

Climate Change (Emissions Reduction Targets) (Scotland) Bill

Explanatory Notes

Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Climate Change (Emissions Reduction Targets) (Scotland) Bill ("the Bill"), introduced in the Scottish Parliament on 23 May 2018.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 30–FM);
 - a Policy Memorandum (SP Bill 30–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 30–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.
5. In these Notes:
"the 2009 Act" means the Climate Change (Scotland) Act 2009,

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“baseline” has the meaning given by section 11(1) (the baseline) of the 2009 Act,

“emissions reduction targets” has the meaning given in section 98 (interpretation) of the 2009 Act (as amended by section 20(4) of the Bill),

“net Scottish emissions account” has the meaning given by section 13(1) (the net Scottish emissions account) of the 2009 Act,

“net-zero emissions target” has the meaning given by section A1(1) (the net-zero emissions target) of the 2009 Act,

“net-zero emissions target year” has the meaning given by section A1(2) of the 2009 Act,

“relevant body” has the meaning given by section 20A (the relevant body) of the 2009 Act (inserted by paragraph 7 of the schedule to the Bill). Accordingly, where no order has been made under section 24(1) of the 2009 Act, it means the UK Committee on Climate Change established under section 32 of the Climate Change Act 2008, and

“target-setting criteria” means the matters mentioned in section 2B(1) (the target-setting criteria) of the 2009 Act (inserted by section 5 of the Bill).

The Bill

Summary and Background

6. The Bill amends the Climate Change (Scotland) Act 2009 (“the 2009 Act”) to make provision setting targets for the reduction of greenhouse gases and to make provision about advice, plans and reports in relation to those targets. It should be read together with the 2009 Act with most of the Bill’s provisions inserting, amending or repealing text in that principal Act, the 2009 Act. For example, the regulation-making powers inserted into the 2009 Act by the Bill will be governed by and interpreted in accordance with the 2009 Act (section 96 of the 2009 Act covers subordinate legislation).

7. The Bill comprises:

Part 1 — Emissions reduction targets,

Part 2 — Emissions accounting,

Part 3 — Reporting and planning duties,

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Part 4 — Minor and consequential modifications,

Part 5 — Final provisions.

8. Part 1 makes provision in relation to emission reduction targets. In particular, it makes provision for the setting of a net-zero emissions target by virtue of the conferral of a power on the Scottish Ministers to, by regulations, specify the year for which the net-zero emissions target will apply. This Part also increases to 90% the emissions reduction target for 2050 (up from 80%), increases to 56% the emissions reduction target for 2020 (up from 42%), and sets new emissions reduction targets for 2030 and 2040 (of 66% and 78% respectively). It also makes provision setting annual targets for every other year between 2020 and 2050. In addition, for reporting purposes only, it establishes new annual targets for 2017, 2018 and 2019.

9. Part 2 makes provision in relation to emissions accounting. In particular, it imposes a new restriction that carbon units surrendered as a result of the operation of an emissions trading scheme may not be credited or debited from a net Scottish emissions account for a period after 2016. Another new restriction is that the amount of carbon units purchased by the Scottish Ministers that may be credited to a net Scottish emissions account is zero. These new restrictions can only be disapplied to the extent that regulations subject to the affirmative procedure provide otherwise. This Part also adjusts the way in which international carbon reporting practice is applied for the purposes of assessing and reporting under a new section 33 of the 2009 Act.

10. Part 3 makes provision in relation to reporting and planning duties. In particular, it replaces the previous annual reporting requirements in relation to emissions with new reporting requirements. It also replaces requirements in relation to reports on proposals and policies with a new requirement to lay before the Scottish Parliament a 'climate change plan' every five years and to also lay reports, each relevant year, assessing the progress towards implementing the proposals and policies contained in each substantive chapter of the most recent plan.

11. Part 4 makes minor and consequential modifications to the 2009 Act. Part 5 makes provision in relation to ancillary matters, commencement and the short title.

Commentary on sections

Part 1 - Emissions reduction targets

The net-zero emissions target

Section 1 – Net-zero emissions target

12. Section 1 inserts a new section A1 (net-zero emissions target) into the 2009 Act. The following paragraphs refer to the subsections of new section A1.

13. Subsection (1) imposes a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the net-zero emission target year is at least 100% lower than the baseline. This target is known as the “net-zero emissions target”.

14. Subsection (2) confers a power on the Scottish Ministers to, by regulations, specify the year in which the net-zero emissions target is to be met. The year is known as the “net-zero emissions target year”. The regulations are subject to the affirmative procedure, in accordance with section 96(4) of the 2009 Act.

