

# CLIMATE CHANGE (EMISSIONS REDUCTION TARGETS) (SCOTLAND) ACT 2019

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Emissions Reduction Targets**

##### **The net-zero emissions target**

##### *Section 1 – Net-zero emissions target*

10. Section 1 inserts a new section A1 (net-zero emissions target) into the 2009 Act. The following paragraphs refer to the subsections of new section A1.
11. Subsection (1) imposes a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the net-zero emission target year is at least 100% lower than the baseline<sup>1</sup>. This target is known as the “net-zero emissions target”.
12. Subsection (2) specifies 2045 as the year in which the net-zero emissions target is to be met. The year is known as the “net-zero emissions target year”.
13. Subsection (3) confers a power on the Scottish Ministers to, by regulations, modify the net-zero emissions target year. If the Scottish Ministers propose to modify the net-zero emissions target year to a year later than 2045, they may only do so if the advice is consistent with the most-up-to-date advice they have received from the relevant body<sup>2</sup> and that advice is based on either scientific knowledge about climate change or current international carbon reporting practice (or both).
14. Subsection (4) requires the Scottish Ministers, if proposing to modify the net-zero emissions target year, to have regard to the target-setting criteria in section 2B of the 2009 Act (inserted by section 5 of the Act) and the most up-to-date advice received from the relevant body.
15. Subsection (5) requires the Scottish Ministers to publish a statement as soon as reasonably practicable after laying, for approval under the affirmative procedure, a draft of regulations under subsection (3). This must set out their reasons for proposing to modify the net-zero emissions target year, the extent to which the proposed year takes account of the “target-setting criteria”, and whether the proposed year is consistent with the most up-to-date advice they have received from the relevant body and, if it is not, the reasons why.

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<sup>1</sup> The “baseline” is the aggregate amount of (a) net Scottish emissions of carbon dioxide for 1990, and (b) net Scottish emissions of each of the greenhouse gases other than carbon dioxide for the year that is the ‘baseline year’ for that gas. The baseline years for greenhouse gases other than carbon dioxide are: 1990 for methane and nitrous oxide, and 1995 for hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride and nitrogen trifluoride.

<sup>2</sup> See definition in paragraph 3.

## **The 2050 and interim targets**

### ***Section 2 – The 2050 target***

16. Section 2 repeals section 1 (the 2050 target) of the 2009 Act. Section 1 of the 2009 Act previously imposed a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the baseline. Such a target has now been superseded by section A1 (inserted by section 1 of the Act), which sets 2045 as the net-zero emissions target year.

### ***Section 3 – The interim targets***

17. Section 3 substitutes section 2 (the interim targets) of the 2009 Act with a new section 2. The previous section 2 imposed a duty on the Scottish Ministers to ensure that the net Scottish emissions account for the year 2020 is at least 42% lower than the baseline. The new section 2 imposes a duty on them to ensure that the net Scottish emissions accounts for the years 2020, 2030, and 2040 are, respectively, at least 56%, 75% and 90% lower than the baseline.

### ***Section 4 – Modification of the interim targets***

18. Section 4 inserts a new section 2A (modification of the interim targets) into the 2009 Act. The following paragraphs refer to the subsections of new section 2A.
19. Subsection (1) confers a power on the Scottish Ministers to, by regulations, modify any percentage figure applying for the purposes of any of the interim targets. The regulations are subject to the affirmative procedure.
20. Subsection (2) provides that the regulations may not substitute a lower percentage figure if that would be inconsistent with advice from the relevant body; not based on either scientific knowledge about climate change or current international carbon reporting practice (or both); lower than a figure applying for an earlier interim target; or lower than 100% for a year which is the same as, or later than, the net-zero emissions target year.
21. Subsection (3) provides that, in preparing a draft of regulations to be made under subsection (1), the Scottish Ministers must have regard to the target-setting criteria and the most up-to-date advice they have received from the relevant body.
22. Subsection (4) provides that the duty in subsection (5) applies in the event that both: (i) the Scottish Ministers lay a draft of regulations under section A1(3) which propose to modify the net-zero emissions target year to a year earlier than 2045, and (ii) one or more percentage figures applying for the purposes of any interim target for a year which is the same as or later than the proposed net-zero emissions target year, is lower than 100%. In this event, subsection (5) provides that the Scottish Ministers must, simultaneously or as soon as reasonably practicable afterwards, lay before the Scottish Parliament a draft of regulations under subsection (1) which modify to 100% each such lower percentage figure.
23. Subsection (6) requires the Scottish Ministers to publish a statement, as soon as reasonably practicable after laying draft regulations under subsection (1), setting out for each proposed modification of a percentage figure by the regulations: their reasons for proposing it, the extent to which it takes account of the target-setting criteria, and whether it is consistent with the most up-to-date advice they have received from the relevant body.

## **The target-setting criteria**

### ***Section 5 – The target-setting criteria***

24. Section 5 inserts a new section 2B (the target-setting criteria) into the 2009 Act. The following paragraphs refer to the subsections of new section 2B.
25. Subsection (1) provides that, in the 2009 Act, the “target-setting criteria” are the matters mentioned in paragraphs (a) to (m) of that subsection. These matters match those previously mentioned in section 4(4) (setting annual targets) of the 2009 Act, except that: “European and international law and policy relating to climate change” (now listed second) has been supplemented to make it clear that this matter includes the United Nations Framework Convention on Climate Change and protocols to that Convention; and “current international carbon reporting practice”, “the likely impact of the target on the achievement of sustainable development, including the achievement of the United Nations sustainable development goals” and “the likely impact of the target on public health” have been added as additional criteria.
26. Subsection (2) explains what is meant by the expression “fair and safe Scottish emissions budget” in subsection (1)(a) and elsewhere in the 2009 Act.
27. Subsection (3) confers a power on the Scottish Ministers to, by regulations, amend the target-setting criterion. The regulations are subject to the affirmative procedure.

