

CLIMATE CHANGE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Climate Change (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill contains provisions aimed at providing a framework to ensure that the Scottish Government takes immediate and sustained action to reduce Scotland's greenhouse gas emissions by 80% from 1990/1995 levels by the year 2050. It also contains a number of measures to help Scotland reduce its emissions and adapt to climate change.
4. The Bill has six parts:
 - *Part 1* creates a statutory framework for greenhouse gas emissions reductions in Scotland by setting a 50% reduction target for 2030 and an 80% reduction target for 2050. To help ensure the delivery of these targets, this Part of the Bill also requires that Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.
 - *Part 2* contains provisions relating to advice. Among other things, this Part allows the Scottish Ministers to establish a Scottish Committee on Climate Change, or to designate an existing body, to exercise advisory functions.
 - *Part 3* places duties on the Scottish Ministers requiring that they report regularly to the Scottish Parliament on Scotland's emissions and on the progress being made towards the emissions reduction targets set in the Bill.
 - *Part 4* contains powers to allow the Scottish Ministers, by order, to impose duties on public bodies in relation to climate change, to issue guidance to those bodies relating

to their climate change duties and to require that they report upon the discharge of those duties.

- *Part 5* contains a number of provisions to reduce emissions and adapt to climate change and is divided into the four chapters—
 - Chapter 1 requires Scottish Ministers to lay a programme for adaptation to climate change before the Scottish Parliament, and allows for the ability to vary the permitted times for making muirburn.
 - Chapter 2 allows the Scottish Ministers to modify the functions of the Forestry Commissioners in or as regards Scotland but only if it is necessary for climate change purposes.
 - Chapter 3 allows of the Scottish Ministers to make regulations for the assessment of the carbon and energy performance of non-domestic buildings, places a duty on the Scottish Ministers to promote energy efficiency, and places a duty on the Scottish Ministers to promote renewable heat.
 - Chapter 4 allows the Scottish Ministers to make regulations in relation to waste reduction and recycling.
- *Part 6* contains general and miscellaneous provisions.

5. Further information about the Bill's provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill [17-EN], and in the Policy Memorandum published separately as SP Bill [17-PM].

Rationale for subordinate legislation

6. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether these provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has carefully considered the importance of each matter against the need to—

- ensure that future measures needed for the purposes of reducing emissions or adapting to the effects of climate change are flexible and can be introduced, if required, quickly in the light of experience without the need for primary legislation; and
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.

General subordinate legislation provision

7. Section 64 (subordinate legislation) contains the Bill's general subordinate legislation provision. Subsection (1) provides that any power conferred on the Scottish Ministers to make orders or regulations is exercisable by statutory instrument. Subsection (2) allows different provision to be made for different purposes and permits the powers to be used to make consequential, incidental, supplementary, transitory, transitional or saving provision. Subsection

(3) enables secondary legislation made under this Bill to amend the Bill and any other piece of legislation.

8. Subsection (4) provides that the procedure applicable to the making of secondary legislation under this Bill is generally affirmative resolution procedure. Subsections (6) to (8) set out the exceptions to this, which attract negative resolution procedure.

9. All of the delegated powers provisions in the Climate Change (Scotland) Bill are listed in this Memorandum, with a short explanation of what each power allows, why the power has been taken in the Bill and why the form of Parliamentary procedure selected is considered appropriate.

DELEGATED POWERS

PART 1 – EMISSIONS REDUCTION TARGETS

Section 4 - Setting annual targets

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

10. Section 4 imposes a requirement on the Scottish Ministers to set annual targets by order. Subsection (2) states for which years the targets must be set. The Scottish Ministers intend to set targets in batches; the first batch will be for 13 years (2010-2022), with subsequent targets set in batches of five years until the last batch, which will be three years in length (2048-2050). The dates by which each batch of targets must be set are also given. The annual targets must be set in accordance with provisions in section 3. Section 4(3) requires that, in setting annual targets, the Scottish Ministers must have regard to the targets for 2030 and 2050. Subsection (4) requires that, in setting annual targets, the Scottish Ministers must have regard to a range of matters. Section 5 further requires the Scottish Ministers to seek advice from the advisory body before laying a statutory instrument under section 4 and to publish a statement after the instrument is laid.

Reason for taking power

11. The rationale behind having targets set in advance is to provide certainty for the public and private sectors so that they can take them into account when making investment decisions, providing sufficient incentive to invest and innovate. Some technologies or changes in plant need a long lead in time and some behaviours take time to change. Setting targets in batches recognises that it is not possible now to accurately forecast up until 2050 the range of factors which need to be taken into account regarding reducing Scotland's greenhouse gas emissions.

Choice of procedure

12. The annual targets will set the future trajectory of Scotland's emissions and the amount of emissions over this time. The impact of this trajectory on the economy and people's lives is as significant as a target for a specific point in time, the interim target in 2030 and the final target in

2050. The affirmative resolution procedure is considered appropriate due to the socio-economic impacts the targets will have on Scotland.

Section 6 - Modifying annual targets

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

13. Section 6 allows the Scottish Ministers to modify various parts of sections 3 and 4 by order. Subsection (1)(a) enables the Scottish Ministers to modify the percentage figure by which annual targets must reduce year-on-year from 2020. Subsection (2) restricts this power so that the percentage may be modified only if the Scottish Ministers consider that it is no longer necessary to set the targets by reference to that percentage. Subsection (5) further states that the percentage may not be changed to a figure less than zero.

14. Subsection (1)(b) allows the Scottish Ministers to modify an annual target once it has been set by order under section 4. Subsection (3) restricts this power so that an annual target may be changed only as a result of significant changes to the basis on which the annual target was first set.