15. Subsection (3) requires the Scottish Ministers to publish a statement as soon as reasonably practicable after laying, for approval under the affirmative procedure, a draft of regulations under subsection (2). This must set out their reasons for proposing to specify the year, the extent to which the proposed year takes account of the “target-setting criteria” in section 2B of the 2009 Act (inserted by section 5 of the Bill), and whether the proposed year is consistent with the most up-to-date advice they have received from the relevant body¹ and, if it is not, the reasons why.

16. Subsection (4) provides that the duty to meet the net-zero emissions target applies after the first regulations under subsection (2) come into force. Subsection (5) provides that any subsequent regulations must revoke the previous regulations, and cannot specify a later year unless this is consistent with advice received from the relevant body.

¹ See definition in paragraph 5.

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The 2050 And Interim Targets

Section 2 – The 2050 target

17. Section 2 amends section 1 (the 2050 target) of the 2009 Act. Section 1 of the 2009 Act previously imposed a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the baseline². The amendment made by section 2 substitutes a figure of 90% so as to impose a duty on Ministers to ensure that the net Scottish emissions account for the year 2050 is now at least 90% lower than the baseline.

Section 3 – The interim targets

18. Section 3 substitutes section 2 (the interim targets) of the 2009 Act with a new section 2. Section 2 of the 2009 Act previously imposed a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the year 2020 is at least 42% lower than the baseline. New section 2 imposes a duty on them to ensure that the net Scottish emissions accounts for the years 2020, 2030, and 2040 are, respectively, at least 56%, 66% and 78% lower than the baseline.

Section 4 – Modification of 2050 and interim targets

19. Section 4 inserts a new section 2A (modification of the 2050 and interim targets) into the 2009 Act. The following paragraphs refer to the subsections of new section 2A.

20. Subsection (1) confers a power on the Scottish Ministers to, by regulations, modify any percentage figure applying for the purposes of the 2050 target or any of the interim targets. The regulations are subject to the affirmative procedure.

21. Subsection (2) provides that the regulations may not substitute a lower percentage figure if that would be either: inconsistent with advice from the

² The “baseline” is the aggregate amount of (a) net Scottish emissions of carbon dioxide for 1990, and (b) net Scottish emissions of each of the greenhouse gases other than carbon dioxide for the year that is the ‘baseline year’ for that gas. The baseline years for greenhouse gases other than carbon dioxide are: 1990 for methane and nitrous oxide, and 1995 for hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and nitrogen trifluoride.

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relevant body, lower than a figure for an earlier interim target, or lower than 100% for a year which is the same or later than the net-zero emissions target.

22. Subsection (3) provides that, in preparing a draft of regulations to be made under subsection (1), the Scottish Ministers must have regard to the target-setting criteria and the most up-to-date advice they have received from the relevant body.

23. Subsection (4) provides that the duty in subsection (5) applies in the event that both: (i) the Scottish Ministers lay a draft of regulations under section A1(2) which propose to specify a net-zero emissions target year of 2050 or earlier, and (ii) one or more percentage figures applying for the purposes of the 2050 target, or any interim target for a year which is the same as or later than the proposed net-zero emissions target year, is lower than 100%. In this event, subsection (5) provides that the Scottish Ministers must, simultaneously or as soon as reasonably practicable afterwards, lay before the Scottish Parliament a draft of regulations under subsection (1) which modify to 100% each such lower percentage figure.

24. Subsection (6) requires the Scottish Ministers to publish a statement, as soon as reasonably practicable after laying draft regulations under subsection (1), setting out for each proposed modification of a percentage figure by the regulations: their reasons for proposing it, the extent to which it takes account of the target-setting criteria, and whether it is consistent with the most up-to-date advice they have received from the relevant body.

The Target-Setting Criteria

Section 5 – The target-setting criteria

25. Section 5 inserts a new section 2B (the target-setting criteria) into the 2009 Act. The following paragraphs refer to the subsections of new section 2B.

26. Subsection (1) provides that, in the 2009 Act, the “target-setting criteria” are the matters mentioned in paragraphs (a) to (k) of that subsection. These matters match those previously mentioned in section 4(4) (setting annual targets) of the 2009 Act, except that: “European and international law and policy relating to climate change” (now listed second) has been supplemented to make it clear that this matter includes the United Nations

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Framework Convention on Climate Change and protocols to that Convention, and “international carbon reporting practice” has been added as an additional criterion.

