

# CLIMATE CHANGE ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

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

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

25. *Subsection (1)* of this section imposes a duty on the Secretary of State to ensure that “the net UK carbon account” for 2050 is at least 80% lower than the “1990 baseline”.
26. *Subsection (2)* defines “the 1990 baseline” to mean the aggregate amount of: net UK emissions of carbon dioxide in 1990; and net UK emissions of the other targeted greenhouse gases in the “base year” for each gas.
27. The term “targeted greenhouse gas” refers to the gases which are covered by the targets and budgets in the Act as set out in section 24(1); the “base year” for each targeted greenhouse gas other than carbon dioxide is set out in section 25(1). The targeted greenhouse gases, and their base years, are: carbon dioxide (1990), methane (1990), nitrous oxide (1990), hydrofluorocarbons (1995), perfluorocarbons (1995) and sulphur hexafluoride (1995). Under section 24, the Secretary of State is given the power to add more gases – the commentary on that section provides details of the process. The commentary on section 25 provides more details on base years.
28. The term “the net UK carbon account” is defined in section 27. For 2050, it means the level of net UK emissions of targeted greenhouse gases in 2050 after numbers of “carbon units” have been added and subtracted in accordance with carbon accounting regulations. The commentary on sections 26 and 27 provides a more detailed explanation of carbon accounting and the net UK carbon account.
29. The target for 2050 is set by reference to a 1990 baseline rather than a particular quantum of emissions because the baseline emissions are subject to revision as understanding of historic emissions improves. 1990 is the baseline year used for emissions of carbon dioxide under the Kyoto Protocol, an international agreement to limit emissions of greenhouse gases, to which the UK is party; where a gas has a different base year, emissions of the gas in the base year are treated as being emissions of the gas in 1990.

##### *Section 2: Amendment of 2050 target or baseline year*

30. *Subsection (1)* allows the Secretary of State, by order, to amend the 2050 target and to amend the baseline year.
31. *Subsection (2)* sets out the circumstances in which the Secretary of State can amend the 2050 target:
  - paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy

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or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;

- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target (see section 24) or if emissions from international aviation or international shipping are added to the target (see section 30).
32. *Subsection (3)* provides more detail on the meaning of “developments in scientific knowledge about climate change”. The first time the Secretary of State amends the 2050 target, he will be able to rely only on scientific developments occurring after Royal Assent. But when making any subsequent amendment, the Secretary of State will be able to take into account scientific developments only since the target was last changed.
33. *Subsection (4)* provides that the baseline year can be amended only if there have been significant developments in European Community or international law or policy which make an amendment appropriate.
34. *Subsections (5) and (6)* provide that an order amending the target is to be made by statutory instrument subject to the affirmative resolution procedure (that is, a draft of the order must be approved by both Houses of Parliament). An order that changes the baseline year may also amend other references in the Act to “the 1990 baseline”.
35. 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 target.

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

36. This section sets out the procedures that the Secretary of State must follow before amending the 2050 target or the baseline year.
37. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change (a new non-departmental public body which is created by Part 2 of the Act). The Secretary of State also has to consider the views of the devolved administrations (the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department).
38. *Subsections (2) to (7)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can lay the draft order only after the three month period has expired;
  - *Subsection (5)* places a duty on the Secretary of State, at the same time as he lays the draft order, to publish a statement that sets out whether and how he has taken account of the devolved administrations’ views;
  - *Subsection (6)* places a duty on the Secretary of State, if amending the 2050 target or baseline year in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision;
  - *Subsection (7)* allows the Secretary of State to publish a statement under subsection (5) or (6) (that is, on taking account of the devolved administrations’

views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

## **Carbon budgeting**

### ***Section 4: Carbon budgets***

39. *Subsection (1)* of this section places a duty on the Secretary of State to set five-year "carbon budgets", defined as an amount for the net UK carbon account for a given period (a "budgetary period"). The Secretary of State is also placed under a duty to ensure that the net UK carbon account stays within the budget for each period.
40. *Subsection (2)* requires the Secretary of State to set three consecutive carbon budgets for the periods 2008–2012, 2013–2017 and 2018–2022 by 1st June 2009. It also creates a duty to set subsequent carbon budgets at least 1½ 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.

