



The Scottish Parliament
Pàrlamaid na h-Alba

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

21st Meeting, 2019 (Session 5)

Tuesday 18 June 2019

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **European Union (Withdrawal) Act 2018:** The Committee will consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019.

2. **Climate Change (Emissions Reduction Targets) (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

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Clerk to the Environment, Climate Change and Land Reform Committee
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The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

ECCLR/S5/19/21/1

Agenda item 2

Note by the Clerk

ECCLR/S5/19/21/2

Environment, Climate Change and Land Reform Committee

21st Meeting, 2019 (Session 5), Tuesday, 18 June 2019

European Union (Withdrawal) Act 2018

Introduction

1. This paper details a consent notification sent by the Scottish Government in relation to—

- **The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019.**

2. The Committee is invited to consider the consent notification and agree whether it is content for the Scottish Government to give its consent for UK Ministers to lay the instrument.

Background

3. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.

4. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

5. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers' consent to the UK Parliament legislating on these devolved matters. The protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.

6. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

7. Under the protocol, following its consideration of a consent notification, a committee can—

- Write to the Scottish Government confirming its agreement with the consent notification; or
- Report to Parliament and recommend that—

- it is content for consent to be given for a UK SI to be made in the UK Parliament only.
- It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
- It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

8. Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

9. The Cabinet Secretary wrote to the Committee on 30 May 2019 and the consent notification is attached in **Annexe A** for members' information. The Scottish Government has determined this is a category A notification as—

“The instrument makes minor amendments to correct minor errors in other EU exit instruments, which correct deficiencies in waste related retained EU law. It represents no changes of policy, nor will it produce any impact on businesses or the public.”

10. No policy or legal issues have been identified in relation to this notification.

For decision

11. The Committee is invited to consider the consent notification and agree whether it is content for the Scottish Government to give its consent for UK Ministers to lay following statutory instruments in the UK Parliament—

- **The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019.**

Clerks

Environment, Climate Change and Land Reform Committee

ENVIRONMENT - NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019

1. Name of the instrument and summary of proposal

The Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies.

This instrument corrects a number of minor errors in other EU exit instruments, which correct deficiencies in waste related legislation, some of which were identified by the Joint Committee on Statutory Instruments (JCSI). In relation to Scotland, the instrument amends:

- the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (“Waste (EU Exit) Regulations”); and
- the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (“the Waste (EU Exit) (No. 2) Regulations”).

2. Explanation of law that the proposals amend and summary of proposals

A summary of the corrections and amendments is provided below.

Regulation 4 of this instrument makes amendments to the Waste (EU Exit) (No. 2) Regulations. The Waste (EU Exit) (No. 2) Regulations correct deficiencies in waste related domestic subordinate legislation. Those amendments are as follows:

- Regulation 4(2) alters an amendment to regulation 33 of the End-of-life Vehicle Regulations 2003/2635, which was originally made in the Waste (EU Exit) (No. 2) Regulations. Regulation 33 relates to certificates of destruction issued in EEA States or Gibraltar. The new amendment amends regulation 33 so that the references to “another EEA State” will read “an EEA State”.
- Regulation 4(3) of this instrument corrects the Waste (EU Exit) (No. 2) Regulations by omitting regulation 13(3). Regulation 13(3) amends regulation 3(1) of the Batteries and Accumulators (Placing on the Market) Regulations 2008 by inserting a reference to “regulation 2A”. However, regulation 13(3) was included in error and is to be omitted.
- Similarly, regulation 4(3) of this instrument corrects the Waste (EU Exit) (No. 2) Regulations by omitting regulation 14(2)(b). Regulation

14(2)(b) purports to amend the definition of “the Waste Directive” in regulation 2 of the Waste Batteries and Accumulators Regulations 2009. However, there is no such definition. Regulation 14(2)(b) was included in error and is to be omitted.

- Regulation 4(5) of the instrument amends regulation 18(25)(c) of the Waste (EU Exit) (No. 2) Regulations. Regulation 18(25)(c) inserts a new Part 4 into Schedule 1 to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. The new amendment removes paragraph 26(c)(vi) from the newly inserted Part 4 of Schedule 1. Paragraph 26(c)(vi) is unnecessary in light of new paragraphs 26(c)(iv) and 26(c)(v).