## **Advice about targets**

### ***Section 6 – Duty to seek advice from the relevant body***

28. Section 6 inserts new section 2C (duty to seek advice from the relevant body) into the 2009 Act. The following paragraphs refer to the subsections of new section 2C.
29. Subsection (1), read with subsection (2), imposes a duty on the Scottish Ministers to request advice from the relevant body at least once before the expiry of each relevant five year period. The first request must be made within five years of section 2C coming into force. Subsequent requests must be made within five years of each previous request under subsection (1).
30. Subsection (3), read with subsection (4), provides that each request under subsection (1) must request the relevant body’s view as to the matters mentioned in paragraphs (a) to (h) of subsection (3). In particular, each request must seek the relevant body’s views as to whether the net-zero emissions target is achievable and, if so, what is the earliest achievable year for that target (with views on these matters taking account of the target-setting criteria).
31. Each request must also seek the body’s views as to whether the percentage figure applying for the purposes of each interim target (not yet reported under section 33 of the 2009 Act) is appropriate by reference to the target-setting criteria, and if not, advice as to any alternative percentage figure that would be appropriate. The body’s views must also be requested on whether the fair and safe Scottish emissions budget, which forms part of the target-setting criteria, is appropriate and, if not, request the body makes a fresh recommendation for the purpose of the budget. The body’s views must also be sought on the estimated contribution of the net-zero emissions target and the interim targets towards global efforts to limit the global average temperature increase to 1.5°C above pre-industrial levels.
32. Each request must also seek the body’s views on certain matters relating to meeting emissions reduction targets for the next 15 years. These matters consider the balance between action to reduce net Scottish emissions and the use of carbon credits purchased by Scottish Ministers, and the respective contribution that different sectors of the Scottish economy should make to reductions in net Scottish emissions of greenhouse gases.

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33. Each request must also seek the body's views as to whether the multiplier to reflect the direct and indirect non-carbon dioxide climate change impacts of emissions at altitude from international aviation (which applies by virtue of section 16(3) of the 2009 Act) is appropriate and, if not, request advice as to any alternative multiplier that would be appropriate.
34. Subsection (5) provides that the Scottish Ministers may request the relevant body's views as to any other matter which they consider relevant for the purposes of Part 1 of the 2009 Act.

### ***Section 7 – Power to seek additional advice***

35. Section 7 inserts a new section 2D (power to seek additional advice) into the 2009 Act. The following paragraphs refer to the subsections of new section 2D.
36. Subsection (1) confers a power on the Scottish Ministers to request advice from the relevant body at any time (and in addition to any request required to be made under section 2C of the 2009 Act) on any matter they consider relevant for the purposes of Part 1 of the 2009 Act.
37. By virtue of subsection (2), a request for advice under subsection (1) on all of the matters mentioned in section 2C(3) of the 2009 Act is treated as having been made under section 2C(1) of that Act. Accordingly, where this subsection applies, the request under subsection (1) would become the most recent request to have been made under section 2C(1) and (2) of the 2009 Act.

### ***Section 8 – Ministerial duties following receipt of advice***

38. Section 8 inserts a new section 2E (ministerial duties following request for advice) into the 2009 Act. The following paragraphs refer to the subsections of new section 2E.
39. Subsection (1) imposes a duty on the Scottish Ministers to publish any advice received in response to a request under section 2C(1) or 2D(1) of the 2009 Act as soon as reasonably practicable after they receive it.
40. Subsection (2) provides that the duty in subsection (3) applies in the event that:
  - the relevant body's advice states that a particular year is the earliest achievable year for the net-zero emissions target, and
  - that year is not already the net-zero emissions target year.
41. In this event, subsection (3) imposes a duty on the Scottish Ministers to publish a statement within 3 months setting out how they intend to respond to that advice. It also requires that in the event that the Scottish Ministers do not, within 12 months of receiving that advice, lay draft regulations under section A1(3) of the 2009 Act to modify the net-zero emissions target year to the particular year referred to in subsection (2)(a), the Scottish Ministers must make a statement to the Scottish Parliament setting out the reasons for not doing so.
42. Subsection (4) provides that the duty in subsection (5) applies in the event that the relevant body's advice states that a percentage figure for an interim target applying when the request is made is not appropriate and that another figure would be appropriate. In this event, subsection (5) imposes a duty on the Scottish Ministers to publish a statement within 3 months setting out how they intend to respond to that advice. It also requires that in the event that Scottish Ministers do not, within 12 months of receiving that advice, lay draft regulations under section 2A(1) of the 2009 Act to make the advised modification to that percentage figure, they must make a statement to the Scottish Parliament setting out the reasons for not doing so.
43. Subsection (6) provides that the duty in subsection (7) applies in the event that:

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- the relevant body’s advice states that, for a greenhouse gas, the multiplier figure reflecting the direct and indirect non-carbon dioxide climate change impacts of emissions at altitude from international aviation applying when the request is made is not appropriate and that another figure would be appropriate, and
  - the Scottish Ministers do not, within 12 months of receiving that advice, lay for approval a draft order under section 16(1) of the 2009 Act making the advised modification to that multiplier figure.
44. In this event, subsection (7) imposes a duty on the Scottish Ministers to publish a statement setting out the reasons for not laying for approval a draft order under section 16(1) of the 2009 Act making the advised modification to that multiplier figure.

