

# Climate Change (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 17-EN. A Policy Memorandum is printed separately as SP Bill 17-PM.

# Climate Change (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to set a target for the year 2050, an interim target for the year 2030, and to provide for annual targets, for the reduction of greenhouse gas emissions; to provide about the giving of advice to the Scottish Ministers relating to climate change; to confer power on Ministers to impose climate change duties on public bodies; to make further provision about mitigation of and adaptation to climate change; to make provision about energy efficiency; to make provision about the reduction and recycling of waste; and for connected purposes.

## PART 1

### EMISSIONS REDUCTION TARGETS

#### *The 2050 target*

#### **1 The 2050 target**

- (1) The Scottish Ministers must ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the baseline.
- (2) In this Act, the target set out in subsection (1) is known as the “2050 target”.

#### *The interim target*

#### **2 The interim target**

- (1) The Scottish Ministers must ensure that the net Scottish emissions account for the year 2030 is at least 50% lower than the baseline.
- (2) In this Act, the target set out in subsection (1) is known as the “interim target”.

#### *Annual targets*

#### **3 Annual targets**

- (1) The Scottish Ministers must—
  - (a) for each year in the period 2010-2050, set a target for the maximum amount of the net Scottish emissions account;
  - (b) ensure that the net Scottish emissions account for each year in that period does not exceed the target set for that year.
- (2) The target—

- (a) for 2010, must be set at an amount that is less than the estimated net Scottish emissions account for 2009;
- (b) for each year in the period 2011-2019, must be set at an amount that is less than the target for the preceding year;
- (c) for each year in the period 2020-2050, must be set at an amount that is at least 3% less than the target for the preceding year.

(3) In this Act—

- (a) an “annual target” for any year means the target for the maximum amount of the net Scottish emissions account set for that year in accordance with this section and section 4;
- (b) references to an annual target being met are references to the net Scottish emissions account for a year not exceeding the annual target for that year (and cognate expressions are to be construed accordingly).

#### 4 Setting annual targets

- (1) The Scottish Ministers must, by order, set the annual targets for each year in the periods mentioned in paragraphs (a) to (g) of subsection (2).
- (2) The Scottish Ministers must set the annual targets for each year—
  - (a) in the period 2010-2022, no later than 1 June 2010;
  - (b) in the period 2023-2027, no later than 31 October 2011;
  - (c) in the period 2028-2032, no later than 31 October 2016;
  - (d) in the period 2033-2037, no later than 31 October 2021;
  - (e) in the period 2038-2042, no later than 31 October 2026;
  - (f) in the period 2043-2047, no later than 31 October 2031;
  - (g) in the period 2048-2050, no later than 31 October 2036.
- (3) The Scottish Ministers must, when setting annual targets, have regard—
  - (a) in relation to each year in the period 2010-2030, to the achievement of the interim target and the 2050 target;
  - (b) in relation to each year in the period 2031-2050, to the achievement of the 2050 target.
- (4) The Scottish Ministers must, when setting annual targets, also have regard to the following matters (the “target-setting criteria”)—
  - (a) scientific knowledge about climate change;
  - (b) technology relevant to climate change;
  - (c) economic circumstances, in particular the likely impact of the target on—
    - (i) the Scottish economy;
    - (ii) the competitiveness of particular sectors of the Scottish economy;
    - (iii) small and medium-sized enterprises;
  - (d) fiscal circumstances, in particular the likely impact of the target on taxation, public spending and public borrowing;

- (e) social circumstances, in particular the likely impact of the target on those living in poverty;
- (f) the likely impact of the target on those living in remote and rural communities;
- (g) energy policy, in particular the likely impact of the target on energy supplies, the renewable energy sector and the carbon and energy intensity of the Scottish economy;
- (h) European and international law and policy relating to climate change.

## **5 Advice before setting annual targets**

- (1) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under section 4(1) before the Scottish Parliament, request advice from the relevant body.
- (2) As soon as reasonably practicable after laying such a draft, the Scottish Ministers must publish a statement setting out in respect of the annual targets set by the order—
  - (a) the reasons for setting those annual targets at those levels;
  - (b) the extent to which those targets take account of the target-setting criteria.
- (3) If the order under section 4(1) makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (4) A statement under subsection (2) or (3) may be published in such manner as the Scottish Ministers consider appropriate.
- (5) In this Part, the “relevant body” means—
  - (a) where no order has been made under section 19(1) designating a person or body as the advisory body, the UK Committee on Climate Change; or
  - (b) where such an order has been made, the advisory body.
- (6) In subsection (5)(a), the “UK Committee on Climate Change” means the Committee on Climate Change established under section 32 of the Climate Change Act 2008 (c.27) (the “2008 Act”).

## **6 Modifying annual targets etc.**

- (1) The Scottish Ministers may, by order, modify—
  - (a) the percentage figure mentioned in section 3(2)(c);
  - (b) an annual target set by virtue of section 4(1);
  - (c) any date mentioned in paragraphs (a) to (g) of section 4(2);
  - (d) the target-setting criteria in section 4(4).
- (2) The Scottish Ministers may make an order under subsection (1)(a) only if they consider that it is no longer necessary for annual targets to be set by reference to that percentage figure.
- (3) The Scottish Ministers may make an order under subsection (1)(b) only if they consider that it is appropriate to do so as a result of significant changes to the basis on which the annual target was set.

- (4) The Scottish Ministers may make an order under subsection (1)(c) or (d) only if they consider it appropriate to do so.
- (5) The power in subsection (1)(a) may not be exercised so as to substitute a percentage of less than zero.
- 5 (6) The power in subsection (1)(b)—
- (a) may be exercised only before the beginning of the year to which the target relates;
- (b) may not be exercised if the effect of doing so would be that the target for the year would be greater than the target for the preceding year.

## 7 **Advice before modifying annual targets etc.**

- 10 (1) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under section 6(1) before the Scottish Parliament, request advice from the relevant body.
- (2) If the order under section 6(1) makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- 15 (3) A statement under subsection (2) may be published in such manner as the Scottish Ministers consider appropriate.

### *Advice on progress*

## 8 **Progress towards targets**

- 20 (1) The Scottish Ministers must in each year, beginning with the year 2011, request the relevant body to prepare a report setting out that body's views on—
- (a) progress towards achievement of—
- (i) annual targets;
- (ii) the interim target;
- 25 (iii) the 2050 target;
- (b) whether the annual targets, the interim target or the 2050 target are likely to be achieved;
- (c) any further effort which may be necessary to achieve annual targets, the interim target or the 2050 target.
- 30 (2) In the second year following a year for which an annual target has been set (a “target year”), the Scottish Ministers must request the relevant body to prepare a report setting out that body's views on—
- (a) whether the annual target for the target year was met;
- (b) the way in which that target was or was not met;
- 35 (c) the action taken by the Scottish Ministers to reduce net Scottish emissions during that year.
- (3) The Scottish Ministers must lay a response to the relevant body's report under this section before the Scottish Parliament as soon as reasonably practicable after they receive that body's report.

*Greenhouse gases*

**9 Greenhouse gases**

- (1) In this Act, a “greenhouse gas” means—
- (a) carbon dioxide;
  - (b) methane;
  - (c) nitrous oxide;
  - (d) hydrofluorocarbons;
  - (e) perfluorocarbons;
  - (f) sulphur hexafluoride.
- (2) The Scottish Ministers may, if they consider it appropriate to do so, by order, modify subsection (1) so as to—
- (a) add a gas;
  - (b) modify the description of a gas.
- (3) The power in subsection (2)(a) may be exercised only if it appears to the Scottish Ministers that an agreement or arrangement at European or international level recognises that the gas to be added contributes to climate change.
- (4) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under subsection (2) before the Scottish Parliament, request advice from the relevant body.
- (5) If the order makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (6) A statement under subsection (5) may be published in such manner as the Scottish Ministers consider appropriate.