Regulation 5 of this instrument amends the Waste (EU Exit) Regulations. The Waste (EU Exit) Regulations correct deficiencies in waste related domestic primary legislation, and directly applicable EU Regulations and Decisions. Regulation 17(3) of the Waste (EU Exit) Regulations inserts new Articles 1A to 1F into Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries. Regulation 5 of this instrument replaces the new Article 1B(8)(b)(i), which modifies Article 16 of the Waste Framework Directive, to ensure that the principles of self-sufficiency and proximity will continue to apply at a UK level.

3. Why are these changes necessary?

The instrument makes minor amendments to correct minor errors in other EU exit instruments, which correct deficiencies in waste related retained EU law. It represents no changes of policy, nor will it produce any impact on businesses or the public.

4. Scottish Government categorisation of significance of proposals

Category A. The provisions are making small, minor technical changes to preserve the functioning of the legislation.

5. Impact on devolved areas

These changes do not impact on devolved powers, nor on our implementation of the relevant legislation, now or in future.

6. Stakeholder engagement/consultation

We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on stakeholders, businesses or the public.

7. Any other impact assessments?

On the basis that these amendments do not result in any policy changes, no impact assessment has been prepared.

8. Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Officials have worked with Defra to ensure the drafting delivers for our interests, and so Scottish Ministers propose to agree to a UK approach for these deficiencies.

9. Do the proposed changes adhere to the environment and animal principles?

Yes. The guiding principles on the environment as set out in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union are relevant to these proposals. The legislation modified by this instrument is already in line with these principles, and as no policy changes are being introduced, it is considered that these amendments are in adherence with these principles.

10. Are there governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

This instrument corrects minor errors in other EU exit instruments, which correct deficiencies in waste related retained EU law. There are no governance issues associated with the proposed amendments.

11. Intended UK laying date

This instrument is subject to the negative procedure and has been laid for sifting at Westminster on 23 May. Defra have agreed that no EU Exit SIs subject to the negative procedure will be made, until after they have been through the consent process agreed with the Scottish Parliament.

12. Does the Scottish Parliament have 28 days to scrutinise Scottish Ministers' proposal to consent?

Yes.

13. Information about any time dependency associated with the proposal

Given the minor and technical nature of the changes, there is no time dependency associated with the proposals.

14. Any significant financial implications

There are no financial implications associated with the proposals.

Environment, Climate Change and Land Reform Committee

21st Meeting, 2019 (Session 5), Tuesday 18 June 2019

Climate Change (Emissions Reduction Targets) (Scotland) Bill – Stage 2

Background

The Climate Change (Emissions Reduction Targets) (Scotland) Bill (the Bill) was introduced on 23 May 2018 and referred to the Environment, Climate Change and Land Reform Committee to consider and report on the general principles. Background information on the Bill and the Committee's consideration of it at Stage 1 can be found at Annexe B.

1. The Committee published its [Stage 1 report](#) on the Bill on 4 March 2019 and the Scottish Government [responded](#) on 1 April 2019. The [Stage 1 debate](#) took place on 2 April 2019. The Scottish Government provided a further [update](#) to the Committee's Stage 1 report on 15 May 2019.

Stage 2 Report

2. Following evidence sessions with the [Committee on Climate Change](#), the [Cabinet Secretary for Environment, Climate Change and Land Reform](#), and a range of [stakeholders](#) during May 2019, the Committee produced a [Stage 2 report](#) on 5 June 2019.

3. The Scottish Government responded to the Committee's Stage 2 report on 13 June 2019. The letter can be found at Annexe A.

**Committee Clerks,
Environment, Climate Change and Land Reform Committee**

LETTER FROM THE CABINET SECRETARY FOR ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM TO THE CONVENER – 13 JUNE 2019

CLIMATE CHANGE BILL: STAGE 2 REPORT

I am grateful to the Committee for its Stage 2 report, published 5 June, on the Climate Change (Emissions Reduction Targets) (Scotland) Bill.

I am pleased that the Committee has welcomed the Scottish Government's response to the advice from the Committee on Climate Change (CCC) and our commitment to publishing a revised Climate Change Plan within six months of the Bill achieving Royal Assent.

