Climate Change (Scotland) Act 2009

2009 asp 12

PART 5 S

OTHER CLIMATE CHANGE PROVISIONS

CHAPTER 1 S

ADAPTATION

Adaptation programmes

53 Programmes for adaptation to climate change S

(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) setting out—

(i) their objectives in relation to adaptation to climate change;

(ii) their proposals and policies for meeting those objectives;

(iii) the arrangements for involving employers, trade unions and other stakeholders in meeting those objectives;

(iv) the mechanisms for ensuring public engagement in meeting those objectives;

(v) the period within which those proposals and policies will be introduced; and

(b) otherwise addressing the risks identified in the report under section 56 of the 2008 Act.

(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 must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in the previous programme.

(4) The Scottish Ministers must lay each programme as soon as reasonably practicable after they receive the copy of the Secretary of State's report.

Commencement Information

I1 S. 53 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

54 Reports on progress towards implementation of programmes for adaptation S

(1) This section applies where the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament.

(2) The Scottish Ministers must lay before the Scottish Parliament reports setting out their assessment of the progress made towards implementing the objectives, proposals and policies set out in the programme.

(3) The first report under this section must be laid before the Scottish Parliament no later than the expiry of the period of 12 months beginning with the day on which the programme is laid.

(4) The second and subsequent reports under this section must be laid before the Scottish Parliament no later than the expiry of each subsequent period of 12 months.

Commencement Information

I2 S. 54 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

55 Progress towards implementation of programmes for adaptation S

(1) This section applies where—

(a) the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament;

(b) the Secretary of State lays a second or subsequent report under section 56 of the 2008 Act before Parliament.

(2) Where subsection (1)(a) applies, the Scottish Ministers must, before the expiry of the period of 2 years beginning with the day on which the programme is laid, request the relevant body to prepare a report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in that programme.

(3) Where subsection (1)(b) applies, the Scottish Ministers must, as soon as reasonably practicable after they receive the copy of the report laid, request the relevant body to prepare a further report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in the most recent programme laid by the Scottish Ministers under section 53(2).

(4) The Scottish Ministers must, as soon as reasonably practicable after they receive the relevant body's report under subsection (2) or, as the case may be, further report under subsection (3), lay it before the Scottish Parliament.

Commencement Information

I3 S. 55 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

PROSPECTIVE

56 Reports on programmes for adaptation S

(1) This section applies where—

(a) the Scottish Ministers lay a programme under section 53(2) before the Scottish Parliament;

(b) the Secretary of State lays a second or subsequent report under section 56 of the 2008 Act before Parliament.

(2) Where subsection (1)(a) applies, the advisory body must, before the expiry of the period of 2 years beginning with the day on which the programme is laid, prepare a report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in that programme.

(3) Where subsection (1)(b) applies, the advisory body must, as soon as reasonably practicable after the report is laid, prepare a further report setting out its assessment of the progress made towards implementing the objectives, proposals and policies set out in the most recent programme laid by the Scottish Ministers under section 53(2).

(4) The advisory body must, as soon as reasonably practicable after preparing a report under subsection (2) or, as the case may be, a further report under subsection (3), lay it before the Scottish Parliament.

CHAPTER 2 S

LAND USE

Land use strategy

57 Duty to produce a land use strategy S

(1) The Scottish Ministers must, no later than 31 March 2011, lay a land use strategy before the Scottish Parliament.

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

(a) the Scottish Ministers' objectives in relation to sustainable land use;

(b) their proposals and policies for meeting those objectives; and

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

(3) The objectives, proposals and policies referred to in subsection (2) must contribute to—

(a) achievement of the Scottish Ministers' duties under section 1, 2(1) or 3(1)(b);

(b) achievement of the Scottish Ministers' objectives in relation to adaptation to climate change, including those set out in any programme produced by virtue of section 53(2); and

(c) sustainable development.

(4) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with such bodies as they consider appropriate and also with the general public.

(5) The strategy must be accompanied by a report setting out—

(a) the consultation process undertaken in order to comply with subsection (4); and

(b) the ways in which views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(6) The Scottish Ministers must, no later than—

(a) 5 years after laying a strategy before the Scottish Parliament under subsection (1); and

(b) the end of every subsequent period of 5 years,

lay a revised strategy before the Scottish Parliament; and subsections (2) to (5) apply to a revised strategy as they apply to a strategy laid under subsection (1).

