

19-D-01087

s 9(2)(a)

Office of the Parliamentary Commissioner for the Environment

s 9(2)(a)@pce.parliament.nz

Dear s 9(2)(a)

Your OIA request

Thank you for your email of 29 May 2019 requesting the following under the Official Information Act 1982 (the Act):

- *“Any briefings provided by MfE or other departmental officials to a Minister or Ministers relating to the decision to use gazette notices for emissions budgets (rather than another form of delegated legislation, such as a disallowable or confirmable instrument)”*
- *“Any Cabinet paper or papers which were provided to Cabinet in relation to the decision”*
- *“Any other documentation which records the rationale for the decision, and/or any other options considered by officials.”*

On 4 June 2019, your query was rescoped to the following:

- *Briefings provided by MfE to the Minister for Climate Change relating to the decision to use gazette notices for emissions budgets (rather than another form of delegated legislation, such as a disallowable or confirmable instrument).*

I note that on 26 June 2019 a two-week extension was applied to your request. I apologise for the delay in getting this information back to you. I trust the documents attached to this letter will provide the clarifications you are seeking, however I encourage you to be in touch again if you have any further questions.

Documents in scope

MfE has identified two documents in scope of your request, as listed in the below table.

Table. All documents considered for release

No.	Date	Content	Decision	OIA Section/s applied
1	3 April 2019	Briefing 19-B-05464: Clarifying the process for setting emissions budgets	Release in full	N/A
2	1 October 2018	Briefing 18-B-04982: Zero Carbon Bill: Additional information on emissions budgets	Release in part	s9(2)(a) s18(d) Out of scope

Please note that document 1 will be of most interest to you. I would also like to redirect you to the *Minute of Decision - Proposed Climate Change Bill* [ENV-18-MIN-0053], in particular paragraphs 28 and 29, which include the decisions agreed by Cabinet in December 2018 on the establishment of emissions budgets. You can find these minutes on MfE's website, at: <https://www.mfe.govt.nz/node/25200>.

Document 2 includes a package of information that was provided to the Minister on emissions budgets. We note, in particular, that Appendices E, F and G listed in this briefing contain some information about the instruments used in the context of the United Kingdom when setting emissions budgets. These appendices have been redacted under section 18(d) (publicly available), however you can access them below:

- Appendix E. The Carbon Budgets Order 2009 (UK):
<http://www.legislation.gov.uk/ukSI/2009/1259/contents/made>
- Appendix F. Sam Fankhauser, Alina Averchenkova, and Jared Finnegan (March 2018) '10 Years of the UK Climate Change Act', see page 11 in particular:
<http://www.lse.ac.uk/GranthamInstitute/publication/10-years-climate-change-act/>
- Appendix G. Teresa Weeks (Productivity Commission) (September 2017) 'Examining the UK Climate Change Act 2008: Research Note', see page 9 in particular:
<https://www.productivity.govt.nz/research-paper/examining-the-uk-climate-change-act-2008>

Application of the OIA

Some information within these documents has been withheld under the following sections of the Act:

- 9(2)(a) to protect the privacy of natural persons, including that of deceased natural persons
- s18(d) information refused for the reason that the information requested is or will soon be publicly available.

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

Some out of scope information has also been removed from document 2 being released to you.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our website on our [OIA responses page](#) shortly after the response has been sent.

If you have any queries about this, please feel free to contact our Executive Relations team.

Yours sincerely,



Lewis Stevens
Acting Director, Climate Change



DOC 1

Clarifying the process for setting emissions budgets

Date Submitted:	3 April 2019	Tracking #: 2019-B-05464	
Security Level	In-confidence	MfE Priority:	Non-Urgent

	Action sought:	Response by:
To Hon James Shaw, Minister for Climate Change	Note this briefing	8 April 2019

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments #1	Appendix A: The process for setting emissions budgets
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Jemima Jamieson		
Responsible Manager	Bridget Fraser		
Director	Janine Smith		✓

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Clarifying the process for setting emissions budgets

1. On 25 March 2019, you provided comments on the draft Climate Change Response (Zero Carbon) Amendment Bill (**the Bill**). We also note your comments on 3 April, and understand that you would like emissions budgets to be debated in Parliament.
2. This briefing provides information relating to the process for setting emissions budgets specifically:
 - the process for setting emissions budgets, including why this does not include a vote in Parliament.
 - the timeframes for setting and notifying emissions budgets (e.g. why the Bill provides for 12-15 months, rather than 6 months).

