

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

# Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill, introduced in the Scottish Parliament on 26 June 2018.

2. The following other accompanying documents are published separately:

- a Financial Memorandum (SP Bill 37–FM);
- a Policy Memorandum (SP Bill 37–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 37—LC).

3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### The Bill

#### Summary

5. The Bill contains the following key elements. It will:

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- Enshrine in legislation the Scottish Government’s target that, by the year 2040 no more than 5% of households in Scotland are in fuel poverty.
- Establish a new definition of fuel poverty, including how levels of fuel poverty will be measured.
- Place a duty on the Scottish Ministers to produce a long-term fuel poverty strategy within a year of the Bill being brought into force. The strategy will set out how delivery of the 2040 target will be achieved and set out a monitoring framework to oversee progress in meeting the target.
- Place a duty on the Scottish Ministers to produce a report every 5 years. This will provide an update on progress being made towards meeting the 2040 target and set out the detail of the plans for the next 5 year period. A duty will also be placed on the Scottish Ministers to report to the Parliament on whether or not the 2040 target is met.

## Commentary on Sections

### The fuel poverty target

#### **Section 1**

6. Section 1 sets out the target relating to the eradication of fuel poverty. The target is that by the year 2040, no more than 5% of households in Scotland are in fuel poverty.

### Definition of fuel poverty

#### **Section 2**

7. Section 2 defines when a household is in fuel poverty. This is a multi-faceted definition which includes a lot of detail about how particular elements will be measured. However, the broad thrust of it is that a household will be in fuel poverty if:

- (a) after having paid its housing costs, it would need more than 10% of its remaining net income to pay for its reasonable fuel needs, and

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- (b) having paid for its reasonable fuel needs, its childcare costs and its housing costs, this then leaves the household unable to maintain an acceptable standard of living.

8. Subsection (1) lays down the test that determines whether a household is in fuel poverty. It should be read in conjunction with subsection (6)(a) which explains that “adjusted” net income means the household’s net income after deduction of housing costs.

9. Paragraph (a) sets out the first element of the test. It requires an examination of what fuel costs the household ought to have. It does not matter what fuel costs the household actually incurs, but rather the cost of its assessed fuel needs. The measurement is therefore a uniform one which is not influenced by whether, in practice, a household opts to save money by turning its heating off or whether it turns the heating up to a level which experts consider to be too warm. The calculation that must be carried out is whether the cost of meeting the household’s assessed fuel needs amounts to more than 10% of the net income that the household has after it has paid its housing costs. For a worked example of this, see paragraph 26 below.

10. Paragraph (b) sets out the second element of the test. The question is whether, after the assessed fuel costs discussed above, any childcare costs and housing costs have all been deducted from the household’s net income, there is sufficient income remaining to allow members of the household to maintain an acceptable standard of living. The result of the inclusion of paragraph (b) is that the test is not just about what proportion of a household’s income is needed to meet its assessed fuel needs, but also about whether or not the household is then left unable to maintain an acceptable standard of living. For a worked example of this, see paragraph 27 below.

11. Subsections (2) to (4) provide more detail about the first element of the test and how a household’s fuel needs are to be assessed. This is to be measured by reference to both the cost of meeting specified heating levels within the home and also whether the household’s other reasonable fuel needs within the home are being met.

12. In relation to heating levels, different temperatures are specified for different rooms of the house. The number of hours that the rooms need to

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

be heated to these temperatures is also set. The temperatures and number of hours that are specified differ based on whether or not the household is classified as being one for which enhanced levels of heating is appropriate.

13. The specified heating levels are:

- For a household for which enhanced levels of heating is appropriate, heating the living room<sup>1</sup> to 23° Celsius and any other room to 20° Celsius for 16 hours a day, every day.
- For any other household, heating the living room to 21° Celsius and any other room to 18° Celsius for 9 hours a day on a weekday and 16 hours a day at the weekend.

14. Regulations made by the Scottish Ministers under subsection (4) will set out the types of household for which enhanced heating is appropriate. This would allow assessed fuel needs to take account of households where, for example, a member of the household is elderly or has a condition or illness which makes that person especially at risk of suffering adverse effects from being in a cold home.

15. Measurement of the household's other reasonable indoor fuel needs for the purpose of subsection (2)(b) would cover the cost of fuel-use for things such as heating water, cooking, lighting and using appliances such as kettles, phone chargers, etc. However, the costs are only factored in to the extent that they are reasonable: fuel use for an unreasonable purpose (e.g. an indoor swimming pool) or to a unreasonable extent (e.g. keeping all lights on at all hours) would not be factored in.