*Baseline*

**10 The baseline**

- (1) In this Act, the “baseline” means the aggregate amount of—
- (a) net Scottish emissions of carbon dioxide for 1990; and
  - (b) net Scottish emissions of each of the greenhouse gases other than carbon dioxide for the year that is the baseline year for that gas.
- (2) The baseline years for greenhouse gases other than carbon dioxide are—
- (a) for methane, 1990;
  - (b) for nitrous oxide, 1990;
  - (c) for hydrofluorocarbons, 1995;
  - (d) for perfluorocarbons, 1995;
  - (e) for sulphur hexafluoride, 1995.

**11 Baselines for additional greenhouse gases**

- (1) This section applies where the Scottish Ministers have made an order under section 9(2)(a) adding a greenhouse gas.
- (2) In this section, such a gas is referred to as an “additional greenhouse gas”.
- 5 (3) The Scottish Ministers may, by order, make provision as to the manner of determining, in the case of an additional greenhouse gas, the amount of net Scottish emissions for the baseline year.
- (4) An order under subsection (3) may in particular—
- (a) designate a year as the baseline year for the additional greenhouse gas;
- 10 (b) provide for the amount of net Scottish emissions of the gas for that year to be treated for the purposes of this Act as the amount of net Scottish emissions of that gas for that baseline year.

*Supplementary***12 The net Scottish emissions account**

- 15 (1) The net Scottish emissions account means the aggregate amount of net Scottish emissions of greenhouse gases—
- (a) reduced by the amount of carbon units credited to the net Scottish emissions account for the period in accordance with regulations under subsection (2);
- 20 (b) increased by the amount of carbon units that, in accordance with such regulations, are to be debited from the net Scottish emissions account for the period.
- (2) The Scottish Ministers may, by regulations, make provision about—
- (a) the circumstances in which carbon units may be credited to the net Scottish emissions account for a period;
- 25 (b) the circumstances in which such units may be debited from that account for a period;
- (c) the manner in which this is to be done.
- (3) The regulations must contain provision for ensuring that carbon units that are credited to the net Scottish emissions account for a period cease to be available to offset other greenhouse gas emissions.

**13 Attribution of emissions to Scotland**

30 For the purposes of section 15(1), emissions of a greenhouse gas are attributable to Scotland if—

- (a) they are emitted from sources in Scotland;
- (b) they are attributed to Scotland by virtue of an order under section 14(1).

**14 Scottish share of emissions from international aviation and international shipping**

- 35 (1) The Scottish Ministers may, by order, make provision regarding the emissions of greenhouse gases from international aviation and international shipping that are attributable to Scotland.

- (2) An order under subsection (1) may make provision—
- (a) as to the period or periods (whether past or future) in which emissions of a greenhouse gas are to be taken into account as Scottish emissions of that gas;
  - (b) as to the manner in which such emissions are to be taken into account in determining Scottish emissions of that gas for the year that is the baseline year for that gas.
- (3) The Scottish Ministers must, before laying a draft of a statutory instrument containing an order under subsection (1) before the Scottish Parliament, request advice from the relevant body.
- (4) If the order makes provision different from that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.
- (5) A statement under subsection (4) may be published in such manner as the Scottish Ministers consider appropriate.

## **15 Scottish emissions and removals**

- (1) In this Act—
- “emissions”, in relation to a greenhouse gas, means emissions of that gas into the atmosphere that are attributable to human activity;
  - “Scottish emissions”, in relation to a greenhouse gas, means emissions of that gas which are attributable to Scotland;
  - “Scottish removals”, in relation to a greenhouse gas, means removals of that gas from the atmosphere due to land use, land-use change or forestry activities in Scotland;
  - “the net Scottish emissions” for a period, in relation to a greenhouse gas, means the amount of Scottish emissions of that gas for the period reduced by the amount of Scottish removals of that gas for the period.
- (2) The Scottish Ministers may, if they consider it appropriate to do so, by order, modify the definition of Scottish removals in subsection (1).
- (3) The amount of Scottish emissions and Scottish removals of a greenhouse gas for a period must, in so far as reasonably practicable, be determined consistently with international carbon reporting practice.

## **16 Measurement of emissions etc.**

- (1) For the purposes of this Act, greenhouse gas emissions, reductions of such emissions and removals of greenhouse gases from the atmosphere are measured or calculated in tonnes of carbon dioxide equivalent.
- (2) A “tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice).

## **17 International carbon reporting practice**

In this Act, “international carbon reporting practice” means accepted practice in relation to reporting for the purposes of—

- (a) the protocols to the United Nations Framework Convention on Climate Change;
- (b) such other agreements or arrangements at European or international level as the Scottish Ministers may, by order, specify.

## 18 Carbon units and carbon accounting

- 5 (1) The Scottish Ministers may, by regulations, make provision for a scheme—
- (a) for registering or otherwise keeping track of carbon units;
  - (b) for establishing and maintaining accounts in which carbon units may be held, and between which they may be transferred, by the Scottish Ministers.
- 10 (2) Regulations under subsection (1) may, in particular, provide for an existing scheme to be adapted for these purposes.
- (3) The regulations may also include provision—
- (a) designating a person or body to administer the scheme;
  - (b) establishing a person or body for that purpose and making such provision in relation to the appointment of members, staffing, expenditure, procedure and otherwise of the person or body as the Scottish Ministers consider appropriate;
  - (c) conferring power on the Scottish Ministers to give guidance or directions to the person or body administering the scheme;
  - (d) conferring power on the Scottish Ministers to delegate the performance of any of the functions conferred on them by the regulations;
  - (e) requiring the payment by persons using the scheme of such charges as are reasonably required to cover the reasonable costs incurred in operating the scheme.
- 20 (4) In this Act, a “carbon unit” means a unit of a kind specified in regulations made under subsection (1) and which represents—
- (a) a reduction in an amount of greenhouse gas emissions;
  - (b) the removal of an amount of greenhouse gas from the atmosphere;
  - (c) an amount of greenhouse gas emissions allowed under a scheme or arrangement imposing a limit on such emissions.
- 25

## PART 2

### ADVISORY FUNCTIONS

#### *Advisory body*

## 19 Meaning of advisory body

- 30 (1) The Scottish Ministers may, by order, designate—
- (a) a body established under section 20(1); or
  - (b) such other public body as they consider appropriate,
- 35 to exercise the functions mentioned in subsection (3) (the “advisory functions”).
- (2) In this Act, the body designated by virtue of subsection (1) is the “advisory body”.

- (3) The advisory functions are—
- (a) the function of providing advice, analysis, information and other assistance to the Scottish Ministers in respect of Ministers’ functions under sections 5, 7, 8 and 9(4);
  - 5 (b) the functions conferred on the advisory body by sections 22 to 27; and
  - (c) such other functions relating to advice on climate change as the Scottish Ministers may confer by an order under subsection (1).
- (4) An order under subsection (1) may in particular provide—
- 10 (a) for the conferral of functions on the advisory body relating to advice on climate change;
  - (b) for the information that advice must contain;
  - (c) for the factors to which the body is to have regard in giving that advice;
  - (d) for the period within which the body must give that advice;
  - (e) as to whom that advice is to be given;
  - 15 (f) for the form and manner in which that advice is to be published and laid before the Scottish Parliament.
- (5) In subsection (1)(b) , a “public body” means a person or body with functions of a public nature.

*Scottish Committee on Climate Change*

**20 Scottish Committee on Climate Change**

- (1) The Scottish Ministers may, by order, establish a body for the purpose of exercising the advisory functions.
  - (2) The body established by virtue of subsection (1) is to be known as the Scottish Committee on Climate Change (the “Committee”).
  - 25 (3) Schedule 1 makes further provision about the Committee.
  - (4) An order under subsection (1) may in particular provide—
- (a) for the conferral of functions on the Committee relating to advice on climate change;
  - 30 (b) in relation to the status, constitution and proceedings of the Committee as the Scottish Ministers consider appropriate;
  - (c) for the information that the Committee’s advice must contain;
  - (d) for the factors to which the Committee is to have regard in giving that advice;
  - (e) for the period within which the Committee must give that advice;
  - (f) as to whom that advice is to be given;
  - 35 (g) for the form and manner in which that advice is to be published and laid before the Scottish Parliament.

**21 Application of sections 22 to 27**

- (1) Sections 22 to 27 have effect only from—

- (a) the date when an order made by the Scottish Ministers under section 19(1) comes into force; or
- (b) such later date or dates as the Scottish Ministers may specify in an order under that section.

