

# **WASTE AND EMISSIONS TRADING ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Waste and Emissions Trading Act 2003. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

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

### **SUMMARY AND BACKGROUND**

3. The Act extends to the whole of the UK, although some particular provisions have limited territorial extent (see section 41).

4. Part 1 of the Act is intended to give legal effect to the obligations imposed by Article 5(1) and (2) of Council Directive 1999/31/EC<sup>1</sup> (“the Landfill Directive”) which was adopted on 26 April 1999 and entered into force on 16 July 1999. The Act also implements a commitment in the White Paper “Waste Strategy 2000: England and Wales”<sup>2</sup> to introduce tradable allowances for local authorities to restrict the amount of biodegradable municipal waste sent to landfills.

5. The aim of Article 5(1) and (2) of the Landfill Directive is to reduce the amount of biodegradable waste that is sent to landfills. Member States are required to establish a national strategy for the reduction of biodegradable waste going to landfills. Such a strategy must ensure that targets for the reduction of the amount of biodegradable municipal waste going to landfills set out in Article 5(2) of the Directive are met. Each EU Member State must reduce the amount of biodegradable municipal waste sent to landfills to 75% of the amount produced by that State in 1995 by 2006, to 50% by 2009 and to 35% by 2016. There is a four year derogation of this target for Member States which send to landfills more than 80% of their collected municipal waste in 1995. The UK qualifies to take advantage of this derogation.

6. The Act seeks to fulfil the requirements of Article 5(1) and (2) of the Landfill Directive by providing for the Secretary of State to set the maximum amounts of biodegradable municipal waste which may be sent to landfills from each country of the UK. The Act enables a landfill allowance system to be set up which limits the amount of biodegradable waste disposal authorities may send to landfill on the basis of allocations made

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<sup>1</sup> OJ L 182, 16.7.1999, p.1

<sup>2</sup> Waste Strategy 2000: England and Wales, Command Paper 4693

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by allocating authorities for each country of the UK. The Act also requires the Secretary of State and the appropriate authority for each country of the UK to have a national strategy for the reduction of biodegradable waste sent to landfills. In two-tier areas of England, the Act gives waste disposal authorities the power to direct waste collection authorities to deliver their waste in a separated form. It also requires authorities in two-tier areas, subject to certain exemptions, to have in place a joint strategy for the management of their municipal waste.

7. Part 2 of the Act is concerned with the trading of emissions quotas. Section 38 amends Schedule 1 to the Pollution Prevention and Control Act 1999. One purpose of that Act was to enable legal effect to be given to Council Directive 96/61/EC<sup>3</sup> (Integrated Pollution Prevention and Control Directive). The amendment provides for penalties in future emissions trading schemes. This Part of the Act also provides for the enforceability of penalties, including fixed financial penalties, in the current non-statutory UK Emissions Trading Scheme. The policy framework for the Emissions Trading Scheme was set out in the 'Framework for the Emissions Trading Scheme' published in August 2001.<sup>4</sup>

## **OVERVIEW OF THE ACT**

8. Part 1 of the Act provides for:

- the setting of the maximum amount of biodegradable municipal waste which is allowed to be sent to landfills from each country of the UK;
- the allocation of landfill allowances, which may be tradable, to waste disposal authorities;
- the preparation, in each country of the UK, of a strategy for reducing the amount of biodegradable waste going to landfills;
- the National Assembly of Wales to make regulations requiring local authorities in Wales to have municipal waste management strategies and provide information about waste;
- an amendment to the Environmental Protection Act 1990 to allow waste disposal authorities to direct waste collection authorities about the separation of waste;
- the waste authorities for each two-tier area of England, subject to certain exemptions, to draw up joint municipal waste management strategies.

9. The details of the landfill allowances schemes will be established in subordinate legislation made by the appropriate authority in each country of the UK.

10. Part 2 of the Act provides for:

- the development of the statutory framework for wider emission trading by amending the Pollution Prevention and Control Act 1999 to include the power to provide

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<sup>3</sup> OJ L 257, 10.10.96, p. 26.

<sup>4</sup> Defra, August 2001, <http://www.defra.gov.uk/environment/climatechange/trading/index.htm>.

