

CLIMATE CHANGE (EMISSIONS REDUCTION TARGETS) (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Climate Change (Emissions Reduction Targets) (Scotland) Bill, introduced in the Scottish Parliament on 5 September 2024.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 51–FM);
 - a Policy Memorandum (SP Bill 51–PM);
 - a Delegated Powers Memorandum (SP Bill 51–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 51–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.

OVERVIEW OF THE BILL AND GENERAL NOTES

Overview

5. The Bill amends the [Climate Change \(Scotland\) Act 2009](#) in the following ways:
 - sections 1 and 2 replace the system of annual and interim emissions reduction targets, which are focussed on Scottish emissions of greenhouse gases in a given year, with a system of periodic carbon budgets that are focussed on emissions over a number of years,
 - section 3 adjusts when the Scottish Government next has to produce a climate change plan so that that next plan reflects the new system of carbon budgets.

6. Section 4 does not amend the 2009 Act, but is closely connected to the amendments to that Act made by sections 1 and 2. Specifically, section 4 makes provision about the first exercise of the regulation-making power to set Scottish carbon budgets that section 1 inserts into the 2009 Act.

7. The Bill's remaining sections, contained in Part 2, deal with the matters usually dealt with at the end of an Act, such as when it comes into force and the short title by which it may be formally cited.

Interpretation

8. The text that the Bill inserts into the Climate Change (Scotland) Act 2009 will fall to be interpreted as part of that Act. The 2009 Act is to be interpreted in accordance with [the Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc. of Acts of the Scottish Parliament\) Order 1999](#).

9. The Bill's freestanding text (that is the text not being inserted into the 2009 Act) falls to be interpreted in accordance with the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

Crown application

10. The Bill achieves its substantive effects by modifying the Climate Change (Scotland) Act 2009. That Act, by virtue of its [section 95](#), binds the Crown. The Bill does nothing to alter that section, therefore the 2009 Act, as modified by the Act that this Bill will become, if passed, will continue to bind the Crown.

PART 1: EMISSIONS REDUCTION TARGETS

Sections 1 to 3: Modification of the Climate Change (Scotland) Act 2009

Background to, and general effect of, sections 1 to 2

11. [Part 1 of the Climate Change \(Scotland\) Act 2009](#), as modified by the [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#), sets out statutory targets for reducing the greenhouse gas emissions attributable to Scotland. It provides for 3 types of target:

- The ultimate target is the net-zero emissions target (set by [section A1 of the 2009 Act](#)), which is that the net Scottish emissions account for the net-zero emissions target year will be 100% lower than the baseline level (see paragraph 12 below for the meaning of “net Scottish emissions account” and “baseline”). At the time these Notes were prepared, the net-zero emissions target year is 2045 (the Scottish Ministers have a power to change the target year by regulations).
- [Section 2 of the 2009 Act](#) sets interim targets for 2020, 2030 and 2040. The interim targets are that the net Scottish emissions account for each of those years be a certain percentage lower than the baseline level.
- Annual targets are set by [section 3 of the 2009 Act](#). These are targets for each year leading up to the net-zero emissions target year (excluding years in which an interim target is to be met). The target for each year is that the net Scottish emissions account

for the year be a percentage lower than the baseline level, with that percentage calculated by evenly distributing across the years between the last interim target and the next higher-level target (i.e. the next interim target, or the net-zero emissions year target) the percentage point change in emission levels needed to meet that next higher-level target.