5 (2) When an order under section 19(1) bringing section 24 into effect comes into force, subsection (3) of section 8 ceases to have effect.

## 22 Advice on annual targets etc.

(1) When requested to do so by the Scottish Ministers, the advisory body must provide the Scottish Ministers with advice as regards—

- 10 (a) annual targets Ministers propose to set under section 4;  
(b) a modification Ministers propose to make under section 6.

(2) When providing advice under subsection (1)(a), the advisory body must—

- (a) express a view as to whether the annual targets are appropriate; and
- (b) explain that view by reference to the target-setting criteria.

15 (3) When providing advice under subsection (1)(a), the advisory body must also express a view as to—

(a) the extent to which the annual targets should be met—

- (i) by taking action to reduce net Scottish emissions;
- (ii) by the use of carbon units that in accordance with regulations under section 12(2) may be credited to the net Scottish emissions account;

(b) the respective contributions towards meeting the annual targets that should be made—

- (i) by the traded sector of the Scottish economy;
- (ii) by the other sectors of the Scottish economy;

(c) the sectors of the Scottish economy in which there are particular opportunities for contributions to be made towards meeting the targets through reductions in emissions of greenhouse gases.

(4) The advisory body must provide advice under this section within such period as the Scottish Ministers may reasonably request.

30 (5) In subsection (3)(b)(i), “traded sector” means the sectors of the Scottish economy which are covered by trading schemes within the meaning of section 44 of the 2008 Act.

## 23 Reporting on progress towards targets

(1) The advisory body must, in each year beginning with the specified year, prepare a report setting out that body’s views on—

- 35 (a) progress towards achievement of—
- (i) annual targets;
  - (ii) the interim target;
  - (iii) the 2050 target;

(b) whether the annual targets, the interim target or the 2050 target are likely to be achieved;

(c) any further effort which may be necessary to achieve annual targets, the interim target or the 2050 target.

5 (2) In subsection (1), the “specified year” means such year as the Scottish Ministers may, by order, specify.

(3) A report prepared in the second year following a year for which an annual target has been set (a “target year”), must also set out the advisory body’s views on—

(a) whether the annual target for the target year was met;

10 (b) the way in which that target was or was not met;

(c) the action taken by the Scottish Ministers to reduce net Scottish emissions during that year.

(4) The advisory body must lay a report under this section before the Scottish Parliament no later than—

15 (a) 31 January in the third year following the target year; or

(b) such other later date as the Scottish Ministers may, by order, appoint.

#### **24 Scottish Ministers’ response to reports on progress**

(1) The Scottish Ministers must lay before the Scottish Parliament a response to a report laid by the advisory body before the Parliament under section 23.

20 (2) The response to the advisory body’s report must be laid before the Parliament no later than—

(a) 31 March in the third year following the year for which an annual target has been set; or

(b) such later date as the Scottish Ministers may, by order, appoint.

#### **25 Duty of advisory body to provide advice or other assistance**

When requested to do so by the Scottish Ministers, the advisory body must provide advice, analysis, information or assistance as regards—

(a) the exercise of the Scottish Ministers’ functions under this Act;

30 (b) the exercise of Ministers’ functions in relation to climate change other than under this Act;

(c) other matters relating to climate change.

#### **26 Guidance to advisory body**

(1) The advisory body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Act.

35 (2) The Scottish Ministers may not give the advisory body guidance as to the content of any advice or report.

(3) The power to give guidance under subsection (1) includes power to vary or revoke the guidance.

**27 Power to give directions to advisory body**

- (1) The Scottish Ministers may, if they consider it appropriate to do so, give the advisory body directions as to the exercise of its functions under this Act.
- (2) The Scottish Ministers may not direct the advisory body as to the content of any advice or report.
- (3) The power to give directions under subsection (1) includes power to vary or revoke the directions.
- (4) The advisory body must comply with any directions given under subsection (1).

**PART 3**

## REPORTING DUTIES

**28 Reports on annual targets**

- (1) The Scottish Ministers must lay before the Scottish Parliament a report in respect of each year in the period 2010-2050 for which an annual target has been set (a “target year”).
- (2) The report must state whether the annual target for the target year has been met.
- (3) If the annual target has not been met, the report must explain why.
- (4) The report must also contain the information mentioned in section 29.
- (5) The report under this section must be laid before the Parliament no later than 31 October in the second year after the target year.

**29 Reports on annual targets: content**

- (1) In respect of each greenhouse gas, the report must—
  - (a) state the amount of net Scottish emissions for the baseline year;
  - (b) state the amount of net Scottish emissions for the target year;
  - (c) state whether the amount of net Scottish emissions represents an increase or decrease compared to the equivalent amount for the previous target year;
  - (d) identify the methods used to measure or calculate the amount of net Scottish emissions (including in particular any change to those methods).
- (2) The report must also set out the aggregate amount for the target year of net Scottish emissions.
- (3) The report must also—
  - (a) state the amount of the net Scottish emissions account for the target year;
  - (b) state the total amount of carbon units—
    - (i) that have been credited to or debited from the net Scottish emissions account for the target year;
    - (ii) that have been purchased in the target year;
    - (iii) that have been held and not surrendered in the target year;

(c) give details of the number and type of those carbon units.

(4) The report must also—

(a) state the amount of Scottish gross electricity consumption for the target year;

(b) state the amount of Scottish electricity generation for the target year.

5 (5) If the method of measuring or calculating net Scottish emissions changes and that change is such as to require adjustment of an amount for an earlier target year, the report must specify the adjustment required and state the adjusted amount.

(6) An adjustment under subsection (5) must, in so far as reasonably practicable, be made in accordance with international carbon reporting practice.

10 (7) The report may contain such other information as the Scottish Ministers consider appropriate and, in particular, may state the amount of Scottish electricity generation from each source for the target year.

### **30 Reports on proposals and policies for meeting annual targets**

15 (1) As soon as reasonably practicable after making an order under section 4(1) setting annual targets, the Scottish Ministers must lay before the Scottish Parliament a report containing the following information.

(2) The report must, in particular, set out—

(a) the Scottish Ministers' proposals and policies for meeting the annual targets;

20 (b) how those proposals and policies are expected to contribute towards the achievement of the interim target and the 2050 target;

(c) the timescales over which those proposals and policies are expected to take effect.

(3) The report must also explain how the proposals and policies set out in the report are expected to affect different sectors of the Scottish economy.

(4) The second and each subsequent report under this section—

25 (a) must contain an assessment of the progress towards implementing proposals and policies set out in earlier reports;

(b) may make such adjustments to those proposals and policies as the Scottish Ministers consider appropriate.

### **31 Reports on proposals and policies where annual targets not met**

30 (1) This section—

(a) applies if the Scottish Ministers lay a report under section 28 which states that an annual target has not been met;

(b) does not apply if that report relates to the annual target for 2050.

35 (2) As soon as reasonably practicable after the report referred to in subsection (1)(a) has been laid, the Scottish Ministers must lay a report before the Scottish Parliament setting out proposals and policies to compensate in future years for the excess emissions.

### **32 Report on the interim target**

(1) The Scottish Ministers must lay before the Scottish Parliament a report containing the following information in respect of the year 2030.

- 
- (2) The report must state whether the interim target has been met.
- (3) If the interim target has not been met, the report must explain why.
- (4) In respect of each greenhouse gas, the report must state the amount of net Scottish emissions for 2030.
- 5 (5) The report must also—
- (a) state the amount of the net Scottish emissions account for 2030;
  - (b) state the total amount of carbon units—
    - 10 (i) that have been credited to or debited from the net Scottish emissions account for 2030;
    - (ii) that have been purchased in 2030;
    - (iii) that have been held and not surrendered in 2030;
  - (c) give details of the number and type of those carbon units.
- (6) In subsections (4) and (5), the amount means the amount set out in the report for 2030 made under section 28.
- 15 (7) The report may contain such other information as the Scottish Ministers consider appropriate.
- (8) The report under this section must be laid before the Parliament no later than 31 October 2032.

