

FUEL POVERTY (TARGETS, DEFINITION AND STRATEGY) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Fuel Poverty (Targets, Definition and Strategy) (Scotland) (Scotland) Bill (which was introduced in the Scottish Parliament on 26 June 2018) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These revised 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.

3. 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

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

- Enshrine in legislation the Scottish Government's fuel poverty targets. The primary target is that, by the year 2040, as far as reasonably possible, no household in Scotland is in fuel poverty but that, in any event, the following objectives are met: no more than 5% are in fuel poverty, no more than 1% are in extreme fuel poverty, and the median fuel poverty gap is no more than £250 (in 2015 prices). The 2040 target will apply at the level of local authority areas as well as applying across Scotland. There is also an interim target for the year 2030: that no more than 15% of households in Scotland are in fuel poverty, no more than 5% are in extreme fuel poverty, and the median fuel poverty gap is no more than £350 (in 2015 prices).
- Establish a new definition of fuel poverty, including how levels of fuel poverty will be measured. There is also a related definition of extreme fuel poverty. In addition,

the fuel poverty gap (which applies to those who are in fuel poverty and measures how deeply they are in it) is defined.

- 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 fuel poverty targets will be achieved and set out a monitoring framework to oversee progress in meeting the targets.
- Place a duty on the Scottish Ministers to produce a report every 3 years. This will provide an update on progress being made towards meeting the fuel poverty targets and set out the detail of the plans for the next 3 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.
- Establish a Scottish Fuel Poverty Advisory Panel with responsibility for reporting to the Scottish Ministers on progress towards the fuel poverty targets, the likelihood of meeting them, and the extent to which the drivers of fuel poverty are being addressed.

COMMENTARY ON SECTIONS

The 2040 target

Section 1

5. Section 1(1) sets out the target relating to the eradication of fuel poverty. The target is that by the year 2040, as far as reasonably possible no household in Scotland is in fuel poverty and that, in any event, the following objectives are met—

- no more than 5% of households in Scotland are in fuel poverty.
- no more than 1% of households in Scotland are in extreme fuel poverty,
- the median fuel poverty gap of households in Scotland that are in fuel poverty is no more than £250 (adjusted in accordance with section 2B(5) to take account of inflation or deflation).

6. Under subsection (1A), the 2040 target also requires to be met in each local authority area. The term “local authority area” is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 as the local government area for which the authority is constituted.

7. Subsection (1B) allows the Scottish Ministers to change the target year set under this section if they receive a report from the Scottish Fuel Poverty Advisory Panel which advises that the target is not going to be met. The Scottish Fuel Poverty Advisory Panel is established under section 9A of the Bill.

The 2030 target

Section 1A

8. Section 1A sets out an interim target for the year 2030. The target is that—
- no more than 15% of households in Scotland are in fuel poverty.
 - no more than 5% of households in Scotland are in extreme fuel poverty,
 - the median fuel poverty gap of households in Scotland that are in fuel poverty is no more than £350 (adjusted in accordance with section 2B(5) to take account of inflation or deflation).

Definition of fuel poverty

Section 2

9. 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
- (b) having paid for its reasonable fuel needs, its childcare costs and its housing costs, and disregarding the value of specified benefits which are received for a care need or disability, this then leaves the household unable to maintain an acceptable standard of living.

10. 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.

11. 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 35 below.

12. Paragraph (b) sets out the second element of the test. The question there is whether, after the assessed fuel costs discussed above, any childcare costs, housing costs and the value of specified benefits received for a care need or disability (where applicable) 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 36 below.

13. 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.

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

15. The specified heating levels are:

- For a household for which enhanced levels of heating is appropriate, heating the living room¹ 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.

16. 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.

17. 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 an unreasonable extent (e.g. keeping all lights on at all hours) would not be factored in.

18. 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. How this is calculated will depend on the location of the home in question.

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

19. For most households², it requires a comparison of:

- the household's net income, after deduction of—
 - 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,
 - the value of specified benefits which are received for a care need or disability (where applicable),

with

- 90% of 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.

20. 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.

21. 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 University³. 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.

22. The standard covers the needs of over a hundred different family combinations⁴. However, if there is no standard which applies to a particular type of household, subsection (5) will not be able to settle the 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).

² Where the home in question is in a remote rural area, remote small town or island area, subsection (5A) applies and an additional amount can be added to the UK minimum income standard for the purpose of this calculation in recognition of the higher living costs which can apply in those areas.

³ For more information, see <http://www.lboro.ac.uk/research/crsp/mis/> and <https://www.jrf.org.uk/report/minimum-income-standard-uk-2017>.

