

CLIMATE CHANGE (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

3. Climate change is one of the most serious threats facing Scotland and the world. The most severe consequences include famine, drought and extinction of species. Urgent action is needed by all nations to avoid the most severe climate change.
4. The aim of the Climate Change (Scotland) Act is to establish a framework to drive greater efforts at reducing Kyoto Protocol greenhouse gas emissions in Scotland. The Act creates mandatory climate change targets to reduce Scotland's greenhouse gas emissions.
5. The provisions in the Act set a long-term target to reduce Scotland's emissions of Kyoto Protocol greenhouse gases by at least 80% by the year 2050. This long-term target is supported by a 2020 interim target and a framework of annual targets intended to drive the policies necessary for achieving the long-term target. Many of the policy measures required to meet these targets will not require legislation to implement, but certain climate change mitigation and adaptation policies have been identified which do require legislation and this Act contains provisions in Part 5 to allow these to be taken forward.
6. The Act is separated into six parts.

Part 1 creates the statutory framework for the greenhouse gas emissions reductions in Scotland by setting an interim 42% reduction target for 2020, with the power for this to be varied based on expert advice, and an 80% reduction target for 2050. To help ensure the delivery of these targets this Part of the Act also requires that the Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.

Part 2 contains provisions which will allow the Scottish Ministers to establish a Scottish Committee on Climate Change or to designate an existing body to exercise advisory functions.

Part 3 places duties on the Scottish Ministers requiring them to report regularly to the Scottish Parliament on Scotland's emissions and on the progress being made towards the emissions reduction targets set by the Act.

Part 4 places climate change duties on public bodies requiring them to act in the way (a) best calculated to deliver the emissions reduction targets, (b) best calculated to deliver adaptation programmes made under the Act, and (c) that they consider most sustainable. This Part also contains powers to allow the Scottish Ministers, by order, to impose further duties on public bodies in relation to climate change and to require that they report upon the discharge of those duties. It also imposes on the Scottish Ministers a requirement to issue guidance to those bodies relating to their climate change duties.

Part 5 – Chapter 1 requires the Scottish Ministers to lay programmes on adaptation to climate change before the Scottish Parliament, and to report on these programmes and the progress made under them.

Part 5 – Chapter 2 places a duty on the Scottish Ministers to produce a land use strategy and provides for an enabling power for the Scottish Ministers to vary, but not shorten, the permitted times during which muirburn may be made where they consider it necessary or expedient to do so in relation to climate change. This chapter also allows modification by secondary legislation of the functions of the Forestry Commissioners to enable the Forestry Commission in Scotland to play a greater role in tackling climate change.

Part 5 – Chapter 3 contains a range of provisions relating to energy efficiency. These include -

- production by the Scottish Ministers of a plan for the promotion and improvement of energy efficiency:
- production by the Scottish Ministers of a plan for promoting of the use of heat from renewable sources:
- the making of regulations regarding the assessment and improvement of the energy performance of non-domestic buildings and living accommodation:
- a duty on local authorities to establish energy efficiency discount schemes using the council tax system:
- provisions enabling the Scottish Ministers to make regulations in respect of non-domestic rates discounts related to energy efficiency:
- a “climate change burden” that can be added to a property’s title deeds to specify the mitigation or adaptation standards that must be met when the burdened property is developed:
- provision on Tenement Management Schemes:
- provisions on permitted development rights for the installation, alteration or replacement of microgeneration equipment in domestic and non-domestic buildings:
- changes to the Town and Country Planning (Scotland) Act 1997 so that development plans contain policies for reducing the greenhouse gas emissions of new buildings by the installation of low and zero carbon technologies:
- the promotion by Scottish Water of water conservation and water-use efficiency.

Part 5 – Chapter 4 contains provision regarding the procurement and construction of buildings which become part of the civil estate in Scotland and sets out duties concerning reports which must be made concerning the efficiency and sustainability of the civil estate.

Part 5 – Chapter 5 contains provisions which enable the Scottish Ministers to make regulations relating to the acquisition of accurate information about waste and the promotion of waste reduction and recycling by different methods.

Part 6 contains provisions of a general nature including provisions which require the Scottish Ministers to prepare and publish a public engagement strategy and to lay before Parliament, at the same time as they lay before Parliament draft budget proposals for the use of resources in any financial year, a document describing the impact on greenhouse gas emissions of the activities to be funded by virtue of those proposals.

Part 1 – Emissions Reduction Targets

7. **Part 1** of the Act creates the statutory framework for greenhouse gas emissions reductions in Scotland by setting a 42% reduction target for 2020, which the Scottish Ministers may modify by order subject to affirmative resolution, and an 80% reduction target for 2050. To help ensure the delivery of these targets the Act requires that the Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.

The 2050 target

8. **Section 1** sets out the 80% target for 2050. Subsection (1) defines the obligation on the Scottish Ministers as reducing the net Scottish emissions account by at least 80% by 2050 relative to the defined baseline year. The net Scottish emissions account is defined in section 13, and the baseline year in section 11, of the Act. For any one year it will consist of the total of Scottish emissions, reduced by the amount of Scottish removals and adjusted to reflect carbon units credited and debited to the account.

The interim target

9. **Section 2** sets out the 42% interim target for 2020. Subsection (1) defines the obligation on the Scottish Ministers as reducing the net Scottish emissions account by at least 42% by 2020 relative to the defined baseline year. Subsection (3) enables the Scottish Ministers to modify this figure and to replace it with a figure provided by the relevant body as the highest achievable interim target, or with a higher figure.
10. Subsection (4) places a duty on the Scottish Ministers to request advice from the relevant body, currently the UK Committee on Climate Change (UKCCC), as soon as reasonably practicable after Royal Assent. This request must be for advice as to whether the interim target is the highest achievable target and, if not, what the highest achievable interim target is. The factors that must be had regard to in determining what the highest interim target is are set out in subsection (5).
11. Subsection (6) requires the Scottish Ministers to publish the advice requested under subsection (4) no later than 31 December 2009 or as soon as reasonably practicable thereafter.
12. Subsection (7) requires the Scottish Ministers to comply with either of the duties set out in subsection (8) as soon as reasonably practicable after the advice is published. These duties are (a) to lay before the Scottish Parliament a draft of a statutory instrument substituting for the interim target figure specified in subsection (1) the one provided by the relevant body or (b) to make a statement to the Scottish Parliament setting out the reasons why no such draft statutory instrument has been laid.
13. Subsection (9) requires the Scottish Ministers, if an appropriate Community instrument comes into force, to lay before the Scottish Parliament a draft of a statutory instrument containing an appropriate order before the expiry of the appropriate period. The terminology used in subsection (9) is defined in subsections (10), (11) and (12). In this section, an “appropriate Community Instrument” is an instrument of the European Community which amends Decision [406/2009/EC](#) of the European Parliament and of the Council of 23 April 2009 on the efforts of Member States of the European Union to reduce their greenhouse gas emissions. The appropriate Community Instrument must also contain a commitment to reduce, by 2020, European Union greenhouse gas emissions by 30% compared to 1990 levels.
14. In the event that a draft of an appropriate order is not laid before the expiry of the appropriate period, subsection (13) requires the Scottish Ministers to lay the draft as soon as reasonably practicable thereafter.
15. Subsection (14) provides that subsections (9) to (13) cease to apply if, for the time being, the interim target is set at a figure higher than 42%.

Annual targets

16. Subsection (1) of section 3 requires the Scottish Ministers to set annual targets for the maximum amount of the net Scottish emissions account for each year in the period 2010 to 2050 and must ensure that those targets are not exceeded.
17. Subsection (2) sets out criteria that the annual targets must meet. Paragraph (a) specifies that the annual target for the year 2010 is an amount which is less than the estimated net Scottish emissions account for 2009. Paragraph (b) requires that the targets for each year in the period 2011 to 2019 must be set so that each is consistent with a reduction that is in line with achieving the interim target and the 2050 target. Paragraph (c) requires that the targets for each year in the period 2020 to 2050 must be set so that each is consistent with a reduction that is in line with achieving the 2050 target, and that each annual target is an amount which is at least 3% less than the target for the preceding year.