### **33 Report on the 2050 target**

- 20 (1) The Scottish Ministers must lay before the Scottish Parliament a report containing the following information in respect of the year 2050.
- (2) The report must state whether the 2050 target has been met.
- (3) If the 2050 target has not been met, the report must explain why.
- 25 (4) In respect of each greenhouse gas, the report must state the amount of net Scottish emissions for 2050.
- (5) The report must also—
- (a) state the amount of the net Scottish emissions account for 2050;
  - (b) state the total amount of carbon units—
    - 30 (i) that have been credited to or debited from the net Scottish emissions account for 2050;
    - (ii) that have been purchased in 2050;
    - (iii) that have been held and not surrendered in 2050;
  - (c) give details of the number and type of those carbon units.
- (6) In subsections (4) and (5), the amount means the amount set out in the report for 2050 made under section 28.
- 35 (7) The report may contain such other information as the Scottish Ministers consider appropriate.
- (8) The report under this section must be laid before the Parliament no later than 31 October 2052.

**34 Reports: provision of further information to the Scottish Parliament**

- 5 (1) Where the Scottish Ministers lay a report mentioned in subsection (2) before the Scottish Parliament, they must, as soon as reasonably practicable after doing so, and in so far as reasonably practicable, make a statement to the Parliament relating to the report.
- (2) Those reports are reports under—
- (a) section 28(1) (report on annual target);
  - (b) section 30(1) (report on proposals and policies for meeting annual targets);
  - 10 (c) section 31(2) (report on proposals and policies to compensate for excess emissions);
  - (d) section 32(1) (report on interim target);
  - (e) section 33(1) (report on 2050 target).
- 15 (3) Where the Scottish Ministers lay a report referred to in subsection (2)(a), they must also, as soon as reasonably practicable after doing so, and in so far as reasonably practicable, meet with the persons who convene and chair such committees of the Scottish Parliament as are for the time being appointed by virtue of standing orders.

**35 Further provision about reporting duties**

- 20 (1) The Scottish Ministers may, if they consider it appropriate to do so, by order, make further provision imposing duties on themselves to report to the Scottish Parliament.
- (2) An order under subsection (1) may in particular—
- (a) provide for the information to be provided under the duties;
  - (b) provide for the period in relation to which that information is to be provided;
  - (c) provide for the period within which that information is to be provided.

**PART 4**

DUTIES OF PUBLIC BODIES RELATING TO CLIMATE CHANGE

*Duties of public bodies*

**36 Duties of public bodies relating to climate change**

- 30 (1) The Scottish Ministers may, if they consider it appropriate to do so, by order, make provision relating to the imposition on public bodies of duties relating to climate change (“climate change duties”).
- (2) In this Part, a public body which has climate change duties by virtue of subsection (1) is a “relevant public body”.
- (3) An order under subsection (1) may in particular—
- 35 (a) impose climate change duties on—
    - (i) all public bodies;
    - (ii) public bodies of a particular description;
    - (iii) individual public bodies;

- (b) impose different climate change duties on different public bodies or descriptions of public body;
  - (c) remove climate change duties.
- (4) Before laying a draft of a statutory instrument containing an order under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (5).
- (5) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.
- (6) The Scottish Ministers must co-operate with a relevant public body to help that body comply with its climate change duties.

### **37 Guidance to relevant public bodies**

- (1) Relevant public bodies must have regard to any guidance given by the Scottish Ministers to them in relation to climate change duties.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
  - (a) such associations of local authorities; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

### **38 Reporting on climate change duties**

- (1) The Scottish Ministers may, by order, make provision—
  - (a) requiring relevant public bodies to prepare reports on compliance with climate change duties;
  - (b) setting out what information reports must contain;
  - (c) setting out the form and manner of reports;
  - (d) setting out the period within which reports must be sent to the Scottish Ministers.
- (2) An order under subsection (1) may in particular—
  - (a) require two or more relevant public bodies to prepare a joint report in relation to compliance with one or more climate change duties; and
  - (b) require those bodies to co-operate with each other for the purpose of preparing that report.

*Monitoring body*

**39 Appointment of monitoring body**

- (1) The Scottish Ministers may, by order, designate one or more persons or bodies to monitor whether relevant public bodies are—
- 5           (a) complying with climate change duties;
- (b) having regard to any guidance given under section 37.
- (2) In this Part, a person or body designated under subsection (1) is the “monitoring body”.

*Investigations*

**40 Investigations**

- 10       (1) The monitoring body may carry out an investigation into—
- (a) a relevant public body’s compliance with climate change duties;
- (b) whether a relevant public body is having regard to guidance given under section 37.
- 15       (2) The monitoring body must carry out an investigation if the Scottish Ministers direct it to do so.

**41 Investigations: investigators’ powers**

- (1) In this section an “investigator” means—
- (a) the monitoring body;
- 20           (b) a person authorised by the monitoring body for the purpose of carrying out investigations.
- (2) An investigator may use the powers set out in subsections (3) to (5) if the investigator considers that it is necessary to do so for the purposes of or in connection with an investigation.
- 25       (3) An investigator may, by notice in writing, require any relevant public body to provide any relevant document or relevant information in the possession, or under the control, of the relevant public body.
- (4) An investigator may require any person who possesses or controls any document or information referred to in subsection (3) to provide an explanation of the document or information.
- 30       (5) An investigator may take copies of, or extracts from, any document or information produced in accordance with subsection (3).
- (6) Nothing in this section authorises an investigator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

**42 Reporting by monitoring body**

- 35       (1) The Scottish Ministers may direct the monitoring body to prepare a report relating to—
- (a) the monitoring body’s activities under this Act;
- (b) investigations carried out by the monitoring body;

- (c) its use of resources in carrying out its functions under this Act;
- (d) any other matters the Scottish Ministers may direct.

(2) The report may include information relating to a continuing investigation only if the Scottish Ministers direct that information to be included.

5 (3) The monitoring body must send the report to the Scottish Ministers.

#### **43 Guidance to monitoring body**

(1) The monitoring body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Part.

10 (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).

(3) Those persons are—

- (a) the monitoring body; and
- (b) such other persons,

as the Scottish Ministers consider appropriate.

15 (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.

(5) The Scottish Ministers must publish any guidance given under this section.

#### **44 Power to direct monitoring body**

20 (1) The Scottish Ministers may give directions to the monitoring body relating to the exercise of its functions under this Part.

(2) The Scottish Ministers may vary or revoke a direction given under this section.

(3) The monitoring body must comply with a direction given under this section.

### **PART 5**

#### OTHER CLIMATE CHANGE PROVISIONS

#### 25 **CHAPTER 1**

#### ADAPTATION

#### *Adaptation programmes*

#### **45 Programmes for adaptation to climate change**

30 (1) This section applies where the Secretary of State lays a report under section 56 of the 2008 Act (report on impact of climate change) before Parliament.

(2) The Scottish Ministers must lay a programme before the Scottish Parliament—

- (a) addressing the risks identified in the report under section 56 of the 2008 Act; and
- (b) in particular, setting out—

- (i) the Scottish Ministers' objectives in relation to adaptation to climate change;
- (ii) their proposals and policies for meeting those objectives;
- (iii) the period within which those proposals and policies will be introduced.

- 5 (3) Where the report laid under section 56 of the 2008 Act is a subsequent report (within the meaning of subsection (3) of that section), the programme under this section must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in the previous programme laid under subsection (2).
- 10 (4) The Scottish Ministers must lay each programme under this section as soon as reasonably practicable after the Scottish Ministers receive the Secretary of State's report.