The draft Bill reflects the policy decisions agreed by the Cabinet Environment, Energy and Climate Cabinet Committee in December 2019

3. The process agreed by the Cabinet Environment, Energy and Climate Committee (ENV) in December (ENV-18-MIN-0053) will require:
 - consultation with the appropriate representatives of other political parties represented in Parliament;
 - a Cabinet process, whereby Cabinet must agree to the proposed emissions budget; and
 - a copy of the emissions budget to be presented in the House.
4. The Minister also has the discretion to undertake further consultation with persons and sector representatives that are likely to have an interest in the level of an emissions budget if the Minister proposes to depart from the recommendations provided by the Climate Change Commission.
5. The Bill gives the Minister 12 months to set and notify emissions budgets (extending to 15 months in an election year). As indicated in Appendix A, we expect that this process will take around 9 months if the Minister departs from the Commission's recommendations and undertakes additional consultation.
6. Presenting a copy of the emissions budget in the House presents an opportunity to debate the emissions budget, but does not guarantee that a debate will occur. Importantly, presenting a copy of the emissions budget will not allow the emissions budget to be thrown out if opposition parties do not agree to the proposed emissions budget.
7. As a result, this model will mitigate risk that opposition parties may hold up the progress of an emissions budget for political gain if a vote on emissions budget is required. It also provides some "wriggle room" in the event of unexpected delays.
8. While this process still involves risks (particularly for the first three emissions budgets, which must be set and notified by 31 December 2021), these are insignificant compared to those associated with debating emissions budgets in Parliament.

This process does not require Parliament to vote on an emissions budget

9. Options for requiring the House of Representatives to approve an emissions budget were considered, and discussed with both the Parliamentary Counsel Office (PCO) and the Legislation Design Advisory Committee (LDAC). Their views are summarised below, and chiefly concern timing, the ability to build consensus through a Parliamentary debate, and the need for complex and detailed analysis and policy trade-offs when setting emissions budgets.

10. In LDAC's view:

- House approval is not the most appropriate model for the high policy trade-offs that will be required when setting emissions budgets, particularly as decisions that affect the economy are fundamentally Government decisions and will have multiple impacts on other Government policies.
- Emissions budgets will be the result of complex and detailed analysis. Requiring the House to then approve them is likely to result in the House itself needing advice, thereby creating a highly engineered process, and/or the possible creation of a subcommittee.
- Requiring House approval also has significant timing risks. Getting anything through the House in less than 6 months would require the House to treat it with utmost urgency.
- There are other means of achieving cross-party input and support that involve fewer risks and may be more effective (e.g. requiring the Minister to consult a House committee or to consult all party leaders before making a decision on an emissions budget).

11. PCO shared these views, advising that:

- Cross-party input and support could be obtained by requiring the Minister to consult a House committee OR consult all party leaders before making a decision of the budget, and would have both fewer risks and greater benefits (e.g. would be more effective in gaining buy-in).
- This model would still allow the final budget to be tabled in the House to raise awareness of the level of emissions budgets.
- Parliamentary debates are political forums that highlight differences rather than consensus. There are better ways to consult with political parties and achieve buy-in.

