State must wait until the end of the 3-month period, but can then act immediately without waiting for the national authorities. Does the Secretary of State have to take account of representations made after the 3-month period? Not strictly under this section – but it is likely that a decision to ignore late representations would be vulnerable to challenge as unreasonable on Wednesbury grounds, particularly if there were respectable reasons why they were late and if there was no compelling reason for acting before taking account of them.

Subsection (5):

Note that “may be published” in this subsection does not indicate a discretion, because subsection (3) and (4), which this subsection amplifies, are expressly duties.

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

- (1) The following matters must be taken into account—
 - (a) by the Secretary of State in coming to any decision under this Part relating to carbon budgets, and
 - (b) by the Committee on Climate Change in considering its advice in relation to any such decision.
- (2) The matters to be taken into account are—
 - (a) scientific knowledge about climate change;
 - (b) technology relevant to climate change;
 - (c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;
 - (d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;
 - (e) social circumstances, and in particular the likely impact of the decision on fuel poverty;
 - (f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;
 - (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
 - (h) circumstances at European and international level;
 - (i) the estimated amount of reportable emissions from international aviation and international shipping for the budgetary period or periods in question.
- (3) In subsection (2)(i) “ the estimated amount of reportable emissions from international aviation and international shipping” , in relation to a budgetary period, means the aggregate of the amounts relating to emissions of targeted greenhouse gases from international aviation and international shipping that the Secretary or State or (as the case may be) the Committee estimates the United Kingdom will be required to report for that period in accordance with international carbon reporting practice.
- (4) Such amounts may be estimated using such reasonable method or methods as the Secretary of State or (as the case may be) the Committee considers appropriate.
- (5) The duty in subsection (2)(i) applies if and to the extent that regulations under section 30 do not provide for emissions of targeted greenhouse gases from

international aviation and international shipping in the budgetary period or periods in question to be treated as emissions from sources in the United Kingdom for the purposes of this Part.

(6) Section 30(1) (emissions from international aviation and international shipping not to count as emissions from UK sources for the purposes of this Part, except as provided by regulations) does not prevent the Secretary of State or the Committee from taking into account the matter referred to in subsection (2)(i) for the purposes of this section.

(7) Nothing in this section is to be read as restricting the matters that the Secretary of State or the Committee may take into account.

Section 10

Introduction:

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

Subsection (1):

See General Note: Secretary of State.

Carbon budgets – see ss.1, 4.

Committee on Climate Change – see s.32.

Subsection (2):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "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 (7) makes it explicit that this section does not prevent the Secretary of State or the Committee on Climate Change from taking other matters into account; nor does it limit the general requirement for the Secretary of State and the Committee to take all relevant matters into account."

Budgetary period - see s.4(1).

Targeted greenhouse gases - see s.24.

International carbon reporting practice - see s.94.

Subsection (4):

“Considers” – see General Note: Levels of Certainty.

Subsection (5):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " Subsection (5) provides that the Secretary of State and the Committee do not have to consider the factor in subsection (2)(i) if, and to the extent that, any regulations have been made under section 30 which mean that emissions from international aviation or international shipping are already included in the budget that is being considered. See the notes on sections 30 and 31 for details on the process and procedure for making such regulations."

Subsection (6):

It is not immediately clear why this provision is required, particularly given subsection (7).

11 Limit on use of carbon units

- (1) It is the duty of the Secretary of State to set a limit on the net amount of carbon units that may be credited to the net UK carbon account for each budgetary period.
- (2) The “ net amount of carbon units” means—
 - (a) the amount of carbon units credited to the net UK carbon account for the period in accordance with regulations under section 27, less
 - (b) the amount of carbon units debited from the net UK carbon account for the period in accordance with such regulations.
- (3) The limit for a budgetary period must be set—
 - (a) for the period 2008– 2012, not later than 1st June 2009, and
 - (b) for any later period, not later than 18 months before the beginning of the period in question.
- (4) The Secretary of State must set a limit under this section by order.
- (5) The order may provide that carbon units of a description specified in the order do not count towards the limit.
- (6) An order under this section is subject to affirmative resolution procedure.
- (7) Before laying before Parliament a draft of a statutory instrument containing an order under this section in relation to a budgetary period, the Secretary of State must—
 - (a) take into account the advice of the Committee on Climate Change under section 34(1)(b) (advice on use of carbon units) in relation to that period, and
 - (b) consult the other national authorities.

Section 11

Introduction:

This section requires the Secretary of State to set a limit on the carbon units that may be credited to the net UK carbon account for each budgetary period.

Subsection (1):

“It is the duty of ...” – This is a modern equivalent of what would once have routinely been expressed as “the Secretary of State shall ...” It imposes an obligation for which there is no express sanction.

Failure to comply would be enforceable through action for judicial review. (Similarly, an attempt to circumvent the duty by setting a limit so high as to be nugatory would be vulnerable to challenge by judicial review if it could not be demonstrated that it had been arrived at in accordance with due consideration of the relevant matters.)

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? Answer: Probably not; but a change of language always invites construction, and it is possible that someone might try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

See General Note: Secretary of State

Carbon units - see s.26

The net amount of carbon units - see s.11(2)

Net UK carbon account - see s.27

Budgetary period - see s.4(1)(a)

Subsection (4):

“By order” – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (5):

The Secretary of State must describe the units to be excluded in the order setting the limit:
Explanatory Note: 67

Subsection (6):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

Subsection (7):

See General Note: Laying Before Parliament.

See General Note: Statutory Instruments.

“Take into account” – see General Note: Have Regard To.

Committee on Climate Change – see s.32.

National Authority - see s.95.

12 Duty to provide indicative annual ranges for net UK carbon account

- (1) As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out an indicative annual range for the net UK carbon account for each year within the period.
 - (2) An “ indicative annual range” , in relation to a year, is a range within which the Secretary of State expects the amount of the net UK carbon account for the year to fall.
 - (3) Before laying a report under this section before Parliament, the Secretary of State must consult the other national authorities on the indicative annual ranges set out in the report.
 - (4) The Secretary of State must send a copy of the report to those authorities.
-

Section 12

Introduction:

This section requires the Secretary of State to produce a report containing an indicative annual range for the net UK carbon account for each year of a budgetary period.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "This section aims to enhance the transparency regarding progress within each budgetary period, so that Parliament is clear about performance towards meeting the budget each year".

Subsection (1):

“Order setting the carbon budget” – under ss. 1 to 8.

See General Note: Secretary of State.

See General Note: Laying Before Parliament.

Net UK carbon account – see s.27.

Subsection (3):

See General Note: Consultation.

National Authority - see s.95.

13 Duty to prepare proposals and policies for meeting carbon budgets

- (1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.
 - (2) The proposals and policies must be prepared with a view to meeting—
 - (a) the target in section 1 (the target for 2050), and
 - (b) any target set under section 5(1)(c) (power to set targets for later years).
 - (3) The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.
 - (4) In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities.
-

Section 13

Introduction:

This section requires the Secretary of State to prepare proposals and policies for meeting carbon budgets.

Subsection (1):

See General Note: Secretary of State.