12. Key to understanding the targets are the following concepts:
- The net Scottish emissions account (defined by [section 13 of the 2009 Act](#)) describes the volume of greenhouse gas emissions (modified by permitted credits and debits of carbon units) by reference to which the assessment is made of whether the targets are being met.
 - The baseline (defined by [section 11 of the 2009 Act](#)) is the level of greenhouse gas emissions relative to which the assessment is made of the percentage by which the net Scottish emissions account over a period has changed.
13. The principal ways in which the targets are legally significant are as follows:
- The Scottish Ministers have a duty to ensure the targets are met. This duty, in relation to each of the 3 types of target, arises from the section creating it.
 - The Scottish Ministers have duties to keep the Scottish Parliament informed about whether the targets are being met. Under [section 33 of the 2009 Act](#), Ministers must report to the Parliament following each year for which there is a target (which, due to there being annual targets means every year until the net-zero emissions target year) on whether the target for the year was met and various other matters. Where they report that a target has not been met, [section 36 of the 2009 Act](#) places a further requirement on Ministers to lay a report before the Parliament setting out proposals and policies intended to compensate for the excess emissions.
 - The Scottish Ministers have a duty to plan for meeting the targets. [Section 35 of the 2009 Act](#) requires that the climate change plans which it obliges Ministers to produce periodically set out their proposals and policies for meeting the targets that fall within the period covered by the plan.
 - All Scottish public authorities (as defined by [section 3\(1\) of the Freedom of Information \(Scotland\) Act 2002](#)) have a duty to exercise their functions in a way best calculated to contribute to the delivery of the targets. This is one of the climate change duties of those authorities under [section 44 of the 2009 Act](#), in relation to which further provision is made by the rest of [Part 4 of the Act](#).
14. Section 1 of the Bill establishes the concept of a Scottish carbon budget, and the associated concept of a Scottish carbon budget target. Section 2 of the Bill modifies the 2009 Act so as to remove the concepts of interim and annual targets and replace references to them with references to Scottish carbon budget targets. Whereas interim and annual targets are concerned with emissions levels for a particular year, a Scottish carbon budget target is concerned with emissions levels over the period for which the budget is set (which will typically be 5 years).

Section 1: Scottish carbon budgets

15. Section 1 inserts into the Climate Change (Scotland) Act 2009 new sections A2 to A5, which establish within that Act the concept of a Scottish carbon budget.

Inserted section A2 (Scottish carbon budgets and associated concepts)

16. Inserted section A2 sets up the conceptual framework around Scottish carbon budgets so that those concepts can be used elsewhere in the Climate Change (Scotland) Act 2009. In particular:

- a Scottish carbon budget is defined to be an amount of tonnes of carbon dioxide equivalent allocated to a given period,
- a Scottish carbon budget is said to be exceeded where the net Scottish emissions account for a period exceeds the Scottish carbon budget for the period,
- a Scottish carbon budget target is defined to mean not exceeding the Scottish carbon budget for a period.

17. Scottish carbon budgets will be set by regulations made by the Scottish Ministers under inserted section A4.

18. Inserted section A2(4) glosses references elsewhere in the 2009 Act that are predicated on emissions reduction targets being in respect of a year to allow for Scottish carbon budget targets being in respect of a period. For example, section 9(2) of the 2009 Act requires the Scottish Ministers to request a report within two years of the end of each target year about (amongst other things) whether the emissions reduction target for the year was met. A Scottish carbon budget target is a target for the aggregate emissions reduction over a number of years, not a target for a single year. Inserted section A2(4) clarifies that when section 9(2), and other provisions that are similarly expressed, refer to the target for a year being met, they are referring, in the context of a Scottish carbon budget target, to the budget not being exceeded over the whole of the period covered by the budget rather than the target being met in any single year of the period.

Inserted section A3 (Duty of Scottish Ministers in relation to budgets)

19. Inserted section A3 places a duty on the Scottish Ministers to ensure that Scottish carbon budget targets are met. The definition of Scottish carbon budget target is given by inserted section A2.

Inserted section A4 (Budget-setting regulations)

20. Inserted section A4 deals with the setting of Scottish carbon budgets by regulations. (Section 4 of the Bill makes further provision about the first exercise of this regulation-making power.)

21. As inserted section A2 states, a Scottish carbon budget is to be an amount of tonnes of carbon dioxide equivalent. Subsection (2) of inserted section A4 makes clear that the regulations expressing the budget may, but need not, do so by specifying a number of tonnes. The Scottish Ministers may instead set the budget using a formula for calculating the number of tonnes that

constitutes the budget for a given period. Rather than say that the budget for the period 2026 to 2030 is x mega tonnes, the regulations might (for example) say that the budget is $x\%$ of what emissions would have been had the baseline level of emissions continued throughout each year of that period. Specifying a formula in the legislation, rather than directly specifying a number, means that the budget amount at the end of a budget period may be different from what it would have been had the budget been specified as a number calculated at the start of the period using the formula. This is because changes in knowledge and methodology in the climate-science sphere mean that the formula's input values (such as the baseline), although historical, may nevertheless change over time, so that the formula's output may be different in 2030 from what it was in 2026. The use of a formula in setting Scottish carbon budgets would be consistent with the approach to the setting of interim targets, which the budgets will replace.

