



# Climate Change (Scotland) Act 2009

## 2009 asp 12

### PART 1

#### EMISSIONS REDUCTION TARGETS

##### *The 2050 target*

#### **1 The 2050 target**

- (1) The Scottish Ministers must ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the baseline.
- (2) In this Act, the target set out in subsection (1) is known as the “2050 target”.

##### *The interim target*

#### **2 The interim target**

- (1) The Scottish Ministers must ensure that the net Scottish emissions account for the year 2020 is at least 42% lower than the baseline.
- (2) In this Act, the target set out in subsection (1) is known as the “interim target”.
- (3) The Scottish Ministers may, by order, modify the percentage figure mentioned in subsection (1) so as to substitute—
  - (a) a figure provided by the relevant body by virtue of subsection (4)(b); or
  - (b) a higher figure,for the one for the time being mentioned there.
- (4) The Scottish Ministers must, as soon as reasonably practicable after the Bill for this Act receives Royal Assent, request advice from the relevant body as to (having regard to the criteria set out in subsection (5))—
  - (a) whether the percentage figure for the time being mentioned in subsection (1) is the highest achievable interim target; and
  - (b) if not, what the highest achievable interim target is.

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- (5) The criteria referred to in subsection (4) are—
- (a) scientific knowledge about climate change;
  - (b) technology relevant to climate change;
  - (c) economic circumstances, in particular the likely impact of the target on—
    - (i) the Scottish economy;
    - (ii) the competitiveness of particular sectors of the Scottish economy;
    - (iii) small and medium-sized enterprises;
    - (iv) jobs and employment opportunities;
  - (d) fiscal circumstances, in particular the likely impact of the target on taxation, public spending and public borrowing;
  - (e) social circumstances, in particular the likely impact of the target on those living in poorer or deprived communities;
  - (f) the likely impact of the target on those living in remote rural communities and island communities;
  - (g) energy policy, in particular the likely impact of the target on energy supplies, the renewable energy sector and the carbon and energy intensity of the Scottish economy;
  - (h) environmental considerations and, in particular, the likely impact of the targets on biodiversity;
  - (i) European and international law and policy relating to climate change.
- (6) The Scottish Ministers must publish the advice requested under subsection (4) no later than 31 December 2009 (or, if the advice is not published by that date, as soon as reasonably practicable afterwards).
- (7) Where the relevant body has provided advice of the kind mentioned in subsection (4) (b), the Scottish Ministers must, as soon as reasonably practicable after that advice is published under subsection (6), comply with either of the duties set out in subsection (8).
- (8) The duties are—
- (a) to lay before the Scottish Parliament a draft of a statutory instrument containing an order under subsection (3) substituting for the percentage figure for the time being mentioned in subsection (1) the figure provided by the relevant body by virtue of subsection (4)(b); or
  - (b) to make a statement to the Scottish Parliament setting out the reasons why no such order has been laid.
- (9) If an appropriate Community instrument comes into force, the Scottish Ministers must, before the expiry of the appropriate period, lay a draft of a statutory instrument containing an appropriate order before the Scottish Parliament.
- (10) An “appropriate order” means an order under subsection (3) modifying the percentage figure mentioned in subsection (1) so as to substitute a figure of at least 42%.
- (11) An “appropriate Community instrument” means a Community instrument—
- (a) which contains a commitment to reduce greenhouse gas emissions by at least 30% compared to 1990 levels by 2020; and
  - (b) which amends Decision [406/2009/EC](#) of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission

reduction commitments up to 2020 in the manner envisaged in Article 8(2) of the Decision.

- (12) The “appropriate period” means the period of 3 months beginning with the day on which the appropriate Community instrument comes into force.
- (13) If a draft of an appropriate order is not laid before the expiry of the appropriate period, the Scottish Ministers must lay the draft as soon as reasonably practicable afterwards.
- (14) Subsections (9) to (13) cease to apply if a figure higher than 42% is, by virtue of a draft of a statutory instrument of the kind mentioned in subsection (8)(a) having been approved by the Scottish Parliament, the percentage figure for the time being mentioned in subsection (1).

#### *Annual targets*

### **3 Annual targets**

- (1) The Scottish Ministers must—
  - (a) for each year in the period 2010–2050, set a target for the maximum amount of the net Scottish emissions account;
  - (b) ensure that the net Scottish emissions account for each year in that period does not exceed the target set for that year.
- (2) The target—
  - (a) for 2010, must be set at an amount that is less than the estimated net Scottish emissions account for 2009;
  - (b) for each year in the period 2011–2019, must be set at an amount that is consistent with a reduction over that period of net Scottish emissions accounts which would allow the interim target and the 2050 target to be met;
  - (c) for each year in the period 2020–2050, must be set at an amount that is—
    - (i) consistent with a reduction over that period of net Scottish emissions accounts which would allow the 2050 target to be met; and
    - (ii) at least 3% less than the target for the preceding year.
- (3) In this Act—
  - (a) an “annual target” for any year means the target for the maximum amount of the net Scottish emissions account set for that year in accordance with this section and section 4;
  - (b) references to an annual target being met are references to the net Scottish emissions account for a year not exceeding the annual target for that year (and cognate expressions are to be construed accordingly).

### **4 Setting annual targets**

- (1) The Scottish Ministers must, by order, set the annual targets for each year in the periods mentioned in paragraphs (a) to (g) of subsection (2).
- (2) The Scottish Ministers must set the annual targets for each year—
  - (a) in the period 2010–2022, no later than 1 June 2010;
  - (b) in the period 2023–2027, no later than 31 October 2011;
  - (c) in the period 2028–2032, no later than 31 October 2016;

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- (d) in the period 2033–2037, no later than 31 October 2021;
  - (e) in the period 2038–2042, no later than 31 October 2026;
  - (f) in the period 2043–2047, no later than 31 October 2031;
  - (g) in the period 2048–2050, no later than 31 October 2036.
- (3) The Scottish Ministers must, when setting annual targets, have regard to any advice they receive from the relevant body as to the cumulative amount of net Scottish emissions for the period 2010–2050 that is consistent with a reduction over that period of net Scottish emissions accounts which would allow the 2050 target to be met.
- (4) The Scottish Ministers must, when setting annual targets, also have regard to the following matters (the “target-setting criteria”)—
- (a) the objective of not exceeding the fair and safe Scottish emissions budget;
  - (b) scientific knowledge about climate change;
  - (c) technology relevant to climate change;
  - (d) economic circumstances, in particular the likely impact of the target on—
    - (i) the Scottish economy;
    - (ii) the competitiveness of particular sectors of the Scottish economy;
    - (iii) small and medium-sized enterprises;
    - (iv) jobs and employment opportunities;
  - (e) fiscal circumstances, in particular the likely impact of the target on taxation, public spending and public borrowing;
  - (f) social circumstances, in particular the likely impact of the target on those living in poorer or deprived communities;
  - (g) the likely impact of the target on those living in remote rural communities and island communities;
  - (h) energy policy, in particular the likely impact of the target on energy supplies, the renewable energy sector and the carbon and energy intensity of the Scottish economy;
  - (i) environmental considerations and, in particular, the likely impact of the targets on biodiversity;
  - (j) European and international law and policy relating to climate change.
- (5) If annual targets for a period are not set by the corresponding date mentioned in paragraphs (a) to (g) of subsection (2), the Scottish Ministers must set the annual targets as soon as reasonably practicable afterwards.
- (6) In this Act, the “fair and safe Scottish emissions budget” is the aggregate amount of net Scottish emissions for the period 2010–2050 recommended by the relevant body as being consistent with Scotland contributing appropriately to stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

## **5 Advice before setting annual targets**

- (1) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under section 4(1) before the Scottish Parliament, request advice from the relevant body.
- (2) The request for advice must include requests for the relevant body’s views—

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- (a) in the case of annual targets proposed for years in the period 2010–2020, as to whether those targets are consistent with a reduction over that period of net Scottish emissions accounts which would allow the interim target and the 2050 target to be met;
  - (b) in the case of annual targets proposed for years in the period 2021–2050, as to whether those targets are consistent with a reduction over that period of net Scottish emissions accounts which would allow the 2050 target to be met;
  - (c) in any case—
    - (i) as to what annual targets are appropriate by reference to the target-setting criteria;
    - (ii) as to the extent to which the annual targets should be met—
      - (A) by taking action to reduce net Scottish emissions;
      - (B) by the use of carbon units that in accordance with section 13(2) and regulations under section 13(5) may be credited to the net Scottish emissions account;
    - (iii) as to the respective contributions towards meeting the annual targets and the domestic effort target that should be made—
      - (A) by the traded sector of the Scottish economy;
      - (B) by the other sectors of the Scottish economy;
    - (iv) as to the respective contributions towards meeting the annual targets and the domestic effort target that should be made by—
      - (A) energy efficiency;
      - (B) energy generation;
      - (C) land use;
      - (D) transport.
- (3) The Scottish Ministers must publish the advice requested under subsection (1) as soon as reasonably practicable after they receive it.
- (4) As soon as reasonably practicable after laying such a draft, the Scottish Ministers must publish a statement setting out in respect of the annual targets set by the order—
  - (a) the reasons for setting those annual targets at those levels;
  - (b) the extent to which those targets take account of the target-setting criteria.
- (5) If the order under section 4(1) makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (6) Advice requested under subsection (1) or a statement under subsection (4) or (5) may be published in such manner as the Scottish Ministers consider appropriate.
- (7) In this Part, the “relevant body” means—
  - (a) where no order has been made under section 24(1) designating a person or body as the advisory body, the UK Committee on Climate Change; or
  - (b) where such an order has been made, the advisory body.
- (8) In subsection (7)(a), the “UK Committee on Climate Change” means the Committee on Climate Change established under section 32 of the Climate Change Act 2008 (c. 27) (the “2008 Act”).
- (9) In this section, “traded sector” means the sectors of the Scottish economy which are covered by trading schemes within the meaning of section 44 of the 2008 Act.

## **6 Modifying annual targets etc.**

- (1) The Scottish Ministers may, by order, modify—
  - (a) the percentage figure mentioned in section 3(2)(c)(ii);
  - (b) an annual target set by virtue of section 4(1);
  - (c) any date mentioned in paragraphs (a) to (g) of section 4(2);
  - (d) the target-setting criteria in section 4(4).
- (2) The Scottish Ministers must, at the same time as laying a draft of a statutory instrument containing an order under subsection (1)(a) before the Scottish Parliament, lay before the Parliament a report explaining why the modification is being proposed.
- (3) The Scottish Ministers must, as soon as reasonably practicable after laying a report before the Scottish Parliament under subsection (2), and in so far as reasonably practicable, make a statement to the Parliament relating to the report.
- (4) The Scottish Ministers may make an order under subsection (1)(a) only if they consider that it is no longer necessary for annual targets to be set by reference to that percentage figure.
- (5) The Scottish Ministers may make an order under subsection (1)(b) only if they consider that it is appropriate to do so as a result of—
  - (a) a modification of the interim target; or
  - (b) another significant change to the basis on which the annual target was set.
- (6) The Scottish Ministers may make an order under subsection (1)(c) or (d) only if they consider it appropriate to do so.
- (7) The power in subsection (1)(a) may not be exercised so as to substitute a percentage of less than zero.
- (8) The power in subsection (1)(b)—
  - (a) may be exercised only before the beginning of the year to which the target relates;
  - (b) may not be exercised if the effect of doing so would be that the target for the year would be greater than the target for the preceding year.

## **7 Advice before modifying annual targets etc.**

- (1) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under section 6(1) before the Scottish Parliament, request advice from the relevant body.
- (2) If the order under section 6(1) makes provision different from that recommended by the relevant body, the Scottish Ministers must lay before the Scottish Parliament a report setting out the reasons why.
- (3) The Scottish Ministers must, as soon as reasonably practicable after laying a report before the Scottish Parliament under subsection (2), and in so far as reasonably practicable, make a statement to the Parliament relating to the report.

