

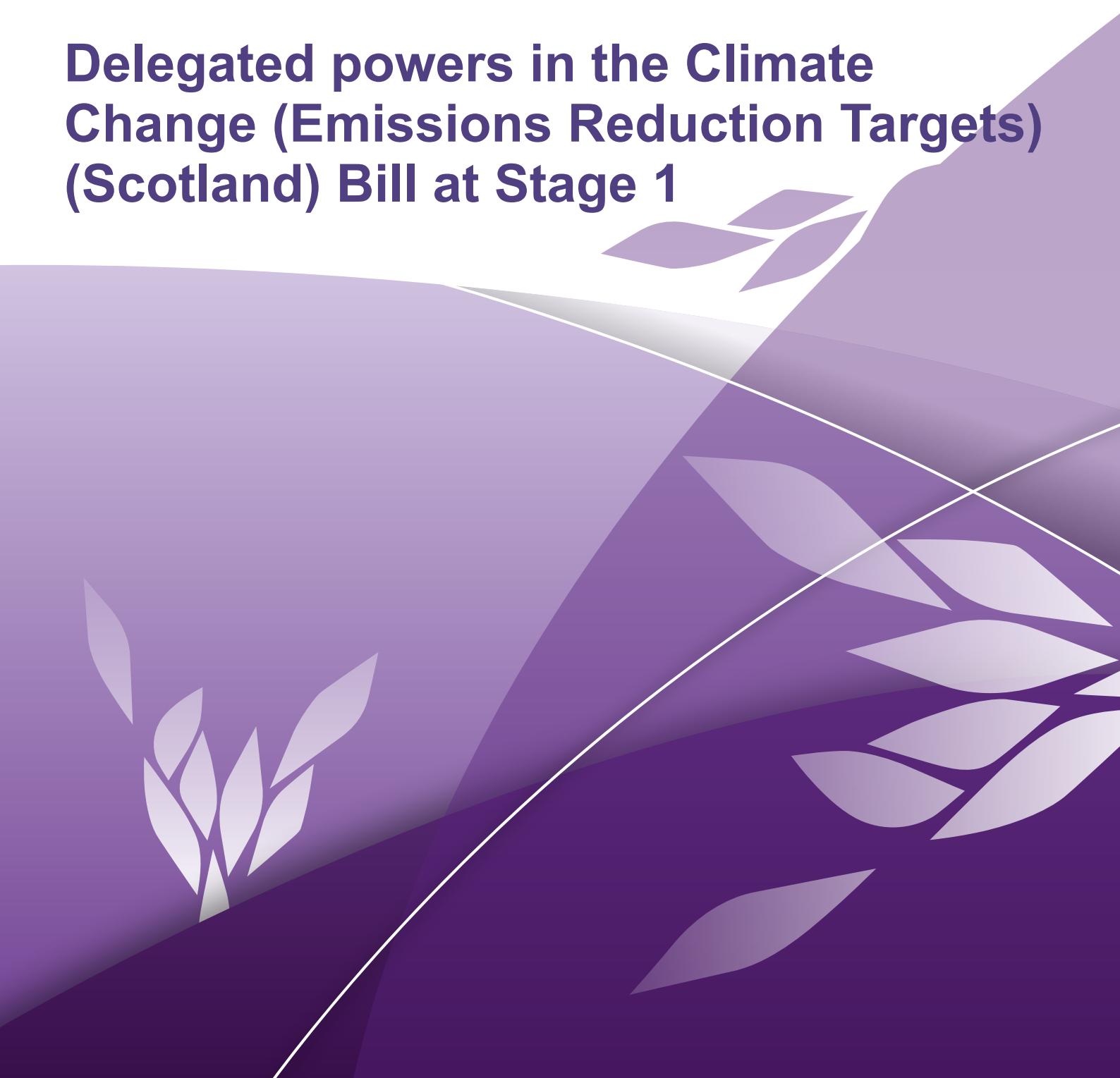


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Climate Change (Emissions Reduction Targets) (Scotland) Bill at Stage 1



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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.



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Introduction

1. At its meeting on 10 September 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
3. The Committee is reporting to the lead committee before it has received a response to its [questions issued to the Scottish Government](#), as it wishes for the lead committee to be aware of its views on the delegated powers in the Bill before that committee takes evidence from the Cabinet Secretary.

Overview of the Bill

4. This Scottish Government Bill was introduced on 5 September 2024. The lead committee is the Net Zero, Energy, and Transport Committee.
5. The Climate Change (Scotland) Act 2009 (“the 2009 Act”) created the statutory framework for greenhouse gas emissions reduction targets in Scotland. That Act was updated by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 (“the 2019 Act”).
6. In March 2024, the Climate Change Committee published its report to Parliament entitled “Progress in reducing emissions in Scotland”. That report stated that the Scottish Government is failing to achieve its climate goals and that annual emissions targets, set by the above-mentioned legislation, have been repeatedly missed. The Report concluded that the interim target of 75% emissions reduction by 2030 was no longer credible, but that the Scottish Government should implement policies as soon as possible to ensure Scotland reaches that target at the earliest possible date.
7. In response to the report, the Scottish Government is adapting its approach to target-setting. Whereas the 2009 Act and the 2019 Act set annual and interim targets, this Bill will create a legislative framework for replacing these targets with a “carbon budget approach”. The Bill gives Scottish Ministers powers to set the level of those carbon budgets in secondary legislation.
8. Carbon budgets will set a limit on the amount of greenhouse gases emitted in Scotland over a five-year period.