### ***Section 5: Level of carbon budgets***

41. This section sets limits on the levels of certain carbon budgets.
42. *Subsection (1)* sets out the requirement for carbon budgets to be consistent with certain emissions levels in particular years:
  - paragraph (a) requires that the "annual equivalent" of the carbon budget for the carbon budget covering the year 2020 must be at least 26% lower than the 1990 baseline;
  - paragraph (b) requires that the "annual equivalent of the carbon budget" for the carbon budget covering the year 2050 is no more than the level specified in section 1 compared with the 1990 baseline (80% below 1990 levels, unless amended under section 2);
  - paragraph (c) gives the Secretary of State a power to set, by order, further percentage targets or target percentage ranges for years after 2050.
43. *Subsection (2)* provides that the "annual equivalent" of a given carbon budget is the total carbon budget for a period divided by the number of years in that period. *Subsection (3)* provides that an order setting a target percentage or percentage range for a year after 2050 must be made using the affirmative resolution procedure.
44. *Subsection (4)* makes further provision in relation to the cap on the budget which includes the year 2020, as set out in subsection (1)(a). It provides that only carbon dioxide emissions are to be taken in considering the level of the cap. Paragraph (a) provides that only so much of the budget as the Secretary of State considers relates to carbon dioxide emissions should be considered, and paragraph (b) provides that only so much of the 1990 baseline (see section 1(2)) as relates to carbon dioxide should be used as the comparator.

### ***Section 6: Amendment of target percentages***

45. This section sets out when and how the target percentages in section 5 can be amended.
46. *Subsection (1)* gives the Secretary of State the power to amend the target percentage for 2020 (in section 5(1)(a), and any target percentage or percentage range set for a year after 2050 (in section 5(1)(c)).
47. *Subsection (2)* sets out the circumstances in which those percentages can be amended:
  - paragraph (a) allows an amendment if there have been significant developments in scientific knowledge about climate change, in European Community law or policy

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or in international law or policy. For example, this power might be used in the event of a new international treaty on climate change;

- paragraph (b) allows an amendment if a change is made to the range of greenhouse gases covered by the target or emissions from international aviation or international shipping are added to the target.
48. *Subsection (3)* makes special provision on the meaning of “developments in scientific knowledge about climate change”. The first time the Secretary of State amends the target percentage for 2020, he will be able to rely on scientific developments since June 2000 to justify the change; he will not be restricted to considering only scientific developments which have taken place after the Act receives Royal Assent. If the Secretary of State wants to amend a target percentage or percentage range for a year after 2050, he will be allowed to rely only on scientific developments that occur after the percentage or range is set. When making any subsequent amendment to a target percentage or percentage range, the Secretary of State will be able to take into account scientific developments only since the percentage or range was last changed.
49. *Subsection (4)* allows the Secretary of State to repeal section 5(4) when he makes an order amending the target percentage for 2020. It 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.
50. *Subsection (5)* prescribes that orders made under subsection (1) are subject to affirmative resolution procedure.

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

51. This section sets out the procedures that the Secretary of State must follow before amending the 2020 target percentage or a target percentage or percentage range for a year after 2050.
52. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.
53. *Subsections (2) to (7)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views before the three month period has expired, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can only lay the draft order after the three month period has expired;
  - *Subsection (5)* places a duty on the Secretary of State, at the same time as he lays the draft order, to publish a statement that sets out whether and how he has taken account of the devolved administrations’ views;
  - *Subsection (6)* places a duty on the Secretary of State, if amending the 2020 target or any post-2050 target or range in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision;

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- *Subsection (7)* allows the Secretary of State to publish a statement under subsection (5) or (6) (on taking account of the devolved administrations' views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

### ***Section 8: Setting of carbon budgets for budgetary periods***

54. *Subsections (1) and (3)* require the Secretary of State to set carbon budgets using affirmative resolution orders.
55. *Subsection (2)* provides that every carbon budget must be set with a view to meeting the 2050 target, the 2020 target and any percentage target or percentage range for a year after 2050. 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).