### *The domestic effort target*

## **8 The domestic effort target**

- (1) The Scottish Ministers must ensure that reductions in net Scottish emissions of greenhouse gases account for at least 80% of the reduction in the net Scottish emissions account in any target year.
- (2) In this Act, the target set out in subsection (1) is known as the “domestic effort target”.
- (3) For the purposes of ascertaining whether the domestic effort target has been met, any reduction to the net Scottish emissions account as a result of the crediting to that account of a net amount of European carbon units mentioned in subsection (4) is to be treated as though it is a reduction in net Scottish emissions.
- (4) In subsection (3), “European carbon units” means carbon units which are surrendered by participants in—
  - (a) the European Union Emissions Trading Scheme (“EU ETS”); or
  - (b) such other trading scheme making provision equivalent to the EU ETS as the Scottish Ministers may, by order, specify.
- (5) In subsection (4)(b), “trading scheme” means a trading scheme within the meaning of section 44 of the 2008 Act.
- (6) The Scottish Ministers may, by order, modify the percentage figure mentioned in subsection (1) so as to substitute a higher figure for the one for the time being mentioned there.
- (7) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under subsection (6) before the Scottish Parliament, request advice from the relevant body.
- (8) If the order under subsection (6) makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (9) A statement under subsection (8) may be published in such manner as the Scottish Ministers consider appropriate.

### *Advice on progress*

## **9 Progress towards targets**

- (1) The Scottish Ministers must in each year, beginning with the year 2011, request the relevant body to prepare a report setting out that body’s views on—
  - (a) progress towards achievement of—
    - (i) annual targets;
    - (ii) the interim target;
    - (iii) the 2050 target;
  - (b) whether the annual targets, the interim target or the 2050 target are likely to be achieved;
  - (c) any further effort which may be necessary to achieve annual targets, the interim target or the 2050 target.

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- (2) No later than the end of the second year following a year for which an annual target has been set (a “target year”), the Scottish Ministers must request the relevant body to prepare a report setting out that body’s views on—
- (a) whether the annual target for the target year was met;
  - (b) whether the domestic effort target was met in that target year;
  - (c) the ways in which those targets were or were not met;
  - (d) the action taken by the Scottish Ministers to reduce net Scottish emissions during that year.
- (3) The Scottish Ministers must lay a response to the relevant body’s report under this section before the Scottish Parliament as soon as reasonably practicable after they receive that body’s report.

### *Greenhouse gases*

## **10 Greenhouse gases**

- (1) In this Act, a “greenhouse gas” means—
- (a) carbon dioxide;
  - (b) methane;
  - (c) nitrous oxide;
  - (d) hydrofluorocarbons;
  - (e) perfluorocarbons;
  - (f) sulphur hexafluoride.
- (2) The Scottish Ministers may, if they consider it appropriate to do so, by order, modify subsection (1) so as to—
- (a) add a gas;
  - (b) modify the description of a gas.
- (3) The power in subsection (2)(a) may be exercised only if it appears to the Scottish Ministers that an agreement or arrangement at European or international level recognises that the gas to be added contributes to climate change.
- (4) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under subsection (2) before the Scottish Parliament, request advice from the relevant body.
- (5) If the order makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (6) A statement under subsection (5) may be published in such manner as the Scottish Ministers consider appropriate.

### *Baseline*

## **11 The baseline**

- (1) In this Act, the “baseline” means 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.
- (2) The baseline years for greenhouse gases other than carbon dioxide are—
- (a) for methane, 1990;
  - (b) for nitrous oxide, 1990;
  - (c) for hydrofluorocarbons, 1995;
  - (d) for perfluorocarbons, 1995;
  - (e) for sulphur hexafluoride, 1995.

## **12 Baselines for additional greenhouses gases**

- (1) This section applies where the Scottish Ministers have made an order under section 10(2)(a) adding a greenhouse gas.
- (2) In this section, such a gas is referred to as an “additional greenhouse gas”.
- (3) The Scottish Ministers may, by order, make provision as to the manner of determining, in the case of an additional greenhouse gas, the amount of net Scottish emissions for the baseline year.
- (4) An order under subsection (3) may in particular—
- (a) designate a year as the baseline year for the additional greenhouse gas;
  - (b) provide for the amount of net Scottish emissions of the gas for that year to be treated for the purposes of this Act as the amount of net Scottish emissions of that gas for that baseline year.

### *Supplementary*

## **13 The net Scottish emissions account**

- (1) The net Scottish emissions account means the aggregate amount of net Scottish emissions of greenhouse gases—
- (a) reduced by the amount of carbon units credited to the net Scottish emissions account for the period in accordance with regulations under subsection (5);
  - (b) increased by the amount of carbon units that, in accordance with such regulations, are to be debited from the net Scottish emissions account for the period.
- (2) The net amount of carbon units credited to the net Scottish emissions account for a year for which an annual target has been set (a “target year”) must not exceed the allowable amount.
- (3) The “allowable amount” is—
- (a) the amount equal to the limit, set by virtue of section 21(1), on the net amount of carbon units that may be credited to net Scottish emissions accounts during the period which includes the target year; or
  - (b) where a net amount of carbon units has been credited to the net Scottish emissions account for any other target year in that period, the balance (if any) remaining of the amount referred to in paragraph (a).

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- (4) In subsections (2) and (3), the “net amount of carbon units” has the meaning given by section 21(3).
- (5) The Scottish Ministers may, by regulations, make provision about—
  - (a) the circumstances in which carbon units may be credited to the net Scottish emissions account for a period;
  - (b) the circumstances in which such units may be debited from that account for a period;
  - (c) the manner in which this is to be done.
- (6) The regulations must contain provision for ensuring that carbon units that are credited to the net Scottish emissions account for a period cease to be available to offset other greenhouse gas emissions.

#### **14 Restriction on use in 2010–2017 of carbon units purchased by Scottish Ministers**

- (1) The Scottish Ministers may not, where subsection (2) applies, credit to the net Scottish emissions account for a year in the period 2010–2012 any carbon units purchased by them.
- (2) This subsection applies provided the percentage figure mentioned in section 13 is 34%.
- (3) The Scottish Ministers may only credit to the net Scottish emissions account for a year in the period 2013–2017 any carbon units purchased by them up to a limit of 20% of the reduction in the amount of the net Scottish emissions account planned for that year.

#### **15 Attribution of emissions to Scotland**

For the purposes of section 17(1), emissions of a greenhouse gas are attributable to Scotland if—

- (a) they are emitted from sources in Scotland;
- (b) they are attributed to Scotland by virtue of an order under section 16(1).

#### **16 Scottish share of emissions from international aviation and international shipping**

- (1) The Scottish Ministers may, by order, make provision regarding the emissions of greenhouse gases from international aviation and international shipping that are attributable to Scotland.
- (2) An order under subsection (1)—
  - (a) must make provision for emissions from international aviation and international shipping of—
    - (i) in the case of the first order under that subsection, each greenhouse gas; and
    - (ii) in the case of any subsequent order under subsection (1), any gas added to the list of greenhouse gases in section 10(1) since the last such order was made,

to be taken into account as Scottish emissions of each such gas in the period starting with the 1 January following the order being approved by the Scottish Parliament and ending on 31 December 2050;

- (b) may make provision as to any past period in which emissions of a greenhouse gas are to be taken into account as Scottish emissions of that gas;
  - (c) may not, once emissions from international aviation and international shipping of a greenhouse gas are, by virtue of a previous order under subsection (1), being taken into account as Scottish emissions of that gas, provide for such emissions to cease to be taken into account as Scottish emissions of that gas;
  - (d) must, subject to subsection (3), make provision as to the manner in which emissions from international aviation and international shipping of each greenhouse gas are to be taken into account in determining Scottish emissions of that gas—
    - (i) for the year that is the baseline year for that gas; and
    - (ii) in the period during which such emissions of that gas are to be taken into account as Scottish emissions of that gas.
- (3) Provision made by virtue of subsection (2)(d) must include the use, for each greenhouse gas, of a multiplier which reflects the direct and indirect non-carbon dioxide climate change impacts of emissions at altitude from international aviation.
- (4) A draft of a statutory instrument containing the first order under subsection (1) must be laid before the Scottish Parliament no later than 1 June 2010.
- (5) If a draft of the first order is not laid by the date mentioned in subsection (4), the Scottish Ministers must lay the draft as soon as reasonably practicable afterwards.
- (6) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under subsection (1) before the Scottish Parliament, request advice from the relevant body (including advice as to an appropriate multiplier for each greenhouse gas for the purposes of subsection (3)).
- (7) If the order makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (8) A statement under subsection (7) may be published in such manner as the Scottish Ministers consider appropriate.

## **17 Scottish emissions and removals**

- (1) In this Act—
- “emissions”, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity;
  - “Scottish emissions”, in relation to a greenhouse gas, means emissions of that gas which are attributable to Scotland;
  - “Scottish removals”, in relation to a greenhouse gas, means removals of that gas from the atmosphere due to land use, land-use change or forestry activities in Scotland;
  - “the net Scottish emissions” for a period, in relation to a greenhouse gas, means the amount of Scottish emissions of that gas for the period reduced by the amount of Scottish removals of that gas for the period.
- (2) The Scottish Ministers may, if they consider it appropriate to do so, by order, modify the definition of Scottish removals in subsection (1).

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- (3) The amount of Scottish emissions and Scottish removals of a greenhouse gas for a period must, in so far as reasonably practicable, be determined consistently with international carbon reporting practice.

## **18 Measurement of emissions etc.**

- (1) For the purposes of this Act, greenhouse gas emissions, reductions of such emissions and removals of greenhouse gases from the atmosphere are measured or calculated in tonnes of carbon dioxide equivalent.
- (2) A “tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice).

## **19 International carbon reporting practice**

In this Act, “international carbon reporting practice” means accepted practice in relation to reporting for the purposes of—

- (a) the protocols to the United Nations Framework Convention on Climate Change;
- (b) such other agreements or arrangements at European or international level as the Scottish Ministers may, by order, specify.

## **20 Carbon units and carbon accounting**

- (1) The Scottish Ministers may, by regulations, make provision for a scheme—
- (a) for registering or otherwise keeping track of carbon units;
  - (b) for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred, by the Scottish Ministers.
- (2) Regulations under subsection (1) may, in particular, provide for an existing scheme to be adapted for these purposes.
- (3) The regulations may also include provision—
- (a) designating a person or body to administer the scheme;
  - (b) establishing a person or body for that purpose and making such provision in relation to the appointment of members, staffing, expenditure, procedure and otherwise of the person or body as the Scottish Ministers consider appropriate;
  - (c) conferring power on the Scottish Ministers to give guidance or directions to the person or body administering the scheme;
  - (d) conferring power on the Scottish Ministers to delegate the performance of any of the functions conferred on them by the regulations;
  - (e) requiring the payment by persons using the scheme of such charges as are reasonably required to cover the reasonable costs incurred in operating the scheme.
- (4) In this Act, a “carbon unit” means a unit of a kind specified in regulations made under subsection (1) and which represents—
- (a) a reduction in an amount of greenhouse gas emissions;
  - (b) the removal of an amount of greenhouse gas from the atmosphere;
  - (c) an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions.

## **21 Limits on use of carbon units**

- (1) The Scottish Ministers must, by order, set a limit on the net amount of carbon units that may be credited to net Scottish emissions accounts during the periods mentioned in paragraphs (a) to (i) of subsection (2).
- (2) The Scottish Ministers must set the limit—
  - (a) for the period 2010–2012, no later than 1 June 2010;
  - (b) for the period 2013–2017, no later than 31 December 2011;
  - (c) for the period 2018–2022, no later than 31 December 2016;
  - (d) for the period 2023–2027, no later than 31 December 2021;
  - (e) for the period 2028–2032, no later than 31 December 2026;
  - (f) for the period 2033–2037, no later than 31 December 2031;
  - (g) for the period 2038–2042, no later than 31 December 2036;
  - (h) for the period 2043–2047, no later than 31 December 2041;
  - (i) for the period 2048–2050, no later than 31 December 2046.
- (3) The “net amount of carbon units” means C minus D, where—

“C” is the amount of carbon units credited to net Scottish emissions accounts during the period in accordance with regulations under section 13(5);

“D” is the amount of carbon units debited from net Scottish emissions accounts during the period in accordance with such regulations.
- (4) An order under subsection (1) may provide that carbon units of a description specified in the order do not count towards the limit.
- (5) If the limit for a period is not set by the corresponding date mentioned in paragraphs (a) to (i) of subsection (2), the Scottish Ministers must set the limit as soon as reasonably practicable afterwards.