The Committee's report sets out a range of areas for further discussion with the Government and I am happy to commit to continued engagement across these important matters. Meeting the targets advised by the CCC will require difficult decisions and the Scottish Parliament, as well as the Scottish Government, needs to be prepared for this. I hope that the Committee's current report, and the Bill process more widely, will provide us with a strong platform from which to make these decisions.

On the Committee's requests for clarification regarding the CCC's advice on interim targets and inventory revisions, in particular: "*as to how [the Scottish Government] intend to respond to the CCC recommendation in relation to the interim targets*", any "*intention [...] to bring forward further related amendments in response*" and "*which inventory [the Government's] plans will be based on*", further information on how the Scottish Government understands these aspects of the CCC's advice is set out in the Annex to this letter. The Scottish Government's response to the CCC's advice on interim targets is to accept the recommendations they have provided, of a 56% target for 2020, a 70% target for 2030 and a 90% target for 2040. As set out in the Annex, we do not see any inconsistency between the CCC's 2 May advice on interim targets and the design of the Bill target framework, which follows the CCC's previous advice in March and December 2017 on those matters. As such, we do not see any need for amendments to the Bill. In terms of which GHG inventory will be used by the Scottish Government for the forthcoming update of the Climate Change Plan, we will continue to follow the approach of taking into account the full and most up-to-date range of available evidence and information when preparing Plans.

On the Committee's recommendation regarding annual statements on climate change matters from all relevant Cabinet Secretaries and Ministers, I remain of the view set out in my letter of 15 May.

The Bill already requires the annual laying of separate sector by sector monitoring reports on the delivery of the Climate Change Plan, which will then provide a clear prompt for lead subject Committees to decide whether to seek evidence from relevant Cabinet Secretaries and Ministers on these matters, should they wish to do so.

On the Committee's request for further information regarding the Scottish Government's plans on public education, engagement and behaviour change, I will

write again, before summer recess, with an update on the upcoming programme of public engagement over the summer, including the timing and location of events. An invitation to tender for the facilitation of workshops is currently live. I would encourage Members to participate in any events in their areas.

On the Committee's recommendation regarding an enhanced pre-laying procedure for regulations to raise the limit on the use of international carbon from the default position of zero, I can confirm that the Scottish Government will support amendments to the Bill to require that such regulations are subject to the pre-laying procedure set out in section 97 of the Climate Change (Scotland) Act 2009.

Roseanna Cunningham

ANNEX – CCC ADVICE AND INVENTORY REVISIONS

The Scottish Government has accepted the CCC's recommendations regarding Scottish target levels, as set out in the 2 May report and restated in the 20 May letter. These recommendations are for a net-zero emissions target date of 2045 and increased interim targets for 2030 and 2040 of 70% and 90% reductions in emissions respectively.

In arriving at its recommendations on Scottish targets, the CCC's 2 May report was clear that their analysis had taken account of known upcoming changes to GHG inventory measurement methods (Box 5.1, page 140 of that report). These changes reflect situations where new or updated guidelines have been agreed by UN bodies and the UK Government has committed to implementing these into the UK GHG inventory within the next few years. In particular, the CCC's analysis includes the upcoming incorporation of emissions from peatlands into the inventory, in line with the IPCC "wetland supplement" guidelines, which the UK Government has committed to implementing in national inventories by 2022 at latest.

The Scottish Government was content to accept the CCC's target recommendations on this basis on 2 May, noting that these represent the expert assessment of our independent statutory advisers based on the evidence available at the present time. During the CCC's session with the Committee on 14 May, Chris Stark said: "We have offered you the best assessment of what is achievable in Scotland".

The CCC's letter to the Committee on 20 May offered further detail on the analytical approach it has taken regarding the known future inventory revisions in preparing its advice. What this information illustrates is that the impact of the upcoming peatland revisions on Scottish emissions estimates will be very significant. This situation has been clear since publication in April of a BEIS technical report on the implementation of the wetland supplement into the UK GHG inventory, figures from which are cited in the CCC's 2 May report (e.g. Box 5.1 and also specific figures for Scotland at page 169). The CCC's 20 May letter does not change any of the recommendations made in its 2 May report, either in terms of the target levels or the way in which targets should be set.