### ***Section 9: Consultation on carbon budgets***

56. This section sets out the procedures that the Secretary of State must follow before setting a carbon budget.
57. *Subsection (1)* places a duty on the Secretary of State to take into account advice from the Committee on Climate Change (as provided for in section 34). The Secretary of State also has to consider any views of the devolved administrations.
58. *Subsections (2) to (5)* set out the stages of the process:
  - *Subsection (2)* provides that the devolved administrations have three months to send the Secretary of State their views. If they send their views within the three month period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he may lay the draft order only after the three month period has expired;
  - *Subsections (3) to (5)* place a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views. If the budget is not set at the level recommended by the Committee, the Secretary of State must publish a statement explaining why not. The Secretary of State must publish the statements when he lays the order, in any way he thinks is appropriate.

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

59. 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 the Secretary of State on those decisions.
60. *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.
61. Subsections (3) to (6) make provision in relation to the matter in subsection (2)(i), which requires the Secretary of State to take into account "the estimated amount of reportable emissions from international aviation and international shipping" for the budgetary period or periods under consideration.
62. *Subsection (3)* defines the term "the estimated amount of reportable emissions from international aviation and international shipping" as meaning the aggregate amount of emissions of all greenhouse gases from those sectors which the Secretary of State

or the Committee estimates that the UK will be required to report in accordance with international carbon reporting practice (see section 94). *Subsection (4)* allows the Secretary of State and the Committee to use any reasonable method or methods they choose to estimate those emissions.

63. *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)* makes it clear that section 30(1), which provides that emissions from international aviation and international shipping do not count as emissions from sources in the UK, does not prevent the Secretary of State and the Committee from taking them into account in relation to carbon budgets.

## **Limit on the use of carbon units**

### ***Section 11: Limit on the use of carbon units***

64. This section places a duty on the Secretary of State to set a limit on the “net amount of carbon units” that can be credited to the net UK carbon account in each budgetary period. *Subsection (3)* provides that the limit for each budgetary period must be set 18 months before the beginning of each period; exceptionally, the limit for the first budget must be set no later than 1st June 2009 (the date before which the first budget must be set – see section 4).
65. *Subsection (2)* defines the term “net amount of carbon units” to mean the amount of carbon units credited to the net UK carbon account in accordance with regulations made under section 27, minus the amount of units credited to the net UK carbon account under those regulations. See the notes on section 27 for more information on the net UK carbon account and regulations on the crediting and debiting of carbon units.
66. *Subsection (4)* provides that the limit must be set by order (a type of statutory instrument) and *subsection (6)* provides that the order is subject to the approval of both Houses of Parliament under the affirmative resolution procedure.
67. *Subsection (5)* allows the Secretary of State to exclude specified descriptions of units from the calculation of the limit. The Secretary of State must describe the units to be excluded in the order setting the limit.
68. *Subsection (7)* requires the Secretary of State to take into account the Committee on Climate Change’s advice under section 34(1)(b) (advice on the extent to which a budget should be met by reducing domestic emissions and by the use of carbon units), and to consult the devolved administrations, before setting the limit.

## **Indicative annual ranges**

### ***Section 12: Duty to provide indicative annual ranges for net UK carbon account***

69. This section places a duty on the Secretary of State to lay a report before Parliament setting out an “indicative annual range” for the net UK carbon account for each year of a budgetary period. 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.
70. *Subsection (2)* defines an “indicative annual range” as the range within which the Secretary of State expects the amount of the net UK carbon account for the year in question to fall.
71. *Subsection (3)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation

to the indicative annual ranges set out in the report. *Subsection (4)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

## **Proposals and policies for meeting carbon budgets**

### ***Section 13: Duty to prepare proposals and policies for meeting carbon budgets***

72. This section places a duty on the Secretary of State to prepare such proposals and policies as the Secretary of State considers will enable carbon budgets that have been set to be met. The proposals and policies must also be prepared with a view to meeting the target for 2050 (under section 1) and any target set for later years (under section 5(1)(c)).
73. *Subsection (3)* imposes a requirement that the proposals and policies, taken as a whole, must contribute to sustainable development. *Subsection (4)* allows the Secretary of State to take into account proposals and policies which he considers may be prepared by the other national authorities.