## **22 Modifying limits on use of carbon units etc.**

- (1) The Scottish Ministers may, by order, modify—
  - (a) a limit on the use of carbon units set by virtue of section 21(1);
  - (b) any date mentioned in paragraphs (a) to (i) of section 21(2).
- (2) The Scottish Ministers may make an order under subsection (1)(a) only if they consider that it is appropriate to do so as a result of—
  - (a) a modification of the interim target; or
  - (b) another significant change to the basis on which the limit on the use of carbon units was set.
- (3) The Scottish Ministers may make an order under subsection (1)(b) only if they consider it appropriate to do so.
- (4) An order under subsection (1)(a) may provide that carbon units of a description specified in the order do not count towards the limit.

## **23 Advice before setting or modifying limits on use of carbon units etc.**

- (1) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under section 21(1) or 22(1) before the Scottish Parliament, request advice from the relevant body.

- (2) If the order under section 21(1) or 22(1) makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (3) A statement under subsection (2) may be published in such manner as the Scottish Ministers consider appropriate.

## PART 2

### ADVISORY FUNCTIONS

#### *Advisory body*

#### **24 Meaning of advisory body**

- (1) The Scottish Ministers may, by order, designate—
  - (a) a body established under section 25(1); or
  - (b) such other public body as they consider appropriate, to exercise the functions mentioned in subsection (3) (the “advisory functions”).
- (2) In this Act, the body designated by virtue of subsection (1) is the “advisory body”.
- (3) The advisory functions are—
  - (a) the function of providing advice, analysis, information and other assistance to the Scottish Ministers in respect of Ministers' duty under section 2(1) and functions under sections 5, 7, 9 and 10(4);
  - (b) the functions conferred on the advisory body by sections 27 to 32 and 56; and
  - (c) such other functions relating to advice on climate change as the Scottish Ministers may confer by an order under subsection (1).
- (4) An order under subsection (1) may in particular provide—
  - (a) for the conferral of functions on the advisory body relating to advice on climate change;
  - (b) for the information that advice must contain;
  - (c) for the factors to which the body is to have regard in giving that advice;
  - (d) for the period within which the body must give that advice;
  - (e) as to whom that advice is to be given;
  - (f) for the form and manner in which that advice is to be published and laid before the Scottish Parliament.
- (5) In subsection (1)(b), a “public body” means a person or body with functions of a public nature.

#### *Scottish Committee on Climate Change*

#### **25 Scottish Committee on Climate Change**

- (1) The Scottish Ministers may, by order, establish a body for the purpose of exercising the advisory functions.

- (2) The body established by virtue of subsection (1) is to be known as the Scottish Committee on Climate Change (the “Committee”).
- (3) Schedule 1 makes further provision about the Committee.
- (4) An order under subsection (1) may in particular provide—
  - (a) for the conferral of functions on the Committee relating to advice on climate change;
  - (b) in relation to the status, constitution and proceedings of the Committee as the Scottish Ministers consider appropriate;
  - (c) for the information that the Committee’s advice must contain;
  - (d) for the factors to which the Committee is to have regard in giving that advice;
  - (e) for the period within which the Committee must give that advice;
  - (f) as to whom that advice is to be given;
  - (g) for the form and manner in which that advice is to be published and laid before the Scottish Parliament.

## **26 Application of sections 27 to 32 and 56**

- (1) Sections 27 to 32 and 56 have effect only from—
  - (a) the day when an order made by the Scottish Ministers under section 24(1) comes into force; or
  - (b) such later day or days as the Scottish Ministers may specify in an order under that section.
- (2) When an order under section 24(1)—
  - (a) bringing section 29 into effect comes into force, subsection (3) of section 9 ceases to have effect;
  - (b) bringing section 56 into effect comes into force, subsection (4) of section 55 ceases to have effect.

## **27 Advice on annual targets etc.**

- (1) When requested to do so by the Scottish Ministers, the advisory body must provide the Scottish Ministers with advice as regards—
  - (a) annual targets Ministers propose to set under section 4;
  - (b) a modification Ministers propose to make under section 6.
- (2) When providing advice under subsection (1)(a), the advisory body must express a view—
  - (a) in the case of annual targets proposed for years in the period 2010–2020, as to whether those targets are consistent with a reduction over that period of net Scottish emissions accounts which would allow the interim target and the 2050 target to be met;
  - (b) in the case of annual targets proposed for years in the period 2021–2050, as to whether those targets are consistent with a reduction over that period of net Scottish emissions accounts which would allow the 2050 target to be met;
  - (c) in any case, as to what annual targets are appropriate by reference to the target-setting criteria.

- (3) When providing advice under subsection (1)(a), the advisory body must also express a view as to—
- (a) the extent to which the annual targets should be met—
    - (i) by taking action to reduce net Scottish emissions;
    - (ii) by the use of carbon units that in accordance with section 13(2) and regulations under section 13(5) may be credited to the net Scottish emissions account;
  - (b) the respective contributions towards meeting the annual targets and the domestic effort target that should be made—
    - (i) by the traded sector of the Scottish economy;
    - (ii) by the other sectors of the Scottish economy;
  - (c) the respective contributions towards meeting the annual targets that should be made by—
    - (i) energy efficiency;
    - (ii) energy generation;
    - (iii) land use;
    - (iv) transport.
- (4) When providing advice under subsection (1)(a), the advisory body may also express a view as to any other matter that body considers appropriate including, in particular, as to any sectors of the Scottish economy in which there are particular opportunities for contributions to be made towards meeting annual targets through reductions in emissions of greenhouse gases.
- (5) When providing advice under subsection (1)(a), the advisory body must also express a view as to the cumulative amount of net Scottish emissions for the period 2010–2050 that is consistent with a reduction over that period of net Scottish emissions accounts which would allow the 2050 target to be met.
- (6) The advisory body must provide advice under this section within such period as the Scottish Ministers may reasonably request.
- (7) In subsection (3)(b)(i), “traded sector” means the sectors of the Scottish economy which are covered by trading schemes within the meaning of section 44 of the 2008 Act.

## **28 Reporting on progress towards targets**

- (1) The advisory body must, in each year beginning with the specified year, prepare a report setting out that body’s views on—
- (a) progress towards achievement of—
    - (i) annual targets;
    - (ii) the interim target;
    - (iii) the 2050 target;
  - (b) whether the annual targets, the interim target or the 2050 target are likely to be achieved;
  - (c) any further effort which may be necessary to achieve annual targets, the interim target or the 2050 target.
- (2) In subsection (1), the “specified year” means such year as the Scottish Ministers may, by order, specify.



- (3) A report prepared in a relevant year must also set out the advisory body's views on the matters mentioned in subsection (6).
- (4) In subsection (3), the "relevant year" means such year as the Scottish Ministers may, by order, designate in accordance with subsection (5).
- (5) The year which may be designated under subsection (4) is the first year following a year for which an annual target has been set (a "target year") or the second year following a target year.
- (6) The matters referred to in subsection (3) are—
  - (a) whether the annual target for the target year was met;
  - (b) whether the domestic effort target was met in that target year;
  - (c) the ways in which those targets were or were not met;
  - (d) the action taken by the Scottish Ministers to reduce net Scottish emissions during that year.
- (7) The advisory body must lay a report under this section before the Scottish Parliament no later than—
  - (a) 31 January in the third year following the target year; or
  - (b) such other date as the Scottish Ministers may, by order, appoint.

## **29 Scottish Ministers' response to reports on progress**

- (1) The Scottish Ministers must lay before the Scottish Parliament a response to a report laid by the advisory body before the Parliament under section 28.
- (2) The response to the advisory body's report must be laid before the Parliament no later than—
  - (a) 31 March in the third year following the year for which an annual target has been set; or
  - (b) such other date as the Scottish Ministers may, by order, appoint.

## **30 Duty of advisory body to provide advice or other assistance**

When requested to do so by the Scottish Ministers, the advisory body must provide advice, analysis, information or assistance as regards—

- (a) the exercise of the Scottish Ministers' functions under this Act;
- (b) the exercise of Ministers' functions in relation to climate change other than under this Act;
- (c) other matters relating to climate change.

## **31 Guidance to advisory body**

- (1) The advisory body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Act.
- (2) The Scottish Ministers may not give the advisory body guidance as to the content of any advice or report.
- (3) The power to give guidance under subsection (1) includes power to vary or revoke the guidance.

**32 Power to give directions to advisory body**

- (1) The Scottish Ministers may, if they consider it appropriate to do so, give the advisory body directions as to the exercise of its functions under this Act.
- (2) The Scottish Ministers may not direct the advisory body as to the content of any advice or report.
- (3) The power to give directions under subsection (1) includes power to vary or revoke the directions.
- (4) The advisory body must comply with any directions given under subsection (1).

**PART 3**

## REPORTING DUTIES

**33 Reports on annual targets**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report in respect of each year in the period 2010–2050 for which an annual target has been set (a “target year”).
- (2) The report must state whether the annual target for the target year has been met.
- (3) If the annual target has not been met, the report must explain why.
- (4) The report must also state whether the domestic effort target has been met in the target year to which the report relates.
- (5) If the domestic effort target has not been met, the report must explain why.
- (6) The report must also contain the information mentioned in section 34.
- (7) The report under this section must be laid before the Parliament no later than 31 October in the second year after the target year.

**34 Reports on annual targets: content**

- (1) In respect of each greenhouse gas, the report must—
  - (a) state the amount of net Scottish emissions for the baseline year;
  - (b) state the amount of net Scottish emissions for the target year;
  - (c) state whether the amount of net Scottish emissions represents an increase or decrease compared to the equivalent amount for the previous target year;
  - (d) identify the methods used to measure or calculate the amount of net Scottish emissions (including in particular any change to those methods).
- (2) The report must also set out the aggregate amount for the target year of net Scottish emissions.
- (3) The report must also—
  - (a) state the amount of the net Scottish emissions account for the target year;
  - (b) state the proportion of the reduction in the net Scottish emissions account which is accounted for by reductions in net Scottish emissions;

- (c) state the total amount of carbon units—
    - (i) that have been credited to or debited from the net Scottish emissions account for the target year;
    - (ii) that have been purchased in the target year;
    - (iii) that have been held and not surrendered in the target year;
  - (d) give details of the number and type of those carbon units.
- (4) The report must also—
- (a) state the amount of Scottish gross electricity consumption for the target year;
  - (b) state the amount of Scottish electricity generation for the target year;
  - (c) state the average greenhouse gas emissions per megawatt hour of electricity generated in Scotland in the target year;
  - (d) state the average greenhouse gas emissions per megawatt hour, and the estimated lifetime cumulative emissions, of any new electricity generation capacity greater than 50 megawatts approved in Scotland in the target year.
- (5) The report for each year in the period 2011–2050 must—
- (a) state the amount of the net Scottish emissions account for each preceding target year;
  - (b) state the cumulative amount of the net Scottish emissions account for the target year and all preceding target years.
- (6) If the method of measuring or calculating net Scottish emissions changes and that change is such as to require adjustment of an amount for an earlier target year, the report must specify the adjustment required and state the adjusted amount.
- (7) An adjustment under subsection (6) must, in so far as reasonably practicable, be made in accordance with international carbon reporting practice.
- (8) If an amount mentioned in subsection (3)(a) or subsection (5)(a) or (b) for an earlier period requires to be adjusted, the report must—
- (a) explain why the adjustment is required;
  - (b) specify the adjustment required; and
  - (c) state the adjusted amount.
- (9) The report may contain such other information as the Scottish Ministers consider appropriate and, in particular, may state the amount of Scottish electricity generation from each source for the target year.

