



## EXPLANATORY NOTES

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### **Climate Change (Emissions Reduction Targets) (Scotland) Act 2024 (asp 15)**

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# CLIMATE CHANGE (EMISSIONS REDUCTION TARGETS) (SCOTLAND) ACT 2024

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of [the Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2024](#). They do not form part of the Act and have not been endorsed by the Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### OVERVIEW OF THE ACT AND GENERAL NOTES

#### Overview

3. The Act amends the [Climate Change \(Scotland\) Act 2009](#) in the following ways:
  - [sections 1 and 2](#) replace the system of annual and interim emissions reduction targets, which are focussed on Scottish emissions of greenhouse gases in a given year, with a system of periodic carbon budgets that are focussed on emissions over a number of years,
  - [sections 3 to 8](#) make changes to the law surrounding the climate change plans that the Scottish Government is required to produce periodically,
  - [sections 9 to 12](#) make changes affecting the content, timing and parliamentary handling of different kinds of report about progress towards reducing emissions that the Scottish Government is required to produce.
4. [Section 13](#) does not amend the 2009 Act, but is closely connected to the amendments to that Act made by sections 1 and 2. Specifically, it makes provision about the first exercise of the regulation-making power to set Scottish carbon budgets that section 1 inserts into the 2009 Act.
5. The Act's remaining sections, contained in [Part 2](#), deal with the matters usually dealt with at the end of an Act, such as when it comes into force and the short title by which it may be formally cited.

#### Interpretation

6. The text that the Act inserts into the [Climate Change \(Scotland\) Act 2009](#) will fall to be interpreted as part of the 2009 Act. The 2009 Act is to be interpreted in accordance with [the Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Publication and Interpretation etc. of Acts of the Scottish Parliament\) Order 1999](#).

7. The Act's freestanding text (that is the text not being inserted into the 2009 Act) falls to be interpreted in accordance with the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

## **PART 1: EMISSIONS REDUCTION TARGETS**

### **Chapter 1: Modification of the Climate Change (Scotland) Act 2009**

#### **Sections 1 and 2: Scottish carbon budgets**

##### ***Background to, and general effect of, sections 1 and 2***

8. Prior to being amended by [sections 1 and 2 of the Act, Part 1 of the Climate Change \(Scotland\) Act 2009](#) (as modified by the [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#)) set out statutory targets for reducing the greenhouse gas emissions attributable to Scotland. It provided for 3 types of target:

- The ultimate target was the net-zero emissions target (set by [section A1 of the 2009 Act](#)), which was that the net Scottish emissions account for the net-zero emissions target year will be 100% lower than the baseline level (see paragraph 10 below for the meaning of “net Scottish emissions account” and “baseline”). At the time these Notes were prepared, the net-zero emissions target year was 2045 (the Scottish Ministers have a power to change the target year by regulations).
- Interim targets were set for 2020, 2030 and 2040 by [section 2 of the 2009 Act](#). The interim targets were that the net Scottish emissions account for each of those years be a certain percentage lower than the baseline level.
- Annual targets were set by [section 3 of the 2009 Act](#). These were targets for each year leading up to the net-zero emissions target year (excluding years for which an interim target was set). The target for each year was that the net Scottish emissions account for the year be a percentage lower than the baseline level, with that percentage calculated by evenly distributing across the years between the last interim target and the next higher-level target (i.e. the next interim target, or the net-zero emissions year target) the percentage point change in emission levels needed to meet that next higher-level target.

9. Sections 1 and 2 of the Act replace that system of 3 types of target with a new targets system. The net-zero emissions target is unchanged as the ultimate target. But the interim targets and the annual targets are replaced with the concept of the Scottish carbon budget target. Whereas interim and annual targets were concerned with emissions levels for a particular year, a Scottish carbon budget target is concerned with emissions levels over the period for which the budget is set (which will typically be 5 years).

10. Key to understanding the system of emissions reduction targets (both the old one and the new one created by the Act) are the following concepts:

- The net Scottish emissions account (defined by [section 13 of the 2009 Act](#)) describes the volume of greenhouse gas emissions (modified by permitted credits and debits of carbon units) by reference to which the assessment is made of whether the targets are being met.

- The baseline (defined by [section 11 of the 2009 Act](#)) is the level of greenhouse gas emissions relative to which the assessment is made of the percentage by which the net Scottish emissions account has changed over a period.

11. The principal ways in which emissions reduction targets are legally significant are as follows:

- The Scottish Ministers have a duty to ensure the targets are met. These duties arise from the section of the 2009 Act that creates the target in question.
- The Scottish Ministers have duties to keep the Scottish Parliament informed about whether the targets are being met. Those duties arise, principally, from the following provisions of the 2009 Act: [section 9](#), [section 33](#), [section 34A](#) (which is inserted by section 2 of the Act, see paragraph 36 below) and [section 35B](#) (which is relevantly modified by section 9 of the Act, see paragraph 64 below).
- The Scottish Ministers have a duty to publish plans for meeting the targets. The duty arises from [section 35 of the 2009 Act](#), which requires that the climate change plan that it obliges the Scottish Ministers to produce periodically set out their proposals and policies for meeting the targets that fall within the period covered by the plan.
- All Scottish public authorities (as defined by [section 3\(1\)\(a\) of the Freedom of Information \(Scotland\) Act 2002](#)) have a duty to exercise their functions in a way best calculated to contribute to the delivery of the targets. This is one of the climate change duties of those authorities under [section 44 of the 2009 Act](#), in relation to which further provision is made by the rest of [Part 4 of the 2009 Act](#).