22. Subsection (3) of inserted section A4 requires the Scottish Ministers to set budgets so that each budget covers a 5 year period, with the exception of the final budget which may cover a shorter period. The final budget period may be shorter than 5 years because the budgets are to operate up until the net-zero emissions target year, which may fall fewer than 5 years after the end of the preceding budget period. Inserted section A5 (discussed further below) allows the budget periods mandated by inserted section A4(3) to be adjusted by regulations.

23. Subsection (4) of inserted section A4 requires the Scottish Ministers, when making budget-setting regulations, to have regard to the target-setting criteria and the most up to date advice they have received from the relevant body. Subsection (5) requires the Scottish Ministers to lay before the Parliament a statement about their compliance with subsection (4). The "target-setting criteria" are set out in [section 2B of the Climate Change \(Scotland\) 2009 Act](#). The "relevant body", at the time these Notes were prepared, was the UK Committee on Climate Change. [Section 20A of the 2009 Act](#) allows for a different body to become the "relevant body" by virtue of an order made by the Scottish Ministers under [section 24 of the 2009 Act](#). At the time these Notes were prepared, the Scottish Ministers had not expressed any intention to make such an order and the possibility is mentioned here only for explanatory completeness.

24. Regulations under inserted section A4 will be subject to parliamentary scrutiny under the affirmative procedure. This is because [section 96\(4\) of the Climate Change \(Scotland\) Act 2009](#) applies the affirmative procedure by default to any regulations made under a section of that Act. Section 96(4) is relevantly modified by [paragraph 5 of schedule 3 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), which requires section 96(4) of the 2009 Act to be read as referring to the affirmative procedure as defined by [section 29 of the 2010 Act](#).

Inserted section A5 (Alteration of budget periods)

25. As explained above, inserted section A4(3) requires Scottish carbon budgets (other than the final budget) to be set for a 5 year period. Inserted section A5 allows the Scottish Ministers, by regulations, to change that provision so that budgets can be set for a different period. The power can only be used for the purpose of achieving alignment between the budget periods and similar periods under international agreements to which the United Kingdom is a party.

26. Regulations under inserted section A5 will be subject to parliamentary scrutiny under the affirmative procedure. This is because [section 96\(4\) of the Climate Change \(Scotland\) Act 2009](#) applies the affirmative procedure by default to any regulations made under a section of that Act.

Section 96(4) is relevantly modified by [paragraph 5 of schedule 3 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), which requires section 96(4) of the 2009 Act to be read as referring to the affirmative procedure as defined by [section 29 of the 2010 Act](#).

Section 2: Replacement of annual and interim targets with budget targets

27. The overall effect of section 2 of the Bill is to modify the Climate Change (Scotland) Act 2009 so as to remove from it the concept of interim and annual targets and replace its references to those targets with references to Scottish carbon budget targets, which (as explained above) is a concept that will be amended into the 2009 Act by section 1 of the Bill.

28. Section 2(2) of the Bill repeals [section 2 of the 2009 Act](#), which defines interim targets. [Section 2A of the 2009 Act](#) conferred a regulation-making power to modify the interim targets in section 2. It is repealed by section 2(3) of the Bill.

29. Section 2(4) of the Bill modifies [section 2C of the 2009 Act](#). Section 2C places a duty on the Scottish Ministers to request advice from the relevant body in relation to various matters (for the meaning of “relevant body” see paragraph 23 above). Section 2(4) of the Bill modifies section 2C so as to replace the requirement for Ministers to seek the relevant body’s advice in relation to interim targets with a requirement to instead seek its advice in relation to Scottish carbon budgets. Section 4 of the Bill contains further non-textual modifications to section 2C of the 2009 Act that are to operate only in the period prior to the first Scottish carbon budgets being set. These transitional modifications are explained in paragraph 53 below.