### *Muirburn*

#### **46 Variation of permitted times for making muirburn**

15 After section 23 of the Hill Farming Act 1946 (c.73) (prohibition of muirburn at certain times), insert—

##### **“23A Power to vary permitted times for making muirburn**

- 20 (1) The Scottish Ministers may, by order, specify such dates as they consider appropriate as the dates before which or after which it is lawful to make muirburn in any year.
- (2) Where such an order has effect, section 23 applies as if the dates specified in the order were substituted for the dates mentioned in subsection (1), (2) or, as the case may be, (3) of that section.
- (3) 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.
- 25 (4) The power conferred by subsection (1) is exercisable by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

## **CHAPTER 2**

### **FORESTRY**

#### **30 47 Power to modify functions of Forestry Commissioners**

- (1) The Scottish Ministers may, by order, modify the functions of the Forestry Commissioners in or as regards Scotland.
- (2) The Scottish Ministers may make an order under subsection (1) only where they consider it necessary or expedient to do so—
- 35 (a) in order to comply with their duty under section 1, 2 or 3(1)(b); or
- (b) otherwise in relation to climate change.
- (3) An order under subsection (1) may in particular include provision enabling the Forestry Commissioners to—
- (a) form, or participate in the forming of, a body corporate;

- (b) invest in a body corporate;
  - (c) provide loans;
  - (d) establish a trust;
  - (e) act, or appoint a person to act, as—
    - (i) an officer of a body corporate; or
    - (ii) a trustee of a trust.
- (4) The order may also make provision about the delegation by the Forestry Commissioners of their functions, including—
- (a) the circumstances in and purposes for which those functions may be delegated;
  - (b) the functions which may be delegated;
  - (c) the persons to whom such functions may be delegated.

### CHAPTER 3

#### ENERGY EFFICIENCY

##### *Promotion of energy efficiency*

#### **48 Duty of Scottish Ministers to promote energy efficiency**

- (1) The Scottish Ministers must prepare and publish a plan for the promotion of energy efficiency in Scotland.
- (2) That plan must include provision about the promotion of the energy efficiency of living accommodation.
- (3) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.
- (4) The Scottish Ministers—
  - (a) may, from time to time; and
  - (b) must, before the end of the period mentioned in subsection (5),
 review the plan prepared and published under this section.
- (5) The period referred to in subsection (4)(b) is the period of 3 years beginning with the date on which—
  - (a) the plan is first published; or
  - (b) the plan was last reviewed under subsection (4).
- (6) Where, following a review under subsection (4), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.
- (7) In preparing or varying the plan, the Scottish Ministers must have regard to the contributions which improvements to buildings and changes in building standards can make to the delivery of energy efficiency and to the reduction of greenhouse gas emissions.
- (8) In this section—
  - “energy efficiency” includes the use of—

- (a) technologies reliant on renewable sources of energy; and
- (b) materials the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials;

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) peat;
- (d) natural gas (within the meaning of the Energy Act 1976 (c.76));
- (e) crude liquid petroleum;
- (f) petroleum products (within the meaning of that Act);
- (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);

“renewable sources” means sources other than fossil fuel and nuclear fuel.

#### **49 Laying of plans and reports**

- (1) The Scottish Ministers must, as soon as reasonably practicable after publishing a plan under section 48(1) or (6), lay it before the Scottish Parliament.
- (2) The Scottish Ministers must, before the end of the period mentioned in subsection (3), lay before the Parliament a report on what steps have been taken in implement of the plan.
- (3) The period referred to in subsection (2) is the period of 12 months beginning with the date on which—
  - (a) the plan is first published; or
  - (b) a report was last laid under subsection (2).

#### *Energy performance of non-domestic buildings*

#### **50 Non-domestic buildings: assessment of energy performance and emissions**

- (1) The Scottish Ministers may, by regulations, make provision relating to the assessment of—
  - (a) the energy performance of non-domestic buildings;
  - (b) the emission of greenhouse gases produced by or otherwise associated with such buildings or with activities carried out in such buildings.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which the regulations apply;
  - (b) the non-domestic buildings to which the regulations apply;
  - (c) the persons who may be required to have assessments carried out;
  - (d) the periods within which such assessments must be carried out;
  - (e) the procedure and methodology for assessing the energy performance of buildings;

- (f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with buildings or activities;
- (g) the persons who may carry out such assessments;
- 5 (h) the issuing of certificates following such assessments, including the form, manner and content of such certificates;
- (i) subject to subsection (3), the enforcement authority in relation to the regulations;
- (j) subject to subsection (4), the functions of that authority;
- (k) the keeping of information and its production to the enforcement authority;
- (l) the enforcement of the duties imposed by the regulations;
- 10 (m) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority provided for in the regulations is to be—
- (a) a local authority; or
- (b) such other person or body as the Scottish Ministers consider appropriate.
- (4) The functions of the enforcement authority may include power to levy charges to recover the reasonable costs incurred by it in exercising its functions under the regulations.
- 15 (5) In this section, “non-domestic building”—
- (a) means a building other than a dwelling;
- (b) does not include—
- 20 (i) any yard, garden, outbuilding or other land or buildings;
- (ii) any common areas,  
associated with such a dwelling.

### *Renewable heat*

#### **51 Promotion of renewable heat**

- 25 (1) The Scottish Ministers must take such steps as they consider appropriate to promote the use of heat produced from renewable sources.
- (2) The steps which the Scottish Ministers may take for the purposes of subsection (1) include, in particular, steps to promote—
- 30 (a) the installation of plant which is or may be fuelled by renewable sources;
- (b) the adaptation of plant so as to enable it to be fuelled by renewable sources;
- (c) the production of heat by plant which is fuelled partly by renewable sources and partly by other sources.
- (3) For the purposes of subsection (1), heat produced by any plant is produced from renewable sources to the extent that the plant is fuelled by renewable sources.
- 35 (4) In this section—
- “plant” includes any equipment, apparatus or appliance;
- “renewable sources” has the same meaning as in section 48.

## CHAPTER 4

### WASTE REDUCTION AND RECYCLING

#### *Waste prevention and management plans*

#### **52 Waste prevention and management plans**

- 5 (1) The Scottish Ministers may, by regulations, require persons of the kinds specified—
- (a) to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities;
  - (b) to comply with those plans.
- (2) The regulations may in particular include provision about—
- 10 (a) the circumstances in which plans must be prepared, including when more than one plan must be prepared;
- (b) the kinds of waste in relation to which plans must be prepared;
- (c) the periods—
- (i) to which plans relate;

15 (ii) within which plans must be prepared;
- (d) the content of plans;
- (e) subject to section 60—
- (i) the enforcement authority in relation to the regulations; and

20 (ii) the functions of that authority, including the approval by it of plans prepared under the regulations;
- (f) the keeping of plans and other information and their production to the enforcement authority;
- (g) the enforcement of the duties imposed by the regulations;
- (h) offences in relation to failures to comply with requirements of the regulations.
- 25 (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (4) In this Chapter—
- 30 “recycling”, in relation to any waste, includes recovery and re-use (whether or not the waste is subjected to any process) (and cognate expressions are to be construed accordingly);
- “specified” means specified in regulations (and cognate expressions are to be construed accordingly);
- “waste” has the meaning given by section 75(2) of the Environmental Protection Act 1990 (c.43) (the “1990 Act”).

*Waste data*

**53 Information on waste**

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to provide SEPA with information on the waste produced by or otherwise associated with such persons' activities.
- (2) The regulations may in particular include provision about—
- (a) the circumstances in which information must be provided;
  - (b) the information required to be provided, including the periods to which the information relates;
  - (c) the form and manner in which information must be provided;
  - (d) the periods within which information must be provided;
  - (e) the functions of SEPA in relation to the regulations;
  - (f) the keeping of information and its production to SEPA;
  - (g) the enforcement of the duties imposed by the regulations;
  - (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The power to make regulations under this section is without prejudice to section 34(5) of the 1990 Act and any other enactment to the same effect as that section; and any duty imposed on any person by regulations under this section is without prejudice to any duty to provide information on waste imposed by regulations under that section or by virtue of any other such enactment.
- (4) SEPA may give guidance to persons to whom the regulations apply on how to comply with the requirements of the regulations.
- (5) In this section and in section 60, “SEPA” means the Scottish Environment Protection Agency.