## **Citizen’s Assembly**

### ***Section 9 – Citizens Assembly***

45. Section 9 inserts a new Part 2A and section 32A (citizens assembly) into the 2009 Act. The following paragraphs refer to the subsections of new section 32A.
46. Subsection (1) imposes a duty on the Scottish Ministers to establish a panel to be known as a “citizens assembly” to exercise the functions in subsection (5).
47. Subsection (2) requires that the citizens assembly is made up of such persons as the Scottish Ministers consider to be representative of the general populace of Scotland.
48. Subsection (3), read with subsection (4), requires the citizens assembly to have two conveners who are independent of the Scottish Ministers and the Scottish Parliament, and that there is a gender balance between the conveners.
49. Subsection (5), read with subsection (6), sets out the functions to be exercised by the citizens assembly. These are to consider how to prevent or minimise, or remedy or mitigate the effects of, climate change; make recommendations on measures proposed to achieve the emissions reduction targets; and make recommendations about such other matters as the Scottish Ministers may refer to the assembly. Scottish Ministers may refer matters to the assembly only if they have been approved by resolution of the Scottish Parliament.
50. Subsection (7) imposes a duty on the Scottish Ministers to lay a report before the Scottish Parliament on the arrangements for the administration and operation of the assembly before the first meeting of the assembly.
51. Subsection (8), read with subsections (9) and (10), requires the assembly to complete its consideration of the matters mentioned in subsection (5)(a) by 28 February 2021 and to lay a report with its recommendations before the Scottish Parliament by that date. The assembly must send a copy of the report to the Scottish Ministers who, within 6 months of receipt, must publish a statement setting out how they intend to respond to the recommendations.

## **Annual targets**

### ***Section 10 – Annual targets: 2021 to 2049***

52. Section 10 substitutes section 3 (annual targets) of the 2009 Act with the following:
- new section 3 (annual targets: 2021 to year before net-zero year),
  - new section 3A (annual targets: recalculation if net-zero emissions target year is in certain periods), and
  - new section 3B (annual targets: further rules on recalculation).

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53. New section 3(1) imposes a duty on the Scottish Ministers to ensure that the net Scottish emissions account is at least the “relevant target figure” lower than the baseline for each year in:
- the period 2021-2029,
  - the period 2031-2039, and
  - the period beginning 2041 and ending with the year which immediately precedes any net-zero emissions target year after 2041. This is to be known as the “final annual target period”.
54. Subsections (2) to (5) of this new section make provision about the rules for calculating the relevant percentage figure applying for the purposes of each annual target. These subsections require, in effect, that for each period a straight line is drawn between the percentage figures applying for the purposes of the target year which precedes the period and the target year which follows it. The figures for each target year in the intervening period must then correlate with that line.
55. For example, if the percentage figure applying for the purposes of the 2020 target remains at 56%, and the corresponding figure for the 2030 target at 75%, the difference is 19%. This 19% difference must be apportioned so that there is an equal percentage point change between the percentage figure for each consecutive year in the period beginning with 2020 and ending with 2030. There are 10 pairs of consecutive years in this period, namely: 2020 and 2021, 2021 and 2022, and so on. To apportion the 19% difference so that there is an equal percentage point change, this 19% difference must first be divided by 10 (the number of consecutive pairs in the period). The percentage point change between each consecutive pair must therefore be 1.9%. This change is applied so that the percentage figure for 2021 is 1.9% higher than the figure for 2020, and the figure for 2022 is 1.9% higher than the figure for 2021, and so on. Accordingly, in this example, the relevant percentage figures would be 57.9% for the annual target for 2021, 59.8% for the annual target for 2022, 61.7% for 2023, 63.6% for 2024, 65.5% for 2025, 67.4% for 2026, 69.3% for 2027, 71.2% for 2028 and 73.1% for 2029.
56. New section 3A(1) provides that this new section applies where regulations made under section A1(3) of the 2009 Act modify the net-zero emissions target year which is in either the period 2021-2029, or the period 2031-2039. In this event, subsections (2)(a) and (4) of this new section modify the relevant target figure which would otherwise apply by virtue of new section 3 for a year which is in the same period as, but before, the net-zero emissions target year. These subsections require, in effect, that, for the period containing the net-zero emissions target, a straight line is drawn between the percentage figure applying for the purposes of the interim target year which precedes this period and the 100% percentage figure applying for the purpose of the net-zero emissions target. Subsection (3) provides that subsection (4) applies for the purposes of calculating annual targets where regulations are made to modify the net-zero emissions target year to a year which is after 2041. Where such regulations are made, the annual targets are to be calculated by drawing a straight line between the percentage figure applying for the purposes of the interim target year which immediately precedes the net-zero emissions target year and the 100% percentage figure for the net-zero emissions target year. The method for calculating the relevant target figure for the years between the target year and the net-zero emission target is otherwise broadly equivalent to the approach set out in section 3.
57. Subsection (5) of new section 3A provides that any modification of an annual target under this section does not apply to a year which is the same as, or earlier than, the year in which the regulations under section A1(3) of the 2009 Act come into force.
58. New section 3B(1) provides that this new section applies where either:
- the Scottish Ministers make regulations under section A1(3) of the 2009 Act to modify the net-zero emissions target year, or

