Consultation on Proposals for a Scottish Climate Change Bill

Report by Ian L Young, Director, Strategic Services

1 Purpose of Report

1.1 The Scottish Government proposes to bring forward a Climate Change Bill for Scotland and is consulting on what should be contained within the proposed Bill. This report provides a recommended response from Midlothian Council.

2 Report Summary

2.1 The proposed Scottish Climate Change Bill is intended to provide a long-term framework for future Scottish action on climate change. The Bill is not intended to provide the solutions to all of the climate change issues Scotland will face for the next 40 and more years but it is intended to drive policies forward by making the Scottish Government responsible for achieving ambitious targets.

2.2 The Bill when enacted will create mandatory targets to reduce Scotland’s emissions and will create new legislative means to do so. The Scottish Government’s preference is to reduce emissions by 80% by 2050. Opting for an ambitious target is seen as a recognition that Scotland has a relatively affluent economy and great potential for generating energy from renewable sources.

2.3 The consultation sets out the Scottish Government’s thinking on proposals for the Bill and asks for views on some of the options. The Scottish Government is looking for responses to this consultation from every sector in Scotland, recognising that it is important for all of Scotland to work together in reaching credible solutions to the difficult problem of climate change. The Government intends listening to the views expressed and considering them when making final decisions.

2.4 The Government will also be continuing to collect evidence alongside this consultation to ensure that the proposed Bill takes account of both what is needed and what is possible. The Bill’s primary purpose is to establish a framework of credible measures.

2.5 The consultation will close in mid-April 2008. The step after that is for the Government to consider the responses and publish a summary and analysis in the summer. The Government will then decide what is to be included in the Bill, and instruct lawyers to draft the Bill (this process will take a number of months). The Government aims to have the Bill ready for introduction to the Scottish Parliament before the end of 2008. The Consultation document asks a series of questions – 33 in all, and a recommended response from Midlothian Council to each question is listed in Appendix 1.
2.6 The proposed Bill could have a profound effect on Scottish local authorities depending on how the Scottish Government intends to implement its climate change targets. This response puts forward a pragmatic approach to the proposed Bill highlighting that any actions imposed on local authorities must be backed up with the appropriate resources.

3 Recommendations

3.1 Cabinet is recommended to:

a) Note the contents of this report; and

b) Agree the draft response set out in Appendix 1.

28 March 2008

Report Contact: Brian Forsyth Tel No 0131 271 3473
Background papers: File Ref: 3980
4 Report Implications and Management

4.1 Resource Implications

There are no direct resource implications arising from this report. However, new legislation could have a significant impact on future Council budgets.

4.2 Risk Implications

There are no direct risk implications arising from this report.

4.3 Policy Implications

Strategy
The Government’s consultation document and this Council’s response to it address issues which are in accord with the Council’s Corporate and Divisional priorities as follows:

Corporate Strategy: ‘We want to ensure that everything that we do can be justified by its positive long-term social, economic and environmental benefit to Midlothian and is not done merely for short-term gain.’

Corporate and Divisional Priorities 2008-11: ‘4b - Contribute to sustainable development, including in securing Best Value.’
‘6a - Ensure a sustainable strategy for the delivery of Council services.’

Consultation
This report is itself a response to a consultation exercise.

Equalities
This report is not proposing new or revised services, policies, strategies, or plans and therefore has not been assessed for equalities implications.

Sustainability
New legislation could impact on Council approaches to contributing to sustainable development, e.g. the Council’s Sustainability Strategy.
5 Report Background and Appendices

5.1 Background

5.2 The Scottish Government recognises that climate change is one of the most serious threats facing Scotland and the world. The most severe consequences include famine, drought and the extinction of species. Further action by all nations is needed urgently in order to avoid the most severe climate change.

5.3 Climate change will have a profound effect on the everyday lives of the people of Scotland – both young and old in every village, town and city, on mainland and island. The scale of climate change occurring at present is unprecedented – some parts of Scotland have seen winter average temperatures increase by up to 2°C.