### ***Section 1: Scottish carbon budgets***

12. [Section 1 of the Act](#) inserts into the Climate Change (Scotland) Act 2009 new sections A2 to A5, which establish within that Act the concept of a Scottish carbon budget and the associated concept of the Scottish carbon budget target.

#### *Inserted section A2 (Scottish carbon budgets and associated concepts)*

13. Inserted section A2 sets up the conceptual framework around Scottish carbon budgets so that those concepts can be used elsewhere in the Climate Change (Scotland) Act 2009. In particular:

- a Scottish carbon budget is defined to be an amount of tonnes of carbon dioxide equivalent allocated to a given period,
- a Scottish carbon budget is said to be exceeded where the net Scottish emissions account for a period exceeds the Scottish carbon budget for the period,
- a Scottish carbon budget target is defined to mean not exceeding the Scottish carbon budget for a period.

14. Scottish carbon budgets will be set by regulations made by the Scottish Ministers under inserted section A4.

15. Inserted section A2(4) glosses references elsewhere in the 2009 Act that are predicated on emissions reduction targets being in respect of a year to allow for Scottish carbon budget targets being in respect of a period. For example, [section 9\(2\) of the 2009 Act](#) requires the Scottish Ministers to request a report within two years of the end of each target year about (amongst other things) whether the emissions reduction target for the year was met. A Scottish carbon budget target is a target for aggregate emissions reduction over a number of years, not a target for a single year. Inserted section A2(4) clarifies that when section 9(2), and other provisions that are similarly expressed, refer to the target for a year being met, they are referring, in the context of a Scottish carbon budget target, to the budget not being exceeded over the whole of the period covered by the budget rather than the target being met in any single year of the period.

*Inserted section A3 (Duty of Scottish Ministers in relation to budgets)*

16. Inserted section A3 places a duty on the Scottish Ministers to ensure that Scottish carbon budget targets are met. The definition of Scottish carbon budget target is given by inserted section A2.

*Inserted section A4 (Budget-setting regulations)*

17. Inserted section A4 deals with the setting of Scottish carbon budgets by regulations. ([Section 13 of the Act](#) makes further provision about the first exercise of this regulation-making power.)

18. As inserted section A2 states, a Scottish carbon budget is to be an amount of tonnes of carbon dioxide equivalent. Subsection (2) of inserted section A4 makes clear that the regulations setting a budget may, but need not, do so by expressing it as a number of tonnes. The Scottish Ministers may instead set a budget for a given period using a formula for calculating the number of tonnes that constitutes the budget for the period. Rather than say that the budget for the period 2026 to 2030 is  $x$  mega tonnes, the regulations might (for example) say that the budget is  $x\%$  of what emissions would have been had the baseline level of emissions continued throughout each year of that period. Specifying a formula in the legislation, rather than directly specifying a number, means that the budget amount at the end of a budget period may be different from what it would have been had the budget been specified as a number calculated at the start of the period using the formula. This is because changes in knowledge and methodology in the climate-science sphere mean that the formula's input values (such as the baseline), although historical, may nevertheless change over time, so that the formula's output may be different in 2030 from what it was in 2026.

19. Subsection (3) of inserted section A4 requires the Scottish Ministers to set budgets so that each budget covers a 5 year period, with the exception of the final budget which may cover a shorter period. The final budget period may be shorter than 5 years because the budgets are to operate up until the net-zero emissions target year, which may fall fewer than 5 years after the end of the preceding budget period. Inserted section A5 (discussed further below) allows the budget periods mandated by inserted section A4(3) to be adjusted by regulations.

20. Subsection (4) of inserted section A4 requires the Scottish Ministers, when making budget-setting regulations, to have regard to the target-setting criteria and take into account the advice they have received from the relevant body. Subsection (5) requires the Scottish Ministers to lay before the Parliament a statement about their compliance with subsection (4), and subsections (6) and (7) specify other matters that must be addressed in those statements.

The “target-setting criteria” are set out in [section 2B of the Climate Change \(Scotland\) 2009 Act](#). The “relevant body”, at the time these Notes were prepared, was the UK Committee on Climate Change. [Section 20A of the 2009 Act](#) allows for a different body to become the “relevant body” by virtue of an order made by the Scottish Ministers under [section 24 of the 2009 Act](#).

21. Regulations under inserted section A4 will be subject to parliamentary scrutiny under the affirmative procedure. This is because [section 96\(4\) of the Climate Change \(Scotland\) Act 2009](#) applies the affirmative procedure by default to any regulations made under a section of that Act. Section 96(4) is relevantly modified by [paragraph 5 of schedule 3 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), which requires section 96(4) of the 2009 Act to be read as referring to the affirmative procedure as defined by [section 29 of the 2010 Act](#).

*Inserted section A5 (Alteration of budget periods)*

22. As explained above, inserted section A4(3) requires Scottish carbon budgets (other than the final budget) to be set for a 5 year period. Inserted section A5 allows the Scottish Ministers, by regulations, to change that provision so that budgets can be set for a different period. The power can only be used for the purpose of achieving alignment between the budget periods and similar periods under international agreements to which the United Kingdom is a party.

23. Regulations under inserted section A5 will be subject to parliamentary scrutiny under the affirmative procedure. This is because [section 96\(4\) of the Climate Change \(Scotland\) Act 2009](#) applies the affirmative procedure by default to any regulations made under a section of that Act. Section 96(4) is relevantly modified by [paragraph 5 of schedule 3 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#), which requires section 96(4) of the 2009 Act to be read as referring to the affirmative procedure as defined by [section 29 of the 2010 Act](#).

