

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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 The repealed subsections previously imposed restrictions on the net amount of carbon units which may be credited to the net Scottish emissions account for a year.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 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 (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.