16. Subsection (5) provides more detail about the second element of the test and how the question of whether a household has sufficient income left to maintain an acceptable standard of living is to be assessed. It requires a comparison of:

- the household's net income, after deduction of—

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<sup>1</sup> The expression "living room" bears its ordinary meaning in the Bill (that is, a room for everyday general use).

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- the costs that would be incurred in meeting the specified heating levels and its other reasonable fuel needs (whether or not it actually spends that),
- the housing costs actually incurred (which, as well as rent/mortgage costs, includes council tax and water and sewerage charges), and
- any childcare costs actually incurred,

with

- the UK minimum income standard which applies to the household, after deduction of the amount that the standard allocates to—
  - fuel costs,
  - rent, council tax and water rates, and
  - childcare costs.

17. If the amount of the household's remaining net income is 90% or more of the relevant minimum income standard figure, subsection (5) provides that this is to be treated as determinative of the question as to whether or not the household has sufficient income left to maintain an acceptable standard of living. In such cases, the household is considered to have sufficient remaining income, meaning that the household will not be in fuel poverty.

18. The term "minimum income standard" refers to the UK minimum income standard that has been developed by the Centre for Research in Social Policy at Loughborough University with the support of the Joseph Rowntree Foundation<sup>2</sup>. The standard sets out how much money it considers households to need depending on the composition of the household. It also breaks this headline sum down into different items of expenditure.

19. The standard covers the needs of over a hundred different family combinations<sup>3</sup>. However, if there is no standard which applies to a particular type of household, subsection (5) will not be able to settle the

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<sup>2</sup> For more information, see <http://www.lboro.ac.uk/research/crsp/mis/> and <https://www.jrf.org.uk/report/minimum-income-standard-uk-2017>.

<sup>3</sup> <https://www.jrf.org.uk/file/50351/download?token=7KmLaSiz&filetype=full-report>

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

question of whether the household has sufficient remaining income to maintain an acceptable standard of living. In those rare cases, the test as set out in subsection (1) would simply fall to be interpreted on its own terms, and an assessment would be made as to what constitutes an acceptable standard of living. Alternatively, Ministers would be able to set a standard for those cases by using the power in section 10(c).

20. Subsection (6)(e) allows Ministers to determine that the minimum income standard for the purposes of subsection (5) is to be determined by a different body. This would allow Ministers to react quickly if the current UK minimum income standard ceases to be published, if the bodies which produce it change, or if the basis on which it is calculated is changed. Through the use of this power, subsection (5) will be able to continue to be used as the litmus test for whether a sufficient standard of living can be achieved.

21. Subsection (6) also defines a number of other terms which are used in the section: childcare costs, household, housing costs, and net income. It also explains that references to “adjusted” net income relate to net income after deduction of housing costs.

22. While most of the words defined here are readily understood in everyday language, the section provides tests which can be used to clarify any less obvious cases. For example, the definition of a household captures those living together as a family or other unit, so a group of friends who rent a flat together would constitute a household. However, a lodger who lives with a family and is entitled to use shared living and cooking facilities need not necessarily count as part of that household. This test is derived from the Scottish Housing Condition Survey<sup>4</sup> and so represents an understood approach to determining what constitutes a household.

23. Childcare costs would include the cost of an after-school club which is used for the purpose of providing care facilities for the child, but the cost of paying school fees or paying for an activity like piano lessons (where the primary objective is to allow the child the chance to learn an instrument) would not be covered. The definition is restricted to children of primary school age or below, in line with how childcare costs are assessed under the minimum income standard.

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<sup>4</sup> <http://www.gov.scot/Topics/Statistics/SHCS>

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

24. The section also provides that housing costs means not just rent or mortgage payments but also the associated council tax and water and sewerages charges relating to the house.

A worked example

25. A worked example of the calculation required by section 2 follows, based on the entirely hypothetical figures set out in this paragraph. The 2017 minimum income standard figures are used, but with weekly sums being converted to monthly figures.