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- they make regulations under section 2A(1) of the 2009 Act which modify a percentage figure applying for the purposes of any interim target.
59. Subsection (2) of new section 3B provides that an annual target in relation to a year which is subsequent to the year in which the regulations mentioned in section 3B(1) come into force (i.e. a prospective annual target) is to be recalculated under section 3 and, where applicable, modified under section 3A, in accordance with the figures applying immediately after those regulations come into force.
60. Subsection (3) of new section 3B provides that an annual target in relation to a year which is the same as, or earlier than, the year in which those regulations come into force, is not to be recalculated or modified except where subsection (4) applies. Subsection (4) applies where the Scottish Ministers publish a statement at the same time, or soon after the draft regulations are laid for approval under affirmative procedure. The statement must confirm that the regulations are in response to, and consistent with, the most up-to-date advice they have received from the relevant body advising that targets should be modified for the sole reason of a change in international carbon reporting practice. Where subsection (4) applies, subsection (5) then provides that an annual target in respect of a year for which the Scottish Ministers has not yet reported on under section 33, is also to be recalculated in accordance with subsection (2) of new subsection 3B for the purposes of assessing and reporting in accordance with section 33.

### ***Section 11 – Annual targets: 2018 and 2019***

61. Section 11(1) provides that, for the purposes of assessing and reporting in accordance with section 33 of the 2009 Act, the annual target for 2018 and 2019 are to be taken as a target of, respectively, at least 54.0% and 55.0% lower than the baseline.
62. Subsection (2) confers a power on the Scottish Ministers to, by regulations, modify one or more of the percentage figures applying for the purposes of a year mentioned in subsection (1). The regulations are subject to the affirmative procedure.
63. But subsection (3) provides that a draft of regulations to be laid under subsection (2) may only propose the modification of a percentage figure only if:
- the Scottish Ministers have, at the same time as or before laying the draft of regulations under subsection (2), laid a draft of regulations under section 2A(1) of the 2009 Act proposing to modify the percentage figure applying for the purposes of the interim target for 2020,
  - the figure proposed to be modified is in respect of a year in relation to which the Scottish Ministers have not yet reported on under section 33 of the 2009 Act, and
  - the Scottish Ministers have, before laying a draft of the regulations, had regard to the most up-to-date advice they have received from the relevant body about the figure proposed to be modified.

### ***Section 12 – Revocation of previous annual targets***

64. Section 12 revokes three Orders made under the 2009 Act that set annual targets for the years 2018 to 2032. Those targets are superseded by the new interim targets set by virtue of new section 2 of the 2009 Act (inserted by section 3 of the Act) and the new annual targets which apply by virtue of new sections 3, 3A and 3B of the 2009 Act (inserted by section 10 of the Act).

## **Publication of targets**

### ***Section 13 – Publication of targets***

65. Section 13 inserts a new section 3C (publication of targets) into the 2009 Act. The following paragraphs refer to the subsections of this new section 3C.
66. Subsection (1) requires the Scottish Ministers to keep and maintain a list of the net-zero emissions target year and the percentage figures applying for each emissions reduction target. By virtue of subsection (2), the Scottish Ministers may remove from the list any entry in relation to a year in respect of which they have reported on under section 33 of the 2009 Act.
67. Subsection (3) requires the Scottish Ministers to lay a copy of the list before the Scottish Parliament. The first list must be laid as soon as is reasonably practicable after it has been compiled and, thereafter, as soon as reasonably practicable after the net-zero emissions target year or a percentage figure mentioned in subsection (1) has been modified.
68. Subsection (4) also requires the Scottish Ministers to publish the information contained in the list mentioned in subsection (1), with discretion given over the manner of publication.

## **Part 2 – Emissions accounting**

### ***Section 14 – Net Scottish emissions account: restriction on use of carbon units***

69. Section 14 makes provision in relation to restrictions on the use of carbon units.
70. Subsection (1)(a) repeals subsections (2) to (4) of section 13 (the net Scottish emission account) of the 2009 Act. The repealed subsections previously imposed restrictions on the net amount of carbon units which may be credited to the net Scottish emissions account for a year.
71. Subsection (1)(b) amends section 13(5) of the 2009 Act to extend a power so that the Scottish Ministers may, by regulations, also make provision about circumstances in which carbon units may not be credited to, or debited from, the net Scottish emissions account for a period.
72. Subsection (1)(c) inserts a new subsection (5A) into section 13 of the 2009 Act. This new subsection provides that the amount of carbon units purchased by the Scottish Ministers which may, by virtue of regulations under section 13(5) of the 2009 Act, be credited to the net Scottish emissions account for a period is zero, unless regulations under section 13A of the 2009 Act (inserted by section 15 of the Act) specify a higher limit in relation to that period.
73. Subsection (2) repeals section 96(7)(a) of the 2009 Act. In consequence, all regulations made under section 13(5) of the 2009 Act are subject to the affirmative procedure.
74. Subsections (3) and (4) provide that carbon units which are surrendered as a result of the operation of a trading scheme (within the meaning of section 44 of the Climate Change Act 2008) may not be credited to or debited from the net Scottish emissions account for any period after 2017, except to the extent that regulations made under section 13(5) of the 2009 Act permit this.
75. Regulations made under section 13(5) of the 2009 Act, may, among other things, make provision about the circumstances in which carbon units which are surrendered as a result of the operation of a trading scheme may be credited to or debited from a particular net Scottish emissions account. However, new section 13(5A) of the 2009 Act, ensures that the amount of carbon units purchased by the Scottish Ministers that may, by virtue of those regulations, be credited to the net Scottish emissions account

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for a period is zero, unless regulations under section 13A of the 2009 Act specify a higher limit (notes on section 13A of the 2009 Act are included with the notes below on section 15 of the Act).