### ***Section 14: Duty to report on proposals and policies for meeting carbon budgets***

74. This section places a duty on the Secretary of State to lay a report before Parliament setting out proposals and policies for meeting the current and future carbon budgets. This section will ensure that Parliament is clear about how the Government intends to meet its obligations under the Act.
75. *Subsection (2)* requires the report to set out the Secretary of State's current proposals and policies for meeting carbon budgets (which must be prepared under section 13). The report must also explain how the proposals and policies affect different sectors of the economy (*subsection (3)*).
76. *Subsection (4)* provides that the report must set out what implications the proposals and policies in the report have as regards the use that will be made of carbon units in meeting the carbon budgets covered by the report. 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.
77. *Subsection (5)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation to any part of the report covering their proposals and policies. *Subsection (6)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

### ***Section 15: Duty to have regard to need for UK domestic action on climate change***

78. *Subsection (1)* of this section requires the Secretary of State to have regard to the need for "UK domestic action on climate change" when exercising any functions under Part 1 of the Act involving consideration of how to meet the 2050 target (under section 1) and any carbon budget. 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.
79. *Subsection (2)* defines the term "UK domestic action on climate change" as covering both reductions in UK emissions of targeted greenhouse gases and increases in UK removals of those gases. The terms "UK emissions" and "UK removals" are defined in section 29 – see the commentary on that section for more detail.

## **Determination whether objectives met**

### ***Section 16: Annual statement of UK emissions***

80. This section places a duty on the Secretary of State to lay a statement before Parliament on UK emissions in respect of every year from 2008 onwards. Finalised figures for UK emissions, including a full inventory report, are currently produced, and submitted to the EU by the Government on 15th March each year, 14½ months after the end of calendar year in question. *Subsection (10)* therefore provides that the report under this section must be laid no later than the 31st March in the second year after the year to which it relates (the report for 2008 must be laid by 31st March 2010).
81. *Subsections (2) and (3)* specify that the statement must set out UK emissions, UK removals and net UK emissions. These terms are defined in section 29; they include emissions of all greenhouse gases (whether or not they are “targeted greenhouse gases” included in the 2050 and other targets), and the statement must show the total figures for emissions of each gas and also aggregate figures. The statement must also explain how the figures were measured or calculated, and must say whether they represent an increase or decrease when compared with the figures for the previous year. See, also, section 82, which repeals a similar reporting requirement under section 2(b) of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#).
82. *Subsection (4)* provides that where there has been a change in the international method of calculating emissions levels that requires the adjustment of emissions levels in earlier years in the budgetary period, then the report should set out the adjusted figures.
83. *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.
84. *Subsection (6)* specifies that the report must set out the cumulative total of carbon units (as defined in section 26(1)) credited to or debited from the net UK carbon account for the year, and give details of the number and type of those carbon units. *Subsection (7)* provides that the report must also state the net UK carbon account for the year.
85. *Subsection (8)* specifies that the statement must set out the amount of net UK emissions of carbon dioxide for the year 1990, and the amount of net UK emissions for each of the other targeted greenhouse gases in their base years. The report must also state the baseline amount for greenhouse gases which are not “targeted”; the baseline amount may be equal to emissions of the gas in 1990 or another year, or average net UK emissions for a number of years (*subsection (9)*).
86. *Subsection (10)* gives the date by which the statement must be laid before Parliament and *subsection (11)* requires the Secretary of State to send a copy of the statement to each of the devolved administrations.

### ***Section 17: Powers to carry amounts from one budgetary period to another***

87. This section provides a power for the Secretary of State to “bank” and “borrow” emissions between budgetary periods.
88. *Subsection (1)* allows the Secretary of State to “borrow” part of the next budget. In the language of the Act, an amount from the next budget is “carried back” to the budget preceding it. Where this power is used, the next budget (which will already have been set by order) is reduced by the amount that has been borrowed.