Setting annual targets

18. [Section 4](#) contains a number of conditions which must be met when the Scottish Ministers set annual targets. Subsections (1) and (2) establish that the targets must be set by order and must be set for certain periods by specified dates.
19. Subsection (3) imposes a duty on the Scottish Ministers when setting annual targets to have regard to any advice they receive from the relevant body as to the cumulative amount of net Scottish emissions for the period 2010 to 2050 that is consistent with a reduction over that period which would achieve the 2050 target.
20. Subsection (4) details a list of criteria which must be considered by the Scottish Ministers when setting annual targets. This largely replicates the list in section 2(5) but also includes in paragraph (a) the objective of not exceeding the fair and safe Scottish emissions budget (i.e. cumulative emissions, as defined in subsection (6)). This list is not intended to be the sole list of factors that the Scottish Ministers may consider when setting annual targets and additional factors can also be considered.

Advice before setting annual targets

21. [Section 5](#) requires that the Scottish Ministers request and publish advice from the relevant body before laying a draft order containing annual targets. That request must ask for the relevant body's views on the topics set out in subsection (2). The Scottish Ministers must also publish a statement explaining why the annual targets are being set at the levels they are and how these annual targets take account of the target-setting criteria described in section 4(4) of the Act. If the Scottish Ministers have chosen to set annual targets at levels which differ from the expert advice provided, they must publish a statement setting out the reasons why. Subsection (7) defines "relevant body" for the purposes of the Part, which will be the UKCCC or a Scottish body designated under section 24.

Modifying annual targets etc.

22. [Section 6](#) allows the Scottish Ministers to modify, by order, the minimum annual target percentage reduction applying from 2020, annual targets, dates by which annual targets must be set and the target-setting criteria. The annual targets set by order may be modified only if the Scottish Ministers consider it appropriate to do so as a result of a modification of the interim target or if there has been another significant change to the basis on which the annual target was set. Subsections (2) and (3) place a requirement on the Scottish Ministers to lay a report before the Parliament at the same time as laying the draft modifying order explaining why the modification is required and to make a statement to the Parliament relating to this report.
23. Subsections (4) and (7) constrain the ability to modify the 3% minimum reduction in emissions so that this can be used only where it is no longer considered necessary for

that minimum to be achieved, and it can expressly not be used to substitute a percentage of less than zero. Subsection (6) provides that an order modifying either the date by which annual targets are to be set, or the target-setting criteria, may be made only where the Scottish Ministers consider it appropriate. Subsection (8) constrains the ability to modify annual targets so that it can be exercised only before the beginning of the year to which the target relates and cannot be used if it would result in the target for the year being greater than the target for the preceding year (i.e. allowing emissions to increase between years).

Advice before modifying annual targets etc.

24. [Section 7](#) requires the Scottish Ministers to request advice from the relevant body before laying an order for modification under section 6. If this advice is not followed, this provision requires the Scottish Ministers to lay before the Parliament a report explaining why and to make a statement to the Parliament relating to the report.

The domestic effort target

25. [Section 8](#) places a duty on the Scottish Ministers to ensure that reductions in net Scottish emissions of greenhouse gases make up at least 80% of the reduction in the net Scottish emissions account in any target year. This is the “domestic effort target”.
26. Subsection (3) provides that any reduction in the net Scottish emissions account that is the result of “European carbon units” being credited to that account is, for the purpose of the domestic effort target, to be treated as though it is a reduction in net Scottish emissions. Subsection (4) defines “European carbon units” by reference to the European Union Emissions Trading Scheme or other equivalent trading scheme and subsection (5) defines “trading scheme”.
27. Subsection (6) enables the Scottish Ministers to modify, by order, the percentage figure contained in subsection (1) so as to substitute a higher figure. Subsection (7) requires that advice from the relevant body must be requested by the Scottish Ministers before laying a draft of a statutory instrument containing an order under subsection (6) (i.e. a modification order), and subsection (8) requires the Scottish Ministers to publish a statement if they set a percentage figure different from that advised by the relevant body.

Progress towards targets

28. [Section 9](#) requires the Scottish Ministers, from 2011, to request the relevant body to prepare a report on its views on the progress towards achievement of annual targets, the interim target and the 2050 target, on whether these targets are likely to be achieved and on what further effort may be required to meet the targets.
29. Subsection (2) requires that no later than the end of the second year following an annual target, the Scottish Ministers must request the relevant body to prepare a report detailing its views on whether the domestic effort target was met in that target year, whether the annual target for the target year was met, the ways in which those targets were or were not met and the action taken by the Scottish Ministers to reduce net Scottish emissions during that year. Subsection (3) requires the Scottish Ministers to lay a response to this report before the Scottish Parliament as soon as reasonably practicable after receiving the report.

Greenhouse gases

30. [Section 10](#) defines the greenhouse gases targeted by the Act and allows for this list of gases to be amended, by order, by adding gases or modifying their description. The power to add new greenhouse gases may be exercised only if it appears to the Scottish Ministers that European or international agreements or arrangements recognise the contribution to climate change of a gas. Before laying an order modifying section 10(1), the Scottish Ministers must request advice from the relevant body.

The baseline

31. [Section 11](#) defines the baseline years for each greenhouse gas covered by the emissions reduction targets set by the Act.

Baselines for additional greenhouse gases

32. [Section 12](#) applies in the situation where the list of target gases for the Act is expanded and a baseline year is required. If a new greenhouse gas is added to the list of target gases for the Act, subsections (3) and (4) allow the Scottish Ministers to specify by order what the baseline year is to be and how the net Scottish emissions are to be determined for the baseline year for the new gas.

The net Scottish emissions account

33. [Section 13](#) defines the net Scottish emissions account as the aggregate of net Scottish emissions, minus any carbon units credited to the account for the period plus any carbon units debited from the account for the period.
34. Subsection (2) provides that the net Scottish emissions account for a target year may not be credited with an amount of carbon units which exceeds the “allowable amount”. Subsection (3) defines the term “allowable amount” as (a) the amount equal to the limit, set by virtue of subsection (1) of section 21 (Limits on use of carbon units), 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). Subsection (4) states that the term “net amount of carbon units” has the meaning given by subsection (3) of section 21.
35. Subsection (5) enables the Scottish Ministers to provide in regulations which carbon units can be credited to and debited from the net Scottish emissions account and how this can be done. Subsection (6) provides that regulations must ensure that, where carbon units are used to reduce the net Scottish emissions account, they are not also used to offset other emissions elsewhere. This could otherwise lead to “double-counting”.

Restriction on use in 2010-2017 of carbon units purchased by Scottish Ministers

36. [Section 14](#) places restrictions on the use in the period 2010 to 2017 of carbon units purchased by the Scottish Ministers. Subsection (1) prohibits the Scottish Ministers from crediting the net Scottish emissions accounts for the years 2010 to 2012 with carbon units that they have purchased. Subsection (2) provides when subsection (1) applies. Subsection (3) restricts the Scottish Ministers ability to credit the net Scottish emissions account for a year in the period 2013-2017 with 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.

Attribution of emissions to Scotland

37. [Section 15](#) defines which emissions of greenhouse gases are attributable to Scotland for the purposes of the definitions contained in section 17. These are emissions of greenhouse gases emitted from sources in Scotland and the share attributed to Scotland by an order made in terms of section 16 of emissions from international aviation and international shipping.

Scottish share of emissions from international aviation and international shipping

38. [Section 16](#) allows the Scottish Ministers to make provision, by order, for a proportion of emissions from international aviation and international shipping to be attributed to

Scotland. Subsection (2) provides that orders must make provision for emissions of each greenhouse gas in the list in section 10(1) and any greenhouse gas added to that list to be taken into account in the period starting with 1 January following on from the order being approved by the Parliament and ending on 31 December 2050. Also, orders must make provision regarding the manner in which such emissions are to be taken into account in determining Scottish emissions of that gas for the baseline year and in the period in which such emissions of that gas are to be taken into account as Scottish emissions. Subsection (2) also provides that an order 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 such a gas. Once such emissions of greenhouse gases are being taken into account an order may not provide that they cease to be so taken into account.

39. Subsection (3) requires that provision made by virtue of an order under subsection (1) must, for each greenhouse gas, include the use of a multiplier which reflects the climate change impacts of emissions made at altitude by international aviation. Subsections (4) and (5) provide that a first draft order must be laid before the Scottish Parliament no later than 1 June 2010, or as soon as reasonably practicable afterwards. Before laying such an order, the Scottish Ministers must, in terms of subsection (6), seek advice from the relevant body. Subsection (7) provides that if this advice is not followed, the Scottish Ministers must publish a statement explaining why they are following a different approach.