30. Section 2(5) of the Bill modifies [section 2E of the 2009 Act](#). Section 2E makes further provision about the advice from the relevant body that the Scottish Ministers must request under [section 2C](#) and may request under [section 2D](#). Subsections (4) and (5) of section 2E, in its original form, require Ministers to take action if the relevant body gives advice to the effect that an interim target should be changed. In particular, they require Ministers to publish a statement setting out what they intend to do in light of the advice within 3 months of receiving it and if, within 12 months of receiving it, they have not laid before the Parliament draft regulations to change the interim target in question to bring it into line with the relevant body’s advice, the subsections require Ministers to make a statement to the Parliament explaining why not. Section 2(5) of the Bill replaces subsections (4) and (5) of section 2E with new subsections (3A) and (3B) which make equivalent provision about the action to be taken if the relevant body advises that a different Scottish carbon budget for a period would be appropriate.

31. Subsections (6) to (8) of section 2 of the Bill repeal [sections 3 to 3B of the 2009 Act](#). Those sections are about annual targets.

32. Section 2(9) of the Bill modifies [section 3C of the 2009 Act](#). Subsection (1) of section 3C requires the Scottish Ministers to keep up to date a list of the various targets that apply under the 2009 Act. Section 2(9) of the Bill adjusts section 3C in the following ways:

- The description in subsection (1) of the targets to be included in the Scottish Ministers’ list is changed so that the list covers Scottish carbon budget targets rather than interim and annual targets.

- Subsection (3) is replaced with a modified version which omits any reference to percentage figures. The original form of subsection (3) requires the Scottish Ministers to lay an updated list of targets before the Scottish Parliament whenever “a percentage figure mentioned in subsection (1) has been modified.” Unlike interim and annual targets, Scottish carbon budgets will not necessarily be percentage figures (see paragraph 21 above). To accommodate that, the replacement subsection (3) is more generally expressed; it will require the Scottish Ministers to lay a new version of the list before the Parliament whenever it is changed in any way. The Scottish Ministers’ duty to change the list to reflect any change in a target, or a Scottish carbon budget, flows from section 3C(1) requiring them to maintain the list.

33. Section 2(10) of the Bill modifies [section 9\(2\)\(d\) of the 2009 Act](#) to accommodate Scottish carbon budgets being concerned with emissions over a period, unlike the interim and annual targets which were concerned only with emissions in a particular year. Section 9(2) requires the Scottish Ministers to report within two years of the end of each target year on various matters. One of those matters, specified in section 9(2)(d), is the action taken by the Scottish Ministers to reduce net Scottish emissions of greenhouse gases during the target year. Section 2(24) of the Bill will amend the 2009 Act so that “target year”, in relation to a period for which a Scottish carbon budget is set, will mean the final year of that period. The duty to produce a report under section 9(2) will therefore arise at the end of each Scottish carbon budget period, but the modification to paragraph (d) of that provision means that the report will have to address actions to reduce net greenhouse gas emissions during the whole period not just in the final year of it.

34. Section 2(11) of the Bill modifies [section 13A of the 2009 Act](#). Section 13A confers a power on the Scottish Ministers to make regulations limiting the amount of purchased carbon units that can be credited to the net Scottish emissions account for a period. The net Scottish emissions account is defined by [section 13\(1\) of the 2009 Act](#). It is the measure of emissions used to assess whether the Act’s emissions reduction targets have been met. Carbon units purchased through carbon-trading schemes can be credited to the net Scottish emissions account for a period so as to reduce the account for that period, but this can only be done if regulations have been made under section 13A setting a limit on the amount of purchased carbon units that can be credited to the account (see section 13(5A) of the 2009 Act). In its original form, section 13A(2) provided that regulations cannot set the limit for a year at a level higher than 20% of the planned reduction in the net Scottish emissions account for the year. In other words, no more than 20% of the reduction in the net Scottish emissions account that would be needed for that year’s emissions-reduction target to be met (assuming the previous year’s target was met) can be due to the crediting of purchased carbon units. Section 2(11) of the Bill modifies section 13A of the 2009 Act with the following results:

- For years falling within a period covered by a Scottish carbon budget, the ceiling on the use of purchased carbon units is set for the whole period rather than for the individual years comprising it.
- No more than 20% of the reduction in the net Scottish emissions account that would be needed to stay within a Scottish carbon budget for a period, assuming emissions in the preceding period to have been at the level set as the budget for that period, can be due to the crediting of carbon units.