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penalties (including automatic financial penalties) for non-compliance with future schemes;

- the enforceability of penalties for non-compliance with the current UK Emissions Trading Scheme (including automatic financial penalties).

## **TERRITORIAL APPLICATION: WALES**

11. Part 1 of the Act requires the National Assembly for Wales to have a national strategy for reducing the amount of biodegradable waste sent to landfills from Wales (section 19). Also, as the “allocating authority” for Wales, the Assembly is required to allocate allowances to waste disposal authorities in Wales (section 4) and, under Chapter 1 of Part 1 of the Act, has power to make regulations setting out the detailed requirements of how the landfill allowances scheme will operate in Wales. In England, Scotland and Northern Ireland, the functions of “allocating authority” are given, respectively, to the Secretary of State, the Scottish Ministers and the Department of the Environment for Northern Ireland.

12. Sections 29 and 30 apply to Wales only and provide the National Assembly of Wales with powers to require local authorities to have a strategy for the management of waste and to supply it with information about waste.

13. The National Assembly of Wales has a separate power of commencement for sections 4, 5, 9, 10, 19 and 35(c) (see section 40).

14. The provisions in Part 2 of the Act affect powers which the of the National Assembly does not currently exercise: section 38 extends regulation-making powers which at the date of writing have not been transferred to the National Assembly and section 39 relates to the existing non-statutory UK Emissions Trading Scheme which is administered by the Secretary of State in respect of the whole of the UK.

## **COMMENTARY ON SECTIONS**

15. **Section 1** requires the Secretary of State by regulations to specify the maximum amount by weight of biodegradable municipal waste allowed to be sent to landfills in target years (as defined in section 23(1)) from the whole of, and from each country of, the United Kingdom. The Secretary of State must consult the appropriate authority for each country of the UK before these amounts are set.

16. **Section 2** permits the Secretary State by regulations to set the maximum amount by weight of biodegradable municipal waste that may be sent to landfills in a scheme year that is not a target year. Except where the regulations concern England, the agreement of the appropriate authority for a country of the UK is required before an amount for that country is set.

17. As the regulations under sections 1 and 2 will sub-divide the national target between the countries of the UK, such regulations will be subject to the affirmative resolution procedure in both Houses of Parliament (see section 28).

18. **Section 3** provides default rules for setting the maximum for a non-target year in the event that the Secretary of State does not set a maximum under section 2, for example because agreement cannot be reached. The maximum amounts calculated under the default rules represent the rate of progress needed to meet the Landfill Directive targets in equal

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annual steps from the last target year, or if later the last year for which amounts were set under section 2 to the next target year.

19. **Section 4** requires each allocating authority to allocate allowances to waste disposal authorities in its area. An allowance authorises a waste disposal authority to send to landfill, in the year for which the allowance is allocated, no more than the amount of biodegradable municipal waste covered by the allowance.

20. The allocating authorities are (section 24(1)):

- for England, the Secretary of State;
- for Scotland, the Scottish Ministers;
- for Wales, the National Assembly for Wales;
- for Northern Ireland, the Department of the Environment for Northern Ireland.

21. An allocation of allowances must be made before the beginning of the year to which the allowances relate. An allocating authority must ensure that the total amount of allowances allocated by it for a year does not exceed the maximum amount allowed to be sent to landfills in that year from its country, as specified under sections 1 or 2.

22. **Section 5** allows an allocating authority to alter allocations of allowances to a waste disposal authority, but not to withdraw an allowance that has already been utilised by a waste disposal authority. “Utilised” is not defined in the Act but a power is conferred by section 11(2)(c) for regulations to make provision about what utilisation means for the purposes of the Act.

23. **Section 6** allows an allocating authority to make regulations enabling waste disposal authorities in its area to ‘bank’ allowances for future use or ‘borrow’ allowances allocated for later years. Regulations may not allow the banking and borrowing of landfill allowances across target years. Regulations may provide that any breach of the provisions of any regulations made under this section will be an offence.

24. **Section 7** allows an allocating authority to make regulations to allow waste disposal authorities within its area to transfer allowances, whether by trade or otherwise, to other waste disposal authorities. These regulations may permit ‘cross-border trading’ of allowances allocated by another allocating authority, although such trading would be dependent on each allocating authority involved making enabling regulations. The regulations may provide that any breach of the provisions of any regulations made under this section will be an offence.