Scottish emissions and removals

40. [Section 17](#) defines Scottish emissions and Scottish removals of greenhouse gases, and defines the total of these for a period as the net Scottish emissions for that period.
41. Subsection (2) allows the Scottish Ministers to modify the definition of Scottish removals by order. Subsection (3) requires the amount of emissions and removals of a greenhouse gas to be determined, in so far as reasonably practicable, consistently with international carbon reporting practice, as defined in section 19.

Measurement of emissions etc.

42. [Section 18](#) provides that emissions, emissions reductions and removals are to be measured in tonnes of carbon dioxide equivalent, and defines that term.

International carbon reporting practice

43. [Section 19](#) defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Scottish Ministers specify by order. This power allows the definition to be updated to take account of new international arrangements and agreements.

Carbon units and carbon accounting

44. [Section 20](#) enables the Scottish Ministers to define “carbon unit” in regulations and provides them with the power by regulations to establish a scheme or use an existing scheme for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held.

Limits on use of carbon units

45. [Section 21](#) requires the Scottish Ministers to set limits on the net amount of carbon units which may be credited to net Scottish emissions accounts for specified periods.
46. Subsection (2) lists the periods for which limits on the net amount of carbon units must be set and specifies the dates by which those limits must be set. Subsection (3) defines the term “net amount of carbon units”. Subsection (4) provides that an order

may exclude certain specified carbon units from counting towards any limit set and subsection (5) requires that if the limit for a period is not set by the corresponding deadline, the limit must be set as soon as reasonably practicable afterwards.

Modifying limits on use of carbon units etc.

47. [Section 22](#) enables the Scottish Ministers to modify, by order, any limits which have been set on the amount of carbon units that may be credited to the net Scottish emissions account and any dates associated with the limits on carbon units.
48. Subsection (2) specifies the circumstances when this order may be made: in the case of an order altering a limit set, where there has been a modification of the interim target or another significant change to the basis on which the limit was set; and, in the case of an order altering a date by which a limit must be set, where the Scottish Ministers consider it appropriate to do so.

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

49. [Section 23](#) requires the Scottish Ministers to request advice from the relevant body (the UKCCC or a Scottish body designated under section 24 of the Act) before setting or modifying limits on the net amount of carbon units which may be credited to net Scottish emissions accounts for specified periods. If provision is made that is different to that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.

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.

Part 3 – Reporting Duties

69. The Act requires that the Scottish Ministers report regularly to the Scottish Parliament on Scotland's emissions and on the progress being made towards the emissions reduction targets set by the Act.

Reports on annual targets

70. [Section 33](#) requires the Scottish Ministers to lay annual reports before the Scottish Parliament in respect of each year from 2010 to 2050. Subsections (2) to (6) specify information that the annual report must contain. This includes whether the annual target and domestic effort target have been met, and if they have not, the report must explain why. Subsection (7) requires the annual report to be laid before the Scottish Parliament no later than 31 October in the second year after that to which the annual target discussed in the report relates.

Reports on annual targets: content

71. [Section 34](#) specifies further information that must be contained in each annual target report. Subsection (3) requires that the report must state, among other things, the proportion of the reduction in the net Scottish emissions account which is accounted for by reductions in net Scottish emissions. Subsection (4) requires the report to include information on electricity consumption and generation, the average greenhouse gas emissions per megawatt hour of electricity generated, and the average greenhouse gas emissions per megawatt hour, and the estimated lifetime cumulative emissions, of any new electricity generation capacity greater than 50 megawatts. Subsection (5) requires that the report for each year in the period 2011 to 2050 must state the amount of the net Scottish emissions account for each preceding target year, and the cumulative amount of the net Scottish emissions account for the target year and all preceding target years.

72. Subsections (7) and (8) make provision regarding the adjustment of previously reported information, including specific reporting that must be made in the event of such an adjustment.

Reports on proposals and policies for meeting annual targets

73. Subsection (1) of section 35 requires the Scottish Ministers to lay before the Scottish Parliament a report as soon as reasonably practicable after making an order under section 4 setting annual targets. That report must contain the information set out in subsections (8) to (11).
74. Subsection (2) requires the Scottish Ministers to lay a draft of the report before Parliament before laying the actual report. By virtue of subsections (3) and (4) the actual report may not be laid until the expiry of a 60-day “period for Parliamentary consideration”. Of those 60 days no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
75. Subsection (5) requires the Scottish Ministers, before laying the report, to have regard to any representations on the draft report made to them, any resolution passed by Parliament relating to the draft report, and any report relating to the draft report published by any parliamentary committee. Subsection (6) provides that the Scottish Ministers, when laying the actual report, must also lay a statement setting out details of the representations etc. that were made in respect of the draft and any changes that were made in response to these, including the reasons for those changes.
76. Subsection (8) requires this report to set out the Scottish Ministers’ proposals and policies intended to meet the annual targets, and their timescales, with an explanation of how these are expected to contribute towards the delivery of the interim target, the 2050 target, and in each target year, the domestic effort target. Subsection (9) requires that the report must, in particular, detail proposals and policies regarding the respective contributions to meeting the annual targets that should be made by (a) energy efficiency, (b) energy generation, (c) land use, and (d) transport. Subsection (10) requires the report to explain how the proposals and policies are expected to affect the different sectors of the Scottish economy. Subsection (11) requires the second and each subsequent report to provide an assessment of progress towards implementation of the policies and proposals in earlier reports, and make any adjustments to those proposals and policies which are considered appropriate.

Reports on proposals and policies where annual targets not met

77. If the annual report indicates that the annual target or domestic effort target has not been met, section 36 requires the Scottish Ministers to lay a report before the Scottish Parliament, which sets out proposals and policies to compensate in future years for the excess emissions.

Reports on emissions attributable to Scottish consumption of goods and services

78. [Section 37](#) requires the Scottish Ministers to lay a report before the Scottish Parliament in respect of each year in the period from 2010 to 2050 setting out, in so far as reasonably practicable, the emissions of greenhouse gases, whether in Scotland or elsewhere, which are produced by or associated with the consumption and use of goods and services in Scotland during that year. The report can also contain other information the Scottish Ministers think appropriate.

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

79. [Section 38](#) requires the Scottish Ministers to lay a report before the Scottish Parliament in respect of each year in the period from 2010 to 2050 setting out, in so far as reasonably

practicable, the impact on net Scottish emissions resulting from the exercise by the Scottish Ministers of any of their statutory functions relating to energy generation.

Report on progress towards meeting the interim target

80. [Section 39](#) requires the Scottish Ministers, no later than 31 December 2015, to lay before the Scottish Parliament a report on progress towards meeting the interim target. The report must, in particular, indicate whether progress in reducing net Scottish emissions is in line with a reduction over the period 2010 to 2020 which would allow the interim and 2050 targets to be met.

Report on the interim target

81. [Section 40](#) requires the Scottish Ministers to lay a report before the Scottish Parliament in respect of the interim target for the year 2020. Subsections (2) to (8) determine what the report must contain and its timescale for laying.

Report on the 2050 target

82. [Section 41](#) requires the Scottish Ministers to lay a report before the Scottish Parliament in respect of the 2050 target. Subsections (2) to (8) determine what the report must contain and its timescale for laying.

Reports: provision of further information to the Scottish Parliament

83. Subsections (1) and (2) of section 42 provide that where the Scottish Ministers lay various reports before the Scottish Parliament relating to annual targets, proposals and policies to compensate for excess emissions, the interim target and the 2050 target, they must immediately send a copy of the report to the persons who convene Scottish Parliament committees and, as soon as reasonably practicable, make a statement on the report to the Scottish Parliament. Subsection (3) requires that in terms of the report on the annual target, the Scottish Ministers must attend, if invited, Scottish Parliament committees to give evidence on the report. All of these duties apply only as far as is reasonably practicable. Subsection (4) requires the Scottish Ministers to have regard to any resolution passed by the Scottish Parliament or report made by a parliamentary committee relating to the content of any report mentioned in subsection (2).

