

# **CLIMATE CHANGE (EMISSIONS REDUCTION TARGETS) (SCOTLAND) BILL**

## **[AS AMENDED AT STAGE 2]**

---

### **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

#### **Purpose**

1. This supplementary Memorandum has been prepared by the Scottish Government in accordance with rule 9.7.10 of the Parliament's Standing Orders, to assist the Delegated Powers and Law Reform Committee in its consideration of the Climate Change (Emissions Reduction Targets) (Scotland) Bill. This Memorandum describes provisions in the Bill conferring powers to make subordinate legislation, which were either introduced or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.

#### **PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2**

3. The amended or new delegated powers in the Bill at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

#### **Section 1 (inserting section A1(2B) into the Climate Change (Scotland) Act 2009 (“the 2009 Act”)) – Power to modify the net-zero emissions target year**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** revised  
**Parliamentary procedure:** affirmative

4. Section 1 inserts section A1 (the net-zero emissions target) into the 2009 Act. The following paragraphs refer to the subsections of section A1.

5. In the Bill as introduced, subsection (2) conferred a power on the Scottish Ministers to, by regulations, specify a year which is to be the year in which the ‘net-zero emissions target’ is to be met.

6. At Stage 2, subsection (2) was substituted with a new subsection which set 2045 as the net-zero emissions target year. Subsection (2B) was inserted, in consequence of the specification of the net-zero emissions target year in Bill, and confers a power on the Scottish Ministers to modify the net-zero emissions target year by regulations.

7. In addition, subsection (2B) provides that where the Scottish Ministers propose to modify the net-zero emissions target year to a later year than 2045, they may only do so if the later year is consistent with the most-up-to-date advice they have received from the relevant body and that advice is based on either scientific knowledge about climate change or current international reporting practice (or both).

*Reason for taking power*

8. In May 2019, the UK Committee on Climate Change (“the CCC”), who are the “relevant body” under the 2009 Act, advised that Scotland should legislate for a net-zero emissions target year of 2045. The Scottish Government accepted this advice and lodged amendments to specify 2045 as the year in which the net-zero emissions target is to be met on the face of the Bill. The removal of the power to initially specify the net-zero emissions target year is consequential to this.

9. The Scottish Ministers are committed to Scotland achieving net-zero emissions of greenhouse gases by 2045. However, it is possible that in the future the CCC may advise that net-zero emissions is achievable at an even earlier date; or that it is only achievable by a later date. Therefore, a power to modify the net-zero emissions target year remains prudent to ensure targets are credible and achievable.

10. In its Stage 1 Report, the Environment, Climate Change and Land Reform (“ECCLR”) Committee called for tighter restrictions on modifying any emissions reduction targets within the Bill. As such, subsection (2B)(b) was inserted at Stage 2 to impose an additional requirement on the Scottish Ministers where they propose to modify the net-zero emissions target year to a later year. This means that the Scottish Ministers may only propose a later year if that year is consistent with the most-up-to-date advice they have received from the relevant body and that advice is based on either scientific knowledge about climate change or current international reporting practice (or both).

*Choice of procedure*

11. It is considered appropriate that regulations made using this power to modify the net-zero emissions target year are subject to the affirmative procedure. This means that the regulations cannot be made unless a draft of them has been laid before, and approved by resolution of, the Scottish Parliament. This is appropriate as any modification would amend primary legislation and the affirmative procedure would enable the Parliament to fully scrutinise any proposals for draft regulations, which are likely to be politically sensitive and attract stakeholder attention given this is the headline target being set out in primary legislation.

**Section 4 (inserting section 2A into the 2009 Act) – Power to modify the interim targets**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** revised  
**Parliamentary procedure:** affirmative

12. Section 4 inserts section 2A (modification of the interim targets) into the 2009 Act. The following paragraphs refer to the subsections of section 2A.

*This document relates to the Climate Change (Emissions Reduction Targets) (Scotland) Bill as amended at Stage 2 (SP Bill 30A)*

13. In the Bill as introduced, subsection (1) conferred a power on the Scottish Ministers to modify any percentage figure applying for the purposes of the 2050 target or any of the interim targets.

14. At Stage 2, subsection (1) was amended so that the power conferred on the Scottish Ministers is to modify any percentage figure applying for the purposes of any of the interim targets only. This is because there is no longer a 2050 target in the Bill, as this was removed by amendments at Stage 2 as a result of this target having been superseded by the setting of a net-zero emissions target for 2045 through section A1(2A).