### **35 Reports on proposals and policies for meeting annual targets**

- (1) As soon as reasonably practicable after making an order under section 4(1) setting annual targets, the Scottish Ministers must lay before the Scottish Parliament a report containing the following information.
- (2) The Scottish Ministers must, before laying a report under this section before the Scottish Parliament, lay a draft of the report before the Parliament.
- (3) The Scottish Ministers may not lay the report before the expiry of the period for Parliamentary consideration.

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- (4) In subsection (3), the “period for Parliamentary consideration” means the period of 60 days, of which no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
- (5) The Scottish Ministers must, before laying the report before the Parliament, have regard to—
  - (a) any representations on the draft report made to them;
  - (b) any resolution relating to the draft report passed by the Parliament; and
  - (c) any report relating to the draft report published by any committee of the Parliament for the time being appointed by virtue of standing orders.
- (6) The Scottish Ministers must, when laying the report before the Parliament, lay a statement setting out—
  - (a) details of any representations, resolutions or reports mentioned in subsection (5);
  - (b) the changes (if any) they have made to the report in response to such representations, resolutions or reports and the reasons for those changes.
- (7) The Scottish Ministers must, as soon as reasonably practicable after laying a report under this section, and in so far as reasonably practicable, make a statement to the Parliament relating to the report.
- (8) The report must, in particular, set out—
  - (a) the Scottish Ministers' proposals and policies for meeting the annual targets;
  - (b) how those proposals and policies are expected to contribute towards the achievement of the interim target, the 2050 target and, in each target year, the domestic effort target;
  - (c) the timescales over which those proposals and policies are expected to take effect.
- (9) The report must also set out the Scottish Ministers' proposals and policies regarding the respective contributions towards meeting the annual targets that should be made by—
  - (a) energy efficiency;
  - (b) energy generation;
  - (c) land use;
  - (d) transport.
- (10) The report must also explain how the proposals and policies set out in the report are expected to affect different sectors of the Scottish economy.
- (11) The second and each subsequent report under this section—
  - (a) must contain an assessment of the progress towards implementing proposals and policies set out in earlier reports;
  - (b) may make such adjustments to those proposals and policies as the Scottish Ministers consider appropriate.

## **36 Reports on proposals and policies where annual targets not met**

- (1) This section—
  - (a) applies if the Scottish Ministers lay a report under section 33 which states that an annual target has not been met or that the domestic effort target has not been met in the target year to which the report relates;

(b) does not apply if that report relates to the annual target for 2050.

- (2) As soon as reasonably practicable after the report referred to in subsection (1)(a) has been laid, the Scottish Ministers must lay a report before the Scottish Parliament setting out proposals and policies to compensate in future years for the excess emissions.

**37 Reports on emissions attributable to Scottish consumption of goods and services**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report in respect of each year in the period 2010–2050 containing the following information.
- (2) The report must, in so far as reasonably practicable, set out the emissions of greenhouse gases (whether in Scotland or elsewhere) which are produced by or otherwise associated with the consumption and use of goods and services in Scotland during that year.
- (3) The report may also contain such other information as the Scottish Ministers consider appropriate.

**38 Reports on impact on emissions of exercise of electricity generation related functions**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report in respect of each year in the period 2010–2050 containing the following information.
- (2) The report must, in so far as reasonably practicable, set out the impact on net Scottish emissions during that year resulting from the exercise by the Scottish Ministers of the functions conferred on them by virtue of any enactment relating to electricity generation.

**39 Report on progress towards meeting the interim target**

- (1) The Scottish Ministers must, no later than 31 December 2015, lay before the Scottish Parliament a report on progress towards meeting the interim target.
- (2) The report must, in particular, state the progress that has been made in reducing net Scottish emissions and indicate whether this progress is consistent with a reduction over the period 2010–2020 of net Scottish emissions accounts which would allow the interim target and the 2050 target to be met.

**40 Report on the interim target**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report containing the following information in respect of the year 2020.
- (2) The report must state whether the interim target has been met.
- (3) If the interim target has not been met, the report must explain why.
- (4) In respect of each greenhouse gas, the report must state the amount of net Scottish emissions for 2020.
- (5) The report must also—

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- (a) state the amount of the net Scottish emissions account for 2020;
  - (b) state the cumulative amount of the net Scottish emissions account for the period 2010–2020;
  - (c) state the total amount of carbon units—
    - (i) that have been credited to or debited from the net Scottish emissions account for 2020;
    - (ii) that have been purchased in 2020;
    - (iii) that have been held and not surrendered in 2020;
  - (d) give details of the number and type of those carbon units.
- (6) In subsections (4) and (5), the amount means the amount set out in the report for 2020 made under section 33.
- (7) The report may contain such other information as the Scottish Ministers consider appropriate.
- (8) The report under this section must be laid before the Parliament no later than 31 October 2022.

#### **41 Report on the 2050 target**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report containing the following information in respect of the year 2050.
- (2) The report must state whether the 2050 target has been met.
- (3) If the 2050 target has not been met, the report must explain why.
- (4) In respect of each greenhouse gas, the report must state the amount of net Scottish emissions for 2050.
- (5) The report must also—
  - (a) state the amount of the net Scottish emissions account for 2050;
  - (b) state the cumulative amount of the net Scottish emissions account for the period 2010–2050;
  - (c) state the total amount of carbon units—
    - (i) that have been credited to or debited from the net Scottish emissions account for 2050;
    - (ii) that have been purchased in 2050;
    - (iii) that have been held and not surrendered in 2050;
  - (d) give details of the number and type of those carbon units.
- (6) In subsections (4) and (5), the amount means the amount set out in the report for 2050 made under section 33.
- (7) The report may contain such other information as the Scottish Ministers consider appropriate.
- (8) The report under this section must be laid before the Parliament no later than 31 October 2052.

#### **42 Reports: provision of further information to the Scottish Parliament**

- (1) Where the Scottish Ministers lay a report mentioned in subsection (2) before the Scottish Parliament, they must—
  - (a) immediately send a copy of the report to the persons who convene and chair such committees of the Scottish Parliament as are for the time being appointed by virtue of standing orders; and
  - (b) as soon as reasonably practicable after doing so, and in so far as reasonably practicable, make a statement to the Parliament relating to the report.
- (2) Those reports are reports under—
  - (a) section 33(1) (report on annual target);
  - (b) section 36(2) (report on proposals and policies to compensate for excess emissions);
  - (c) section 40(1) (report on interim target);
  - (d) section 41(1) (report on 2050 target).
- (3) Where the Scottish Ministers lay a report referred to in subsection (2)(a), they must also, as soon as reasonably practicable after doing so, and in so far as reasonably practicable, attend, if invited, the proceedings of any such committees of the Scottish Parliament as are for the time being appointed by virtue of standing orders, for the purposes of giving evidence on the report.
- (4) The Scottish Ministers must have regard to—
  - (a) any resolution passed by the Scottish Parliament;
  - (b) any report published by any committee of the Parliament for the time being appointed by virtue of standing orders,relating to the content of any report referred to in subsection (2).

#### **43 Further provision about reporting duties**

- (1) The Scottish Ministers may, if they consider it appropriate to do so, by order, make further provision imposing duties on themselves to report to the Scottish Parliament.
- (2) An order under subsection (1) may in particular—
  - (a) provide for the information to be provided under the duties;
  - (b) provide for the period in relation to which that information is to be provided;
  - (c) provide for the period within which that information is to be provided.

### **PART 4**

#### **DUTIES OF PUBLIC BODIES RELATING TO CLIMATE CHANGE**

##### *Duties of public bodies*

#### **44 Duties of public bodies relating to climate change**

- (1) A public body must, in exercising its functions, act—
  - (a) in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of this Act;

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- (b) in the way best calculated to help deliver any programme laid before the Scottish Parliament under section 53;
  - (c) in a way that it considers is most sustainable.
- (2) In this Part, a “public body” means a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002 (asp 13).
- (3) The Scottish Ministers may, if they consider it appropriate to do so, by order, make further provision relating to the imposition on relevant public bodies of duties relating to climate change.
- (4) The duties imposed by subsection (1) and any duty imposed by virtue of an order under subsection (3) are referred to in this Act as “climate change duties”.
- (5) In this Part, a public body which has climate change duties under subsection (1) or by virtue of subsection (3) is a “relevant public body”.
- (6) An order under subsection (3) may in particular—
  - (a) impose climate change duties on—
    - (i) all public bodies;
    - (ii) public bodies of a particular description;
    - (iii) individual public bodies;
  - (b) impose different climate change duties on different public bodies or descriptions of public body;
  - (c) remove climate change duties.
- (7) Before laying a draft of a statutory instrument containing an order under subsection (3) before the Scottish Parliament, the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (8).
- (8) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.
- (9) The Scottish Ministers must co-operate with a relevant public body to help that body comply with its climate change duties.

#### **45 Guidance to relevant public bodies**

- (1) The Scottish Ministers must give guidance to relevant public bodies in relation to climate change duties and those bodies must have regard to such guidance.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.



(5) The Scottish Ministers must publish any guidance given under this section.

#### **46 Reporting on climate change duties**

- (1) The Scottish Ministers may, by order, make provision—
- (a) requiring relevant public bodies to prepare reports on compliance with climate change duties;
  - (b) requiring any relevant public body found, following an investigation under section 48, to be failing to comply with its climate change duties, to prepare a report on the actions it has taken, is taking or intends to take to secure future compliance with those duties;
  - (c) subject to subsection (2), setting out what information reports must contain;
  - (d) setting out the form and manner of reports;
  - (e) setting out the period within which reports must be sent to the Scottish Ministers.
- (2) A report required by virtue of subsection (1)(a) must, in particular, contain information relating to how—
- (a) procurement policies of relevant public bodies; and
  - (b) procurement activity by relevant public bodies,
- have contributed to compliance with climate change duties.
- (3) An order under subsection (1) may in particular—
- (a) require two or more relevant public bodies to prepare a joint report in relation to compliance with one or more climate change duties; and
  - (b) require those bodies to co-operate with each other for the purpose of preparing that report.

#### *Monitoring body*

#### **47 Appointment of monitoring body**

- (1) The Scottish Ministers may, by order, designate one or more persons or bodies to monitor whether relevant public bodies are—
- (a) complying with climate change duties;
  - (b) having regard to any guidance given under section 45.
- (2) In this Part, a person or body designated under subsection (1) is the “monitoring body”.

#### *Investigations*

#### **48 Investigations**

- (1) The monitoring body may carry out an investigation into—
- (a) a relevant public body’s compliance with climate change duties;
  - (b) whether a relevant public body is having regard to guidance given under section 45.
- (2) The monitoring body must carry out an investigation if the Scottish Ministers direct it to do so.

**49 Investigations: investigators' powers**

- (1) In this section an “investigator” means—
  - (a) the monitoring body;
  - (b) a person authorised by the monitoring body for the purpose of carrying out investigations.
- (2) An investigator may use the powers set out in subsections (3) to (5) if the investigator considers that it is necessary to do so for the purposes of or in connection with an investigation.
- (3) An investigator may, by notice in writing, require any relevant public body to provide any relevant document or relevant information in the possession, or under the control, of the relevant public body.
- (4) An investigator may require any person who possesses or controls any document or information referred to in subsection (3) to provide an explanation of the document or information.
- (5) An investigator may take copies of, or extracts from, any document or information produced in accordance with subsection (3).
- (6) Nothing in this section authorises an investigator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

**50 Reporting by monitoring body**

- (1) The Scottish Ministers may direct the monitoring body to prepare a report relating to—
  - (a) the monitoring body’s activities under this Part;
  - (b) investigations carried out by the monitoring body;
  - (c) its use of resources in carrying out its functions under this Part;
  - (d) any other matters the Scottish Ministers may direct.
- (2) The report may include information relating to a continuing investigation only if the Scottish Ministers direct that information to be included.
- (3) The monitoring body must send the report to the Scottish Ministers.
- (4) The Scottish Ministers must lay the report before the Scottish Parliament.

**51 Guidance to monitoring body**

- (1) The monitoring body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Part.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
  - (a) the monitoring body; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.

- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

## **52 Power to direct monitoring body**

- (1) The Scottish Ministers may give directions to the monitoring body relating to the exercise of its functions under this Part.
- (2) The Scottish Ministers may vary or revoke a direction given under this section.
- (3) The monitoring body must comply with a direction given under this section.

## **PART 5**

### OTHER CLIMATE CHANGE PROVISIONS

#### **CHAPTER 1**

#### ADAPTATION

##### *Adaptation programmes*

## **53 Programmes for adaptation to climate change**

- (1) This section applies where the Secretary of State lays a report under section 56 of the 2008 Act (report on impact of climate change) before Parliament.
- (2) The Scottish Ministers must lay a programme before the Scottish Parliament—
  - (a) setting out—
    - (i) their objectives in relation to adaptation to climate change;
    - (ii) their proposals and policies for meeting those objectives;
    - (iii) the arrangements for involving employers, trade unions and other stakeholders in meeting those objectives;
    - (iv) the mechanisms for ensuring public engagement in meeting those objectives;
    - (v) the period within which those proposals and policies will be introduced; and
  - (b) otherwise addressing the risks identified in the report under section 56 of the 2008 Act.
- (3) Where the report laid under section 56 of the 2008 Act is a subsequent report (within the meaning of subsection (3) of that section), the programme must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in the previous programme.
- (4) The Scottish Ministers must lay each programme as soon as reasonably practicable after they receive the copy of the Secretary of State's report.

**54 Reports on progress towards implementation of programmes for adaptation**

- (1) This section applies where the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament.
- (2) The Scottish Ministers must lay before the Scottish Parliament reports setting out their assessment of the progress made towards implementing the objectives, proposals and policies set out in the programme.
- (3) The first report under this section must be laid before the Scottish Parliament no later than the expiry of the period of 12 months beginning with the day on which the programme is laid.
- (4) The second and subsequent reports under this section must be laid before the Scottish Parliament no later than the expiry of each subsequent period of 12 months.

**55 Progress towards implementation of programmes for adaptation**

- (1) This section applies where—
  - (a) the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament;
  - (b) the Secretary of State lays a second or subsequent report under section 56 of the 2008 Act before Parliament.
- (2) Where subsection (1)(a) applies, the Scottish Ministers must, before the expiry of the period of 2 years beginning with the day on which the programme is laid, request the relevant body to prepare a report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in that programme.
- (3) Where subsection (1)(b) applies, the Scottish Ministers must, as soon as reasonably practicable after they receive the copy of the report laid, request the relevant body to prepare a further report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in the most recent programme laid by the Scottish Ministers under section 53(2).
- (4) The Scottish Ministers must, as soon as reasonably practicable after they receive the relevant body's report under subsection (2) or, as the case may be, further report under subsection (3), lay it before the Scottish Parliament.

**56 Reports on programmes for adaptation**

- (1) This section applies where—
  - (a) the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament;
  - (b) the Secretary of State lays a second or subsequent report under section 56 of the 2008 Act before Parliament.
- (2) Where subsection (1)(a) applies, the advisory body must, before the expiry of the period of 2 years beginning with the day on which the programme is laid, prepare a report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in that programme.
- (3) Where subsection (1)(b) applies, the advisory body must, as soon as reasonably practicable after the report is laid, prepare a further report setting out its assessment

of the progress made towards implementing the objectives, proposals and policies set out in the most recent programme laid by the Scottish Ministers under section 53(2).

- (4) The advisory body must, as soon as reasonably practicable after preparing a report under subsection (2) or, as the case may be, a further report under subsection (3), lay it before the Scottish Parliament.

## CHAPTER 2

### LAND USE

#### *Land use strategy*

#### **57 Duty to produce a land use strategy**

- (1) The Scottish Ministers must, no later than 31 March 2011, lay a land use strategy before the Scottish Parliament.
- (2) The strategy must, in particular, set out—
- (a) the Scottish Ministers' objectives in relation to sustainable land use;
  - (b) their proposals and policies for meeting those objectives; and
  - (c) the timescales over which those proposals and policies are expected to take effect.
- (3) The objectives, proposals and policies referred to in subsection (2) must contribute to—
- (a) achievement of the Scottish Ministers' duties under section 1, 2(1) or 3(1)(b);
  - (b) achievement of the Scottish Ministers' objectives in relation to adaptation to climate change, including those set out in any programme produced by virtue of section 53(2); and
  - (c) sustainable development.
- (4) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with such bodies as they consider appropriate and also with the general public.
- (5) The strategy must be accompanied by a report setting out—
- (a) the consultation process undertaken in order to comply with subsection (4); and
  - (b) the ways in which views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).
- (6) The Scottish Ministers must, no later than—
- (a) 5 years after laying a strategy before the Scottish Parliament under subsection (1); and
  - (b) the end of every subsequent period of 5 years,
- lay a revised strategy before the Scottish Parliament; and subsections (2) to (5) apply to a revised strategy as they apply to a strategy laid under subsection (1).

*Muirburn***58 Variation of permitted times for making muirburn**

After section 23 of the Hill Farming Act 1946 (c. 73) (prohibition of muirburn at certain times), insert—

**“23A Power to vary permitted times for making muirburn**

- (1) The Scottish Ministers may, by order, modify section 23 so as to substitute for any of the dates for the time being mentioned in subsection (1), (2) or, as the case may be, (3) of that section such other dates as they consider appropriate as the dates before which or after which it is lawful to make muirburn in any year.
- (2) The Scottish Ministers may make an order under subsection (1) only if they consider it necessary or expedient to do so in relation to climate change.
- (3) An order under subsection (1) may not modify any of the dates for the time being mentioned in section 23 if the modification would result in a period during which it is lawful to make muirburn in any year being shorter than the corresponding period which applied immediately before the coming into force of section 58 of the Climate Change (Scotland) Act 2009 (asp 12).
- (4) The power conferred by subsection (1) is exercisable by statutory instrument.
- (5) No statutory instrument containing an order under subsection (1) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

*Forestry***59 Power to modify functions of Forestry Commissioners**

- (1) The Scottish Ministers may, by order, modify the functions of the Forestry Commissioners in or as regards Scotland.
- (2) The Scottish Ministers may make an order under subsection (1) only where they consider it necessary or expedient to do so—
  - (a) in order to comply with their duty under section 1, 2(1) or 3(1)(b); or
  - (b) otherwise in relation to climate change.
- (3) An order under subsection (1) may in particular include provision enabling the Forestry Commissioners to—
  - (a) form, or participate in the forming of, a body corporate;
  - (b) invest in a body corporate;
  - (c) provide loans;
  - (d) establish a trust;
  - (e) act, or appoint a person to act, as—
    - (i) an officer of a body corporate; or
    - (ii) a trustee of a trust.

- (4) Any body corporate formed or trust established by the Forestry Commissioners by virtue of an order under subsection (1) is a public body or office holder for the purposes of section 1 of the Nature Conservation (Scotland) Act 2004 (asp 6).

### CHAPTER 3

#### ENERGY EFFICIENCY

##### *Promotion of energy efficiency and renewable heat*

#### **60 Duty of Scottish Ministers to promote energy efficiency**

- (1) The Scottish Ministers must prepare and publish a plan for—
- (a) promoting energy efficiency; and
  - (b) improving the energy efficiency of living accommodation, in Scotland.
- (2) The plan must set annual energy efficiency targets and describe how those targets are to be reported on.
- (3) The plan must also include details of how the Scottish Ministers intend to update planning and building regulations to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific building, through the installation and operation of low and zero-carbon generating technologies.
- (4) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.
- (5) The Scottish Ministers—
- (a) may, from time to time; and
  - (b) must, before the end of the period mentioned in subsection (6), review the plan prepared and published under this section.
- (6) The period referred to in subsection (5)(b) is the period of 3 years beginning with the day on which—
- (a) the plan is first published; or
  - (b) the plan was last reviewed under subsection (5).
- (7) Where, following a review under subsection (5), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.
- (8) In preparing or varying the plan, the Scottish Ministers must have regard to the contributions which improvements to buildings and changes in building standards can make to the delivery of energy efficiency and to the reduction of greenhouse gas emissions.
- (9) In this section—
- “energy efficiency” includes the use of—

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- (a) technologies (other than those used for the production of heat) reliant on renewable sources of energy;
- (b) materials and equipment the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials and equipment; and
- (c) surplus heat from electricity generation or other industrial processes for district heating or other purposes;

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) peat;
- (d) natural gas (within the meaning of the Energy Act 1976 (c. 76));
- (e) crude liquid petroleum;
- (f) petroleum products (within the meaning of that Act);
- (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);

“renewable sources” means sources other than fossil fuel and nuclear fuel.

## **61 Duty of Scottish Ministers to promote renewable heat**

- (1) The Scottish Ministers must prepare and publish a plan for the promotion of the use of heat produced from renewable sources.
- (2) The plan must, in particular—
  - (a) set—
    - (i) targets for the percentage of heat to be produced from renewable sources; and
    - (ii) in relation to each target, the date by which it should be met; and
  - (b) describe how those targets are to be reported on.
- (3) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.
- (4) The Scottish Ministers—
  - (a) may, from time to time; and
  - (b) must, before the end of the period mentioned in subsection (5), review the plan prepared and published under this section.
- (5) The period referred to in subsection (4)(b) is the period of 2 years beginning with the day on which—
  - (a) the plan is first published; or
  - (b) the plan was last reviewed under subsection (4).
- (6) Where, following a review under subsection (4), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.
- (7) In this section, “renewable sources” has the same meaning as in section 60(9).



## **62 Laying of plans and reports**

- (1) The Scottish Ministers must, as soon as reasonably practicable after publishing a plan under section 60(1) or (7) or section 61(1) or (6), lay it before the Scottish Parliament.
- (2) The Scottish Ministers must, before the end of the period mentioned in subsection (3), lay before the Parliament a report on what steps have been taken in implement of the plan.
- (3) The period referred to in subsection (2) is the period of 12 months beginning with the day on which—
  - (a) the plan is first published; or
  - (b) a report was last laid under subsection (2).
- (4) Where the Scottish Ministers lay a plan mentioned in subsection (1) or a report mentioned in subsection (2) before the Parliament, they must, as soon as reasonably practicable after doing so, and in so far as reasonably practicable, make a statement to the Parliament relating to the plan or, as the case may be, report.

### *Energy performance of non-domestic buildings*

## **63 Non-domestic buildings: assessment of energy performance and emissions**

- (1) The Scottish Ministers must, by regulations—
  - (a) provide for the assessment of—
    - (i) the energy performance of non-domestic buildings;
    - (ii) the emission of greenhouse gases produced by or otherwise associated with such buildings or with activities carried out in such buildings;
  - (b) require owners of such buildings to take steps, identified by such assessments, to—
    - (i) improve the energy performance of such buildings;
    - (ii) reduce such emissions.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which the regulations apply;
  - (b) the non-domestic buildings to which the regulations apply;
  - (c) the persons who may be required to have assessments carried out;
  - (d) the periods within which such assessments must be carried out;
  - (e) the procedure and methodology for assessing the energy performance of buildings;
  - (f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with buildings or activities carried out in buildings;
  - (g) the persons who may carry out such assessments;
  - (h) the issuing of certificates following such assessments, including the form, manner and content of such certificates;
  - (i) the form of any recommendations, contained in such certificates, as to the improvement of the energy performance of buildings and the reduction of emissions produced by or otherwise associated with buildings or activities carried out in buildings;

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- (j) the manner in which and periods within which persons must take steps to comply with any recommendations contained in such certificates;
  - (k) the registration of such certificates;
  - (l) the disclosure of information which is entered in the register;
  - (m) subject to subsection (3), the enforcement authority in relation to the regulations;
  - (n) subject to subsection (5), the functions of that authority;
  - (o) the keeping of information and its production to the enforcement authority;
  - (p) the enforcement of the duties imposed by the regulations;
  - (q) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority provided for in the regulations is to be such person or body as the Scottish Ministers consider appropriate.
- (4) The regulations may provide for the functions of the enforcement authority to be exercised by two or more such authorities and about the functions of each such authority.
- (5) The functions of the enforcement authority may include power to levy charges to recover the reasonable costs incurred by it in exercising its functions under the regulations.
- (6) The Scottish Ministers must, no later than 12 months after the day on which this section comes into force, publish a report setting out—
- (a) what measures they intend to take to reduce emissions from non-domestic buildings; and
  - (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).
- (7) In this section, “non-domestic building”—
- (a) means a building other than a dwelling;
  - (b) does not include—
    - (i) any yard, garden, outbuilding or other land or buildings;
    - (ii) any common areas,
 associated with such a dwelling.