***Section 2: Replacement of annual and interim targets with budget targets***

24. The overall effect of [section 2 of the Act](#) is to modify [the Climate Change \(Scotland\) Act 2009](#) so as to remove from it the concept of interim and annual targets and replace its references to those targets with references to Scottish carbon budget targets, which (as explained above) is a concept amended into the 2009 Act by [section 1 of the Act](#).

25. Section 2(2) of the Act repeals [section 2 of the 2009 Act](#), which defines interim targets. [Section 2A of the 2009 Act](#) conferred a regulation-making power to modify the interim targets in section 2 of that Act. It is repealed by section 2(3) of the Act.

26. Section 2(4) of the Act modifies [section 2C of the 2009 Act](#). Section 2C places a duty on the Scottish Ministers to request advice from the relevant body in relation to various matters (for the meaning of “relevant body” see paragraph 20 above). Section 2(4) of the Act modifies section 2C of the 2009 Act so as to replace the requirement for Ministers to seek the relevant body’s advice in relation to interim targets with a requirement to instead seek its advice in relation to Scottish carbon budgets. [Section 13\(4\) of the Act](#) contains further non-textual modifications to section 2C of the 2009 Act that are to operate only in the period prior to the first Scottish carbon budgets being set. These transitional modifications are explained in paragraph 77 below.

27. Section 2(5) of the Act modifies [section 2E of the 2009 Act](#). Section 2E makes further provision about the advice from the relevant body that the Scottish Ministers must request under [section 2C of the 2009 Act](#) and may request under [section 2D of that Act](#). Subsections (4) and (5) of section 2E, in their original form, required Ministers to take action if the relevant body gave advice to the effect that an interim target should be changed. In particular, they required Ministers to publish a statement setting out what they intended to do in light of the advice within 3 months of receiving it and if, within 12 months of receiving it, they had not laid before the Scottish Parliament draft regulations to change the interim target in question to bring it into line with the relevant body's advice, the subsections required Ministers to make a statement to the Parliament explaining why not. Section 2(5) of the Act replaces subsections (4) and (5) of section 2E of the 2009 Act with new subsections (3A) and (3B), which make equivalent provision about the action to be taken if the relevant body advises that a different Scottish carbon budget for a period would be appropriate.

28. Subsections (6) to (8) of section 2 of the Act repeal [sections 3 to 3B of the 2009 Act](#). Those sections were about annual targets.

29. Section 2(9) of the Act modifies [section 3C of the 2009 Act](#). Subsection (1) of section 3C requires the Scottish Ministers to keep up to date a list of the various targets that apply under the 2009 Act. Section 2(9) of the Act adjusts section 3C of the 2009 Act in the following ways:

- The description in subsection (1) of the targets to be included in the Scottish Ministers' list is changed so that the list covers Scottish carbon budget targets rather than interim and annual targets.
- Subsection (3) is replaced with a modified version which omits any reference to percentage figures. The original form of subsection (3) required the Scottish Ministers to lay an updated list of targets before the Scottish Parliament whenever "a percentage figure mentioned in subsection (1) has been modified." Unlike interim and annual targets, Scottish carbon budgets will not necessarily be percentage figures (see paragraph 18 above). To accommodate that, the replacement subsection (3) is more generally expressed; it requires the Scottish Ministers to lay a new version of the list before the Parliament whenever it is changed in any way. The Scottish Ministers' duty to change the list to reflect any change in a target, or a Scottish carbon budget, flows from section 3C(1) requiring them to maintain the list.

30. Section 2(10) of the Act modifies [section 9\(2\)\(d\) of the 2009 Act](#) to accommodate Scottish carbon budgets being concerned with emissions over a period, unlike interim and annual targets which were concerned only with emissions in a particular year. Section 9(2) requires the Scottish Ministers to request a report from the relevant body within two years of the end of each target year on various matters (for the meaning of "relevant body" see paragraph 20 above). One of those matters, specified in section 9(2)(d), is relevant body's views on the action taken by the Scottish Ministers to reduce net Scottish emissions of greenhouse gases during the target year. Section 2(24) of the Act amends the 2009 Act so that "target year", in relation to a period for which a Scottish carbon budget is set, will mean the final year of that period. The duty to request a report under section 9(2) will therefore arise at the end of each Scottish carbon budget period. The modification to paragraph (d) of section 9(2) means that the report should address actions to reduce net greenhouse gas emissions during the whole of the budget period not just its final year.

31. Section 2(11) of the Act modifies [section 13A of the 2009 Act](#). Section 13A confers a power on the Scottish Ministers to make regulations limiting the amount of purchased carbon units that can be credited to the net Scottish emissions account for a period. The net Scottish emissions account is defined by [section 13\(1\) of the 2009 Act](#). It is the measure of emissions used to assess whether the 2009 Act's emissions reduction targets have been met. Carbon units purchased through carbon-trading schemes can be credited to the net Scottish emissions account for a period so as to reduce the account for that period, but this can only be done if regulations have been made under section 13A setting a limit on the amount of purchased carbon units that can be credited to the account (see section 13(5A) of the 2009 Act). In its original form, section 13A(2) provided that regulations cannot set the limit for a year at a level higher than 20% of the planned reduction in the net Scottish emissions account for the year. In other words, no more than 20% of the reduction in the net Scottish emissions account that would be needed for that year's emissions-reduction target to be met (assuming the previous year's target was met) could be due to the crediting of purchased carbon units. Section 2(11) of the Act modifies section 13A of the 2009 Act with the following results:

- For years falling within a period covered by a Scottish carbon budget, the ceiling on the use of purchased carbon units is set for the whole period rather than for the individual years comprising it.
- No more than 20% of the reduction in the net Scottish emissions account needed to stay within a Scottish carbon budget for a period, assuming emissions in the preceding period to have been at the level set as the budget for that period, can be due to the crediting of carbon units.
- As it is not possible to calculate 20% of the targeted reduction in the net Scottish emissions account between the first period covered by a Scottish carbon budget and the period which preceded it (because by definition there will be no budget for the period preceding the first period covered by a budget), a transitional rule applies to allow the calculation to be performed for that first Scottish carbon budget period. The transitional rule entails calculating 20% of the difference between the first budget to be set and a notional budget for the preceding period specified by the Scottish Ministers in regulations. In making regulations setting the notional budget, the Scottish Ministers will be bound by the same obligations as they will when making regulations under inserted section A4 setting real budgets and the regulations will similarly be subject to parliamentary scrutiny under the affirmative procedure (see paragraphs 20 and 21 above).
- The ceiling on the use of purchased carbon units in respect of years not covered by Scottish carbon budgets is unchanged.

32. Subsections (12) and (13) of section 2 of the Act modify [sections 17\(3\) and 18\(2\)](#) (respectively) of the 2009 Act. In each case, the modification is to have the modified provision apply in relation to reports under inserted section 34A (see paragraph 35 below) as it does in relation to reports under the existing [section 33 of the 2009 Act](#).

33. Section 2(14) of the Act modifies [section 24 of the 2009 Act](#). Prior to the modification taking effect, subsection (3) of section 24 defined the functions of the advisory body to include advising on the Scottish Ministers' duty under section 2(1) of the 2009 Act, meaning their duty to ensure the interim targets were met. That duty is abolished by the Act, and accordingly

section 2(14) of the Act replaces the reference to it with a reference to the Scottish Ministers' new duty under inserted section A3 (see paragraph 16 above) to ensure that Scottish carbon budget targets are met.

34. Section 2(15) of the Act modifies [section 33 of the 2009 Act](#). That section requires the Scottish Ministers to lay a report before the Scottish Parliament following each “target year”. Before the abolition of annual targets, this meant a report under section 33 was required in every year up until the net-zero emissions target year (see [section A1 of the 2009 Act](#)). Now that annual targets have been replaced with Scottish carbon budget targets, emissions reduction targets will be concerned with emissions levels over a number of years rather than in respect of a single year (except in the case of the net-zero emissions target, which remains focussed solely on emissions levels in the net-zero emissions target year). Section 2(15) of the Act replaces subsections (1) and (2) of section 33 of the 2009 Act to reflect the fact that the new Scottish carbon budget targets are focussed on emissions over multiple years. Specifically:

- the replacement subsection (1) links the duty to report on the attainment of targets to the end of each period for which a Scottish carbon budget is set. A new requirement for the Scottish Ministers to report on progress towards emissions reduction annually is created by section 2(17) of the Act, which inserts a new section 34A into the 2009 Act.
- The replacement subsection (2) reproduces the effect of the previous subsection (2), which was to set out the required contents of a report under the section, with changes to reflect the move to multi-year targets.
- The new subsection (2A) makes special provision about the final section 33 report, that is the one produced following the net-zero emissions target year. As that report will address a target specific to a single year, subsection (2A) requires that report to cover, in addition to the matters set out in the new version of subsection (2) for the final Scottish carbon budget period, the matters that the previous version of subsection (2) required all reports to cover when all section 33 reports were specific to a single year.

35. Section 2(16) of the Act modifies [section 34 of the 2009 Act](#). Section 34 of the 2009 Act elaborates on the contents of a report under [section 33](#). The modifications made by section 2(16) of the Act are made to reflect the fact that reports under the modified section 33 of the 2009 Act are concerned with emissions levels over a number of years rather than in respect of only one target year.

36. Section 2(17) of the Act inserts a new section 34A into the 2009 Act. As explained in paragraph 34 above, [section 33 of the 2009 Act](#) (in the form inserted by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019) required the Scottish Ministers to report on delivery against emissions-reduction targets annually because there was a system of annual targets. The Act has modified the 2009 Act to replace annual targets with multi-year Scottish carbon budget targets and therefore reports under section 33 on delivery against targets will cease to be annual because there will not be annual targets against which to report. The inserted section 34A will create a new annual reporting duty for the Scottish Ministers. Like a report under section 33, a report under section 34A will need to include the information set out in section 34 of the 2009 Act. It will differ from a report under section 33 principally in not having to address performance against a Scottish carbon budget target; the point of having a report

under section 34A rather than under section 33 is that, in a system of multi-year targets, performance against the target cannot be addressed until the end of the period for which the target is set. No report under the new section 34A is required for:

- the final year of a period for which a Scottish carbon budget is set, because following those years a report under section 33 will be produced and it will contain all of the information that a section 34A report for the year would cover,
- years that predate the new section 34A being inserted into the 2009 Act, except for those few years that would otherwise fall into a transitional gap because they had not been reported on under section 33 before it ceased to require reporting against annual targets and will not be reported on under section 33 in future because they were already in the past when the first Scottish carbon budget period begins,
- future years beyond the net-zero emissions target year (as defined by [section A1 of the 2009 Act](#)).

37. Section 2(18) of the Act modifies [section 35\(4\)\(b\) of the 2009 Act](#) to remove a reference to interim targets that no longer makes sense following their abolition.

38. Section 2(19) of the Act changes the heading to [section 36 of the 2009 Act](#) to remove a reference to annual targets that would no longer have made sense following their abolition.