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89. *Subsection (2)* limits the amount that can be borrowed under subsection (1) to no more than 1% of the next budget.
90. *Subsection (3)* allows the Secretary of State to carry forward any part of the carbon budget that exceeds the net UK carbon account for that period (i.e. to “bank” a budget surplus, but not necessarily all of it). The banked amount is added to the next budget.
91. *Subsection (4)* requires the Secretary of State to obtain the advice of the Committee on Climate Change, and take this advice into account, before exercising powers under this section (that is, before banking or borrowing). The Secretary of State is also obliged to consult the devolved administrations before banking or borrowing.
92. *Subsection (5)* places a back-stop on when the banking and borrowing powers can be used. A decision to bank or borrow must be taken no later than 31st May in the second year after the earlier budget period ends (so, for the 2008–2012 budget, no later than 31st May 2014). This is also the date on which a assessment is made of whether the budget has been met (see section 18).

***Section 18: Final statement for budgetary period***

93. This section places a duty on the Secretary of State to report the final figures for the net UK carbon account during a budgetary period; these figures are used to determine whether a budget has been met.
94. *Subsections (2) to (6)* place a duty on the Secretary of State to report:
- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for each targeted greenhouse gas (each of the gases included in the target – see section 24). The final amounts may differ slightly from the sum of the emissions figures in the annual reports for the budgetary period because this statement will take account of any changes in the international methodology used to work out the 1990 baseline and emissions for each year;
  - under *subsection (3)*, the final amount of carbon units that have been credited to or debited from the UK carbon account in that budgetary period, and details of the number and type of those units;
  - under *subsection (4)*, the final amount of the net UK carbon account for the budgetary period;
  - under *subsection (5)*, whether the Secretary of State has decided to borrow from the next budget (using the power in section 17(1)) and, if so, the amount borrowed;
  - under *subsection (6)*, the amount of the budget for the period, which will be the level of the budget as originally set, subject to any banking or borrowing under section 17 and any alteration of the budget under section 21.
95. *Subsection (7)* provides that the determination of whether the budget has been met should be made by reference to the figures in the statement.
96. *Subsection (8)* provides that if the budget has not been met, then the statement must include an explanation of the reasons why not.
97. *Subsection (9)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than the 31st May in the second year after the end of a budgetary period (so, for the 2008–2012 budget, no later than 31st May 2014). *Subsection (10)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

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

98. This section places a duty on the Secretary of State to lay a report before Parliament setting out proposals and policies to compensate in future periods for excess emissions, if a report under section 18 shows that the net UK carbon account has exceeded the carbon budget for a period.
99. *Subsection (2)* places the Secretary of State under a duty to consult the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department in relation to any part of the report covering their proposals and policies. *Subsection (3)* requires the Secretary of State to send a copy of the report to each of the devolved administrations.

***Section 20: Final statement for 2050***

100. This section places a duty on the Secretary of State to report to Parliament the final figures for the net UK carbon account in 2050.
101. *Subsections (2) to (4)* place a duty on the Secretary of State to report:
- under *subsection (2)*, the final amounts of UK emissions, UK removals and net UK emissions for 2050 for each targeted greenhouse gas;
  - under *subsection (3)*, the amount of carbon units that have been credited to and debited from the net UK carbon account, and details of the number and type of those units;
  - under *subsection (4)*, the amount of the net UK carbon account for 2050.
102. *Subsection (5)* provides that the question of whether the 2050 target has been met is to be answered by referring to the figures in the statement.
103. *Subsection (6)* provides that if the budget has not been met, the statement must explain the reasons why not.
104. *Subsection (7)* sets a back-stop, requiring the Secretary of State to lay the statement before Parliament no later than 31st May 2052. *Subsection (8)* requires the Secretary of State to send a copy of the statement to the devolved administrations.