*Deposit of recyclable waste etc.*

**54 Recyclable waste: facilities for deposit etc.**

- (1) The Scottish Ministers may, by regulations, require—
- (a) persons of the kinds specified to provide facilities for the deposit of waste;
  - (b) authorised persons—
    - (i) to collect waste deposited by virtue of paragraph (a);
    - (ii) to ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.
- (2) The regulations may in particular include provision about—
- (a) the circumstances in which facilities must be provided, including the places at which they must be provided;
  - (b) the persons for whom facilities must be provided;
  - (c) the kinds of waste for which facilities must be provided;

- (d) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
- (e) the charging by authorised persons for collecting waste, for recycling waste and for otherwise ensuring waste is recycled;
- 5 (f) subject to section 60—
  - (i) the enforcement authority in relation to the regulations; and
  - (ii) the functions of that authority;
- (g) the keeping of records and their production to the enforcement authority;
- (h) the enforcement of the duties imposed by the regulations;
- 10 (i) offences in relation to failures to comply with requirements of the regulations.

(3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

(4) The Scottish Ministers may not, by regulations under this section, impose requirements on persons to provide facilities for the deposit of waste in circumstances in relation to which regulations under section 55 may be made.

(5) In this section and in section 55, “authorised person” has the same meaning as in section 34(3) of the 1990 Act.

## **55 Recyclable waste: facilities for deposit at events etc.**

(1) The Scottish Ministers may, by regulations, confer power on local authorities to issue notices requiring—

(a) persons responsible for organising temporary events open to the public to provide facilities for the deposit of waste by persons attending those events;

(b) authorised persons to—

(i) collect waste deposited by virtue of paragraph (a);

(ii) ensure, in so far as reasonably practicable, that such waste collected by or transferred to them (whether in accordance with section 34 of the 1990 Act or otherwise) is recycled.

(2) The regulations may in particular include provision about—

(a) the events in relation to which notices can be issued;

(b) the circumstances in which facilities must be provided, including the places at which they must be provided;

(c) the persons for whom facilities must be provided;

(d) the kinds of waste for which facilities must be provided;

(e) the persons to whom notices can be issued;

(f) the content of notices;

(g) the form of and manner in which notices can be issued, including the times at which notices can be issued;

(h) appeals against notices;

- (i) the circumstances in which authorised persons must collect waste, including which authorised persons must do so;
- (j) the charging by authorised persons for collecting waste, recycling waste and otherwise ensuring waste is recycled;
- 5 (k) subject to section 60—
- (i) the enforcement authority in relation to notices; and
- (ii) the functions of that authority;
- (l) the keeping of records by persons to whom notices are issued and their production to the enforcement authority;
- 10 (m) the enforcement of duties imposed by notices;
- (n) offences in relation to failures to comply with requirements of notices.
- (3) Local authorities must have regard to any guidance given by the Scottish Ministers to them in relation to the functions conferred on them by the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- 15

*Procurement of recyclate*

**56 Procurement of recyclate**

- (1) The Scottish Ministers may, by regulations, require persons of the kinds specified to comply with the requirement in subsection (2).
- 20 (2) That requirement is to ensure that things procured or constructed by or on behalf of such persons—
- (a) comprise of; or
- (b) include or contain a certain proportion of,
- recyclate.
- 25 (3) The regulations may in particular include provision about—
- (a) the circumstances in which the requirement applies;
- (b) the kinds of things in relation to which the requirement applies;
- (c) the proportion of recyclate that such things must include or contain;
- (d) how such proportions are to be determined;
- 30 (e) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disapplied;
- (f) subject to section 60—
- (i) the enforcement authority in relation to the regulations; and
- (ii) the functions of that authority;
- 35 (g) the keeping of records and their production to the enforcement authority;
- (h) the enforcement of the duties imposed by the regulations;
- (i) offences in relation to failures to comply with requirements of the regulations.

- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (5) Persons to whom the regulations apply must have regard to any guidance given by—
- 5 (a) the Scottish Ministers;
- (b) the enforcement authority,
- to them in relation to the requirements imposed by the regulations.
- (6) In this section, “recyclate” means waste that has been recycled.

*Reduction of packaging*

**57 Targets for reduction of packaging etc.**

- 10 (1) The Scottish Ministers may, by regulations—
- (a) set targets—
- (i) for the reduction of packaging;
- (ii) for the reduction of greenhouse gas emissions produced by the manufacture of or otherwise associated with packaging;
- 15 (b) require persons of the kinds specified to comply with those targets.
- (2) The regulations may in particular include provision about—
- (a) the circumstances in which the requirement in subsection (1)(b) applies;
- (b) the kinds of packaging in relation to which targets may be set;
- (c) the targets in relation to such packaging (including how targets may be set);
- 20 (d) the methods of determining whether targets have been met;
- (e) subject to section 60—
- (i) the enforcement authority in relation to the regulations; and
- (ii) the functions of that authority;
- (f) the keeping of records and other information and their production to the enforcement authority (including the periods to which records or information must relate and within which it must be produced to the authority);
- 25 (g) the enforcement of the duties imposed by the regulations;
- (h) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- 30 (4) In this section and in section 58, “packaging” has the meaning given by Article 3 of Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste.

*Deposit and return*

**58 Deposit and return schemes**

- 35 (1) The Scottish Ministers may, by regulations, establish deposit and return schemes.

- (2) A “deposit and return scheme” is a scheme under which—
- (a) the sale price of articles includes a returnable element (a “deposit”);
  - (b) persons who return the packaging associated with such articles are entitled to be paid a sum equal to that deposit.
- 5 (3) Retailers may be required, under a deposit and return scheme, to—
- (a) include a deposit in the price of articles placed on the market by them;
  - (b) pay a sum equal to the deposit to persons who return packaging associated with such articles to them;
  - (c) return such packaging to the producers of it or of the articles with which it is
- 10 associated.
- (4) Producers may be required, under a deposit and return scheme, to—
- (a) include a deposit in the price of articles placed on the market by them;
  - (b) pay a sum equal to the deposit to retailers who return packaging to them;
  - (c) ensure that some or all of such packaging is recycled.
- 15 (5) A deposit and return scheme may also provide for a person or body (in place of retailers and producers) to—
- (a) ensure that deposits are included in the price of articles placed on the market;
  - (b) receive returned packaging;
  - (c) pay sums equal to deposits to persons who return such packaging;
  - (d) return such packaging to the producers of it or of the articles with which it is
- 20 associated;
- (e) recover sums equal to deposits from such producers;
  - (f) ensure that some or all of the packaging returned is recycled.
- 25 (6) The Scottish Ministers may make regulations under this section only where they consider it necessary or expedient to do so for the purpose of promoting or securing an increase in the recycling of materials.
- (7) The regulations may in particular include provision about—
- (a) the persons who are retailers and producers for the purposes of deposit and return schemes;
  - (b) the articles to which such schemes apply;
  - (c) the deposits to be included in the price of such articles;
  - (d) the packaging associated with such articles, the return of which entitles persons returning it to payment of sums equal to deposits;
  - (e) the methods by which such packaging is to be identified;
  - (f) information on the operation of schemes (including notices on premises where
- 30 articles are offered for sale and the content of such notices);
- (g) the places to which packaging can be returned;
  - (h) the registration of retailers and producers to whom schemes apply (including the reasonable fees payable in relation to such registration);
- 35

- (i) subject to section 60—
  - (i) the enforcement authority in relation to the regulations; and
  - (ii) the functions of that authority;
- (j) the keeping of records and other information and their production to the enforcement authority;
- (k) the enforcement of the duties imposed by the regulations;
- (l) offences in relation to failures to comply with requirements of the regulations.

*Carrier bag charges*

**59 Charges for supply of carrier bags**

- (1) The Scottish Ministers may, by regulations, require suppliers of goods—
  - (a) to charge for carrier bags supplied at the place where the goods are supplied for the purpose of enabling the goods to be taken away or delivered;
  - (b) to apply the net proceeds raised by such charges to the advancement of environmental protection or improvement or to any other purposes that may be reasonably regarded as analogous.
- (2) The regulations may in particular include provision about—
  - (a) the circumstances in which the requirement applies;
  - (b) the suppliers to whom the requirement applies;
  - (c) the carrier bags to which the requirement applies;
  - (d) the minimum amount to be charged for each carrier bag;
  - (e) how the net proceeds raised by the charge are to be ascertained;
  - (f) the purposes to which those net proceeds are to be applied;
  - (g) subject to section 60—
    - (i) the enforcement authority in relation to the regulations; and
    - (ii) the functions of that authority;
  - (h) the keeping of records and their production to the enforcement authority;
  - (i) the enforcement of the duties imposed by the regulations;
  - (j) offences in relation to failures to comply with requirements of the regulations.
- (3) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.