Our approach differs from the affirmative resolution procedure that applies in the UK

12. Under the Climate Change Act 2008 (UK), carbon budgets are subject to affirmative resolution by Parliament. This means that carbon budgets must be actively approved by both Houses of Parliament. Usually, statutory instruments in the UK (such as carbon budgets) that are subject to affirmative resolution procedures are agreed without a debate or vote, but opposition Members of Parliament can force either. If both Houses do not indicate their backing for the instrument, it cannot become law.
13. Although the affirmative resolution procedure represents a high level of Parliamentary control, this is not a particularly unusual requirement in the UK. For example, approximately 10 per cent of the statutory instruments that Parliament considers each year are subject to affirmative resolution. British Parliament tends to consider around 1000 statutory instruments a year).
14. In contrast, affirmative resolution procedures are used infrequently in New Zealand, and are used in very limited circumstances (e.g. the appointment of Officers of Parliament).

Recommendations

15. We recommend that you:

- a. **Discuss** the process for setting emissions budgets at your officials meeting on Monday, 8 April

Yes/No

Signature



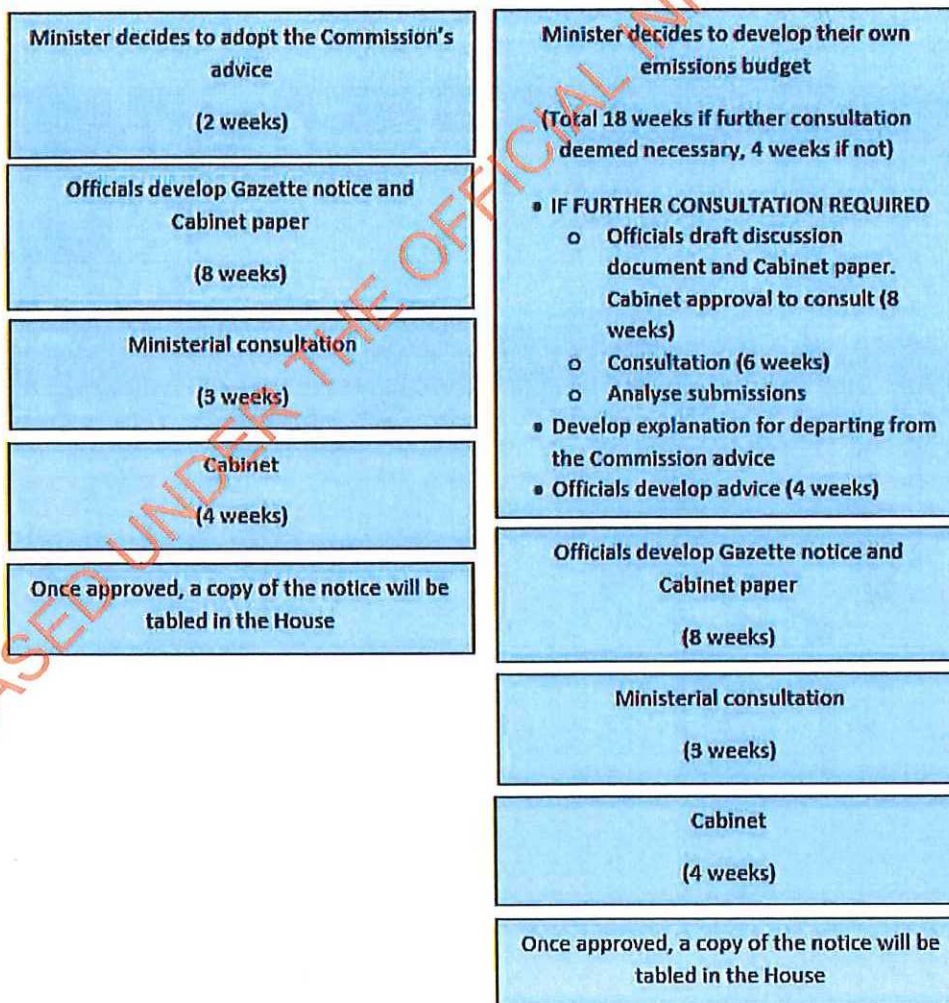
Bridget Fraser
Manager
Climate Change

Hon James Shaw
Minister for Climate Change

Date

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Appendix A: The process for setting emissions budgets