**Alteration of budgets or budgetary periods**

***Section 21: Alteration of carbon budgets***

105. This section gives the Secretary of State a power, using an affirmative resolution statutory instrument, to amend the level of carbon budgets in certain circumstances. The section also limits the conditions in which orders setting carbon budgets can be revoked.
106. *Subsection (1)* prevents an order setting a carbon budget being revoked after the final date by which it had to be set in accordance with section 4(2).
107. *Subsection (2)* gives the Secretary of State the power to amend budgets, but limits the circumstances in which such an order may be made. A budget may be amended only if there have been significant changes in the factors on the basis of which the decision to set, or previously amend, the budget was made.
108. *Subsection (3)* limits the circumstances in which an order amending a budget after the start of the relevant budgetary period can be made. A budget may be amended only after the start of the budgetary period if there have been significant changes, since the budget period began, in the factors on the basis of which the decision to set or previously amend the budget was made. This is a more stringent test than in subsection (2) because there will typically have been less time for a significant change to happen.

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109. *Subsection (4)* stipulates that the level of a carbon budget may not be amended after the budgetary period has ended.
110. *Subsection (5)* requires any order amending budgets to follow the affirmative resolution order procedure.

### ***Section 22: Consultation on alteration of carbon budgets***

111. This section sets out the procedures that the Secretary of State must follow before altering a carbon budget.
112. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. The Secretary of State also has to consider any views of the devolved administrations.
113. *Subsections (2) to (8)* set out the stages of the process:
- *Subsection (2)* places a duty on the Committee on Climate Change to send a copy of its advice to each of the devolved administrations;
  - *Subsection (3)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate;
  - *Subsection (4) and (5)* provide that the devolved administrations have one month to send the Secretary of State their views if the budget period has already begun, and three months if the budget period has not started yet. If the devolved administrations send their views within the relevant period, the Secretary of State can lay a draft order before Parliament immediately after he has considered them; otherwise, he can lay the draft order only after the relevant period has expired;
  - *Subsection (6)* places a duty on the Secretary of State to publish a statement that sets out whether and how he has taken account of the devolved administrations' views;
  - *Subsection (7)* places a duty on the Secretary of State, if altering a carbon budget in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision;
  - *Subsection (8)* allows the Secretary of State to publish a statement under subsection (6) or (7) (on taking account of the devolved administrations' views or on any deviation from the Committee's advice) in any way he thinks is appropriate.

### ***Section 23: Alteration of budgetary periods***

114. This section allows, in certain circumstances, the duration of budgetary periods and their start and end dates to be changed by affirmative resolution statutory instrument.
115. *Subsection (2)* prescribes the circumstances when this power can be exercised. These are when a change to the budgetary periods is needed to keep them in line with similar periods under European or international agreements to which the UK is a party. *Subsection (3)* prevents alterations that would leave a period of time outside the carbon budget system.
116. *Subsection (4)* allows an order under subsection (1) to make consequential amendments to other parts of the Act in order to ensure coherence of the provisions.
117. *Subsection (5)* requires the Secretary of State to consult the devolved administrations before making such an order.

## **Targeted greenhouse gases**

### ***Section 24: Targeted greenhouse gases***

118. This section defines the term “targeted greenhouse gas”, which is the term used to describe the gases covered by the targets and budgets in the Act.
119. *Subsection (1)* defines the term “targeted greenhouse gas” as meaning carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF<sub>6</sub>) and any other greenhouse gas added later by the Secretary of State by order. The term “greenhouse gas” is defined in section 92 by reference to a list of gases (which, for the time being, is identical).
120. *Subsection (7)* provides that an order adding a new gas or gases must be made using the affirmative resolution procedure. *Subsection (2)* allows the Secretary of State to make any necessary consequential amendments to the Act when he makes the order.
121. *Subsection (3)* requires the Secretary of State to consult the devolved administrations, and also to obtain and consider advice from the Committee on Climate Change, before adding a new gas or gases to the list.
122. *Subsection (4)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
123. *Subsection (5)* places a duty on the Secretary of State, if amending the list of targeted greenhouse gases in a way that differs from the Committee’s recommendations, to publish a statement setting out the reasons for that decision. *Subsection (6)* allows the Secretary of State to publish this statement in any way he thinks is appropriate.