15. Subsection (1)(c) enables the Scottish Ministers to modify any of the dates set out in section 4 (the dates of the batches of annual targets) and subsection (1)(d) allows modification of the criteria to which the Scottish Ministers must have regard when setting annual targets. Subsection (4) sets out that the Scottish Ministers may only exercise these powers if they consider it appropriate to do so.

16. Subsection (6) allows the Scottish Ministers to exercise the power to modify annual targets set by order only before the beginning of the year to which the target relates. This power may not be used to allow the target to exceed that set for the previous year.

17. Section 7 requires that all of these powers may only be exercised once the Scottish Ministers have requested advice from the relevant body defined in section 5(5) and the Scottish Ministers must publish a statement if the order differs from the recommendation of the relevant body.

Reason for taking power

18. The annual targets will be set in advance and are based on a range of criteria. Between the date when an annual target is set and the year to which it relates, circumstances may change significantly which require a re-evaluation of the annual target level. Subsections (1)(a) and (1)(b) allow this re-evaluation to occur. Over time, it may become apparent that annual targets need to be set further, or not as far, in advance. Subsection (1)(c) allows the date by which the annual targets are set to be changed. It is not possible to foresee the full range of criteria which need to be taken into account up until 2050. Additional criteria may become as important as the current list. Subsection (1)(d) allows the criteria to change.

Choice of procedure

19. As subsection (1)(a) allows an important percentage set in primary legislation to be modified, it is considered appropriate that affirmative resolution should apply. Subsection (1)(b) allows a change to a previous instrument subject to affirmative resolution, it is therefore considered appropriate that affirmative resolution should apply. As subsections (1)(c) and (1)(d) allow a change in primary legislation, it is considered appropriate that affirmative resolution should apply.

Section 9 - Greenhouse gases

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

20. Subsection (2) enables the Scottish Ministers to add gases to the list of greenhouse gases, for the purposes of the Bill, and to modify the description of gases. Subsection (3) places a restriction on the Scottish Ministers in so far as they may only modify subsection (1) to add a gas if it appears that an agreement or arrangement at European or international level recognises that such a gas contributes to climate change. Subsection (4) requires the Scottish Ministers to consult with the relevant body defined in section 5(5) before laying such an order.

Reason for taking power

21. As climate change science is an evolving science, it may become necessary in the future to add new gases to the list of those covered by the targets in the Climate Change (Scotland) Bill. Future European or international agreements may include these gases. It may also be the case in the future that such agreements describe existing greenhouse gases in different ways than they do currently. For example, hydrofluorocarbons and perfluorocarbons are families of gases, it is accepted practice to refer to them collectively but it may be appropriate in the future to describe individual gases within those families. Subsection (2) enables the Scottish Ministers to respond to these kinds of changes.

Choice of procedure

22. As this provision will enable the amendment of a core provision of the Bill, the greater degree of Parliamentary scrutiny provided by the affirmative resolution procedure is considered appropriate.

Section 11 – Baseline for additional greenhouse gases

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

23. Section 11 enables the Scottish Ministers to make provision as to how to determine the baseline year for an additional greenhouse gas added under section 9. In particular, they may designate a baseline year and provide that the amount of net Scottish emissions of that gas for that year is to be treated as the amount for that baseline year.

Reason for taking power

24. If a new greenhouse gas is added under section 9, a baseline year will need to be designated, alongside the quantity of emissions for that year in order for it to be added to the net emissions account for the purposes of targets for the Bill. Until it is known which gases will be added under section 9, it is not possible to designate baseline years or quantities of emissions for those gases on the face of the Bill.

Choice of procedure

25. As the baseline year and level of net Scottish emissions counted as having occurred in that year of any gas added under section 9 will have an important effect on the total amount of net Scottish emissions and, therefore, on efforts to reduce Scottish emissions in order to meet the Bill's statutory targets affirmative resolution procedure is considered appropriate for orders made under section 11.

Section 12 - The net Scottish emissions account

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: On the first occasion, affirmative resolution of the Scottish Parliament. The second and subsequent regulations will be subject to negative resolution provided the amendments made are simply technical in nature. More detail is provided below.

Provision

26. Subsection (2) of section 12 enables the Scottish Ministers to make provision by regulations about how and in what circumstances carbon units are credited to and debited from the net Scottish emissions account.

Reason for taking power

27. Certain businesses in Scotland participate in the European Union Emissions Trading Scheme. It is possible that firms in Scotland may participate in other such trading schemes in the future. If the net Scottish emissions account is to take account of the units traded within such schemes, it will be necessary to define the terms by which this occurs. This power will also

enable the Scottish Ministers to create regulations covering the use of carbon units purchased or sold by Ministers themselves outside of specific trading schemes – for example, units generated by the Clean Development and Joint Implementation Mechanisms established under the Kyoto Protocol.

Choice of procedure

28. The initial regulations will set out how and in what circumstances carbon units are credited to and debited from the net Scottish emissions account which will be a key component of the operation of that account. Affirmative resolution procedure is therefore considered appropriate for the initial regulations. Subsequent regulations will likely involve technical amendments which are unlikely to be significant and, therefore, will usually merit negative resolution procedure. If, however, the second or subsequent regulations make provision to alter the amount by which a carbon unit reduces or increases the net Scottish emissions account, affirmative resolution will be required because of the significant effect this could have on the account.