39. Section 2(20) of the Act modifies [section 42 of the 2009 Act](#). Amongst other things, section 42 sets out duties that the Scottish Ministers owe to the Scottish Parliament when they lay before it a report under [section 33 of the 2009 Act](#). Section 2(20) of the Act adjusts section 42 so that those duties arise in connection with a report laid before the Parliament under inserted section 34A too (see paragraph 36 above).

40. Section 2(21) of the Act modifies [section 57\(3\)\(a\) of the 2009 Act](#). Section 57, in its current form, requires the Scottish Ministers to produce a land use strategy setting out objectives, proposals and policies which contribute to the achievement of their duties under sections 1, 2(1) or 3(1)(b) of the 2009 Act. Section 2(21) of the Act updates those cross-references as follows:

- Section 1 of the 2009 Act set the original ultimate target for Part 1 of the Act, known as the 2050 target. The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 replaced the 2050 target with the Scottish net-zero emissions target (see [section A1 of the 2009 Act](#)) and repealed section 1. The reference to section 1 is therefore replaced with a reference to section A1.
- Sections 2 and 3 of the 2009 Act respectively set interim targets and annual targets. The Act has abolished those and replaced them with Scottish carbon budgets under inserted section A2 and a duty, under inserted section A3, to ensure the targets arising from those budgets are met. The references to sections 2 and 3 are therefore replaced with a reference to section A3.

41. Subsections (22) and (23) of section 2 of the Act modify, respectively, [sections 96 and 97](#) of the 2009 Act. Those sections are concerned with the scrutiny of regulations made under provisions of the 2009 Act, including [section 13A](#). As explained in paragraph 31 above, section 13A (as first enacted) provided for regulations to set a limit on the use of purchased carbon units by reference to planned annual reductions in emissions levels whereas, as now modified by the Act, it sets the limit by reference to planned multi-year reductions. The modification to

both section 96 and 97 of the 2009 Act is consequential on the changes made to section 13A; in each section, reference to section 13A setting a limit for a year is replaced with reference to its doing so for a period. These modifications are made for consistency with the modifications to section 13A and do not change the effect of section 96 or 97.

42. Section 2(24) of the Act modifies [section 98 of the 2009 Act](#). Section 98 is an interpretative provision which defines terms used in the preceding sections of the 2009 Act.

### **Sections 3 to 8: Climate change plan**

#### ***Background: meaning of climate change plan***

43. [Sections 3 to 8 of the Act](#) concern climate change plans. A climate change plan is a document that the Scottish Ministers are required to produce periodically under [section 35 of the Climate Change \(Scotland\) Act 2009](#). Section 35 lists matters that a climate change plan is to cover. In broad terms, the plan is to set out how the Scottish Ministers envisage emissions being reduced over the lifetime of the plan.

#### ***Section 3: Next plan to follow setting of budgets***

44. [Section 3 of the Act](#) sets the deadlines for the Scottish Ministers to lay before the Scottish Parliament first a draft climate change plan, and then the first finalised climate change plan.

45. Section 3(1) of the Act requires a draft plan to be laid before the Parliament within 2 months of the regulations setting the first Scottish carbon budgets coming into force. Regulations setting Scottish carbon budgets are to be made under the new [section A4 of the Climate Change \(Scotland\) Act 2009](#) (see paragraphs 17 to 21 above).

46. Before the Scottish Ministers can lay a finalised climate change plan before the Parliament, [section 35A of the 2009 Act](#) requires a minimum period to have elapsed since they laid a draft plan before the Parliament. The minimum period is 120 days, but only 60 days during which the Parliament is dissolved or in recess can be counted towards the minimum period, therefore the period may be longer than 120 calendar days. The laying of a draft plan before the Parliament as required by section 3(1) of the Act will start the clock on the minimum period required by section 35A of the 2009 Act.

47. Section 3(3) of the Act modifies [section 35 of the 2009 Act](#) so that the Scottish Ministers must lay the first finalised climate change plan before the Parliament within 90 days of the stopping of the clock that started when a draft plan was laid before the Parliament as required by section 3(1) of the Act. In counting that 90 day period, only 45 days during which the Parliament is dissolved or in recess can be counted.

48. In summary, as a result of section 3 of the Act:

- a draft climate change plan has to be laid before the Parliament within 2 months of the first Scottish carbon budgets being set,
- it becomes lawful for the Scottish Ministers to lay a finalised plan before the Parliament 120 countable days after laying the draft plan (for this purpose a day is not a countable day if the Parliament is dissolved or in recess on the day and 60 days on which the Parliament was dissolved or in recess have already been counted),

- the Scottish Ministers must lay a finalised plan before the Parliament within 90 countable days of its becoming lawful to do so (for this purpose a day is not a countable day if the Parliament is dissolved or in recess on the day and 45 days on which the Parliament was dissolved or in recess have already been counted).

#### ***Section 4: Content of plan: budget-period breakdown of costs and benefits***

49. [Section 4 of the Act](#) modifies [section 35 of the Climate Change \(Scotland\) Act 2009](#) in relation to the information that a climate change plan must contain.

50. Section 35(21) of the 2009 Act requires that a climate change plan include an estimate of the costs and benefits associated with the policies described by the plan. Section 4 of the Act modifies that provision to require those estimates to be broken down by reference to the Scottish carbon budget periods within which the estimated costs and benefits are expected to arise.

51. For an explanation of Scottish carbon budgets, and the periods they cover, see paragraphs 12 to 23 above.

#### ***Section 5: Content of plan: contribution of policies to meeting targets***

52. [Section 5 of the Act](#) modifies [section 35 of the Climate Change \(Scotland\) Act 2009](#) in relation to the information that a climate change plan must contain.

