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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Climate Change (Emissions Reduction Targets) (Scotland) Bill: as amended at Stage 2



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 17 September 2019, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Climate Change (Emissions Reduction Targets) (Scotland) Bill as amended at Stage 2.ⁱ The Committee submits this report to the Parliament under Rule 9.7.9 of the Standing Orders.
2. The Delegated Powers and Law Reform Committee published its Stage 1 report on the Bill on 14 November 2018.ⁱⁱ The Committee made one recommendation on the delegated powers provisions to the lead Committee in relation to the power to modify the net-zero emission target year in section 1 of the Bill (inserting section A1(2B) into the 2009 Act). This recommendation was satisfied in the Bill as amended at Stage 2. Stage 3 is scheduled for Tuesday 24 September 2019.

Summary of the Bill

3. The aim of the Bill is to set, in light of the Paris Climate Change Agreementⁱⁱⁱ more ambitious targets for the reduction of greenhouse gas emissions by the Scottish Ministers. The existing targets, and provisions supporting these targets, are currently set out in the Climate Change (Scotland) Act 2009 (“the 2009 Act”). This Bill seeks to amend the 2009 Act, by amending its Parts 1, 2 and 3.
4. The Bill is divided into five Parts, with one schedule of modifications to the 2009 Act. It comprises:
 - Part 1 – emissions reduction targets
 - Part 2 – emissions accounting
 - Part 3 – reporting and planning duties
 - Part 4 – minor and consequential modifications
 - Part 5 – final provisions

ⁱ [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill, as amended at Stage 2 \(SP Bill 30A, Session 5 \(2019\)\)](#).

ⁱⁱ [Delegated Powers and Law Reform Committee. 57th Report, 2018 \(Session 5\). *Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill: Stage 1* \(SP Paper 423\)](#).

ⁱⁱⁱ The [Paris Climate Change Agreement](#) is an agreement within the UN Framework Convention on Climate Change dealing with greenhouse gas emission mitigation, adaptation and finance, starting in 2020. Under the Agreement, each country must plan and report regularly on its contribution to mitigate global warming.

Powers drawn to the attention of the Parliament

5. Following amendments made at Stage 2, three existing powers have been revised and two new powers have been created. These are set out in the supplementary Delegated Powers Memorandum for the Bill as amended at Stage 2.^{iv} The Committee was content with all these new and revised powers but wanted to draw the attention of the Parliament to one matter outlined below.

Section 14 (which, among other things, inserts section 13A into the 2009 Act) – Power to set a limit (higher than zero) on the amount of carbon units purchased by the Scottish Ministers that may be credited to the net Scottish emissions account for a year

- **Power conferred on: Scottish Ministers**
 - **Power exercisable by: regulations made by Scottish statutory instrument**
 - **Revised or new power: revised**
 - **Parliamentary procedure: affirmative, but subject to the pre-laying procedure set out in section 97 of the 2009 Act**
6. Section 14 of the Bill as introduced inserts new section 13A into the 2009 Act. Section 13A(1) of the 2009 Act confers a power on the Scottish Ministers to set a limit representing the maximum amount of carbon units that may be purchased by the Scottish Ministers for a year.
7. New section 14(2A) of the Bill was agreed at Stage 2. It provides that if the power to make draft regulations in new section 13A(1) of the 2009 Act is used to propose an increase to any limit on the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year, such regulations are subject to the pre-laying procedure set out in section 97 of the 2009 Act. In summary, that procedure is:
- An initial draft set of regulations must be laid in Parliament, along with a statement of reasons as to why the regulations are proposed to be made.
 - The regulations must then be consulted upon over a representation period of at least 90 days, including at least 30 sitting days.
 - The Scottish Ministers must have regard to any representations made to them during the representation period, including to any Parliamentary resolution or report.
 - When draft regulations are then subsequently laid in Parliament under affirmative procedure in accordance with section 96(4) of the 2009 Act, the Scottish Ministers must lay a statement alongside the draft regulations setting

iv [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill. Supplementary Delegated Powers Memorandum \(SP Bill 30A-DPM, Session 5 \(2019\)\)](#).

out the details of any representations, resolutions or reports received during the initial period and any changes made in response to those representations, resolutions or reports.

8. New section 14A(2A) of the Bill also amends this form of super-affirmative procedure insofar as it applies to the regulations *increasing* the maximum amount. In addition to the existing requirements in section 97, the Scottish Ministers are also required to 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. This statement is required both when the draft regulations are laid for consultation initially and again when a draft of the regulations is laid for approval.
9. In contrast, as is currently provided for by section 14(2) of the Bill as introduced, regulations under new section 13A(1) of the 2009 Act that do not propose an increase to any limit on the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year are subject to the negative procedure.

Committee consideration

10. The power in new section 13A(1) of the 2009 Act should be seen in the context of the existing power in section 13(5) of the 2009 Act. This provides that the Scottish Ministers may, by regulations, make provision about: (a) the circumstances in which carbon units may be credited to the net Scottish emissions account for a period; (b) the circumstances in which such units may be debited from that account for a period; and (c) the manner in which this is to be done.^v
11. Section 13(1) of the Bill as introduced inserts section 13(5A) into the 2009 Act. It provides that the amount of carbon units purchased by the Scottish Ministers that may be credited to the net Scottish emissions account for a period is zero unless regulations under new section 13A specify a higher limit in relation to that period.
12. Paragraph 25 of the Supplementary DPM indicates that the amendments applying an amended form of the super-affirmative procedure set out in section 97 of the 2009 Act to regulations made under new section 13A(1) of the 2009 Act (inserted by section 14 of the Bill) are made in response to the recommendations of the Environment, Climate Change and Land Reform ("ECCLR") Committee in its reports at Stages 1^{vi} and 2.^{vii}

^v With the exception of the first regulations made under this power, any further regulations (of which there have been a number) made under section 13(5) (other than regulations which make provision altering the amount by which a carbon unit credited or debited to the net Scottish emissions account for a period reduces or, as the case may be, increases the net Scottish emissions account for that period) are subject to the negative procedure. Otherwise, they are subject to the affirmative procedure.

^{vi} [Environment, Climate Change and Land Reform Committee. 1st Report, 2019 \(Session 5\). Stage 1 Report on the Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill \(SP Paper 479\), paragraph 588.](#)

^{vii} [Environment, Climate Change and Land Reform Committee. 6th Report, 2019 \(Session 5\). Stage 2 Report on the Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill \(SP Paper 547\), paragraph 36.](#)

13. Specifically, the ECCLR Committee's Stage 2 report states:

” The Committee considers that **any proposal to use carbon credits** [emphasis added in bold] should be subject to an enhanced affirmative process requiring the Scottish Government to lay a draft instrument in Parliament for consultation for a period of a minimum of 60 days. The Committee considers that any such regulations should also be the subject of an open public consultation. The Committee recommends that the Scottish Government bring forward amendments to this effect.

14. The Committee notes that the form of super-affirmative procedure set out in section 97 of the 2009 Act (as amended by section 14 of the Bill), will not apply to:

- regulations made under existing section 13(5) of the 2009 Act (see paragraph 10 above); or
- regulations under new section 13A(1) of the 2009 Act that do not propose an increase to any limit on the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year.

Recommendation

15. **The Committee is content that a higher level of scrutiny applies to any proposed regulations under new section 13A(1) of the 2009 Act *increasing* the limit on the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year.**
16. **Nevertheless, it draws the Parliament's attention to the regulation-making powers relating to the proposed use of carbon credits that will not be subject to that higher level of scrutiny as set out in paragraph 14 above.**