Commencement Information

I4 S. 57 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Muirburn

58 Variation of permitted times for making muirburn S

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**

(1) The Scottish Ministers may, by order, modify section 23 so as to substitute for any of the dates for the time being mentioned in subsection (1), (2) or, as the case may be, (3) of that section such other dates as they consider appropriate as the dates before which or after which it is lawful to make muirburn in any year.

(2) 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.

(3) An order under subsection (1) may not modify any of the dates for the time being mentioned in section 23 if the modification would result in a period during which it is lawful to make muirburn in any year being shorter than the corresponding period which applied immediately before the coming into force of section 58 of the Climate Change (Scotland) Act 2009 (asp 12).

(4) The power conferred by subsection (1) is exercisable by statutory instrument.

(5) No statutory instrument containing an order under subsection (1) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

Commencement Information
I5 S. 58 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Forestry

59 Power to modify functions of Forestry Commissioners S

(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—
- (a) in order to comply with their duty under section 1, 2(1) 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) Any body corporate formed or trust established by the Forestry Commissioners by virtue of an order under subsection (1) is a public body or office holder for the purposes of section 1 of the Nature Conservation (Scotland) Act 2004 (asp 6).

Commencement Information
I6 S. 59 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

CHAPTER 3 S

ENERGY EFFICIENCY

Promotion of energy efficiency and renewable heat

60 Duty of Scottish Ministers to promote energy efficiency S

(1) The Scottish Ministers must prepare and publish a plan for—

Status: *Point in time view as at 31/10/2009. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Part 5. (See end of Document for details)*

(a) promoting energy efficiency; and
(b) improving the energy efficiency of living accommodation,

in Scotland.

(2) The plan must set annual energy efficiency targets and describe how those targets are to be reported on.

(3) The plan must also include details of how the Scottish Ministers intend to update planning and building regulations to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific building, through the installation and operation of low and zero-carbon generating technologies.

(4) The plan prepared under subsection (1) must be published no later than 12 months after the day on which this section comes into force.

(5) The Scottish Ministers—
(a) may, from time to time; and
(b) must, before the end of the period mentioned in subsection (6),

review the plan prepared and published under this section.

(6) The period referred to in subsection (5)(b) is the period of 3 years beginning with the day on which—
(a) the plan is first published; or
(b) the plan was last reviewed under subsection (5).

(7) Where, following a review under subsection (5), the Scottish Ministers vary the plan, they must, as soon as reasonably practicable after so doing, publish the plan as so varied.

(8) 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.

(9) In this section—

"energy efficiency" includes the use of—
(a) technologies (other than those used for the production of heat) reliant on renewable sources of energy;
(b) materials and equipment the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials and equipment; and
(c) surplus heat from electricity generation or other industrial processes for district heating or other purposes;

"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.

Commencement Information

I7 S. 60 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

61 Duty of Scottish Ministers to promote renewable heat S

(1) The Scottish Ministers must prepare and publish a plan for the promotion of the use of heat produced from renewable sources.

(2) The plan must, in particular—

(a) set—

(i) targets for the percentage of heat to be produced from renewable sources; and

(ii) in relation to each target, the date by which it should be met; and

(b) describe how those targets are to be reported on.

(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 2 years beginning with the day 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 this section, "renewable sources" has the same meaning as in section 60(9).

Commencement Information

I8 S. 61 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

62 Laying of plans and reports S

(1) The Scottish Ministers must, as soon as reasonably practicable after publishing a plan under section 60(1) or (7) or section 61(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 day on which—
  (a) the plan is first published; or
  (b) a report was last laid under subsection (2).

(4) Where the Scottish Ministers lay a plan mentioned in subsection (1) or a report mentioned in subsection (2) before the 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 plan or, as the case may be, report.

Commencement Information

I9 S. 62 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

VALID FROM 01/04/2010

Energy performance of non-domestic buildings

63 Non-domestic buildings: assessment of energy performance and emissions S

(1) The Scottish Ministers must, by regulations—
  (a) provide for the assessment of—
    (i) the energy performance of non-domestic buildings;
    (ii) the emission of greenhouse gases produced by or otherwise associated with such buildings or with activities carried out in such buildings;
  (b) require owners of such buildings to take steps, identified by such assessments, to—
    (i) improve the energy performance of such buildings;
    (ii) reduce such emissions.