Further provision about reporting duties

84. [Section 43](#) enables the Scottish Ministers to impose new duties on themselves, by order, to report to the Scottish Parliament if they consider it appropriate to do so. Subsection (2) sets out further provision which may also be made by such an order.

Part 4 – Duties of Public Bodies Relating to Climate Change

Duties of public bodies relating to climate change

85. Subsection (1) of section 44 places specific climate change duties on public bodies. They must, in exercising their functions, act in the way best calculated to achieve delivery of the targets in the Act, the way best calculated to help deliver any programme laid under section 53 of the Act (adaptation) and in a way that they consider most sustainable. Subsection (2) defines the term “public body”.
86. Subsection (3) enables the Scottish Ministers, by order, to impose further duties on public bodies in relation to climate change (in addition to those specified in subsection (1)). Subsection (6) allows the order to make different provision for different public bodies. A body which has climate change duties under subsection (1) or by virtue of an order under subsection (3) is a “relevant public body” (subsection (5)).

87. Subsections (7) and (8) oblige the Scottish Ministers, in so far as reasonably practicable, to consult with such associations of local authorities and such other persons as they consider appropriate before laying an order under subsection (3) imposing such duties. Subsection (9) states that the Scottish Ministers must co-operate with the relevant public bodies to help those bodies comply with duties imposed under this section.

Guidance to relevant public bodies

88. [Section 45](#) provides that the Scottish Ministers can give guidance to relevant public bodies in relation to climate change duties and that those bodies must have regard to such guidance. Subsections (2) and (3) oblige the Scottish Ministers to consult with such associations of local authorities and such other persons as they consider appropriate before giving guidance, in so far as it is reasonably practicable to do so. Subsection (4) allows the Scottish Ministers to vary or revoke this guidance. If the guidance is to be varied to a substantial extent then the consultation requirement in subsections (2) and (3) applies. Subsection (5) requires the Scottish Ministers to publish such guidance.

Reporting on climate change duties

89. [Section 46](#) enables the Scottish Ministers, by order, to require relevant public bodies to report on how they are complying with climate change duties imposed on them by or under section 44, and to prepare a report on the actions to address future compliance if they are, following an investigation under section 48, found to be failing to comply with their climate change duties. Subsections (1)(c) to (e) enable the Scottish Ministers to set out what must be in the report, its format, and the time by which it must be submitted to them. Subsection (2) contains specific provision about reporting on how procurement policies and activities have contributed to compliance with the climate change duties. Subsection (3) allows for an order to provide that where relevant public bodies are working together on a particular duty, the Scottish Ministers may require them to co-operate with each other to prepare a joint report.

Appointment of monitoring body

90. [Section 47](#) enables the Scottish Ministers, by order, to designate one or more persons or bodies to monitor whether relevant public bodies are complying with duties imposed by or under section 44 or whether they are having regard to guidance given under section 45. The person or body is referred to as the “monitoring body”.

Investigations

91. [Section 48](#) enables a monitoring body to carry out investigations into how relevant public bodies are complying with duties imposed by or under section 44, or whether they are having regard to guidance given under section 45. If the Scottish Ministers direct it to do so, then the monitoring body must carry out an investigation. Section 49 specifies the powers of investigators in those circumstances and when they can use those powers and defines “investigators” which may be either the monitoring body or a person authorised by that body.

Reporting by monitoring body

92. [Section 50](#) enables the Scottish Ministers to direct a monitoring body to prepare a report on its activities, investigations it has carried out, use of resources and any other matters. Those reports will not normally mention continuing investigations unless the Scottish Ministers direct this. Subsection (3) requires the monitoring body to submit the report to the Scottish Ministers, and subsection (4) requires the Scottish Ministers to lay the report before the Scottish Parliament.

Guidance to monitoring body

93. [Section 51](#) requires a monitoring body to have regard to any guidance issued by the Scottish Ministers relating to its functions under Part 4 of the Act. Subsections (2) and (3) oblige the Scottish Ministers to consult with the monitoring body and such other persons as they consider appropriate, in so far as reasonably practicable, before giving guidance.
94. Subsection (4) allows the Scottish Ministers to vary or revoke this guidance. If the guidance is to be substantially varied, then the consultation requirements of subsections (2) and (3) apply. Subsection (5) requires the Scottish Ministers to publish any guidance given under this section.

Power to direct monitoring body

95. [Section 52](#) enables the Scottish Ministers to give directions to a monitoring body relating to its functions under Part 4 of the Act. Subsection (2) allows a direction given under this section to be varied or revoked. Subsection (3) requires the monitoring body to comply with a direction given under this section.

Part 5 – Other Climate Change Provisions

Chapter 1 – Adaptation

Adaptation programmes

96. [Section 53](#) applies where the Secretary of State lays a report under section 56 of the UK Climate Change Act 2008 before the UK Parliament on the impact of climate change on the United Kingdom. Where such a report is laid, under subsection (2) the Scottish Ministers must lay a programme before the Scottish Parliament. This programme must set out the Scottish Ministers' objectives in relation to adaptation to climate change, their proposals and policies for meeting those objectives, including the timescales within which the proposals and policies will be introduced and otherwise address the risks identified for Scotland in the Secretary of State's report. It must also outline arrangements to ensure engagement with stakeholders in delivering the programme, specifically with employers and trade unions and what mechanisms will be used to ensure the public is engaged in meeting the objectives. Subsection (3) requires the Scottish Ministers' programme, where it is a programme being laid following upon a subsequent report by the Secretary of State within the terms of section 56(3) of the 2008 Act, to also contain an assessment of progress made under the previous programme.
97. [Section 54](#) requires the Scottish Ministers to lay before the Scottish Parliament reports setting out their assessment of progress made towards implementing the objectives, proposals and policies set out in the section 53 programme. It also specifies timescales for when such reports have to be laid.
98. [Section 55](#) applies where the Scottish Ministers lay a programme under section 53(2). It requires the Scottish Ministers to 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. Subsection (2) provides that the request has to be made within 2 years of the day on which a programme is laid by the Scottish Ministers before the Scottish Parliament. The assessments will be conducted by the relevant body, currently the UKCCC, until such time as a Scottish advisory body is established.
99. [Section 55](#) also applies where the Secretary of State lays a second or subsequent report under section 56 of the UK Climate Change Act 2008. When this occurs, then the Scottish Ministers must request the relevant body to prepare a further report setting out an assessment of the progress made towards implementing the Scottish Ministers' objectives, proposals and policies set out in the most recent programme under section 53. Under the UK Act, subsequent reports of the Secretary of State are due to be laid every five years after the first.

100. [Section 56](#) only applies when an order is made by the Scottish Ministers designating an advisory body. It requires the Scottish Ministers to request the advisory body to prepare a report setting out an assessment of progress made towards the programmes to adapt to climate change in the same circumstances and within the same timescales as for section 55.

[Chapter 2](#) – Land Use

Duty to produce a land use strategy

101. [Section 57](#) requires the Scottish Ministers to produce a land use strategy.
102. Subsection (1) requires that the Scottish Ministers must lay the strategy before the Scottish Parliament no later than 31 March 2011. Subsection (2) provides that the strategy must set out objectives in relation to sustainable land use, proposals and policies for meeting those objectives, and timescales over which the policies and proposals are expected to take effect. Subsection (3) states that these objectives, policies and proposals must contribute to achieving the emissions reduction targets set by the Act, the objectives set in an adaptation programme and sustainable development. Subsections (4) and (5) make provisions regarding publishing a draft strategy, the need for consultation and reporting on consultation. Subsection (6) requires the Scottish Ministers to revise the land use strategy at least every five years.

Variation of permitted times for making muirburn

103. [Section 58](#) of the Act inserts a new section 23A into the Hill Farming Act 1946 (the “1946 Act”).
104. Subsection (1) of new section 23A enables the Scottish Ministers to make successive orders specifying the dates before or after which it is lawful to make muirburn in any year. Subsection (1) also clarifies the effect of any order made under subsection (1), that is, to substitute for any of the dates specified in section 23(1), (2) or (3) of the 1946 Act, the dates specified in any such order.
105. Subsection (2) of new section 23A provides that the Scottish Ministers may make an order under new section 23A(1) of the 1946 Act only where they consider it necessary or expedient to do so in relation to climate change. Subsection (3) of new section 23A prevents the order-making power being exercised so as to reduce the length of the muirburn season below that currently provided for under section 23 of the 1946 Act.
106. Subsection (5) of new section 23A of the 1946 Act provides that any statutory instrument containing an order made under subsection (1) of that section is subject to affirmative parliamentary procedure.
107. [Schedule 2](#) to the Act provides for a minor amendment of section 23(1) of the 1946 Act, to clarify that section 23 of the 1946 Act is subject to any provision made by order under new section 23A(1) of that Act.