27. Subsection (2) explains what is meant by the expression “fair and safe Scottish emissions budget” in subsection (1)(a). This is unchanged from the previous meaning given to this expression by section 4(6) (setting annual targets) of the 2009 Act.

28. Subsection (3) confers a power on the Scottish Ministers to, by regulations, amend the target-setting criterion. The regulations are subject to the affirmative procedure.

Advice About Targets

Section 6 – Duty to seek advice from the relevant body

29. Section 6 inserts new section 2C (duty to seek advice from the relevant body) into the 2009 Act. The following paragraphs refer to the subsection of new section 2C.

30. Subsection (1), read with subsection (2), imposes a duty on the Scottish Ministers to request advice from the relevant body at least once before the expiry of each relevant five year period. The first request must be made within five years of section 2C coming into force. Subsequent requests must be made within five years of each previous request under subsection (1).

31. Subsection (3), read with subsection (4), provides that each request under subsection (1) must request the relevant body’s view as to the matters mentioned in paragraphs (a) to (e) of subsection (3). In particular, each request must seek the relevant body’s views as to whether the net-zero emissions target is achievable and, if so, what is the earliest achievable year for that target (with views on these matters taking account of the target-setting criteria).

32. Each request must also seek the body’s views as to whether the percentage figure applying for the purposes of the 2050 target and each interim target (not yet reported under section 33) is appropriate by reference to the target-setting criteria. In addition, it must seek the body’s views on

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certain matters relating to meeting emissions reduction targets for the next 15 years. These matters consider the balance between action to reduce net Scottish emissions and the use of carbon credits purchased by Scottish Ministers, and the respective contribution that different sectors of the Scottish economy should make to reductions in net Scottish emissions.

33. Subsection (5) provides that the Scottish Ministers may request the relevant body's views as to any other matter which they consider relevant for the purposes of Part 1 of the 2009 Act.

Section 7 – Power to seek additional advice

34. Section 7 inserts a new section 2D (power to seek additional advice) into the 2009 Act. The following paragraphs refer to the subsections of new section 2D.

35. Subsection (1) confers a power on the Scottish Ministers to request advice from the relevant body at any time (and in addition to any request required to be made under section 2C of the 2009 Act) on any matter they consider relevant for the purposes of Part 1 of the 2009 Act.

36. By virtue of subsection (2), a request for advice under subsection (1) on all of the matters mentioned in section 2C(3) of the 2009 Act is treated as having been made under section 2C(1) of that Act. Accordingly, where this subsection applies, the request under subsection (1) would become the most recent request to have been made under section 2C(1) and (2) of the 2009 Act.

Section 8 – Ministerial duties following receipt of advice

37. Section 8 inserts a new section 2E (ministerial duties following request for advice) into the 2009 Act. The following paragraphs refer to the subsections of new section 2E.

38. Subsection (1) imposes a duty on the Scottish Ministers to publish any advice received in response to a request under section 2C(1) or 2D(1) of the 2009 Act as soon as reasonably practicable after they receive it.

39. Subsection (2) provides that the duty in subsection (3) applies in the event that:

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- the relevant body's advice states that a particular year is the earliest achievable year for the net-zero emissions target,
- that year is not already the net-zero emissions target year, and
- the Scottish Ministers do not, within 12 months of receiving that advice, lay a draft of regulations under section A1(2) to specify that year as the net-zero emissions target year.

40. In this event, subsection (3) imposes a duty on the Scottish Ministers to make a statement to the Scottish Parliament setting out the reasons for not laying a draft of regulations under section A1(2) to specify the particular year referred to in subsection (2)(a).

41. Subsection (4) provides that the duty in subsection (5) applies in the event that:

- the relevant body's advice states that a percentage figure for the 2050 target or an interim target applying when the request is made is not appropriate and that another figure would be appropriate, and
- the Scottish Ministers do not, within 12 months of receiving that advice, lay a draft of regulations under section 2A(1) to make the advised modification to the percentage figure.

42. In this event, subsection (5) imposes a duty on the Scottish Ministers to make a statement to the Scottish Parliament setting out the reasons for not laying a draft of regulations under section 2A(1) to make the advised modification to that percentage figure.

Annual Targets

Section 9 – Annual targets: 2021 to 2049

43. Section 9 substitutes section 3 (annual targets) of the 2009 Act with the following:

- new section 3 (annual targets: 2021 to 2049),
- new section 3A (annual targets: recalculation if net-zero emissions target year is in certain periods), and
- new section 3B (annual targets: further rules on recalculation).

