

EXPLANATORY NOTES

Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (asp 10)

£6.90

FUEL POVERTY (TARGETS, DEFINITION AND STRATEGY) (SCOTLAND) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT

Summary

3. The Act contains the following key elements—

- It enshrines in legislation the Scottish Government's fuel poverty targets. The primary target is that, by the year 2040, as far as reasonably possible, no household in Scotland is in fuel poverty but that, in any event, the following objectives are met: no more than 5% are in fuel poverty, no more than 1% are in extreme fuel poverty, and the median fuel poverty gap is no more than £250 (in 2015 prices). There is also a 2040 target which applies at the level of local authority areas: the objectives to be met are the same as they are at a Scotland-wide level, but they are to be met with reference to each individual local authority area instead. In addition, there are two interim targets at a national level. There is a target for the year 2030: that no more than 15% of households in Scotland are in fuel poverty, no more than 5% are in extreme fuel poverty, and the median fuel poverty gap is no more than £350 (in 2015 prices). There is also a target for the year 2035: that no more than 10% of households in Scotland are in fuel poverty, no more than 3% are in extreme fuel poverty, and the median fuel poverty gap is no more than £300 (in 2015 prices).
- It establishes a new definition of fuel poverty, including how levels of fuel poverty are to be measured. There is also a related definition of extreme fuel poverty. In addition, the fuel poverty gap (which applies to those who are in fuel poverty and measures how deeply they are in it) is defined.
- It places a duty on the Scottish Ministers to produce a long-term fuel poverty strategy within a year of the Act being brought into force. The strategy will set out how delivery of the fuel poverty targets will be achieved and set out a monitoring framework to oversee progress in meeting the targets.

- It places a duty on the Scottish Ministers to produce a report every 3 years. This will provide an update on progress being made towards meeting the fuel poverty targets and set out the detail of the plans for the next 3 year period. A duty is also placed on the Scottish Ministers to report to the Parliament on whether or not the 2040 target is met, and also on whether or not the 2040 target in relation to local authority areas is met.
- It establishes a Scottish Fuel Poverty Advisory Panel with responsibility for reporting to the Scottish Ministers on progress towards the fuel poverty targets, the likelihood of meeting them, and the extent to which the drivers of fuel poverty are being addressed.

COMMENTARY ON SECTIONS

The 2040 targets

Section 1

4. Section 1 sets out the 2040 targets. Subsection (2) sets out the target relating to the eradication of fuel poverty. The target is that by the year 2040, as far as reasonably possible no household in Scotland is in fuel poverty and that, in any event, the following objectives are met—

- no more than 5% of households in Scotland are in fuel poverty.
- no more than 1% of households in Scotland are in extreme fuel poverty,
- the median fuel poverty gap of households in Scotland that are in fuel poverty is no more than £250 (adjusted in accordance with section 5(5) to take account of inflation or deflation).

5. Subsection (3) sets out the target in relation to each local authority area. The percentages and sums are the same, but these will be measured by reference to the households in a local authority area rather than across Scotland as a whole. The term "local authority area" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 as the local government area for which the authority is constituted.

6. Subsection (4) allows the Scottish Ministers to change the target year for either or both of the 2040 targets if they receive a report from the Scottish Fuel Poverty Advisory Panel which advises that the target is not going to be met or could reasonably be met earlier. The Scottish Fuel Poverty Advisory Panel is established under section 14 of the Act. Any change to the target year would be made by regulations and, in terms of subsection (5), those regulations could also make necessary adjustments to other sections of the Act as well. Specifically, the reporting deadlines could be adjusted in light of the change, and references to years (which are currently predicated on the target year being 2040) could also be adjusted.

The interim targets

Section 2

7. Section 2 sets out the interim targets that apply at a national level.

8. The interim target for the year 2030 is that—

- no more than 15% of households in Scotland are in fuel poverty.
- no more than 5% of households in Scotland are in extreme fuel poverty,
- the median fuel poverty gap of households in Scotland that are in fuel poverty is no more than £350 (adjusted in accordance with section 5(5) to take account of inflation or deflation).

9. The interim target for the year 2035 is that—

- no more than 10% of households in Scotland are in fuel poverty.
- no more than 3% of households in Scotland are in extreme fuel poverty,
- the median fuel poverty gap of households in Scotland that are in fuel poverty is no more than £300 (adjusted in accordance with section 5(5) to take account of inflation or deflation).

Meaning of fuel poverty

Section 3

10. Section 3 defines when a household is in fuel poverty. This is a multi-faceted definition which includes a lot of detail about how particular elements will be measured. However, the broad thrust of it is that a household will be in fuel poverty if:

(a) after having paid its housing costs, it would need more than 10% of its remaining net income to pay for its reasonable fuel needs, and

(b) having paid for its reasonable fuel needs, its childcare costs and its housing costs, and disregarding the value of specified benefits which are received for a care need or disability, this then leaves the household unable to maintain an acceptable standard of living.

11. Subsection (1) lays down the test that determines whether a household is in fuel poverty. It should be read in conjunction with subsection (10)(a) which explains that "adjusted" net income means the household's net income after deduction of housing costs.

