

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

# CLIMATE CHANGE ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **The Committee**

##### *Section 32 and Schedule 1: The Committee on Climate Change*

162. This section establishes a new, independent, non-departmental public body, the Committee on Climate Change (in Welsh, y Pwyllgor ar Newid Hinsawdd) and introduces Schedule 1.

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

163. *Schedule 1* makes further provision about the Committee, including provision on its membership, staff, procedures and other administrative requirements.
164. *Paragraphs 1 and 2* make provision in respect of the membership of the Committee on Climate Change. The Committee will have a chair and between five and eight members (one of whom may be appointed as the deputy chair) who will be appointed jointly by the Secretary of State the Scottish Ministers, the Welsh Ministers and the relevant Northern Ireland department (together, the “national authorities”) after consultation with the chairperson. The Secretary of State may, with the consent of the other national authorities, amend the number of members by negative resolution order. Paragraph 1(3) gives a list, in alphabetical order, of the areas of experience and knowledge that are desirable in the Committee’s membership, taken as a whole.
165. *Paragraph 3* provides that a person will be a member of the Committee on the terms which are set upon appointment (which will include terms about the length of time the person is to serve on the Committee). *Paragraphs 4 to 7* make provision about how members can resign, the situations in which they can be removed from their posts, and allows the reappointment of members.
166. *Paragraphs 8 to 10* allow the national authorities to pay remuneration and allowances to members, and allow the national authorities to provide pensions for members or to make payments towards the provision of pensions. They also allow payments of compensation to outgoing members in special circumstances.
167. *Paragraphs 11 to 14* relate to the Committee’s employees. The Committee must appoint a chief executive who has been approved by the national authorities. It may also appoint other employees. These paragraphs make provision about employees’ pay and pensions, and allow employees to be pensionable under the Principal Civil Service Pension Scheme.
168. *Paragraphs 15 to 21* make provision about how the Committee may operate. The Committee can set up sub-committees, which can include people who are not members of the Committee (and they may be paid remuneration and allowances).

169. *Paragraph 16* establishes a sub-committee of the Committee to be known as the Adaptation Sub-Committee or, in Welsh, as yr Is-bwyllgor Addasu; it is referred to in the rest of paragraph 16 as “the ASC”. The ASC will have a chair and not less than 5 other members appointed by the national authorities. Before appointing the ASC chair, the national authorities must consult the chair of the Committee; the ASC chair must be consulted before ASC members are appointed. Paragraph 16(4) provides that the ASC’s role is to provide the Committee with such advice, analysis, information or other assistance as it may require in exercising its functions under sections 38(1)(c) (advice on adaptation requested by national authorities), 57 (advice on report on impact of climate change) and 59 (reporting on progress in connection with adaptation).
170. The Committee is allowed to regulate its own procedure (including quorum) and sub-committee procedures. The Committee is required to publish the minutes of its meetings in any manner it considers appropriate. The Committee may authorise a sub-committee, member or employee to exercise its functions.
171. *Paragraphs 22 to 25* require the Committee to prepare annual reports and annual statements of accounts; reports and accounts must be laid before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The Committee’s accounts will be audited by the National Audit Office. The Committee is placed under a duty to keep proper records, and must provide information to the national authorities on request.
172. *Paragraph 26* provides that the Committee is not required to publish anything it is prohibited from publishing or that it would not be required to publish under the [Freedom of Information Act 2000 \(c.36\)](#) or the [Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#).
173. *Paragraph 27* provides that the Committee is not a Crown body. It will be a statutory non-departmental public body, and its employees will not be civil servants.
174. *Paragraphs 28 to 35* make amendments to, and provision in relation to, several enactments relating to public bodies; these have several effects, including that the body is subject to freedom of information laws, that the chair and members cannot be members of Parliament, and that the Committee’s activities can be subject to investigation by the Scottish Parliament and the appropriate Parliamentary ombudsman.