*Energy performance of living accommodation*

**64 Living accommodation: assessment of energy performance and emissions**

- (1) The Scottish Ministers must, by regulations—
- (a) provide for the assessment of—
    - (i) the energy performance of living accommodation;
    - (ii) the emission of greenhouse gases produced by or otherwise associated with such accommodation;
  - (b) require owners of such accommodation to take steps, identified by such assessments, to—
    - (i) improve the energy performance of such accommodation;
    - (ii) reduce such emissions.
- (2) The regulations may in particular include provision about—

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- (a) the circumstances in which the regulations apply;
  - (b) the living accommodation to which the regulations apply;
  - (c) the persons who may be required to have assessments carried out;
  - (d) the periods within which such assessments must be carried out;
  - (e) the procedure and methodology for assessing the energy performance of living accommodation;
  - (f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with living accommodation;
  - (g) the persons who may carry out such assessments;
  - (h) the issuing of certificates, following such assessments, including the form, manner and content of such certificates;
  - (i) the form of any recommendations, contained in such certificates, as to the improvement of the energy performance of, and the reduction of emissions produced by or otherwise associated with, living accommodation;
  - (j) the manner in which and periods within which persons must take steps to comply with any recommendations contained in such certificates;
  - (k) the registration of such certificates;
  - (l) the disclosure of information which is entered in the register;
  - (m) subject to subsection (3), the enforcement authority in relation to the regulations;
  - (n) subject to subsection (5), the functions of that authority;
  - (o) the keeping of information and its production to the enforcement authority;
  - (p) the enforcement of the duties imposed by the regulations;
  - (q) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority provided for in the regulations is to be such person or body as the Scottish Ministers consider appropriate.
- (4) The regulations may provide for the functions of the enforcement authority to be exercised by two or more such authorities and about the functions of each such authority.
- (5) The functions of the enforcement authority may include power to levy charges to recover the reasonable costs incurred by it in exercising its functions under the regulations.
- (6) The Scottish Ministers must, no later than 12 months after the day on which this section comes into force, publish a report setting out—
- (a) what measures they intend to take to reduce emissions from living accommodation; and
  - (b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).
- (7) In this section, “living accommodation”—
- (a) means a dwelling; and
  - (b) includes—
    - (i) any building having a total useful floor area of 50m<sup>2</sup> or more; and
    - (ii) any common areas,  
associated with such a dwelling.

*Energy efficiency discount schemes***65 Duty of local authorities to establish energy efficiency discount schemes**

- (1) The Local Government Finance Act 1992 (c. 14) is amended as follows.
- (2) After section 80 (reduced amounts payable in respect of council tax), insert—

**“80A Local authority’s power to reduce amount of tax payable**

- (1) A local authority must establish a scheme for reducing the amounts which persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings.
- (2) A scheme established under subsection (1) is an “energy efficiency discount scheme”.
- (3) An energy efficiency discount scheme may make such provision as the local authority considers appropriate, including, in particular, provision about—
- (a) the energy efficiency improvements to which the scheme applies;
  - (b) the chargeable dwellings to which the scheme applies;
  - (c) the reduction, which may be made under the scheme, in the amount which persons are liable to pay in respect of council tax;
  - (d) applications under the scheme.
- (4) But, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax may be reduced only where each of the conditions mentioned in subsection (5) is met (whatever other conditions may require to be met under the scheme).
- (5) Those conditions are—
- (a) the person is liable to pay council tax in respect of a chargeable dwelling and any day;
  - (b) improvements are made to the energy efficiency of that dwelling (whether by the person liable to pay or not);
  - (c) those improvements are made during the same financial year to which the reduction of the amount which the person is liable to pay in respect of council tax relates;
  - (d) the amount which the person is liable to pay in respect of that year has not already been reduced under the scheme in respect of those improvements;
  - (e) the amount which any other person is liable to pay in respect of council tax in respect of that dwelling and that year has not been reduced under the scheme in respect of those improvements.
- (6) In ascertaining whether the condition in subsection (5)(e) is met, no account is to be taken of any person who is jointly and severally liable, with the person mentioned in subsection (5)(a), to pay council tax in respect of the dwelling.
- (7) The minimum reduction which may be provided for under an energy efficiency discount scheme must be—
- (a) where the amount which the person is liable to pay in respect of council tax is £50 or more, no less than £50;

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- (b) where the amount which the person is liable to pay in respect of council tax is less than £50, an amount equal to that person’s liability.
- (8) The local authority may, under an energy efficiency discount scheme, reduce the amount which a person is liable to pay in respect of a dwelling to nil.
- (9) In this section—
  - “energy efficiency” includes the use of—
    - (a) technologies reliant on sources of energy other than fossil fuel and nuclear fuel;
    - (b) materials the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials; and
    - (c) surplus heat from electricity generation or other industrial sources for district heating or other purposes;
  - “fossil fuel” means—
    - (a) coal;
    - (b) lignite;
    - (c) peat;
    - (d) natural gas (within the meaning of the Energy Act 1976 (c. 76));
    - (e) crude liquid petroleum;
    - (f) petroleum products (within the meaning of that Act);
    - (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);
  - “greenhouse gas” has the meaning given by section 10(1) of the Climate Change (Scotland) Act 2009 (asp 12).”.
- (3) In schedule 2, after paragraph 21 (effect of reduction of liability to pay council tax under section 13A), insert—
  - “22 (1) This paragraph applies where a local authority establishes an energy efficiency discount scheme under section 80A.
  - (2) Where, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax is reduced, any amount in relation to which the reduction applies is to be treated for the purposes of this schedule as subject to a discount equal to the amount of the reduction.”.

## **66 Review of energy efficiency discount schemes**

- (1) The Scottish Ministers must, as soon as practicable after 31 March 2012 and annually thereafter, lay before the Scottish Parliament a report on the operation of energy efficiency discount schemes established under section 80A of the Local Government Finance Act 1992 (c. 14), which must include an assessment of whether the reductions thereby provided for have contributed effectively to promoting energy efficiency.
- (2) The Scottish Ministers may, if they consider it appropriate, by order amend section 80A of the Local Government Finance Act 1992 for the purpose of improving the contribution of energy efficiency discount schemes to promoting energy efficiency.

**67 Non-domestic rates: discounts for energy efficiency etc.**

In section 153 (power to prescribe amount of non-domestic rate) of the Local Government etc. (Scotland) Act 1994 (c. 39), in subsection (3)—

- (a) the words “whose rateable value exceeds, and those whose rateable value does not exceed, a prescribed figure” become paragraph (a); and
- (b) at the end insert—

“(b) whose energy efficiency and greenhouse gas emissions fall into different categories prescribed for the purpose of this paragraph in rules under subsection (1).”

(3A) Regulations under this section may make provision in relation to how lands and heritages are to be determined to fall within a category prescribed for the purpose of subsection (3)(b) in rules under subsection (1).”.

*Climate change burdens***68 Climate change burdens**

After section 46 (health care burdens) of the Title Conditions (Scotland) Act 2003 (asp 9), insert—

*“Climate change burdens***46A Climate change burdens**

- (1) On and after the day on which this section comes into force, it shall be competent to create a real burden in favour of a public body or trust, or of the Scottish Ministers, for the purpose of reducing greenhouse gas emissions; and any such burden shall be known as a “climate change burden”.
- (2) A climate change burden may only consist of an obligation, in the event of the burdened property being developed, for the property to meet specified mitigation and adaptation standards.
- (3) For the purposes of this section, a “public body” means a body listed in Part I or II of the Schedule to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453).”.

*Tenement Management Scheme***69 Tenement Management Scheme: definition of “maintenance”**

In schedule 1 (Tenement Management Scheme) to the Tenements (Scotland) Act 2004 (asp 11), in the definition of “maintenance” in rule 1.5, after “replacement,” insert “the installation of insulation.”.

### *Permitted development rights*

#### **70 Air source heat pumps and micro wind turbines in domestic properties**

- (1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 (c. 8) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.
- (2) That class is the installation, alteration or replacement, within the curtilage of a dwellinghouse or building containing one or more flats, of—
  - (a) air source heat pump microgeneration equipment; or
  - (b) wind turbine microgeneration equipment.
- (3) The Scottish Ministers must comply with subsection (1) no later than 6 months after the day on which this section comes into force.
- (4) Before complying with subsection (1), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in paragraphs (a) and (b) of subsection (2); and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) In this section, “microgeneration” has the meaning given in section 82(6) of the Energy Act 2004 (c. 20).

#### **71 Microgeneration in non-domestic buildings**

- (1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 (c. 8) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.
- (2) That class is the installation, alteration or replacement, within the curtilage of a non-domestic building, of microgeneration equipment.
- (3) The Scottish Ministers must comply with subsection (1) no later than 12 months after the day on which this section comes into force.
- (4) Before complying with subsection (1), the Scottish Ministers must consult—
  - (a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in subsection (2); and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) In this section—
  - “microgeneration” has the same meaning as in section 70(5);
  - “non-domestic building” has the same meaning as in section 63(7).

### *Development plans*

#### **72 Development plans: inclusion of greenhouse gas emissions policies**

After section 3E of the Town and Country Planning (Scotland) Act 1997 (c. 8) insert—

##### **“3F Greenhouse gas emissions policies**

A planning authority, in any local development plan prepared by them, must include policies requiring all developments in the local development plan area to be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific development, through the installation and operation of low and zero-carbon generating technologies.”.

#### **73 Annual report on operation of section 72**

(1) The Scottish Ministers must—

- (a) no later than 1 year after the day on which section 72 comes into force; and
- (b) annually thereafter,

lay before the Scottish Parliament a report on the operation of the requirement on relevant planning authorities to include policies within development plans under that section, including an assessment of whether those requirements have contributed effectively to the reduction of greenhouse gas emissions from developments.

(2) The fourth and subsequent reports under subsection (1) must include an assessment of the continuing need or otherwise for the requirement on relevant planning authorities to include policies within development plans; and if the requirement is considered by the Scottish Ministers to be no longer necessary, the Scottish Ministers may, by order, repeal section 3F of the Town and Country Planning (Scotland) Act 1997 and this section.

### *Promotion of water conservation and water-use efficiency*

#### **74 Duty of Scottish Water to promote water conservation and water-use efficiency**

In section 56(1) of the Water Industry (Scotland) Act 2002 (asp 3), after paragraph (a) insert—

“(aa) requiring it to promote water conservation and water-use efficiency,”.

## **CHAPTER 4**

### **THE SCOTTISH CIVIL ESTATE**

#### **75 Energy performance of buildings procured for the Scottish civil estate**

(1) The Scottish Ministers must, in so far as reasonably practicable, ensure that the energy performance of any building that becomes part of the civil estate in Scotland falls within the top quartile of energy performance.



- (2) For the purposes of subsection (1), a building becomes part of the civil estate if it is procured or constructed by or on behalf of the Scottish Ministers.
- (3) The Scottish Ministers may, by regulations, provide that the duty under subsection (1) does not apply in respect of specified buildings or categories of buildings.

## **76 Report on the Scottish civil estate**

- (1) The Scottish Ministers must, in respect of each financial year beginning with 2010–2011, lay before the Scottish Parliament a report containing an assessment of the progress made in the year towards improving—
  - (a) the efficiency; and
  - (b) the contribution to sustainability,of buildings that are part of the civil estate in Scotland.
- (2) If the energy performance of a building mentioned in subsection (3) does not fall within the top quartile of energy performance, the report must state the reasons why the building has become part of the civil estate.
- (3) That building is a building—
  - (a) to which section 75 applies; and
  - (b) which becomes part of the civil estate in the financial year to which the report relates.
- (4) The report under this section must be laid before the Parliament no later than 31 October next following the end of the financial year to which the report relates.