25. **Section 8** sets out the maximum penalties which may be provided where regulations under section 6 or 7 provide for an offence. The maximum penalties are consistent with the maximum penalties that may be set by regulations under section 2(2) of the European Communities Act 1972.<sup>5</sup>

26. **Section 9** imposes a duty on a waste disposal authority not to send more biodegradable municipal waste to landfills than it is allowed to do by the allowances that it holds (including allowances which it has banked from an earlier scheme year, borrowed from

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<sup>5</sup> See paragraph 1(1) of Schedule 2 to the European Communities Act 1972.

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a later scheme year, or which it has acquired from another waste disposal authority in accordance with regulations under sections 6 and 7). If a waste disposal authority breaches this duty, it will be liable to a penalty. If a waste disposal authority breaches this duty in a target year and the UK as a whole exceeds its target under section 1 for that year, the waste disposal authority will also be liable to a supplementary penalty. A waste disposal authority will also be liable to a supplementary penalty in scheme years between target years if it breaches its duty in that year and the amount of biodegradable municipal waste sent to landfill in the UK in that year exceeds the amount specified under section 1(1)(a) for the last target year.

27. **Section 10** requires each allocating authority to appoint a monitoring authority for its area. This section sets out the functions of the monitoring authority. Additional functions may be imposed or conferred on the monitoring authority by regulations under section 11(2)(g).

28. **Section 11** enables allocating authorities to make provision, through regulations, for the operation of a landfill allowances scheme. This includes, for example, power to make provision for the method of allocating allowances and for a waste disposal authority that fails to comply with a requirement of the regulations to be liable to a penalty.

29. **Sections 12 and 13** enable an allocating authority to make regulations in relation to waste disposal authorities and landfill operators to maintain certain records, gather specific information by carrying out operations on waste and make returns to the monitoring authority.

30. Regulations may enable the monitoring authority to require waste disposal authorities or landfill operators to produce records for inspection, and in the case of waste disposal authorities to supply information and evidence connected with the sending of biodegradable municipal waste to landfills. With respect to landfill operators regulations may enable the monitoring authority to enter premises to find and inspect records relating to the operation of a landfill.

31. A waste disposal authority that fails to comply with a requirement in regulations made under section 12 is liable to a penalty (see section 12(3)). A person commits an offence if he fails to comply with requirements in regulations made under section 13 (3), or if he intentionally obstructs a person exercising a power conferred under that section (see section 13(4)). The penalties for such offences are set out in section 13(5) and (6) and are consistent with the penalties for similar offences under section 110 of the Environment Act 1995.

32. **Section 14** makes provision for the disclosure of monitoring information held by a monitoring authority to other monitoring authorities or to any allocating authority, and for the disclosure of monitoring information held by an allocating authority to other allocating authorities. Monitoring information is defined in section 14(4).

33. **Sections 15 and 16** make provision about registers. Section 15 enables an allocating authority to make regulations requiring a monitoring authority to maintain a register of such of its monitoring information as is specified in the regulations. Regulations under section 16 may make provision for public access to such a register. Some of the information in such a

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register may also be publicly accessible under the Environmental Information Regulations 1992.<sup>6</sup>

34. **Sections 17 to 20** require the appropriate authority for each country of the UK to have a strategy for reducing both the amount of biodegradable waste from its country that goes to landfills and the amount of biodegradable waste from outside its country that goes to landfills in its country. These new duties are additional to the duties under sections 44A and 44B of the Environmental Protection Act 1990 (inserted by section 92 of the Environment Act 1995), and under article 19 of the Waste and Contaminated Land (Northern Ireland) Order 1997,<sup>7</sup> to prepare national waste strategies. It is envisaged that national waste strategies and landfill strategies could be combined.

35. Landfill strategies must include measures to achieve the targets set out in Sections 1 and 2, in particular, measures such as recycling, composting, biogas production, materials recovery or energy recovery.

36. The scope of these strategies is wider than the targets set under Section 1 as the strategies apply to all biodegradable waste and not just to biodegradable waste which is also municipal waste (see section 21 for the relevant definitions).