Power to modify functions of Forestry Commissioners

108. Subsection (1) of section 59 allows the Scottish Ministers, by order, to modify the functions of the Forestry Commissioners in or as regards Scotland. Subsection (2) provides that such modifications may be made only where the Scottish Ministers consider it necessary or expedient to allow them to comply with their duties under sections 1, 2(1) or 3(1)(b) of the Act to reduce greenhouse gas emissions or more generally in relation to climate change.
109. Subsection (3) provides that the order may modify the Forestry Commissioners’ functions to allow them to form or participate in corporate bodies or trusts.

110. Subsection (4) imposes the duty in section 1 of the Nature Conservation (Scotland) Act 2004 on any body corporate or trust established by the Forestry Commissioners by virtue of an order under subsection (1).
111. [Section 96](#) makes more general provision in relation to the power to make an order under section 59, and makes provision as to the parliamentary procedure for such an order. Subsections (2) and (3) of section 96 provide that an order made by the Scottish Ministers under section 59 may make different provision for different cases or purposes, or make any appropriate consequential, incidental, supplementary, transitory, transitional or saving provision, including modification of any enactment. Section 96(4) provides that an order made under section 59 is subject to affirmative resolution procedure.

Chapter 3 – Energy efficiency

Duty of Scottish Ministers to promote energy efficiency

112. [Section 60](#) requires the Scottish Ministers, within 12 months of the section coming into force, to publish a plan for promoting energy efficiency and improving the energy efficiency of living accommodation in Scotland. Under subsections (5) and (6), Ministers are required to review the plan at least every 3 years. The plan must set annual energy efficiency targets and describe how those targets are to be reported on. 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.
113. Following a review, the Scottish Ministers must in accordance with subsection (7) publish the plan if the review results in changes to the plan.
114. When preparing a plan and when varying it after a review, subsection (8) requires the Scottish Ministers to have regard to the contribution that improvements to buildings and changes in building standards can make to improving overall energy efficiency and lowering carbon emissions in Scotland.
115. “Energy efficiency” is defined in subsection (9) and includes the use of (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” and “renewable sources” are also defined in subsection (9).

Duty of Scottish Ministers to promote renewable heat

116. [Section 61](#) requires the Scottish Ministers to prepare and publish a plan for the promotion of the use of heat produced from renewable sources. Subsection (2) provides that the plan must set targets, the dates by which the targets are to be met and describe how those targets are to be reported on. This subsection also requires that the Scottish Ministers describe how the targets will be reported on.
117. Subsection (3) requires the Scottish Ministers to publish, within 12 months of the section coming into force, the plan prepared under subsection (1). Under subsections (4) and (5), Ministers are required to review the plan at least every 2 years. If, following a review, the plan is varied, Ministers must publish the revised plan.

Laying of plans and reports

118. Section 62(1) requires the Scottish Ministers to lay the initial energy efficiency and renewable heat plans and any subsequent revised versions of those plans before the Scottish Parliament as soon as reasonably practicable after they are published.

Subsections (2) and (3) require Ministers to lay reports before the Scottish Parliament on what steps have been taken to implement the plans. These reports must be laid within 12 months of the plans first being published and at least annually thereafter. Under subsection (4), the Scottish Ministers are required to make a statement to Parliament as soon as reasonably practicable after the plans are laid.

Non-domestic buildings: assessment of energy performance and emissions

119. [Section 63](#) requires the Scottish Ministers to make regulations providing for the assessment of (a) the energy performance of non-domestic buildings, and (b) emissions of greenhouse gases produced by or associated with such buildings or with activities carried out in such buildings, and to make regulations requiring owners of such buildings to take steps to improve the energy performance of buildings and to reduce emissions.
120. Subsection (2) sets out (without prejudice to the generality of the power in subsection (1)) some of the detail which may be included in the regulations, including: the kinds of non-domestic buildings covered; persons who are required to obtain assessments; time periods for carrying out assessments; procedures and methodologies for assessing energy performance and emissions; persons who can carry out such assessments; the issuing of certificates following assessment; the form of any recommendations as to the improvement of the energy performance and reduction of emissions; the manner and periods within which steps must be taken with regard to such recommendations; the registration of certificates; the disclosure of information entered in the register; enforcement authorities; the keeping of records; enforcement of the regulations; and offences.
121. Subsection (3) makes provision about the enforcement authority provided for in the regulations and subsection (4) allows the regulations to provide for the functions of the enforcement authority to be exercised by two or more such authorities and also allows provision to be made about the functions of each of those authorities.
122. Subsection (5) allows the enforcement authority to levy charges to recover reasonable costs incurred by exercising the functions under the regulations and subsection (6) requires the Scottish Ministers to publish a report, within 12 months of section 63 coming into force. This will set out the measures they intend to take to reduce emissions from non-domestic buildings, and when they intend to make regulations to set out the form of recommendations and the manner and periods within which steps are to be taken to comply with the recommendations.
123. Subsection (7) defines “non-domestic building” as all buildings, other than buildings which are dwellings. Yards, gardens, outbuildings and other land or buildings associated with dwellings, and any common areas so associated, are also excluded from the meaning of “non-domestic building”.

Living accommodation: assessment of energy performance and emissions

124. [Section 64](#) requires the Scottish Ministers to make regulations providing for the assessment of (a) the energy performance of living accommodation, and (b) emissions of greenhouse gases produced by living accommodation. Ministers must also, by regulations, require owners of such accommodation to take steps, identified by the assessments, to (a) improve the energy performance of such accommodation, and (b) reduce such emissions.
125. Subsection (2) sets out (without prejudice to the generality of the power in subsection (1)) some of the detail which may be included in the regulations, including: the kinds of living accommodation covered; persons who are required to obtain assessments; time periods for carrying out assessments; procedures and methodologies for assessing energy performance and emissions; persons who can carry out such assessments; the issuing of certificates following assessment; the form of any

recommendations as to the improvement of the energy performance and reduction of emissions; the manner and periods within which steps must be taken with regard to such recommendations; the registration of certificates; the disclosure of information entered in the register; enforcement authorities; the keeping of records; enforcement of the regulations; and offences.

- 126. Subsection (3) makes provision about the enforcement authority provided for in the regulations and subsection (4) allows the regulations to provide for the functions of the enforcement authority to be exercised by two or more such authorities and also allows provision to be made about the functions of each of those authorities.
- 127. Subsection (5) allows the enforcement authority to levy charges to recover reasonable costs incurred in exercising the functions under the regulations. Subsection (6) requires the Scottish Ministers to publish a report, within 12 months of section 64 coming into force. This will set out the measures they intend to take to reduce emissions from living accommodation, and when they intend to make regulations to set out the form of recommendations and the manner and periods within which steps are to be taken to comply with the recommendations.
- 128. Subsection (7) defines “living accommodation” as a dwelling, and includes any building having a total useful floor area of 50m² or more and any common areas associated with such a dwelling.

Duty of local authorities to establish energy efficiency discount schemes

- 129. [Section 65](#) amends the Local Government Finance Act 1992 by inserting new section 80A – Local authority’s power to reduce amount of tax payable. Subsection (1) of section 80A requires local authorities to establish schemes 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. Subsection (2) defines such a scheme as an “energy efficiency discount scheme”.
- 130. Subsection (3) gives local authorities the discretion to design schemes as they see fit and lists provision which it may in particular include. Subsection (4) states that certain conditions must be met before the amount which a person is liable to pay in respect of council tax may be reduced. Subsections (5) and (6) set out these conditions.
- 131. Subsection (7) details the minimum reduction which may be provided under an energy efficiency discount scheme. Where that person’s council tax liability is £50 or more, the discount must be no less than £50. Where that person’s council tax liability is less than £50, the discount must be equal to that liability. Subsection (8) allows a local authority, under an energy efficiency discount scheme, to reduce a person’s liability to zero.
- 132. Subsection (9) contains definitions of expressions, such as “energy efficiency”, used in section 80A.
- 133. Subsection (3) of section 65 inserts a new paragraph 22 into schedule 2 to the Local Government Finance Act 1992, which provides that a council tax reduction under an energy efficiency discount scheme is to be treated, for the purposes of that schedule, as a discount equal to the amount of the reduction.