### ***Section 15 – Permitted use of carbon units purchased by the Scottish Ministers***

76. Section 15 makes provision in relation to the permitted use of carbon units purchased by the Scottish Ministers.
77. Section 15(1) inserts a new section 13A (permitted use of carbon units purchased by the Scottish Ministers) into the 2009 Act. Except where otherwise specified, the following paragraphs refer to the subsections of new section 13A.
78. Subsection (1) confers a power on the Scottish Ministers to, by regulations, set a limit representing the maximum amount of carbon units purchased by them that may be credited to the net Scottish emissions account for a year.
79. Subsection (2) provides that the limit must not exceed an amount which represents 20% of the planned reduction in the net Scottish emissions account for that year. The default zero-limit (in section 13(5A) of the 2009 Act) along with this limit on the crediting of carbon units, replace the domestic effort target under section 8(1) of the 2009 Act. The domestic effort target required the Scottish Ministers to ensure that reductions in net Scottish emissions account for at least 80% of the reduction in the net Scottish emissions account for a target year (i.e. no more than 20% of the reduction should be due to the crediting of carbon units). Limiting the maximum amount of carbon units purchased by the Scottish Ministers that may be credited to the net Scottish emissions account for a year to no more than 20% of the reduction ensures that, for carbon units purchased by the Scottish Ministers, a broadly similar outcome is achieved.
80. Subsection (3) sets out how the planned reduction is to be calculated.
81. Subsection (4) provides that a limit may only be set for a year which has not yet been reported on under section 33 and which ends no more than 10 years after the year in which the regulations come into force.
82. Section 14(2) inserts a new paragraph (aa) into section 96(7) (subordinate legislation) of the 2009 Act. Regulations laid under section 13(5) are, by default, subject to the affirmative procedure by virtue of section 96(4) of the 2009 Act. But new paragraph (aa) ensures that where the regulations do not propose an increase to a limit, the regulations are subject instead to the negative procedure.
83. Section 14(2A) amends section 97 of the 2009 Act, which makes provision about pre-laying procedure for subordinate legislation made under that Act in certain circumstances. Subsection (2A)(a) amends section 97(1) to add regulations made under section 13A(1) that propose an increase to the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year to the list of regulations that are subject to the pre-laying procedure as set out in section 97 of the 2009 Act.
84. Subsection (3)(b) amends section 97(2) to require the Scottish Ministers, when laying a copy of the proposed regulations to increase the maximum amount of carbon units, to also lay a statement setting out the extent to which the proposal is consistent with the most up-to-date advice received from the relevant body.
85. Subsection (3)(c) amends section 97(7) to require the Scottish Ministers, when laying a draft of the proposed regulations for approval by resolution of the Scottish Parliament, to lay a statement setting out the extent to which the proposed limit is consistent with the advice received from the relevant body.
86. Section 15(4) revokes three Orders made under the 2009 Act which imposed limits on the net amount of carbon units that may be credited to a net Scottish emissions account. These limits are replaced by a general default rule in section 13(5A) of the 2009 Act

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(inserted by section 14 of the Act) which provides that the amount of carbon units purchased by the Scottish Ministers that may be credited to any such account is zero.

### **Section 16 – International carbon reporting practice**

87. Section 16(1) substitutes subsection (3) of section 17 (Scottish emissions and removals) of the 2009 Act with a new subsection (3). The new subsection (3) broadly replicates the previous subsection (3), except that, when assessing and reporting in accordance with section 33 of the 2009 Act, the amount of Scottish emissions and Scottish removals must be determined, in so far as reasonably practicable, consistently with “target-relevant international reporting practice”. This new expression is defined in section 19(2) (international carbon reporting practice) of the 2009 Act (as amended by section 16(3) (b) of the Act).
88. Section 16(2) substitutes subsection (2) of section 18 (measurement of emissions etc.) of the 2009 Act with a new subsection (2). The new subsection (2) broadly replicates the previous subsection (2), except that, when assessing and reporting an amount (in tonnes of carbon dioxide equivalent) in accordance with section 33 of the 2009 Act, the amount must be determined, in so far as reasonably practicable, consistently with “target-relevant international reporting practice”.
89. Section 16(3) amends section 19 (international carbon reporting practice) of the 2009 Act to insert a new subsection (2) which defines the expressions “current international carbon reporting practice” and “target-relevant international carbon reporting practice”. These are defined, respectively, as “the most up to-to-date international reporting practice” and “a practice which produces results which are consistent with those which would have been produced by using the international carbon reporting practice which was current at the later of 30 June 2018, or the date on which Scottish Ministers last received advice from the relevant body following a request under new section 2C”. These expressions are used in sections 33 and 34 of the 2009 Act.

### **Section 17 – Nitrogen balance sheet**

90. Section 17 inserts a new section 8A (nitrogen balance sheet) into the 2009 Act. The following paragraphs refer to the subsections of new section 8A.
91. Subsection (1), read with subsection (2), imposes a duty on the Scottish Ministers to create a nitrogen balance sheet to quantify all major nitrogen flows across all sectors and media in Scotland, no later than 18 months after section 8A comes into force. The purpose is to record how nitrogen use efficiency contributes to achieving the targets in the Act.
92. Subsection (3), read with subsection (4), requires regulations to be made, following consultation, making provision for matters mentioned in paragraphs (a) to (e) of subsection (3).
93. Subsection (5), read with subsection (6), defines the term “nitrogen use efficiency” used in section 8A as “the ratio of nitrogen removed from the environment compared to total nitrogen inputs”. For the purposes of assessing the ratio, account should be taken of sources of nitrogen pollution, including food production and waste, energy, and transport.