53. Subsection (5) of section 35 of the 2009 Act requires that a climate change plan break down the expected contributions to meeting emissions reduction targets that will be made by different sectors listed in subsection (3) of the section (for example, the energy-supply sector and the agricultural sector). Section 5 of the Act amends section 35(5) of the 2009 Act to create a further requirement for climate change plans to include a breakdown of the expected contribution to meeting emissions reduction targets that will be made by groups of associated policies. It will be for the authors of a plan to group associated policies, but an example may be a collection policies connected by the common theme of “active travel”.

#### ***Section 6: Preparation of plan: public consultation***

54. [Section 6 of the Act](#) inserts a new [section 35ZA into the Climate Change \(Scotland\) Act 2009](#) to create a requirement for the Scottish Ministers to consult publicly to inform the proposals and policies to be set out in a climate change plan. The new section further requires the Scottish Ministers to lay a statement before the Scottish Parliament, ahead of carrying out such a consultation, describing their approach to the consultative process. The duty created by the new section applies only to climate change plans that are to be laid before the Parliament under [section 35\(1\)\(b\) of the 2009 Act](#), which means that it does not apply to the first climate change plan to be prepared.

#### ***Section 7: Preparation of plan: further consultation***

55. [Section 7 of the Act](#) modifies [section 35A of the Climate Change \(Scotland\) Act 2009](#), creating an express requirement for the Scottish Ministers to solicit the views of persons with particular kinds of expertise when finalising a climate change plan.

56. Section 35A of the 2009 Act prevents the Scottish Ministers from finalising a climate change plan until a draft of it has lain before the Scottish Parliament for a fixed period. This provides an opportunity for views to be received on the plan in draft form. Before they can finalise the plan, the Scottish Ministers must have regard to any views received in relation to the draft plan.

57. Section 7 of the Act amends section 35A of the 2009 Act so that, as well as laying a draft of a climate change plan before the Parliament, the Scottish Ministers must actively seek views from persons with knowledge of international law or policy relating to climate change, scientific knowledge about climate change and technical knowledge about climate change. It further amends section 35A of the 2009 Act to make clear that the Scottish Ministers must have regard to any views on the draft plan from those whose views were sought in accordance with the new duty.

### ***Section 8: Requirement to respond to parliamentary reports and resolutions on draft plan***

58. [Section 8 of the Act](#) amends [section 35A of the Climate Change \(Scotland\) Act 2009](#) to impose a duty on the Scottish Ministers to respond to parliamentary resolutions and reports in relation to draft climate change plans within 3 months of the resolution or report.

59. Section 35A(1) of the 2009 Act requires that, before laying a final climate change plan before the Scottish Parliament, the Scottish Ministers must first have laid a draft plan before the Parliament. It also requires the Scottish Ministers, in preparing a finalised plan, to have regard to (amongst other things) resolutions about the draft plan passed by the Parliament and reports about the draft plan published by committees of the Parliament. Section 35A(2) requires that, alongside a finalised plan, the Scottish Ministers lay before the Parliament a statement providing details of any such resolution or report and what (if any) changes have been made to the plan in response.

60. Section 8 of the Act inserts a new subsection (1A) into section 35A of the 2009 Act. The new subsection (1A) sets a 3 month deadline for the Scottish Ministers to publish a response to a parliamentary resolution or report in relation to a draft climate change plan.

61. As mentioned, before new subsection (1A) was inserted there was an existing requirement in section 35A(2) for the Scottish Ministers to respond to such resolutions and reports by laying a statement before the Parliament at the same time as laying before the Parliament a finalised climate change plan. In addition to the new subsection (1A), section 8 of the Act inserts a new subsection (1B) into section 35A of the 2009 Act, which makes clear that the requirement for a response created by the new subsection (1A) can be fulfilled by laying before the Parliament the statement required by section 35A(2). In other words if, within the 3 month deadline set by subsection (1A), the Scottish Ministers have responded to a parliamentary resolution or report by laying before the Parliament a statement in accordance with subsection (2), they do not need to publish a separate response to the resolution or report in order to fulfil the requirements of new subsection (1A).

### **Sections 9 to 12: Reporting and assessments**

#### ***Section 9: Report on proposals and policies where targets at risk of not being met***

62. [Section 9 of the Act](#) amends [section 35B of the Climate Change \(Scotland\) Act 2009](#) in relation to the information to be contained in an annual report under that section.

63. Section 35B of the 2009 Act requires the Scottish Ministers to report each year on the implementation of proposals and policies set out in the latest climate change plan (for an explanation of “climate change plan” see paragraph 43 above).

64. Section 9 of the Act adds a new subsection (2A) to section 35B of the 2009 Act, which requires the Scottish Ministers to consider when preparing a section 35B report whether they expect emissions-reduction targets to be met and, where they do not expect them to be met, to include in the report an explanation of why not and what they intend to do to ensure the target is met. The term “emissions reduction target” is defined in [section 98 of the 2009 Act](#).

### ***Section 10: Deadline for report on proposals and policies where targets not met***

65. [Section 10 of the Act](#) amends [section 36\(2\) of the Climate Change \(Scotland\) Act 2009](#) so that, where the requirement to lay a report under that section before the Scottish Parliament is triggered, the Scottish Ministers must do so within a fixed period of 6 months. Prior to the amendment taking effect, the duty was to do so soon as reasonably practicable.