5.4 The aim of the proposed Scottish Climate Change Bill will be to establish a framework to drive these greater efforts in Scotland. The Bill will create mandatory climate change targets to reduce Scotland’s emissions and will create new legislative means to do so. This will provide business and society with a clear signal from Government of its seriousness in tackling this issue and will provide Scotland with the certainty it needs to make the right choices now. The Bill will signal to the international community Scotland’s serious intent to contribute to the global effort to mitigate climate change and provide a strong example to other countries showing what can be done.

5.5 There are four key reasons why the Scottish Government is bringing forward legislation to create mandatory climate change targets:

• to drive decisions in government and business;

• to create and enable new means of reducing emissions and adapting to climate change;

• to play our part in global action on climate change; and

• to provide a strong example to other countries showing what can be done.

5.6 The Scottish Government acknowledges that tackling climate change and reducing our greenhouse gas emissions is a difficult task and will require wholesale changes in technology and to our lifestyles. Even though it will cost money to change our society to a low-carbon economy, there will be new business opportunities and savings from energy efficiencies. It is therefore appropriate that we assess the benefits and drawbacks of mitigating climate change in the world and in Scotland.

5.7 Changing Our Ways, Scotland’s Climate Change Programme, set out Scotland’s response to the urgent social, economic and environmental challenge of climate change. It quantified for the first time Scotland’s equitable contribution to UK climate change commitments in carbon terms, setting a Scottish share and target. The first annual report on progress was
published in March 2007. A new programme will be required to deliver the more ambitious targets set out in this consultation.

5.8 The Scottish Government considers that the only workable option is to set a target based on the emissions that we produce in Scotland (rather than including emissions from goods and services consumed in Scotland). However, what matters for climate change is global emissions, not just Scottish emissions, so this target should always be seen as a proxy for Scotland’s impact on global emissions. Given that Scotland’s global impact is relatively minor, and that the uncertainties involved in tackling climate change are indeed great, the Scottish Government proposes to adopt a point target for 2050, rather than a cumulative target.

5.9 The Scottish Government’s preference is to reduce emissions by 80% by 2050. Opting for an ambitious target recognises that Scotland has a relatively affluent economy and great potential for generating energy from renewable sources. This is in line with the latest Intergovernmental Panel on Climate Change report which states that global emission cuts of between 50% and 85% by 2050 will be required to minimise the chances of a global temperature rise in excess of 2°C – 2.4°C.
APPENDIX 1

CLIMATE CHANGE: CONSULTATION ON PROPOSALS FOR A SCOTTISH CLIMATE CHANGE BILL

SUGGESTED RESPONSE

Which gases should be targeted

The purpose of a Scottish target is to reduce our impact on global climate change. The emissions of gases which are caused by human activities and cause climate change are included in international agreements. They are carbon dioxide (CO$_2$), methane (CH$_4$), nitrous oxide (N$_2$O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur (SF$_6$).

Q1 Should a Scottish target be based on Carbon Dioxide only or the basket of six greenhouse gases?

Suggested Midlothian Council response:

Midlothian Council suggests that it should be based on the basket of six greenhouse gases, recognising their relative global warming potential, perhaps expressed as a Carbon Dioxide equivalent.

Q2 Should the Bill contain provisions to alter which gases are included, for example if the reliability of data for a particular gas improves or if science changes in the future about which gases cause climate change?

Suggested Midlothian Council response:

Midlothian Council agrees that the Bill should contain provisions to alter which gases are included to reflect such changed circumstances.

Separate Targets

Another option proposed by the Scottish Government is to have a separate, mandatory target for each of energy demand and renewable electricity, where it is within the competence of the Scottish Parliament to set such a target (regulation of energy supply is reserved). Having separate statutory targets would mean that Scotland has less flexibility in how it reduces its emissions.

Q3 The Scottish Government wishes to ensure that the Bill gives sufficient incentives to invest in energy efficiency and renewable electricity. Should the targets be based on source emissions; an end-user inventory; or on individual targets for energy efficiency and renewable electricity? Do you have any other suggestions?