## **Part 3 – Reporting and planning duties**

### **Reporting duties**

#### **Section 18 – Reports on emissions reduction targets**

94. Section 18 replaces section 33 (reports on annual targets) of the 2009 Act with a new section 33. The following paragraphs refer to the subsections of new section 33.

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95. Subsection (1) requires that the Scottish Ministers must, following each target year, lay before the Scottish Parliament, a report in respect of that target year. Subsection (2) sets out what needs to be stated in each report.
96. Subsection (3)(a) provides that the Scottish Ministers must use target-relevant international carbon reporting practice (as defined in the new section 19(2) of the 2009 Act) when assessing and reporting on the matters mentioned in subsection (2). In doing so they must determine each figure and amount in a manner as would be consistent with the most up-to-date advice provided by the relevant body on the methods to be used for that purpose. Subsection (3)(b) requires Ministers to specify in the report the methods used for that purpose as well.
97. Subsection (4) provides that the report under this section must be laid before the Parliament as soon as reasonably practicable after the information to be contained in the report becomes available.

### ***Section 19 – Reports on emissions reduction targets: further content***

98. Section 19 replaces section 34 (reports on annual targets: content) of the 2009 Act with a new section 34. The following paragraphs refer to the subsections of new section 34.
99. Subsection (1) provides that a report under section 33 must state some additional matters, which are mentioned in the subsection.
100. Subsection (2) requires the Scottish Ministers to use current international carbon reporting practice for assessing and reporting on the matters mentioned in subsection (1).
101. Subsection (3) provides that if the methods used to determine net Scottish emissions change and this requires an adjustment of an amount for an earlier target year, the report under section 33 must specify the adjustment required and state the adjusted amount and also explain why the adjustment is required. Subsection (4) requires any such adjustment to be, in so far as is reasonably practicable, in accordance with current international carbon reporting practice.
102. Subsection (5) gives the Scottish Ministers discretion to include in a report under section 33 any additional information as they consider appropriate.

### ***Section 20 – Report on proposals and policies where emissions reduction targets not met***

103. Section 20 amends section 36 of the 2009 Act (reports on proposals and policies where annual targets not met). Subsection (1) provides that section 36 applies if the Scottish Ministers lay a report under section 33 which states that an emissions reduction target has not been met. Subsection (2) provides that Scottish Ministers must lay a report before the Scottish Parliament as soon as reasonably practicable after the report referred to in subsection (1) setting out proposals and policies to compensate in future years for the excess emissions.

### ***Section 21 – Reports on emissions attributable to Scottish consumption of goods and services***

104. Section 21 amends section 37 (reports on emissions attributable to Scottish consumption of goods and services) of the 2009 Act. In particular, it adds a requirement that a report under section 37(1) of the 2009 Act must, in so far as reasonably practicable, set out the goods and services which contributed most significantly to Scottish consumption emissions. It also adds a requirement that a report under section 37(1) must be laid within 15 months of the date on which the previous report was laid.

### **Section 22 – Reports on land use strategy**

105. Section 22 inserts a new section 37A (reports on land use strategy) into the 2009 Act. The following paragraphs refer to the subsections of new section 37A.
106. Subsection (1) requires the Scottish Ministers to lay a report on progress towards implementing the land use strategy (produced under section 57 of the 2009 Act), including how the strategy will contribute towards achieving the targets in the Act.
107. Subsection (2) requires each report prepared under subsection (1) to be published and laid before the Scottish Parliament, as soon as reasonably practicable after the end of each financial year. Subsection (3) gives the Scottish Ministers discretion to include in a report under subsection (1) any additional information as they consider appropriate.

### **Section 23 – Provision of further information to the Scottish Parliament**

108. Section 23 amends section 42 (reports: provision of further information to the Scottish Parliament) of the 2009 Act. In particular, it updates references in section 42 to the report required under section 33 of the 2009 Act to account for changes made to that section by the Act. In addition, it inserts a new subsection (1A) to ensure that, if the emissions reduction target for the target year has not be met, the Ministerial statement made to the Parliament under subsection (1)(b) must explain why.
109. Subsection (3) of section 18 repeals section 42(2)(c) and (d) of the 2009 Act in consequence of the repeal, by the Act, of sections 40 and 41 of the 2009 Act.

### **Section 24 – Climate change plan**

110. Section 24(1) substitutes previous section 35 (reports on proposals and policies for meeting annual targets) of the 2009 Act with the following:
  - new section 35 (climate change plan),
  - new section 35A (climate change plan: further procedure),
  - new section 35B (climate change plan: annual progress reports), and
  - new section 35C (just transition principles)
111. The following paragraphs (up to and including paragraph 125) refer to the subsections of new section 35.
112. Subsection (1) imposes a duty on the Scottish Ministers to lay a climate change plan before the Scottish Parliament, in the case of the first plan, within a period of five years beginning with the day on which this section comes into force. In the case of a subsequent plan, this must be laid before the Parliament within a period of five years after the previous plan was laid.
113. Subsection (2) sets out what, in particular, the plan must include. It requires the plan to be set out in chapters on each of the sectors mentioned in subsection (3) and such other sectors or topics as the Scottish Ministers consider appropriate for the plan. These chapters must contain proposals and policies for meeting the emissions reduction targets during the plan period and the timescales over which they are expected to take effect.
114. Subsection (3) provides that the sectors mentioned for the purpose of the chapters to be included in each climate change plan are: energy supply; transport (including international aviation and shipping); business and industrial process; residential and public (in relation to buildings in those sectors); waste management; land use, land use change and forestry; and agriculture. These sectoral chapter headings follow the National Communication format used for international reporting of emissions under the United Framework Convention on Climate Change.