66. The requirement to lay a report before the Parliament under section 36 is triggered by the Scottish Ministers laying before the Parliament a report under [section 33 of the 2009 Act](#) stating that an emissions reduction target has not been met. The term “emissions reduction target” is defined in [section 98 of the 2009 Act](#).

67. A report under section 36 of the 2009 Act is a report setting out the Scottish Ministers’ proposals and policies to compensate in future years for the excess emissions that led to the missing of the target identified in the preceding section 33 report.

### ***Section 11: Annual progress reports on climate change plan: further procedure***

68. [Section 11 of the Act](#) adds reports under [section 35B of the Climate Change \(Scotland\) Act 2009](#) to the list of types of report in relation to which the requirements of [section 42\(1\) and \(4\) of that Act](#) apply. Those requirements are as follows:

- when they lay such a report before the Scottish Parliament, the Scottish Ministers must send a copy to the conveners of the Parliament’s committees,
- as soon as reasonably practicable after laying such a report before the Parliament, the Scottish Ministers must make a statement to the Parliament about it, and
- the Scottish Ministers must have regard to any resolution passed by the Parliament, or report published by a parliamentary committee, in relation to such a report.

69. A report under section 35B of the 2009 Act is a report, prepared annually by the Scottish Ministers, on the implementation of proposals and policies set out in the latest climate change plan (for an explanation of the term “climate change plan” see paragraph 43 above).

### ***Section 12: Assessing the impact of major capital projects on meeting targets***

70. [Section 12 of the Act](#) amends [sections 33 and 35](#) of the Climate Change (Scotland) Act 2009 so that reports under section 33 of that Act have to provide details of assessments of the impact of major capital projects on meeting Scottish carbon budget targets (for an explanation of the term “Scottish carbon budget target” see paragraph 13 above).

71. The amendment to section 35 of the 2009 Act creates a requirement for the Scottish Ministers to include in climate change plans their proposals and policies for assessing the impact of major capital projects on meeting Scottish carbon budget targets (for an explanation of the term “climate change plan” see paragraph 43 above). As part of setting out those proposals and policies, the Scottish Ministers are to define what constitutes a “major capital project”.

72. The amendment to section 33 of the 2009 Act creates a requirement for the Scottish Ministers to describe, in a section 33 report, the assessments of major capital projects that they have carried out during the period to which the report relates in accordance with the proposals and policies for carrying out those assessments included in the latest climate change plan. A section 33 report is a report produced at the end of each period covered by a Scottish carbon budget (see paragraph 34 above).

## **Chapter 2: Setting Scottish carbon budgets**

### **Section 13: Further provision about setting first Scottish carbon budgets**

73. As explained in paragraphs 17 to 20 above, the Act inserts a new [section A4 into the Climate Change \(Scotland\) Act 2009](#) under which the Scottish Ministers will set carbon budgets by regulations. [Section 13 of the Act](#) makes further provision in connection with the first exercise of that budget-setting power.

74. Section 13(1) deals with where in the statute book Scottish carbon budgets are to be expressed. It provides that they are to be set out by being amended onto the face of the 2009 Act. This is to ensure that readers of the Act can find the budgets without having to look beyond an updated version of the Act (such as the one that will be freely available on [legislation.gov.uk](http://legislation.gov.uk)). The alternative would be for the budgets to be set out in the body of the regulations themselves, which would require users of the statute book to locate the relevant Scottish statutory instrument to learn what the budgets are. The usual presumption that a regulation-making power cannot be exercised to amend primary legislation (such as the 2009 Act) is overcome in the case of the power conferred by inserted section A4 by [section 96\(3\) of the 2009 Act](#).

75. Section 13(2) requires the Scottish Ministers to obtain the relevant body’s advice on setting budgets before producing the first regulations doing so. That advice will be the latest advice for the purposes of inserted section A4(4) and (5) (the implications of which, and the meaning of “relevant body”, are explained in paragraph 20 above).

76. Section 13(3) sets a deadline for the Scottish Ministers to lay before the Scottish Parliament the first draft regulations setting Scottish carbon budgets. That deadline falls 3 months after they have received the advice from the relevant body that subsection (2) requires them to receive before deciding what budgets to set. As regulations setting Scottish carbon budgets are subject to the affirmative procedure (see paragraph 21 above), the regulations can only be made if the Parliament approves a draft of them.

77. Section 13(4) is a transitional provision that modifies how [section 2C of the 2009 Act](#) will operate if the Scottish Ministers use it as the statutory basis for making the request for the relevant body’s advice that section 13(2) requires them to make, or otherwise invoke it before the first-budget setting regulations have been made and come into force. There are two statutory

bases in the 2009 Act for the Scottish Ministers to request the relevant body's advice. [Section 2D](#) is a general power to make ad hoc requests about any matter the Scottish Ministers consider relevant. Section 2C is more specific; it requires the Scottish Ministers to periodically request the relevant body's advice on a number of matters that it lists. As explained in paragraph 26 above, section 2(4) of the Act will amend section 2C of the 2009 Act to change its references to interim and annual targets into references to Scottish carbon budget targets. Those references to Scottish carbon budget targets will only make sense if there are Scottish carbon budget targets, which is to say if budgets have already been set when the request for advice under section 2C is made. In order to allow section 2C to be invoked to seek the relevant body's advice ahead of setting budgets, during the transitional period before the first budgets are set only, section 13(4) allows the references in section 2C of the 2009 Act to be read as references to the budgets that the relevant body has, or intends, to advise the Scottish Ministers to set.

## **PART 2: FINAL PROVISIONS**

### **Section 14: Ancillary provision**

78. [Section 14 of the Act](#) enables the Scottish Ministers to make ancillary provision, by regulations, to give full effect to the Act or any provision made under it. It includes the power to modify other enactments (including the Act itself).