## **Functions of the Committee**

### ***Section 33: Advice on level of 2050 target***

175. 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 (2)* requires the Committee to provide the reasons for its advice under this section, and *subsection (3)* requires the Committee to provide its advice no later than 1st December 2008.
176. *Subsection (4)* requires the Committee to send a copy of the report to each of the devolved administrations. *Subsection (5)* 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.

### ***Section 34: Advice in connection with carbon budgets***

177. 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.
178. *Subsection (1)* requires the Committee to give advice on carbon budgets. The Committee must advise on the levels at which carbon budgets should be set and on the extent to which budgets should be met by reducing the level of net UK emissions or by the use of carbon units credited to the net UK carbon account. The Committee

must advise on the contributions towards meeting carbon budgets that should be made by sectors of the economy covered by trading schemes (taken as a whole) and by other sectors (taken as a whole). The Committee is also required to advise on sectors of the economy in which there are particular opportunities for contributions to be made towards meeting carbon budgets through reductions in emissions of targeted greenhouse gases.

179. *Subsection (2)* gives the Committee an advisory duty that only applies to the 2008–2012 budget period. The Committee is required to advise the Secretary of State on whether its advice on the level of the 2008 –2012 budget is consistent with meeting a separate target of reducing emissions to an annual equivalent (as defined in section 5(2)) of 20% below the 1990 baseline, and to set out what the costs and benefits would be of setting a budget consistent with that target.
180. *Subsection (3)* requires the Committee to set out the reasons for its advice and *subsection (4)* makes provision on the timing of the advice.
181. *Subsection (5)* imposes upon the Committee a duty to send copies of the advice to the devolved administrations at the same time as it gives its advice to the Secretary of State. *Subsection (6)* gives the Committee a duty to publish its advice in any manner it considers appropriate.

### ***Section 35: Advice on emissions from international aviation and international shipping***

182. *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.
183. *Subsection (2)* provides that the duty does not apply if, and to the extent that, the Secretary of State has already made regulations under section 30 which provide for emissions from international aviation and international shipping to be treated as UK emissions.
184. *Subsection (3)* requires the Committee on Climate Change to provide reasons with its advice. *Subsection (4)* makes provision on the timing of the advice, requiring the Committee on Climate Change to give its first advice under this section when it advises on the carbon budget for 2023 –2027 (which must be given by 31st December 2010, as calculated in accordance with sections 34(4)(b) and 4(2)(b)). Subsequent advice must be given at the same time as its advice on carbon budgets.
185. *Subsection (5)* requires the Committee on Climate Change to send a copy of its advice to the devolved administrations, and *subsection (6)* requires it to publish its advice, in such manner as it considers appropriate, as soon as is reasonably practicable after it has given it to the Secretary of State.

### ***Section 36: Reports on progress***

186. *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.
187. *Subsection (2)* applies to progress reports in the second year after the end of each budget period (for example, for the 2008–2012 budget period, in 2014; the final figures for a budget period are not available until the second year after it ends). In those reports, the Committee is required to give its views on the manner in which the budget was or

was not met, and its views on the action taken to reduce net UK emissions during the budgetary period.

188. *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 (4)* provides that each subsequent report under this section, other than the one in the second year after the end of a budgetary period, must be laid by 30th June in the year in which it is made.
189. *Subsection (5)* requires that each report in the second year after the end of a budgetary period must be laid by 15th July in the year in which it is made.
190. *Subsections (6) to (8)* allow the Secretary of State to amend the timing of the report by negative resolution order after consulting the devolved administrations.
191. See also section 59, which requires the Committee to provide progress reports on the implementation of the UK Government's adaptation programmes under section 58. See the notes on section 59 for more detail on the timing of those progress reports.