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44. New section 3(1) imposes a duty on the Scottish Ministers to ensure that the net Scottish emissions account is at least the 'relevant percentage figure' lower than the baseline for each year in:

- the period 2021-2029,
- the period 2031-2039, and
- the period 2041-2049.

45. Subsections (2) to (5) of this new section make provision about the rules for calculating the relevant percentage figure applying for the purposes of each annual target. These subsections require, in effect, that for each period a straight line is drawn between the percentage figures applying for the purposes of the target year which precedes the period and the target year which follows it. The figures for each target year in the intervening period must then correlate with that line.

46. For example, if the percentage figure applying for the purposes of the 2020 target remains at 56%, and the corresponding figure for the 2030 target at 66%, the difference is 10%. This 10% difference must be apportioned so that there is an equal percentage point change between the percentage figure for each consecutive year in the period beginning with 2020 and ending with 2030. There are 10 pairs of consecutive years in this period, namely: 2020 and 2021, 2021 and 2022, and so on. To apportion the 10% difference so that there is an equal percentage point change, this 10% difference must first be divided by 10 (the number of consecutive pairs in the period). The percentage point change between each consecutive pair must therefore be 1%. This change is applied so that the percentage figure for 2021 is 1% higher than the figure for 2020, and the figure for 2022 is 1% higher than the figure for 2021, and so on. Accordingly, in this example, the relevant percentage figures would be 57% for the annual target for 2021, 58% for the annual target for 2022, 59% for 2023, 60% for 2024, 61% for 2025, 62% for 2026, 63% for 2027, 64% for 2028 and 65% for 2029.

47. New section 3A(1) provides that this new section applies where regulations made under section A1(2) specify a net-zero emissions target year which is in either the period 2021-2029, the period 2031-2039, or the period 2041-2049. In this event, subsections (2)(a) and (3) of this new section modify the relevant target figure which would otherwise apply by virtue of new section 3 for a year which is in the same period as, but before, the net-zero emissions target year. These subsections require, in effect, that,

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for the period containing the net-zero emissions target, a straight line is drawn between the percentage figure applying for the purposes of the target year which precedes this period and the 100% percentage figure applying for the purpose of the net-zero emissions target. The method for calculating the relevant target figure for the years between the target year and the net-zero emission target is otherwise broadly equivalent to the approach set out in section 3. By contrast, subsection (2)(b) of this section requires the relevant target figure to be 100% for each year in this period which comes *after* the net-zero emissions target.

48. Subsection (4) of new section 3A provides that any modification of an annual target under this section does not apply to a year which is the same as, or earlier than, the year in which the regulations under section A1(2) come into force.

49. New section 3B(1) provides that this new section applies where either:

- the Scottish Ministers make second or subsequent regulations under section A1(2) to specify a different net-zero emissions target year, or
- they make regulations under section 2A(1) which modify a percentage figure applying for the purposes of the 2050 target or an interim target.

50. Subsection (2) of new section 3B provides that an annual target in relation to a year which is subsequent to the year in which the regulations mentioned in section 3B(1) come into force (i.e. a prospective annual target) is to be recalculated under sections 3 and, where applicable, modified under section 3A, in accordance with the figures applying immediately after those regulations come into force.

51. Subsection (3) of new section 3B provides that an annual target in relation to a year which is the same as, or earlier than, the year in which those regulations come into force, is not to be recalculated or modified except where subsection (4) applies. Subsection (4) applies where the Scottish Ministers publish a statement at the same time, or soon after the draft regulations are laid for approval under affirmative procedure. The statement must confirm that the regulations are in response to, and consistent with, the most up-to-date advice they have received from the relevant body advising that targets should be modified for the sole reason of

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a change in international reporting practice. Where subsection (4) applies, subsection (5) then provides that an annual target in respect of a year for which the Scottish Ministers has not yet reported on under section 33, is also to be recalculated in accordance with subsection (2) of new subsection 3B for the purposes of assessing and reporting in accordance with section 33.

Section 10 – Annual targets: 2017, 2018 and 2019

52. Section 10(1) provides that, for the purposes of assessing and reporting in accordance with section 33 of the 2009 Act, the annual target for each of 2017, 2018 and 2019 are to be taken as a target of, respectively, at least 52.4%, 54.0% and 55.0% lower than the baseline.