Review of energy efficiency discount schemes

- 134. [Section 66](#) requires the Scottish Ministers to produce a report as soon as practicable after 31 March 2012, and annually thereafter, on the operation of energy efficiency discount schemes established under section 80A of the Local Government Finance Act 1992. The report must include an assessment of the effectiveness of council tax reductions in promoting energy efficiency.

135. Subsection (2) allows the Scottish Ministers to amend section 80A of the 1992 Act to improve the contribution of energy efficiency discount schemes to promoting energy efficiency.

Non-domestic rates: discounts for energy efficiency etc.

136. [Section 67](#) amends section 153 of the Local Government etc. (Scotland) Act 1994 by amending the power of the Scottish Ministers to make regulations prescribing the amount of non-domestic rates so that the amount payable for properties which fall into specific categories determined by energy efficiency and greenhouse gas emissions may be lower than the amount payable for other properties.

Climate change burdens

137. [Section 68](#) inserts a new section 46A into the Title Conditions (Scotland) Act 2003 to create a new kind of real burden – a “climate change burden”- that can be added to a property’s title deeds to specify the mitigation or adaptation standards that must be met when the burdened property is developed. Subsection (3) identifies those public bodies in whose favour a climate change burden can be created, as those bodies listed in Part I or Part II of the schedule to the [Title Conditions \(Scotland\) Act 2003 \(Conservation Bodies\) Order 2003 \(SSI 2003/453\)](#).

Tenement Management Scheme: definition of “maintenance”

138. [Section 69](#) amends the definition of “maintenance” in schedule 1 to the Tenements (Scotland) Act 2004 to include the installation of insulation. The 2004 Act deals with the management and maintenance of tenements, providing a default management scheme which applies when the title deeds do not set out how a tenement should be managed. Amending the definition of maintenance brings the installation of insulation within those matters governed by the scheme, including the scheme rules on how decisions should be made and how the costs should be shared between the individual owners.

Permitted development rights

139. [Sections 70](#) and [71](#) place duties on the Scottish Ministers to bring forward subordinate legislation under the Town and Country Planning (Scotland) Act 1997 to provide for permitted development rights in specified circumstances for the installation of air source heat pump and wind turbine microgeneration equipment in domestic buildings and for the installation of microgeneration equipment in non-domestic buildings.
140. The provisions in these sections of the Act indicate the scope of the consultation that will require to be undertaken with representative persons concerning the extension of permitted development rights. When implemented, the provisions should simplify the planning process and provide a cost saving to applicants.

Development plans: inclusion of greenhouse gas emissions policies

141. [Section 72](#) inserts a new section 3F into the Town and Country Planning (Scotland) Act 1997, placing a requirement upon planning authorities that local development plans must contain greenhouse gas emissions policies. These policies are to ensure that all new buildings are designed to contribute to energy efficiency by the installation and operation of low and zero-carbon generating technologies.

Annual report on operation of [section 72](#)

142. Subsection (1) of section 73 requires the Scottish Ministers to report to the Scottish Parliament annually on the operation of section 72. The report must include an assessment of whether the requirements placed upon planning authorities have contributed effectively to the reduction of greenhouse gas emissions from developments.

143. Subsection (2) requires that the fourth and subsequent reports to the Parliament must include an assessment of the continuing need or otherwise for the requirement placed upon planning authorities to include greenhouse gas emissions policies in local development plans. It makes provision for repeal by the Scottish Ministers of section 3F of the Town and Country Planning (Scotland) Act 1997 and section 73 if, after the fourth and subsequent reports, the Scottish Ministers consider that the requirement is no longer necessary.

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

144. Section 56(1) of the Water Industry (Scotland) Act 2002 puts a duty on the Scottish Ministers to give Scottish Water directions on certain matters. These directions are binding on Scottish Water and can be enforced by Ministers. Section 74 amends section 56(1) of the 2002 Act so that the Scottish Ministers must in future also give specific directions to Scottish Water to promote water conservation and water-use efficiency.

Chapter 4 – The Scottish civil estate

Energy performance of buildings procured for the Scottish civil estate.

145. Section 75(1) places a duty on the Scottish Ministers to ensure, in so far as reasonably practicable, that the energy performance of any building that becomes part of the civil estate in Scotland falls within the top quartile of energy performance.
146. Subsection (2) sets out the criteria that determine the circumstances in which a building becomes part of the civil estate in Scotland.
147. Subsection (3) enables the Scottish Ministers to disapply the duty that a building or category of buildings must fall in the top quartile of energy performance by making regulations to that effect. This may be necessary, for example where there is an operational need to locate in a specific area or in rural areas where it is unlikely that there may be any buildings that fall into the top quartile of energy performance.

Report on the Scottish civil estate

148. Section 76(1) requires the Scottish Ministers, for each financial year beginning with 2010 to 2011, to lay before the Scottish Parliament a report containing an assessment of the progress made in the year towards improving (a) the efficiency of buildings that are part of the civil estate in Scotland; and (b) the contribution to sustainability of those buildings.
149. If a building, the energy performance of which does not fall within the top quartile, becomes part of the civil estate during the year, subsection (2) requires the report for that year to explain why.
150. Subsection (4) contains the deadline by which reports under subsection (1) are to be laid before the Scottish Parliament. For example, for the financial year which ends on 31 March 2011, the report must be laid no later than 31 October 2011.

Scottish civil estate: supplementary

151. Section 77(1) defines the term “building” for the purposes of this section and sections 75 and 76 and sets out what buildings are to be considered as being part of the civil estate in Scotland for these sections.
152. Subsection (2) contains an order-making power to allow specific descriptions of buildings to be included in or excluded from the scope of sections 75 to 77.

Chapter 5 – Waste reduction and recycling

Waste prevention and management plans

153. [Section 78](#) enables the Scottish Ministers to make detailed provision, by regulations, requiring persons specified in such regulations to make waste prevention and management plans, and to comply with them. Some of the detail which may be included in the regulations is specified in subsection (2), but this is without prejudice to the generality of the power in subsection (1). Some essential terms are defined in subsection (4).
154. The effect of regulations made under this section could be, for example, to provide that a builder should draw up plans for how he proposed to reduce waste generated by a building operation by, for example, the re-use of rubble on-site. On a different scale, they might require an office to prepare a plan showing how it will minimise waste – for example by adopting double-sided printing. A person might be required by virtue of subsection (2)(a) to prepare more than one plan, for instance to deal with different types of waste.
155. Subsection (3) ensures that any enforcement authority appointed in relation to this section must have regard to any guidance the Scottish Ministers may give in relation to its functions, which may include the approval of waste prevention and management plans (subsection (2)(e)(ii)). Further provision about enforcement authorities is made by section 89.
156. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that plans were actually drawn up and complied with, but this will be a matter for regulations. Maximum penalties which may be imposed in any regulations made under this Chapter are specified in section 90.

Information on waste

157. [Section 79](#) enables the Scottish Ministers to make detailed provision, by regulations, requiring the provision of information by persons specified in those regulations about waste associated with their activities to the Scottish Environment Protection Agency (SEPA). Some of the detail which may be included in the regulations is specified in subsection (2), but without prejudice to the generality of the power in subsection (1). “Waste” is a term which has already been defined in section 78(4): this definition matches that of Directive [2006/12/EC](#) on waste.
158. Subsection (3) refers to section 34(5) of the Environmental Protection Act 1990 (the “1990 Act”). This enables the Scottish Ministers to make regulations requiring those who import, produce, carry, keep, treat or dispose of controlled waste to make, retain and furnish documents. The powers have been used to make the Environmental Protection (Duty of Care) Regulations 1991 (the “1991 Regulations”) and the Special Waste Regulations 1996 (the “1996 Regulations”). These regulations require notes to be prepared when waste covered by them is transferred. Subsection (3) ensures that regulations made under section 79 are not construed as replacing the separate requirements contained in existing regulations.
159. Subsection (5) provides that the Scottish Ministers must bring forward regulations establishing a scheme to require the provision of data about waste within 12 months of section 79 coming into force.
160. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that information is provided correctly and timeously, but this will be a matter for regulations. Powers to make such provision are contained in subsections (2)(g) and (h).