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115. Subsection (4) provides that a plan covers 15 years starting from the year after the year a draft plan is laid before Parliament or, should the Scottish Ministers specify in the plan, it could cover a period of between 10 to 20 years in order to end in the same year as an interim target or the net-zero emissions target year.
116. Subsection (5) requires that the plan set out the respective contribution that the sectors listed in subsection (3) should make to meeting the emissions reduction targets.
117. Subsections (6) to (17) require that the plan include the Scottish Ministers' proposals and policies regarding:
- the establishment of any regional land use partnerships and the support to and resourcing of any regional land use partnerships to develop frameworks created by such a partnership,
  - the exploitation of fossil fuels including onshore unconventional oil and gas reserves,
  - the development of district heating for new developments, where feasible,
  - the public procurement of electric vehicles,
  - improved access to electric vehicle charging stations for those living in tenements within the meaning of section 26 of the Tenements (Scotland) Act 2004,
  - public procurement of ultra-low emission vehicles,
  - the establishment of a whole farm (which has the same combined meaning as "agriculture", "agricultural land" and "agricultural unit" as in section 86 of the Agriculture (Scotland) Act 1948) approach to emissions accounting on Scottish farms and for the reduction of emissions through the use of, among other things, research, nutrient resource budgeting, circular economy initiatives and carbon sequestration,
  - the consideration of the potential for the capture and long-term storage of carbon when designating marine protected areas under section 67 of the Marine (Scotland) Act 2010,
  - the establishment of a fund, to be known as an Agricultural Modernisation Fund, to support investment in mitigation measures to reduce greenhouse gas emissions on Scottish farms, and
  - ensuring that emissions from housing are reduced such that the majority of housing in Scotland achieves an energy performance certificate rating of "C" or above, where practical.
118. Subsection (18) requires that the plan includes the Scottish Ministers' proposals and policies for taking, or supporting, action to reduce emissions of greenhouse gases (whether in Scotland or elsewhere) which are produced by or otherwise associated with the consumption and use of goods and services in Scotland. This expression is used in reporting on such emissions under section 37 of the 2009 Act.
119. Subsection (19) requires that the plan includes the Scottish Ministers' proposals and policies for supporting, including by the sharing of expertise and technology, action in developing countries to reduce emissions of greenhouse gases and adapt to the effects of climate change.
120. Subsection (20) requires that the plan sets out how the proposals and policies in the plan are expected impact on different sectors of the Scottish economy and different regions in Scotland. It also requires that the plan includes the Scottish Ministers' proposals and policies for supporting the workforce, employers and communities in those sectors and regions.

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121. Subsection (21) requires that the plan includes an estimate of the costs and benefits associated with the policies set out in the plan.
122. Subsection (22) requires that in preparing a plan, the Scottish Ministers must have regard to the just transition principles (as defined in new section 35C, further explanation below) and also the “climate justice principle”. The “climate justice principle”, as defined in subsection (23) is the importance of taking action to reduce global emissions of greenhouse gases and to adapt to the effects of climate change in ways which support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects, and help to address inequality. Subsection (24) requires that the plan must explain the extent to which it takes account of the just transition principles, and how the implementation of the plan is expected to contribute to the achievement of sustainable development, including the achievement of the United Nations sustainable development goals.
123. Subsections (25) and (26) require that the plan must contain an assessment of the progress towards implementing proposals and policies in earlier plans, including those that were laid under the arrangements prior to this Act.
124. Subsections (27) and (28) confer a power on the Scottish Ministers to modify the sectors referred to in subsection (3), provided that any modification is consistent with international carbon reporting practice.
125. New section 35A requires that the Scottish Ministers must, before laying a climate change plan under new section 35 before the Scottish Parliament, lay a draft of the plan before the Parliament for a period of 120 days, of which no fewer than 60 must be days on which the Parliament is not dissolved or in recess. The Scottish Ministers must also have regard to any representations, any views expressed by the relevant body (in a report made under section 9(1)(d) of the 2009 Act, the requirement for which to be requested by the Scottish Ministers is inserted by section 24(2) of the Act), resolutions passed by the Parliament, and reports published by a committee of the Parliament relating to the draft plan. They must also, when laying a climate change plan under new section 35, lay a statement before the Parliament setting out the details of any such representations, views, resolutions or reports, and the changes, if any, they have made to the plan in response.
126. New section 35B requires that the Scottish Ministers must, in each relevant year, lay before the Scottish Parliament a report on each substantive chapter of the most recent plan laid under new section 35. Each report laid under new section 35B must contain an assessment of progress towards implementing the proposals and policies set out in that chapter. Each report must be laid by 31 May in each relevant year or, if this isn't possible because the information needed is not available, as soon as reasonably practicable after that date. “Relevant year” and “substantive chapter” are defined in subsection (4). Subsection (5) require reports to be laid under this new section in relation to the most recent report on proposals and policies laid under the previous section 35 of the 2009 Act, as the previous law in force, until such time as the first climate change plan is laid under the new substitute section 35.
127. New section 35C sets out the “just transition principles” that Scottish Ministers must take into account when preparing a climate change plan (in accordance with section 35(22)). The principles are the importance of taking action to reduce net Scottish emissions of greenhouse gases in a way which: supports environmentally and socially sustainable jobs; supports low-carbon investment and infrastructure; develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Scottish Ministers consider appropriate; creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy; and contributes to resource efficient and sustainable economic approaches which help address inequality and poverty.