79. Regulations under section 14 that amend the text of an Act are subject to parliamentary scrutiny under the affirmative procedure (as defined by [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)). Otherwise, they are subject to the negative procedure (as defined by [section 28 of that Act](#)).

### **Section 15: Commencement**

80. [Section 15 of the Act](#) deals with when the Act's provisions come into effect as a matter of law. It provides for all of the provisions to come into effect on the day after the Bill for the Act receives Royal Assent. That means all of the Act's provisions came into effect on 23 November 2024. The process by which a Bill becomes an Act of the Scottish Parliament is set out in [section 28 of the Scotland Act 1998](#).

### **Section 16: Short title**

81. [Section 16 of the Act](#) provides that the Act's short title is the Climate Change (Emissions Reduction Targets) (Scotland) Act 2024. The short title is the name by which an Act may be officially cited.

## **PARLIAMENTARY HISTORY**

82. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

<i>Proceedings and reports</i>	<i>Reference</i>
<b>INTRODUCTION</b>	
Bill as introduced on 5 September 2024	<a href="#">SP Bill 51 Climate Change (Emissions Reduction Targets) (Scotland) Bill [as introduced] Session 6 (2024)</a>

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
Explanatory Notes for the Bill as introduced	<a href="#">SP Bill 51–EN Climate Change (Emissions Reduction Targets) (Scotland) Bill [explanatory notes] Session 6 (2024)</a>
Policy Memorandum for the Bill as introduced	<a href="#">SP Bill 51–PM Climate Change (Emissions Reduction Targets) (Scotland) Bill [policy memorandum] Session 6 (2024)</a>
Financial Memorandum for the Bill as introduced	<a href="#">SP Bill 51–FM Climate Change (Emissions Reduction Targets) (Scotland) Bill [financial memorandum] Session 6 (2024)</a>
Delegated Powers Memorandum for the Bill as introduced	<a href="#">SP Bill 51–DPM Climate Change (Emissions Reduction Targets) (Scotland) Bill [delegated powers memorandum] Session 6 (2024)</a>
<b>STAGE 1</b>	
Net Zero, Energy and Transport Committee, Stage 1 evidence, day 1	<a href="#">SP OR Net Zero, Energy and Transport Committee 10 September 2024</a>
Stage 1 report by the Delegated Powers and Law Reform Committee	<a href="#">Delegated Powers and Law Reform Committee 52nd Report, 2024, Delegated Powers in the Climate Change (Emissions Reduction Targets) (Scotland) Bill at Stage 1 (SPP 643)</a>
Net Zero, Energy and Transport Committee, Stage 1 evidence, day 2	<a href="#">SP OR Net Zero, Energy and Transport Committee 17 September 2024</a>
Net Zero, Energy and Transport Committee, Stage 1 evidence, day 3	<a href="#">SP OR Net Zero, Energy and Transport Committee 24 September 2024</a>
Stage 1 report by the Net Zero, Energy and Transport Committee	<a href="#">Net Zero, Energy and Transport Committee 11th Report, 2024, Stage 1 report on the Climate Change (Emissions Targets) (Scotland) Bill (SPP 656)</a>
Stage 1 debate in the Chamber	<a href="#">SP OR 10 October 2024, col 79–121</a>
<b>STAGE 2</b>	
Marshalled list of amendments for Stage 2 consideration	<a href="#">SP Bill 51–ML Climate Change (Emissions Reduction Targets) (Scotland) Bill [marshalled list of amendments for Stage 2] Session 6 (2024)</a>
Groupings of amendments for Stage 2 consideration	<a href="#">SP Bill 51–G Climate Change (Emissions Reduction Targets) (Scotland) Bill [groupings of amendments for Stage 2] Session 6 (2024)</a>
Stage 2 consideration by the Net Zero, Energy and Transport Committee	<a href="#">SP OR Net Zero, Energy and Transport Committee 29 October 2024</a>
Bill as amended at Stage 2	<a href="#">SP Bill 51A Climate Change (Emissions Reduction Targets) (Scotland) Bill [as amended at Stage 2] Session 6 (2024)</a>
<b>STAGE 3</b>	
Marshalled list of amendments for Stage 3 consideration	<a href="#">SP Bill 51A–ML Climate Change (Emissions Reduction Targets) (Scotland) Bill [marshalled list of amendments for Stage 3] Session 6 (2024)</a>

*These notes relate to the Climate Change (Emissions Reduction Targets) (Scotland) Act 2024 (asp 15) which received Royal Assent on 22 November 2024*

<b><i>Proceedings and reports</i></b>	<b><i>Reference</i></b>
Groupings of amendments for Stage 3 consideration	<a href="#">SP Bill 51A–G (Timed) Climate Change (Emissions Reduction Targets) (Scotland) Bill [groupings of amendments for Stage 3] Session 6 (2024)</a>
Stage 3 consideration of amendments and debate	<a href="#">SP OR 5 November 2024, col 11–59</a>
Bill as passed	<a href="#">SP Bill 51B Climate Change (Emissions Reduction Targets) (Scotland) Bill [as passed] Session 6 (2024)</a>
<b>ROYAL ASSENT</b>	
Climate Change (Emissions Reduction Targets) (Scotland) Act 2024, Royal Assent received 22 November 2024	<a href="#">2024 asp 15</a>

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.



a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company,  
and available from:

**Online**

**[www.tsoshop.co.uk](http://www.tsoshop.co.uk)**

**Mail, Telephone & E-mail**

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ISBN 978-0-10-592084-7