53. Subsection (2) confers a power on the Scottish Ministers to, by regulations, modify one or more of the percentage figures applying for the purposes of a year mentioned in subsection (1). The regulations are subject to the affirmative procedure.

54. But subsection (3) provides that a draft of regulations to be laid under subsection (2) may only propose the modification of a percentage figure only if:

- the Scottish Ministers have, at the same time as or before laying the draft of regulations under subsection (2), laid a draft of regulations under section 2A(1) (modification of 2050 and interim targets) of the 2009 Act proposing to modify the percentage figure applying for the purposes of the interim target for 2020,
- the figure proposed to be modified is in respect of a year in relation to which the Scottish Ministers have not yet reported on under section 33 of the 2009 Act, and
- the Scottish Ministers have, before laying a draft of the regulations, had regard to the most up-to-date advice they have received from the relevant body about the figure proposed to be modified.

Section 11 – Revocation of previous annual targets

55. Section 11 revokes three Orders made under the 2009 Act that set annual targets for the years 2017 to 2032. Those targets are superseded by the new interim targets set by virtue of new section 2 of the 2009 Act (inserted by section 3 of the Bill) and the new annual targets which apply by

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virtue of new sections 3, 3A and 3B of the 2009 Act (inserted by section 9 of the Bill).

Publication Of Targets

Section 12 – Publication of targets

56. Section 12 inserts a new section 3C (publication of targets) into the 2009 Act. The following paragraphs refer to the subsections of this new section 3C.

57. Subsection (1) requires the Scottish Ministers to keep and maintain a list of the net-zero emissions target year and the percentage figures applying for each emissions reduction target. By virtue of subsection (2), the Scottish Ministers may remove from the list any entry in relation to a year in respect of which they have reported on under section 33.

58. Subsection (3) requires the Scottish Ministers to lay a copy of the list before the Scottish Parliament. The first list must be laid as soon as is reasonably practicable after it has been compiled and, thereafter, as soon as reasonably practicable after the net-zero emissions target year or a percentage figure mentioned in subsection (1) is first specified or has been modified.

59. Subsection (4) also requires the Scottish Ministers to publish the information contained in the list mentioned in subsection (1), with discretion given over the manner of publication.

Part 2 – Emissions Accounting

Section 13 – Net Scottish emissions account: restriction on use of carbon units

60. Section 13 makes provision in relation to restrictions on the use of carbon units.

61. Subsection (1)(a) repeals subsections (2) to (4) of section 13 (the net Scottish emission account) of the 2009 Act. The repealed subsections previously imposed restrictions on the net amount of carbon units which may be credited to the net Scottish emissions account for a year.

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62. Subsection (1)(b) amends section 13(5) of the 2009 Act to extend a power so that the Scottish Ministers may, by regulations, also make provision about circumstances in which carbon units may not be credited to, or debited from, the net Scottish emissions account for a period.

63. Subsection (1)(c) inserts a new subsection (5A) into section 13 of the 2009 Act. This new subsection provides that the amount of carbon units purchased by the Scottish Ministers which may, by virtue of regulations under section 13(5) of the 2009 Act, be credited to the net Scottish emissions account for a period is zero, unless regulations under section 13A of the 2009 Act (inserted by section 14 of the Bill) specify a higher limit in relation to that period.

64. Subsection (2) repeals section 96(7)(a) of the 2009 Act. In consequence, all regulations made under section 13(5) of the 2009 Act are subject to the affirmative procedure.

65. Subsections (3) and (4) provide that carbon units which are surrendered as a result of the operation of a trading scheme (within the meaning of section 44 of the Climate Change Act 2008) may not be credited to or debited from the net Scottish emissions account for any period after 2016, except to the extent that regulations made under section 13(5) of the 2009 Act permit this.

66. Regulations made under section 13(5) of the 2009 Act, may, among other things, make provision about the circumstances in which carbon units which are surrendered as a result of the operation of a trading scheme may be credited to or debited from a particular net Scottish emissions account. However, new section 13(5A) of the 2009 Act, ensures that the amount of carbon units purchased by the Scottish Ministers that may, by virtue of those regulations, be credited to the net Scottish emissions account for a period is zero, unless regulations under section 13A of the 2009 Act specify a higher limit (notes on section 13A of the 2009 Act are included with the notes below on section 14 of the Bill).

Section 14 – Permitted use of carbon units purchased by the Scottish Ministers

67. Section 14 makes provision in relation to the permitted use of carbon units purchased by the Scottish Ministers.

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68. Section 14(1) inserts a new section 13A (permitted use of carbon units purchased by the Scottish Ministers) into the 2009 Act. Except where otherwise specified, the following paragraphs refer to the subsections of new section 13A.