37. **Sections 21 to 24** define terms used in Chapter 1 of Part 1 of the Act. In particular section 23 defines “target years” as scheme years ending with 16 July in 2010, 2013 or 2020. These target years incorporate the 4 year derogation for the achievement of the Landfill Directive’s targets which the UK is entitled to take advantage of under Article 5(2) of the Landfill Directive.

38. Section 23 enables the Secretary of State, subject to a requirement to consult the appropriate authority for each country of the UK, to change the target years, to amend the definitions of target and scheme years by, for example, adding or omitting target or scheme years. In particular, this would enable the Secretary of State to set target years that are either the underrogated target years, or any year up to and including the latest date allowable under the Landfill Directive. Article 5(2) of the Landfill Directive provides that the European Council shall re-examine and may amend the final target set out in the Directive and it is intended that section 23 would allow the Secretary of State to extend the scheme beyond 2020 should that prove necessary or appropriate.

39. **Section 25** identifies certain activities which are excluded from the scope of the Act. These reflect activities which are excluded from the scope of the Landfill Directive by Article 3(2) of that Directive.<sup>8</sup>

40. **Section 26** permits allocating authorities to make regulations setting the levels of penalties under sections 6(3)(g), 7(3)(i), 9(2), 11(3) and 12(3) and supplementary penalties

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<sup>6</sup> S.I. 1992/3240

<sup>7</sup> S.I. 1997/2778

<sup>8</sup> Section 25 refers to Council Directive 91/689/EEC (“the hazardous waste directive”) OJ L 377, 31/12/1991, p.20.

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under section 9(3) and (4). Allocating authorities have power to extend the time for paying any penalty (including interest) or relieve a waste disposal authority, whether or not subject to conditions, from liability to the whole or any part of penalty (including interest).

41. **Section 27** requires each allocating authority to consult persons representative of the interests of waste disposal authorities, landfill operators and any others who may be affected before making regulations under Chapter 1 of the Act. These consultation requirements do not apply to regulations made under sections 1, 2, 3 and 23 of the Act for which specific consultation requirements apply.

42. **Section 28** provides for regulations under sections 1 and 2 and the first regulations made under each of sections 6, 7 and 11 by each of the Secretary of State, Scottish Ministers and the Department of the Environment (Northern Ireland) to be subject to affirmative procedure. Where regulations are made under a mixture of powers and some of the regulations are subject to affirmative procedure, the regulations would be subject to affirmative procedure as a whole.

43. **Sections 29 and 30** apply to Wales only. These sections enable the National Assembly for Wales by regulations to require local authorities in Wales to have a waste management strategy and to provide the National Assembly with specified information relating to waste. The National Assembly intends to use this power to require local authorities to have municipal waste management plans. These are currently not compulsory, although authorities are expected to prepare them. The commitment to make these statutory was made in “Waste Strategy 2000”<sup>9</sup> and “Wise about Waste - National Strategy for Wales”.<sup>10</sup>

44. **Section 31** amends sections 48 and 51 of the Environmental Protection Act 1990 and inserts a new section 52A. The amendments to section 48 and 51 of the Environmental Protection Act 1990 enable directions given by a waste disposal authority in England (which is not also a waste collection authority) to a collection authority under section 51(4)(a) of that Act to include requirements about the separation of waste as delivered to the waste disposal authority. This power may only be exercised where a waste disposal authority considers that such directions are necessary for assisting it to comply with any obligation imposed on it by or under any enactment. This would include its obligations under this Act and obligations to meet performance standards on recycling and composting specified under the Local Government Act 1999. This will assist a waste disposal authority in complying with its duty under section 9 by allowing it to require waste to be delivered to it in a form which can be recycled.

45. New section 52A of the Environmental Protection Act 1990 requires a waste disposal authority to pay to a waste collection authority such amounts as are needed to ensure that the collection authority is not financially worse off as a result of having to comply with any such direction. The Secretary of State has power to make provision by regulations about how these amounts are to be determined. The new section also enables a waste disposal authority to make payments to a waste collection authority in circumstances where the waste collection

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<sup>9</sup> See footnote 2, above.