Delegated powers

9. The Bill confers 4 delegated powers on Scottish Ministers.
10. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”), which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.

11. **Before going into its detailed views and questions on the individual delegated powers in the Bill, the Committee draws to the attention of the lead committee the letter it sent to the Scottish Government, in which it asked the Scottish Government to provide further information to explain its decision on its overall approach to use regulation-making powers for setting such highly significant policy choices, which are key to the purpose of the Bill, rather than using primary legislation.**

Review of relevant powers

Section 1, inserted section A4: Budget-setting regulations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

12. Section 1 of the Bill modifies the Climate Change (Scotland) Act 2009 by inserting new sections A2, A3 and A5. New section A2 sets out what “Scottish carbon budgets” and associated concepts mean, as referenced at paragraphs 7 and 8.
13. New section A4 deals with the setting of Scottish carbon budgets by regulations. It requires that Scottish Ministers must, by regulations, set Scottish carbon budgets so that every year between 2026 and the net-zero emissions target year is covered by a budget. The net-zero emissions target year is currently set at 2045 by the 2009 Act.
14. New section A4 further provides that a budget for a period may be set by expressing the prescribed number of tonnes of carbon dioxide equivalent for the period as a figure or as a method for calculating a figure and may be set by expressing the number as a percentage of the baseline multiplied by the number of years comprising the period.
15. The period covered by a Scottish carbon budget is to be 5 years but may be shorter in the case of the budget for the period that ends with the net-zero emissions target year.
16. The Scottish Ministers are required by new section A4 to have regard to the target-setting criteria, and the most up-to-date advice they have received from the Climate Change Committee in preparing the draft regulations. As soon as reasonably practicable after laying draft regulations before the Parliament, the Scottish Ministers must publish a statement setting out, in respect of each Scottish carbon budget that is set by the regulations, the extent to which the proposed budget takes account of the target-setting criteria and whether the proposed budget is consistent with the most up-to-date advice the Ministers have received from the Climate Change Committee. If the proposed budget is not consistent with the most up-to-date advice, the Scottish Ministers must set out the reasons why in such a statement.
17. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

18. The Scottish Government states in its DPM that it believes that the level at which the Scottish carbon budget for a period should be set should be informed by expert scientific advice about what is credibly achievable within that period. It states that it considers that it is better for the Parliament to approve the general legislative

- scheme for Scottish carbon budgets, by approving this Bill, and for specific budgets to be set by regulations once expert advice from the Climate Change Committee has been received.
19. Further, it notes that the power gives Scottish Ministers the flexibility to amend the budgets on account of other legislative changes for example if the net-zero emissions target year were to be changed or on account of changes in climate science or other technologies.
 20. The Committee considers that it can be appropriate and efficient to use regulations to fill out the specific details of a policy after the Parliament has had an opportunity to consider the general legislative framework. In such circumstances, the Committee would ensure that the power in question is tightly framed in order that the appropriate balance is struck between the desire to enable efficient and effective lawmaking and the protection and promotion of the Parliament's role in that process.
 21. The Bill sets out fairly narrow parameters within which the Scottish Ministers may exercise their power to set Scottish carbon budgets. The Bill also sets out options as to how the budget is to be expressed and the period of time that such a budget is to cover. It also requires that the Scottish Ministers have regard to the target-setting criteria, which have been established by the Parliament, and expert advice from the Climate Change Committee. Consequently, the only policy decision left to the Scottish Ministers is determining the actual target. Although this is the purpose of the Bill and as such is a highly significant policy choice, the Parliament will have an opportunity to scrutinise that choice when regulations are laid subject to the affirmative procedure.
 22. The Scottish Government is also required to publish a statement setting out whether the proposed budget takes account of the target-setting criteria and whether the proposed budget is consistent with the most up-to-date advice received from the Climate Change Committee. This gives the Parliament further information which will inform its scrutiny of the regulations. The requirement also serves as an accountability measure. This may in practice limit the Scottish Ministers' ability to implement targets which have not been recommended by the Climate Change Committee, given the potential political consequences for failing to follow expert advice.
 23. As explained above at paragraph 5, the context for the introduction of this Bill is that the Scottish Government has previously missed statutory annual targets and has been advised by the Climate Change Committee that its 2030 target is no longer credible. The power in new section A4 is framed in such a way that Scottish Ministers "must" exercise the power. However, there is no further requirement as to the timing of the exercise of the power. The Scottish Government notes in the Bill's accompanying documents that the Climate Change Committee has indicated that it will provide advice in Spring 2025 but does not make any commitment about the timing of the regulations which will follow. Against this context, and in the interests of limiting the scope of the power as far as possible, the Committee agreed to ask the Scottish Government whether it has considered setting a deadline by which such regulations establishing Scottish carbon budgets must be laid before the Parliament, perhaps by reference to a timescale following the delivery of advice from the Climate Change Committee.