- It will not be possible to calculate 20% of the reduction in the net Scottish emissions account between the first period to be covered by a Scottish carbon budget and the period which preceded it, because by definition there will be no budget for that period. Therefore, in order to allow the calculation to be performed, the Scottish Ministers are empowered to make regulations setting a notional budget for that period. In making regulations setting that notional budget, the Scottish Ministers will be bound by the same obligations as they will when making regulations under inserted section A4 setting real budgets and the regulations will similarly be subject to parliamentary scrutiny under the affirmative procedure (see paragraphs 23 and 24 above).
- The ceiling on the use of purchased carbon units in respect of years not covered by Scottish carbon budgets is unchanged.

35. Subsections (12) and (13) of section 2 of the Bill modify [sections 17\(3\)](#) and [18\(2\)](#) (respectively) of the 2009 Act. In each case, the modification is to have the modified provision apply in relation to reports under inserted section 34A (see paragraph 38 below) as it does in relation to reports under the existing [section 33 of the 2009 Act](#).

36. Section 2(14) of the Bill modifies [section 24 of the 2009 Act](#). Subsection (3) of that section defines the functions of the advisory body to include advising on Ministers' duty under section 2(1), meaning their duty to ensure the interim targets are met. That duty is abolished by the Bill, and accordingly section 2(12) replaces the reference to it with a reference to their new duty under inserted section A3 (see paragraph 19 above) to ensure that Scottish carbon budget targets are met.

37. Section 2(15) of the Bill modifies [section 33 of the 2009 Act](#). That section requires the Scottish Ministers to lay a report before the Scottish Parliament following each "target year". As the 2009 Act provided for annual targets (see section 3 of the 2009 Act), when section 33 in its current form was enacted, every year was a target year up until the net-zero emissions target year (see [section A1 of the 2009 Act](#)). Once the Bill has replaced annual targets with Scottish carbon budget targets, emissions reduction targets will be concerned with emissions levels over a number of years rather than in respect of a single year (except in the case of the net-zero emissions target, which is defined by section A1 of the 2009 Act and remains focussed solely on emissions levels in the net-zero emissions target year). Section 2(13) of the Bill replaces subsections (1) and (2) of section 33 of the 2009 Act to reflect the fact that the new Scottish carbon budget targets are focussed on emissions over multiple years. Specifically:

- the replacement subsection (1) links the duty to report on the attainment of targets to the end of each period for which a Scottish carbon budget is set. A new requirement for the Scottish Ministers to report on progress towards emissions reduction annually is created by section 2(17) of the Bill, which inserts a new section 34A into the 2009 Act.
- The replacement subsection (2) reproduces the effect of the previous subsection (2), which was to set out the required contents of a report under the section, with changes to reflect the move to multi-year targets.
- The new subsection (2A) makes special provision about the final section 33 report, that is the one produced following the net-zero emissions target year. As that report will address a target specific to a single year, subsection (2A) requires that report to cover, in addition to the matters set out in the new version of subsection (2) for the

final Scottish carbon budget period, the matters that the previous version of subsection (2) required all reports to cover when all section 33 reports were specific to a single year.

38. Section 2(16) of the Bill modifies [section 34 of the 2009 Act](#). Section 34 elaborates on the contents of a report under section 33. The modifications made to it by section 2(16) of the Bill are made to reflect the fact that section 33 reports will in future be concerned with emissions levels over a number of years rather than in respect of only one target year.

39. Section 2(17) of the Bill inserts a new section 34A into the 2009 Act. As explained in paragraph 37 above, [section 33 of the 2009 Act](#) (in the form inserted by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019) required the Scottish Ministers to report on delivery against emissions-reduction targets annually because there was a system of annual targets. The Bill is modifying the 2009 Act to replace annual targets with multi-year Scottish carbon targets and therefore reports under section 33 on delivery against targets will cease to be annual because there will not be annual targets against which to report. The inserted section 34A will create a new annual reporting duty for the Scottish Ministers. Like a report under section 33, a report under section 34A will need to include the information set out in section 34. It will differ from a report under section 33 principally in not having to address performance against a Scottish carbon budget target; the point of having a report under section 34A rather than under section 33 is that in a system of multi-year targets performance against the target cannot be addressed until the end of the period for which the target is set. No report under the new section 34A will be required for:

- the final year of a period for which a Scottish carbon budget is set, because following those years a report under section 33 will be produced and it will contain all of the information that a section 34A report for the year would cover,
- years that predate the new section 34A being inserted into the 2009 Act, except for those few years that would otherwise fall into a transitional gap because they had not been reported on under section 33 before it ceased to require reporting against annual targets and will not be reported on under section 33 in future because they were already in the past when the first Scottish carbon budget period begins,
- future years beyond the net-zero emissions target year (as defined by section A1 of the 2009 Act).