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Zero Carbon Bill: Additional information on emissions budgets

Date Submitted:	1 October 2018	Tracking #: 2018-B-04982	
Security Level	In-confidence	MfE Priority:	Non-Urgent

	Action sought:	Response by:
To Hon James Shaw, Minister for Climate Change	Note only	N/A

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of Attachments: 7	<p>Appendix A: Regulatory Impact Statement – Emissions budgets</p> <p>Appendix B: Zero Carbon Bill – Climate Change Commission timeline</p> <p>Appendix C: Relationship between the 2050 target and emissions budgets</p> <p>Appendix D: Note on Zero Carbon Bill borrowing limit</p> <p>Appendix E: The Carbon Budgets Order 2009 (UK)</p> <p>Appendix F: Sam Fankhauser, Alina Averchenkova, and Jared Finnegan (March 2018) '10 Years of the UK Climate Change Act'</p> <p>Appendix G: Teresa Weeks (Productivity Commission) (September 2017) 'Examining the UK Climate Change Act: Research Note', pp 8-11</p>
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Jemima Jamieson	s9(2)(a)	
Responsible Manager	Bridget Fraser	021 180 6739	✓
Director	Janine Smith	021 144 7617	

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Zero Carbon Bill: Additional information on emissions budgets

1. On 27 September, you requested a package of information on emissions budgets.
2. As per that request, this briefing attaches a number of documents that provide additional information on our proposals, and the content that informed them. These documents are outlined in the table below.
3. Please note that Appendices A, B, C and D are working documents, and do not represent our final policy recommendations.

Appendix	Title	Purpose
Appendix A	Regulatory Impact Statement: Emissions budgets	<p>The emissions budget section of the Regulatory Impact Statement sets out the options that were considered for:</p> <ul style="list-style-type: none"> • the length of budgets • revising emissions budgets • banking and borrowing • role of the Climate Change Commission <p>It also provides an overview of relevant experience from the UK and a summary of submissions received on emissions budgets.</p> <p>Note: These sections exclude implementation arrangements, including transitional arrangements for the provisional emissions allowance and the first three emissions budgets.</p>
Appendix B	Zero Carbon Bill – Climate Change Commission timeline (confidential)	<p>This sets out how the various components of the Zero Carbon Bill work together. These include the role of the Commission and the government in:</p> <ul style="list-style-type: none"> • setting emissions budgets • establishing the plans and policies for meeting emissions budgets • monitoring progress towards emissions budgets and the 2050 target • providing NZ ETS settings • establishing the National Adaptation Plan (NAP) • establishing the National Climate Change Risk Assessments (NCCRA).
Appendix C	Relationship between the 2050 target and emissions budgets (confidential)	<p>This sets out the implications that different target options could have on the design and operation of emissions budgets.</p>
Appendix D	Note on analysis of Zero Carbon Bill borrowing limit (confidential)	<p>This analysis informed the current 1 per cent cap on borrowing between adjacent budget periods.</p> <p>Please note, however, that there are ongoing conversations around land use, land use change</p>

		and forestry (LULUCF) emissions and removals and how these should be treated in emissions budgets.
Appendix E	The Carbon Budget Order 2009 (UK)	This instrument set the UK's first three carbon budgets. It serves as an example of the details that could be included in the Gazette notices that notify New Zealand's emissions budgets.
Appendix F	Sam Fankhauser, Alina Averchenkova, and Jared Finnegan (March 2018) '10 Years of the UK Climate Change Act', see pp 9-11, 12-14, 15	This provides an overview of the fundamental architecture of the UK's Climate Change Act (including carbon budgets), assesses its success since its enactment, and indicates some areas for improvement)
Appendix G	Teresa Weeks (Productivity Commission) (September 2017) 'Examining the UK Climate Change Act 2008: Research Note', pp 7-15	This provides a useful overview of key elements of the UK's system of carbon budgets.

