

CLIMATE CHANGE (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

Part 2 – Advisory Functions

Meaning of advisory body

50. The emissions reduction provisions in the Act impose duties on the Scottish Ministers which require them to establish annual emissions reductions targets in secondary legislation. Ministers will be required to seek expert, independent advice in advance of setting or modifying annual targets, adding greenhouse gases to the list in the Act, or making provision attributing a proportion of emissions of greenhouses gases from international aviation and international shipping to Scotland.
51. Subsection (1) of section 24 gives the Scottish Ministers the power by order to designate a body or person to undertake the advice functions in sections 2, 5, 7, 9 and 10 and the additional advice functions in sections 27 to 32 and 56. Thereafter the body or person will be referred to as the advisory body and will take on the role otherwise performed, by virtue of section 5(7), by the UKCCC. The order may designate the body established under section 25 (Scottish Committee on Climate Change) or such other public body as the Scottish Ministers consider appropriate.
52. Subsection (3) sets out the functions (the “advisory functions”) which the advisory body has.
53. Subsection (4) sets out examples of what an order under subsection (1) may provide for, such as the information that advice from the advisory body must contain. Subsection (5) defines the term “public body” for the purposes of subsection (1).

Scottish Committee on Climate Change

54. [Section 25](#) allows the Scottish Ministers to establish, by order, a body to undertake the advisory functions under the Act. If established, this body would be known as the Scottish Committee on Climate Change.
55. Subsection (3) gives effect to schedule 1 which sets out details of the constitution and operation of this Committee and subsection (4) identifies the types of further provision which may be included in an order establishing the Scottish Committee on Climate Change.

Application of [sections 27 to 32](#) and [56](#)

56. [Section 26](#) makes it clear that the obligations for the advisory body to provide advice to the Scottish Ministers under sections 27 to 32 and 56 do not apply until the order under section 24 by the Scottish Ministers designating the advisory body comes into force, or such later date as the Scottish Ministers may specify in the order. Until such an advisory body is designated, the Scottish Ministers will seek advice from the UKCCC (which will be the relevant body for the purposes of sections 5 to 9).

Advice on annual targets etc.

57. [Section 27](#) obliges the advisory body to respond to requests by the Scottish Ministers for advice on proposed annual targets and proposed modifications related to annual targets.
58. Subsection (2) requires the advisory body, when providing advice in respect of setting annual targets, to provide a view (a) in the case of annual targets proposed for 2010 to 2020, as to whether those targets are consistent with a reduction in line with achieving the interim and 2050 targets, (b) in the case of annual targets proposed for 2021 to 2050, as to whether those targets are consistent with a reduction in line with achieving the 2050 target and (c) in all cases as to what annual targets are appropriate.
59. Subsection (3) requires the body to express views on a number of factors relating to annual targets. Specifically, it should provide a view on the extent to which the annual targets should be met by taking action to reduce emissions or by the use of carbon units. It should also express a view on the contributions to annual and domestic effort targets which may be made by sectors covered by trading schemes and those not covered by such schemes, and the contributions to annual targets that may be made by energy efficiency, energy generation, land use and transport.
60. Subsection (4) allows the advisory body, when providing advice on annual targets, to express a view on any other matter it considers appropriate, in particular on the opportunities for any sectors of the Scottish economy to contribute to meeting annual targets through reduction of emissions. Subsection (5) requires the advisory body, when providing advice in respect of setting annual targets, to express a view on the cumulative amount of emissions for the period 2010 to 2050 that is consistent with a reduction that would allow the 2050 target to be met.
61. Subsection (6) provides that the body must provide its advice within such period as reasonably requested by the Scottish Ministers. Subsection (7) defines the meaning of “traded sector” for subsection (3)(b)(i). This refers to the definition contained in section 44 of the UK Climate Change Act 2008.

Reporting on progress towards targets

62. [Section 28](#) requires the advisory body to prepare an annual report setting out its views on the Scottish Ministers’ progress towards meeting the annual targets, the interim target, and the 2050 target. It must also provide views on whether these targets are likely to be achieved and views on any further action considered necessary to achieve these targets. This duty will be activated by the Scottish Ministers at an appropriate time after an advisory body has been designated.
63. Subsection (3) requires that the advisory body’s report in a relevant year must express a view on matters specified in subsection (6) which are whether the annual target and domestic effort target for the target year was met, the ways in which those targets were or were not met, and a view on the action taken by the Scottish Ministers to reduce greenhouse gas emissions during that year. Subsection (4) provides that the “relevant year” will be such year as the Scottish Ministers may, by order, designate subject to certain conditions set out in subsection (5).
64. Subsection (7) specifies deadlines for laying the reports before the Scottish Parliament.

Scottish Ministers’ response to reports on progress

65. [Section 29](#) obliges the Scottish Ministers to respond to a report provided by the advisory body under section 28. This response must be laid before the Scottish Parliament no later than 31 March in the third year following the year for which an annual target has been set, or any other date as the Scottish Ministers may, by order appoint.

Duty of advisory body to provide advice or other assistance

66. [Section 30](#) obliges the advisory body to respond to requests for advice, analysis, information and assistance by the Scottish Ministers in connection with Ministers' functions under the Act, their other climate change functions, or in relation to climate change generally.

Guidance to advisory body

67. [Section 31](#) provides that the advisory body must have regard to any guidance given by the Scottish Ministers in respect of carrying out its functions under the Act. Subsection (2) provides that the Scottish Ministers may not give the body guidance on the content of any advice or report. Subsection (3) allows the Scottish Ministers to vary or revoke any guidance issued.

Power to give directions to advisory body

68. [Section 32](#) gives the Scottish Ministers the power to direct the advisory body in terms of its functions under the Act. Subsection (2) provides that the Scottish Ministers may not direct the body on the content of any advice or report and subsection (3) allows the Scottish Ministers to vary or revoke the directions. Subsection (4) requires the body to comply with any directions given.