Section 14 - Scottish share of emissions from international aviation and international shipping

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

29. International aviation and international shipping emissions are generally not directly emitted in a specific country. Subsections (1) and (2) allow the Scottish Ministers to specify by order how certain emissions from international aviation and international shipping are to be regarded as “Scottish emissions”. Subsection (3) requires the Scottish Ministers to seek advice from the relevant body defined in section 5(5) prior to making an order. Subsection (4) requires the Scottish Ministers to publish a statement if the advice of the relevant body is not followed.

Reason for taking power

30. As international aviation and international shipping emissions are generally not directly emitted in a specific country, it is necessary to specify how certain amounts of these emissions will be allocated to the Scottish emissions account. This allocation may also need to change over time, particularly if a European or international agreement makes such a change necessary in the future. There is no current international agreement on how to allocate these emissions to states.

Choice of procedure

31. As this is an issue of high interest and could significantly alter the calculation of “Scottish emissions”, and thereby the calculation of the net Scottish emissions account and future annual targets, affirmative resolution procedure is considered appropriate.

Section 15 - Scottish emissions and removals

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

32. Subsection (2) allows the Scottish Ministers to modify the definition of Scottish removals set out in subsection (1).

Reason for taking power

33. Scottish removals is defined in the Bill as removals of a greenhouse gas from the atmosphere due to land use, land-use change or forestry activities in Scotland. These are the current internationally-recognised methods of removing greenhouse gas emissions from the atmosphere. It is not possible to forecast the full range of possible methods of removals which may develop up until 2050. Subsection (2) enables these changing circumstances to be taken account of in the future.

Choice of procedure

34. As this is an issue which could significantly alter the calculation of “net Scottish emissions”, future annual targets, and act as a driver for significant methods of reducing emissions, affirmative resolution procedure is considered appropriate for any change.

Section 17 – International carbon reporting practice

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

35. Paragraph (b) of section 17 enables the Scottish Ministers to expand the definition of “international carbon reporting practice” for the purposes of this Bill.

Reason for taking power

36. This will enable the Scottish Ministers to add future European and international agreements and arrangements relating to climate change to the meaning of “international carbon reporting practice” which must be taken into account when acting under the provisions of the Climate Change (Scotland) Bill.

Choice of procedure

37. Any decision to change the definition of “international carbon reporting practice” from being the protocols of the United Nations Framework Convention on Climate Change (as specified in section 17(a)) would likely be taken as a result of one or more international agreements to use alternative carbon reporting practices. As the provision in section 17(b) is

simply intended to ensure that the definition of “international carbon reporting practice” used in the Bill can be kept up to date, negative resolution procedure is considered appropriate.

Section 18 - Carbon units and carbon accounting

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: On the first occasion, affirmative resolution of the Scottish Parliament. The second and subsequent regulations will be subject to negative resolution provided the amendments made are simply technical in nature. More detail is provided below.

Provision

38. Subsection (1) allows Scottish Ministers to create a scheme for the purpose of monitoring the use of carbon units, including registering them and keeping track of them. Subsection (2) allows existing schemes, which may or may not be established by the Scottish Ministers, to be adapted for the purposes set out in subsection (1). Subsection (3) allows the functions which may need to be carried out for the purposes of such a scheme to be conferred on persons or bodies and for powers to be conferred on the Scottish Ministers in relation to the operation of such a scheme.

Reason for taking power

39. It may be necessary to create a scheme to monitor the use of carbon units. The trading of units across borders can be complicated and it is not yet known whether such a scheme is necessary. However, if it does become necessary, these provisions allow such a scheme to be created.

Choice of procedure

40. The initial regulations will create schemes regulating the use of carbon units and will confer new functions on persons or bodies. Affirmative resolution procedure is therefore considered appropriate for the initial regulations. Second and subsequent regulations could involve amendments which may not be significant and, therefore, merit negative resolution procedure. If, however, the second or subsequent regulations make provision to specify a carbon unit of a kind not previously specified, affirmative resolution will be required because of the significant affect this could have on the net Scottish emissions account.

PART 2 – ADVISORY FUNCTIONS

Section 19 – Meaning of advisory body

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

41. Section 19(1) enables the Scottish Ministers to designate, by order, a body or person to carry out the advisory functions set out in the Bill. (In the absence of an order made under section 19(1), the Scottish Ministers will seek advice from the UK Committee on Climate Change established by the UK Climate Change Act 2008 (as set out in section 5(5) of this Bill).) Section 19(3) specifies what the advisory functions are and clarifies that these may include further advisory functions conferred under subsection (4). Subsection (4) also sets out certain conditions which the Scottish Ministers may place on the advisory body with regard to the advice it is to provide. There is a related provision in section 21 which provides that when an order made under section 19(1) comes into force, subsection (3) of section 8 ceases to have effect. This will remove the duty on Scottish Ministers to lay in the Scottish Parliament a response to the relevant body's report on progress under section 8. Section 21(1)(b) also operates in conjunction with section 19 to ensure that, when the functions contained in sections 22 to 27 are conferred on the advisory body designated under section 19, the order made under section 19 may provide for these functions to be conferred in stages.

Reason for taking power

42. This power allows for flexibility in the future as to which body or person carries out advisory functions under this Bill, particularly as the Bill framework is designed to last for at least 40 years. It will enable the functions to be carried out by an appropriate Scottish body, either an existing body or the Scottish Committee on Climate Change established under section 20 of the Bill. The related provision in section 21 is intended both to enable the phased conferral of new functions on the body and to remove the duplication of a reporting duty placed on the Scottish Ministers in section 8 to respond to the relevant body's report on progress. This latter provision is necessary because once section 24 comes into force an equivalent duty is placed on the Scottish Ministers in relation to the advisory body's reports on progress.