40. Section 2(18) of the Bill modifies [section 35\(4\)\(b\) of the 2009 Act](#) to remove a reference to interim targets that will no longer make sense following their abolition.

41. Section 2(19) of the Bill changes the heading to [section 36 of the 2009 Act](#) to remove a reference to annual targets that will no longer make sense following their abolition.

42. Section 2(20) of the Bill modifies [section 42 of the 2009 Act](#). Amongst other things, section 42 sets out duties that the Scottish Ministers owe to the Scottish Parliament when they lay before it a report under [section 33 of the 2009 Act](#). Section 2(20) of the Bill adjusts section 42 so that those duties arise in connection with a report laid before the Parliament under inserted section 34A too (see paragraph 39 above).

43. Section 2(21) of the Bill modifies [section 57\(3\)\(a\) of the 2009 Act](#). Section 57, in its current form, requires the Scottish Ministers to produce a land use strategy setting out objectives, proposals and policies which contribute to the achievement of their duties under sections 1, 2(1) or 3(1)(b) of the 2009 Act. Section 2(21) updates those cross-references as follows:

- Section 1 of the 2009 Act set the original ultimate target for Part 1 of the Act, known as the 2050 target. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 replaced the 2050 target with the Scottish net-zero emissions target (see section A1 of the 2009 Act) and repealed section 1. The reference to section 1 is therefore replaced with a reference to section A1.
- Sections 2 and 3 of the 2009 Act respectively set interim targets and annual targets. The Bill is abolishing those and replacing them with Scottish carbon budgets under inserted section A2 and a duty, under inserted section A3, to ensure the targets arising from those budgets are met. The references to sections 2 and 3 are therefore replaced with a reference to section A3.

44. Subsections (22) and (23) of section 2 of the Bill modify, respectively, [sections 96](#) and [97](#) of the 2009 Act. Those sections are concerned with the scrutiny of regulations made under provisions of the 2009 Act, including section 13A. As explained in paragraph 34 above, section 13A (in its current form) provides for regulations to set a limit on the use of purchased carbon units by reference to planned annual reductions in emissions levels whereas, as modified, it will set the limit by reference to planned multi-year reductions. The modification to both section 96 and 97 is consequential on the changes being made to section 13A, in each case a reference to section 13A setting a limit for a year is replaced with reference to its doing so for a period. These modifications are made for consistency with the modifications to section 13A and do not change the effect of section 96 or 97.

45. Section 2(24) of the Bill modifies [section 98 of the 2009 Act](#). Section 98 is an interpretative provision which defines terms used in the preceding sections of the 2009 Act.

Section 3: Next climate change plan to follow setting of budgets

46. Section 3 changes the deadline by which the Scottish Ministers must lay a climate change plan before the Scottish Parliament.

47. [Section 35 of the Climate Change \(Scotland\) Act 2009](#) requires the Scottish Ministers to periodically lay climate change plans before the Parliament. It requires the first plan to be laid before the Parliament within 5 years of the coming into force of section 35 as inserted by [section 24 of the Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#). That means, at the time these Notes were prepared, the Scottish Ministers were due to lay a climate change plan before the Parliament on 23 March 2025. That is because section 24 of the 2019 Act, and by implication the inserted section 35 of the 2009 Act, came into force on 23 March 2020 (see [S.S.I. 2020/66](#)).

48. Section 35 of the 2009 Act requires that a climate change plan set out, amongst other things, the Scottish Ministers' proposals and policies for meeting the emissions reduction targets. Once section 2 of the Bill comes into force, the "emissions reduction targets" will include Scottish carbon budget targets and will no longer include interim and annual targets. A climate change plan

produced shortly before section 2 comes into force would therefore not address the targets that apply shortly afterwards, and it will not be possible to produce a climate change plan in the period between section 2 coming into force and the first Scottish carbon budgets being set because proposals and policies for keeping emissions within those budgets cannot be described when the budgets are yet to be set.