(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 carried out in buildings;
  (g) the persons who may carry out such assessments;
  (h) the issuing of certificates following such assessments, including the form, manner and content of such certificates;
  (i) the form of any recommendations, contained in such certificates, as to the improvement of the energy performance of buildings and the reduction of

emissions produced by or otherwise associated with buildings or activities carried out in buildings;

(j) the manner in which and periods within which persons must take steps to comply with any recommendations contained in such certificates;

(k) the registration of such certificates;

(l) the disclosure of information which is entered in the register;

(m) subject to subsection (3), the enforcement authority in relation to the regulations;

(n) subject to subsection (5), the functions of that authority;

(o) the keeping of information and its production to the enforcement authority;

(p) the enforcement of the duties imposed by the regulations;

(q) offences in relation to failures to comply with requirements of the regulations.

(3) The enforcement authority provided for in the regulations is to be such person or body as the Scottish Ministers consider appropriate.

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

(5) 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.

(6) The Scottish Ministers must, no later than 12 months after the day on which this section comes into force, publish a report setting out—

(a) what measures they intend to take to reduce emissions from non-domestic buildings; and

(b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).

(7) In this section, "non-domestic building"—

(a) means a building other than a dwelling;

(b) does not include—

(i) any yard, garden, outbuilding or other land or buildings;

(ii) any common areas,

associated with such a dwelling.

VALID FROM 01/04/2010

Energy performance of living accommodation

64 Living accommodation: assessment of energy performance and emissions S

(1) The Scottish Ministers must, by regulations—

(a) provide for the assessment of—

(i) the energy performance of living accommodation;

(ii) the emission of greenhouse gases produced by or otherwise associated with such accommodation;

(b) require owners of such accommodation to take steps, identified by such assessments, to—

(i) improve the energy performance of such accommodation;

(ii) reduce such emissions.

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

(a) the circumstances in which the regulations apply;

(b) the living accommodation 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 living accommodation;

(f) the procedure and methodology for assessing the greenhouse gas emissions produced by or otherwise associated with living accommodation;

(g) the persons who may carry out such assessments;

(h) the issuing of certificates, following such assessments, including the form, manner and content of such certificates;

(i) the form of any recommendations, contained in such certificates, as to the improvement of the energy performance of, and the reduction of emissions produced by or otherwise associated with, living accommodation;

(j) the manner in which and periods within which persons must take steps to comply with any recommendations contained in such certificates;

(k) the registration of such certificates;

(l) the disclosure of information which is entered in the register;

(m) subject to subsection (3), the enforcement authority in relation to the regulations;

(n) subject to subsection (5), the functions of that authority;

(o) the keeping of information and its production to the enforcement authority;

(p) the enforcement of the duties imposed by the regulations;

(q) offences in relation to failures to comply with requirements of the regulations.

(3) The enforcement authority provided for in the regulations is to be such person or body as the Scottish Ministers consider appropriate.

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

(5) 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.

(6) The Scottish Ministers must, no later than 12 months after the day on which this section comes into force, publish a report setting out—

(a) what measures they intend to take to reduce emissions from living accommodation; and

(b) when they intend to make provision as mentioned in paragraphs (i) and (j) of subsection (2).

(7) In this section, "living accommodation"—

(a) means a dwelling; and

(b) includes—

(i) any building having a total useful floor area of 50m2 or more; and

(ii) any common areas,

associated with such a dwelling.

VALID FROM 01/04/2010

Energy efficiency discount schemes

65 Duty of local authorities to establish energy efficiency discount schemes S

(1) The Local Government Finance Act 1992 (c. 14) is amended as follows.

(2) After section 80 (reduced amounts payable in respect of council tax), insert—

"**80A Local authority's power to reduce amount of tax payable**

(1) A local authority must establish a scheme for reducing the amounts which persons are liable to pay in respect of council tax where improvements are made to the energy efficiency of chargeable dwellings.

(2) A scheme established under subsection (1) is an "energy efficiency discount scheme".

(3) An energy efficiency discount scheme may make such provision as the local authority considers appropriate, including, in particular, provision about—

(a) the energy efficiency improvements to which the scheme applies;

(b) the chargeable dwellings to which the scheme applies;

(c) the reduction, which may be made under the scheme, in the amount which persons are liable to pay in respect of council tax;

(d) applications under the scheme.