Suggested Midlothian Council response:

“The matter of incentives is seen as a key element of any package of measures particularly if there is to be significant buy in from the private
sector and others. The Council’s experience with a major sustainable/renewable energy project with significant environmental benefits (Shawfair Minewater project) is that the level of incentives must be large enough; properly targeted; and not necessarily time limited to accord with public sector annualised funding programmes but more relevant to the needs of industry. The experience is that there is a willingness to engage and develop/implement innovative and relevant environmental measures but these need to be seen in the context of planning and development programme timescales and ensure the cost and industry as well as environmental benefits are fully understood and more than marginal.

The Council can provide more information on its experience if required.”

Q4  Do you agree that the Bill should allow the means of measuring the target to be changed through secondary legislation to reflect international developments or unforeseen consequences of the Bill?

Suggested Midlothian Council response:

Midlothian Council agrees that the Bill should allow sufficient flexibility to adapt to international developments or unforeseen consequences of the Bill.

Impacts of Including EU Emission Trading Scheme (ETS)

The European Union ETS currently regulates just under 50% of Scottish CO₂ emissions so taking account of the EU ETS in the Scottish target is important. The Scottish Government put forward two options:

- Counting the allocations to installations rather than actual emissions from the traded sector. However, there may be a substantial lack of Scottish control over the level of emissions made, and installations may not be given allocations in future years (they may be auctioned) so this approach may not be possible in future years.
- Excluding the traded sector from the target. The disadvantages would be that this would be likely to exclude more and more activity over time and diminish the importance of the Scottish target.

Q5  Should the emissions reduction target take account of the abatement effort made by companies under emissions trading schemes? If so, how?

Suggested Midlothian Council response:

Midlothian Council submits that the emissions reduction target should not take account of the abatement effort made by companies under emissions trading schemes because such schemes do not necessarily contribute to an overall reduction in CO₂ in global terms – it merely shifts the problem elsewhere. Including ETS in the target could also mask the true picture of emissions reductions and make it look as if Scotland is doing better than it actually is. The Scottish Government states in the proposed Bill that “what matters for climate change is global emissions, not just Scottish emissions, so this target should always be seen as a proxy for Scotland’s impact on global emissions”. Including ETS in the target would be at odds with this statement.
International Credits

Emissions of greenhouse gases have the same effect wherever they occur in the world. Both the Kyoto Protocol and the EU Emissions Trading Scheme allow the purchase of carbon credits from overseas to count towards domestic targets. This allows emissions reductions to be made at a lower cost and provides a flow of low carbon investment funds for developing countries.

Many countries with substantial emissions reductions targets expect to use international credits to help meet those targets. The Scottish Government proposes to allow international credits to be counted towards its targets.

Q6 Do you agree that international credits should be counted towards Scottish targets? Should there be limits on credits counted towards Scottish targets?

Suggested Midlothian Council response:

Midlothian Council questions whether the proposal that international credits should be counted towards Scottish targets. If this is implemented then perhaps there should be limits on credits counted towards Scottish targets.

Level of the Target

The level of the target could be set either on the basis of the science and supporting research that indicates by how much emissions need to be reduced to avoid dangerous climate change or, alternatively, by looking at what existing and new technologies and likely behavioural change are expected to achieve. The target must be set at a level which is sufficiently challenging to drive action and set an example to the rest of the world of the level of ambition required to avoid dangerous climate change.

The Scottish Government’s preference is to reduce emissions by 80% by 2050. Opting for an ambitious target recognises that Scotland has a relatively affluent economy and great potential for generating energy from renewable sources. This is in line with the latest IPCC report which states that global emissions cuts of between 50% and 85% by 2050 will be required to minimise the chances of a global temperature rise in excess of 2°C – 2.4°C.

Amending the Target

The Scottish Climate Change Bill could allow for the 2050 target to be changed in future through secondary legislation, which would be faster and require less Parliamentary scrutiny than creating a new Bill to change the target. This could be limited so that the target could only be revised on the basis of independent, expert advice if, for example, new technologies are developed or the science of climate change develops. It could be limited to only increasing the target to increase the certainty for business that investment in low carbon technologies is worthwhile.
Q7 Should the Bill allow the level of the 2050 target to be changed through secondary legislation? If so, should this only be allowed on the basis of independent, expert advice, to reflect international developments or unforeseen consequences of the Bill? Should any changes to the target be limited to an increase in the target?