49. Accordingly, section 3 of the Bill amends section 35 of the 2009 Act to postpone the deadline for laying the first climate change plan before the Parliament so that that need not happen until the first Scottish carbon budgets have been set. Once those budgets have been set, the Scottish Ministers will be duty bound under the amended section 35 to lay the first climate change plan before the Parliament as soon afterwards as is practicable. The duty in section 35 to produce subsequent plans within 5 years of the preceding plan being produced is unaffected.

Section 4: Further provision about setting first Scottish carbon budgets

50. Inserted section A4 provides for Scottish carbon budgets to be set by the Scottish Ministers by regulations (see paragraphs 20 to 23 above). Section 4 of the Bill makes further provision in connection with the first exercise of that budget-setting power.

51. Section 4(1) deals with where in the statute book Scottish carbon budgets are to be expressed. It provides that they are to be set out by being amended onto the face of the Climate Change (Scotland) Act 2009. This is to ensure that readers of the Act can find the budgets without having to look beyond an updated version of the Act (such as the one that will be freely available on legislation.gov.uk). The alternative would be for the budgets to be set out in the body of the regulations themselves, which would require users of the statute book to locate the relevant Scottish statutory instrument to learn what the budgets are. The usual presumption that a regulation-making power cannot be exercised to amend primary legislation (such as the 2009 Act) is overcome in the case of the power conferred by inserted section A4 by [section 96\(3\) of the 2009 Act](#).

52. Section 4(2) requires the Scottish Ministers to obtain the relevant body's advice on setting budgets before producing the first regulations doing so. That advice will be the latest advice for the purposes of inserted section A4(4) and (5) (the implications of which, and the meaning of "relevant body", are explained in paragraph 23 above).

53. Section 4(3) is a transitional provision that modifies how [section 2C of the 2009 Act](#) will operate if the Scottish Ministers use it as the statutory basis for making the request for the relevant body's advice that section 4(2) requires them to make, or otherwise invoke it before the first-budget setting regulations have been made and come into force. There are two statutory bases in the 2009 Act for the Scottish Ministers to request the relevant body's advice. Section 2D is a general power to make ad hoc requests about any matter the Scottish Ministers consider relevant. Section 2C is more specific; it requires the Scottish Ministers to periodically request the relevant body's advice on a number of matters that it lists. As explained in paragraph 29 above, section 2(4) of the Bill will amend section 2C to change its references to interim and annual targets into references to Scottish carbon budget targets. Those references to Scottish carbon budget targets will only make sense if there are Scottish carbon budget targets, which is to say if budgets have already been set when the request for advice under section 2C is made. In order to allow section

2C to be invoked to seek the relevant body's advice ahead of setting budgets, section 4(3) of the Bill allows the references in section 2C of the 2009 Act to be read (during the transitional period only) as references to the budgets that the relevant body has, or intends, to advise the Scottish Ministers to set.

PART 2: FINAL PROVISIONS

Section 5: Ancillary provision

54. Section 5 enables the Scottish Ministers to make ancillary provision, by regulations, to give full effect to the Bill or any provision made under it. It includes the power to modify other enactments (including the Act that the Bill, if passed, will become).

55. Regulations under section 5 that amend the text of an Act are subject to parliamentary scrutiny under the affirmative procedure (as defined by [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)). Otherwise, they are subject to the negative procedure (as defined by [section 28 of that Act](#)).

Section 6: Commencement

56. Section 6 deals with when the provisions of the Act that the Bill will become, if passed, will come into effect as a matter of law. It provides for all of the provisions to come into effect on the day after the Bill for the Act receives Royal Assent. The process by which a Bill becomes an Act of the Scottish Parliament is set out in [section 28 of the Scotland Act 1998](#).

Section 7: Short title

57. Section 7 provides that the short title of the Act that the Bill will become, if passed, is the Climate Change (Emissions Reduction Targets) (Scotland) Act 2024. The short title is the name by which an Act may be officially cited.

This document relates to the Climate Change (Emissions Reduction Targets) (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 5 September 2024

CLIMATE CHANGE (EMISSIONS REDUCTION TARGETS) (SCOTLAND) BILL

EXPLANATORY NOTES

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