Signature



Bridget Fraser
 Manager, Climate Change – Zero Carbon Bill

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Appendix A: Regulatory Impact Statement – Emissions budgets

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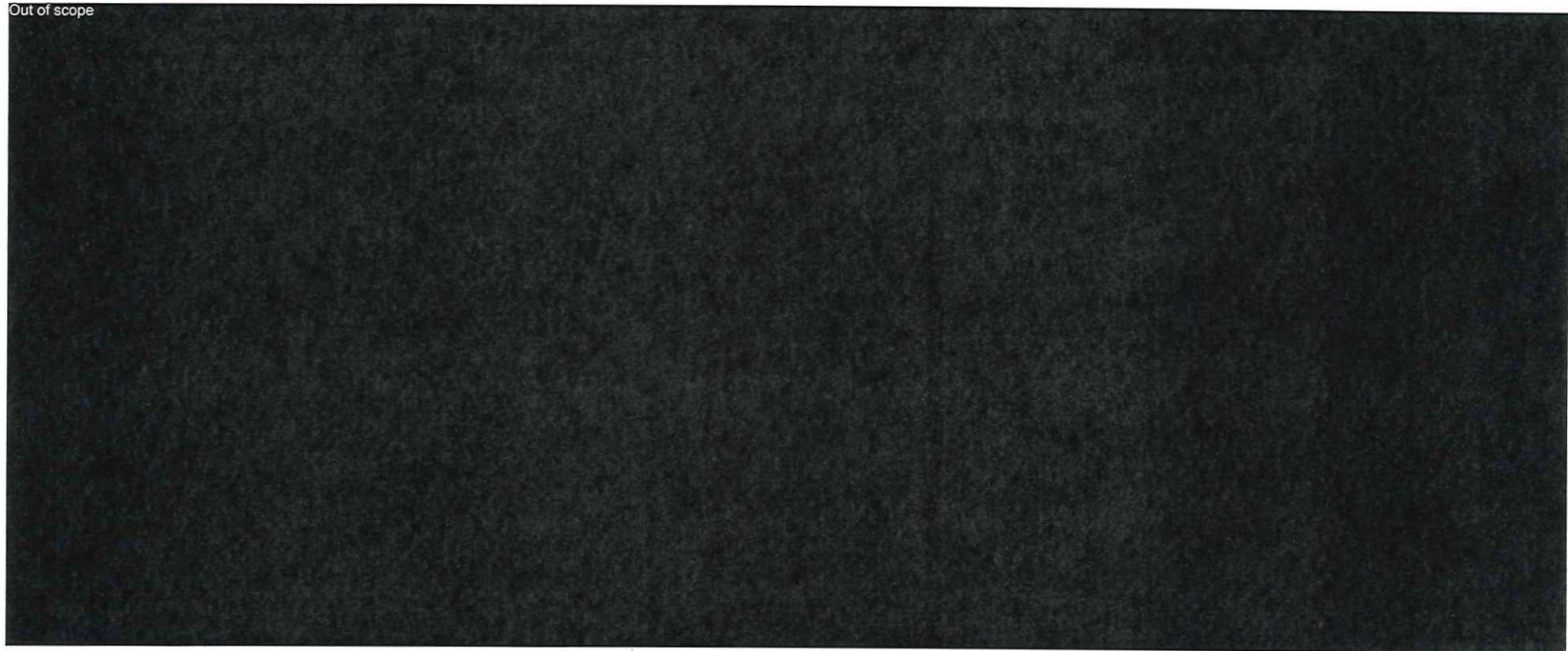


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Appendix B: Zero Carbon Bill – Climate Change Commission timeline

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Appendix C: Relationship between the 2050 target and emissions budgets

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Appendix D: Note on analysis of Zero Carbon Bill borrowing limit