Choice of procedure

43. As this section provides for orders to be made conferring further climate change functions on the advisory body and specifying additional requirements on the provision of advice by the body, the level of Parliamentary scrutiny afforded by affirmative resolution procedure is considered appropriate.

Section 20 - Scottish Committee on Climate Change

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

44. Section 20 enables the Scottish Ministers to establish a Scottish Committee on Climate Change for the purpose of exercising the advisory functions set out in the Bill.

Reason for taking power

45. Section 19 of the Bill allows flexibility in designating the person or body that will provide the statutory advisory functions. This allows the Scottish Ministers to determine where such functions best lie. The Scottish Ministers currently intend to utilise the UK Committee on Climate Change established by the UK Climate Change Act 2008. However, if, in the future, this is no longer considered to be an adequate arrangement, the Scottish Ministers may decide to use the powers in section 19 to confer these functions on an existing Scottish public body, an example being the Scottish Environment Protection Agency. Alternatively, if that is not considered the most appropriate solution, section 20 enables the Scottish Ministers to establish a Scottish Committee on Climate Change.

Choice of procedure

46. As this provision allows for the creation of a new public body, affirmative resolution procedure is considered appropriate.

Section 23 – Reporting on progress towards targets

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

47. Section 23(2) enables the Scottish Ministers to specify the first year for which the advisory body must prepare reports on the progress being made towards the targets established under the Bill. Section 23(4) specifies when the advisory body must lay this report before the Scottish Parliament but also enables the Scottish Ministers to amend this deadline to a later date.

Reason for taking power

48. The first year for which there will be an annual target will be 2010. However, the Scottish Ministers intend to seek progress reports from the UK Committee on Climate Change in the initial years for which annual targets will be set. This arrangement will be reviewed in the future and, if it is considered that the UK Committee on Climate Change is not providing advice and scrutiny suitable for Scotland's unique requirements, the Scottish Ministers will be able to create or designate another person or body to carry out these functions. Even if this does turn out to be necessary, the timescales involved cannot be known at the time the Bill is introduced to the

Scottish Parliament. The power in section 23(2) therefore allows the Scottish Ministers to specify the first year for which the advisory body must prepare progress reports as and when the relevant timescales are known. The advisory body will be required to prepare reports for the first specified year and each year thereafter. The power to amend the reporting deadline to a later date is intended to provide flexibility should there be a delay, for whatever reason, in the availability and/ or reporting of the information (such as the disaggregated Scottish emissions data, for example) upon which the advisory body is required to comment.

Choice of procedure

49. Affirmative resolution procedure demonstrates the significance of the reporting and scrutiny framework established by this Bill.

Section 24 – Scottish Ministers’ response to reports on progress

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

50. Section 24(1) requires that the Scottish Ministers respond to the report prepared by the advisory body under section 23. Section 24(2) specifies the date by which this response is to be laid in the Scottish Parliament but also enables the Scottish Ministers to amend this deadline to a later date.

Reason for taking power

51. The power enabling the Scottish Ministers to amend the response deadline to a later date is intended to provide flexibility should the advisory body’s report under section 23 be delayed.

Choice of procedure

52. Affirmative resolution procedure demonstrates the significance of the reporting and scrutiny framework established by this Bill.

PART 3 – REPORTING DUTIES

Section 35 - Further provision about reporting duties

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

53. Section 35 allows further provision to be made imposing further reporting duties on the Scottish Ministers to report to the Scottish Parliament. Subsection (2)(a) enables additional information to be required in the statutory reports which Ministers must make; subsection (2)(b)

enables the period to be set in relation to which that information is to be provided; and subsection (2)(c) enables the period to be set within which that information is to be provided.

Reason for taking power

54. It is not possible to foresee all possible climate change reporting duties which may become necessary up until 2050 to ensure the Scottish Ministers are held accountable. The Scottish Ministers may, of course, report information on a non-statutory basis. However certain information may in the future be considered important enough for Scottish Ministers to be bound to report it rather than have discretion as to whether or not to do so. Section 35 allows additional reporting duties to be created.

Choice of procedure

55. As this will allow for an increased scope of requirements placed in primary legislation, affirmative resolution procedure is considered appropriate.

PART 4 – DUTIES OF PUBLIC BODIES RELATING TO CLIMATE CHANGE

Section 36 - Duties of public bodies relating to climate change

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

56. Section 36 enables the Scottish Ministers to impose duties relating to climate change, by order, on bodies or persons exercising functions of a public nature, referred to as “public bodies” for the purposes of this Bill. Subsection (3) allows the regulations to impose different duties on different public bodies. Subsections (4) and (5) state that the Scottish Ministers must consult with such associations of local authorities and such other persons as they consider appropriate before imposing a duty. Subsection (6) states that the Scottish Ministers must co-operate with the relevant public bodies to help them comply with duties imposed under this section.

Reason for taking power

57. Section 36 allows for flexibility in the future to help ensure bodies with functions of a public nature take action on climate change, including reducing emissions or adapting to the effects of climate change.

Choice of procedure

58. As this provision could place a burden on bodies or persons exercising functions of a public nature, affirmative resolution procedure is considered appropriate.

Section 38 – Reporting on climate change duties

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

59. Section 38 enables the Scottish Ministers, by order, to require relevant public bodies to report on how they are complying with climate change duties created under section 36. It also enables the Scottish Ministers to set out what reports must include, what format they must take and the time by which they must be submitted.

Reason for taking power

60. The power to require public bodies to report on compliance with climate change duties is intended to ensure that such duties are carried out in an open and transparent fashion.