⁴ <https://www.jrf.org.uk/file/50351/download?token=7KmLaSiz&filetype=full-report>

23. Subsection (6)(e), which defines the term “minimum income standard”, also 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 body which produces it changes, 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 for the majority of households.

24. However, subsection (5) is subject to subsection (5A). Subsection (5A) provides that where the home in which the members of a household live is in a remote rural area, remote small town or island area, the question of whether a household has sufficient income left to maintain an acceptable standard of living is to be assessed slightly differently from the comparison set out in paragraph 19. Instead of comparing the household’s remaining adjusted net income with the UK minimum income standard, it is compared with the UK minimum income standard added together with any additional amount that has been determined in relation to the household in accordance with regulations. This means that it requires a comparison of:

- the household’s net income, after deduction of—
 - 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,
 - the value of specified benefits which are received for a care need or disability (where applicable),

with

- the total of—
 - 90% of 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,
 - and
 - such additional amount (if any) as is determined in relation to the household in accordance with regulations.

25. As set out in subsection (5B), regulations under subsection (5A)(b) providing for the determination of an additional amount must define “remote rural area”, “remote small town” and “island area”. They must also specify who is going to determine the additional amount (though the regulations themselves need not specify this amount; that can be done elsewhere, in a similar fashion to how the amounts under the UK minimum income standard are not set out in legislation).

26. The Scottish Government has stated⁵ that the regulation-making power in subsection (5A)(b) will be used to specify a definition of “remote rural area”, “remote small town” and “island area” which will cover categories 4 and 6 of the Scottish Government’s 6-fold urban rural classification⁶. In addition, under subsection (5D), the definition of “island area” is required to encompass all island areas.

27. The person who makes the determination of the additional amount will also be required, under subsection (5C), to make a separate determination for island areas. This means that the appointed person will have to calculate the relevant figure for the islands separately, although there may be times when the underlying cost of living is such that the figure in question is the same as it is in other places.

28. The additional amount which is specified by a person appointed in the regulations can differ depending on the type of household in question. For example, the extra cost of remote living for a family of four may be very different to the extra cost of remote living for a single person. It is also possible that there may be times where the appointed person does not specify an additional amount if the cost of living is found, based on the research that person has carried out, not to be higher for a particular household type in a particular location. However, the household will never be measured against less than the relevant amount of the UK minimum income standard which is based on research conducted in the Midlands, selected to be representative of the UK overall. And where the cost of living is determined to be higher for a particular household type and location, an additional amount will have to be factored in in recognition of that when calculating whether the household has sufficient income left to maintain an acceptable standard of living.

29. Subsection (6) defines a number of terms which are used in the section: benefits received for a care need or disability, childcare costs, household, housing costs, and net income⁷. It also explains that references to “adjusted” net income relate to net income after deduction of housing costs.

30. While a number 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 Survey⁸ and so represents an understood approach to determining what constitutes a household.

31. 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

⁵ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12039>

⁶ <https://www2.gov.scot/Topics/Statistics/About/Methodology/UrbanRuralClassification>

⁷ It also defines “minimum income standard”, as discussed at paragraphs 21 to 23 above.

⁸ <http://www.gov.scot/Topics/Statistics/SHCS>

school age or below, in line with how childcare costs are assessed under the minimum income standard.

32. 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.

33. The term “benefits received for a care need or disability” is also defined. This covers disability assistance, personal independence payment, attendance allowance and disability living allowance. This means that, in recognition of the fact that these sums are paid to cover particular costs which would not be incurred by others and are not reflected in the minimum income standard, all of these benefits are taken out of account when looking at whether a household has sufficient income left to maintain an acceptable standard of living.

A worked example

34. 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 (living on the mainland in an urban area or accessible small town or in an accessible rural area)				
Household costs (monthly):				
			£1,150	net income
			£350	rent
			£50	council tax, water & sewerage
			£0	childcare
			£0	relevant benefits
			£80	assessed monthly fuel needs (taking into account the tariffs and fuel types available to the household in question)
Minimum	income	standard	£1,286.24	total income
figures:			£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

35. 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
	<hr/> £750
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.	

36. 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
	(£0) relevant benefits
	(£80) necessary fuel costs
	<hr/> £670
This figure then needs to be assessed in accordance with section 2(5) on the basis that the home in question is not located in a remote rural area, remote small town or island area.	