(4) But, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax may be reduced only where each of the conditions mentioned in subsection (5) is met (whatever other conditions may require to be met under the scheme).

(5) Those conditions are—

(a) the person is liable to pay council tax in respect of a chargeable dwelling and any day;

(b) improvements are made to the energy efficiency of that dwelling (whether by the person liable to pay or not);

(c) those improvements are made during the same financial year to which the reduction of the amount which the person is liable to pay in respect of council tax relates;

Status: *Point in time view as at 31/10/2009. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Part 5. (See end of Document for details)*

(d) the amount which the person is liable to pay in respect of that year has not already been reduced under the scheme in respect of those improvements;

(e) the amount which any other person is liable to pay in respect of council tax in respect of that dwelling and that year has not been reduced under the scheme in respect of those improvements.

(6) In ascertaining whether the condition in subsection (5)(e) is met, no account is to be taken of any person who is jointly and severally liable, with the person mentioned in subsection (5)(a), to pay council tax in respect of the dwelling.

(7) The minimum reduction which may be provided for under an energy efficiency discount scheme must be—

(a) where the amount which the person is liable to pay in respect of council tax is £50 or more, no less than £50;

(b) where the amount which the person is liable to pay in respect of council tax is less than £50, an amount equal to that person's liability.

(8) The local authority may, under an energy efficiency discount scheme, reduce the amount which a person is liable to pay in respect of a dwelling to nil.

(9) In this section—

"energy efficiency" includes the use of—

(a) technologies reliant on sources of energy other than fossil fuel and nuclear fuel;

(b) materials the manufacture or use of which produces or involves lower emissions of greenhouse gases than other materials; and

(c) surplus heat from electricity generation or other industrial sources for district heating or other purposes;

"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);

"greenhouse gas" has the meaning given by section 10(1) of the Climate Change (Scotland) Act 2009 (asp 12).".

(3) In schedule 2, after paragraph 21 (effect of reduction of liability to pay council tax under section 13A), insert—

"22 (1) This paragraph applies where a local authority establishes an energy efficiency discount scheme under section 80A.

(2) Where, under an energy efficiency discount scheme, the amount which a person is liable to pay in respect of council tax is reduced, any amount

in relation to which the reduction applies is to be treated for the purposes of this schedule as subject to a discount equal to the amount of the reduction.”.

66 Review of energy efficiency discount schemes S

(1) The Scottish Ministers must, as soon as practicable after 31 March 2012 and annually thereafter, lay before the Scottish Parliament a report on the operation of energy efficiency discount schemes established under section 80A of the Local Government Finance Act 1992 (c. 14), which must include an assessment of whether the reductions thereby provided for have contributed effectively to promoting energy efficiency.

(2) The Scottish Ministers may, if they consider it appropriate, by order amend section 80A of the Local Government Finance Act 1992 for the purpose of improving the contribution of energy efficiency discount schemes to promoting energy efficiency.

67 Non-domestic rates: discounts for energy efficiency etc. S

In section 153 (power to prescribe amount of non-domestic rate) of the Local Government etc. (Scotland) Act 1994 (c. 39), in subsection (3)—

(a) the words “whose rateable value exceeds, and those whose rateable value does not exceed, a prescribed figure”become paragraph (a); and

(b) at the end insert—

“(b) whose energy efficiency and greenhouse gas emissions fall into different categories prescribed for the purpose of this paragraph in rules under subsection (1).

(3A) Regulations under this section may make provision in relation to how lands and heritages are to be determined to fall within a category prescribed for the purpose of subsection (3)(b) in rules under subsection (1).”.

VALID FROM 01/04/2010

Climate change burdens

68 Climate change burdens S

After section 46 (health care burdens) of the Title Conditions (Scotland) Act 2003 (asp 9), insert—

“Climate change burdens

46A Climate change burdens

(1) On and after the day on which this section comes into force, it shall be competent to create a real burden in favour of a public body or trust, or of the

Scottish Ministers, for the purpose of reducing greenhouse gas emissions; and any such burden shall be known as a "climate change burden".

(2) A climate change burden may only consist of an obligation, in the event of the burdened property being developed, for the property to meet specified mitigation and adaptation standards.

(3) For the purposes of this section, a "public body" means a body listed in Part I or II of the Schedule to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453).".