Suggested Midlothian Council response:

Midlothian Council would normally expect targets, however ambitious, to be the basis of progress and achievement. However, it can be accepted that there may be exceptional circumstances (as described) where change can be justified.

Emissions Budgeting

Akin to a financial budget, an ‘Emissions Budget’ refers to the aggregated quantity of emissions which are permitted during a specified time period – in this example, five years. The first budget might cover the years 2008-12 and would be expressed as ‘x million tonnes of CO$_2$’.

It is the total amount of greenhouse gases emitted over a particular time which causes climate change, rather than the amount of emissions in any single year. Whilst there are difficulties with taking a cumulative approach for the 2050 target (setting a target for the total quantity of emissions through to 2050), it is possible to set the desired trajectory, and thus limit cumulative emissions, by establishing a set of emissions budgets. An emissions budget period would last for a specific number of years and would allow for annual fluctuations in emissions during the budget period.

Level of Budgets

The appropriate level at which these budgets are set will be a complex issue and it is important that the process by which they are set is transparent and robust. The levels set must be challenging to provide a strong incentive for increased action. A number of factors would need to be considered, including but not limited to:

- Likely economic growth.
- Likely population growth.
- Likely technological progress.
- Social impacts, including impact on rural areas.
- Environmental impacts.
- Impacts on the economy and business competitiveness.
- International circumstances.
- Scientific knowledge about climate change.

Q8 What factors should be taken into account when setting the level of budgets?

Suggested Midlothian Council response:
Midlothian Council agrees that all the above factors and others such as international agreements on aviation and shipping emissions need to be taken into account when setting the level of budgets.

**Budget Period**

The Scottish Government is proposing to have multi-year budgets of at least three years. Multiples of two years fit with the financial budget cycle (the comprehensive spending review is every two years). However, there are a number of choices for the length of the budget period:

- four years – fits with the Scottish Parliamentary cycle (however the data and policy time lags mean that the emissions for at least half of the period for which Governments will be held to account would have been the responsibility of the administration in power during the previous Parliament);
- five years – fits with the UK climate Change Bill periods, current EU ETS phase and Kyoto period;
- six years – multiple of financial budget cycle but allows more time to adjust policies; or
- eight years – fits with possible future EU ETS phases (2012 onwards).

**Q9 How long should interim budget periods be?**

**Suggested Midlothian Council response:**

Midlothian Council has no comment on this question.

**How far in advance should emissions budgets be set?**

The rationale behind having longer term emissions budgets is to provide certainty for businesses and governments and to give them sufficient incentive to invest and innovate. Some technologies or changes in plant need a long lead in time and some behaviours take generations to change. The Scottish Government believes that emissions budgets should be set far enough in advance so that they can be taken account of when making most investment decisions that are likely affect our emissions trajectory.

**Q10 How many years in advance should emissions budget period be set in order to provide sufficient time to develop infrastructure?**

**Suggested Midlothian Council response:**

Midlothian Council has no comment on this question.

**Banking and Borrowing**

Another important issue exists around the ability of Governments to ‘bank’ or ‘borrow’ emission amounts over budget periods. Banking and borrowing would allow the Scottish Government to carry unused emissions rights over to later budget periods (banking) or allow it to bring forward emissions allocations from future budget periods (borrowing). This would provide a means of allowing for unexpected rises in emissions, instead of, or in addition to, the use of international credits.
Q11 What should be the limit (in terms of absolute quantity or as a percentage of the budget period) on the amount of emissions which the Government can borrow from a following budget period.

Suggested Midlothian Council response:

Midlothian Council has no comment on this question.

Mid Point Targets

The Scottish Government is minded not to include an interim target, but will consider doing so if strong reasons – and, critically, a justifiable target level – can be brought forward.

Q12 Should the Bill include an interim point target? If so, what year (or years) should it be for (2020, 2025, 2030 etc)? How should the level be chosen?