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Subsection (2) confers a power on Scottish Ministers to modify the just transition principles.

## **Part 4 – Other duties**

### ***Section 25 – Programmes for adaptation to climate change***

128. Section 25 amends section 53 of the 2009 Act (programmes for adaptation to climate change) to require that the Scottish Ministers must include, in the programme laid before the Scottish Parliament under section 53(2) which (amongst other things) sets out their objectives in relation to adaptation to climate change, an objective in relation to Scotland’s contribution to international climate change adaptation in line with international best practice.

### ***Section 26 – Sustainable development***

129. Section 92(1) of the 2009 Act requires the Scottish Ministers and any advisory body (should one be designated, by order, under section 24(1) of the 2009 Act) to take into account, in exercising functions conferred on them by virtue of the 2009 Act, the need to do so in a way that contributes to the achievement of sustainable development. Section 26 amends section 92(1) to include the achievement of the United Nations sustainable development goals (as defined in section 98(1) of the 2009 Act (as amended by section 28(11) of the Act)).

### ***Section 27 – Impact of infrastructure investment on emissions***

130. Section 27 inserts a new section 94A (impact of infrastructure investment on emissions) into the 2009 Act. The following paragraphs refer to the subsections of new section 94A, which apply where the Scottish Ministers publish an infrastructure investment plan.
131. Subsection (2) imposes a new duty to publish an assessment of the extent to which investment in accordance with the infrastructure investment plan is expected to contribute to the meeting of the emissions reduction targets.
132. Subsection (3) provides that the assessment may be set out either in the infrastructure investment plan itself or in a separate document. If the latter, the assessment must be published at the same time as, or as soon as reasonably practicable after, the infrastructure investment plan is published.
133. Subsection (4) defines an infrastructure investment plan for this purpose as meaning a plan prepared by the Scottish Ministers setting out their priorities for investing in, and strategy for the development of, public infrastructure.

## **Part 5 – Minor and consequential modifications**

### ***Section 28 – Meaning of certain terms***

134. Section 28 amends section 98 (interpretation) of the 2009 Act to make minor and consequential changes to the list of definitions.

### ***Section 29 – Further consequential: the 2009 Act***

135. Section 29 introduces the schedule which contains further modifications to the 2009 Act.

## **Part 6 – Final provisions**

### ***Section 30 – Meaning of the 2009 Act***

136. Section 30 defines “the 2009 Act” to mean the Climate Change (Scotland) Act 2009. The amendments in the Act are being made to the 2009 Act and the definition section

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recognises that as the principal Act being amended and allows multiple shorthand references to it to be made for the purposes of this Act.

### ***Section 31 – Ancillary provision***

137. Section 31 confers a power on the Scottish Ministers to, by regulations, make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to the Act. The regulations may modify any enactment and may make different provision for different purposes. The regulations are subject to the negative procedure unless they textually amend an Act, in which case they are subject to the affirmative procedure.

### ***Section 32 – Commencement***

138. Section 32(1) provides that the final, framework provisions in Part 6 (namely sections 30, 31, 32 and 33) come into force on the day after Royal Assent. Subsections (2) and (3) of this section confer a power on the Scottish Ministers to, by regulations, appoint the days on which the other provisions of the Act come into force. The regulations may include transitional, transitory or saving provision, and they may also make different provision for different purposes.

### ***Section 33 – Short title***

139. Section 33 provides the short title for the Act once enacted.

### ***Schedule – Modifications of the 2009 Act***

140. This schedule makes further modifications to the 2009 Act. Most of the changes are minor or consequential, but the following paragraphs explain some of the changes in more detail.
141. Paragraph 2 repeals section 4 (setting annual targets), section 5 (advice before setting annual targets), section 6 (modifying annual targets etc.), section 7 (advice before modifying annual targets etc.) and section 8 (the domestic effort target) of the 2009 Act. As annual targets will instead be set mechanistically (by reference to the interim targets and the net-zero emissions target year) in accordance with new sections 3, 3A and 3B (inserted by section 10 of the Act), sections 4 to 7 of the 2009 Act are no longer needed. Section 8 of the 2009 Act is also no longer needed as it is superseded by provision made by sections 14 and 15 of the Act (for further details, see also the explanatory notes above on those section).
142. Paragraph 4 repeals sections 14, 21, 22 and 23 of the 2009 Act (relating to limits on use of carbon units) as these are no longer needed in consequence of the alternative new provision made by virtue of sections 6, 14 and 15 of the Act.
143. Paragraph 5 inserts a section 20A (the relevant body) into the 2009 Act so as to define the “relevant body” for the purposes of Part 1 of the 2009 Act. This replicates the definition which was in section 5(7) and (8) of the 2009 Act (which will be repealed) and moves it to a separate section for better prominence.
144. Paragraph 11 repeals, among other things, section 38 of the 2009 Act, which relates to reports on the impact on emissions of the exercise of electricity generation related functions which are reported on through other methods. It also repeals section 39, which previously required a report to be laid before the Scottish Parliament by the end of December 2015, and is therefore no longer applicable. It also repeals sections 40 and 41 of the 2009 Act (reports on the interim target and reports on the 2050 target respectively). These sections are no longer required as the new reporting functions established by virtue of section 18 of the Act require a report for every year for which

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an emissions reduction target has been set, so there is no longer a requirement to have separate reports covering the different targets.