VALID FROM 01/04/2010

Tenement Management Scheme

69 Tenement Management Scheme: definition of "maintenance" S

In schedule 1 (Tenement Management Scheme) to the Tenements (Scotland) Act 2004 (asp 11), in the definition of "maintenance" in rule 1.5, after "replacement," insert " the installation of insulation, ".

Permitted development rights

70 Air source heat pumps and micro wind turbines in domestic properties S

(1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 (c. 8) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.

(2) That class is the installation, alteration or replacement, within the curtilage of a dwellinghouse or building containing one or more flats, of—
  (a) air source heat pump microgeneration equipment; or
  (b) wind turbine microgeneration equipment.

(3) The Scottish Ministers must comply with subsection (1) no later than 6 months after the day on which this section comes into force.

(4) Before complying with subsection (1), the Scottish Ministers must consult—
  (a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in paragraphs (a) and (b) of subsection (2); and
  (b) such other persons as the Scottish Ministers consider appropriate.

(5) In this section, "microgeneration" has the meaning given in section 82(6) of the Energy Act 2004 (c. 20).

VALID FROM 01/04/2010

71 Microgeneration in non-domestic buildings S

(1) The Scottish Ministers must exercise their functions under sections 30 and 31 of the Town and Country Planning (Scotland) Act 1997 (c. 8) so as to make provision specifying the circumstances in which development of the class mentioned in subsection (2) is granted planning permission by virtue of an order under section 30 of that Act.

(2) That class is the installation, alteration or replacement, within the curtilage of a non-domestic building, of microgeneration equipment.

(3) The Scottish Ministers must comply with subsection (1) no later than 12 months after the day on which this section comes into force.

(4) Before complying with subsection (1), the Scottish Ministers must consult—
(a) such persons appearing to them to represent the producers and suppliers of the equipment mentioned in subsection (2); and
(b) such other persons as the Scottish Ministers consider appropriate.

(5) In this section—
"microgeneration" has the same meaning as in section 70(5);
"non-domestic building" has the same meaning as in section 63(7).

VALID FROM 01/04/2010

Development plans

72 Development plans: inclusion of greenhouse gas emissions policies S

After section 3E of the Town and Country Planning (Scotland) Act 1997 (c. 8) insert—

"**3F Greenhouse gas emissions policies**

A planning authority, in any local development plan prepared by them, must include policies requiring all developments in the local development plan area to be designed so as to ensure that all new buildings avoid a specified and rising proportion of the projected greenhouse gas emissions from their use, calculated on the basis of the approved design and plans for the specific development, through the installation and operation of low and zero-carbon generating technologies.".

73 Annual report on operation of section 72 S

(1) The Scottish Ministers must—
(a) no later than 1 year after the day on which section 72 comes into force; and
(b) annually thereafter,

lay before the Scottish Parliament a report on the operation of the requirement on relevant planning authorities to include policies within development plans under that section, including an assessment of whether those requirements have contributed effectively to the reduction of greenhouse gas emissions from developments.

(2) The fourth and subsequent reports under subsection (1) must include an assessment of the continuing need or otherwise for the requirement on relevant planning authorities to include policies within development plans; and if the requirement is considered by the Scottish Ministers to be no longer necessary, the Scottish Ministers may, by order, repeal section 3F of the Town and Country Planning (Scotland) Act 1997 and this section.

Promotion of water conservation and water-use efficiency

74 Duty of Scottish Water to promote water conservation and water-use efficiency S

In section 56(1) of the Water Industry (Scotland) Act 2002 (asp 3), after paragraph (a) insert—

"(aa) requiring it to promote water conservation and water-use efficiency,".

Commencement Information

I10 S. 74 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

CHAPTER 4 S

THE SCOTTISH CIVIL ESTATE

75 Energy performance of buildings procured for the Scottish civil estate S

(1) The Scottish Ministers must, in so far as reasonably practicable, ensure that the energy performance of any building that becomes part of the civil estate in Scotland falls within the top quartile of energy performance.

(2) For the purposes of subsection (1), a building becomes part of the civil estate if it is procured or constructed by or on behalf of the Scottish Ministers.

(3) The Scottish Ministers may, by regulations, provide that the duty under subsection (1) does not apply in respect of specified buildings or categories of buildings.