Suggested Midlothian Council response:

Midlothian Council suggests it would be useful to have a range of milestone targets over time to measure the success of strategies.

Other Possible Reporting Requirements

There is a range of other issues related to climate change on which the Bill could require the Scottish Government to report. An example of this is a requirement to report what effect specific policies will have on emissions internationally so that it is clear if a policy is simply shifting Scotland’s emissions to another country. Other possible options include:

- forecast emissions;
- an assessment of the impacts and risks of current emissions levels;
- an assessment of the effectiveness (measured or projected) of current and/or planned polices;
- a measure of the energy efficiency of domestic and non-domestic buildings in the public and private sectors;
- the capacity of Scotland’s renewable energy sector;
- emissions produced by the ‘Scottish element’ of international aviation and shipping; and
- a measure of energy/carbon consumption in Scotland such as carbon footprint.

Q13 Should the Scottish Ministers be required to report on any other issues related to climate change in addition to the requirements already set out? If so, what and how often?

Suggested Midlothian Council response:

Midlothian Council agrees that it would be useful to collect data on the above range of issues but it may not be necessary to report on all of them.
Accountability of Meeting Targets

If one or more of the targets or budgets set by the Scottish Ministers are not met, the Scottish Ministers will be required to report to the Scottish Parliament setting out a plan of how they intend to get back on track. The Scottish Government believes that this requirement, coupled with a robust reporting framework will ensure that the Scottish Ministers are fully and publicly accountable for their work to mitigate and adapt to the effects of climate change.

Q14  Is a process of Parliamentary scrutiny the appropriate way of holding the Scottish Government to account if targets or budgets are not met?

Suggested Midlothian Council response:

Midlothian Council submits that an independent body such as Audit Scotland should be appointed to scrutinise the Scottish Government and hold them to account if targets or budgets are not met.

Independent Advice and Scrutiny

The Scottish Government is minded to utilise the UK Committee on Climate Change in the short-term and evaluate within three years the effectiveness of the Committee’s advice for Scotland and its circumstances. The Scottish Government is also minded to include provisions in the Bill to create a new Scottish Committee on Climate Change if the evaluation concludes that the advice of the UK Committee does not fully meet Scottish needs.

Q15  What should be the primary source of advice to the Scottish Government for setting emissions targets or budgets and why? Options include: the proposed UK Committee on Climate Change, a new Scottish Committee on Climate Change, an existing public body in Scotland, or the Scottish Government itself?

Suggested Midlothian Council response:

Midlothian Council has no comment to make on this question.

Q16  If it were to be an existing Scottish public body, which public body is most suited to carrying out this task and why?

Suggested Midlothian Council response:

Midlothian Council suggests that the Scottish Government consider the Sustainable Development Commission in Scotland as an appropriate existing public body to advise and scrutinise on climate change.
Q17 Which organisation should be tasked with monitoring the progress of the Scottish Government on reducing emissions and why? Options include: the proposed UK Committee on Climate Change, a new Scottish Committee on Climate Change, an existing public body in Scotland, or the Scottish Government itself.

Suggested Midlothian Council response:

Midlothian Council has no comment to make on this question.

Q18 If it were to be an existing Scottish public body, which public body is most suited to carrying out this task and why?

Suggested Midlothian Council response:

As in Q16 above Midlothian Council suggests that the Sustainable Development Commission in Scotland be considered as an option to monitor progress on climate change.

Q19 Should additional independent mechanisms for scrutinising the effectiveness of the Scottish Government’s policies in reducing emissions be created by the Bill (in addition to any scrutiny already provided by the Scottish Parliament)?

Suggested Midlothian Council response:

Yes, an additional independent method of scrutinising the effectiveness of policies should be created by the Bill.

Q20 If so, which organisation is best placed to carry out this function and why? Options include a new Scottish Committee on Climate Change or an existing public body in Scotland.

Suggested Midlothian Council response:

The Sustainable Development Commission in Scotland for reasons given above.

Q21 If it were to be an existing Scottish public body, which public body is most suited to carrying out this task and why?