15. Subsection (2) was amended at Stage 2 in order to provide that, where the Scottish Ministers propose to modify any of the interim targets to a lower percentage figure, they may only do so if the lower percentage figure is consistent with the most-up-to-date advice they have received from the relevant body and that advice is based on either scientific knowledge about climate change or current international reporting practice (or both).

*Reason for taking power*

16. The removal of the power to modify the 2050 target is consequential to the removal of this target from the 2009 Act itself.

17. The Scottish Ministers are committed to Scotland achieving emissions reductions in 2020, 2030 and 2040 as set by the interim targets in the Bill. However, it is possible that the CCC may advise that the levels of these targets be modified in the future. Therefore, a power to modify the interim targets remains prudent to ensure targets are credible and achievable.

18. In its Stage 1 Report, the ECCLR Committee called for tighter restrictions on modifying any emissions reduction targets within the Bill. As such, subsection (2)(aa) was inserted at Stage 2 to impose an additional requirement on Scottish Ministers where they propose to modify any interim target to a lower percentage figure. This means that Scottish Ministers may only propose a lower percentage figure if that figure is consistent with the most-up-to-date advice they have received from the relevant body and that advice is based on either scientific knowledge about climate change or current international reporting practice (or both).

*Choice of procedure*

19. It is considered appropriate that regulations made using this power to modify the percentage figure for any interim target remain subject to the affirmative procedure. This means that the regulations cannot be made unless a draft of them has been laid before, and approved by resolution of, the Scottish Parliament. This is appropriate as any modification would amend primary legislation and the affirmative procedure would enable the Parliament to fully scrutinise any proposals for draft regulations, which are likely to be politically sensitive and attract stakeholder attention given these are high profile targets set out in primary legislation.

**Section 14(1) and (2) (which, among other things, inserts section 13A into the 2009 Act) – Power to set a limit (higher than zero) on the amount of carbon units purchased by the Scottish Ministers that may be credited to the net Scottish emissions account for a year**

**Power conferred on: the Scottish Ministers**  
**Power exercisable by: regulations made by Scottish statutory instrument**

**Revised or new power:** revised  
**Parliamentary procedure:** affirmative, but subject to the pre-laying procedure set out in section 97 of the 2009 Act

20. Section 13A(1) (to be inserted into the 2009 Act by section 14 of the Bill) confers a power upon the Scottish Ministers to set a limit representing the maximum amount of carbon units that may be purchased by the Scottish Ministers for a year.

21. At Stage 2, subsection (2A) was inserted into section 14 of the Bill to provide that certain regulations made under inserted section 13A(1) are subject to the pre-laying procedure set out under section 97 of the 2009 Act. If the power under inserted section 13A(1) is used to increase the limit of carbon units that may be purchased, the regulations will be subject to the pre-laying procedure.

22. The pre-laying procedure means that:

- An initial draft set of regulations must be laid in Parliament, along with a statement of reasons as to why the regulations are proposed to be made.
- The regulations must then be consulted upon over a representation period of at least 90 days, including at least 30 sitting days.
- The Scottish Ministers must have regard to any representations made to them during the representation period, including to any Parliamentary resolution or report.
- When draft regulations are then subsequently laid in Parliament under affirmative procedure in accordance with section 96(4) of the 2009 Act, the Scottish Ministers must lay a statement alongside the draft regulations setting out the details of any representations, resolutions or reports received during the initial period and any changes made in response to those representations, resolutions or reports.

23. Subsection (2A) also adds to this standard pre-laying procedure, so that the Scottish Ministers are required, in relation to regulations under inserted section 13A to lay a statement setting out the extent to which the proposal is consistent with the most up-to-date advice received from the relevant body. This statement is required both when the draft regulations are initially laid for consultation and again when a draft of the regulations is laid for approval.

#### *Reasons for taking power*

24. The power itself remains unchanged from the Bill as introduced.

#### *Choice of procedure*

25. In its Stage 1 Report, the ECCLR Committee recommended that the regulation making power in relation to setting a limit for the use of carbon credits should be subject to an “enhanced affirmative procedure”. In their Stage 2 report, the Committee further stated that it “considers that any proposal to use carbon credits should be subject to an enhanced affirmative process requiring the Scottish Government to lay a draft instrument in Parliament for consultation for a period of a minimum of 60 days” and that such regulations “should also be the subject of an open public consultation”.