Commencement Information

I11 S. 75 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

76 Report on the Scottish civil estate S

(1) The Scottish Ministers must, in respect of each financial year beginning with 2010–2011, lay before the Scottish Parliament a report containing an assessment of the progress made in the year towards improving—

(a) the efficiency; and

(b) the contribution to sustainability,

of buildings that are part of the civil estate in Scotland.

(2) If the energy performance of a building mentioned in subsection (3) does not fall within the top quartile of energy performance, the report must state the reasons why the building has become part of the civil estate.

(3) That building is a building—

(a) to which section 75 applies; and

(b) which becomes part of the civil estate in the financial year to which the report relates.

(4) The report under this section must be laid before the Parliament no later than 31 October next following the end of the financial year to which the report relates.

Commencement Information

I12 S. 76 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

77 Scottish civil estate: supplementary S

(1) For the purposes of this section and sections 75 and 76—

(a) "building" means a building that uses energy for heating or cooling the whole or any part of its interior; and

(b) a building is part of the civil estate in Scotland if it—

(i) is used for the purposes of Scottish central government administration; and

(ii) is of a description of buildings for which the Scottish Ministers have responsibilities in relation to efficiency and sustainability.

(2) The Scottish Ministers may, by order, provide—

(a) for buildings of a description specified in the order to be treated as being, or as not being, part of the civil estate;

(b) for uses specified in the order to be treated as being, or as not being, uses for the purposes of Scottish central government administration.

Commencement Information

I13 S. 77 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Status: *Point in time view as at 31/10/2009. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Part 5. (See end of Document for details)*

CHAPTER 5 S

WASTE REDUCTION AND RECYCLING

Waste prevention and management plans

78 Waste prevention and management plans S

(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—

(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;

(ii) within which plans must be prepared;

(d) the content of plans;

(e) subject to section 89—

(i) the enforcement authority in relation to the regulations; and

(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.

(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—

"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").

Commencement Information

I14 S. 78 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Waste data

79 Information on waste S

(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) A draft of a statutory instrument containing the first regulations under subsection (1) must be laid before the Scottish Parliament no later than 12 months after the day on which this section comes into force.

(6) In this section and in section 89, "SEPA" means the Scottish Environment Protection Agency.

Commencement Information
I15 S. 79 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Deposit of recyclable waste etc.

80 Recyclable waste: facilities for deposit etc. S

(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;

(f) subject to section 89—

(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;

(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 81 may be made.

(5) In this section and in section 81, "authorised person" has the same meaning as in section 34(3) of the 1990 Act.

Commencement Information

I16 S. 80 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

81 Recyclable waste: facilities for deposit at events etc. S

(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;
(k) subject to section 89—
(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;
(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.

Commencement Information
I17 S. 81 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Procurement of recyclate

82 Procurement of recyclate S

(1) The Scottish Ministers may, by regulations, require persons of the kinds specified to comply with the requirement in subsection (2).

(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.

(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;
(e) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disapplied;
(f) subject to section 89—
(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;
(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—
(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.

Commencement Information
I18 S. 82 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Reduction of packaging

83 Targets for reduction of packaging etc. S

(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;
(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);
(d) the methods of determining whether targets have been met;
(e) subject to section 89—
(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);
(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.

(4) In this section and in section 84, "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.

Commencement Information

I19 S. 83 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Deposit and return

84 Deposit and return schemes S

(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—

(i) such articles;

(ii) the packaging associated with such articles ("returnable packaging"); or

(iii) both such articles and such packaging,

are entitled to be paid a sum equal to that deposit.

(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) accept the return to them of—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(c) pay a sum equal to the deposit to persons who return to them—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(d) return such articles to the producers of them;

(e) return returnable packaging to the producers of it or of the articles with which it is 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) accept the return to them of—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(c) pay a sum equal to the deposit to retailers who return to them—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(d) recycle, or have recycled—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging.

Status: *Point in time view as at 31/10/2009. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Part 5. (See end of Document for details)*

(5) A deposit and return scheme may also provide for a person or body (a "scheme administrator") to—

(a) ensure that deposits are included in the price of articles placed on the market;

(b) accept the return of—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(c) pay sums equal to deposits to persons who return—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging;

(d) return such articles to the producers of them;

(e) return returnable packaging to the producers of it or of the articles with which it is associated;

(f) recover sums equal to deposits from such producers;

(g) recycle, or have recycled—

(i) such articles;

(ii) returnable packaging; or

(iii) both such articles and such packaging.