12. Paragraph (a) of subsection (1) sets out the first element of the test. It requires an examination of what fuel costs the household ought to have. It does not matter what fuel costs the household actually incurs, but rather the cost of its assessed fuel needs. The measurement is therefore a uniform one which is not influenced by whether, in practice, a household opts to save money by turning its heating off or whether it turns the heating up to a level which experts consider to be too warm. The calculation that must be carried out is whether the cost of meeting the household's assessed fuel needs amounts to more than 10% of the net income that the household has after it has paid its housing costs. For a worked example of this, see paragraph 36 below.

13. Paragraph (b) of subsection (1) sets out the second element of the test. The question there is whether, after the assessed fuel costs discussed above, any childcare costs, housing costs and the value of specified benefits received for a care need or disability (where applicable) have all been deducted from the household's net income, there is sufficient income remaining to allow members of the household to maintain an acceptable standard of living. The result of the inclusion of paragraph (b) is that the test is not just about what proportion of a household's income is needed to meet its assessed fuel needs, but also about

whether or not the household is then left unable to maintain an acceptable standard of living. For a worked example of this, see paragraph 37 below.

14. Subsections (2) to (4) provide more detail about the first element of the test and how a household's fuel needs are to be assessed. This is to be measured by reference to both the cost of meeting specified heating levels within the home and also whether the household's other reasonable fuel needs within the home are being met.

15. In relation to heating levels, different temperatures are specified for different rooms of the house. The number of hours that the rooms need to be heated to these temperatures is also set. The temperatures and number of hours that are specified differ based on whether or not the household is classified as being one for which enhanced heating temperatures and/or enhanced heating hours is appropriate.

16. The specified heating levels are:

- For a household for which enhanced heating temperatures is appropriate, heating the living room[1] to 23° Celsius and any other room to 20° Celsius.
- For any other household, heating the living room to 21° Celsius and any other room to 18° Celsius.
- For a household for which enhanced heating hours is appropriate, heating the home to the requisite temperatures for 16 hours a day, every day.
- For any other household, heating the home to the requisite temperatures for 9 hours a day on a weekday and 16 hours a day at the weekend.

17. Regulations made by the Scottish Ministers under subsection (4) will set out the types of household for which enhanced heating temperatures and/or enhanced heating hours is appropriate. This would allow assessed fuel needs to take account of households where, for example, a member of the household is elderly or has a condition or illness which makes that person especially at risk of suffering adverse effects from being in a cold home.

18. Measurement of the household's other reasonable indoor fuel needs for the purpose of subsection (2)(b) would cover the cost of fuel-use for things such as heating water, cooking, lighting and using appliances such as kettles, phone chargers, etc. However, the costs are only factored in to the extent that they are reasonable: fuel use for an unreasonable purpose (e.g. an indoor swimming pool) or to a unreasonable extent (e.g. keeping all lights on at all hours) would not be factored in.

19. Subsection (5) provides more detail about the second element of the test and how the question of whether a household has sufficient income left to maintain an acceptable standard of living is to be assessed. How this is calculated depends on the location of the home in question.

20. For most households[2], it requires a comparison of:

[1] The expression "living room" bears its ordinary meaning in the Bill (that is, a room for everyday general use).
[2] Where the home in question is in a remote rural area, remote small town or island area, subsection (6) applies and an additional amount can be added to the UK minimum income standard for the purpose of this calculation in recognition of the higher living costs which can apply in those areas.

- the household's net income, after deduction of—
    - the costs that would be incurred in meeting the specified heating levels and its other reasonable fuel needs (whether or not it actually spends that),
    - the housing costs actually incurred (which, as well as rent/mortgage costs, includes council tax and water and sewerage charges), and
    - any childcare costs actually incurred,
    - the value of specified benefits which are received for a care need or disability (where applicable),

with

- 90% of the UK minimum income standard which applies to the household, after deduction of the amount that the standard allocates to—
    - fuel costs,
    - rent, council tax and water rates, and
    - childcare costs.

21. If the amount of the household's remaining net income is 90% or more of the relevant minimum income standard figure, subsection (5) provides that this is to be treated as determinative of the question as to whether or not the household has sufficient income left to maintain an acceptable standard of living. In such cases, the household is considered to have sufficient remaining income, meaning that the household will not be in fuel poverty.

22. The term "minimum income standard" refers to the UK minimum income standard that has been developed by the Centre for Research in Social Policy at Loughborough University[3]. It sets out how much money it considers households to need depending on the composition of the household. It also breaks this headline sum down into different items of expenditure.

23. The standard covers the needs of over a hundred different family combinations[4]. However, if there is no standard which applies to a particular type of household, subsection (5) will not be able to settle the question of whether the household has sufficient remaining income to maintain an acceptable standard of living. In those rare cases, the test as set out in subsection (1) would simply fall to be interpreted on its own terms, and an assessment would be made as to what constitutes an acceptable standard of living. Alternatively, Ministers would be able to set a standard for those cases by using the power in section 16(c).