<sup>10</sup> June 2002. ISBN 07504 27604

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authority is delivering waste in a state of separation, but no direction on waste separation has been issued by the waste disposal authority.

46. **Section 32** places a duty on waste authorities in two-tier areas to have a joint strategy for the management of municipal waste. This strategy must be kept under review and authorities must have regard to any guidance given by the Secretary of State.

47. **Sections 33** allows the Secretary of State, through regulations, to exempt certain authorities and areas from this obligation. The Secretary of State can only exercise this power if the performance of the relevant authority or authorities is considered satisfactory. For an authority's performance to be considered satisfactory it must either receive an "excellent" rating in its Comprehensive Performance Assessment or it must be 'on target' to meet agreed standards. Sections 32(1) to (11) and 33 extend only to England and Wales, while section 32(12) extends only to England, Wales and Scotland.

48. **Section 34** defines terms used in Chapter 3 of the Act. In particular, 'waste authorities' for a two-tier area, are the waste disposal authority and the waste collection authority. 'Two-tier' areas are areas where the waste authorities are separate bodies.

49.. **Section 35** repeals the requirement for waste collection authorities in England and Wales to prepare and publish a waste recycling plan in accordance with section 49 of the Environmental Protection Act 1990. It also provides for certain consequential repeals in relation to the Greater London Authority Act 1999 and the Local Government Act 2000.

50. **Section 36** contains general provisions about regulations under Part 1 of the Act. In particular, the power to make regulations under section 23(2)(a), (b) or (c) includes the power to make different provision in relation to England, Scotland, Wales and Northern Ireland.

51. **Section 37** defines "waste" for the purposes of the Act. Article 2(a) of the Landfill Directive provides that waste means any substance or object which is covered by Council Directive 75/442/EEC<sup>11</sup> ("the Waste Directive"). Section 32(1) therefore defines waste as anything which is waste for the purposes of the Waste Directive and is not excluded from the scope of the Waste Directive by Article 2 of that Directive.

- Article 1 of the Waste Directive defines "waste" as follows:
  - "any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard" (Article 1(a)).
- "Holder" is defined as:
  - "the producer of the waste or the natural or legal person who is in possession of it" (Article 1(c)).
- "Producer" is defined as:

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<sup>11</sup> OJ L 194, 25.7.1975, p.39 as amended by Council Directive 91/156/EEC, OJ L 78, 26.3.1991, p.32; Council Directive 91/692/EEC, OJ L 377, 31.12.1991, p.48 and Commission Decision 96/350/EC, OJ L 135, 6.6.1996, p.32

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- “anyone whose activities produce waste (‘original producer’) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of the waste” (Article 1(b)).

52. Annex I to the Waste Directive lists categories of waste. Article 2 of the Waste Directive excludes certain types of waste from the scope of the Directive.<sup>12</sup>

53. **Section 38** amends the Pollution Prevention and Control Act 1999 so that regulations may authorise the imposition of penalties (including automatic financial penalties) upon persons contravening the rules of future statutory emissions quota trading schemes under that Act.

54. **Section 39** provides a statutory basis for the provisions of the UK Emissions Trading Scheme which provide for penalties for non-compliance with the Scheme, including those requiring participants to pay automatic financial penalties for failure to comply with their annual commitment to limit emissions of greenhouse gases. The Scheme, and the agreements which participants have entered into, expressly envisage legislation being made to provide a statutory basis for the penalties.

#### **FINANCIAL EFFECTS OF THE ACT**

55. The Act will require small additional public expenditure:

- by the allocating authorities in putting the landfill allowance scheme in place;
- by the monitoring authorities in monitoring the scheme;
- by waste disposal authorities in maintaining records of their compliance with the scheme and of their trading of landfill allowances;
- by local authorities in Wales in preparing strategies under section 29 (although most authorities already prepare such strategies) and providing information under section 30;
- by local authorities in England in two tier areas in drawing up and revising strategies under section 32 (although many authorities already have such strategies and those whose performance is considered satisfactory will be eligible for exemption from the duty);
- By waste disposal authorities which are required to make payments to waste collection authorities under section 31 of the Act, in respect of directions to deliver waste in a separated form.