## **77 Scottish civil estate: supplementary**

- (1) For the purposes of this section and sections 75 and 76—
  - (a) “building” means a building that uses energy for heating or cooling the whole or any part of its interior; and
  - (b) a building is part of the civil estate in Scotland if it—
    - (i) is used for the purposes of Scottish central government administration; and
    - (ii) is of a description of buildings for which the Scottish Ministers have responsibilities in relation to efficiency and sustainability.
- (2) The Scottish Ministers may, by order, provide—
  - (a) for buildings of a description specified in the order to be treated as being, or as not being, part of the civil estate;
  - (b) for uses specified in the order to be treated as being, or as not being, uses for the purposes of Scottish central government administration.

## CHAPTER 5

### WASTE REDUCTION AND RECYCLING

#### *Waste prevention and management plans*

#### **78 Waste prevention and management plans**

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified—
  - (a) to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities;
  - (b) to comply with those plans.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which plans must be prepared, including when more than one plan must be prepared;
  - (b) the kinds of waste in relation to which plans must be prepared;
  - (c) the periods—
    - (i) to which plans relate;
    - (ii) within which plans must be prepared;
  - (d) the content of plans;
  - (e) subject to section 89—
    - (i) the enforcement authority in relation to the regulations; and
    - (ii) the functions of that authority, including the approval by it of plans prepared under the regulations;
  - (f) the keeping of plans and other information and their production to the enforcement authority;
  - (g) the enforcement of the duties imposed by the regulations;
  - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) In this Chapter—
 

“recycling”, in relation to any waste, includes recovery and re-use (whether or not the waste is subjected to any process) (and cognate expressions are to be construed accordingly);

“specified” means specified in regulations (and cognate expressions are to be construed accordingly);

“waste” has the meaning given by section 75(2) of the Environmental Protection Act 1990 (c. 43) (the “1990 Act”).

#### *Waste data*

#### **79 Information on waste**

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to provide SEPA with information on the waste produced by or otherwise associated with such persons' activities.

- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which information must be provided;
  - (b) the information required to be provided, including the periods to which the information relates;
  - (c) the form and manner in which information must be provided;
  - (d) the periods within which information must be provided;
  - (e) the functions of SEPA in relation to the regulations;
  - (f) the keeping of information and its production to SEPA;
  - (g) the enforcement of the duties imposed by the regulations;
  - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The power to make regulations under this section is without prejudice to section 34(5) of the 1990 Act and any other enactment to the same effect as that section; and any duty imposed on any person by regulations under this section is without prejudice to any duty to provide information on waste imposed by regulations under that section or by virtue of any other such enactment.
- (4) SEPA may give guidance to persons to whom the regulations apply on how to comply with the requirements of the regulations.
- (5) A draft of a statutory instrument containing the first regulations under subsection (1) must be laid before the Scottish Parliament no later than 12 months after the day on which this section comes into force.
- (6) In this section and in section 89, “SEPA” means the Scottish Environment Protection Agency.

*Deposit of recyclable waste etc.*

**80      Recyclable waste: facilities for deposit etc.**

- (1) The Scottish Ministers may, by regulations, require—
  - (a) persons of the kinds specified to provide facilities for the deposit of waste;
  - (b) authorised persons—
    - (i) to collect waste deposited by virtue of paragraph (a);
    - (ii) to ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which facilities must be provided, including the places at which they must be provided;
  - (b) the persons for whom facilities must be provided;
  - (c) the kinds of waste for which facilities must be provided;
  - (d) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
  - (e) the charging by authorised persons for collecting waste, for recycling waste and for otherwise ensuring waste is recycled;
  - (f) subject to section 89—
    - (i) the enforcement authority in relation to the regulations; and

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- (ii) the functions of that authority;
  - (g) the keeping of records and their production to the enforcement authority;
  - (h) the enforcement of the duties imposed by the regulations;
  - (i) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) The Scottish Ministers may not, by regulations under this section, impose requirements on persons to provide facilities for the deposit of waste in circumstances in relation to which regulations under section 81 may be made.
- (5) In this section and in section 81, “authorised person” has the same meaning as in section 34(3) of the 1990 Act.

## **81 Recyclable waste: facilities for deposit at events etc.**

- (1) The Scottish Ministers may, by regulations, confer power on local authorities to issue notices requiring—
- (a) persons responsible for organising temporary events open to the public to provide facilities for the deposit of waste by persons attending those events;
  - (b) authorised persons to—
    - (i) collect waste deposited by virtue of paragraph (a);
    - (ii) ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.
- (2) The regulations may in particular include provision about—
- (a) the events in relation to which notices can be issued;
  - (b) the circumstances in which facilities must be provided, including the places at which they must be provided;
  - (c) the persons for whom facilities must be provided;
  - (d) the kinds of waste for which facilities must be provided;
  - (e) the persons to whom notices can be issued;
  - (f) the content of notices;
  - (g) the form of and manner in which notices can be issued, including the times at which notices can be issued;
  - (h) appeals against notices;
  - (i) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
  - (j) the charging by authorised persons for collecting waste, recycling waste and otherwise ensuring waste is recycled;
  - (k) subject to section 89—
    - (i) the enforcement authority in relation to notices; and
    - (ii) the functions of that authority;
  - (l) the keeping of records by persons to whom notices are issued and their production to the enforcement authority;
  - (m) the enforcement of duties imposed by notices;
  - (n) offences in relation to failures to comply with requirements of notices.

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- (3) Local authorities must have regard to any guidance given by the Scottish Ministers to them in relation to the functions conferred on them by the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

### *Procurement of recyclate*

## **82 Procurement of recyclate**

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to comply with the requirement in subsection (2).
- (2) That requirement is to ensure that things procured or constructed by or on behalf of such persons—
  - (a) comprise of; or
  - (b) include or contain a certain proportion of, recyclate.
- (3) The regulations may in particular include provision about—
  - (a) the circumstances in which the requirement applies;
  - (b) the kinds of things in relation to which the requirement applies;
  - (c) the proportion of recyclate that such things must include or contain;
  - (d) how such proportions are to be determined;
  - (e) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disappplied;
  - (f) subject to section 89—
    - (i) the enforcement authority in relation to the regulations; and
    - (ii) the functions of that authority;
  - (g) the keeping of records and their production to the enforcement authority;
  - (h) the enforcement of the duties imposed by the regulations;
  - (i) offences in relation to failures to comply with requirements of the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (5) Persons to whom the regulations apply must have regard to any guidance given by—
  - (a) the Scottish Ministers;
  - (b) the enforcement authority,to them in relation to the requirements imposed by the regulations.
- (6) In this section, “recyclate” means waste that has been recycled.

### *Reduction of packaging*

## **83 Targets for reduction of packaging etc.**

- (1) The Scottish Ministers may, by regulations—
  - (a) set targets—

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- (i) for the reduction of packaging;
  - (ii) for the reduction of greenhouse gas emissions produced by the manufacture of or otherwise associated with packaging;
  - (b) require persons of the kinds specified to comply with those targets.
- (2) The regulations may in particular include provision about—
- (a) the circumstances in which the requirement in subsection (1)(b) applies;
  - (b) the kinds of packaging in relation to which targets may be set;
  - (c) the targets in relation to such packaging (including how targets may be set);
  - (d) the methods of determining whether targets have been met;
  - (e) subject to section 89—
    - (i) the enforcement authority in relation to the regulations; and
    - (ii) the functions of that authority;
  - (f) the keeping of records and other information and their production to the enforcement authority (including the periods to which records or information must relate and within which it must be produced to the authority);
  - (g) the enforcement of the duties imposed by the regulations;
  - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) In this section and in section 84, “packaging” has the meaning given by Article 3 of Directive [94/62/EC](#) of the European Parliament and of the Council on packaging and packaging waste.

### *Deposit and return*

## **84      Deposit and return schemes**

- (1) The Scottish Ministers may, by regulations, establish deposit and return schemes.
- (2) A “deposit and return scheme” is a scheme under which—
- (a) the sale price of articles includes a returnable element (a “deposit”);
  - (b) persons who return—
    - (i) such articles;
    - (ii) the packaging associated with such articles (“returnable packaging”);
    - or
    - (iii) both such articles and such packaging,
 are entitled to be paid a sum equal to that deposit.
- (3) Retailers may be required, under a deposit and return scheme, to—
- (a) include a deposit in the price of articles placed on the market by them;
  - (b) accept the return to them of—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (c) pay a sum equal to the deposit to persons who return to them—
    - (i) such articles;

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- (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (d) return such articles to the producers of them;
  - (e) return returnable packaging to the producers of it or of the articles with which it is associated.
- (4) Producers may be required, under a deposit and return scheme, to—
  - (a) include a deposit in the price of articles placed on the market by them;
  - (b) accept the return to them of—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (c) pay a sum equal to the deposit to retailers who return to them—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (d) recycle, or have recycled—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging.
- (5) A deposit and return scheme may also provide for a person or body (a “scheme administrator”) to—
  - (a) ensure that deposits are included in the price of articles placed on the market;
  - (b) accept the return of—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (c) pay sums equal to deposits to persons who return—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging;
  - (d) return such articles to the producers of them;
  - (e) return returnable packaging to the producers of it or of the articles with which it is associated;
  - (f) recover sums equal to deposits from such producers;
  - (g) recycle, or have recycled—
    - (i) such articles;
    - (ii) returnable packaging; or
    - (iii) both such articles and such packaging.
- (6) The Scottish Ministers may make regulations under this section only where they consider it necessary or expedient to do so for the purpose of promoting or securing an increase in the recycling of materials.
- (7) The regulations may in particular include provision about—
  - (a) the persons who are retailers and producers for the purposes of deposit and return schemes;

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- (b) the articles to which such schemes apply;
- (c) the deposits to be included in the price of such articles;
- (d) the inclusion, in the sale price of articles, of a non-returnable element to cover the reasonable costs incurred by retailers, producers or a scheme administrator in administering such schemes;
- (e) the articles the return of which entitles persons to payment of sums equal to deposits;
- (f) the methods by which such articles are to be identified;
- (g) the packaging which is returnable packaging for the purposes of such schemes;
- (h) the methods by which returnable packaging is to be identified;
- (i) information on the operation of schemes (including notices on premises where articles are offered for sale and the content of such notices);
- (j) the places to which articles can be returned;
- (k) the places to which returnable packaging can be returned;
- (l) the registration of retailers and producers to whom schemes apply (including the reasonable fees payable in relation to such registration);
- (m) the scheme administrator;
- (n) subject to section 89—
  - (i) the enforcement authority in relation to the regulations; and
  - (ii) the functions of that authority;
- (o) the keeping of records and other information and their production to the enforcement authority;
- (p) the enforcement of the duties imposed by the regulations;
- (q) offences in relation to failures to comply with requirements of the regulations.

## **85 Deposit and return schemes: designation of scheme administrator**

- (1) The Scottish Ministers may, by order, designate—
  - (a) a body established under section 86(1); or
  - (b) such other person or body as they consider appropriate (an “existing body”), as a scheme administrator of a deposit and return scheme established by virtue of section 84.
- (2) An order under subsection (1)(b) may, in so far as the Scottish Ministers consider it necessary or expedient to do so, modify the functions of an existing body by—
  - (a) conferring functions on;
  - (b) removing functions from; or
  - (c) otherwise varying the functions of,
 the body.
- (3) That order may in particular include provision about—
  - (a) borrowing by the existing body (with the approval of the Scottish Ministers);
  - (b) the charging by the body, in respect of the exercise of its functions in relation to a deposit and return scheme, of such reasonable amounts as the Scottish Ministers consider appropriate.



- (4) In exercising functions in relation to a deposit and return scheme, a scheme administrator must comply with any written directions of a general or specific nature as the Scottish Ministers may from time to time give to it in relation to those functions.