24. Subsection (10)(f), which defines the term "minimum income standard", also allows Ministers to determine that the minimum income standard for the purposes of subsection (5) is to be determined by a different body. This would allow Ministers to react quickly if the current UK minimum income standard ceases to be published, if the body which produces it changes, or if the basis on which it is calculated is changed. Through the use of the this power, subsection (5) will be able to continue to be used as the litmus test for whether a sufficient standard of living can be achieved for the majority of households.

[3] For more information, see http://www.lboro.ac.uk/research/crsp/mis/ and https://www.jrf.org.uk/report/minimum-income-standard-uk-2017.
[4] https://www.jrf.org.uk/file/50351/download?token=7KmLaSiz&filetype=full-report

25. However, subsection (5) is subject to subsection (6). Subsection (6) provides that where the home in which the members of a household live is in a remote rural area, remote small town or island area, the question of whether a household has sufficient income left to maintain an acceptable standard of living is to be assessed slightly differently from the comparison set out in paragraph 20. Instead of comparing the household's remaining adjusted net income with the UK minimum income standard, it is compared with the UK minimum income standard added together with any additional amount that has been determined in relation to the household in accordance with regulations. This means that it requires a comparison of:

- the household's net income, after deduction of—
    - the costs that would be incurred in meeting the specified heating levels and its other reasonable fuel needs (whether or not it actually spends that),
    - the housing costs actually incurred (which, as well as rent/mortgage costs, includes council tax and water and sewerage charges), and
    - any childcare costs actually incurred,
    - the value of specified benefits which are received for a care need or disability (where applicable),

with

- the total of—
    - 90% of the UK minimum income standard which applies to the household, after deduction of the amount that the standard allocates to—
        - fuel costs,
        - rent, council tax and water rates, and
        - childcare costs,

      and
    - such additional amount (if any) as is determined in relation to the household in accordance with regulations.

26. As set out in subsection (7), regulations under subsection (6)(b) providing for the determination of an additional amount must define "remote rural area", "remote small town" and "island area". They must also specify who is going to determine the additional amount (though the regulations themselves need not specify this amount; that can be done elsewhere, in a similar way to how the amounts under the UK minimum income standard are not set out in legislation).

27. The Scottish Government has stated[5] that the regulation-making power in subsection (6)(b) will be used to specify a definition of "remote rural area", "remote small town" and "island area" which will cover categories 4 and 6 of the Scottish Government's 6-fold urban rural classification[6]. In addition, under subsection (9), the definition of "island area" is required to encompass all island areas.

[5] http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12039
[6] https://www2.gov.scot/Topics/Statistics/About/Methodology/UrbanRuralClassification

28. The person who makes the determination of the additional amount will also be required, under subsection (8), to make a separate determination for island areas. This means that the appointed person will have to calculate the relevant figure for the islands separately, although there may be times when the underlying cost of living is such that the figure in question is the same as it is in other places.

29. The additional amount which is specified by a person appointed in the regulations can differ depending on the type of household in question. For example, the extra cost of remote living for a family of four may be very different to the extra cost of remote living for a single person. It is also possible that there may be times where the appointed person does not specify an additional amount if the cost of living is found, based on the research that person has carried out, not to be higher for a particular household type in a particular location. However, the household will never be measured against less than the relevant amount of the UK minimum income standard which is based on research conducted in the Midlands, selected to be representative of the UK overall. And where the cost of living is determined to be higher for a particular household type and location, an additional amount will have to be factored in in recognition of that when calculating whether the household has sufficient income left to maintain an acceptable standard of living.

30. Subsection (10) defines a number of terms which are used in the section: benefits received for a care need or disability, childcare costs, household, housing costs, and net income[7]. It also explains that "adjusted" net income means net income after deduction of housing costs.

31. While a number of the words defined here are readily understood in everyday language, the section provides tests which can be used to clarify any less obvious cases. For example, the definition of a household captures those living together as a family or other unit, so a group of friends who rent a flat together would constitute a household. However, a lodger who lives with a family and is entitled to use shared living and cooking facilities need not necessarily count as part of that household. This test is derived from the Scottish Housing Condition Survey[8] and so represents an understood approach to determining what constitutes a household.

32. Childcare costs would include the cost of an after-school club which is used to provide care facilities for the child, but the cost of paying school fees or paying for an activity like piano lessons (where the primary objective is to allow the child the chance to learn an instrument) would not be covered. The definition is restricted to children of primary school age or below, in line with how childcare costs are assessed under the minimum income standard.

33. The section also provides that housing costs means not just rent or mortgage payments but also the associated council tax and water and sewerages charges relating to the house.

34. The term "benefits received for a care need or disability" is also defined. This covers disability assistance, personal independence payment, attendance allowance, severe disablement allowance, and disability living allowance. Although severe disablement allowance is no longer provided to new applicants, it continues to exist for those who were

[7] It also defines "minimum income standard", as discussed at paragraphs 22 to 24 above.
[8] http://www.gov.scot/Topics/Statistics/SHCS

receiving it prior to its abolition[9]. Taken together, this means that, in recognition of the fact that these sums are paid to cover particular costs which would not be incurred by others and are not reflected in the minimum income standard, all of these benefits are taken out of account when looking at whether a household has sufficient income left to maintain an acceptable standard of living.

