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Net Zero, Energy and Transport Committee
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20 September 2024

Dear Edward,

At the evidence session on the Climate Change (Emissions Reduction Targets) (Scotland) Bill on 17 September, I offered to write to you with further detail on several areas.

Timetable

At the evidence session, we engaged extensively on the timescales for the production of carbon budgets and the next Climate Change Plan, following the passage of this Bill. As we have discussed on several occasions, the Scottish Government's view is that it is essential that we receive independent advice from the Climate Change Committee (CCC) before bringing forward regulations to set carbon budget levels. There is no specific date for when this advice will be published, however, the CCC have indicated that they will provide this advice in spring 2025.

As I said to Committee, when the CCC provide their advice, it is my intention to bring forward regulations to set carbon budgets within weeks of that. If that advice is by the end of March, my intention is to also publish a draft Climate Change Plan (CCP) before Parliament's summer recess. My officials are continuing discussions with the CCC to establish the earliest date possible for advice on carbon budgets.

For example, if the CCC published their advice in week commencing 24 March 2025, my intention would be to work towards the below timetable, noting there are non-sitting days and on assumption Regulations are passed by Parliament:

- Week commencing 24 March 2025: CCC advice published (noting that the CCC has not set a specific date for its advice)
- Week commencing 31 March 2025: Draft carbon budget regulations laid
- 5-20 April 2025: Parliamentary recess

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- Week commencing 9 June 2025: Carbon budgets set through affirmative SSI, if agreed by Parliament
- Week commencing 23 June 2025: Draft Climate Change Plan published (once carbon budget regulations are passed)
- 28 June to 31 August 2025: Parliamentary Recess
- November 2025: earliest date for publication of the final CCP, following 120-day scrutiny period by Parliament, if the draft is published at the end of June (though this is likely to be later to allow time to respond to Parliament’s scrutiny of the draft CCP).

If the CCC’s advice is published after week commencing 24 March 2025, the subsequent dates on this timeline would adjust accordingly.

If that advice is received later than the timeframe indicated above but still with enough time to set carbon budgets through affirmative SSI we will absolutely do so. However, if the advice is not received before the week commencing 28 April 2025, there would not be enough time to set carbon budgets by affirmative procedure before summer recess without breaching the 54 day laying convention agreed with the Scottish Parliament. Should the timing of the advice mean the timeline requires a breach of the 40 days required under Standing Orders, we will engage with the Parliament and Presiding Officer in the usual way.

In the scenario where the CCC’s advice on carbon budgets is not received before the week commencing 28 April 2025, I would not be able to publish a draft CCP that reflects these budgets before summer recess but, if Parliament scrutinises the regulations on an accelerated timescale by summer recess, I would plan to publish the draft CCP as soon as possible including during the summer recess so that people have time to view and consider the plan at the earliest opportunity, recognizing that 60 days of the 120 day scrutiny period need to be sitting days.

Committee’s discussion on a possible “super-affirmative” procedure for the regulations to set carbon budgets

The Committee discussed the possibility of applying an enhanced, “super-affirmative” procedure to the target-setting regulations. For example, this may involve using 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. It may be pertinent to note that the 2009 Act already contains powers to modify emissions reduction targets, but Parliament has never previously thought it appropriate to apply section 97 to such regulations. The Bill has been drafted for as close adherence to the existing legislation as possible, and clearly the Parliament has not previously been convinced that a pre-laying procedure (beyond the requirement to get CCC advice) would be a useful addition.

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It would not be my preferred option as it would extend the procedure for setting targets start to finish from around 54 days to over 144 days. Assuming CCC advice is received in March 2025, it would mean the budgets would not be set until November. I believe that taking five months to set the carbon budget targets after receiving CCC advice is too long and I do not think anyone would want to wait that long. Requiring a standstill period before Parliament could approve a draft of the regulations, which is what adopting a model like section 97 would entail, would mean that even if there were no controversy about the proposed budget levels, it would be legally impossible to get on with setting them and move the discussion on to the CCP. I do not think building in inevitable delay of the kind is in anybody's interests.

Given that Parliament have a 120-day period of Parliamentary scrutiny of the CCP, and Ministers will need time to consider any representations made, we would not have a final CCP to work towards until a year after advice on carbon budgets was provided by the CCC and the process for finalising the CCP would run right up against the end of the parliamentary session in 2026.

I also said that in response to your questions I would write to you on the possibility of the draft CCP being brought forward at the same time as regulations to set carbon budgets. My plan is to continue work on that plan from when this Bill has passed and finalise it when the CCC has provided its advice and I am able to base it on the carbon budgets that are set. Time will be needed to ensure that the Plan, as per the 2009 Act, sets out policies and proposals for meeting our emissions target levels. Therefore, whilst we will work at pace there needs to be time between the advice and the publication. As you can see above, I plan to do this within months of the advice, but doing so within weeks, is not a sensible approach for such a major piece of work if we are to ensure we have a credible plan.

Statutory Timescales

I said to the Committee that I would consider including in the Bill a timescale for bringing forward carbon budget regulations. I can confirm I am considering including in the Bill a timescale for the laying of the necessary carbon budget regulations following the delivery of advice from the CCC and also timeframe for which the draft CCP is published following the advice from the CCC, noting that these must be within a realistic timescale based on sitting days in parliament, rather than a specific date, given that the setting of carbon budgets requires the CCC advice to be available, the draft version of a CCP requires finalisation of the carbon budgets and it is likely easter recess will often be around the time CCC is due to give its advice.

Section 36 reports

We also discussed the approach to section 36 reports in the Bill, and members of the Committee raised the approach of other countries in requiring the Government to take proactive measures where they are off-track in meeting a carbon budget the Bill as drafted already requires that Ministers must ensure that carbon budgets are met.

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The Scottish Government's position is that if it became apparent during a carbon budget period that a budget is going to be missed, it would already be incumbent on Ministers to bring forward additional measures to ensure that the budgets is met. Indeed, the annual progress reports for the Climate Change Plan are an existing statutory requirement and enable performance against indicators and milestones to be monitored annually and for further action to be taken if required.

In addition given that the official Greenhouse Gas statistics are currently published two years after the relevant period, Ministers would not be able to give an accurate assessment of progress towards a budget until the fourth or fifth year of the budget period based on these statistics (i.e. once Ministers have data on the first 2-3 years comprising the carbon budget period). For example, Ministers would only receive data regarding the first 3 years of our first carbon budget (running from 2026-2030) in 2030, by which point any measures taken to address any expected shortfall would have little to no impact on the overall emissions for that specific period.

Net Zero assessment

Separately from the Bill, you also asked about the net zero assessment that the Scottish Government is currently piloting. Following passage of the Bill, I will provide an update to the Committee on the results of the pilot by the end of the calendar year and our plan to roll out a full net zero assessment across all significant new Scottish Government expenditure decisions from the beginning of 2025.

I hope that this letter provides further clarity to members of the Committee, and I welcome further engagement on these matters.

Yours sincerely,



GILLIAN MARTIN

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