#### **EFFECTS OF THE ACT ON PUBLIC SERVICE MANPOWER**

56. The effects of the Act on public sector manpower will be marginal. However, under Chapter 1 of Part 1 of the Act, some additional staff will be needed to make allocations of landfill allowances and to monitor the operation of the landfill allowances scheme.

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<sup>12</sup> The Waste Directive and the Landfill Directive can be viewed on the Europa website (<http://europa.eu.int/eur-lex/en/index.html>).

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## **SUMMARY OF THE REGULATORY APPRAISAL**

57. The Act will ensure that the reductions in the landfilling of biodegradable municipal waste required to meet the targets in Article 5(2) of the Landfill Directive are distributed evenly among the UK's constituent countries, and that the targets are met in the most cost effective and efficient way. The administrative burden on both local authorities and landfill operators will be marginal.

58. The UK Emissions Trading Scheme is voluntary and the Act puts in place the penalties framework for those companies that miss their emissions reduction targets. Companies are expecting a measure along the lines of section 39 and the bringing forward of such a measure is expressly referred to in their existing contracts with the Secretary of State.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

59. The Secretary of State for Environment, Food and Rural Affairs, the Rt Honorable Margaret Beckett MP, has made the following statement:

“In my view the provisions of the Waste and Emissions Trading Bill are compatible with the Convention rights.”

## **COMMENCEMENT**

60.

<b>Sections...</b>	<b>will come into force...</b>
1-3, 17, 31, 32(12), 35(b) and 39.	On a day appointed by the Secretary of State.
4, 5, 9 and 10	On a day to be appointed by: <ul style="list-style-type: none"> <li>- the Secretary of State in relation to England,</li> <li>- the National Assembly for Wales in relation to Wales,</li> <li>- the Scottish Ministers in relation to Scotland,</li> <li>- the Department of the Environment for Northern Ireland in relation to Northern Ireland.</li> </ul>
18, 19 and 35(c), and 20.	On a day appointed by the Scottish Ministers, the National Assembly for Wales and the Department for Northern Ireland respectively.
32(1)-32(9)	Two months after this act is passed.
35(b)	On a day to be appointed by: <ul style="list-style-type: none"> <li>- the Secretary of State in relation to England,</li> <li>- the National Assembly for Wales in relation to Wales</li> </ul>

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The remaining sections of the Act will come into force on Royal Assent.

## PARLIAMENTARY HISTORY

<b>Stage</b>	<b>Date</b>	<b>Hansard Ref.</b>
<b>House of Lords</b> – Introduction / First Reading	14 Nov 2002	Vol. 641, Col. 25
Second Reading	3 Dec 2002	Vol. 641, 1032 - 1048
Grand Committee (First Day)	17 Dec 2002	Vol. 642, GC1 – GC60
Grand Committee (Second Day)	18 Dec 2002	Vol. 642, GC61 – GC118
Report	3 Feb 2003	Vol. 644, Col. 14 – 20, 33 - 82
Third Reading	6 Mar 2003	Vol. 645, Col. 921 - 956
<b>House of Commons</b> – Second Reading	20 Mar 2003	Vol. 401, Col. 1128 - 1177
Committee Stage – First Sitting (Morning)	3 April 2003	Standing Committee B
Committee Stage – Second Sitting (Afternoon)	3 April 2003	Standing Committee B
Committee Stage – Third Sitting (Morning)	8 April 2003	Standing Committee B
Committee Stage – Fourth Sitting (Afternoon)	8 April 2003	Standing Committee B
Committee Stage – Fifth Sitting (Morning)	10 April 2003	Standing Committee B
Committee Stage – Sixth Sitting (Afternoon)	10 April 2003	Standing Committee B
Committee Stage – Seventh Sitting (Morning)	29 April 2003	Standing Committee B
Committee Stage – Eighth Sitting (Afternoon)	29 April 2003	Standing Committee B
Report and Third Reading	28 Oct 2003	Vol. 412, Col. 179 - 274
Lords Consideration of Commons Amendments	3 Nov 2003	Vol. 654, Col. 521 - 538

Royal Assent – 13 November 2003    House of Lords Hansard Vol. 654 Col. 1521  
House of Commons Hansard Vol. 413 Col. 393