“Considers” – see General Note: Levels of Certainty.

Carbon budget - see s.4

Subsection (3):

Sustainable development – not a defined term in this Act. Compare Planning Act 2008, s.10.

Subsection (4):

National Authority - see s.95.

14 Duty to report on proposals and policies for meeting carbon budgets

- (1) As soon as is reasonably practicable after making an order setting the carbon budget for a budgetary period, the Secretary of State must lay before Parliament a report setting out proposals and policies for meeting the carbon budgets for the current and future budgetary periods up to and including that period.
- (2) The report must, in particular, set out—
 - (a) the Secretary of State's current proposals and policies under section 13, and
 - (b) the time-scales over which those proposals and policies are expected to take effect.
- (3) The report must explain how the proposals and policies set out in the report affect different sectors of the economy.
- (4) The report must outline the implications of the proposals and policies as regards the crediting of carbon units to the net UK carbon account for each budgetary period covered by the report.
- (5) So far as the report relates to proposals and policies of the Scottish Ministers, the Welsh Ministers or a Northern Ireland department, it must be prepared in consultation with that authority.
- (6) The Secretary of State must send a copy of the report to those authorities.

Section 14

Introduction:

This section requires the Secretary of State to report to Parliament about proposals and policies for meeting current and future carbon budgets.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "This section will ensure that Parliament is clear about how the Government intends to meet its obligations under the Act".

Subsection (1):

"Order setting the carbon budget" – under ss. 1 to 8.

See General Note: Secretary of State.

See General Note: Laying Before Parliament.

Budgetary period - see s.4(1)(a)

Subsection (2):

Section 13 - duty to prepare proposals and policies for meeting carbon budgets.

Subsection (4):

Net UK carbon account - see s.27

Carbon units - see s.26

See also section 34(1)(b), which requires the Committee on Climate Change to advise on the use of carbon units, and section 11, which requires the Secretary of State to set a limit on the use of carbon units for each budgetary period.

Subsection (5):

See General Note: Scottish Ministers

See General Note: Welsh Ministers

See General Note: Northern Ireland Departments.

15 Duty to have regard to need for UK domestic action on climate change

(1) In exercising functions under this Part involving consideration of how to meet—

(a) the target in section 1(1) (the target for 2050), or

(b) the carbon budget for any period,

the Secretary of State must have regard to the need for UK domestic action on climate change.

(2) “UK domestic action on climate change” means reductions in UK emissions of targeted greenhouse gases or increases in UK removals of such gases (or both).

Section 15

Introduction:

This section requires the Secretary of State to have regard to the need for UK domestic action on climate change when considering how to meet each carbon budget.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: “So, in particular, the Secretary of State must have regard to the need for UK domestic action on climate change when preparing proposals and policies for meeting carbon budgets (with a view to meeting the 2050 target) as required by section 13.”

Subsection (1):

See General Note: Secretary of State

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? Answer: Probably not; but a change of language always invites construction, and it is possible that someone might try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

Carbon budget – under ss.1 to 8.

See General Note: Have Regard To.

Subsection (2):

UK emissions - see s.29

Targeted greenhouse gases - see s.24.

UK removals - see s.29.

16 Annual statement of UK emissions

- (1) It is the duty of the Secretary of State to lay before Parliament in respect of each year, beginning with the year 2008, a statement containing the following information.
- (2) In respect of each greenhouse gas (whether or not a targeted greenhouse gas), it must—
 - (a) state the amount for the year of UK emissions, UK removals and net UK emissions of that gas,
 - (b) identify the methods used to measure or calculate those amounts, and
 - (c) state whether any of those amounts represents an increase or decrease compared to the equivalent amount for the previous year.
- (3) It must state the aggregate amount for the year of UK emissions, UK removals and net UK emissions of all greenhouse gases.
- (4) If in accordance with international carbon reporting practice a change of method is such as to require adjustment of an amount for an earlier year in the same budgetary period, it must specify the adjustment required and state the adjusted amount.
- (5) If emissions of a greenhouse gas from international aviation or international shipping are not required to be included in the statement by virtue of subsection (2), it must state any amounts relating to such emissions that the United Kingdom is required to report for the year in accordance with international carbon reporting practice.
- (6) It must—
 - (a) state the total amount of carbon units that have been credited to or debited from the net UK carbon account for the year, and
 - (b) give details of the number and type of those carbon units.
- (7) It must state the amount of the net UK carbon account for the year.
- (8) It must state—
 - (a) the amount of net UK emissions of carbon dioxide for the year 1990,
 - (b) the amount of net UK emissions of each targeted greenhouse gas other than

carbon dioxide for the year that is the base year for that gas, and

(c) a baseline amount for each greenhouse gas that is not a targeted greenhouse gas, determined on such basis as the Secretary of State considers appropriate.

(9) The amount referred to in subsection (8)(c) may be—

(a) the amount of net UK emissions of the gas for the year 1990 or a different year, or

(b) the average amount of net UK emissions of the gas for a number of years.

(10) The statement required by this section must be laid before Parliament not later than 31st March in the second year following that to which it relates.

(11) The Secretary of State must send a copy of the statement to the other national authorities.

Section 16

Introduction:

This section requires the Secretary of State to lay before Parliament an annual statement about emissions.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " 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 (1):

"It is the duty of ..." – This is a modern equivalent of what would once have routinely been expressed as "the Secretary of State shall ..." It imposes an obligation for which there is no express sanction. Failure to comply would be enforceable through action for judicial review.

See General Note: Secretary of State

See General Note: Lay before Parliament

Subsection (2):

Greenhouse gas – see s.92.

Targeted greenhouse gases - see s.24.

Emissions, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity – see s.97.

UK removals - see s.29.

Net UK emissions - see s.29.

See, also, section 82, which repeals a similar reporting requirement under section 2(b) of the Climate Change and Sustainable Energy Act 2006.

Subsection (4):

International carbon reporting practice – see s.94.

Budgetary period - see s.4(1).

Subsection (5):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (5) requires the Secretary of State to report the levels of emissions from international aviation and 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 and international shipping will be included in the figures reported under subsection (2) if regulations are made under section 30 which have that effect; the commentary on section 30 gives more detail on the circumstances in which that can happen."

Subsection (6):

Carbon units - see s.26

Net UK carbon account - see s.27

Subsection (8):

Net UK emissions - see s.29

Base years for each targeted greenhouse gas other than carbon dioxide are specified in section 25.

See General Note: Secretary of State

See Explanatory Note: 85

Subsection (10):

See General Note: Laying Before Parliament.

Subsection (11):

National Authority - see s.95.

17 Powers to carry amounts from one budgetary period to another

(1) The Secretary of State may decide to carry back part of the carbon budget for a budgetary period to the preceding budgetary period.

The carbon budget for the later period is reduced, and that for the earlier period increased, by the amount carried back.

(2) The amount carried back under subsection (1) must not exceed 1% of the carbon budget for the later period.

(3) The Secretary of State may decide to carry forward the whole or part of any amount by which the carbon budget for a budgetary period exceeds the net UK carbon account for the period.