69. Subsection (1) confers a power on the Scottish Ministers to, by regulations, set a limit representing the maximum amount of carbon units purchased by them that may be credited to the net Scottish emissions account for a year.

70. Subsection (2) provides that the limit must not exceed an amount which represents 20% of the planned reduction in the net Scottish emissions account for that year. The default zero-limit (in section 13(5A) of the 2009 Act) along with this limit on the crediting of carbon units, replace the domestic effort target under section 8(1) of the 2009 Act. The domestic effort target required the Scottish Ministers to ensure that reductions in net Scottish emissions account for at least 80% of the reduction in the net Scottish emissions account for a target year (i.e. no more than 20% of the reduction should be due to the crediting of carbon units). Limiting the maximum amount of carbon units purchased by the Scottish Ministers that may be credited to the net Scottish emissions account for a year to no more than 20% of the reduction ensures that, for carbon units purchased by the Scottish Ministers, a broadly similar outcome is achieved.

71. Subsection (3) sets out how the planned reduction is to be calculated.

72. Subsection (4) provides that a limit may only be set for a year which has not yet been reported on under section 33 and which ends no more than 10 years after the year in which the regulations come into force.

73. Where draft regulations are laid under subsection (1) proposing an increase to any such limit, subsection (5) requires the Scottish Ministers to publish a statement setting out their reasons for proposing the increase and whether the proposed new limit is consistent with the most up-to-date advice they have received from the relevant body. This statement must be published as soon as reasonably practicable after the draft regulations are laid.

74. Section 14(2) inserts a new paragraph (aa) into section 96(7) (subordinate legislation) of the 2009 Act. Regulations laid under section 13(5) are, by default, subject to the affirmative procedure by virtue of section

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96(4) of the 2009 Act. But new paragraph (aa) ensures that where the regulations do not propose an increase to a limit, the regulations are subject instead to the negative procedure.

75. Section 14(3) revokes three Orders made under the 2009 Act which imposed limits on the net amount of carbon units that may be credited to a net Scottish emissions account. These limits are replaced by a general default rule in section 13(5A) of the 2009 Act (inserted by section 13 of the Bill) which provides that the amount of carbon units purchased by the Scottish Ministers that may be credited to any such account is zero.

Section 15 – International carbon reporting practice

76. Section 15(1) substitutes subsection (3) of section 17 (Scottish emissions and removals) of the 2009 Act with a new subsection (3). The new subsection (3) broadly replicates the previous subsection (3), except that, when assessing and reporting in accordance with section 33 of the 2009 Act, the amount of Scottish emissions and Scottish removals must be determined, in so far as reasonably practicable, consistently with “target-relevant international reporting practice”. This new expression is defined in section 19(2) (international carbon reporting practice) of the 2009 Act (as amended by section 15(3)(b) of the Bill).

77. Section 15(2) substitutes subsection (2) of section 18 (measurement of emissions etc.) of the 2009 Act with a new subsection (2). The new subsection (2) broadly replicates the previous subsection (2), except that, when assessing and reporting an amount (in tonnes of carbon dioxide equivalent) in accordance with section 33 of the 2009 Act, the amount must be determined, in so far as reasonably practicable, consistently with “target-relevant international reporting practice”.

78. Section 15(3) amends section 19 (international carbon reporting practice) of the 2009 Act to insert a new subsection (2) which defines the expressions “current international carbon reporting practice” and “target-relevant international carbon reporting practice”. These are defined, respectively, as “the most up to-to-date international reporting practice” and “a practice which produces results which are consistent with those which would have been produced by using the international carbon reporting practice which was current at the later of 30 June 2018, or the date on which Scottish Ministers last received advice from the relevant body following a

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request under new section 2C. These expressions are used in sections 33 and 34 of the 2009 Act.

Part 3 – Reporting And Planning Duties

Reporting Duties

Section 16 – Reports on emissions reduction targets

79. Section 16 replaces section 33 (reports on annual targets) of the 2009 Act with a new section 33. The following paragraphs refer to the subsections of new section 33.

80. Subsection (1) requires that the Scottish Ministers must, following each target year, lay before the Scottish Parliament, a report in respect of that target year. Subsection (2) sets out what needs to be stated in each report.