Recyclable waste: facilities for deposit etc.

161. [Section 80](#) enables the Scottish Ministers to make detailed provision, by regulations, requiring persons specified in those regulations to provide facilities for the deposit of

waste, and requiring that waste deposited in such facilities be collected by an authorised person and, as far as practicable, recycled. Some of the detail which may be included in the regulations is specified in subsection (2), but without prejudice to the generality of the power in subsection (1). “Waste” and “recycling” are terms which have already been defined in section 78(4). “Authorised person” is defined in subsection (5) in terms of section 34(3) of the 1990 Act, and includes local authorities and holders of waste management licences.

162. The power this section grants could be used to require offices to have facilities to collect paper for recycling, for example. Such facilities might be no more than a box, but more complex facilities, such as can-crushers, could also be required, as appropriate. This section could not be used to require facilities to be provided at temporary public events, which are covered by section 81 (see section 80(4)). Subsection (2)(b) may be used to restrict the categories of person who must be allowed to use the facilities, such as staff only in an office environment.
163. Subsection (2)(d) may be used to require an authorised person to remove the waste deposited, for example where the person providing the facilities could otherwise encounter difficulties in getting the waste uplifted. If this power were exercised, subsection (2)(e) could be used to set charges to finance this collection, and the recycling of the relevant material.
164. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that facilities were provided and used properly, but this will be a matter for regulations. Relevant powers are contained in subsection (2)(h) and (i).

Recyclable waste: facilities for deposit at events etc.

165. [Section 81](#) enables the Scottish Ministers to make detailed provision, by regulations, empowering local authorities to issue notices requiring organisers of temporary public events to provide facilities for the deposit of waste, and requiring that the waste be collected by an authorised person and, as far as practicable, recycled. Subsection (4) of section 80 ensures that events are not subject to requirements, possibly competing, made under both sections.
166. An example of how the power might be used could be a local authority requiring the holder of a music festival to ensure that facilities to collect the kinds of waste to which such a festival might give rise (such as bottles, cans, or plastic cups) are provided for the duration of that festival.
167. Subsection (2)(g) could be used to ensure that notices were issued sufficiently far in advance of the relevant events. Provision for appeals against notices may be made under subsection (2)(h). Subsection (2)(k) to (n) deal with enforcement and provide for the appointment of an enforcement authority, which need not necessarily be the local authority. Further provision on enforcement authorities is made by section 89.

Procurement of recyclate

168. [Section 82](#) enables the Scottish Ministers to make detailed provision, by regulations, requiring persons specified in those regulations to ensure that specified things procured or constructed by them include or contain a certain amount or proportion of recyclate. Some of the detail which may be included in the regulations is specified in subsection (3), but without prejudice to the generality of the power in subsection (1). “Recyclate” is defined by subsection (6) in relation to the definition of “recycling” in section 78(4).
169. Subsection (3)(d) could be used to deal with measurement of the proportion of recyclate present in complex items. Subsection (3)(e) could be used to allow the requirement to procure recyclate to be disapplied on application to the Scottish Ministers, for example where this could conflict with Community internal market rules.

170. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that recycle was procured in at least the proper proportion, but this will be a matter for regulations.

Targets for reduction of packaging etc.

171. [Section 83](#) enables the Scottish Ministers to make detailed provision, by regulations, setting targets for reducing the amount of packaging in use (subsection (1)(a)(i)), or the amount of greenhouse gas emissions associated with packaging (subsection (1)(a)(ii)). Some of the detail which may be included in the regulations is specified in subsection (2), but without prejudice to the generality of the power in subsection (1). “Packaging” is defined by subsection (4) in terms of Directive [94/62/EC](#) on packaging and packaging waste.
172. Subsection (2)(c) would allow targets to be set by a variety of means, for instance by reference to turnover or market share. Subsection (2)(f) could be used to require the production of baseline information about the amount of packaging in circulation, which might then be used to set targets. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that accurate information was provided and the targets actually met, but this would be a matter for the regulations.

Deposit and return schemes

173. [Section 84](#) enables the Scottish Ministers to make detailed provision, by regulations, setting up deposit and return schemes for packaging associated with specified products, the products themselves, or both, where Ministers are satisfied that it is necessary or expedient to do so in order to promote recycling. Some of the detail which may be included in the regulations is specified in subsections (3) to (5) and (7), but without prejudice to the generality of the power. Subsections (4)(d) and (5)(g) would confer power to require that materials returned under such a scheme were “recycled”, using the definition at the beginning of this Chapter, which includes re-use and recovery. Any scheme would have to take account of the waste hierarchy set out in the Waste Framework Directive ([2008/98/EC](#)), which prioritises re-use over recycling (narrowly defined), and both over recovery.
174. Subsection (5) would permit regulations to establish an administrative body (called a “scheme administrator”) to act on behalf of relevant producers and retailers in certain respects. This is dealt with in more detail in section 85. Subsection (7) deals with matters such as mechanisms for identifying articles and/or packaging as falling within a scheme, customer information and specification of the places to which packaging could be returned and the deposit reclaimed. The latter could for example be used to deal with return of packaging to a different retailer selling similar types of product. It also provides for a scheme of “split deposits”, whereby there could be an element added to the price which was *not* refundable. This could be used to fund the scheme.
175. It is very likely that a system of enforcement, including offences and penalties, would be required to ensure that deposits were actually taken and repaid, and subsection (7)(n) to (q) contain appropriate powers.

Deposit and return schemes: designation of scheme administrator

176. [Section 85](#) sets out the detail of the Scottish Ministers’ powers to designate, by order, a scheme administrator. The administrator may be a new or an existing body. If an existing body is chosen, it is highly unlikely that its existing powers and functions will match those required for the administrator. Subsection (2), therefore, allows the Scottish Ministers to alter the functions of an existing body accordingly. In subsection (3) particular mention is made of powers to borrow or charge, which will be necessary to fund the operation of the scheme.

177. Similarly, while it is common for the Scottish Ministers to have powers to direct bodies which have a relationship with Government (SEPA being an obvious example), Ministers do not have such powers over all bodies to whom the functions of scheme administrator might be given. Subsection (4) ensures that such directions may be given, but only in respect of a deposit and return scheme. Thus, should a body which is not currently subject to a power of direction by the Scottish Ministers be given the functions of scheme administrator, the Ministers could direct it only in respect of those functions. Its pre-existing functions which were not subject to a power of direction would remain unaffected.

Power to establish scheme administrator

178. Should the Scottish Ministers determine that a new body be established to act as scheme administrator, it is necessary for them to have appropriate powers to give that new body the full range of functions needed to run a deposit and return scheme. Section 86 gives the Scottish Ministers those powers, which they may exercise by order. Again, specific mention is made of powers to borrow and to charge. Under subsection (2), any body which may be established to be a scheme administrator will be a body corporate.
179. Subsection (5) gives Ministers explicit powers to make specific arrangements in relation to issues such as status, constitution, accounts and records. Similarly, the Scottish Ministers may make specific rules for the status, remuneration, allowances and pensions of the members and employees who work for the scheme administrator.

Finance of scheme administrator

180. Whether a new or existing body undertakes the functions of scheme administrator, it is likely that financial support will be required, at least temporarily, from the Scottish Ministers. Examples of circumstances in which this need for financial support might arise are during the start-up phase, and during the operational phase where there is a mismatch between the timing of receipts (from charges and sale of recyclate, for example) and outgoings. Section 87 gives the Scottish Ministers power to give financial support to the scheme administrator, whether by grant, loan or financial guarantee. The section gives powers to the Ministers to determine the conditions upon which such support shall be given.