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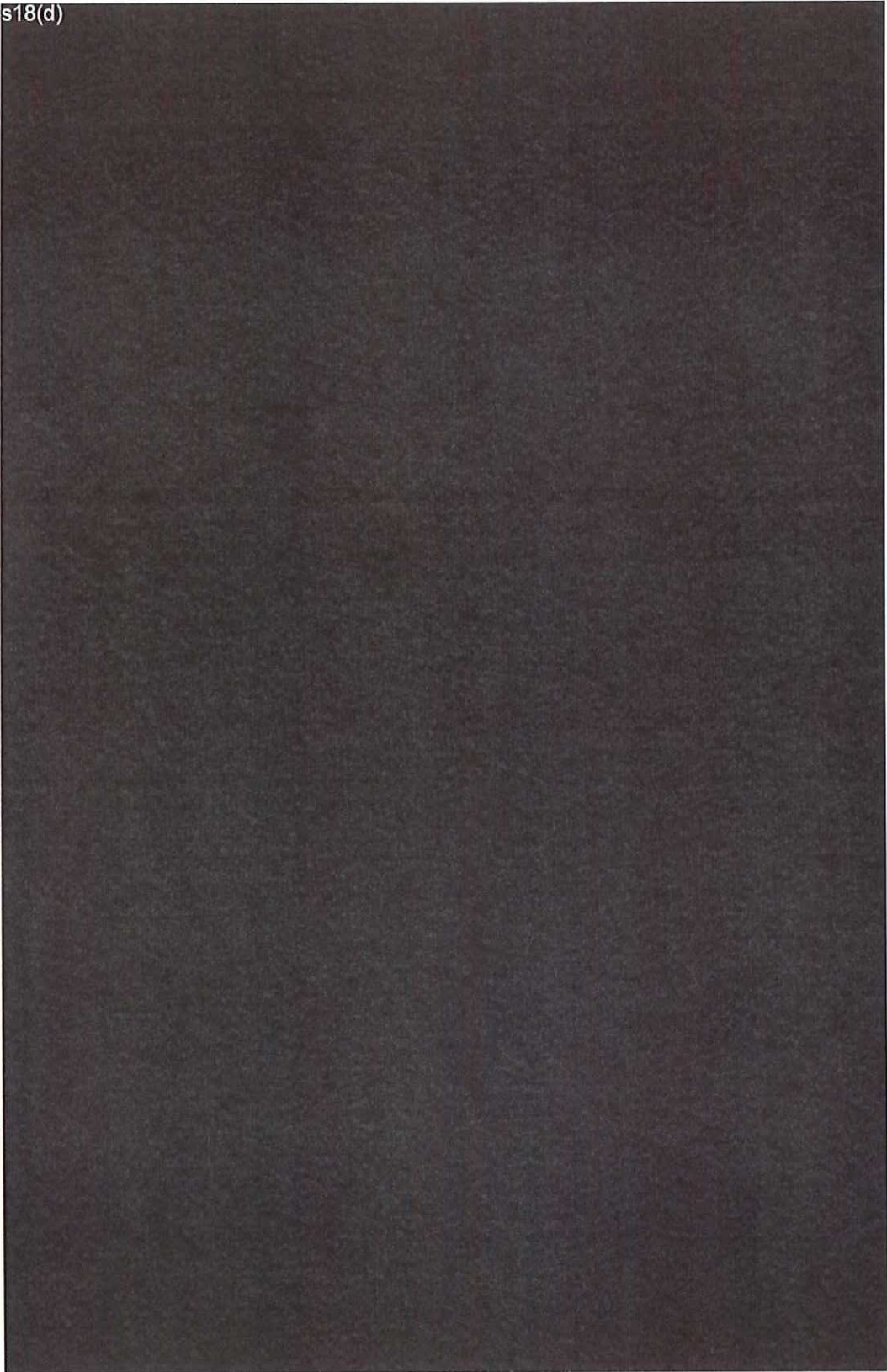


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Appendix E: The Carbon Budgets Order 2009 (UK)