81. Subsection (3)(a) provides that the Scottish Ministers must use target-relevant international carbon reporting practice (as defined in the new section 19(2) of the 2009 Act) when assessing and reporting on the matters mentioned in subsection (2). In doing so they must determine each figure and amount in a manner as would be, in so far as reasonably practicable, consistent with the most up-to-date advice provided by the relevant body on the methods to be used for that purpose. Subsection (3)(b) requires Ministers to specify in the report the methods used for that purpose as well.

82. Subsection (4) provides that the report under this section must be laid before the Parliament as soon as reasonably practicable after the information to be contained in the report becomes available.

Section 17 – Reports on emissions reduction targets: further content

83. Section 17 replaces section 34 (reports on annual targets: content) of the 2009 Act with a new section 34. The following paragraphs refer to the subsections of new section 34.

84. Subsection (1) provides that a report under section 33 must state some additional matters, which are mentioned in the subsection.

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85. Subsection (2) requires the Scottish Ministers to use current international carbon reporting practice for assessing and reporting on the matters mentioned in subsection (1).

86. Subsection (3) provides that if the methods used to determine net Scottish emissions change and this requires an adjustment of an amount for an earlier target year, the report under section 33 must specify the adjustment required and state the adjusted amount and also explain why the adjustment is required. Subsection (4) requires any such adjustment to be, in so far as is reasonably practicable, in accordance with current international carbon reporting practice.

87. Subsection (5) gives the Scottish Ministers discretion to include in a report under section 33 any additional information as they consider appropriate.

Section 18 – Provision of further information to the Scottish Parliament

88. Section 18 amends section 42 (reports: provision of further information to the Scottish Parliament) of the 2009 Act. In particular, it updates references in section 42 to the report required under section 33 of the 2009 Act to account for changes made to that section by the Bill. In addition, it inserts a new subsection (1A) to ensure that, if the emissions reduction target for the target year has not be met, the Ministerial statement made to the Parliament under subsection (1)(b) must explain why.

89. Subsection (4) of section 18 repeals section 42(2) of the 2009 Act in consequence of the amendment made (by subsection (2) of that section) to section 42(1) of the 2009 Act and the repeal, by the Bill, of sections 36, 40 and 41 of the 2009 Act.

Section 19 – Climate change plan

90. Section 19 substitutes section 35 (reports on proposals and policies for meeting annual targets) with the following:

- new section 35 (climate change plan),
- new section 35A (climate change plan: further procedure), and
- new section 35B (climate change plan: annual progress reports).

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91. New section 35(1) imposes a duty on the Scottish Ministers to lay a climate change plan before the Scottish Parliament, in the case of the first plan, within a period of five years beginning with the day on which this section comes into force. In the case of a subsequent plan, this must be laid before the Parliament within a period of five years after the previous plan was laid.

92. Subsection 35(2) sets out what, in particular, the plan must include. It requires the plan to be set out in such chapters as is considered appropriate by the Scottish Ministers. These chapters must contain proposals and policies for meeting the emissions reduction targets. In addition, where the most recent report for a target year under section 33 states that the 'cumulative amount' is greater than zero (i.e. that overall net emissions in the period beginning with 2017 and ending with the target year exceeded the emissions reduction targets over that period), then the climate change plan must also set out the Scottish Ministers' proposals and policies for compensating, during the plan period, for any such excess emissions.

93. Subsection 35(3) provides that a plan covers 15 years starting from the year after the year a draft plan is laid before Parliament or, should the Scottish Ministers specify in the plan, it could cover a period of between 10 to 20 years in order to end in the same year as an interim target, the 2050 target or the net-zero emissions target year.

94. Subsections 35(4) and 35(5) require that the plans set out the contribution of certain sectors of the Scottish economy and how the proposals and policies in the plan will impact on different sectors of the Scottish economy.

95. Subsections 35(6) and 35(7) require that plans must contain an assessment of the progress towards implementing proposals and policies in earlier plans, including those that were laid under the arrangements prior to this Bill.

96. New section 35A requires that the Scottish Ministers must, before laying a climate change plan under new section 35 before the Scottish Parliament, lay a draft of the plan before the Parliament for a period of 90 days, of which no fewer than 60 must be days on which the Parliament is not dissolved or in recess. The Scottish Ministers must also have regard to any representations, resolutions passed by the Parliament, and reports published by a committee of the Parliament relating to the draft plan. They

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must also, when laying a climate change plan under new section 35, lay a statement before the Parliament setting out the details of any such representations, resolutions or reports, and the changes, if any, they have made to the plan in response.