The amount of the carbon budget for the next budgetary period is increased by the amount carried forward.

(4) Before deciding to carry an amount back or forward under this section, the Secretary of State must—

(a) consult the other national authorities, and

(b) obtain, and take into account, the advice of the Committee on Climate Change.

(5) Any such decision must be made no later than 31st May in the second year after the end of the earlier of the two budgetary periods affected.

Section 17

Introduction:

This section allows the Secretary of State to carry amounts from one budgetary period to another.

Subsection (1):

Carbon budgets – under ss.1 to 8.

Budgetary period - see s.4(1).

Subsection (3):

See General Note: Secretary of State.

Net UK carbon account - see s.27

Subsection (4):

National Authority - see s.95.

Committee on Climate Change – see s.32.

See General Note: Consultation.

“Obtain, and take into account,” – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Subsection (5):

See Explanatory Note: 92

18 Final statement for budgetary period

(1) It is the duty of the Secretary of State to lay before Parliament in respect of each budgetary period a statement containing the following information.

(2) In respect of each targeted greenhouse gas, it must state the final amount for the period of UK emissions, UK removals and net UK emissions of that gas.

That is the total of the amounts (or adjusted amounts) stated under section 16 (annual statement of UK emissions) in respect of that gas for the years included in the period.

(3) It must—

(a) state the final amount of carbon units that have been credited to or debited from the net UK carbon account for the period, and

(b) give details of the number and type of those carbon units.

(4) It must state the final amount of the net UK carbon account for the period.

(5) It must state whether the Secretary of State has decided to carry an amount back under section 17(1) (power to carry amount back from the budget for the next budgetary period), and if so what amount.

(6) It must state the amount of the carbon budget for the period.

That is the amount originally set, subject to any exercise of the powers conferred by section 17 (powers to carry amounts from one budgetary period to another) and any alteration of the budget under section 21.

(7) Whether the carbon budget for a period has been met shall be determined by reference to the figures given in the statement laid before Parliament under this section in respect of that period.

(8) If the carbon budget for the period has not been met, the statement must explain why it has not been met.

(9) The statement required by this section must be laid before Parliament not later than 31st May in the second year following the end of the period to which it relates.

(10) The Secretary of State must send a copy of the statement to the other national authorities.

Section 18

Introduction:

This section requires the Secretary of State to give Parliament statements for each budgetary period.

Subsection (1):

“It is the duty of ...” – This is a modern equivalent of what would once have routinely been expressed as “the Secretary of State shall ...” It imposes an obligation for which there is no express sanction. Failure to comply would be enforceable through action for judicial review.

See General Note: Secretary of State.

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? Answer: Probably not; but a change of language always invites construction, and it is possible that someone might try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

See General Note: Laying Before Parliament.

Budgetary period – see s.4(1).

Subsection (2):

Targeted greenhouse gas – see s.24.

UK emissions - see s.29

UK removals - see s.29.

Net UK emissions - see s.29.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " 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”.

Subsection (3):

Carbon units - see s.26

Subsection (4):

Net UK carbon account - see s.27

Subsection (5):

See General Note: Secretary of State.

Subsection (6):

Carbon budget – set under ss.1 to 8.

Note:

Section 21 contains provisions about alteration (i.e. revocation and amendment) of carbon budgets.

Subsection (7):

See General Note: Laying Before Parliament.

Subsection (10):

National Authority - see s.95.

19 Duty to report on proposals and policies for compensating for budget excess

(1) As soon as is reasonably practicable after laying a statement before Parliament under section 18 in respect of a period for which the net UK carbon account exceeds the carbon budget, the Secretary of State must lay before Parliament a report setting out proposals and policies to compensate in future periods for the excess emissions.

(2) So far as the report relates to proposals and policies of the Scottish Ministers, the Welsh Ministers or a Northern Ireland department, it must be prepared in consultation with that authority.

(3) The Secretary of State must send a copy of the report to those authorities.

Section 19

Introduction:

This section requires the Secretary of State to devise policies for dealing with any excess emissions.

Subsection (1):

See General Note: Laying Before Parliament.

See General Note: Secretary of State.

Subsection (2):

See General Note: Scottish Ministers.

See General Note: Welsh Ministers.

See General Note: Northern Ireland Department.

See General Note: Consultation.

20 Final statement for 2050

(1) It is the duty of the Secretary of State to lay before Parliament in respect of the year 2050 a statement containing the following information.

(2) In respect of each targeted greenhouse gas, it must state the amount for that year of UK emissions, UK removals and net UK emissions of that gas.

That is the amount stated for that year in respect of that gas under section 16 (annual statement of UK emissions).

(3) It must—

(a) state the amount of carbon units that have been credited to or debited from the net UK carbon account for the year, and

(b) give details of the number and type of those carbon units.

(4) It must state the amount of the net UK carbon account for that year.

(5) Whether the target in section 1 (the target for 2050) has been met shall be determined by reference to the figures given in the statement laid before Parliament under this section.

(6) If the target has not been met, the statement must explain why it has not been met.

(7) The statement required by this section must be laid before Parliament not later than 31st May 2052.

(8) The Secretary of State must send a copy of the statement to the other national authorities.

Section 20

Introduction:

This section requires the Secretary of State to give a final report about emissions in the year 2050.

Subsection (1):

See General Note: Secretary of State.

Question: Is there a distinction intended between “It is the duty of the Secretary of State ...” here and “The Secretary of State must ...” elsewhere in the Act (see, in particular, ss.83-85)? Answer: Probably not; but a change of language always invites construction, and it is possible that someone

might try to argue, for example, that “must” is more mandatory while “it is the duty” is more directory.

See General Note: Laying Before Parliament.

Subsection (2):

Targeted greenhouse gas – see s.24.

UK emissions - see s.29

UK removals - see s.29.

Net UK emissions - see s.29.

Subsection (3):

Carbon units - see s.26

Subsection (4):

Net UK carbon account - see s.27.

21 Alteration of carbon budgets

- (1) An order setting the carbon budget for a period may not be revoked after the date by which a budget for the period was required to be set.
- (2) An order setting the carbon budget for a period may be amended after the date by which a budget for the period was required to be set only if it appears to the Secretary of State that, since the budget was originally set (or previously altered), there have been significant changes affecting the basis on which the previous decision was made.
- (3) An order setting the carbon budget for a period may be amended after the period has begun only if it appears to the Secretary of State that there have been such changes since the period began.
- (4) An order setting the carbon budget for a period may not be amended after the period has ended.
- (5) An order revoking or amending an order setting a carbon budget is subject to affirmative resolution procedure.

Section 21

Introduction:

This section allows carbon budgets to be amended once set, in limited circumstances.

Subsection (1):

Order setting the carbon budget – under ss.1 to 8.

Note:

The implication of subsection (1) is that until the last date for setting the budget the order may be revoked (under the power implied by section 14 of the Interpretation Act 1978).

Subsection (2):

“May be amended” – by further order (under the power implied by section 14 of the Interpretation Act 1978).

“Appears”: See General Note: Levels of Certainty.

Subsection (4):

A budget might otherwise be amended after the end of the period to which it relates for purposes connected with movement between budgets under s.17.