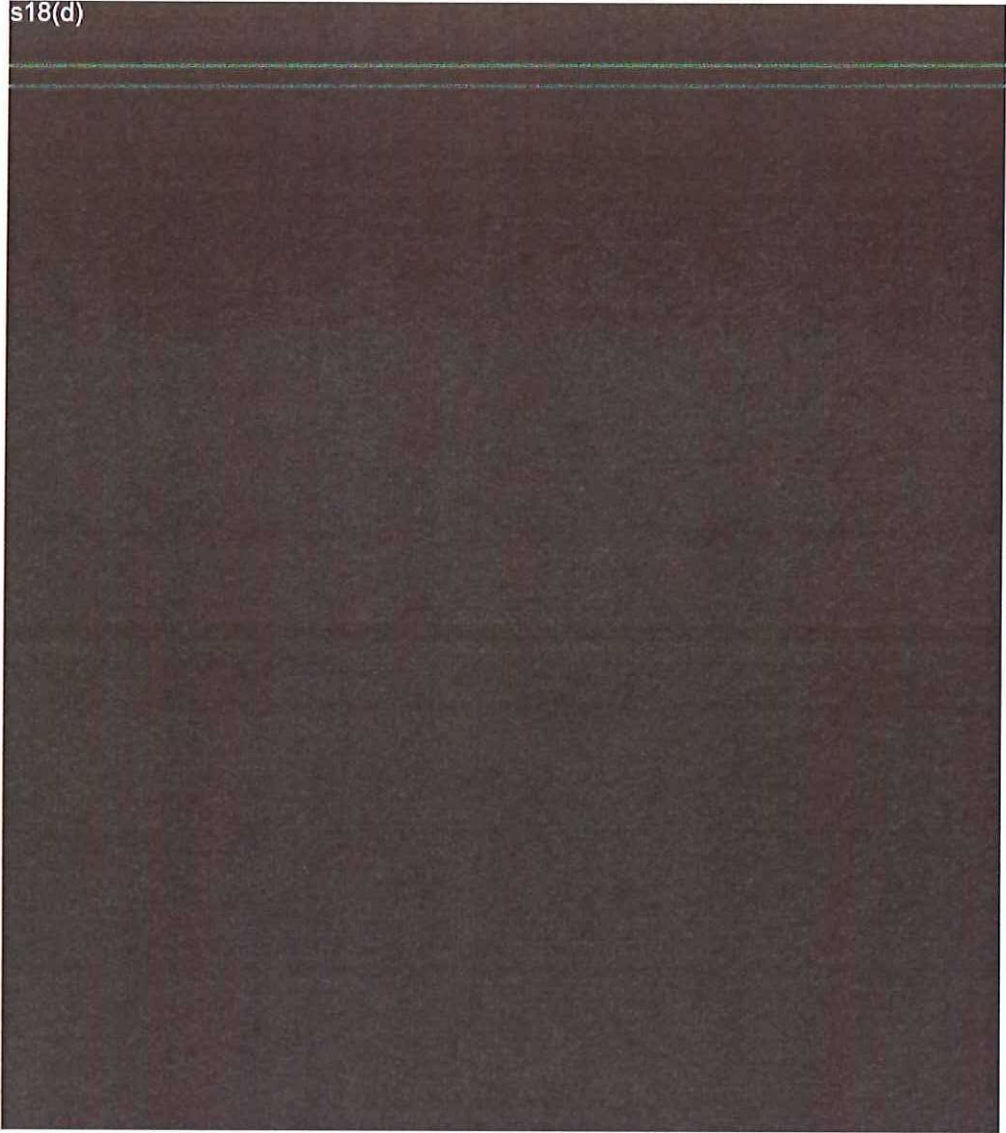
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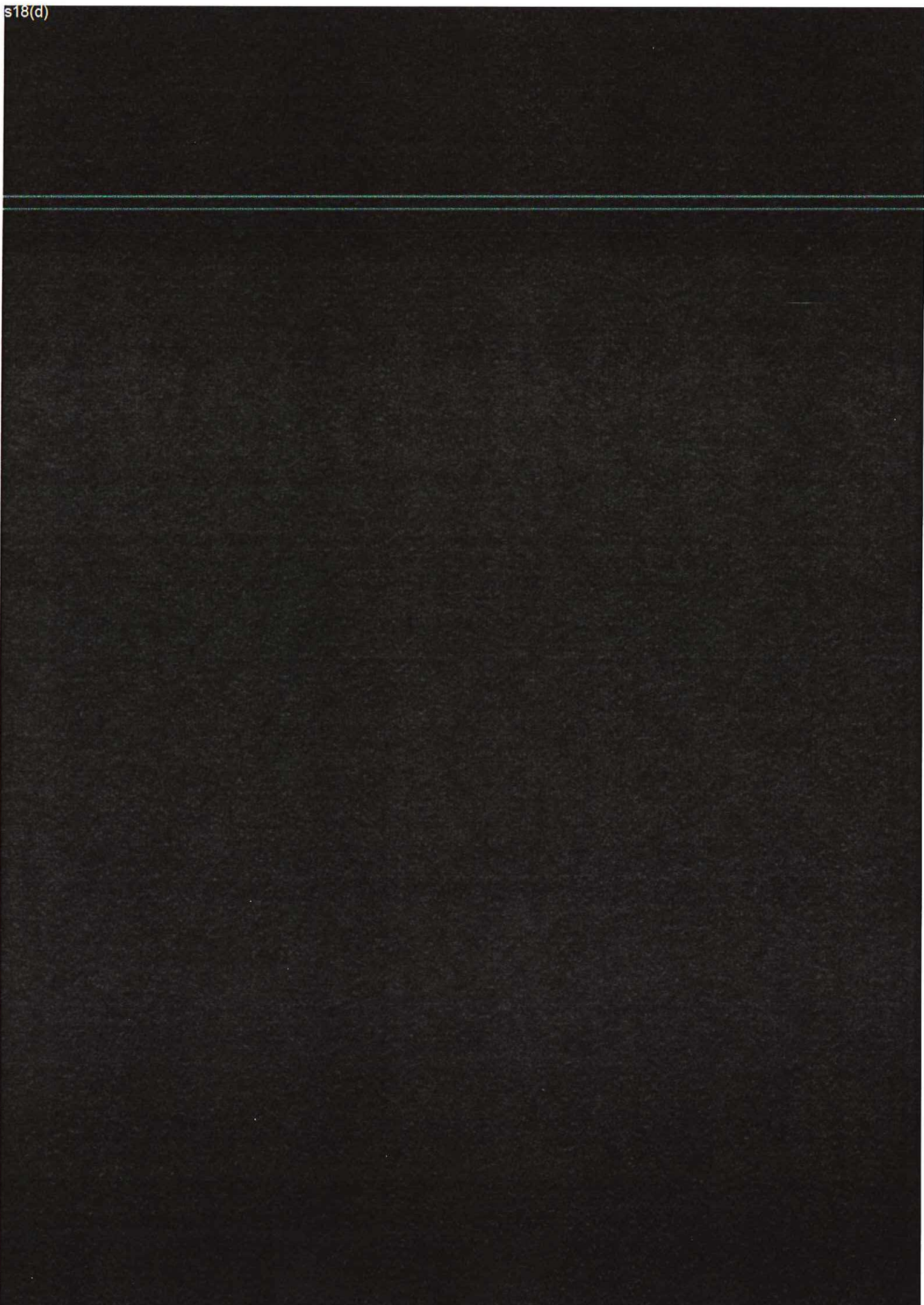


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Appendix F: Sam Fankhauser, Alina Averchenkova, and Jared Finnegan (March 2018) '10 Years of the UK Climate Change Act', see pp 9-11, 12-14, 15

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Appendix G: Teresa Weeks (Productivity Commission) (September 2017) 'Examining the UK Climate Change Act 2008: Research Note', pp 7-15

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