97. New section 35B requires that the Scottish Ministers must, in each relevant year, lay before the Scottish Parliament a report on each substantive chapter of the most recent plan laid under new section 35 of the 2009 Act. Each report laid under new section 35B must contain an assessment of progress towards implementing the proposals and policies set out in that chapter. Each report must be laid by 31 October in each relevant year or, if this isn't possible because the information needed is not available, as soon as reasonably practicable after that date. "Relevant year" and "substantive chapter" are defined in subsection (4).

98. Subsection (5) modifies section 35B to also require reports to be laid under this new section in relation to the most recent report on proposals and policies laid under the previous section 35 of the 2009 Act, as the previous law in force, until such time as the first climate change plan is laid under the new substitute section 35.

Part 4 – Minor And Consequential Modifications

Section 20 – Meaning of certain terms

99. Section 20 amends section 98 (interpretation) of the 2009 Act to make minor and consequential changes to the list of definitions.

Section 21 – Further consequentials: the 2009 Act

100. Section 21 introduces the schedule which contains further modifications to the 2009 Act.

Part 5 – Final Provisions

Section 22 – Meaning of the 2009 Act

101. Section 22 defines "the 2009 Act" to mean the Climate Change (Scotland) Act 2009. The amendments in the Bill are being made to the 2009 Act and the definition section recognises that as the principal Act being

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amended and allows multiple shorthand references to it to be made for the purposes of this Bill.

Section 23 – Ancillary provision

102. Section 23 confers a power on the Scottish Ministers to, by regulations, make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to the Bill. The regulations may modify any enactment and may make different provision for different purposes. The regulations are subject to the negative procedure unless they textually amend an Act, in which case they are subject to the affirmative procedure.

Section 24 – Commencement

103. Section 24(1) provides that the final, framework provisions in Part 5 (namely sections 22, 23, 24 and 25) come into force on the day after Royal Assent. Subsections (2) and (3) of this section confer a power on the Scottish Ministers to, by regulations, appoint the days on which the other provisions of the Bill come into force. The regulations may include transitional, transitory or saving provision, and they may also make different provision for different purposes.

Section 25 – Short title

104. Section 25 provides the short title for the Bill once enacted.

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Schedule – Modifications Of The 2009 Act

105. This schedule makes further modifications to the 2009 Act. Most of the changes are minor or consequential, but the following paragraphs explain some of the changes in more detail.

106. Paragraph 4 repeals section 4 (setting annual targets), section 5 (advice before setting annual targets), section 6 (modifying annual targets etc.), section 7 (advice before modifying annual targets etc.) and section 8 (the domestic effort target) of the 2009 Act. As annual targets will instead be set mechanistically (by reference to the interim targets, the 2050 target and, if applicable, the net-zero emissions target year) in accordance with new sections 3, 3A and 3B (inserted by section 9 of the Bill), sections 4 to 7 of the 2009 Act are no longer needed. Section 8 of the 2009 Act is also no longer needed as it is superseded by provision made by sections 13 and 14 (for further details, see also the explanatory notes above on those section).

107. Paragraph 6 repeals sections 14, 21, 22 and 23 of the 2009 Act (relating to limits on use of carbon units) as these are no longer needed in consequence of the alternative new provision made by virtue of sections 6, 13 and 14 of the Bill.

108. Paragraph 7 inserts a section 20A (the relevant body) into the 2009 Act so as to define the “relevant body” for the purposes of Part 1 of the 2009 Act. This replicates the definition which was in section 5(7) and (8) of the 2009 Act (which will be repealed) and moves it to a separate section for better prominence.

109. Paragraph 12 repeals section 36 (reports on proposals and policies where annual target not met) of the 2009 Act because alternative provision is made in new section 35(2) (inserted by section 19 of the Bill) to ensure that climate change plans set out the proposals and policies of the Scottish Ministers which compensate in the plan for any excess emissions.

110. Paragraph 14 repeals, among other things, section 38 of the 2009 Act, which relates to reports on impact on emissions of exercise of electricity generation related functions which are reported on through other methods. It also repeals section 39, which previously required a report to be laid before the Scottish Parliament by the end of December 2015, and is therefore no longer applicable. It also repeals sections 40 and 41 of the 2009 Act. These

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sections are no longer required as the new reporting functions established by virtue of section 16 of the Bill require a report for every year for which an emissions reduction target has been set, so there is no longer a requirement to have separate reports covering the interim target, or the 2050 target.

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Climate Change (Emissions Reduction Targets) (Scotland) Bill

Explanatory Notes

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