22 Consultation on alteration of carbon budgets

- (1) Before laying before Parliament a draft of a statutory instrument containing an order under section 21 (alteration of carbon budgets), the Secretary of State must—
 - (a) obtain, and take into account, the advice of the Committee on Climate Change, and
 - (b) take into account any representations made by the other national authorities.
 - (2) The Committee must, at the time it gives its advice to the Secretary of State, send a copy to the other national authorities.
 - (3) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.
 - (4) The Secretary of State may proceed to lay such a draft statutory instrument before Parliament without having received a national authority's representations if the authority does not provide them before the end of the relevant period.
 - (5) The relevant period is—
 - (a) if the budgetary period to which the order relates has begun, one month beginning with the date the Committee's advice was sent to the authority, or
 - (b) otherwise, three months beginning with that date.
 - (6) At the same time as laying such a draft statutory instrument before Parliament, the Secretary of State must publish a statement setting out whether and how the order takes account of any representations made by the other national authorities.
 - (7) If the order makes provision different from that recommended by the Committee, the Secretary of State must also publish a statement setting out the reasons for that decision.
 - (8) A statement under this section may be published in such manner as the Secretary of State thinks fit.
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Section 22

Introduction:

This section requires the Secretary of State to consult before altering a carbon budget under section 21.

Subsection (1):

See General Note: Laying Before Parliament.

See General Note: Secretary of State.

“Obtain, and take into account” – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

National authority – see s.95.

Subsection (3):

“Considers appropriate”. Question: What difference of substance is intended between “considers appropriate” here and “thinks fit” later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (4):

The result of this subsection and subsection (5) is that if the national authorities all make representations during the prescribed period, the Secretary of State may proceed as soon as those representations have been considered; otherwise, the Secretary of State must wait until the end of the period, but can then act immediately without waiting for the national authorities. Does the Secretary of State have to take account of representations made after the 3-month period? Not strictly under this section – but it is likely that a decision to ignore late representations would be vulnerable to challenge as unreasonable on *Wednesbury* grounds, particularly if there were respectable reasons why they were late and if there was no compelling reason for acting before taking account of them.

Subsection (8):

“Thinks fit” – See Question on “Considers appropriate” above.

Note:

“May be published” in this subsection does not indicate a discretion, because subsections (6) and (7), which this subsection amplifies, are expressly duties.

23 Alteration of budgetary periods

- (1) The Secretary of State may by order amend section 4(1)(a) so as to alter—
 - (a) the length of the budgetary periods, or
 - (b) the dates in the calendar year on which the budgetary periods begin and end.
- (2) This power may only be exercised if it appears to the Secretary of State necessary to do so in order to keep the budgetary periods under this Part in line with similar periods under any agreement at European or international level to which the United Kingdom is a party.
- (3) The power may not be exercised in such a way that any period falls outside a budgetary period.
- (4) An order may make such consequential amendments of the provisions of this Act as appear to the Secretary of State to be necessary or expedient.
- (5) Before making an order under this section the Secretary of State must consult the other national authorities.
- (6) An order under this section is subject to affirmative resolution procedure.

Section 23

Introduction:

This section allows the Secretary of State to alter the length of budgetary periods.

Subsection (1):

See General Note: Secretary of State.

“By order” – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (2):

“Appears”: See General Note: Levels of Certainty.

Subsection (4):

See General Note: Consequential Amendments.

See General Note: Necessary or Expedient.

Subsection (5):

See General Note: Consultation.

National authority – see s.95.

Subsection (6):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

24 Targeted greenhouse gases

- (1) In this Part a “targeted greenhouse gas” means—
 - (a) carbon dioxide,
 - (b) methane,
 - (c) nitrous oxide,
 - (d) hydrofluorocarbons,
 - (e) perfluorocarbons,
 - (f) sulphur hexafluoride, and
 - (g) any other greenhouse gas designated as a targeted greenhouse gas by order made by the Secretary of State.

 - (2) The order may make such consequential amendments of the provisions of this Act as appear to the Secretary of State to be necessary or expedient.

 - (3) Before making an order under this section, the Secretary of State must—
 - (a) consult the other national authorities, and
 - (b) obtain, and take into account, the advice of the Committee on Climate Change.

 - (4) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.

 - (5) If the order makes provision different from that recommended by the Committee, the Secretary of State must publish a statement setting out the reasons for that decision.

 - (6) The statement may be published in such manner as the Secretary of State thinks fit.

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

Section 24

Introduction:

This section defines “targeted greenhouse gas”.

Subsection (1):

See General Note: Secretary of State.

By order – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (2):

“The order” – under subs.(1)(g).

See General Note: Consequential Amendments.

See General Note: Necessary or Expedient.

Subsection (3):

National Authority - see s.95.

“Obtain, and take into account” – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

Subsection (4):

“Considers appropriate”. Question: What difference of substance is intended between “considers appropriate” here and “thinks fit” later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (6):

“Thinks fit” – See Question on “Considers appropriate” above.

Note:

“May be published” in this subsection does not indicate a discretion, because subsections (4) and (5), which this subsection amplifies, are expressly duties.

Subsection (7):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

25 Base years for targeted greenhouse gases other than CO₂

(1) The base years for the purposes of this Act for targeted greenhouse gases other than carbon dioxide are—

<i>Gas</i>	<i>Base year</i>
methane	1990
nitrous oxide	1990
hydrofluorocarbons	1995
perfluorocarbons	1995
sulphur hexafluoride	1995

(2) The Secretary of State may make provision by order amending the table in subsection (1) so as to—

(a) specify the base year for a gas designated as a targeted greenhouse gas by order under section 24(1), or

(b) specify a different base year from that for the time being specified in relation to any targeted greenhouse gas other than carbon dioxide.

(3) An order may—

(a) designate a particular base year, or

(b) designate a number of base years and provide that the average amount of net UK emissions of a gas for those years is to be treated for the purposes of this Act as the amount of net UK emissions for the base year.

(4) The power in subsection (2)(b) may only be exercised if it appears to the Secretary of State that there have been significant developments in European or international law or policy that make it appropriate to do so.

(5) Before making an order under this section, the Secretary of State must—

(a) consult the other national authorities, and

(b) obtain, and take into account, the advice of the Committee on Climate Change.

(6) As soon as is reasonably practicable after giving its advice to the Secretary of

State, the Committee must publish that advice in such manner as it considers appropriate.

(7) If the order makes provision different from that recommended by the Committee, the Secretary of State must publish a statement setting out the reasons for that decision.

(8) The statement may be published in such manner as the Secretary of State thinks fit.

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

Section 25

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "This section sets out the base years for targeted greenhouse gases other than carbon dioxide and allows the Secretary of State to set base years for new targeted greenhouse gases added at a later date. A "base year" is the year used as the reference point against which reductions in emissions of the gas are to be measured for the purposes of the targets and budgets in the Act."

Subsection (1):

See generally ss.1, 16 for more information about base years.

Subsection (2):

See General Note: Secretary of State.

By order – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Targeted greenhouse gases - see s.24.

