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The Scottish Parliament
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12 September 2024

Dear Stuart,

Thank you for your correspondence of 10 September, in which you outlined the Committee's initial questions on the Climate Change (Emissions Reduction Targets) (Scotland) Bill introduced on 5 September 2024. I thank the Committee for its engagement on the Bill, and hope the following information is useful in your consideration of this legislation.

You first asked about the general approach of delegated powers within the Bill, specifically why the Scottish Government decided to use regulation-making powers for the setting of carbon budget targets and whether an alternative approach of setting these targets via primary legislation had been considered.

The Government is clear that the levels at which the Scottish carbon budgets are set must be informed by expert scientific advice from the Climate Change Committee (CCC). That advice will not be available until spring 2025 - delaying this Bill until that time is not a viable option, given the urgent need to amend our target framework and adjust the timing of the Climate Change Plan. Rather than set Scottish carbon budgets on the face of primary legislation without the benefit of that advice, we are of the view that it is better for the Parliament to approve the general legislative scheme for Scottish carbon budgets first, and for the specific budgets to then be set by regulations (subject to parliamentary oversight through the affirmative procedure) once expert advice has been received. This is the approach of the equivalent Acts in Wales, Northern Ireland and the UK - these governments already use a carbon budgets approach to emissions reduction and set their carbon budgets by secondary legislation.

It is also important to note that, while the levels at which carbon budgets are set will be of particular importance, the Bill is not changing the net zero target of 2045. The budget-setting regulations will deal only with the trajectory to that point, not the final destination, nor will the regulations address the highly significant policy choices to be made for the target trajectory to be followed.

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If we did not use secondary legislation to set targets, the only alternative approach would be to have to introduce two Bills: first, a Bill to remove the targets system and duty to bring forward a Climate Change Plan in November this year, and second a Bill to create a new targets system and set targets once the CCC's advice has been received next year. The Scottish Government does not believe it would be a good use of Parliamentary time and resource to go through an expedited bill now and another next year. It also would delay the implementation of our emissions reduction targets and the next Climate Change Plan due to the time that would be needed. Taking forward two pieces of primary legislation requires space to be found in the legislative timetable and could risk delay to other climate actions from being taken forward, taking up Chamber time as well as Committee time in ways secondary legislation simply does not.

This approach would also mean the CCC would be advising on what budgets to set at a time when the final form of the targets system would be unresolved. It is important that we have an agreed new system of emissions reduction targets before seeking expert advice on what the targets within that system ought to be. Otherwise, it may be very difficult for the CCC to provide clear advice for Scotland's carbon budget levels. In addition, it would mean that for an indeterminate period, Scotland would have no effective system of emissions reduction targets. I am sure you will agree that this would not be a credible position to put to stakeholders or Parliament.

While your letter mentions financial budget Bills as a possible comparator, these are very different. As well as the special rules that apply to their consideration by Parliament, under rule 9.16 of Standing Orders which means they do not follow the standard three-stage process, the actual financial budget process is qualitatively different from the process of setting carbon budgets. Whereas carbon budgets will be set by providing one budget for a period, financial budget bills contain different figures for different portfolios and bodies - the purpose of the full Bill process is to consider the balance between them.

The Scottish Government's position is that we must have just and credible carbon budget targets in place as soon as possible, so we can continue to move focus from target-setting onto the vital delivery we need to reach our overall goal of net zero by 2045. My engagements with stakeholders and parliamentarians on this issue have made it clear that we share an urgency on the need for climate action. When we receive the Climate Change Committee's expert advice on the expected timeline, which as noted they have indicated should be spring 2025, we will act as quickly as possible to set new targets so that a credible Climate Change Plan can be developed at pace – setting targets in regulations is the best avenue to balance this need for swiftness with the proper time for scrutiny.

You also asked about whether the Government has considered setting a deadline by which regulations setting carbon budgets must be laid before Parliament. The Government is conscious that an absolute deadline might conflict with other provisions of the Bill – for example the requirement to bring forward regulations after the Government receives CCC advice on appropriate carbon budget levels. If such a provision were included, we could foresee a situation, for example, where the CCC's advice was delayed and thus Ministers would be placed in an impossible situation of having to bring forward regulations by a certain date while also having to wait for the CCC's advice. However, you note in your letter that the Bill could include a timescale following the delivery of advice from the Climate Change Committee. This is a suggestion that I will actively consider further, and I would welcome engagement with the Committee or specific members.

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Finally, your letter asked whether the Government considers applying an enhanced procedure to the target setting regulations would be appropriate. The Committee suggests using an existing provision, Section 97 of the Climate Change (Scotland) Act 2009, for a “pre-laying procedure” – presenting Parliament with regulations in draft form alongside a statement of reasoning, for a period of at least 90 days before the regulations themselves are laid. This would extend the procedure for setting targets start to finish from around 54 days to over 144 days, meaning that the carbon budget targets would take nearly five months minimum to be set after CCC advice in spring 2025. This would also delay the next Climate Change Plan which will be based on the new carbon budgets. As with your first question, the Government’s intention is to continue to shift focus from target-setting to delivery on climate action and to do so as quickly as practicably possible, so we do not think it is appropriate to extend the process in this way.

When considering the scrutiny of carbon budgets under the system proposed in the Bill, it is important that we consider the full picture: initial consideration and written advice by the independent experts of the CCC; affirmative consideration of the Government’s carbon budget targets laid after that advice; consideration of a draft Climate Change Plan; formal laying of that Plan for approval by Parliament; annual reporting of progress on the carbon budgets as well as on emissions levels; regular independent CCC reporting on the carbon budgets; and a full Government report on the success of each budget at the end of each budget period.

With this in mind, it is our view that the existing affirmative procedure for secondary legislation already allows for sufficient scrutiny for the setting of carbon budget targets, and that the scrutiny provided for by the Bill as introduced over the whole period, from start to finish, of a carbon budget is appropriate and consistent with the approach to scrutiny of such regulations endorsed by the Parliament when passing previous Climate Change Bills.

I hope the above information reassures the Committee on the consideration given to the provisions of this Bill, especially those related to delegated powers. I also thank you for the invitation to discuss these matters further at your session on 17 September . As requested, I copy this response to Parliament’s Net Zero, Energy and Transport Committee.

Yours sincerely,

GILLIAN MARTIN

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