

CLIMATE CHANGE (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

Part 4 – Duties of Public Bodies Relating to Climate Change

Duties of public bodies relating to climate change

85. Subsection (1) of section 44 places specific climate change duties on public bodies. They must, in exercising their functions, act in the way best calculated to achieve delivery of the targets in the Act, the way best calculated to help deliver any programme laid under section 53 of the Act (adaptation) and in a way that they consider most sustainable. Subsection (2) defines the term “public body”.
86. Subsection (3) enables the Scottish Ministers, by order, to impose further duties on public bodies in relation to climate change (in addition to those specified in subsection (1)). Subsection (6) allows the order to make different provision for different public bodies. A body which has climate change duties under subsection (1) or by virtue of an order under subsection (3) is a “relevant public body” (subsection (5)).
87. Subsections (7) and (8) oblige the Scottish Ministers, in so far as reasonably practicable, to consult with such associations of local authorities and such other persons as they consider appropriate before laying an order under subsection (3) imposing such duties. Subsection (9) states that the Scottish Ministers must co-operate with the relevant public bodies to help those bodies comply with duties imposed under this section.

Guidance to relevant public bodies

88. [Section 45](#) provides that the Scottish Ministers can give guidance to relevant public bodies in relation to climate change duties and that those bodies must have regard to such guidance. Subsections (2) and (3) oblige the Scottish Ministers to consult with such associations of local authorities and such other persons as they consider appropriate before giving guidance, in so far as it is reasonably practicable to do so. Subsection (4) allows the Scottish Ministers to vary or revoke this guidance. If the guidance is to be varied to a substantial extent then the consultation requirement in subsections (2) and (3) applies. Subsection (5) requires the Scottish Ministers to publish such guidance.

Reporting on climate change duties

89. [Section 46](#) enables the Scottish Ministers, by order, to require relevant public bodies to report on how they are complying with climate change duties imposed on them by or under section 44, and to prepare a report on the actions to address future compliance if they are, following an investigation under section 48, found to be failing to comply with their climate change duties. Subsections (1)(c) to (e) enable the Scottish Ministers to set out what must be in the report, its format, and the time by which it must be submitted to them. Subsection (2) contains specific provision about reporting on how procurement policies and activities have contributed to compliance with the climate change duties. Subsection (3) allows for an order to provide that where relevant public bodies are

working together on a particular duty, the Scottish Ministers may require them to co-operate with each other to prepare a joint report.

Appointment of monitoring body

90. [Section 47](#) enables the Scottish Ministers, by order, to designate one or more persons or bodies to monitor whether relevant public bodies are complying with duties imposed by or under section 44 or whether they are having regard to guidance given under section 45. The person or body is referred to as the “monitoring body”.

Investigations

91. [Section 48](#) enables a monitoring body to carry out investigations into how relevant public bodies are complying with duties imposed by or under section 44, or whether they are having regard to guidance given under section 45. If the Scottish Ministers direct it to do so, then the monitoring body must carry out an investigation. Section 49 specifies the powers of investigators in those circumstances and when they can use those powers and defines “investigators” which may be either the monitoring body or a person authorised by that body.

Reporting by monitoring body

92. [Section 50](#) enables the Scottish Ministers to direct a monitoring body to prepare a report on its activities, investigations it has carried out, use of resources and any other matters. Those reports will not normally mention continuing investigations unless the Scottish Ministers direct this. Subsection (3) requires the monitoring body to submit the report to the Scottish Ministers, and subsection (4) requires the Scottish Ministers to lay the report before the Scottish Parliament.

Guidance to monitoring body

93. [Section 51](#) requires a monitoring body to have regard to any guidance issued by the Scottish Ministers relating to its functions under Part 4 of the Act. Subsections (2) and (3) oblige the Scottish Ministers to consult with the monitoring body and such other persons as they consider appropriate, in so far as reasonably practicable, before giving guidance.
94. Subsection (4) allows the Scottish Ministers to vary or revoke this guidance. If the guidance is to be substantially varied, then the consultation requirements of subsections (2) and (3) apply. Subsection (5) requires the Scottish Ministers to publish any guidance given under this section.

Power to direct monitoring body

95. [Section 52](#) enables the Scottish Ministers to give directions to a monitoring body relating to its functions under Part 4 of the Act. Subsection (2) allows a direction given under this section to be varied or revoked. Subsection (3) requires the monitoring body to comply with a direction given under this section.