Household type: single person of working age			
Household costs (monthly):	£1,150	net income	
	£350	rent	
	£50	council tax, water & sewerage	
	£0	childcare	
	£80	assessed monthly fuel needs (taking into account the tariffs and fuel types available to the household in question)	
Minimum income standard figures:	£1,286.24	total income	
	£388.70	notional rent cost	
	£68.28	notional council tax cost	
	£24.99	notional water rates cost	
	£71.41	notional fuel costs	
	£0.00	notional childcare costs	

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

26. The section 2(1)(a) test is as follows—

Fuel costs necessary to satisfy section 2(2):	£80	
Adjusted net income:	£1,150	net income
	(£350)	rent
	(£50)	council tax, water & sewerage
	<u>£750</u>	
Fuel costs as percentage:	$(80 / 750) *$	
	100	
	= 10.7%	
As the percentage is above 10%, the first element of the fuel poverty test is met.		

27. The section 2(1)(b) test is as follows—

Remaining adjusted net income:	£1,150	net income
	(£350)	rent
	(£50)	council tax, water & sewerage
	(£0)	childcare
	<u>£80</u>	necessary fuel costs
	£670	
This figure then needs to be assessed in accordance with section 2(5).		

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

28. The section 2(5) comparison is as follows—

Relevant minimum income standard:	£1,286.24	minimum income
	(£388.70)	notional rent
	(£68.28)	notional council tax
	(£24.99)	notional water rates
	(£0.00)	notional childcare
	(£71.41)	notional fuel
	<u>£732.86</u>	
90% of that standard:	$(£732.86 / 100) * 90$	
	= £659.57	
As the remaining adjusted income of £670 is greater than the relevant MIS figure of £659.57, the household is not in fuel poverty.		

## The fuel poverty strategy

### Section 3

29. Section 3 puts the Scottish Ministers under a duty to prepare a fuel poverty strategy. It should be read in conjunction with sections 4 and 5 which set out the requirements as to consultation and publication.

30. The strategy must set out the following—

- the approach that Ministers intend to take to ensure that the 2040 target is met,
- the types of organisations with which Ministers intend to work (for example, local authorities or third sector bodies),
- characteristics of households for which fuel poverty is a particular problem (for example, there are particular issues which arise for rural Scotland and the islands),

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- how Ministers intend to assess whether the 2040 target is met and what the rates of fuel poverty are (and, as the policy memorandum notes, the intention is to use the Scottish House Condition Survey<sup>5</sup> in order to measure fuel poverty).

31. Other relevant information may also be included in the strategy. This might include, for example, information about how the strategy interacts with other related strategies or statutory requirements, such as the targets relating to climate change.

## **Section 4**

32. In accordance with section 4, the Scottish Ministers must, when preparing the fuel poverty strategy, consult such persons as they consider appropriate. The persons consulted must include individuals who currently live, or have previously lived, in fuel poverty. Subsection (3) ensures that any consultation which was carried out prior to the Bill coming into force is not invalidated simply by reason of when it was carried out. It is expected that this may include any consultation that occurs at the same time as the Bill is going through Parliament or shortly after the Bill is passed, but before it comes into force.

## **Section 5**

33. Section 5 requires the finalised strategy to be both published and laid before the Scottish Parliament. This must be done within 1 year of the bringing into force of the section which requires Ministers to prepare the strategy.

## **Reporting on fuel poverty**

## **Section 6**

34. Section 6 places a duty on the Scottish Ministers to prepare 5-yearly reports on the progress being made towards meeting the 2040 target. The section should also be read in conjunction with sections 7 and 8 which set out the requirements as to consultation and publication.

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<sup>5</sup> <http://www.gov.scot/Topics/Statistics/SHCS>

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

35. A report will look both backwards at the progress that has been made during the reporting period (i.e. what steps were taken and what effect that had) and ahead to what action is planned for the next reporting period. Accordingly, the report will set out the detail of the work that the Scottish Government has carried out as well as the work it intends to carry out, including details of work with partner organisations. Additional information may also be included as appropriate.

36. The reporting period covered by a report is a fixed 5 year period. The first one begins with the publication of the fuel poverty strategy, and each subsequent period runs from the end of the previous reporting period.

37. Under subsection (3), the obligation to prepare these reports applies to each complete 5 year period which falls prior to 31 December 2040 – i.e. the end of the 2040 target year. Where a reporting period would straddle that date or would (in its entirety) fall after that date, no report requires to be prepared. For example, if the timings were to be such that a 5 year period ran from 2039 to 2044, there would be no need to publish a report in 2045. Instead, any partial period that covers the period between the final report and 31 December 2040 can be addressed through the reporting mechanism for reporting on the 2040 target.