26. Therefore, the Scottish Government brought forward amendments at Stage 2 to ensure that the pre-laying procedure set out in section 97 of the Act applies where the Scottish

Ministers propose by regulations to raise the limit of carbon credits that can be purchased. This will offer the high level of scrutiny called for by the Scottish Parliament for any regulations using this power.

**Section 19 (inserting new section 35 into the 2009 Act) – Power to modify the climate change plan chapter headings**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** new  
**Parliamentary procedure:** affirmative

27. Section 19 substitutes section 35 of the 2009 Act with a new section 35, relating to climate change plans. The following paragraphs refer to the subsections of new section 35.

28. Subsection (2A), inserted by amendment at Stage 2, lists the relevant sectors for which each climate change plan must have individual chapters.

29. At Stage 2, new subsection (8) was inserted, which confers upon the Scottish Ministers a power to modify subsection (2A) (i.e. the list of sectors). A new subsection (9) was also inserted, which provides that any such modifications must be consistent with international carbon reporting practice.

*Reason for taking power*

30. In its Stage 1 Report, the ECCLR Committee called for chapter headings in each climate change plan to be aligned with the United Nations Framework Convention on Climate Change (“UNFCCC”) guidelines.

31. At Stage 2, the Scottish Government brought forward amendments to align the chapter headings based on the National Communications submitted biennially to the UNFCCC. However, international classifications schemes may evolve in the future, therefore a power to amend the list is prudent to keep up with the changing context.

32. The power has been limited in such a way to ensure that any proposed modifications are consistent with international carbon reporting practice, thereby ensuring that the ECCLR Committee’s recommendation will continue to be met.

*Choice of procedure*

33. It is considered appropriate that regulations made using this power are subject to the affirmative procedure. This means that they cannot be made unless a draft of them has been laid before, and approved by resolution of, the Scottish Parliament. This is appropriate as any modification would amend primary legislation and the affirmative procedure would enable the Parliament to fully scrutinise any proposals for draft regulations which are likely to attract stakeholder attention given they will determine the structure of future climate change plans, which are high profile strategic planning documents.

34. Accordingly, the power in subsection (2A) to modify the list of sectors to be included in climate change plans is sought due to the need to provide the flexibility to respond to

changing circumstances without the need for further primary legislation, and the need to make proper use of valuable parliamentary time.

**Section 19 (inserting new section 35C into the 2009 Act) – Just transition principles**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Revised or new power:** new  
**Parliamentary procedure:** affirmative

35. Section 19 inserts a new section 35C into the 2009 Act. The following paragraphs refer to the subsections of section 35C.

36. Subsection (1) sets out the “just transition principles” that Scottish Ministers must take into account when preparing any plans, as required by section 35(5B).

37. Subsection (2) confers a power on Scottish Ministers to modify the just transition principles.

*Reason for taking power*

38. The Scottish Government brought forward amendments at Stage 2 to embed just transition principles into the legislative framework by ensuring that Scottish Ministers take such principles into account when preparing a climate change plan and setting out in the plan how it does so.

39. The principles amended into the Bill have been synthesised from the International Labour Organisation (ILO) principles and those that have been used as part of the remit of the current Just Transition Commission, tailored for the Scottish context and for that of the Bill. It is, however, prudent for Scottish Ministers to have a power to add, remove or vary the principles. This will ensure that these can be updated if the wider internationally agreed set of principles evolve in future.

*Choice of procedure*

40. It is considered appropriate that regulations made using this power are subject to the affirmative procedure. This means that they cannot be made unless a draft of them has been laid before, and approved by resolution of, the Scottish Parliament. This is to enable the Parliament to fully scrutinise any proposals for draft regulations which are likely to attract stakeholder attention given they will inform the preparation of future climate change plans, which are high profile strategic planning documents.

41. Accordingly, the power in subsection (2) to add, remove or vary the list of just transition principles is sought due to the need to provide the flexibility to respond to changing context without the need for further primary legislation, and the need to make proper use of valuable parliamentary time.

*This document relates to the Climate Change (Emissions Reduction Targets) (Scotland) Bill  
as amended at Stage 2 (SP Bill 30A)*

**CLIMATE CHANGE (EMISSIONS REDUCTION  
TARGETS) (SCOTLAND) BILL  
[AS AMENDED AT STAGE 2]**

**SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:  
[www.parliament.scot/documents](http://www.parliament.scot/documents)