Subsection (3):

Net UK emissions - see s.29

Subsection (4):

"Appears" - See General Note: Levels of Certainty.

European Law - see s.97

European Policy - see s.97

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Those base years can only be amended if there have been significant developments in European or international law or policy that make it appropriate to do so, for example if an international agreement was reached that required every country to use a particular base year for a gas".

Subsection (5):

National Authority - see s.95.

"Obtain, and take into account" – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

Subsection (6):

"Considers appropriate". Question: What difference of substance is intended between "considers appropriate" here and "thinks fit" later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (8):

"Thinks fit" – See Question on "Considers appropriate" above.

Note: "May be published" in this subsection does not indicate a discretion, because subsection (7), which this subsection amplifies, is expressly a duty.

Subsection (9):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

26 Carbon units and carbon accounting

(1) In this Part a “carbon unit” means a unit of a kind specified in regulations made by the Secretary of State and representing—

- (a) a reduction in an amount of greenhouse gas emissions,
- (b) the removal of an amount of greenhouse gas from the atmosphere, or
- (c) an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions.

(2) The Secretary of State may make provision by regulations for a scheme—

- (a) for registering or otherwise keeping track of carbon units, or
- (b) for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred, by the Secretary of State.

The regulations may, in particular, provide for an existing scheme to be adapted for these purposes.

(3) The regulations may make provision—

- (a) appointing a body to administer the scheme;
- (b) establishing a body for that purpose and making such provision in relation to the appointment of members, staffing, expenditure, procedure and otherwise as the Secretary of State considers appropriate;
- (c) conferring power on the Secretary of State to give guidance or directions to the body administering the scheme;
- (d) conferring power on the Secretary of State to delegate the performance of any of the functions conferred or imposed on the Secretary of State by the regulations;
- (e) requiring the payment by persons using the scheme of charges (of an amount determined by or under the regulations) towards the cost of operating it.

(4) If an existing body is appointed to administer the scheme, the regulations may make such modifications of any enactment relating to that body as the Secretary of State considers appropriate.

Section 26

Introduction: This section defines “carbon unit” and allows the Secretary of State to make a scheme

for registering and tracking them.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " In addition to the level of "net UK emissions" (which is defined in section 29(1)(c)), the "net UK carbon account" (as determined in accordance with section 27) is affected by the addition and subtraction of "carbon units" through a process of "carbon accounting". This section, and section 27, 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."

Subsection (1):

See General Note: Secretary of State

Greenhouse gas - see s.92

Emissions, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity – see s. 97.

Subsection (2):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Carbon units can be moved between accounts. The intention is to establish an accounting system broadly similar to, and compatible and co-ordinated with, 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".

Regulations - to be made by statutory instrument - see s.90; for procedure see s.28. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (3)(c):

See General Note: Guidance.

See General Note: Directions.

Subsection (3)(d):

See General Note: Delegation.

Subsection (4):

Modifications - see s.97.

Enactment - see s.97; see also General Note: Enactment.

27 Net UK carbon account

- (1) In this Part the “net UK carbon account” for a period means the amount of net UK emissions of targeted greenhouse gases for the period—
- (a) reduced by the amount of carbon units credited to the net UK carbon account for the period in accordance with regulations under this section, and
 - (b) increased by the amount of carbon units that in accordance with such regulations are to be debited from the net UK carbon account for the period.
- (2) The net amount of carbon units credited to the net UK carbon account for a budgetary period must not exceed the limit set under section 11 (limit on use of carbon units) for the period.
- (3) The Secretary of State must make provision by regulations about—
- (a) the circumstances in which carbon units may be credited to the net UK carbon account for a period,
 - (b) the circumstances in which such units must be debited from that account for a period, and
 - (c) the manner in which this is to be done.
- (4) The regulations must contain provision for ensuring that carbon units that are credited to the net UK carbon account for a period cease to be available to offset other greenhouse gas emissions.
- (5) The regulations must contain provision—
- (a) for determining whether the total amount of carbon units allocated to the United Kingdom for each budgetary period under schemes or arrangements imposing a limit on emissions from sources in the United Kingdom represent an amount of net UK emissions of targeted greenhouse gases for the period greater than the carbon budget for the period, and
 - (b) for ensuring that, if this is the case, carbon units representing the amount of such emissions in excess of the budget are not used to offset greenhouse gas emissions in the United Kingdom or elsewhere.
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Section 27

Introduction: This section defines “net UK carbon account” and makes provision about the crediting of units to accounts.

Subsection (1):

Net UK emissions - see s.29

Targeted greenhouse gases - see s.24.

Carbon units - see s.26

Subsection (2):

Budgetary period - see s.4(1)

Subsection (3):

See General Note: Secretary of State.

Regulations - to be made by statutory instrument - see s.90; for procedure see s.28. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Carbon units - see s.26

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "For example, the regulations could provide that units purchased through EU Emissions Trading Scheme can be treated as units to be credited to the net UK carbon account".

Subsection (4):

Greenhouse gas - see s.92

Emissions, in relation to a greenhouse gas – see section 97.

Subsection (5):

Budgetary period - see s.4(1)

Net UK emissions - see s.29

Carbon budget - see s.4

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (5) 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, for example, if the UK's target under the first commitment period of the Kyoto Protocol (2008–2012) 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".

28 Procedure for regulations under section 26 or 27

- (1) The following provisions apply in relation to regulations under section 26 (carbon units and carbon accounting) or section 27 (net UK carbon account).
 - (2) The regulations are subject to affirmative resolution procedure if—
 - (a) they are the first regulations to be made under those sections,
 - (b) they specify a carbon unit of a kind not previously specified in regulations made under those sections,
 - (c) they alter the amount by which—
 - (i) a carbon unit that is credited to the net UK carbon account for a period reduces the net UK carbon account for that period, or
 - (ii) a carbon unit that is debited from the net UK carbon account for a period increases the net UK carbon account for that period, or
 - (d) they make modifications of an enactment contained in primary legislation.
 - (3) Otherwise the regulations are subject to negative resolution procedure.
 - (4) The Secretary of State must consult the other national authorities—
 - (a) in the case of regulations subject to affirmative resolution procedure, before laying before Parliament a draft of a statutory instrument containing the regulations;
 - (b) in the case of regulations subject to negative resolution procedure, before making the regulations.
 - (5) The Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change before laying before Parliament a draft of a statutory instrument containing—
 - (a) the first regulations to be made under those sections, or
 - (b) regulations making provision of the kind described in paragraph (b) or (c) of subsection (2).
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Section 27

Introduction:

This section defines “net UK carbon account” and makes provision about the crediting of units to accounts.

Subsection (1):

Net UK emissions - see s.29

Targeted greenhouse gases - see s.24.

Carbon units - see s.26

Subsection (2):

Budgetary period - see s.4(1)

Subsection (3):

See General Note: Secretary of State.

Regulations - to be made by statutory instrument - see s.90; for procedure see s.28. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Carbon units - see s.26

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "For example, the regulations could provide that units purchased through EU Emissions Trading Scheme can be treated as units to be credited to the net UK carbon account".