Choice of procedure

61. Requiring public bodies to report upon climate change duties which they are required to carry out is not considered as significant a burden as the requirement to perform such duties in the first place. Negative resolution procedure is therefore considered appropriate.

Section 39 - Appointment of monitoring body

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

62. Section 39 allows the Scottish Ministers to designate persons or bodies to monitor whether relevant public bodies are complying with climate change duties created under section 36 of this Bill, or having regard to guidance given under section 37 of this Bill.

Reason for taking power

63. A wide range of bodies may be affected by the creation of new climate change-related duties under section 36 and guidance under section 37. It may be deemed appropriate with certain types of duties for monitoring arrangements to be established but this cannot be known until such duties or guidance are created. Until such time, it is not possible to determine the appropriate monitoring framework, including which body should be designated to carry out such functions.

Choice of procedure

64. As this provision enables the creation of a monitoring body which will have investigatory powers, the use of which could place a burden on a body or person exercising functions of a public nature, affirmative resolution procedure is considered appropriate.

PART 5 – OTHER CLIMATE CHANGE PROVISIONS

Chapter 1 - Adaptation

Section 46 - Variation of permitted times for making muirburn

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

65. Section 46 inserts a new section 23A into the Hill Farming Act 1946 (“the 1946 Act”). Subsection (1) of new section 23A of the 1946 Act provides the Scottish Ministers with an order-making power to specify dates before which, and after which, it is lawful to make muirburn in any year. Subsection (2) of the new section 23A of the 1946 Act clarifies the effect of an order made under the new subsection (1). The effect of such an order is to substitute for any of the dates specified in section 23(1) to (3) of the 1946 Act, the dates specified in the order. Subsection (3) stipulates that the Scottish Ministers may make an order under subsection (1) only if they consider it necessary or expedient to do so in relation to climate change.

Reason for taking power

66. The permitted times for making muirburn in Scotland have not changed since the 1946 Act came into force. Climate change in Scotland has altered our seasonal weather patterns. Future climate change scenarios suggest that annual temperatures will rise, winters may become wetter and summers generally drier. These climatic changes have impacted, and are likely to continue to impact, on the ability to successfully undertake muirburn. Where effective muirburn cannot be carried out, there is an increased risk of wildfire from dry or dead vegetation, which can result in the loss of valuable habitats and carbon stored in peat underlying the lands upon which this vegetation is found. The power to vary the permitted muirburn season will enable muirburn, and those engaged in that activity, to adapt to the effects of climate change by permitting the activity at times of the year which reflect optimal climatic conditions.

Choice of procedure

67. Subsection (5) of the new section 23A of the 1946 Act provides that an order made under subsection (1) of that section is subject to annulment in pursuance of a resolution of the Scottish Parliament. This power secures the continued effectiveness of an established activity already provided for in primary legislation. The order-making power can only be exercised where the Scottish Ministers are satisfied it is necessary or expedient to do so in relation to climate change, and the negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.

Chapter 2 - Forestry

Section 47 - Power to modify functions of Forestry Commissioners

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

68. Section 47 confers on the Scottish Ministers the power to modify the functions of the Forestry Commissioners in or as regards Scotland. Subsection (2) provides that this power may be exercised by the Scottish Ministers only where they consider it to be necessary or expedient to do so to comply with their duties under sections 1, 2 or 3(1)(b) of the Bill, or otherwise in relation to climate change. Subsection (3) provides that an order under this section could enable the Forestry Commissioners to form or participate in corporate bodies or trusts. Subsection (4) contains provisions orders to provide for allowing the Forestry Commissioners to delegate their functions to other persons.

Reason for taking power

69. The Forestry Commissioners have the general duty to promote the interests of forestry, the development of afforestation and the production and supply of timber and other forest products. In addition, the Forestry Commissioners have the function of managing land comprising the national forest estate. These functions have benefits in relation to the development of programmes, such as afforestation, which will assist with mitigation of climate change. The effects of climate change will continue to develop in the future. This power will ensure that the Forestry Commissioners can establish, participate in, or facilitate programmes to mitigate climate change without being prevented from doing so because of the limits set out in their current functions and duties which do not allow for them to form or participate in corporate bodies or trusts. The power will allow for flexibility to ensure that the Forestry Commissioners functions and duties can continue to be modified in future to meet the challenges posed by the continuing effects of climate change.

Choice of procedure

70. The affirmative resolution procedure is considered appropriate because of the breadth of the power and the fact that it may involve modification of primary legislation.

Chapter 3 – Energy Efficiency

Section 50 – Non-domestic buildings: assessment of energy performance and emissions

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament other than where the regulations only make provision relating to recovery of costs incurred by an enforcement authority in which case the procedure is negative resolution of the Scottish Parliament.

Provision

71. Section 50 enables the Scottish Ministers to make regulations relating to the assessment of the energy performance of and the emission of greenhouse gases from non-domestic buildings. Subsection (1)(b) provides that the regulations may extend not only to the greenhouse gases emitted by non-domestic buildings themselves but also to greenhouse gases otherwise associated with such buildings and with the activities carried out in these buildings. Subsection (2) lists certain things which the regulations may, in particular, provide about. Subsection (3) states that the enforcement authority provided for in the regulations is to be a local authority or such other person or body as the Scottish Ministers consider appropriate. Subsection (4) enables the enforcement authority to levy charges to recover the reasonable costs incurred in exercising its functions under the regulations.

Reason for taking power

72. The aim of the provisions for improving the energy performance of existing non-domestic buildings is to raise the contribution that the existing non-domestic stock can make to mitigating climate change. Buildings account for over 40% of emissions and there is scope to reduce these levels. They are to be subject to an assessment of the emissions of greenhouse gases and energy performance, an enhanced form of energy performance certificate (EPC). The enabling powers in section 50 will allow the creation of the framework necessary for this.