Charges for supply of carrier bags

181. [Section 88](#) enables the Scottish Ministers to make detailed provision, by regulations, requiring persons supplying carrier bags to take goods away to charge for those bags, and requiring that the net proceeds of such charges be applied to environmental good causes. Some of the detail which may be included in the regulations is specified in subsection (2), but without prejudice to the generality of the power in subsection (1).
182. Subsection (2)(c) provides a power to specify the carrier bags in respect of which a charge would have to be made. This could be used to exempt certain bags, for example where Ministers were satisfied that they were likely to be re-used rather than quickly becoming waste.
183. The amount of the charge is to be fixed, and may be varied, by regulations. The charge is to be levied, not by central or local government, but by the supplier of the bag to which the regulations may apply. Subsection (2)(a) to (c) provide that the regulations may apply the charge to particular kinds of goods, or bags, or suppliers of goods. Subsection (2)(e) enables regulations to provide a mechanism for the calculation of the net proceeds of the charge.
184. Subsections (1)(b) and (2)(f) would allow Ministers to ensure that the net proceeds were spent on broadly environmental purposes, and to define those purposes in more detail if that was thought necessary (such as specifying that funds raised were to be spent in Scotland). It is very likely that a system of enforcement, including offences and

penalties, would be required to ensure that charges were levied, appropriately accounted for, and devoted to appropriate causes, but this would be a matter for the regulations.

Enforcement authorities

185. [Section 79](#) names SEPA as the enforcement authority in respect of waste information. Other provisions in this Chapter enable the Scottish Ministers to specify, by regulations, enforcement authorities in respect of them. Section 89 allows the Scottish Ministers to specify SEPA, a local authority or such other person or body as may be selected. Subsection (3) allows the functions of an enforcement authority to be divided between different specified bodies. Subsection (4) provides that enforcement authorities may charge to recover costs reasonably incurred in connection with their functions. SEPA, however, already has a charging power under section 41(1) of the Environment Act 1995, so charging in respect of its functions under section 79 has been dealt with as a consequential amendment of section 41(1) (see schedule 2, paragraph 2).

Penalties

186. [Section 90](#) sets out the maximum penalties for offences created by regulations under any section in Part 5 of the Act (namely, section 63 in Chapter 3 and sections 78 to 88 in Chapter 5). The statutory maximum for summary cases (those heard without a jury) is currently £10,000, and was set by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. It may, however, be varied by order by the Scottish Ministers under powers given by the Criminal Procedure (Scotland) Act 1995. Where a prosecution is on indictment rather than under summary procedure, the court may impose an unlimited fine.

Part 6 – General and Miscellaneous

Public engagement

187. [Section 91](#) requires the Scottish Ministers to prepare and publish a public engagement strategy setting out the steps they intend to take to (a) inform persons in Scotland about the targets set by the Act, and (b) encourage them to contribute to the achievement of those targets
188. This strategy must identify actions which persons in Scotland can take to contribute to the achievement of the targets set by the Act, and it must be published by 31 December 2010. As soon as reasonably practicable after publication it has to be laid before the Parliament. Subsections (4) and (5) require the Scottish Ministers to review the strategy at least every five years and subsection (7) requires that the second and subsequent public engagement strategies contain an assessment of the progress made towards implementing earlier strategies.

Sustainable development

189. [Section 92](#) requires the Scottish Ministers and the advisory body, when exercising their functions under the Act, to take into account the need to do so in a way that contributes to the achievement of sustainable development.

Equal opportunities

190. [Section 93](#) requires the Scottish Ministers and the advisory body, when exercising their functions under the Act, to encourage equal opportunities and the observance of the equal opportunities requirements.

Impact of budget proposals on emissions

191. [Section 94](#) requires the Scottish Ministers, at the same time as laying any document before the Scottish Parliament setting out draft budget proposals for the use of resources

in any financial year, to also lay a document describing the direct and indirect impact on greenhouse gas emissions of the activities to be funded by virtue of the proposals. Subsection (2) defines “use of resources”.

Crown application

192. [Section 95](#) provides that the Act applies to the Crown, including to Her Majesty in her private capacity.

Subordinate legislation

193. [Section 96](#) sets out the procedures that apply for the making of orders and regulations under the Act. Subsections (2) and (3) provide that such orders and regulations may make different provision for different cases or purposes, or make any appropriate consequential, incidental, supplementary, transitory, transitional or saving provision, including modification of any enactment. Subsections (4) and (5) provide that all orders and regulations made under the Act are subject to affirmative procedure (as extended by section 97 in certain cases, which introduces a pre-laying procedure), except a commencement order made under section 100, and those orders and regulations listed in subsections (6) and (7). The orders and regulations listed in those subsections are subject to negative resolution procedure, unless certain conditions apply – such as that they modify an Act of Parliament or an Act of the Scottish Parliament - in which case they are subject to affirmative resolution procedure.

Subordinate legislation: pre-laying procedure

194. The effect of section 97 is to provide that, with a few exceptions, the first regulations exercising powers under sections 84 and 88 (which relate to deposit and return schemes and carrier bag charges respectively) are to be subject to the procedure set out in this section. The exceptions are referred to in subsection (1), and are those which are subject to negative procedure in terms of section 96(5). These include regulations dealing with the amount of deposits, information notices about the operation of deposit and return schemes, and fees for the registration of retailers and producers.
195. Otherwise, the procedure set out in this section for the first exercise of the powers in sections 84 and 88 is that, under subsections (2) to (5), the Scottish Ministers must lay a copy of the proposed regulations before the Parliament, with a statement of reasons for proposing to make these regulations, and specify a period of not less than 90 days, of which at least 30 must be days on which the Parliament is not dissolved or in recess. During this period, the Scottish Ministers must publicise the proposed regulations and representations may be made to Ministers, the Parliament may make resolutions relating to the regulations, or a parliamentary committee may prepare a report on them. Under subsection (7), when the Scottish Ministers lay the draft regulations for approval they must provide a statement providing details of any such representations, resolutions or reports, and what changes (if any) they have made to the proposed regulations in the light of these.
196. Thereafter procedure for making the regulations is affirmative, as provided for at section 96(4).

Interpretation

197. [Section 98](#) brings together defined expressions used in the Act and either defines them or indicates where in the Act definitions of them can be found.

Minor and consequential modifications

198. [Section 99](#) introduces schedule 2, which contains amendments and repeals to other legislation.

Short title and commencement

199. [Section 100](#) provides that all of the provisions of the Act, except section 100 itself, sections 27 to 32 and 56 (relating to the powers and duties of the advisory body), 70 (relating to permitted development rights in relation to air source heat pumps and micro wind turbines in domestic properties) and 96(subordinate legislation), are to come into force on a day set by the Scottish Ministers by order. Sections 44 to 52 must be commenced no later than 18 months after Royal Assent.
200. [Sections 27 to 32](#) and [56](#) come into force in accordance with section 26 (i.e. when an order designating the advisory body is made under section 24). Section 70 comes into force on the day after Royal Assent. As the Act is silent as to a particular day for the coming into force of sections 96 and 100, these come into force on the day of Royal Assent. Section 100 also specifies the short title of the Act.

Schedule 1 – the Scottish Committee on Climate Change

201. [Schedule 1](#) makes detailed provision for the constitution, powers and proceedings of the Scottish Committee on Climate Change which may be established under section 25 of the Act. The Committee is to consist of a chair and no fewer than five and no more than eight other members. These numbers may be varied by order made by the Scottish Ministers, subject to negative resolution procedure. Members are to be appointed for a period of up to five years. Members are eligible to be reappointed for one further period.
202. In appointing members, the Scottish Ministers are to have regard to the desirability of the Committee (taken as a whole) having expertise or experience in business competitiveness, climate change policy, climate science and other branches of environmental science, economic analysis and forecasting, emissions trading, energy production and supply, financial investment and technology development and diffusion.
203. [Schedule 1](#) provides for the circumstances in which members may be removed, for the disqualification of MPs, MSPs and MEPs from membership, and for remuneration, pensions and allowances.
204. [Schedule 1](#) also provides for the appointment of a Chief Executive of the Committee, with the approval of the Scottish Ministers, and for the appointment of other staff by the Committee. The schedule makes provision for the procedure of the Committee, for the establishment of sub-committees, for its general powers and for the delegation of its functions. The Committee is to be required to keep proper accounts to be audited by the Auditor General for Scotland, and to publish an Annual Report which is to be laid before the Scottish Parliament by the Scottish Ministers.

Schedule 2 – Minor and Consequential Modifications

205. [Schedule 2](#) sets out minor and consequential modifications to other legislation required as a result of the Act.