Subsection (4):

Greenhouse gas - see s.92

Emissions, in relation to a greenhouse gas – see section 97.

Subsection (5):

Budgetary period - see s.4(1)

Net UK emissions - see s.29

Carbon budget - see s.4

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (5) 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, for example, if the UK's target under the first commitment period of the Kyoto Protocol (2008–2012) 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".

29 UK emissions and removals of greenhouse gases

(1) In this Part—

(a) “UK emissions”, in relation to a greenhouse gas, means emissions of that gas from sources in the United Kingdom;

(b) “UK removals”, in relation to a greenhouse gas, means removals of that gas from the atmosphere due to land use, land-use change or forestry activities in the United Kingdom;

(c) the “net UK emissions” for a period, in relation to a greenhouse gas, means the amount of UK emissions of that gas for the period reduced by the amount for the period of UK removals of that gas.

(2) The amount of UK emissions and UK removals of a greenhouse gas for a period must be determined consistently with international carbon reporting practice.

Section 29

Introduction:

This section defines “UK emissions” and “net UK emissions”.

Subsection (1):

Greenhouse gas - see s.92.

Emissions – see section 97.

Subsection (2):

International carbon reporting practice - see s.94.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " 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 Act if they are emissions of greenhouse gases from anthropogenic sources; non-anthropogenic sources of greenhouse gases (for example, emissions from volcanic activity) are not included in the figures (see the definition of “emissions” in section 97)."

30 Emissions from international aviation or international shipping

(1) Emissions of greenhouse gases from international aviation or international shipping do not count as emissions from sources in the United Kingdom for the purposes of this Part, except as provided by regulations made by the Secretary of State.

(2) The Secretary of State may by order define what is to be regarded for this purpose as international aviation or international shipping.

Any such order is subject to affirmative resolution procedure.

(3) The Secretary of State must, before expiry of the period ending with 31st December 2012—

(a) make provision by regulations as to the circumstances in which, and the extent to which, emissions from international aviation or international shipping are to be regarded for the purposes of this Part as emissions from sources in the United Kingdom, or

(b) lay before Parliament a report explaining why regulations making such provision have not been made.

(4) The expiry of the period mentioned in subsection (3) does not affect the power of the Secretary of State to make regulations under this section.

(5) Regulations under this section—

(a) may make provision only in relation to emissions of a targeted greenhouse gas;

(b) may, in particular, provide for such emissions to be regarded as emissions from sources in the United Kingdom if they relate to the transport of passengers or goods to or from the United Kingdom.

(6) Regulations under this section may make provision—

(a) as to the period or periods (whether past or future) in which emissions of the targeted greenhouse gas are to be taken into account as UK emissions of that gas, and

(b) as to the manner in which such emissions are to be taken into account in determining UK emissions of that gas for the year that is the base year for that gas.

(7) They may, in particular—

(a) designate a different base year, or

(b) designate a number of base years, and provide for the emissions in that year, or the average amount of emissions in those years, to be treated for the purposes of this Act as UK emissions of that gas for the year that is the base year for that gas.

(8) For the purposes of this section the base year for carbon dioxide is the year that is the baseline year for the purposes of this Part.

Section 30

Introduction:

This section allows the Secretary of State to make regulations specifying the circumstances in which, and the extent to which, emissions from international aviation and international shipping count as emissions from sources in the United Kingdom.

Subsection (1):

Greenhouse gas - see s.92 .

Regulations - to be made by statutory instrument - see s.90.

For procedure, see s.31. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

See General Note: Secretary of State.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Until such time as regulations are made under subsection (1), section 16(5) requires the Secretary of State to report the levels of emissions from international aviation and international shipping, calculated in accordance with international carbon reporting practice (see section 90), in his annual statement to Parliament. See also section 10(2)(i), which requires the Secretary of State to take into account the estimated amount of reportable emissions from international aviation and international shipping in relation to carbon budgets".

Subsection (2):

By order – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

Subsection (3):

Emissions, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity (section 97).

Regulations - to be made by statutory instrument - see s.90. For procedure, see s.31. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

See General Note: Laying Before Parliament.

Subsection (5):

Targeted greenhouse gases - see s.24.

Emissions – see s.97.

Greenhouse gas - see s.92.

Subsection (6):

UK emissions - see s.29

Base years for each targeted greenhouse gas other than carbon dioxide are specified in section 25

Subsection (8):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (8) explains that the base year for carbon dioxide is 1990 (referred to as the "1990 baseline" in section 1)."

31 Procedure for regulations under section 30

- (1) Before making regulations under section 30, the Secretary of State must obtain, and take into account, the advice of the Committee on Climate Change.
- (2) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.
- (3) If the regulations make provision different from that recommended by the Committee, the Secretary of State must publish a statement setting out the reasons for that decision.
- (4) The statement may be published in such manner as the Secretary of State thinks fit.
- (5) Regulations under section 30 are subject to affirmative resolution procedure.

Section 31

Introduction:

This section sets the procedure for making regulations on emissions from international aviation or international shipping under section 30.

Subsection (1):

See General Note: Secretary of State.

“Obtain, and take into account” – see General Note: Have Regard To. Question: What if the Committee refuses to provide advice, or unreasonably delays in providing it? Answer: The duty to obtain advice is implicitly qualified by the fact that it cannot be fulfilled if the Committee refuses to provide advice: it must therefore be read as a duty to take all reasonable measures to obtain advice.

Committee on Climate Change – see s.32.

Subsection (2):

“Considers appropriate”. Question: What difference of substance is intended between “considers appropriate” here and “thinks fit” later in the section? Answer: Despite the general rule that a change of legislative language must indicate a change of meaning, it is impossible to discern any substantive difference in this place that is reasonably likely to have been intended.

Subsection (4):

“Thinks fit” – See Question on “Considers appropriate” above.

Note:

“May be published” in this subsection does not indicate a discretion, because subsection (3), which this subsection amplifies, is expressly a duty.

Subsection (5):

Affirmative resolution procedure - see s.91; see also General Note: Statutory Instruments: Draft Affirmative Procedure.

Part 2 THE COMMITTEE ON CLIMATE CHANGE

Functions of the Committee

32 The Committee on Climate Change

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

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

Section 32

Introduction:

This section introduces Part 2, which is about the new Committee on Climate Change. This section establishes the Committee. Schedule 1 makes constitutional and other provision about it.

Pepper v Hart Note (see General Note: Pepper v Hart):

In introducing the Second Reading in the House of Commons of the Bill for this Act the Minister for the Environment (Mr. Phil Woolas): said as follows:

“The committee’s task will be to advise on the emissions reduction path to the 2050 target, and specifically on the appropriate level of the carbon budgets and our progress towards achieving them. The committee has already been established in shadow form, with a first-class team under the chairmanship of Lord Turner. It will be sponsored by and will report jointly to the Government and the three devolved Administrations.”

See General Note: Statutory Corporations.