A worked example

35. A worked example of the calculation required by section 3 follows, based on the entirely hypothetical figures set out in this paragraph. The 2017 minimum income standard figures are used, but with weekly sums being converted to monthly figures.

Household type: single person of working age (living on the mainland in an urban area or accessible small town or in an accessible rural area)		
Household costs (monthly):	£1,150	net income
	£350	rent
	£50	council tax, water & sewerage
	£0	childcare
	£0	relevant benefits
	£80	assessed monthly fuel needs (taking into account the tariffs and fuel types available to the household in question)
Minimum income standard figures:	£1,286.24	total income
	£388.70	notional rent cost
	£68.28	notional council tax cost
	£24.99	notional water rates cost
	£71.41	notional fuel costs
	£0.00	notional childcare costs

36. The section 3(1)(a) test is as follows—

Fuel costs necessary to satisfy section 3(2):	£80	
Adjusted net income:	£1,150	net income
	(£350)	rent
	(£50)	council tax, water & sewerage
	£750	

[9] See article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional Savings Provisions) Order 2000 (SI 2000 No. 2958).

Fuel costs as percentage:	(80 / 750) * 100	
	= 10.7%	

As the percentage is above 10%, the first element of the fuel poverty test is met.

37. The section 3(1)(b) test is as follows—

Remaining adjusted net income:	£1,150	net income
	(£350)	rent
	(£50)	council tax, water & sewerage
	(£0)	childcare
	(£0)	relevant benefits
	(£80)	necessary fuel costs
	£670	

This figure then needs to be assessed in accordance with section 3(5) on the basis that the home in question is not located in a remote rural area, remote small town or island area.

38. The section 3(5) comparison is as follows—

Relevant minimum income standard:	£1,286.24	minimum income
	(£388.70)	notional rent
	(£68.28)	notional council tax
	(£24.99)	notional water rates
	(£0.00)	notional childcare
	(£71.41)	notional fuel
	£732.86	
90% of that standard:	(£732.86 / 100) * 90	
	= £659.57	

As the remaining adjusted income of £670 is greater than the relevant MIS figure of £659.57, the household is not in fuel poverty.

However, if the home in question had been located in a remote rural area, remote small town or island area, the result may have been different. If the additional amount calculated in relation to the household type for that area was £20, that sum would need to be added to the figure of £659.57 above, meaning that the total would instead be £679.57. As the remaining adjusted income of £670 would then be less than the minimum income standard which applies in that area, the household would be in fuel poverty.

Meaning of extreme fuel poverty

Section 4

39. Section 4 defines the term "extreme fuel poverty". This forms part of both the 2040 targets and the interim targets. The test for whether a household is in extreme fuel poverty is largely the same as the test for whether it is in fuel poverty other than that the threshold is different: for extreme fuel poverty, the cost of meeting the household's assessed fuel needs must amount to more than 20% of the net income that the household has after it has paid its housing costs (rather than the 10% which is required for fuel poverty). The rules set out in section 3(2) to (10) apply, meaning that any adjustments to the defined terms in section 3(10) would carry through to this definition.

Meaning of fuel poverty gap

Section 5

40. Section 5 defines the term "fuel poverty gap". This forms part of both the 2040 targets and the interim targets. This measures the amount by which a household falls into fuel poverty. The fuel poverty gap is essentially the smaller of—

- the amount by which the household's necessary annual fuel costs exceed 10% of the household's adjusted net income, and
- the amount by which the annual sum required for the household to have an acceptable standard of living exceeds the amount it has for that purpose.

41. The fuel poverty gap is only calculated when a household is in fuel poverty, meaning that the households in question will meet both of the elements of the fuel poverty definition. The smaller of the two figures is used to calculate the gap because if a household meets the requirements for one of the elements but not the other then it is not in fuel poverty. In the example at paragraph 45 below, if the required fuel costs reduced by £60 per year or if annual remaining adjusted net income increased by £114.84 then the household would no longer be in fuel poverty. As a £60 reduction in required fuel costs is the smallest amount required to lift this household out of fuel poverty, this represents the fuel poverty gap. If this reduction was achieved then the requirements of the first element of the fuel poverty definition would no longer be met, meaning that the household would no longer be in fuel poverty.

42. The definitions which apply for the purpose of these calculations are the same as in the calculation of whether a household is in fuel poverty (see subsection (4)).

43. Subsection (5) provides that when the fuel poverty gap in any given year is being measured against the fuel poverty targets, the sums set out in the targets are to be adjusted to take account of any inflation or deflation. This means that the comparison will remain an accurate one in real terms and will not be distorted by changes in the value of money. Subsection (7) allows the way that inflation and deflation is measured to be adjusted in case another price index subsequently becomes a more appropriate measurement than the consumer prices index (CPI).

A worked example

44. The example below demonstrates how the calculation of the fuel poverty gap works. It builds on the hypothetical example given at paragraphs 35 to 38 above but, because the fuel

poverty gap only applies where a household is in fuel poverty, it uses the alternative ending set out at paragraph 38 which applies where the home in question was located in a remote rural area, remote small town or island area.

