



# Climate Change (Scotland) Act 2009

## 2009 asp 12

VALID FROM 01/01/2011

### PART 4

#### DUTIES OF PUBLIC BODIES RELATING TO CLIMATE CHANGE

##### *Duties of public bodies*

#### **44 Duties of public bodies relating to climate change**

- (1) A public body must, in exercising its functions, act—
  - (a) in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of this Act;
  - (b) in the way best calculated to help deliver any programme laid before the Scottish Parliament under section 53;
  - (c) in a way that it considers is most sustainable.
- (2) In this Part, a “public body” means a Scottish public authority within the meaning of section 3(1)(a) of the Freedom of Information (Scotland) Act 2002 (asp 13).
- (3) The Scottish Ministers may, if they consider it appropriate to do so, by order, make further provision relating to the imposition on relevant public bodies of duties relating to climate change.
- (4) The duties imposed by subsection (1) and any duty imposed by virtue of an order under subsection (3) are referred to in this Act as “climate change duties”.
- (5) In this Part, a public body which has climate change duties under subsection (1) or by virtue of subsection (3) is a “relevant public body”.
- (6) An order under subsection (3) may in particular—
  - (a) impose climate change duties on—
    - (i) all public bodies;
    - (ii) public bodies of a particular description;
    - (iii) individual public bodies;

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- (b) impose different climate change duties on different public bodies or descriptions of public body;
  - (c) remove climate change duties.
- (7) Before laying a draft of a statutory instrument containing an order under subsection (3) before the Scottish Parliament, the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (8).
- (8) Those persons are—
- (a) such associations of local authorities; and
  - (b) such other persons,
- as the Scottish Ministers consider appropriate.
- (9) The Scottish Ministers must co-operate with a relevant public body to help that body comply with its climate change duties.

#### **45 Guidance to relevant public bodies**

- (1) The Scottish Ministers must give guidance to relevant public bodies in relation to climate change duties and those bodies must have regard to such guidance.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
- (a) such associations of local authorities; and
  - (b) such other persons,
- as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

#### **46 Reporting on climate change duties**

- (1) The Scottish Ministers may, by order, make provision—
- (a) requiring relevant public bodies to prepare reports on compliance with climate change duties;
  - (b) requiring any relevant public body found, following an investigation under section 48, to be failing to comply with its climate change duties, to prepare a report on the actions it has taken, is taking or intends to take to secure future compliance with those duties;
  - (c) subject to subsection (2), setting out what information reports must contain;
  - (d) setting out the form and manner of reports;
  - (e) setting out the period within which reports must be sent to the Scottish Ministers.
- (2) A report required by virtue of subsection (1)(a) must, in particular, contain information relating to how—
- (a) procurement policies of relevant public bodies; and
  - (b) procurement activity by relevant public bodies,

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have contributed to compliance with climate change duties.

- (3) An order under subsection (1) may in particular—
- (a) require two or more relevant public bodies to prepare a joint report in relation to compliance with one or more climate change duties; and
  - (b) require those bodies to co-operate with each other for the purpose of preparing that report.

#### *Monitoring body*

### **47 Appointment of monitoring body**

- (1) The Scottish Ministers may, by order, designate one or more persons or bodies to monitor whether relevant public bodies are—
- (a) complying with climate change duties;
  - (b) having regard to any guidance given under section 45.
- (2) In this Part, a person or body designated under subsection (1) is the “monitoring body”.

#### *Investigations*

### **48 Investigations**

- (1) The monitoring body may carry out an investigation into—
- (a) a relevant public body's compliance with climate change duties;
  - (b) whether a relevant public body is having regard to guidance given under section 45.
- (2) The monitoring body must carry out an investigation if the Scottish Ministers direct it to do so.

### **49 Investigations: investigators' powers**

- (1) In this section an “investigator” means—
- (a) the monitoring body;
  - (b) a person authorised by the monitoring body for the purpose of carrying out investigations.
- (2) An investigator may use the powers set out in subsections (3) to (5) if the investigator considers that it is necessary to do so for the purposes of or in connection with an investigation.
- (3) An investigator may, by notice in writing, require any relevant public body to provide any relevant document or relevant information in the possession, or under the control, of the relevant public body.
- (4) An investigator may require any person who possesses or controls any document or information referred to in subsection (3) to provide an explanation of the document or information.

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- (5) An investigator may take copies of, or extracts from, any document or information produced in accordance with subsection (3).
- (6) Nothing in this section authorises an investigator to require the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

#### **50 Reporting by monitoring body**

- (1) The Scottish Ministers may direct the monitoring body to prepare a report relating to—
  - (a) the monitoring body's activities under this Part;
  - (b) investigations carried out by the monitoring body;
  - (c) its use of resources in carrying out its functions under this Part;
  - (d) any other matters the Scottish Ministers may direct.
- (2) The report may include information relating to a continuing investigation only if the Scottish Ministers direct that information to be included.
- (3) The monitoring body must send the report to the Scottish Ministers.
- (4) The Scottish Ministers must lay the report before the Scottish Parliament.

#### **51 Guidance to monitoring body**

- (1) The monitoring body must have regard to any guidance given by the Scottish Ministers to it in relation to the exercise of its functions under this Part.
- (2) Before giving guidance under subsection (1), the Scottish Ministers must consult, in so far as reasonably practicable, the persons mentioned in subsection (3).
- (3) Those persons are—
  - (a) the monitoring body; and
  - (b) such other persons,as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers may vary or revoke guidance given under this section and where guidance is varied to a substantial extent, subsections (2) and (3) apply.
- (5) The Scottish Ministers must publish any guidance given under this section.

#### **52 Power to direct monitoring body**

- (1) The Scottish Ministers may give directions to the monitoring body relating to the exercise of its functions under this Part.
- (2) The Scottish Ministers may vary or revoke a direction given under this section.
- (3) The monitoring body must comply with a direction given under this section.

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