The Committee's report queries whether the approach to GHG inventories taken by the CCC in providing its advice on targets is consistent with the inclusion of "current international carbon reporting practice" in the list of target-setting criteria in section 5 of the Bill. This list also includes "scientific knowledge around climate change", which we would expect to include knowledge around emissions measurement issues more widely. The list of criteria represent a specific set of matters which Ministers must request the CCC considers when providing advice on modifying targets. It is then part of the CCC's role as independent, expert advisers to consider all of these matters, as well as any others they consider relevant, in arriving at its advice. As such, I do not see any inconsistency between the CCC's current advice on interim targets and the design of the target framework in the Bill.

The approach advised by the CCC will minimise the risk of targets set now needing to be rapidly modified over the next few years, due solely to technical factors such as changes in the GHG inventory. If the known upcoming changes around peatland emissions were not to be reflected in the targets that are set now, then it would become necessary to modify those targets in the space of the next one to three years. I am

supportive of the principle that climate targets, in order to be effective, need to not only be very ambitious, but also to offer clear and stable signalling functions.

The technical landscape around ongoing revisions to the GHG inventory, decisions on which are made at UN and UK levels, is clearly very complex. In the face of that complexity, I think the right approach is to be guided by independent, expert advice that is based on the full range of available evidence.

Annexe B

Background to the Climate Change (Emissions Reductions Targets) (Scotland) Bill

In December 2015, signatories to the United Nations Framework Convention on Climate Change met in Paris for the annual Conference of the Parties. In December 2015 the [Paris Agreement \(UNFCCC 2015\)](#) was adopted under the United Nations Framework Convention on Climate Change (UNFCCC). The Scottish Parliament Information Centre (SPICe) [produced a briefing](#) on provisions of the Paris Agreement and what these might mean for Scotland.

The key provisions of the agreement were:

- Global temperature rises should be limited to “well below” 2°C and to “pursue efforts” to limit temperature increase to 1.5°C above pre industrial levels (See [Article 2](#));
- Parties to the agreement are to aim to “reach global peaking of greenhouse gas emissions as soon as possible”;
- Parties are to take action to “preserve and enhance” carbon sinks;
- To conduct a “Global Stocktake” every five years, starting in 2023;
- For developed countries to provide financial support for developing countries to mitigate climate change;
- Creation of goal of “enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change”.

Following the adoption of the agreement, the First Minister (who [attended the summit](#)) welcomed the agreement and [said](#):

“COP21 has, as we had hoped, achieved a big step forward in the international fight against climate change.....Devolved administrations, like the Scottish Government, will be strong drivers of a progressive climate agenda. We look forward to working with our international partners to secure the successful implementation of the Paris agreement.”

In its [Programme for Government 2016-17](#), the Scottish Government signalled its intentions to legislate to create new, more pressing climate change targets via new legislation in order to address the Paris Agreement. In its [2017-18 Programme for Government](#), the Scottish Government stated the Bill would be included in the programme of legislation that year and said:

“The Climate Change Bill will respond to the historic Paris Agreement by setting more ambitious targets to reduce greenhouse gas emissions. The Bill will increase transparency, demonstrate our commitment to sustainable economic growth and signal to the international community that Scotland is the place to do low carbon business.

Content of the Bill

The Bill proposes to increase the 2050 target for reduction of greenhouse gas emissions from the 1990 baseline from 80% (as laid out in the Climate Change (Scotland) Act 2009) to 90%. The Bill also allows for a target of the 100% reduction (known as a net zero target) from the baseline to be created at a future date.

The Bill contains 5 Parts and 1 Schedule.