45. The section 5 test is as follows—

Relevant information:		
	£80	per month necessary fuel costs
	£750	per month adjusted net income
	£679.57	per month to maintain an acceptable standard of living
	£670	per month remaining adjusted net income (i.e. the household's adjusted net income after deducting the necessary fuel costs, benefits received for a care need or disability, and childcare costs)
The first figure:		
	£960	annual necessary fuel costs
	(£900)	10% of annual adjusted net income
	£60	
The second figure:	£8,154.84	annual sum required for acceptable standard of living
	(£8,040.00)	annual remaining adjusted net income
	£114.84	
As the first figure is lower, it is used. The fuel poverty gap in this case is therefore £60.		

The fuel poverty strategy

Section 6

46. Section 6 puts the Scottish Ministers under a duty to prepare a fuel poverty strategy. It should be read in conjunction with sections 7 and 8 which set out the requirements as to consultation and publication. The strategy relates predominantly to the fuel poverty targets: under the definition in section 19, these are the 2040 targets set out in section 1 and the interim targets set out in section 2.

47. The strategy must set out the following—

- the approach that Ministers intend to take or consider should be taken to ensure that the fuel poverty targets are met (which, under subsection (3), must include provision for how to remove low energy efficiency as a driver of fuel poverty) and the cost of that approach,

- the approach that Ministers intend to take in relation to the four drivers of fuel poverty to ensure that the fuel poverty targets are met,
- the approach that Ministers intend to take or consider should be taken towards meeting the fuel poverty targets in each local authority area,
- the types of organisations with which Ministers intend to work (for example, local authorities or third sector bodies),
- how Ministers intend to identify households in fuel poverty,
- characteristics of households for which fuel poverty is a particular problem (for example, there are particular issues which arise for rural Scotland and the islands),
- the approach that Ministers intend to take to identifying residential buildings which are used as homes by a household in fuel poverty and which would need improvements in order to achieve an energy performance certificate of band C or higher by 2030 (but only where it is technically feasible, cost effective and affordable to achieve such a rating),
- how Ministers intend to assess whether the fuel poverty targets are met and what the rates of fuel poverty are (and, as the policy memorandum notes, the intention is to use the Scottish House Condition Survey[10] in order to measure fuel poverty).

48. There is an element of overlap among some of the things which the strategy must set out. The approach that Ministers intend to take or consider should be taken to ensure that the fuel poverty targets are met will necessarily overlap with their approach to addressing the drivers of fuel poverty. The drivers of fuel poverty are set out in section 14(10). Of these four drivers, the final one (inefficient use of fuel in homes) will not in practice have a bearing on whether the fuel poverty targets are met as the targets are based on reasonable, rather than actual, fuel use.

49. It should also be noted that subsection (2)(c) requires the strategy to set out the approach that Ministers intend to take or consider should be taken towards meeting the fuel poverty targets in each local authority area. This means that, although (in contrast with the 2040 targets) there is no local authority area target in relation to the interim targets, the strategy must still set out what will be done towards meeting the interim targets at a local authority level. However, there is no formal target and so the approach will not be being taken with a view to ensuring that a target is met.

50. Other relevant information may also be included in the strategy. This might include, for example, information about how the strategy interacts with other related strategies or statutory requirements, such as the targets relating to climate change. A commitment was also given to set out in the strategy, under this provision, what Ministers intend to do to help people who are in fuel poverty as a result of being in a household for which enhanced heating temperatures or enhanced heating hours is appropriate[11].

51. Ministers must keep the strategy under review and may at any time revise it. Within 5 years of publication, Ministers must either revise the strategy or publish an explanation of why they do not consider it necessary to revise it. This duty applies equally following the

[10] http://www.gov.scot/Topics/Statistics/SHCS
[11] http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12167&mode=pdf at column 67.

publication of a revised strategy. Subsection (6) provides that, unless the context requires otherwise, a reference in the Act to the strategy includes a reference to a revised strategy. This means that the same requirements as to content, consultation and publication etc. will apply (subject to, for example, the specific deadlines which apply only to the first strategy).

Section 7

52. In accordance with section 7, the Scottish Ministers must, when preparing the fuel poverty strategy, consult such persons as they consider appropriate. This must include individuals who currently live, or have previously lived, in fuel poverty. It must also include local authorities and individuals drawn from the following categories: those with disabilities, those with long-term illness, older people, and those living in rural areas. The Scottish Fuel Poverty Advisory Panel (established under section 14) must also be consulted. Subsection (3) ensures that any consultation which was carried out prior to the Act coming into force is not invalidated simply by reason of when it was carried out. This would include any consultation that occurred at the same time as the Bill was going through Parliament or shortly after the Bill was passed, but before it came into force.

53. Once the strategy has been prepared, it must be laid in draft before the Scottish Parliament. In the case of the first strategy, that must be done within one year of section 6 of the Act (preparation of the strategy) coming into force. There is then a standstill period of 40 days during which the Parliament can consider the draft strategy, before Ministers are allowed to finalise it. Where the Parliament is dissolved or in recess for a prolonged period (that is to say, for more than 4 days), that is taken into account and the standstill period is extended accordingly.