Suggested Midlothian Council response:

The Sustainable Development Commission in Scotland for reasons given above.
Q22 Are there any other functions related to climate change, existing or new, which should be carried out at arm’s length from the Scottish Government and why?

Suggested Midlothian Council response:

Midlothian Council has no comment to make on this question.

Q23 Should the Bill contain enabling powers to introduce a duty on certain parts of the public sector (i.e. local authorities and large public bodies) to take specified actions on climate change or other specified environmental issues? Why?

Suggested Midlothian Council response:

Midlothian Council has no issue with the proposal to bring forward enabling powers so long as any duty imposed on the public sector to take specified actions on climate change or other specified environmental issues is backed up with the appropriate resources to enable those duties to be carried out.

Q24 What should such a duty (or duties) include?

Suggested Midlothian Council response:

Initially, such duties should be restricted to reporting public bodies’ efforts to reduce their carbon emissions and possibly producing a plan with targets. This approach is consistent with ongoing approaches being developed for local authorities and others as Scotland’s Climate Change Declaration proposes.

Q25 Should the Bill contain enabling powers to introduce statutory guidance for certain public sector bodies (i.e. local authorities and large public bodies) on specified climate change or other environmental measures? Why? Are there gaps in any existing guidance?

Suggested Midlothian Council response:

Such guidance would be welcome. Public bodies would benefit from focussed guidance on how they are to achieve targets set by the Scottish Government, as well as the resources to meet them.

Q26 What should this guidance include?

Suggested Midlothian Council response:

Midlothian Council has no comment on this question.

Q27 Should the Bill contain enabling powers to create a requirement for certain public sector bodies (i.e. local authorities and large public bodies) to make regular reports on specific measures they are taking to tackle climate change (whether mitigation or adaptation) or other environmental issues? Why? What should be included in such reports?
Suggested Midlothian Council response:

Any requirement for local authorities to make regular reports on specific measures they are taking to tackle climate change (whether mitigation or adaptation) or other environmental issues should be thoroughly researched and resources provided to enable them to comply with this.

Q28 As a potential non-legislative measure, should current Best Value guidance be amended to take specific account of climate change mitigation and adaptation? If so, how should Best Value guidance be amended?

Suggested Midlothian Council response:

Midlothian Council agrees Statutory Best Value guidance could be amended to some benefit.

Q29 Are there any amendments to existing legislation or any enabling powers needed to allow for variable charging (for example by local authorities) to incentivise action or eliminate perverse incentives?

Suggested Midlothian Council response:

Midlothian Council has no issue with the proposal to bring forward enabling powers to allow for variable charging but acknowledges the need for further confirmation that such powers are within the legislative competence of the Scottish Parliament. The Council expects, at a later date, to be consulted upon any proposals for such a scheme coming forward.

Q30 Are there any provisions to help Scotland adapt to the impacts of climate change which should be included in the Scottish Climate Change Bill.

Suggested Midlothian Council response:

Midlothian Council agrees that, as the Scottish Government is able to address such matters within devolved competence, there is no need to include this matter in the Climate Change Bill as measures to address adaptation in Scotland will be primarily addressed through the Scottish Adaptation Strategy (consultation due in Spring 2008).

Q31 Should provisions within the Environmental Assessment (Scotland) Act 2005, be amended in order to provide clearer links with emissions reduction? If so, how should this be done?

Suggested Midlothian Council response:

Environmental issues covered by the Act could be amended to read: “include climatic factors, and greenhouse gas emissions reduction in particular”.

Q32 What are the equalities implications of the measures in the proposals for the Scottish Climate Change Bill?
Suggested Midlothian Council response:

Any ‘green’ taxes on fuel or power could have an adverse effect on those living on a low income and measures to address this should be considered. An Equality Impact Assessment should highlight most of the equality impacts of the Bill, including for example, insurance/blight implications of properties in danger of flooding.

Q33 Is there any existing legislation within the competence of the Scottish Parliament (devolved) which needs to be amended so that appropriate action on climate change can be taken by sectors in society?

Suggested Midlothian Council response:

Midlothian Council has no comment on this question.