33 Advice on level of 2050 target

- (1) It is the duty of the Committee to advise the Secretary of State on—
 - (a) whether the percentage specified in section 1(1) (the target for 2050) should be amended, and
 - (b) if so, what the amended percentage should be.
 - (2) Advice given by the Committee under this section must also contain the reasons for that advice.
 - (3) The Committee must give its advice under this section not later than 1st December 2008.
 - (4) The Committee must, at the time it gives its advice under this section to the Secretary of State, send a copy to the other national authorities.
 - (5) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.
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Section 33

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " This section places a duty on the Committee on Climate Change to advise the Secretary of State on whether the 2050 target in section 1(1) should be amended and if so what the amended percentage should be."

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

Subsection (4):

National Authority - see s.95.

34 Advice in connection with carbon budgets

(1) It is the duty of the Committee to advise the Secretary of State, in relation to each budgetary period, on—

(a) the level of the carbon budget for the period,

(b) the extent to which the carbon budget for the period should be met—

(i) by reducing the amount of net UK emissions of targeted greenhouse gases, or

(ii) by the use of carbon units that in accordance with regulations under sections 26 and 27 may be credited to the net UK carbon account for the period,

(c) the respective contributions towards meeting the carbon budget for the period that should be made—

(i) by the sectors of the economy covered by trading schemes (taken as a whole);

(ii) by the sectors of the economy not so covered (taken as a whole), and

(d) the sectors of the economy in which there are particular opportunities for contributions to be made towards meeting the carbon budget for the period through reductions in emissions of targeted greenhouse gases.

(2) In relation to the budgetary period 2008– 2012, the Committee must also advise the Secretary of State on—

(a) whether it would be consistent with its advice on the level of the carbon budget for the period to set a carbon budget such that the annual equivalent for the period was lower than the 1990 baseline by 20%, and

(b) the costs and benefits of setting such a budget.

(3) Advice given by the Committee under this section must also contain the reasons for that advice.

(4) The Committee must give its advice under this section—

(a) for the budgetary periods 2008– 2012, 2013– 2017 and 2018– 2022, not later than 1st December 2008;

(b) for any later period, not later than six months before the last date for setting the carbon budget for the period (see section 4(2)(b)).

(5) The Committee must, at the time it gives its advice under this section to the

Secretary of State, send a copy to the other national authorities.

(6) As soon as is reasonably practicable after giving its advice under this section the Committee must publish that advice in such manner as it considers appropriate.

Section 34

Introduction:

This section 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.

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

See General Note: Secretary of State

Budgetary period - see s.4(1)

For information on setting the carbon budget for a budgetary period see generally ss. 1 to 8.

Net UK emissions - see s.29.

Targeted greenhouse gases - see s.24.

Carbon units - see s.26

Net UK carbon account – see s.27.

Trading schemes - see s.44.

Emissions – see s. 97.

Greenhouse gas – see s.92.

Annual equivalent - see s.5(2)

1990 baseline - see s.1(2)

Subsection (5):

National Authority - see s.95.

35 Advice on emissions from international aviation and international shipping

(1) It is the duty of the Committee to advise the Secretary of State on the consequences of treating emissions of targeted greenhouse gases from—

- (a) international aviation, and
- (b) international shipping,

as emissions from sources in the United Kingdom for the purposes of Part 1.

(2) The duty applies if and to the extent that regulations under section 30 do not provide for such emissions to be so treated.

(3) Advice given by the Committee under this section must also contain the reasons for that advice.

(4) The Committee must give its advice under this section—

- (a) when it gives its advice under section 34 for the budgetary period 2023–2027, and
- (b) when it gives its advice under that section for each subsequent budgetary period.

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

(6) As soon as is reasonably practicable after giving its advice to the Secretary of State, the Committee must publish that advice in such manner as it considers appropriate.

Section 35

Introduction: The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (1) of this section places a duty on the Committee on Climate Change to advise the Secretary of State on the consequences of treating emissions from international aviation and international shipping as UK emissions for the purposes of the targets and budgets in the Act."

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

See General Note: Secretary of State

Targeted greenhouse gases - see s.24.

Emissions – see s.97.

Greenhouse gas – see s.92.

Subsection (2):

Section 30 allows the Secretary of State to make regulations for allowing emissions of greenhouse gases from international shipping or international aviation to be accounted as emissions from sources in the United Kingdom.

Subsection (5):

National Authority - see s.95.

36 Reports on progress

(1) It is the duty of the Committee to lay before Parliament and each of the devolved legislatures each year, beginning with the year 2009, a report setting out the Committee's views on—

(a) the progress that has been made towards meeting the carbon budgets that have been set under Part 1 and the target in section 1 (the target for 2050),

(b) the further progress that is needed to meet those budgets and that target, and

(c) whether those budgets and that target are likely to be met.

(2) The Committee's report in the second year after the end of a budgetary period must also set out the Committee's general views on—

(a) the way in which the budget for the period was or was not met, and

(b) action taken during the period to reduce net UK emissions of targeted greenhouse gases.

(3) The first report under this section must be laid before Parliament and the devolved legislatures not later than 30th September 2009.

(4) Each subsequent report under this section, other than one in the second year after the end of a budgetary period, must be laid before Parliament and the devolved legislatures not later than 30th June in the year in which it is made.

(5) A report in the second year after the end of a budgetary period must be laid before Parliament and the devolved legislatures not later than 15th July in the year in which it is made.

(6) The Secretary of State may by order extend the period mentioned in subsection (4) or (5).

(7) Before making such an order the Secretary of State must consult the other national authorities.

(8) Any such order is subject to negative resolution procedure.

Section 36

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "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 that has been made towards meeting the carbon budgets already set

and the 2050 target (that is, unless amended, to reduce the net UK carbon account to at least 80% below 1990 levels); the further progress that is needed to meet the budgets and that target; and whether the budgets and that target are likely to be met.”

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

See General Note: Laying Before Parliament.

Devolved legislatures - see s.97.

See Explanatory Note 186

Subsection (2):

Budgetary period - see s.4(1)

Net UK emissions - see s.29

Greenhouse gas – see s.92.

Subsection (3):

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Subsection (3) provides that the first report under this section must be laid by 30th September 2009, to take into account the fact that the Secretary of State is required to set the first three budgets by 1st June 2009 (see section 4(2))."

Subsection (6):

See General Note: Secretary of State.

By order – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Subsection (7):

See General Note: Consultation.

National Authority - see s.95.

Subsection (8):

Negative resolution procedure - see s.91; see also General Note: Statutory Instruments: Negative Resolution.

37 Response to Committee's reports on progress

- (1) The Secretary of State must lay before Parliament a response to the points raised by each report of the Committee under section 36 (reports on progress).
 - (2) Before doing so, the Secretary of State must consult the other national authorities on a draft of the response.
 - (3) The response to the Committee's first report under section 36 must be laid before Parliament not later than 15th January 2010.
 - (4) Each subsequent response must be laid before Parliament not later than 15th October in the year in which the Committee's report is made.
 - (5) The Secretary of State may by order extend that period.
 - (6) Any such order is subject to negative resolution procedure.
-

Section 37

Introduction:

This section requires the Secretary of State to respond to reports of the Committee on Climate Change under section 36.

Subsection (1):

See General Note: Secretary of State

See General Note: Laying Before Parliament.

The Committee – The Committee on Climate Change, established by s.32.