Section 8

54. Section 8 requires the finalised strategy to be both published and laid before the Scottish Parliament. This must be done as soon as reasonably practicable after the end of the period given to the Parliament under section 7(5) for its consideration of the draft.

55. As soon as reasonably practicable after that, Ministers must also publish and lay before the Scottish Parliament a report setting out the consultation process that was carried out in accordance with section 7 and how views expressed during that process were taken into account. Ministers must also make a statement to the Parliament about the strategy.

Reporting on fuel poverty

Section 9

56. Section 9 places a duty on the Scottish Ministers to prepare 3-yearly reports on the progress being made towards meeting the fuel poverty targets. The section should also be read in conjunction with sections 10 and 11 which set out the requirements as to consultation and publication.

57. A report will look both backwards at the progress that has been made during the reporting period (i.e. what steps were taken and what effect that had) and ahead to what action is planned for the next reporting period. Accordingly, the report will set out the detail of the work that the Scottish Government has carried out as well as the work it intends to carry out, including details of work with partner organisations. It must do these things in relation to the fuel poverty targets as a whole, but subsection (2) ensures that it also does each

of these things specifically in relation to meeting the 2040 target in relation to each local authority area.

58. Moreover, a report must set out details of the cost of the steps that have been taken for the purpose of meeting the fuel poverty targets, and details of any additional funding required to take the steps that Ministers are proposing to take for that purpose. It must also set out the steps that have been taken in the last reporting period to address the four drivers of fuel poverty, and the steps that will be taken in the next reporting period to that end. When setting out the progress that has been made towards meeting the fuel poverty targets, the report must in particular set out what progress has been made in removing low levels of energy efficiency as a driver of fuel poverty. Additional information may also be included as appropriate.

59. The reporting period covered by a report is a fixed 3 year period. The first one begins with the publication of the first fuel poverty strategy, and each subsequent period runs from the end of the previous reporting period.

60. Under subsection (4), the obligation to prepare these reports applies to each complete 3 year period which falls prior to 31 December 2040 – i.e. the end of the 2040 target year. Where a reporting period would straddle that date or would (in its entirety) fall after that date, no report requires to be prepared. For example, if the timings were to be such that a 3 year period ran from 2039 to 2042, there would be no need to publish a periodic report in 2043. Instead, any partial period that covers the period between the final periodic report and 31 December 2040 can be addressed through the reporting mechanism for reporting on the 2040 targets.

61. The final periodic report will be looking back over a 3 year period which falls prior to the 2040 target date and reporting on that period. However, in terms of setting out future plans, the 3 year period ahead to which the report is looking may span a period falling both before and after the 2040 target date. In recognition of this, subsection (6)(a) provides – for the purpose of subsections (1)(d) and (2)(c) – that if the forwards-looking part of a report would cover any period after 31 December 2040 then, instead of only being required to set out the steps that are to be taken in order to meet the 2040 target (i.e. the steps that will be taken up until that date), the report must set out all steps that are to be taken in relation to fuel poverty during the next 3 years. That will cover both the steps that are to be taken prior to 31 December 2040 in order to meet the 2040 targets, and the steps that are to be taken in that part of the next reporting period which falls after the 2040 date (for example, to ensure that fuel poverty does not re-emerge).

62. Subsection (6)(b) confirms that the rule in subsection (4) is only about when a report must be prepared; if a report must be prepared then a forward-look will be required under subsections (1)(d) and (2)(c) even if this requires looking ahead to a theoretical reporting period which will never be the subject of a report after the fact (other than, as noted at paragraph 60 above, as part of the reporting mechanism for the 2040 targets).

Section 10

63. In accordance with section 10, the Scottish Ministers must, when preparing the 3-yearly reports, consult such persons as they consider appropriate. This must include individuals who currently live, or have previously lived, in fuel poverty. It must also include local authorities and individuals drawn from the following categories: those with disabilities,

those with long-term illness, older people, and those living in rural areas. The Scottish Fuel Poverty Advisory Panel (established under section 14) must also be consulted.

Section 11

64. Section 11 requires the 3-yearly reports to be both published and laid before the Scottish Parliament. This must be done before the end of the financial year in which the reporting period ends. In accordance with schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, "financial year" means a year ending with 31 March. This means that if, for example, the fuel poverty strategy is published in December 2019, the first reporting period will cover the period December 2019 to December 2022 and the first periodic report will need to be published by 31 March 2023 at the latest.

Section 12

65. Under section 12, the Scottish Ministers are required to prepare a report on the 2040 target – i.e. the target set out in section 1(2). This must be laid before the Scottish Parliament by 31 March 2042 at the latest. The report must state whether or not the 2040 target has been met and what percentage of households in Scotland remain in fuel poverty in 2040. However, the information which can be included is not limited and any other information which would be useful may be included within the report. That additional information might relate to what the Government intends to do in respect of fuel poverty at that point.