Choice of procedure

73. As this provision may be used to create regulations which could place a significant burden on the owners of non-domestic buildings, affirmative resolution procedure is considered appropriate. However, where regulations are made only to make provision relating to the recovery of costs it is considered that such regulations would be needed to keep such provisions up to date and would involve technical amendments which are unlikely to be significant and, therefore, would merit negative resolution procedure.

Chapter 4 – Waste Reduction and Recycling

Section 52 - Waste prevention and management plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

74. Section 52 enables the Scottish Ministers, by regulations, to place a duty on specified persons to prepare waste prevention and management plans. The Scottish Ministers would prescribe in regulations the persons required to prepare a plan (or plans), as well as the matters to be included in a plan. It is intended that the plans can be required for a range of different matters. For example, the regulations might require a plan for an individual construction project. Alternatively, they might require a plan for waste generated by a business on an on-going, day-to-day basis (e.g. office waste). It is intended that these regulations would deal with measures to prevent as well as manage waste.

75. Should the preparation of waste prevention and management plans be made compulsory by regulations under this section of the Bill, a regime will need to be established to ensure that plans are drawn up, that they are sufficiently rigorous, and that they are followed. A body will need to be established, or nominated, to do this. Subsection (2)(e) to (h) and section 60 of the Bill grants powers enabling such a regime to be set up and to establish or nominate a body to operate the regime.

Reason for taking power

76. Minimisation of waste, better use of resources, and careful management of such waste as does arise all impact on climate change. They are also important for other environmental goals, such as landfill reduction and preservation of amenity. Avoidance of waste can also generate savings for businesses. In view of this range of gains, many businesses already plan for prevention and management of waste. Powers would be taken to ensure that performance across the economy met best standards, and that up-to-date approaches and techniques be adopted.

77. The range of activities encompassed by the plans, and the kind of waste with which they will need to deal, will be strongly influenced by economic activities and market conditions prevailing in future. All of these may change over time. Taking these powers allows a flexible response to prevailing conditions.

Choice of procedure

78. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception would be regulations dealing only with charges by the monitoring and enforcement body (see section 60(4)) which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

Section 53 - Information on waste

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

79. Subsection 53(1) enables the Scottish Ministers, by regulations, to require specified persons to provide information to SEPA about the waste that they produce. Subsection (2) lists certain things which the regulations may, in particular, provide about, including the enforcement of duties imposed by the regulations and related offences for failing to comply with the requirements of the regulations.

Reason for taking power

80. It will be difficult to move to a zero waste society without much better information about the circumstances in which waste arises and its management, treatment and disposal in Scotland. Good, reliable waste data informs policy-makers when they are developing new ways of reducing and managing waste. It informs the private sector when it is seeking to invest in waste infrastructure as part of the move away from landfill, and also when looking to minimise waste, and thus costs. Such information would also help to meet the obligations of the Scottish Ministers under the Waste Statistics Regulation (2150/2002/EC)¹. This establishes a framework for the production of Community statistics on the generation, recovery and disposal of waste. It requires Member States and the European Commission to produce Community statistics on the generation, recovery and disposal of waste. SEPA already collates waste statistics which are used to meet Scotland's obligations under the EU Regulation. However, statistics on commercial and industrial waste are based on surveys for which the return rate is low.

81. Taking powers would enable the kind of statistics collected to be determined by developing needs. As an example, and without prejudicing any eventual use of the power, in future it may become possible and desirable to keep statistics relating to the greenhouse-gas-generating potential of waste.

Choice of procedure

82. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences.

¹ OJ No L 332, 9.12.2002, p1

Section 54 - Recyclable waste: facilities for deposit etc.

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

83. Section 54 enables the Scottish Ministers to make regulations which may require receptacles to be provided by persons of the kinds specified for a broad range of types of waste. It is possible that, for example, supermarkets could be required to provide recycling facilities at or near tills for packaging which customers could use. Offices could be required to provide receptacles in which employees could recycle their own paper, as well as that of the workplace. This would not be a complete innovation: such facilities are already available in places. In practice, the Scottish Ministers would only prescribe types of waste if there was capacity to recycle that waste and a market for the resulting recycle.

84. Regulations may also be used to require persons with the correct environmental authorisation to collect waste deposited in such facilities and to ensure so far as reasonably practicable that such waste is recycled. Charges payable to such authorised persons may be specified.

85. A monitoring and enforcement regime may be established to ensure that the facilities are provided, and used and operated correctly. Subsection (2)(f) to (i) and section 60 of the Bill grants powers enabling such a regime to be set up and to establish or nominate a body to operate the regime.

Reason for taking power

86. Improved provision of recycling facilities reduces the use of landfill and can also help to mitigate climate change. To improve recycling rates the producers of waste have to be given better opportunities to recycle, rather than dispose of the waste they produce; and waste has to be separated and kept uncontaminated to make recycling easier, or even physically possible. The provision of receptacles at convenient places, and which keep waste streams separate, achieves both these conditions.

87. The kinds of waste for which receptacles are provided are likely to change over time as recycling markets change or new products are developed. This will in turn affect judgements about the persons who should be required to provide and enabled to use these facilities. For this reason requirements are likely to need to be modified; and this power will permit this to be done.

Choice of procedure

88. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception would be regulations dealing only with charges by the monitoring and enforcement body which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

Section 55 - Recyclable waste: facilities for deposit at events etc.