*General provision*

**60 Enforcement authorities**

- (1) This section applies to any regulations made under this Chapter other than under section 53.
- (2) The enforcement authority provided for in the regulations is to be—
  - (a) SEPA;

- (b) a local authority; or
- (c) such other person or body as the Scottish Ministers consider appropriate.

(3) The regulations may provide for the functions of the enforcement authority in relation to the regulations to be exercised by two or more such authorities and about the functions of each such authority.

(4) The regulations may also provide for enforcement authorities to levy charges to recover the reasonable costs incurred by them in exercising their functions under the regulations.

## **61 Penalties**

(1) A person who commits an offence under regulations made under this Part is liable to such penalties, not exceeding those mentioned in subsection (2), as are provided for in the regulations.

(2) Those penalties are—

- (a) on summary conviction, a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, a fine.

## **PART 6**

### GENERAL AND MISCELLANEOUS

## **62 Equal opportunities**

(1) The persons mentioned in subsection (2) must exercise their functions under this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(2) Those persons are—

- (a) the Scottish Ministers;
- (b) the advisory body.

(3) In this section, “equal opportunities” and the “equal opportunities requirements” have the same meanings as those expressions have in section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

## **63 Crown application**

(1) This Act and any orders and regulations made under it bind the Crown.

(2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable.

(3) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite subsection (2), any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

**64 Subordinate legislation**

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations is exercisable by statutory instrument.
- (2) Any such power—
- 5 (a) may be exercised so as to make different provision for different cases or descriptions of case or for different purposes;
- (b) includes power to make such consequential, incidental, supplementary, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (3) An order or regulations under this Act may modify any enactment (including this Act).
- 10 (4) Subject to subsections (5) to (8), no statutory instrument containing an order or regulations under this Act (other than an order under section 67(2)) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (5) A statutory instrument containing an order mentioned in subsection (6) or regulations mentioned in subsection (7) is subject to annulment in pursuance of a resolution of the
- 15 Scottish Parliament.
- (6) Those orders are orders under—
- (a) section 17(b);
- (b) section 38(1);
- 20 (c) paragraph 2(2) of schedule 1.
- (7) Those regulations are—
- (a) the second or subsequent regulations under section 12(2) (other than regulations which make provision altering the amount by which a carbon unit credited or
- 25 debited to the net Scottish emissions account for a period reduces or, as the case may be, increases the net Scottish emissions account for that period);
- (b) the second or subsequent regulations under section 18(1) (other than regulations which make provision specifying a carbon unit of a kind not previously specified in regulations under that section);
- (c) regulations under section 50(1) which make provision about the matter mentioned
- 30 in section 50(4) only;
- (d) regulations under section 58(1) which make provision about one or more of the following matters only—
- (i) the deposits mentioned in section 58(7)(c);
- (ii) the form and content of notices mentioned in section 58(7)(f);
- 35 (iii) setting the registration fees mentioned in section 58(7)(h);
- (e) regulations under Chapter 4 of Part 5 which make provision about the matter mentioned in section 60(4) only.
- (8) Subsection (5) does not apply to an order or regulations which includes provision modifying an Act or an Act of the Scottish Parliament.

**65 Interpretation**

In this Act—

“additional greenhouse gas” has the meaning given by section 11(2);

“advisory body” has the meaning given by section 19(2);

“advisory functions” has the meaning given by section 19(3);

“annual target” has the meaning given by section 3(3);

5 “authorised person” has the meaning given by section 54(5);

“baseline” has the meaning given by section 10(1);

“baseline year” means—

(a) in relation to a greenhouse gas mentioned in section 10(2), the year mentioned in subsection (2)(a), (b), (c), (d) or, as the case may be, (e);

10 (b) in relation to an additional greenhouse gas, any year designated by virtue of section 11(3);

“carbon unit” has the meaning given by section 18(4);

“climate change duties” means duties imposed on public bodies by virtue of section 36(1);

15 “Committee” means the Scottish Committee on Climate Change;

“deposit and return scheme” means a scheme established by virtue of section 58(1);

“emissions” has the meaning given by section 15(1);

“energy efficiency” has the meaning given by section 48(8);

20 “greenhouse gas” has the meaning given by section 9(1);

“interim target” has the meaning given by section 2(2);

“international carbon reporting practice” has the meaning given by section 17;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

25 “monitoring body” has the meaning given by section 39(2);

“net Scottish emissions” has the meaning given by section 15(1);

“net Scottish emissions account” has the meaning given by section 12(1);

“packaging” has the meaning given by section 57(4);

“public body” has the meaning given by section 19(5);

30 “relevant body” has the meaning given by section 5(5);

“relevant public body” has the meaning given by section 36(2);

“recycling” has the meaning given by section 52(4);

“renewable sources” has the meaning given by section 48(8);

“Scottish Committee on Climate Change” has the meaning given by section 20(2);

35 “Scottish emissions” has the meaning given by section 15(1);

“Scottish removals” has the meaning given by section 15(1);

“SEPA” has the meaning given by section 53(5);

“target year” means a year for which an annual target has been set;

“target-setting criteria” means the matters mentioned in section 4(4)(a) to (h);

“the 1990 Act” means the Environmental Protection Act 1990 (c.43);

“the 2008 Act” means the Climate Change Act 2008 (c.27);

5 “the 2050 target” has the meaning given by section 1(2);

“UK Committee on Climate Change” has the meaning given by section 5(6);

“waste” has the meaning given by section 52(4).

## **66 Minor and consequential modifications**

10 Schedule 2 makes minor modifications and modifications consequential on the provisions of this Act.

## **67 Short title and commencement**

(1) This Act may be cited as the Climate Change (Scotland) Act 2009.

(2) This Act (other than this section and sections 22 to 27 and 64) comes into force on such day as the Scottish Ministers may, by order, appoint.

15 (3) Sections 22 to 27 come into force in accordance with section 21.

(4) Different days may, under subsection (2), be appointed for different purposes.

SCHEDULE 1  
*(introduced by section 20)*

THE SCOTTISH COMMITTEE ON CLIMATE CHANGE

*Status*

- 5 1 (1) The Committee is a body corporate.
- (2) The Committee is not to be regarded as a servant or agent of the Crown, nor is it to be regarded as having any status, privilege or immunity of the Crown.
- (3) The Committee's members and employees are not to be regarded as civil servants.
- 10 (4) The Committee's property is not to be regarded as property of, or held on behalf of, the Crown.

*Membership of the Committee*

- 2 (1) The Committee is to consist of the following members—
- (a) a person to chair the Committee (“the Chair”); and
- (b) not fewer than five and not more than eight other members.
- 15 (2) The Scottish Ministers may, by order, modify sub-paragraph (1)(b) so as to alter the number of other members of the Committee.
- (3) Members of the Committee are appointed by the Scottish Ministers.
- (4) In appointing members to the Committee, the Scottish Ministers must have regard to the desirability of the Committee (taken as a whole) having expertise or experience in the
- 20 following—
- (a) business competitiveness;
- (b) climate change policy at Scottish, UK and international level (in particular the social impact of such policy);
- (c) climate science and other branches of environmental science;
- 25 (d) economic analysis and forecasting;
- (e) emissions trading;
- (f) energy production and supply;
- (g) financial investment;
- (h) technology development and diffusion.

30 *Period, and conditions, of appointment of members*

- 3 (1) Each member of the Committee is to be appointed for a period not exceeding five years.
- (2) A member holds and vacates office in accordance with the terms and conditions of appointment.
- 35 (3) A member may resign office as a member of the Committee by giving written notice to the Scottish Ministers.
- (4) On ceasing to be a member, a person is eligible to be reappointed for one further period.

*Persons not eligible for appointment*

4 No person may be appointed as a member of the Committee if that person is, or has at any time during the previous year been, a member of—

- 5
- (a) the House of Commons;
  - (b) the Scottish Parliament;
  - (c) the European Parliament.

*Removal of members of Committee*

10 5 (1) Subject to sub-paragraph (3), the Chair may, by giving written notice, remove a member from office if the Chair is satisfied that one of the situations set out in sub-paragraph (2) exists.

(2) Those situations are—

- 15
- (a) that the member is insolvent;
  - (b) that the member has been convicted of a criminal offence;
  - (c) that the member has been absent from meetings of the Committee for a period longer than six months without the permission of the Chair;
  - (d) that the member is otherwise unable or unfit to discharge the functions of a member or is unsuitable to continue as a member.

(3) The Chair may only remove a member from office with the agreement of the Scottish Ministers.

20 (4) The Scottish Ministers may, by giving written notice, remove the Chair from office if the Scottish Ministers are satisfied that one of the situations set out in sub-paragraph (2) exists.

(5) For the purposes of sub-paragraph (2)(a), a member is insolvent when—

- 25
- (a) a voluntary arrangement proposed by the member is approved;
  - (b) the member is adjudged bankrupt;
  - (c) the member's estate is sequestrated;
  - (d) the member enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor;
  - (e) the member grants a trust deed for creditors.

30 *Remuneration, allowances and pensions of members*

6 (1) The Committee must pay its members such remuneration and allowances as the Scottish Ministers may in each case determine.

(2) The Committee may, with the agreement of the Scottish Ministers—

- 35
- (a) pay (or make arrangements for the payment);
  - (b) make payments towards the provision;
  - (c) provide and maintain schemes (whether contributory or not) for the payment,

of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be a member of the Committee, as the Committee may determine.

- (3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

5 *Chief executive and other employees*

7 (1) The Committee is to employ a chief executive.

(2) The chief executive is to be appointed by the Committee on such terms and conditions as the Committee may determine.

10 (3) The appointment of the chief executive and the terms and conditions of that appointment are subject to the agreement of the Scottish Ministers.

(4) The Committee may appoint other employees on such terms and conditions as the Committee may determine.

(5) The Scottish Ministers may give directions to the Committee as regards the appointment of employees under sub-paragraph (4), which may relate in particular to—

- 15 (a) the number of appointments;  
 (b) the terms and conditions of employment.

(6) The Committee must comply with directions given under sub-paragraph (5).

(7) The Committee may, with the agreement of the Scottish Ministers—

- 20 (a) pay (or make arrangements for the payment);  
 (b) make payments towards the provision;  
 (c) provide and maintain schemes (whether contributory or not) for the payment,

of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of it, as the Committee may determine.

25 (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities paid by way of compensation for loss of office.

*Accounts*

8 (1) The Committee must—

- (a) keep proper accounts and accounting records;  
 (b) prepare in respect of each financial year a statement of accounts;  
 30 (c) send the statement of accounts to the Scottish Ministers.

(2) The Committee must comply with any directions which the Scottish Ministers gives it in relation to the matters mentioned in sub-paragraph (1).

(3) The Scottish Ministers must, as soon as reasonably practicable after receiving the statement of accounts from the Committee—

- 35 (a) send the statement of accounts to the Auditor General for Scotland for auditing;  
 (b) lay the audited statement before the Scottish Parliament.

(4) The Committee must make its audited statement of accounts and its accounting records available so that they may be inspected by any person.

- (5) Those documents are to be made available—
- (a) at any reasonable time; and
  - (b) without charge.
- (6) In this paragraph and paragraph 9, “financial year” means—
- (a) the period beginning with the day the Committee is established and ending with 31 March in the following calendar year;
  - (b) each subsequent period of 12 months ending with 31 March.

### *Reports*

- 9 (1) As soon as practicable after the end of each financial year, the Committee must prepare a report on—
- (a) the discharge of the Committee’s functions during that year;
  - (b) the actions that the Committee proposes to take during the following year in pursuance of its functions.
- (2) The Committee must—
- (a) send a copy of the report to the Scottish Ministers; and
  - (b) publish the report.
- (3) The Committee must prepare and publish the report in accordance with any directions which the Scottish Ministers may give.
- (4) The Scottish Ministers must as soon as reasonably practicable after receiving the report from the Committee, lay a copy of it before the Scottish Parliament.
- (5) The Committee may publish such other reports on matters relevant to its functions as it considers appropriate.

### *Sub-committees*

- 10 (1) The Committee may establish sub-committees for any purposes relating to its functions.
- (2) A sub-committee must comply with any directions given to it by the Committee.

### *Proceedings*

- 11 (1) Subject to the remaining provisions of this paragraph, the Committee may regulate—
- (a) its own procedure (including any quorum);
  - (b) the procedure of any sub-committee (including any quorum).
- (2) The Chair must, if present, chair meetings of the Committee or any sub-committee of the Committee.
- (3) If the Chair is not available to be present at a meeting of the Committee (or any sub-committee of the Committee), the Chair is to appoint another member to chair the meeting.
- (4) The Chair has a casting vote and any person appointed by the Chair under sub-paragraph (3) has a casting vote for the purposes of that appointment.

- (5) The validity of any proceedings of the Committee (or any of its sub-committees) is not affected by a vacancy in membership nor by any defect in the appointment of a member.

*Delegation of functions*

12 (1) The Committee may, subject to sub-paragraph (2), authorise—

- 5 (a) any of its members;  
 (b) any of its sub-committees;  
 (c) its chief executive;  
 (d) any other employee,

to exercise such of its functions (and to such extent) as it may determine.

10 (2) The Committee may not authorise the exercise of the following functions under sub-paragraph (1)—

- (a) the approval of annual reports and accounts;  
 (b) the approval of any budget or other financial plan.

15 (3) Sub-paragraph (1) does not affect the responsibility of the Committee for the exercise of its functions.

*General powers*

13 (1) The Committee may do anything which appears to it—

- (a) to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions;  
 20 (b) to be conducive to the exercise of its functions.

(2) In particular, the Committee may—

- (a) enter into contracts;  
 (b) with the agreement of the Scottish Ministers, borrow money;  
 (c) with the agreement of the Scottish Ministers, acquire and dispose of land;  
 25 (d) obtain advice and assistance from any person who, in the Committee's opinion, is qualified to give it.

(3) The Committee may pay to any person from whom advice or assistance is obtained such fees, remuneration and allowances as the Committee may, with the agreement of the Scottish Ministers, determine.

30 SCHEDULE 2

*(introduced by section 66)*

MINOR AND CONSEQUENTIAL MODIFICATIONS

*Hill Farming Act 1946 (c.73)*

1 In section 23(1) of the Hill Farming Act 1946 (prohibition of muirburn at certain times),  
 35 after "section" insert "and to section 23A,".

*Environment Act 1995 (c.25)*

2 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (e), insert—

5 “(f) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 53 of the Climate Change (Scotland) Act 2009 (asp 00), SEPA may require the payment to it of such charges as may from time to time be prescribed;”.

*Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)*

10 3 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies) at the appropriate place, insert—

“The Scottish Committee on Climate Change”.

*Scottish Public Services Ombudsman Act 2002 (asp 11)*

4 In the Scottish Public Services Ombudsman Act 2002, in Part 2 of schedule 2 (listed authorities) at the appropriate place, insert—

15 “The Scottish Committee on Climate Change”.

*Freedom of Information (Scotland) Act 2002 (asp 13)*

5 In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities) at the appropriate place, insert—

“The Scottish Committee on Climate Change”.

20 *Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)*

6 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) at the appropriate place in the list of advisory bodies, insert—

“The Scottish Committee on Climate Change”.

*Housing (Scotland) Act 2006 (asp 1)*

25 7 In the Housing (Scotland) Act 2006, section 179 (duty of Scottish Ministers to prepare strategy for improving energy efficiency of living accommodation) is repealed.

# Climate Change (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to set a target for the year 2050, an interim target for the year 2030, and to provide for annual targets, for the reduction of greenhouse gas emissions; to provide about the giving of advice to the Scottish Ministers relating to climate change; to confer power on Ministers to impose climate change duties on public bodies; to make further provision about mitigation of and adaptation to climate change; to make provision about energy efficiency; to make provision about the reduction and recycling of waste; and for connected purposes.

Introduced by: John Swinney  
On: 4 December 2008  
Supported by: Stewart Stevenson  
Bill type: Executive Bill

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