24. The Committee also notes that the 2009 Act includes provision for a “pre-laying procedure” to apply when certain powers are exercised. The powers this procedure currently attaches to are those regarding deposit and return schemes, charges for the supply of carrier bags and the increase to any limit on the maximum amount of carbon units that may be credited to the net Scottish emissions account for a year. The “pre-laying procedure” requires that the Scottish Ministers must lay a copy of the proposed regulations, and a statement setting out their reasons for proposing to make those regulations, before laying the draft regulations before the Parliament. There must be a representation period of at least 90 days during which representations on the proposed regulations may be made to the Scottish Ministers.
25. In the absence of any timescale for making the regulations, the Committee also agreed to ask the Scottish Government whether any consideration has been given to applying an enhanced procedure to the regulation making power, allowing Members an opportunity to make representations before draft regulations are laid.
26. The Committee wrote to the Scottish Government on [10 September](#).

27. **The Committee highlights to the lead committee its consideration of this power above, and the questions in relation to this power it has asked the Scottish Government, which, in summary are, whether:**
- **it has considered setting a deadline by which such regulations establishing Scottish carbon budgets must be laid before the Parliament, for example by reference to a timescale following the delivery of advice from the Climate Change Committee.**
 - **any consideration has been given to applying an enhanced procedure to the regulation making power to allow Members an opportunity to make representations on proposed regulations before the draft regulations are laid.**

28. **The Committee recommends the lead committee considers the Scottish Government’s response to its questions, as part of its scrutiny of the Bill.**

Section 1, inserted section A5: Alteration of periods

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

29. New section A5 provides that the Scottish Ministers may modify new section A4(3), allowing them to alter the length of the periods to be covered by Scottish carbon budgets. As noted above, the Bill requires that the length of this period is 5 years, other than the period that ends with the net-zero emissions target year.

30. This power may only be exercised if it appears to the Scottish Ministers necessary to do so in order to keep the periods covered by Scottish carbon budgets in line with similar periods under any international agreement to which the United Kingdom is a party.
31. The power is subject to the affirmative procedure. Before making such regulations under this power, the Scottish Ministers must consult with Climate Change Committee.

Committee consideration

32. The Scottish Government states in its DPM that the emissions reductions targets in the 2009 Act exist against the backdrop of global initiatives to tackle climate change, many of which are underpinned by international agreements to which the United Kingdom is a party, and therefore it may be preferable to align Scottish carbon budget periods to the milestones of one or more of those initiatives.
33. The Committee considers that this power is appropriately limited to being exercised in circumstances which will predominately be outwith the Scottish Ministers control. It considers it may be necessary to use the power to ensure the implementation of international obligations.
34. The affirmative procedure will allow the Parliament to effectively scrutinise any regulations made under this power in order that it may consider whether it has been used in those limited situations envisaged by this Bill.

35. **The Committee is content with the power in principle, and that it is subject to the affirmative procedure.**

Section 2(11), inserted section 13A(2B): Setting notional Scottish carbon budget

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

36. Section 2(11) adds new subsections (2A) to (2C) to section 13A of the 2009 Act. The provisions set limits on the number of carbon units that can be used to reduce Scotland's net emissions for a given period. The Bill provides a formula to calculate this limit, based on the difference between the current and previous budgets. Since there will be no previous budget for the first period, subsection (2B) enables the Scottish Ministers to set a notional budget by regulations for this purpose. The Scottish Government states in its DPM that the notional budget has no relevance beyond calculating the ceiling on the use of purchased carbon units.
37. Regulations made under this power will be subject to the affirmative procedure.

Committee consideration

38. The Scottish Government explains in its DPM that the notional budget cannot be set

until the content of the first regulations under new section A4, setting the first Scottish carbon budgets, is known.

39. The Committee considers the power is necessary, given the link of the notional budget to actual budget. The notional budget will be used for the purpose of making the calculation which is used to set limits on the number of carbon units that can be used to reduce Scotland's net emissions for a given period. The Committee considers this significant but notes that the power will only be used once for a specific purpose and believe that the affirmative procedure will give the Parliament an appropriate level of oversight.

40. **The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

Section 5: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

41. Section 5 makes standard ancillary provision, giving the Scottish Ministers the power to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Act flowing from the Bill.
42. By virtue of subsection (2), regulations made under section 5 may modify any enactment, including the Act flowing from the Bill.
43. Section 5(3) provides that the affirmative procedure will apply where regulations made under section 90 amend primary legislation, and that otherwise the negative procedure will apply.

Committee consideration

44. This power is considered at paragraphs 27 to 29 of the DPM.
45. The power to make standalone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it.
46. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.

- 47. The Committee is content with the power to make ancillary provision in regulations under section 5 of the Bill. It is also content that the affirmative procedure applies to any provision made which modifies primary legislation and that otherwise the negative procedure applies.**