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament (negative procedure for regulations dealing only with charging by enforcement authority)

Provision

89. Whereas section 54 is most likely to be used to require the provision of receptacles at more-or-less permanent locations, section 55 enables the Scottish Ministers to make regulations which confer power on local authorities to issue notices requiring receptacles to be provided for a broad range of types of waste at various events. The receptacles would be needed only for the duration of the event. This would not be a complete innovation: such facilities have already been made available at particular events. In practice, the Scottish Ministers would only prescribe types of waste if there was capacity to recycle that waste and a market for the resulting recycle.

90. Those who hold sporting or cultural events could be placed under a duty to provide receptacles in which those attending could leave a range of waste – relevant examples could be plastic cups and programmes. The materials so collected could then be recycled. Regulations may also be used to enable local authorities to require persons with the correct environmental authorisation to collect such waste and to ensure so far as reasonably practicable that waste deposited in such facilities is recycled. Regulations may specify charges payable to such authorised persons.

91. A monitoring and enforcement regime may be established to ensure that facilities are provided, used and operated correctly. Subsections (2)(k) to (n) and section 60 of the Bill grant powers enabling such a regime to be set up and to establish or nominate a body to operate the regime.

Reason for taking power

92. As with the kind of receptacles in permanent locations envisaged by section 54, the aim here is to encourage recycling and thus the more efficient use of resources. The conditions for higher recycling rates are to be established by maximising collection and by keeping different types of waste separate for easy recycling. An additional benefit which may be achieved by the provision of recycling facilities at events is a reduction in littering.

93. The kinds of waste for which receptacles are provided are likely to change over time as recycling markets change or new products are developed. This may in turn affect judgements about which events should be potentially subject to notices. For this reason, requirements are likely to need to be modified; and this power will permit this to be done.

Choice of procedure

94. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception

would be regulations dealing only with charges by the monitoring and enforcement body which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

Section 56 - Procurement of recyclate

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament (negative procedure for regulations dealing only with charging by enforcement authority)

Provision

95. Section 56 gives the Scottish Ministers powers to require specified persons to ensure that particular things procured or constructed by them contain or include a certain proportion of recyclate.

96. Arrangements would be required to ensure that these obligations were observed. A body would have to be set up or nominated to do this. Section 56(3)(f), subject to section 60, contains provisions allowing such a regime to be developed.

Reason for taking power

97. A great deal of recyclate is already procured by a wide range of businesses and public bodies, which promotes resource efficiency, reduces the use of landfill and helps mitigate climate change. It is likely, however, that markets for recyclate, and with them economic activity in the waste processing sector, could be increased if such procurement were made compulsory. It would also help to counter the effects of what may be perceived as a stigma attached to recycled products.

98. The kind of recycled materials which should be procured would, however, depend on market conditions prevailing at the time, as would the type of organisation at which the powers would be aimed. Care would also have to be taken, for example, that any materials stipulated should be sufficiently widely available and readily traded to avoid market distortions. Powers therefore need to be flexible enough to allow modification, as envisaged in this section.

Choice of procedure

99. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception would be regulations dealing only with charges by the monitoring and enforcement body which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

Section 57 – Targets for reduction of packaging etc.

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament (negative procedure for regulations dealing only with charging by enforcement authority)

Provision

100. Section 57 enables the Scottish Ministers, by regulations, to set targets to reduce the amount of packaging used and to require specified persons to comply with those targets. Without prejudicing detailed provisions, it would allow Ministers to obtain information about a baseline volume of packaging on the market in Scotland and then set targets on retailers, for example, to reduce that amount year on year. The reduction might be expressed in ways other than absolute amounts: for example, targets could be set with reference to the relationship between volume of packaging put on the market by a retailer and its turnover. The forms of packaging for which targets might be set would be a matter for the regulations and could, obviously, be altered by further regulations.

101. A monitoring and enforcement regime may be established to ensure that information is properly collated and targets met. Subsection (2)(e) to (h) and section 60 of the Bill grants powers enabling such a regime to be set up and to establish or nominate a body to operate the regime.

Reason for taking power

102. There is already legislation regarding packaging, in the form of the Packaging (Essential Requirements) Regulations 2003² and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007³. These respectively set out the required specifications of packaging, and place responsibility on producers to recycle a proportion of waste packaging put on the market by them. Neither of these sets of regulations actually requires that the overall amount of packaging used should be reduced. The proposal in this Bill would complement existing legislation. Baseline information about packaging in circulation is needed before targets can be set, and the system is likely to require future revision in light of changing market conditions.

Choice of procedure

103. Regulations will provide the detail of any targets, to whom they apply, and how they should be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception would be regulations dealing only with charges by the monitoring and enforcement body which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

² SI 2003/1941

³ SI 2007/871

Section 58 – Deposit and return schemes

Power conferred on:	Scottish Ministers
Power exercisable by:	regulations made by statutory instrument
Parliamentary procedure:	affirmative resolution of the Scottish Parliament other than where the regulations only make provision relating to one or more of: charging by the enforcement authority, amount of deposits, form and content of notices or registration fees, in which case the procedure is negative resolution of the Scottish Parliament

Provision

104. Section 58 allows the Scottish Ministers to establish a deposit and return schemes, which are defined in terms of attaching a returnable element, called a “deposit” to the sale price of an article, which would be payable to the person returning the packaging associated with that item. The section allows the items which would be included in the scheme, and the persons involved, as well as the amount of any deposit, to be defined in regulations.