### ***Section 25: Base years for targeted greenhouse gases other than CO<sub>2</sub>***

124. 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.
125. *Subsection (1)* contains a table showing the base years for targeted greenhouse gases other than carbon dioxide. Hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride have a base year of 1995, which is the base year used for UK emissions of those gases under the Kyoto Protocol.
126. *Subsection (2)* allows the Secretary of State to amend the table, by order, to specify the base year for any new gas designated as a targeted greenhouse gases in accordance with section 24. It also allows the Secretary of State to amend the base years of the gases which are already in the table in subsection (1).
127. *Subsection (3)* provides that the Secretary of State may either designate a single base year or may designate a number of base years and use the average of the emissions of the gas in those years.
128. *Subsection (4)* restricts the use of the power to amend the base years that are set out in the table in subsection (1). 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.
129. *Subsection (5)* requires the Secretary of State to consult the devolved administrations, and also to obtain and consider advice from the Committee on Climate Change, before making an order designating a base year or years.

130. *Subsection (6)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
131. *Subsection (7)* places a duty on the Secretary of State, if setting a base year in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision. *Subsection (8)* allows the Secretary of State to publish this statement in any way he thinks is appropriate.
132. *Subsection (9)* provides that an order under subsection (2) must be made using the affirmative resolution procedure.

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

### ***Section 26: Carbon units and carbon accounting***

133. 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.
134. *Subsection (1)* allows the Secretary of State to make regulations setting out specifically what "carbon units" can be used for carbon accounting purposes. "Carbon units" in the regulations can only be:
- units representing a reduction in the amount of greenhouse gas emissions;
  - units representing the removal of greenhouse gas from the atmosphere; or
  - units representing greenhouse gas emissions which are allowed under a scheme or arrangement which limits total emissions of greenhouse gases (for example, under certain kinds of emissions trading scheme).
135. *Subsection (2)* allows the Secretary of State to make regulations which contain details of how carbon units should be registered and kept track of, and allows him to establish and maintain accounts containing carbon units. Carbon units can be moved between accounts. The intention is to establish an accounting system broadly similar to, 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.
136. *Subsection (3)* gives more detail of what the regulations can say. The Secretary of State is allowed to appoint a body to operate the accounting scheme, to set up a new body for that purpose, to make provision allowing him to give guidance and directions to the body and to require users of the scheme to pay charges towards the cost of operating the scheme.
137. *Subsection (4)* provides that if an existing body is appointed to operate the accounting scheme, then the Secretary of State can make any necessary amendments to relevant enactments.
138. The procedures relating to the regulations are set out in section 28.

### ***Section 27: Net UK carbon account***

139. *Subsection (1)* defines the term "net UK carbon account" for a budgetary period as being net UK emissions (as defined in section 29(1)(c)) as decreased by a number of carbon units to be credited to the account and increased by a number of carbon units to be debited from the account in accordance with regulations made by the Secretary of State.

*These notes refer to the Climate Change Act 2008 (c.27)  
which received Royal Assent on 26th November 2008*

140. *Subsection (2)* provides that the net amount of carbon units credited to the net UK carbon account must not exceed the limit for the period set by order under section 11. See the notes on section 11 for details of how the “net amount of carbon units” is calculated.
141. *Subsection (3)* requires the Secretary of State to make regulations setting out the circumstances in which carbon units are to be credited to and debited from the net UK carbon account, and the manner in which it is to be done. For example, the regulations could provide that units purchased through the EU Emissions Trading Scheme can be treated as units to be credited to the net UK carbon account.
142. *Subsection (4)* provides that where carbon units are to be credited to the net UK carbon account, then provision must be made so that they are no longer available to offset other greenhouse gases: they must be put beyond use so that they cannot be double-counted.
143. *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.