Section 13

66. Under section 13, the Scottish Ministers are required to prepare a report on the 2040 target in relation to each local authority area – i.e. the target set out in section 1(3). This must be laid before the Scottish Parliament by 31 December 2043 at the latest. The report must include such information as Ministers can reasonably obtain as to whether the target has been met, and combined data about the percentage of households in each local authority area in fuel poverty in the period 2040 to 2042. This reflects the fact that local authority level results on fuel poverty from the Scottish House Condition Survey are produced based on a dataset that combines 3 years' worth of data. As with the report under section 12, the information which can be included is not limited and any other information which would be useful may be included within the report.

Independent advisory panel

Section 14

67. Section 14 establishes a Scottish Fuel Poverty Advisory Panel. Its statutory function is to meet after the publication of each 3-yearly report and consider progress towards meeting the fuel poverty targets (i.e. both the interim and the 2040 targets), the likelihood of meeting those targets, and the extent to which the four drivers of fuel poverty are being addressed – these drivers being low net adjusted household incomes, high household fuel prices, homes having low levels of energy efficiency, and inefficient use of fuel in homes (although, as noted in relation to section 6, the final of these will have no impact on rates of fuel poverty as measured under the Act). The Panel must then report to the Scottish Ministers on its findings. That report can propose changes to the fuel poverty strategy and can also contain any other recommendations the Panel considers appropriate. The Panel can also choose to provide advice to the Scottish Parliament committee with responsibility for fuel poverty. Such advice may be on the matters which the Panel is required to consider under subsection

(3) following a 3-yearly report but also on any other matters that are set out by the Scottish Ministers in regulations.

68. Subsection (7) of section 14 allows the Scottish Ministers to make further provision about the Panel by regulations. It also allows Ministers to dissolve the Panel, but only once the target year set under section 1 has passed. Ministers must lay draft regulations under subsection (7)(a) before the Parliament within one year of the section coming into force. The regulations can (among other things) make provision about the Panel's membership, make provision about the remuneration and expenses to be paid to members (if any), make provision about the Panel's reports, and make such other provision relating to the Panel as Ministers consider appropriate. Such regulations may also modify the Act or other enactments.

Section 15

69. Section 15 deals with the funding of the Scottish Fuel Poverty Advisory Panel. Subject to the cap provided for in subsection (2), the Scottish Ministers are required to provide the financial resources they consider necessary to support the Panel.

70. The cap on the Panel's funding is set at £82,000 in any 3 year operating period, but this sum is to be adjusted to take account of inflation. The first operating period begins on the date the section comes into force, and subsequent operating periods begin immediately upon the conclusion of the previous one.

71. Inflation is dealt with in subsections (3) to (5). The cap is to be adjusted to take account of any increase that has occurred in the annual average consumer prices index beginning with the day on which the section came into force. There is, however, a power to amend the prices index using regulations.

72. The inflation linking will be done on an ongoing, cumulative basis. This means that any inflation which takes place during an operating period can be taken into account when paying out funds during or in respect of that period. In any calculation for any operating period, the indexing is to be done from the day on which the section came into force, meaning that inflation for the entire period is taken into account.

General

Section 16

73. Section 16 provides the Scottish Ministers with the power, by making regulations, to adjust the effect of aspects of the definition of fuel poverty. This will allow Ministers to respond to changes which may occur during the period between the Act being passed and the date of the 2040 targets. Specifically—

- paragraph (a) allows Ministers to adjust the temperatures and number of hours which constitute the heating levels test (for example, to respond to any change in expert advice as to how warm rooms ought to be),
- paragraph (b) allows the definitions in section 3(10) to be adjusted (for example, if national insurance contributions were to be replaced with a new tax which needed to be factored into the definition of net income instead),

- paragraph (c) allows different provision to be made as to when members of a household can maintain an acceptable standard of living (for example, to accommodate the situation discussed at paragraph 23 or to react if the UK minimum income standard stops allocating costs specifically to rent, council tax, water rates, fuel and childcare.

Section 17

74. Any regulations made under the sections specified below are subject to the affirmative procedure. For details of the affirmative procedure, see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010. The regulations to which this applies are those made under—

- section 1(4) (changing the date of either or both of the 2040 targets found in section 1, following advice from the Panel),
- section 3(4) (specifying the types of household for which enhanced heating temperatures and/or enhanced heating hours are appropriate),
- section 3(6)(b) (providing for a person to make a determination of an additional amount to be factored in when calculating how much is sufficient to maintain an acceptable standard of living for those in remote rural areas, remote small towns and island areas),
- section 5(7) (specifying a different prices index for use in calculating changes in the value of money for the purpose of measuring the fuel poverty gap),
- section 14(7)(a) (making further provision about the Panel),
- section 14(7)(b) (providing for the dissolution of the Panel after the target year set out in section 1 has passed),
- section 15(5) (specifying a different prices index for use in calculating inflation for the purpose of the cap that applies to the funding of the Panel),
- section 16 (adjusting the effect of the fuel poverty definition).