38. The final report will be looking back over a 5 year period which falls prior to the 2040 target date and reporting on that period. However, in terms of setting out future plans, the 5 year period ahead to which the report is looking may span a period falling both before and after the 2040 target date. In recognition of this, subsection (5)(a) provides that if the forwards-looking part of a report covers any period after 31 December 2040 then, instead of only being required to set out the steps that are to be taken up until that date in order to meet the 2040 target, the report must set out all steps to be taken in relation to fuel poverty during that period. That will cover both the steps that are to be taken prior to 31 December 2040 in order to meet the 2040 target, and the steps that are to be taken in that part of the reporting period which falls after the target date (for example, to ensure that fuel poverty does not re-emerge).

39. Subsection (5)(b) confirms that the rule in subsection (3) is only about when a report must be prepared; if a report must be prepared then a forward-look will be required under subsection (1)(c) even if this requires looking ahead to a reporting period which will never be the subject of a

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

report after the fact (other than, as noted at paragraph 37 above, as part of the reporting mechanism for the 2040 target).

## **Section 7**

40. In accordance with section 7, the Scottish Ministers must, when preparing the 5-yearly reports, consult such persons as they consider appropriate. This must include individuals who currently live, or have previously lived, in fuel poverty.

## **Section 8**

41. Section 8 requires the 5-yearly reports to be both published and laid before the Scottish Parliament. This must be done before the end of the financial year in which the reporting period ends. In accordance with schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, “financial year” means a year ending with 31 March. This means that if, for example, the fuel poverty strategy is published in December 2019, the first reporting period will cover the period December 2019 to December 2024 and must be published by 31 March 2025 at the latest.

## **Section 9**

42. Under section 9, the Scottish Ministers are required to prepare a report on the 2040 target. This must be laid before the Scottish Parliament by 31 March 2042 at the latest. The report must state whether or not the 2040 target has been met and what percentage of households in Scotland remain in fuel poverty in 2040. However, the information which can be included is not limited and any other information which would be useful may be included within the report. That additional information might relate to what the Government intends to do in respect of fuel poverty at that point.

## **General**

### **Section 10**

43. Section 10 provides the Scottish Ministers with the power, by making regulations, to adjust the effect of aspects of the definition of fuel poverty. This will allow Ministers to respond to changes which may occur during the period between the Act being passed and the date of the 2040 target. Specifically—

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- paragraph (a) allows Ministers to adjust the temperatures and number of hours which constitute the heating levels test (for example, to respond to any change in expert advice as to how warm rooms ought to be),
- paragraph (b) allows the definitions in section 1(6) to be adjusted (for example, if national insurance contributions were to be replaced with a new tax which needed to be factored into the definition of net income instead),
- paragraph (c) allows different provision to be made as to when members of a household can maintain an acceptable standard of living (for example, to accommodate the situation discussed at paragraph 19 or to react if the UK minimum income standard stops allocating costs specifically to rent, council tax, water rates, fuel and childcare.

## **Section 11**

44. Any regulations made under section 2(4) (specifying the types of household for which enhanced heating is appropriate) or section 10 (adjusting the effect of the fuel poverty definition) are subject to the affirmative procedure. For details of the affirmative procedure, see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

45. Subsection (2) obliges the Scottish Ministers to consult prior to putting forward proposed regulations under the Bill. They must consult such persons as they consider it appropriate to consult but, regardless of who else they choose to consult, they must consult individuals who are living or who have previously lived in fuel poverty.

## **Section 12**

46. Section 12 makes consequential amendments to the Housing (Scotland) Act 2001. The existing definition of fuel poverty is repealed, as are the existing reporting rules (as they are superseded by the strategy and reporting requirements provided for in this Bill).

47. The 2001 Act continues to have one reference to fuel poverty: a local authority's local housing strategy must set out its policies with a view to accomplishing a number of purposes, one of which is the provision of

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

housing and related services in a manner which ensures, so far as reasonably practicable, that persons do not live in fuel poverty. The meaning of living in fuel poverty for that purpose is adjusted so that it is aligned with the definition in this Bill.

### **Section 13**

48. Section 13 makes provision for commencement. The commencement section itself, as well as the short title section, will come into force the day after Royal Assent is granted. The other sections will come into force on such day as the Scottish Ministers by regulations appoint.

### **Section 14**

49. Section 14 provides for the short title of the resulting Act to be the Fuel Poverty (Target, Definition and Strategy) (Scotland) Act 2019.



This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

# Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill

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