Subsection (2):

See General Note: Consultation.

National Authority - see s.95.

Subsection (5):

By order – to be made by statutory instrument (s.90(1)). (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " This provision is to allow flexibility (it might, for example, 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)".

Subsection (6):

Negative resolution procedure - see s.91; see also General Note: Statutory Instruments: Negative Resolution.

38 Duty to provide advice or other assistance on request

- (1) The Committee must, at the request of a national authority, provide advice, analysis, information or other assistance to the authority in connection with—
 - (a) the authority's functions under this Act,
 - (b) the progress made towards meeting the objectives set by or under this Act,
 - (c) adaptation to climate change, or
 - (d) any other matter relating to climate change.
 - (2) In particular, the Committee must, at the request of a national authority—
 - (a) advise the authority about any limit proposed to be set by a trading scheme on the total amount of the activities to which the scheme applies, or
 - (b) assist the authority in connection with the preparation of statistics relating to greenhouse gas emissions.
 - (3) The Committee must, at the request of a national authority other than the Secretary of State, provide advice, analysis, information or other assistance to the authority in connection with any target, budget or similar requirement relating to emissions of greenhouse gas that has been adopted by the authority or to which the authority is otherwise subject.
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Section 38

Introduction:

This section requires the Committee on Climate Change to provide advice or assistance on request of a national authority.

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

National Authority - see s.95.

Subsection (2):

Trading schemes - see s.44.

Emissions – see s.97.

Greenhouse gas – see s.92 .

Subsection (3):

See General Note: Secretary of State.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " 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."

39 General ancillary powers

- (1) The Committee may do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions.
 - (2) In particular the Committee may—
 - (a) enter into contracts,
 - (b) acquire, hold and dispose of property,
 - (c) borrow money,
 - (d) accept gifts, and
 - (e) invest money.
 - (3) In exercising its functions, the Committee may—
 - (a) gather information and carry out research and analysis,
 - (b) commission others to carry out such activities, and
 - (c) publish the results of such activities carried out by the Committee or others.
 - (4) The Committee must have regard to the desirability of involving the public in the exercise of its functions.
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Section 39

Introduction:

This section sets out general ancillary powers of the Committee on Climate Change.

Subsection (1):

The Committee – The Committee on Climate Change, established by s.32.

Subsection (4):

See General Note: Have Regard To.

40 Grants to the Committee

A national authority may make grants to the Committee of such amount and subject to such conditions as the authority thinks fit.

Section 40

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " This section enables each national authority (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)."

National Authority - see s.95.

The Committee – The Committee on Climate Change, established by s.32.

41 Powers to give guidance

(1) The national authorities may give the Committee guidance as to the matters it is to take into account in the exercise of—

- (a) its functions generally, or
- (b) any of its functions under Schedule 1.

(2) The Secretary of State may give the Committee guidance as to the matters it is to take into account in the exercise of its functions under—

- (a) Part 1 (carbon target and budgeting),
- (b) section 33 (advice on level of 2050 target),
- (c) section 34 (advice in connection with carbon budgets),
- (d) section 35 (advice on emissions from international aviation and international shipping),
- (e) section 36 (reports on progress),
- (f) section 57 (advice on report on impact of climate change), or
- (g) section 59 (reporting on progress in connection with adaptation).

Before giving guidance under any of paragraphs (a) to (f), the Secretary of State must consult the other national authorities.

(3) A national authority that requests the Committee to provide advice, analysis, information or other assistance under—

- (a) section 38 (duty to provide advice or assistance on request), or
- (b) section 48 (advice on trading scheme regulations),

may give the Committee guidance as to the matters it is to take into account in responding to that request.

If the request is made by two or more national authorities, the guidance must be given by them jointly.

(4) The power to give guidance under this section includes power to vary or revoke it. (5) In performing its functions the Committee must have regard to any guidance given under this section.

Section 41

Introduction:

This section allows Secretary of State and the devolved administrations to give guidance to the Committee on Climate Change. (For a power to give directions, see s.42.)

Subsection (1):

National Authority - see s.95.

The Committee – The Committee on Climate Change, established by s.32.

See General Note: Guidance.

Note: The result of s.95(2) is that guidance under this subsection must be given jointly by all the national authorities.

Subsection (2):

See General Note: Secretary of State.

See Explanatory Note: 201

Subsection (3):

See Explanatory Note: 201

National Authority - see s.95.

Subsection (5):

See General Note: Have regard to

42 Powers to give directions

(1) The national authorities may give the Committee directions as to the exercise of—

- (a) its functions generally, or
- (b) any of its functions under Schedule 1.

(2) The Secretary of State may give the Committee directions as to the exercise of its functions under—

- (a) Part 1 (carbon target and budgeting),
- (b) section 33 (advice on level of 2050 target),
- (c) section 34 (advice in connection with carbon budgets),
- (d) section 35 (advice on emissions from international aviation and international shipping),
- (e) section 36 (reports on progress),
- (f) section 57 (advice on report on impact of climate change), or
- (g) section 59 (reporting on progress in connection with adaptation).

Before giving directions under any of paragraphs (a) to (f), the Secretary of State must consult the other national authorities.

(3) A national authority that requests the Committee to provide advice, analysis, information or other assistance under—

- (a) section 38 (duty to provide advice or assistance on request), or
- (b) section 48 (advice on trading scheme regulations),

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

If the request is made by two or more national authorities, the directions must be given by them jointly.

(4) The power to give directions under this section does not include power to direct the Committee as to the content of any advice or report. (5) The power to give directions under this section includes power to vary or revoke the directions.

(6) The Committee must comply with any directions given under this section.

Section 42

Introduction:

This section allows the national authorities and the Secretary of State to give directions to the Committee on Climate Change. (The difference between guidance under section 41 and directions under this section is that directions are binding.)

Subsection (1):

National Authority - see s.95.

The Committee – The Committee on Climate Change, established by s.32.

See General Note: Directions.

Subsection (2):

See General Note: Secretary of State.

Subsection (6):

Question: Why is there no express sanction for failure to comply? Answer: Because the Committee is a public authority, the wide range of sanctions that can be imposed by way of judicial review is available.

43 Interpretation of Part 2

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

Section 43

Introduction:

This section applies definitions from Part 1 of the Act to Part 2.

44 Trading schemes

(1) The relevant national authority may make provision by regulations for trading schemes relating to greenhouse gas emissions.

(2) A “trading scheme” is a scheme that operates by—

(a) limiting or encouraging the limitation of activities that consist of the emission of greenhouse gas or that cause or contribute, directly or indirectly, to such emissions, or

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

Section 44

Introduction:

This section introduces Part 3 which is about trading schemes for greenhouse gas emissions. Section 44 allows schemes to be established.

Subsection (1):

Relevant national authority - see s.47.

Regulations - to be made by statutory instrument - see s.90. For procedure, see s.48. (Note s.90(4), (5) which allow regulations to be made instead of orders; and orders instead of regulations.)

Emissions, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity – s.97.

Greenhouse gas – see s.92.

The remainder of this Act has not been reproduced for the purposes of this sample.