37. 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
	<hr/>	
	£732.86	
90% of that standard:	$(£732.86 / 100) * 90$	
	= £659.57	
<p>As the remaining adjusted income of £670 is greater than the relevant MIS figure of £659.57, the household is not in fuel poverty.</p>		
<p>However, if the home in question had been located in a remote rural area, remote small town or island area, the result may have been different. If the additional amount calculated in relation to the household type for that area was £20, that sum would need to be added to the figure of £659.57 above, meaning that the total would instead be £679.57. As the remaining adjusted income of £670 would then be less than the minimum income standard which applies in that area, the household would be in fuel poverty.</p>		

Meaning of extreme fuel poverty

Section 2A

38. Section 2A defines the term “extreme fuel poverty”. This forms part of both the 2040 target and the 2030 target. The test for whether a household is in extreme fuel poverty is largely the same as the test for whether it is in fuel poverty other than that the threshold is different: for extreme fuel poverty, the cost of meeting the household’s assessed fuel needs must amount to more than 20% of the net income that the household has after it has paid its housing costs (rather than the 10% which is required for fuel poverty). The only other difference is that benefits received for a specified care need or disability are not taken out of account when considering whether a household has sufficient income left to maintain an acceptable standard of living. Aside from that, the rules set out in section 2(2) to (6) apply, meaning that any adjustments to the defined terms in section 2(6) would carry through to this definition.

Meaning of fuel poverty gap

Section 2B

39. Section 2B defines the term “fuel poverty gap”. This forms part of both the 2040 target and the 2030 target and measures the amount by which a household falls into fuel poverty. The fuel poverty gap is essentially the smaller of—

- the amount by which the household’s necessary annual fuel costs exceed 10% of the household’s adjusted net income, and
- the amount by which the annual sum required for the household to have an acceptable standard of living exceeds the amount it has for that purpose.

40. The definitions which apply for the purpose of these calculations are the same as in the calculation of whether a household is in fuel poverty (see subsection (4)).

41. Subsection (5) provides that when the fuel poverty gap in any given year is being measured against the fuel poverty targets, the sums set out in the targets are to be adjusted to take account of any inflation or deflation. This means that the comparison will remain an accurate one in real terms and will not be distorted by changes in the value of money. Subsection (7) allows the way that inflation and deflation is measured to be adjusted in case another price index subsequently becomes a more appropriate measurement than the consumer prices index (CPI).

The fuel poverty strategy

Section 3

42. 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. The strategy relates predominantly to the fuel poverty targets: under the definition in section 12A, these are the 2040 target set out in section 1 and the 2030 target set out in section 1A.

43. The strategy must set out the following—

- the approach that Ministers intend to take to ensure that the fuel poverty targets are met (which must include provision for how to remove low energy efficiency as a driver of fuel poverty) and the cost of that approach,
- the approach that Ministers intend to take to ensure that the 2040 target is met in each local authority area,
- the types of organisations with which Ministers intend to work (for example, local authorities or third sector bodies),
- how Ministers intend to identify households in fuel poverty,
- 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),

- the approach to identifying residential buildings which would need improvements in order to achieve an energy performance certificate of band C or higher by 2030 (but only where it is technically feasible and cost effective to achieve such a rating),
- how Ministers intend to assess whether the fuel poverty targets are met and what the rates of fuel poverty are (and, as the policy memorandum notes, the intention is to use the Scottish House Condition Survey⁹ in order to measure fuel poverty).

44. 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.

45. Ministers must keep the strategy under review. Within 5 years of its publication, they must either revise the strategy or publish an explanation of why they do not consider it necessary to revise it. This duty applies equally following the publication of a revised strategy.

Section 4

46. In accordance with section 4, the Scottish Ministers must, when preparing the fuel poverty strategy (or a revised strategy), consult such persons as they consider appropriate. The persons consulted must include individuals who currently live, or have previously lived, in fuel poverty, as well as local authorities. 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.

47. Once the strategy (or a revised strategy) has been prepared, it must be laid in draft before the Scottish Parliament. In the case of the first strategy, that must be done within one year of section 3 of the Bill (preparation of the strategy) coming into force. There is then a standstill period of 40 days during which the Parliament can consider the draft strategy (or draft revised strategy), before Ministers are allowed to finalise it. Where the Parliament is dissolved or in recess for a prolonged period (that is to say, for more than 4 days), that is taken into account and the standstill period is extended accordingly.

Section 5

48. Section 5 requires the finalised strategy (or finalised revised strategy) to be both published and laid before the Scottish Parliament. This must be done as soon as reasonably practicable after the end of the period given to the Parliament under section 4(5) for its consideration of the draft.

49. As soon as reasonably practicable after that, Ministers must also publish and lay before the Scottish Parliament a report setting out the consultation process that was carried out in accordance with section 4 and how views expressed during that process were taken into account. Ministers must also make a statement to the Parliament about the strategy.

⁹ <http://www.gov.scot/Topics/Statistics/SHCS>

Reporting on fuel poverty

Section 6

50. Section 6 places a duty on the Scottish Ministers to prepare 3-yearly reports on the progress being made towards meeting the fuel poverty targets. The section should also be read in conjunction with sections 7 and 8 which set out the requirements as to consultation and publication.