### ***Section 37: Response to Committee's reports on progress***

192. This section places a duty on the Secretary of State to lay before Parliament a response to the points raised by each of the Committee on Climate Change's annual progress reports.
193. *Subsection (2)* requires the Secretary of State to consult the devolved administrations on a draft of the response. *Subsection (3)* provides that the response to the Committee's first report must be laid no later than 15th January 2010. *Subsection (4)* provides that each subsequent report must be laid by 15th October in the year the Committee's report was made.
194. *Subsections (5) and (6)* allow the Secretary of State to change the deadline by negative resolution order. 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).
195. This section will also require the Secretary of State to respond to any points raised by the Committee in its progress reports under section 59 in relation to progress made in implementing the adaptation programmes under section 58. See the notes on section 59 on the timing of those reports. Also of relevance is section 82, which repeals a reporting requirement under section 2(a) of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#).

### ***Section 38: Duty to provide advice or other assistance on request***

196. *Subsection (1)* requires the Committee on Climate Change to provide advice, analysis, information or other assistance, when requested to do so, to the Secretary of State, the Scottish Ministers, the Welsh Ministers or the relevant Northern Ireland department (together, the "national authorities"). Any request can be made if it relates to an authority's functions under the Act, the progress that is being made towards meeting objectives set under the Act, to adaptation to climate change or to climate change generally.
197. *Subsection (2)* gives specific examples of what may be required of the Committee, including advice on caps on activities under trading schemes or assistance in the preparation of statistics.
198. *Subsection (3)* gives the Committee a duty to provide a devolved administration (not the Secretary of State), when requested to do so, with advice, analysis, information or other assistance on a target, budget or similar requirement it has adopted (whether or not the target, budget or similar requirement is contained in legislation) or which has been

imposed on it. For example, the Committee would, if requested to do so, be required to advise the Scottish Ministers in relation to any target adopted under an Act of the Scottish Parliament.

## **Supplementary provisions**

### ***Section 39: General ancillary powers***

199. *Subsection (1)* gives the Committee on Climate Change the power to do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions. *Subsections (2) and (3)* set out examples to illustrate the scope of the power. Ancillary powers are not freestanding; they may be used only to facilitate the exercise of formal functions. *Subsection (4)* requires the Committee to have regard to the desirability of involving the public in the exercise of its functions.

### ***Section 40: Grants to the Committee***

200. 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).

### ***Section 41: Powers to give guidance***

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

- *Subsection (1)* provides that any guidance on the Committee’s functions generally or its functions under Schedule 1 is to be given by the national authorities (and this means that such guidance must be given jointly by all the national authorities: see section 95(2));
- *Subsection (2)* provides that any guidance given on the Committee’s functions under Part 1 of the Act (for example, the function of advising on an amendment of the 2050 target), on its advice on the level of the 2050 target and on carbon budgets under sections 33 and 34, in connection with international aviation and international shipping under section 35, on the report on the impact of climate change under section 57 or on its duty to make progress reports under section 36 or 59 is to be given by the Secretary of State. Unless he is only issuing guidance in relation to the Committee’s functions under section 59, the Secretary of State must consult the devolved administrations;

*Subsection (3)* provides that any guidance given on the Committee’s duty to provide advice or other assistance under section 38 or on trading schemes under section 48 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the guidance must be given jointly.

### ***Section 42: Powers to give directions***

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

- *Subsection (1)* provides that any direction on the Committee’s functions generally or its functions under Schedule 1 is to be given (jointly) by the national authorities;

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- *Subsection (2)* provides that any direction given on the Committee's functions under Part 1 of the Act (for example, the function of advising on an amendment of the 2050 target), on its advice on the level of the 2050 target and on carbon budgets under sections 33 and 34, in connection with international aviation and international shipping under section 35, on the report on the impact of climate change under section 57 or on its duty to make progress reports under section 36 or 59 is to be given by the Secretary of State. Unless he is only issuing directions in relation to the Committee's functions under section 59, the Secretary of State must consult the devolved administrations;
- *Subsection (3)* provides that any direction given on the Committee's duty to provide advice and other assistance under section 38 or on trading schemes under section 48 is to be given by the national authority seeking the advice or other assistance. If two or more national authorities are seeking the advice or other assistance, then the directions must be given jointly.