- **Part 1** allows for the creation of a net zero emissions target at a future date and updates the 2009 Act 2050 target from 80% to 90%. It also creates new interim targets for 2030 and 2040, as well as updating the previous 2020 interim target. The Bill creates a new provision for modification of these targets. Part 1 also includes sections proposing annual targets be presented in percentage terms in future and on advice the Scottish Government must seek in setting targets.
- **Part 2** is concerned with Emissions Accounting and how the emissions will be calculated in relation to the targets. This includes restricting the use of carbon units which can be purchased to contribute towards emissions reductions.
- **Part 3** is about the reporting and planning duties of the Scottish Government on the targets. It also includes detail of proposals for how reports on policies and proposals, suggested to be renamed Climate Change Plans, will be created and published in the future.
- **Part 4** provides further detail on the meaning of terms within the Bill and further consequential to the 2009 Act.
- **Part 5** contains final general and miscellaneous provisions such as:
 - i. Meaning of the 2009 Act
 - ii. Ancillary Provision
 - iii. Commencement
 - iv. Short title

The Scottish Government published the following documents in relation to the Bill:

- [Climate Change \(Emissions Reductions Targets\) \(Scotland\) Bill](#)
- [Policy Memorandum](#)
- [Explanatory Notes](#)
- [Financial Memorandum](#)
- [Delegated Powers Memorandum](#)
- [Statement on Legislative Competence](#)

The SPICe Briefing on the Bill is available [here](#).

Committee Stage 1 programme

The Committee completed Stage 1 with the following timetable:

- [19 June 2018](#): Evidence session: Scottish Government Bill Team
- **27 June 2018**: Launch of call for evidence
- **23 August 2018**: Close of call for evidence: The Committee [received over 90 responses](#).
- [23 October 2018](#): Evidence Session: Advice of the Committee on Climate Change. Following its meeting on 23 October 2018, the Committee wrote to the Chair of the Committee on Climate Change, Lord Deben, seeking further information relating to the session: [Letter from the Convener to the Chair of the Committee on Climate Change, Lord Deben, seeking further information relating to the session 31 October 2018](#)
- [30 October 2018](#): Evidence Session: International Context. [Report highlighted by Anders Wijkman - The Circular Economy - A Powerful Force for Climate Mitigation](#)
- [6 November 2018](#): Evidence Session: Behaviour Change and Climate Change Governance
- [13 November 2018](#): Evidence Session: Sector Specific Evidence on Agriculture and Transport
- [15 November 2018](#): Evidence Session: Innovation
- [20 November 2018](#): Evidence Session: Content of the Bill (environmental and climate change groups and sectoral perspectives)
- [27 November 2018](#): Evidence Session: Cabinet Secretary for Environment, Climate Change and Land Reform
- **December 2018-February 2019**: Draft report consideration
- [4 March 2019](#): Stage 1 Report published

The Scottish Government [responded](#) to the Stage 1 report on 1 April 2019 and the [Stage 1 debate](#) took place on 2 April 2019.

The Bill is now at Stage 2 and amendments have been lodged to update and reflect the new advice from the CCC.

Advice from the Committee on Climate Change

On 2 May 2019, the CCC published its [advice](#) on Scottish, Welsh and UK targets in light of the Paris Agreement and the [IPCC Special Report](#). This advice details how Scotland can credibly adopt a more ambitious target of reaching net-zero greenhouse

gas emissions (GHGs) by 2045, contingent on the UK adopting the CCC's recommended 2050 net-zero GHG target. The CCC report states:

A UK net-zero GHG target in 2050 is feasible but will only be deliverable with a major strengthening and acceleration of policy effort. Challenges across sectors must be tackled vigorously and in tandem, beginning immediately.

The Cabinet Secretary [wrote](#) to the Committee on 2 May 2019 following the CCC's advice. The Cabinet Secretary also made a [statement](#) in Parliament on 14 May 2019 outlining the Scottish Government's response to 'The Global Climate Emergency.'

Stage 2 Evidence sessions

The Committee [heard](#) from the CCC on 14 May and [heard](#) from the Cabinet Secretary on 21 May. On 28 May, the Committee [heard](#) from a range of stakeholders in two roundtable sessions.

Stage 2 timetable

As part of its scrutiny, the Committee agreed the following timetable for consideration of the Bill at Stage 2:

Tues 14 May	CCC gives evidence to the Committee
Tues 21 May	Scottish Government (Cabinet Secretary) gives evidence to the Committee
Tues 28 May	Stakeholder evidence sessions
Tues 4 June	Consider report
Weds 5 June	Publish report
Tues 18 June	Consideration of amendments
Tues 25 June	Consideration of amendments