51. 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. It must also do each of these things in relation to meeting the 2040 target in each local authority area. Moreover, it must set out details of the cost of the steps that have been taken, and details of any additional funding required to take the steps Ministers are proposing to take. Additional information may also be included as appropriate.

52. The reporting period covered by a report is a fixed 3 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. However, the reporting period will be recalculated and start running anew in the event that a revised strategy is published.

53. Under subsection (3), the obligation to prepare these reports applies to each complete 3 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 3 year period ran from 2039 to 2042, there would be no need to publish a periodic report in 2043. Instead, any partial period that covers the period between the final periodic report and 31 December 2040 can be addressed through the reporting mechanism for reporting on the 2040 target.

54. The final periodic report will be looking back over a 3 year period which falls prior to the 2040 target date and reporting on that period. However, in terms of setting out future plans, the 3 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 that are 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).

55. 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 report after the fact (other than, as noted at paragraph 53 above, as part of the reporting mechanism for the 2040 target).

Section 7

56. In accordance with section 7, the Scottish Ministers must, when preparing the 3-yearly reports, consult such persons as they consider appropriate. This must include individuals who currently live, or have previously lived, in fuel poverty. It must also include local authorities and individuals drawn from the following categories: those with disabilities, those with long-term illness, older people, and those living in rural areas.

Section 8

57. Section 8 requires the 3-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 2022 and the first periodic report must be published by 31 March 2023 at the latest.

Section 9

58. 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.

Independent advisory panel

Section 9A

59. Section 9A establishes a Scottish Fuel Poverty Advisory Panel. Its statutory function is to meet after the publication of each 3-yearly report and consider progress towards meeting the fuel poverty targets (i.e. both the 2030 and the 2040 targets), the likelihood of meeting those targets, and the extent to which the four drivers of fuel poverty are being addressed – these being incomes, energy costs, energy performance, and how energy is used in households. It must then report to the Scottish Minister on its findings. That report can propose changes to the fuel poverty strategy and can also contain any other recommendations it considers appropriate.

60. Subsection (6) of section 9A allows the Scottish Ministers to make provision about the governance, remuneration and membership of the Panel by regulations. Ministers must lay draft regulations before the Parliament within one year of the section coming into force. The regulations can specify the Panel’s membership, specify the remuneration and expenses to be paid to members, make provision about the Panel’s reports, and make such other provision as Ministers consider appropriate.

61. The Scottish Ministers must provide the necessary funding for the operation of the Panel, but the Panel’s costs cannot exceed £20,000 in any given financial year.

General

Section 10

62. 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—

- 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 22 or to react if the UK minimum income standard stops allocating costs specifically to rent, council tax, water rates, fuel and childcare).

Section 11

63. Any regulations made under the sections specified below are subject to the affirmative procedure. For details of the affirmative procedure, see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010. The regulations to which this applies are those made under—

- section 1(1B) (changing the date of the 2040 target following advice from the Panel)¹⁰,
- section 2(4) (specifying the types of household for which enhanced heating is appropriate),
- section 2(5A)(b) (providing for a person to make a determination of an additional amount to be factored in when calculating how much is sufficient to maintain an acceptable standard of living for those in remote rural areas, remote small towns and island areas),
- section 2B(7) (specifying a different prices index for use in calculating changes in the value of money for the purpose of measuring the fuel poverty gap),
- section 9A(6) (making provision about the governance, remuneration and membership of the Panel),
- section 10 (adjusting the effect of the fuel poverty definition).

64. Subsection (2) obliges the Scottish Ministers to consult prior to putting forward proposed regulations under section 2(4) or 10 of the Bill. They must consult such persons as they consider

¹⁰ There is currently a printing error in the Bill and it refers here to section 1(1A). However, this will be remedied administratively in the version of the Bill produced following Stage 3.

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. But where anything is done prior to the Bill being passed by way of consultation about the types of household for which enhanced heating is appropriate, subsection (4) ensures that the consultation will still count towards fulfilling the statutory consultation requirement.

Section 12

65. 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).

66. 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 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 12A

67. Section 12A defines the 2040 target as the target that is set out in section 1. The fuel poverty targets are defined as the two targets set out in the Bill: the 2040 target set out in section 1 and the 2030 target set out in section 1A.

Section 13

68. Section 13 makes provision for commencement. The commencement section itself, as well as the interpretation and short title sections, 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

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

*This document relates to the Fuel Poverty (Targets, Definition and Strategy) (Scotland)
Bill as amended at Stage 2 (SP Bill 37A)*

**FUEL POVERTY (TARGETS, DEFINITION AND
STRATEGY) (SCOTLAND) BILL**
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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