75. Subsection (2) obliges the Scottish Ministers to consult prior to putting forward proposed regulations under section 3(4) or 16 of the Act. They must consult such persons as they consider it appropriate to consult but, regardless of who else they choose to consult, they must consult individuals who are living or who have previously lived in fuel poverty. But where anything was done prior to the Bill being passed, or after it was passed but before it came into force, by way of consultation about the types of household for which enhanced heating temperatures and/or enhanced heating hours are appropriate, subsection (4) ensures that the consultation will still count towards fulfilling the statutory consultation requirement.

Section 18

76. Section 18 makes consequential amendments to the Housing (Scotland) Act 2001. The existing definition of fuel poverty is repealed, as are the existing reporting rules (as they are superseded by the strategy and reporting requirements provided for in this Act).

77. The 2001 Act continues to have one reference to fuel poverty: a local authority's local housing strategy must set out its policies with a view to accomplishing a number of purposes, one of which is the provision of housing and related services in a manner which ensures, so

far as reasonably practicable, that persons do not live in fuel poverty. The meaning of living in fuel poverty for that purpose is adjusted so that it is aligned with the definition in this Act.

Section 19

78. Section 19 applies a number of definitions across the whole Act as follows—

- it defines "the 2040 target" as the target that is set out in section 1(2),
- it defines "the 2040 target in relation to each local authority area in Scotland" as the target that is set out in section 1(3),
- "the fuel poverty targets" are defined as the targets set out in the Act: the two 2040 targets set out in section 1 and the two interim targets set out in section 2,
- "the Scottish Fuel Poverty Advisory Panel" is defined as the Panel which is established under section 14.

79. There are a number of other terms which are defined and applied locally in the Act. These are—

- "adjusted" (section 3(10)(a)),
- "benefits received for a care need or disability" (section 3(10)(b)),
- "childcare costs" (section 3(10)(c)),
- "extreme fuel poverty" (section 4),
- "four drivers of fuel poverty" (section 14(10)),
- "fuel poverty" (section 3),
- "fuel poverty gap" (section 5),
- "household" (section 3(10)(d)),
- "housing costs" (section 3(10)(e)),
- "minimum income standard" (section 3(10)(f)),
- "net income" (section 3(10)(g)),
- "operating period" (section 15(6)).

80. The terms "remote rural area", "remote small town" and "island area" will be defined in regulations in accordance with sections 3(7)(a) and 3(9).

Section 20

81. Section 20 makes provision for commencement. The commencement section itself, as well as the interpretation and short title sections, will come into force the day after Royal Assent is granted. The other sections will come into force on such day as the Scottish Ministers by regulations appoint.

Section 21

82. Section 21 provides for the short title of the resulting Act to be the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019.

PARLIAMENTARY HISTORY

83. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
INTRODUCTION	
Bill as introduced	SP Bill 37 – Session 5
Policy memorandum	SP Bill 37-PM – Session 5
Explanatory notes	SP Bill 37-EN – Session 5
Financial memorandum	SP Bill 37-FM – Session 5
Delegated powers memorandum	SP Bill 37-DPM – Session 5
STAGE 1	
(a) Local Government and Communities Committee	
26 September 2018 (26th meeting)	*Item in private*
31 October 2018 (29th meeting)	*Item in private*
7 November 2018 (30th meeting)	*Item in private*
21 November 2018 (32nd meeting)	Col 3 – 28
5 December 2018 (34th meeting)	Col 1 – 50
19 December 2018 (36th meeting)	Col 1 – 22
16 January 2019 (2nd meeting)	*Item in private*
23 January 2019 (3rd meeting)	*Item in private*
Stage 1 Report – 29 January 2019	Report (SP Paper 461, 2nd Report 2019 (Session 5)
(b) Delegated Powers and Law Reform Committee	
18 September 2018 (27th meeting)	*Item in private*
13 November 2018 (33rd meeting)	*Item in private*
27 November 2018 (35th meeting)	*Item in private*

Proceedings and reports	***Reference***
DPLRC Stage 1 Report – 28 November 2018	Report (SP Paper 437, 61st Report 2018 (Session 5)
26 February 2019 (7th meeting)	Col 9
(c) Consideration by the Parliament	
Stage 1 debate – 20 February 2019	Col 25 – 68
STAGE 2	
Local Government and Communities Committee	
27 March 2019 (10th meeting)	Col 18 – 48
3 April 2019 (11th meeting)	Col 2 – 39
Bill as amended at Stage 2	SP Bill 37A – Session 5
Revised explanatory notes	SP Bill 37A-EN – Session 5
Supplementary financial memorandum	SP Bill 37A-FM – Session 5
Supplementary delegated powers memorandum	SP Bill 37A-DPM – Session 5
STAGE 3	
(a) Delegated Powers and Law Reform Committee	
4 June 2019 (19th meeting)	*Item in private*
(b) Consideration by the Parliament	
Stage 3 debate on amendments – 6 June 2019	Col 51 – 100
Bill as amended at Stage 3	SP Bill 37B – Session 5
Stage 3 debate on Bill – 11 June 2019	Col 22 – 43
ROYAL ASSENT	
Royal Assent – 18 July 2019	Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019

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