(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 inclusion, in the sale price of articles, of a non-returnable element to cover the reasonable costs incurred by retailers, producers or a scheme administrator in administering such schemes;

(e) the articles the return of which entitles persons to payment of sums equal to deposits;

(f) the methods by which such articles are to be identified;

(g) the packaging which is returnable packaging for the purposes of such schemes;

(h) the methods by which returnable packaging is to be identified;

(i) information on the operation of schemes (including notices on premises where articles are offered for sale and the content of such notices);

(j) the places to which articles can be returned;

(k) the places to which returnable packaging can be returned;

(l) the registration of retailers and producers to whom schemes apply (including the reasonable fees payable in relation to such registration);

(m) the scheme administrator;

(n) subject to section 89—

(i) the enforcement authority in relation to the regulations; and

(ii) the functions of that authority;

(o) the keeping of records and other information and their production to the enforcement authority;

(p) the enforcement of the duties imposed by the regulations;

(q) offences in relation to failures to comply with requirements of the regulations.

Commencement Information

I20 S. 84 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

85 Deposit and return schemes: designation of scheme administrator S

(1) The Scottish Ministers may, by order, designate—

(a) a body established under section 86(1); or

(b) such other person or body as they consider appropriate (an "existing body"),

as a scheme administrator of a deposit and return scheme established by virtue of section 84.

(2) An order under subsection (1)(b) may, in so far as the Scottish Ministers consider it necessary or expedient to do so, modify the functions of an existing body by—

(a) conferring functions on;

(b) removing functions from; or

(c) otherwise varying the functions of,

the body.

(3) That order may in particular include provision about—

(a) borrowing by the existing body (with the approval of the Scottish Ministers);

(b) the charging by the body, in respect of the exercise of its functions in relation to a deposit and return scheme, of such reasonable amounts as the Scottish Ministers consider appropriate.

(4) In exercising functions in relation to a deposit and return scheme, a scheme administrator must comply with any written directions of a general or specific nature as the Scottish Ministers may from time to time give to it in relation to those functions.

Commencement Information

I21 S. 85 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

86 Power to establish scheme administrator S

(1) The Scottish Ministers may, by order, establish a body to be a scheme administrator of a deposit and return scheme established by virtue of section 84(1).

(2) A body established under subsection (1) is to be a body corporate.

(3) The body 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 in relation to a deposit and return scheme;

(b) to be conducive to the exercise of those functions.

(4) In particular, the body may—

(a) enter into contracts;

(b) with the agreement of the Scottish Ministers, borrow money;

(c) charge, in respect of the exercise of its functions in relation to a deposit and return scheme, such reasonable amounts as the Scottish Ministers consider appropriate.

(5) An order under subsection (1) may in particular include provision about—

(a) the status and constitution of the body;

(b) the status of the members and any employees of the body;

(c) the remuneration, allowances and pensions of such members and such employees;

(d) the conferral of functions on the body;

(e) the keeping by the body of accounts and accounting records.

Commencement Information

I22 S. 86 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

87 Finance of scheme administrator S

(1) The Scottish Ministers may, for the purpose of or in connection with the exercise by a scheme administrator of functions in relation to a deposit and return scheme—

(a) pay grants;

(b) make loans,

to the administrator of such amounts as Ministers may determine.

(2) Any such grant or loan may be paid or, as the case may be, made, on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers may, from time to time after any grant or loan is paid or, as the case may be, made, vary the terms and conditions on which it was paid or made.

(4) The Scottish Ministers may guarantee, in such manner and on such conditions as they consider appropriate, the discharge of any financial obligation in connection with any sums borrowed by a scheme administrator for the purpose of, or in connection with, the exercise of its functions in relation to a deposit and return scheme.

Commencement Information

I23 S. 87 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Carrier bag charges

88 Charges for supply of carrier bags S

(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 89—

(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.

Commencement Information

I24 S. 88 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

General provision

89 Enforcement authorities S

(1) This section applies to any regulations made under this Chapter other than under section 79.

(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.

Commencement Information

I25 S. 89 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

90 Penalties S

(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.

Commencement Information

I26 S. 90 in force at 31.10.2009 by S.S.I. 2009/341, **art. 2(2)(a)**

Status:
Point in time view as at 31/10/2009. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, Part 5.