***Section 28: Procedure for regulations under section 26 or 27***

144. This section sets out the procedure that must be followed when carbon accounting regulations are made under section 26 or section 27.
145. *Subsection (2)* provides that the affirmative resolution procedure must be used in the following cases:
- for the first set of carbon accounting regulations;
  - if the regulations specify a new kind of carbon unit;
  - if the regulations alter the value of a carbon unit;
  - if the regulations modify primary legislation.
146. *Subsection (3)* provides that the negative resolution procedure applies in all other situations.
147. *Subsection (4)* requires the Secretary of State to consult the devolved administrations before laying or making the regulations (depending on which Parliamentary process is being used).
148. *Subsection (5)* requires the Secretary of State to consult the Committee on Climate Change on the first set of regulations and whenever subsequent regulations specify a new kind of carbon unit or alter the value of a carbon unit.

**Other supplementary provisions**

***Section 29: UK emissions and removals of greenhouse gases***

149. This section defines the terms “UK emissions”, “UK removals” and “net UK emissions” used in Part 1 of the Act. “UK emissions” are emissions of gases from sources in the United Kingdom; “UK removals” are removals of gases from the atmosphere as a result of land use, land-use change or forestry; “net UK emissions” of a gas are calculated by subtracting the amount of UK removals of the gas from the amount of UK emissions of the gas.

150. *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).

***Section 30: Emissions from international aviation or international shipping***

151. This section makes provision about greenhouse gas emissions from international aviation or international shipping. *Subsection (1)* provides that those emissions do not count as emissions from sources in the United Kingdom (so they do not count as “UK emissions” under section 29(1)(a)) for the targets and budgeting in Part 1, unless regulations make provision for them to do so.
152. 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 – see the notes on section 10 for more details.
153. *Subsection (2)* allows the Secretary of State to define in more detail what is meant by “international aviation or shipping” by affirmative resolution order.
154. *Subsection (3)* requires the Secretary of State, by 31st December 2012, either:
- to make provision by regulations setting out the circumstances and extent to which emissions from international aviation or international are to be regarded as being emissions from sources in the United Kingdom. Under the mechanisms in the Act, any emissions regarded as being from sources in the United Kingdom are “UK emissions” (see section 29(1)(a)) and count towards calculating and meeting the 2050 target and the carbon budgets, or
  - to lay before Parliament a report saying why he has not made any regulations.
155. *Subsection (4)* makes it clear that even after the five-year period has expired the Secretary of State is still allowed to make regulations setting out the circumstances and extent to which emissions from international aviation or international shipping are to be regarded as being from sources in the United Kingdom.
156. *Subsection (5)* provides that regulations under this section can only deal with emissions of “targeted greenhouse gases” (see section 24). It also provides that the regulations can, in particular, provide that emissions from international aviation or international shipping will only count as UK emissions if they relate to the transport of passengers or goods to or from the United Kingdom.
157. *Subsection (6)* specifically allows the Secretary of State to make provision in the regulations about which time periods should be used when calculating UK emissions from international aviation and international shipping, and how emissions in the base year for the gas should be calculated. *Subsection (7)* allows the Secretary of State to assign a different base year for this purpose, or to assign a number of base years and to treat the average amount of emissions in those years as emissions in the base year. *Subsection (8)* explains that the base year for carbon dioxide is 1990 (referred to as the “1990 baseline” in section 1).

***Section 31: Procedure for regulations under section 30***

158. This section sets out the procedures that the Secretary of State must follow before making regulations on emissions from international aviation or international shipping under section 30.
159. *Subsection (1)* places a duty on the Secretary of State to obtain and consider advice from the Committee on Climate Change. *Subsection (2)* requires the Committee on Climate Change, as soon as is reasonably practicable after giving its advice to the Secretary of State, to publish that advice in any way it thinks is appropriate.
160. *Subsection (3)* places a duty on the Secretary of State, if making regulations in a way that differs from the Committee's recommendations, to publish a statement setting out the reasons for that decision. The statement may be published in any way the Secretary of State thinks is appropriate (*subsection (4)*).
161. *Subsection (5)* provides that regulations made under section 30 are subject to the affirmative resolution procedure.