## **86 Power to establish scheme administrator**

- (1) The Scottish Ministers may, by order, establish a body to be a scheme administrator of a deposit and return scheme established by virtue of section 84(1).
- (2) A body established under subsection (1) is to be a body corporate.
- (3) The body may do anything which appears to it—
- (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions in relation to a deposit and return scheme;
  - (b) to be conducive to the exercise of those functions.
- (4) In particular, the body may—
- (a) enter into contracts;
  - (b) with the agreement of the Scottish Ministers, borrow money;
  - (c) charge, in respect of the exercise of its functions in relation to a deposit and return scheme, such reasonable amounts as the Scottish Ministers consider appropriate.
- (5) An order under subsection (1) may in particular include provision about—
- (a) the status and constitution of the body;
  - (b) the status of the members and any employees of the body;
  - (c) the remuneration, allowances and pensions of such members and such employees;
  - (d) the conferral of functions on the body;
  - (e) the keeping by the body of accounts and accounting records.

## **87 Finance of scheme administrator**

- (1) The Scottish Ministers may, for the purpose of or in connection with the exercise by a scheme administrator of functions in relation to a deposit and return scheme—
- (a) pay grants;
  - (b) make loans,
- to the administrator of such amounts as Ministers may determine.
- (2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers may, from time to time after any grant or loan is paid or, as the case may be, made, vary the terms and conditions on which it was paid or made.
- (4) The Scottish Ministers may guarantee, in such manner and on such conditions as they consider appropriate, the discharge of any financial obligation in connection with any sums borrowed by a scheme administrator for the purpose of, or in connection with, the exercise of its functions in relation to a deposit and return scheme.

### *Carrier bag charges*

#### **88 Charges for supply of carrier bags**

- (1) The Scottish Ministers may, by regulations, require suppliers of goods—
  - (a) to charge for carrier bags supplied at the place where the goods are supplied for the purpose of enabling the goods to be taken away or delivered;
  - (b) to apply the net proceeds raised by such charges to the advancement of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which the requirement applies;
  - (b) the suppliers to whom the requirement applies;
  - (c) the carrier bags to which the requirement applies;
  - (d) the minimum amount to be charged for each carrier bag;
  - (e) how the net proceeds raised by the charge are to be ascertained;
  - (f) the purposes to which those net proceeds are to be applied;
  - (g) subject to section 89—
    - (i) the enforcement authority in relation to the regulations; and
    - (ii) the functions of that authority;
  - (h) the keeping of records and their production to the enforcement authority;
  - (i) the enforcement of the duties imposed by the regulations;
  - (j) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

### *General provision*

#### **89 Enforcement authorities**

- (1) This section applies to any regulations made under this Chapter other than under section 79.
- (2) The enforcement authority provided for in the regulations is to be—
  - (a) SEPA;
  - (b) a local authority; or
  - (c) such other person or body as the Scottish Ministers consider appropriate.
- (3) The regulations may provide for the functions of the enforcement authority in relation to the regulations to be exercised by two or more such authorities and about the functions of each such authority.
- (4) The regulations may also provide for enforcement authorities to levy charges to recover the reasonable costs incurred by them in exercising their functions under the regulations.

## **90 Penalties**

- (1) A person who commits an offence under regulations made under this Part is liable to such penalties, not exceeding those mentioned in subsection (2), as are provided for in the regulations.
- (2) Those penalties are—
  - (a) on summary conviction, a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, a fine.

## **PART 6**

### GENERAL AND MISCELLANEOUS

## **91 Public engagement**

- (1) The Scottish Ministers must prepare and publish a strategy (a “public engagement strategy”) setting out the steps they intend to take to—
  - (a) inform persons in Scotland about the targets specified by virtue of this Act;
  - (b) encourage them to contribute to the achievement of those targets.
- (2) The public engagement strategy must, in particular, identify actions which persons in Scotland may take to contribute to the achievement of the targets referred to in subsection (1)(a).
- (3) The public engagement strategy must be published no later than 31 December 2010.
- (4) The Scottish Ministers—
  - (a) may, from time to time; and
  - (b) must, before the end of the period mentioned in subsection (5), review the strategy.
- (5) The period referred to in subsection (4)(b) is the period of 5 years beginning with the day on which—
  - (a) the strategy is first published; or
  - (b) the strategy was last reviewed under subsection (4).
- (6) Where, following a review under subsection (4), the Scottish Ministers vary the public engagement strategy, they must, as soon as reasonably practicable after so doing, publish the strategy as so varied.
- (7) A strategy published under subsection (6) must contain an assessment of the progress made towards implementing the steps set out in earlier strategies.
- (8) The public engagement strategy may be published in such manner as the Scottish Ministers consider appropriate.
- (9) The Scottish Ministers must lay the public engagement strategy before the Scottish Parliament as soon as reasonably practicable after it is published.

**92 Sustainable development**

- (1) The persons mentioned in subsection (2) must, in exercising functions conferred on them by virtue of this Act, take into account the need to do so in a way that contributes to the achievement of sustainable development.
- (2) Those persons are—
  - (a) the Scottish Ministers;
  - (b) the advisory body.

**93 Equal opportunities**

- (1) The persons mentioned in subsection (2) must exercise their functions under this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.
- (2) Those persons are—
  - (a) the Scottish Ministers;
  - (b) the advisory body;
  - (c) public bodies (as defined in section 44(2)).
- (3) In this section, “equal opportunities” and the “equal opportunities requirements” have the same meanings as those expressions have in section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).

**94 Impact of budget proposals on emissions**

- (1) The Scottish Ministers must, at the same time as laying before the Scottish Parliament any document setting out draft proposals for the use of resources in any financial year, lay before the Scottish Parliament a document describing the direct and indirect impact on greenhouse gas emissions of the activities to be funded by virtue of the proposals.
- (2) In this section, “use of resources” has the meaning given in section 1(3) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1).

**95 Crown application**

- (1) This Act and any orders and regulations made under it bind the Crown.
- (2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

**96 Subordinate legislation**

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations is exercisable by statutory instrument.

- (2) Any such power—
  - (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes;
  - (b) includes power to make such consequential, incidental, supplementary, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (3) An order or regulations under this Act may modify any enactment (including this Act).
- (4) Subject to subsections (5) to (8) and to section 97, no statutory instrument containing an order or regulations under this Act (other than an order under section 100(2)) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (5) A statutory instrument containing an order mentioned in subsection (6) or regulations mentioned in subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (6) Those orders are orders under—
  - (a) section 19(b);
  - (b) section 46(1);
  - (c) paragraph 2(2) of schedule 1.
- (7) Those regulations are—
  - (a) the second or subsequent regulations under section 13(5) (other than regulations which make provision altering the amount by which a carbon unit credited or debited to the net Scottish emissions account for a period reduces or, as the case may be, increases the net Scottish emissions account for that period);
  - (b) the second or subsequent regulations under section 20(1) (other than regulations which make provision specifying a carbon unit of a kind not previously specified in regulations under that section);
  - (c) regulations under section 84(1) which make provision about one or more of the following matters only—
    - (i) the deposits mentioned in section 84(7)(c);
    - (ii) the form and content of notices mentioned in section 84(7)(i);
    - (iii) setting the registration fees mentioned in section 84(7)(l);
  - (d) regulations under Chapter 5 of Part 5 which make provision about the matter mentioned in section 89(4) only.
- (8) Subsection (5) does not apply to an order or regulations which includes provision modifying an Act or an Act of the Scottish Parliament.

## **97 Subordinate legislation: pre-laying procedure**

- (1) This section applies where the Scottish Ministers propose to lay before the Scottish Parliament a draft of a statutory instrument containing the first regulations under section 84 or 88 (other than a draft containing regulations mentioned in section 96(7) (c) or (d) to which section 96(5) applies).
- (2) The Scottish Ministers must, before doing so, lay before the Parliament—
  - (a) a copy of the proposed regulations; and

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- (b) a statement setting out their reasons for proposing to make those regulations.
- (3) The Scottish Ministers must, when laying such a copy, specify a period (the “representation period”) during which representations on the proposed regulations may be made to them.
- (4) The representation period must be at least 90 days, of which no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
- (5) The Scottish Ministers must, as soon as reasonably practicable after laying a copy of the proposed regulations, publicise them in such manner as they consider appropriate.
- (6) The Scottish Ministers must, before laying the proposed regulations before the Parliament, have regard to—
  - (a) any representations on the proposed regulations made to them;
  - (b) any resolution relating to those regulations passed by the Parliament; and
  - (c) any report relating to those regulations published by any committee of the Parliament for the time being appointed by virtue of standing orders,
 before the expiry of the representation period.
- (7) The Scottish Ministers must, when laying such proposed regulations, lay a statement setting out—
  - (a) details of any representations, resolutions or reports mentioned in subsection (6);
  - (b) the changes (if any) they have made to the proposed regulations in response to such representations, resolutions or reports and the reasons for those changes.
- (8) In this section, “proposed regulations” means a draft of a statutory instrument to which subsection (1) applies.

## 98 Interpretation

In this Act—

- “additional greenhouse gas” has the meaning given by section 12(2);
- “advisory body” has the meaning given by section 24(2);
- “advisory functions” has the meaning given by section 24(3);
- “annual target” has the meaning given by section 3(3);
- “authorised person” has the meaning given by section 80(5);
- “baseline” has the meaning given by section 11(1);
- “baseline year” means—
  - (a) in relation to a greenhouse gas mentioned in subsection (2) of section 11, the year mentioned in paragraph (a), (b), (c), (d) or, as the case may be, (e) of that subsection;
  - (b) in relation to an additional greenhouse gas, any year designated by virtue of section 12(3);
- “carbon unit” has the meaning given by section 20(4);
- “climate change duties” has the meaning given by section 44(4);
- “Committee” means the Scottish Committee on Climate Change;
- “deposit and return scheme” means a scheme established by virtue of section 84(1);
- “domestic effort target” has the meaning given by section 8(2);

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“emissions” has the meaning given by section 17(1);  
“energy efficiency” has the meaning given by section 60(9);  
“greenhouse gas” has the meaning given by section 10(1);  
“interim target” has the meaning given by section 2(2);  
“international carbon reporting practice” has the meaning given by section 19;  
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);  
“monitoring body” has the meaning given by section 47(2);  
“net Scottish emissions” has the meaning given by section 17(1);  
“net Scottish emissions account” has the meaning given by section 13(1);  
“packaging” has the meaning given by section 83(4);  
“public body” (except in Part 4 and section 93) has the meaning given by section 24(5);  
“relevant body” has the meaning given by section 5(7);  
“relevant public body” has the meaning given by section 44(5);  
“recycling” has the meaning given by section 78(4);  
“renewable sources” has the meaning given by section 60(9);  
“Scottish Committee on Climate Change” has the meaning given by section 25(2);  
“Scottish emissions” has the meaning given by section 17(1);  
“Scottish removals” has the meaning given by section 17(1);  
“SEPA” has the meaning given by section 79(6);  
“target year” means a year for which an annual target has been set;  
“target-setting criteria” means the matters mentioned in section 4(4)(b) to (j);  
“the 1990 Act” means the Environmental Protection Act 1990 (c. 43);  
“the 2008 Act” means the Climate Change Act 2008 (c. 27);  
“the 2050 target” has the meaning given by section 1(2);  
“UK Committee on Climate Change” has the meaning given by section 5(8);  
“waste” has the meaning given by section 78(4).

## **99 Minor and consequential modifications**

Schedule 2 makes minor modifications and modifications consequential on the provisions of this Act.

## **100 Short title and commencement**

- (1) This Act may be cited as the Climate Change (Scotland) Act 2009.
- (2) This Act (other than this section and sections 27 to 32, 56, 70 and 96) comes into force on such day (in the case of sections 44 to 52, being no later than 18 months after the day on which the Bill for this Act receives Royal Assent) as the Scottish Ministers may, by order, appoint.
- (3) Sections 27 to 32 and 56 come into force in accordance with section 26.
- (4) Section 70 comes into force on the day after the Bill for this Act receives Royal Assent.
- (5) Different days may, under subsection (2), be appointed for different purposes.