105. The section would permit a range of schemes to be developed, within that basic structure. At its simplest a scheme could merely require Scottish producers to establish their own deposit and return schemes. At the other end of the scale it could require the establishment of a “clearing house” system similar to that operating in Denmark and Norway, whereby relevant items are identified by the clearing house against payment of a fee by whomever puts them on the market. These fees are used to refund those who return the materials. The clearing-house can also take responsibility for recycling the materials collected: this is allowed for by the section.

106. A monitoring and enforcement regime may be established to ensure that materials subject to the requirements have a deposit attached to the sale price of the relevant items and this is properly refunded to those returning them. Monitoring and enforcement powers would be required. Subsection (7)(i) to (l) and section 60 of the Bill grants powers enabling such a regime to be set up and to establish or nominate a body to operate the regime. Section 58(5) contains provisions to set up a clearing house of the type described above.

Reason for taking power

107. While the 2007 Regulations described above do require the recycling of certain amounts of packaging this tends to be “back of store”. A deposit and return scheme could increase the return and the recycling of packaging which reaches consumers’ hands. Section 58(6) provides that Ministers may only make regulations where they consider this to be necessary or expedient in order to promote or secure an increase in the recycling of materials. Furthermore, by attaching a monetary value to items of packaging it could discourage the careless discarding of these materials – littering and fly-tipping – and reduce the concomitant amenity, and health and safety, problems.

108. A scheme could also encourage manufacturers to develop reusable forms of packaging. Those who operate existing deposit and return schemes do so to encourage reuse of packaging and thus keep their own costs down. It is likely that the types of product which are suitable for deposit and return schemes will develop along with markets and technology. The level of detail

required to establish properly functioning schemes is likely to be best left to subordinate legislation.

Choice of procedure

109. Regulations will provide the detail of any deposit and return schemes. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exceptions would be regulations dealing only with charges by the monitoring and enforcement body, the amount of the deposits, form and content of information notices for customers, and registration fees which, in terms of section 64(5) and (7)(d) and (e), would be made by negative resolution.

Section 59 - Charges for supply of carrier bags

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament (negative procedure for regulations dealing only with charging by enforcement authority)

Provision

110. Section 59 will enable the Scottish Ministers to require suppliers of goods to charge for carrier bags. This may be done by reference to the type of goods sold, the type of supplier, turnover or other factors. The regulations would also define the carrier bags to which the charge applied and specify either the amount to be charged for each bag, or provide for how that amount is to be determined. The regulations would also be able to specify how the net proceeds are to be used, for example to ensure (if necessary) that the proceeds are applied to environmental causes which operate in Scotland.

111. Records will need to be kept about matters such as the number, type and tonnage of carrier bags for which a seller has imposed the charge. Section 59(2)(g) to (l), subject to section 60, enable the Scottish Ministers to appoint a body or bodies to monitor the accuracy of these records, and also to enforce the regulations, including ensuring that the proceeds were actually spent on the required good causes and to impose sanctions for failure to comply with the regulations.

Reason for taking power

112. Voluntary action has already significantly reduced the issue of carrier bags. However, reducing carrier bag use to a minimum may well require the imposition of a charge. Exactly what bags should be subject to such a charge, however, is likely not only to be a matter of detailed exposition, but also to be subject to variables, depending on – for example – life cycle analyses of various kinds of bag at any given time. Changes in the plastic reprocessing market, for example, could significantly affect the assessment of the environmental costs of plastic bags. Consumer shopping habits may change, and be reflected in the pattern of bag use associated with supermarkets on the one hand and boutiques on the other. It is therefore necessary for the power to set charges to be capable of modifying a range of details.

Choice of procedure

113. Regulations will provide the detail of any scheme which is to be enforced. It is therefore appropriate, for proper Parliamentary scrutiny, that affirmative procedure be adopted. This is particularly desirable given that regulations are likely to create new offences. The exception would be regulations dealing only with charges by the enforcement body, which, in terms of section 64(5) and (7)(e), would be made by negative resolution.

Section 67 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: no Parliamentary procedure

Provision

114. This section provides that the provisions of the Bill come into force on a day or days set by the Scottish Ministers by order. The exceptions to this are: section 67 itself and section 64 (which contains provisions governing the making of subordinate legislation). Those sections come into force on Royal Assent. Sections 22 to 27 (which relate to powers and duties in connection with the advisory body which may be designated under section 19) come into force in accordance with section 21.

Reason for taking power

115. This section addresses the administrative requirements necessary for commencing the Bill.

Choice of procedure

116. The decision on commencement is a matter for the Scottish Ministers, and as is usual, the Scottish Government considers that the commencement powers should not be subject to any Parliamentary procedure.

Schedule 1, paragraph 2(2) – The Scottish Committee on Climate Change

Power conferred on: Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

117. Paragraph 2(2) of schedule 1 provides that the Scottish Ministers may by order alter the number of members of the Scottish Committee on Climate Change.

Reason for taking power

118. Paragraph 2(1) of schedule 1 specifies that the Scottish Committee on Climate Change is to consist of a person as Chair with five to eight other members. These numbers are intended to ensure that the Committee's membership is of sufficient size to ensure it contains an appropriate

This document relates to the Climate Change (Scotland) Bill (SP Bill 17) as introduced in the Scottish Parliament on 4 December 2008

range of expertise and experience but is not so large as to become unwieldy. Paragraph 2(2) is intended to ensure flexibility in the future should it become apparent that the Committee should operate with fewer than five or more than eight members, in addition to the Chair.

Choice of procedure

119. Changing the number of other members of the Scottish Committee on Climate Change is considered to be an administrative amendment. It is therefore appropriate that negative resolution be used for an order made under this section of the Bill.

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CLIMATE CHANGE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM