

# CLIMATE CHANGE (SCOTLAND) ACT 2009

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## EXPLANATORY NOTES

### THE ACT

#### Part 1 – Emissions Reduction Targets

7. **Part 1** of the Act creates the statutory framework for greenhouse gas emissions reductions in Scotland by setting a 42% reduction target for 2020, which the Scottish Ministers may modify by order subject to affirmative resolution, and an 80% reduction target for 2050. To help ensure the delivery of these targets the Act requires that the Scottish Ministers set annual targets, in secondary legislation, for Scottish emissions from 2010 to 2050.

#### The 2050 target

8. **Section 1** sets out the 80% target for 2050. Subsection (1) defines the obligation on the Scottish Ministers as reducing the net Scottish emissions account by at least 80% by 2050 relative to the defined baseline year. The net Scottish emissions account is defined in section 13, and the baseline year in section 11, of the Act. For any one year it will consist of the total of Scottish emissions, reduced by the amount of Scottish removals and adjusted to reflect carbon units credited and debited to the account.

#### The interim target

9. **Section 2** sets out the 42% interim target for 2020. Subsection (1) defines the obligation on the Scottish Ministers as reducing the net Scottish emissions account by at least 42% by 2020 relative to the defined baseline year. Subsection (3) enables the Scottish Ministers to modify this figure and to replace it with a figure provided by the relevant body as the highest achievable interim target, or with a higher figure.
10. Subsection (4) places a duty on the Scottish Ministers to request advice from the relevant body, currently the UK Committee on Climate Change (UKCCC), as soon as reasonably practicable after Royal Assent. This request must be for advice as to whether the interim target is the highest achievable target and, if not, what the highest achievable interim target is. The factors that must be had regard to in determining what the highest interim target is are set out in subsection (5).
11. Subsection (6) requires the Scottish Ministers to publish the advice requested under subsection (4) no later than 31 December 2009 or as soon as reasonably practicable thereafter.
12. Subsection (7) requires the Scottish Ministers to comply with either of the duties set out in subsection (8) as soon as reasonably practicable after the advice is published. These duties are (a) to lay before the Scottish Parliament a draft of a statutory instrument substituting for the interim target figure specified in subsection (1) the one provided by the relevant body or (b) to make a statement to the Scottish Parliament setting out the reasons why no such draft statutory instrument has been laid.

13. Subsection (9) requires the Scottish Ministers, if an appropriate Community instrument comes into force, to lay before the Scottish Parliament a draft of a statutory instrument containing an appropriate order before the expiry of the appropriate period. The terminology used in subsection (9) is defined in subsections (10), (11) and (12). In this section, an “appropriate Community Instrument” is an instrument of the European Community which amends Decision [406/2009/EC](#) of the European Parliament and of the Council of 23 April 2009 on the efforts of Member States of the European Union to reduce their greenhouse gas emissions. The appropriate Community Instrument must also contain a commitment to reduce, by 2020, European Union greenhouse gas emissions by 30% compared to 1990 levels.
14. In the event that a draft of an appropriate order is not laid before the expiry of the appropriate period, subsection (13) requires the Scottish Ministers to lay the draft as soon as reasonably practicable thereafter.
15. Subsection (14) provides that subsections (9) to (13) cease to apply if, for the time being, the interim target is set at a figure higher than 42%.

### **Annual targets**

16. Subsection (1) of section 3 requires the Scottish Ministers to set annual targets for the maximum amount of the net Scottish emissions account for each year in the period 2010 to 2050 and must ensure that those targets are not exceeded.
17. Subsection (2) sets out criteria that the annual targets must meet. Paragraph (a) specifies that the annual target for the year 2010 is an amount which is less than the estimated net Scottish emissions account for 2009. Paragraph (b) requires that the targets for each year in the period 2011 to 2019 must be set so that each is consistent with a reduction that is in line with achieving the interim target and the 2050 target. Paragraph (c) requires that the targets for each year in the period 2020 to 2050 must be set so that each is consistent with a reduction that is in line with achieving the 2050 target, and that each annual target is an amount which is at least 3% less than the target for the preceding year.

### **Setting annual targets**

18. [Section 4](#) contains a number of conditions which must be met when the Scottish Ministers set annual targets. Subsections (1) and (2) establish that the targets must be set by order and must be set for certain periods by specified dates.
19. Subsection (3) imposes a duty on the Scottish Ministers when setting annual targets to have regard to any advice they receive from the relevant body as to the cumulative amount of net Scottish emissions for the period 2010 to 2050 that is consistent with a reduction over that period which would achieve the 2050 target.
20. Subsection (4) details a list of criteria which must be considered by the Scottish Ministers when setting annual targets. This largely replicates the list in section 2(5) but also includes in paragraph (a) the objective of not exceeding the fair and safe Scottish emissions budget (i.e. cumulative emissions, as defined in subsection (6)). This list is not intended to be the sole list of factors that the Scottish Ministers may consider when setting annual targets and additional factors can also be considered.

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

21. [Section 5](#) requires that the Scottish Ministers request and publish advice from the relevant body before laying a draft order containing annual targets. That request must ask for the relevant body’s views on the topics set out in subsection (2). The Scottish Ministers must also publish a statement explaining why the annual targets are being set at the levels they are and how these annual targets take account of the target-setting criteria described in section 4(4) of the Act. If the Scottish Ministers have chosen to set annual targets at levels which differ from the expert advice provided, they must publish

a statement setting out the reasons why. Subsection (7) defines “relevant body” for the purposes of the Part, which will be the UKCCC or a Scottish body designated under section 24.

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

22. [Section 6](#) allows the Scottish Ministers to modify, by order, the minimum annual target percentage reduction applying from 2020, annual targets, dates by which annual targets must be set and the target-setting criteria. The annual targets set by order may be modified only if the Scottish Ministers consider it appropriate to do so as a result of a modification of the interim target or if there has been another significant change to the basis on which the annual target was set. Subsections (2) and (3) place a requirement on the Scottish Ministers to lay a report before the Parliament at the same time as laying the draft modifying order explaining why the modification is required and to make a statement to the Parliament relating to this report.
23. Subsections (4) and (7) constrain the ability to modify the 3% minimum reduction in emissions so that this can be used only where it is no longer considered necessary for that minimum to be achieved, and it can expressly not be used to substitute a percentage of less than zero. Subsection (6) provides that an order modifying either the date by which annual targets are to be set, or the target-setting criteria, may be made only where the Scottish Ministers consider it appropriate. Subsection (8) constrains the ability to modify annual targets so that it can be exercised only before the beginning of the year to which the target relates and cannot be used if it would result in the target for the year being greater than the target for the preceding year (i.e. allowing emissions to increase between years).

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

24. [Section 7](#) requires the Scottish Ministers to request advice from the relevant body before laying an order for modification under section 6. If this advice is not followed, this provision requires the Scottish Ministers to lay before the Parliament a report explaining why and to make a statement to the Parliament relating to the report.

### **The domestic effort target**

25. [Section 8](#) places a duty on the Scottish Ministers to ensure that reductions in net Scottish emissions of greenhouse gases make up at least 80% of the reduction in the net Scottish emissions account in any target year. This is the “domestic effort target”.
26. Subsection (3) provides that any reduction in the net Scottish emissions account that is the result of “European carbon units” being credited to that account is, for the purpose of the domestic effort target, to be treated as though it is a reduction in net Scottish emissions. Subsection (4) defines “European carbon units” by reference to the European Union Emissions Trading Scheme or other equivalent trading scheme and subsection (5) defines “trading scheme”.
27. Subsection (6) enables the Scottish Ministers to modify, by order, the percentage figure contained in subsection (1) so as to substitute a higher figure. Subsection (7) requires that advice from the relevant body must be requested by the Scottish Ministers before laying a draft of a statutory instrument containing an order under subsection (6) (i.e. a modification order), and subsection (8) requires the Scottish Ministers to publish a statement if they set a percentage figure different from that advised by the relevant body.

### **Progress towards targets**

28. [Section 9](#) requires the Scottish Ministers, from 2011, to request the relevant body to prepare a report on its views on the progress towards achievement of annual targets, the interim target and the 2050 target, on whether these targets are likely to be achieved and on what further effort may be required to meet the targets.

29. Subsection (2) requires that no later than the end of the second year following an annual target, the Scottish Ministers must request the relevant body to prepare a report detailing its views on whether the domestic effort target was met in that target year, whether the annual target for the target year was met, the ways in which those targets were or were not met and the action taken by the Scottish Ministers to reduce net Scottish emissions during that year. Subsection (3) requires the Scottish Ministers to lay a response to this report before the Scottish Parliament as soon as reasonably practicable after receiving the report.

### **Greenhouse gases**

30. [Section 10](#) defines the greenhouse gases targeted by the Act and allows for this list of gases to be amended, by order, by adding gases or modifying their description. The power to add new greenhouse gases may be exercised only if it appears to the Scottish Ministers that European or international agreements or arrangements recognise the contribution to climate change of a gas. Before laying an order modifying section 10(1), the Scottish Ministers must request advice from the relevant body.

### **The baseline**

31. [Section 11](#) defines the baseline years for each greenhouse gas covered by the emissions reduction targets set by the Act.

### **Baselines for additional greenhouse gases**

32. [Section 12](#) applies in the situation where the list of target gases for the Act is expanded and a baseline year is required. If a new greenhouse gas is added to the list of target gases for the Act, subsections (3) and (4) allow the Scottish Ministers to specify by order what the baseline year is to be and how the net Scottish emissions are to be determined for the baseline year for the new gas.

### **The net Scottish emissions account**

33. [Section 13](#) defines the net Scottish emissions account as the aggregate of net Scottish emissions, minus any carbon units credited to the account for the period plus any carbon units debited from the account for the period.
34. Subsection (2) provides that the net Scottish emissions account for a target year may not be credited with an amount of carbon units which exceeds the “allowable amount”. Subsection (3) defines the term “allowable amount” as (a) the amount equal to the limit, set by virtue of subsection (1) of section 21 (Limits on use of carbon units), on the net amount of carbon units that may be credited to net Scottish emissions accounts during the period which includes the target year, or (b) where a net amount of carbon units has been credited to the net Scottish emissions account for any other target year in that period, the balance (if any) remaining of the amount referred to in paragraph (a). Subsection (4) states that the term “net amount of carbon units” has the meaning given by subsection (3) of section 21.
35. Subsection (5) enables the Scottish Ministers to provide in regulations which carbon units can be credited to and debited from the net Scottish emissions account and how this can be done. Subsection (6) provides that regulations must ensure that, where carbon units are used to reduce the net Scottish emissions account, they are not also used to offset other emissions elsewhere. This could otherwise lead to “double-counting”.

### **Restriction on use in 2010-2017 of carbon units purchased by Scottish Ministers**

36. [Section 14](#) places restrictions on the use in the period 2010 to 2017 of carbon units purchased by the Scottish Ministers. Subsection (1) prohibits the Scottish Ministers from crediting the net Scottish emissions accounts for the years 2010 to 2012 with carbon units that they have purchased. Subsection (2) provides when subsection (1)

applies. Subsection (3) restricts the Scottish Ministers ability to credit the net Scottish emissions account for a year in the period 2013-2017 with carbon units purchased by them up to a limit of 20% of the reduction in the amount of the net Scottish emissions account planned for that year.

### **Attribution of emissions to Scotland**

37. [Section 15](#) defines which emissions of greenhouse gases are attributable to Scotland for the purposes of the definitions contained in section 17. These are emissions of greenhouse gases emitted from sources in Scotland and the share attributed to Scotland by an order made in terms of section 16 of emissions from international aviation and international shipping.

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

38. [Section 16](#) allows the Scottish Ministers to make provision, by order, for a proportion of emissions from international aviation and international shipping to be attributed to Scotland. Subsection (2) provides that orders must make provision for emissions of each greenhouse gas in the list in section 10(1) and any greenhouse gas added to that list to be taken into account in the period starting with 1 January following on from the order being approved by the Parliament and ending on 31 December 2050. Also, orders must make provision regarding the manner in which such emissions are to be taken into account in determining Scottish emissions of that gas for the baseline year and in the period in which such emissions of that gas are to be taken into account as Scottish emissions. Subsection (2) also provides that an order may make provision as to any past period in which emissions of a greenhouse gas are to be taken into account as Scottish emissions of such a gas. Once such emissions of greenhouse gases are being taken into account an order may not provide that they cease to be so taken into account.
39. Subsection (3) requires that provision made by virtue of an order under subsection (1) must, for each greenhouse gas, include the use of a multiplier which reflects the climate change impacts of emissions made at altitude by international aviation. Subsections (4) and (5) provide that a first draft order must be laid before the Scottish Parliament no later than 1 June 2010, or as soon as reasonably practicable afterwards. Before laying such an order, the Scottish Ministers must, in terms of subsection (6), seek advice from the relevant body. Subsection (7) provides that if this advice is not followed, the Scottish Ministers must publish a statement explaining why they are following a different approach.

### **Scottish emissions and removals**

40. [Section 17](#) defines Scottish emissions and Scottish removals of greenhouse gases, and defines the total of these for a period as the net Scottish emissions for that period.
41. Subsection (2) allows the Scottish Ministers to modify the definition of Scottish removals by order. Subsection (3) requires the amount of emissions and removals of a greenhouse gas to be determined, in so far as reasonably practicable, consistently with international carbon reporting practice, as defined in section 19.

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

42. [Section 18](#) provides that emissions, emissions reductions and removals are to be measured in tonnes of carbon dioxide equivalent, and defines that term.

### **International carbon reporting practice**

43. [Section 19](#) defines international carbon reporting practice in terms of the protocols to the United Nations Framework Convention on Climate Change, or other European or international arrangements or agreements which the Scottish Ministers specify by order.

This power allows the definition to be updated to take account of new international arrangements and agreements.

### **Carbon units and carbon accounting**

44. [Section 20](#) enables the Scottish Ministers to define “carbon unit” in regulations and provides them with the power by regulations to establish a scheme or use an existing scheme for the registering and tracking of carbon units and for establishing and maintaining accounts in which carbon units may be held.

### **Limits on use of carbon units**

45. [Section 21](#) requires the Scottish Ministers to set limits on the net amount of carbon units which may be credited to net Scottish emissions accounts for specified periods.
46. Subsection (2) lists the periods for which limits on the net amount of carbon units must be set and specifies the dates by which those limits must be set. Subsection (3) defines the term “net amount of carbon units”. Subsection (4) provides that an order may exclude certain specified carbon units from counting towards any limit set and subsection (5) requires that if the limit for a period is not set by the corresponding deadline, the limit must be set as soon as reasonably practicable afterwards.

### **Modifying limits on use of carbon units etc.**

47. [Section 22](#) enables the Scottish Ministers to modify, by order, any limits which have been set on the amount of carbon units that may be credited to the net Scottish emissions account and any dates associated with the limits on carbon units.
48. Subsection (2) specifies the circumstances when this order may be made: in the case of an order altering a limit set, where there has been a modification of the interim target or another significant change to the basis on which the limit was set; and, in the case of an order altering a date by which a limit must be set, where the Scottish Ministers consider it appropriate to do so.

### **Advice before setting or modifying limits on use of carbon units etc.**

49. [Section 23](#) requires the Scottish Ministers to request advice from the relevant body (the UKCCC or a Scottish body designated under section 24 of the Act) before setting or modifying limits on the net amount of carbon units which may be credited to net Scottish emissions accounts for specified periods. If provision is made that is different to that recommended by the relevant body, the Scottish Ministers must publish a statement setting out the reasons why.