

**Item: 5**

**Policy and Resources Committee: 22 April 2025.**

**Climate Change Duties - Draft Statutory Guidance for Public Bodies:  
Consultation.**

**Report by Corporate Director for Neighbourhood Services and  
Infrastructure.**

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## **1. Overview**

- 1.1. The Scottish Government is consulting on updated draft statutory guidance in relation to duties on public bodies under the Climate Change (Scotland) Act 2009, for which responses are required by 23 May 2025. This report provides background to the consultation, along with a proposed (draft) consultation response.
- 1.2. The current guidance requires updating to address developments in practice since the 2009 Act. In line with requirements, the Council reports annually on its Climate Change actions and currently does so with regard to existing (2011) guidance hosted by the Sustainable Scotland Network.
- 1.3. Section 4 of this report considers some key developments in the guidance. Officers have compiled a draft response to the main consultation questions and this is set out in Appendix 1.

## **2. Recommendations**

- 2.1. It is recommended that members of the Committee:
  - i. Approve the draft response to the Scottish Government's consultation on updated draft statutory guidance in relation to duties on public bodies under the Climate Change (Scotland) Act 2009, attached as Appendix 1 to this report.
  - ii. Authorise the Corporate Director for Neighbourhood Services and Infrastructure to submit the response in relation to the consultation on updated draft statutory guidance in relation to duties on public bodies under the Climate Change (Scotland) Act 2009 to the Scottish Government, on behalf of the Council, by the deadline of 23 May 2025.

### **3. Background**

- 3.1. The Climate Change (Scotland) Act 2009 places duties on relevant public bodies to reduce greenhouse gas emissions, contribute to delivery of the Scottish National Adaptation Plan, and to act in the most sustainable way. These duties are known as the climate change duties, or the public bodies climate change duties. Under the 2009 Act, Scottish Ministers are required to provide the public bodies with guidance, to support them in putting their climate change duties into practice.
- 3.2. Statutory guidance was originally published in 2011 and requires to be updated. The current consultation seeks views on new draft statutory guidance which has been developed for this purpose, and which will replace the 2011 guidance. The consultation is available on the Scottish Government website:  
<https://www.gov.scot/publications/climate-change-duties-draft-statutory-guidance-public-bodies-consultation/>
- 3.3. Public bodies subject to the climate change duties are required to have regard to the statutory guidance. Summary information in the consultation states as follows:
  - i. The public sector has a critical role in helping Scotland to reduce greenhouse gas emissions, make a just transition to a low carbon economy and prepare for the future climate. Public bodies have an important leadership role to play as corporate organisations with estates, fleet and staff; bodies delivering national, regional and local services; as anchor organisations with significant influence on local places and communities; as bodies with significant collective annual budgets and buying power; as partner organisations and as trusted messengers.
  - ii. Within the guidance, while certain actions are recommended or encouraged, these should be undertaken in a way that is proportionate to the climate impact that the body has in terms of its size, assets, function and influence. Bodies are responsible for determining what is appropriate for their own organisation, and for taking such measures and actions forward in the most effective way.

### **4. Draft Consultation Response**

- 4.1. The guidance appears extensive and well developed, in line with best practice and expectations. Officers have compiled responses to some issues and developments in the guidance and these are outlined in Appendix 1. Issues raised include the following:

- i. The guidance lacks provision of island examples, and further addressing fuel poverty, peripherality and coastal impacts.
- ii. Greenhouse Gas accounting flexibility is necessary to allow for regional / local variations under transparency principles (e.g. to reflect positive contribution of renewables generated by Local Authorities).
- iii. Proportionality in approach is necessary and use of principles such as ‘comply or explain’ (e.g. allowing for innovation in practice).
- iv. Limiting the administrative burden of reporting by simplification and condensing some guidance sections.

### **Categories of Emissions**

- 4.2. To date, emissions reporting by public bodies has focused primarily on scope 1 and 2 emissions: from heating and power used in buildings, and on the emissions from fleet vehicles. The draft guidance states that “it is important, moving forwards, that while bodies continue to focus efforts on reducing their scope 1 and 2 emissions, they also start to measure, monitor and reduce scope 3 (indirect) emissions from the wider value chain”. As a baseline, public bodies subject to the reporting duty are (in the guidance) expected, to include scope 3 emissions from consumption of mains water, waste and waste water, business travel including, where appropriate, overnight stays, commuting and homeworking, fuel and energy-related emissions (not included in scopes 1 and 2). The Council is currently updating its emissions reporting accordingly.
- 4.3. Over time those subject to the reporting duties, in particular bodies with larger spend and influence, are expected to expand reporting of (indirect) scope 3 emissions to include all relevant categories. This is an approach where the Scottish Government is implementing and responding to outcomes of a review by Environmental Standards Scotland (see list of background papers at end). Extending emissions reporting to all scope 3 emissions categories is not necessarily an effective use of resources and as an alternative a ‘Comply or Explain’ principle should be proposed (and this is suggested in the draft response at Appendix 1).

## **5. Legislative Position**

- 5.1. The Council addresses its responsibilities in relation to public duties established by the Climate Change (Scotland) Act 2009. The duties are set out in section 44(1) of the 2009 Act and require that a public body must, in exercising its functions, act –
  - (a) in the way best calculated to contribute to the delivery of emissions reduction targets (i.e. mitigation).

(b) in the way best calculated to help deliver any statutory climate change adaptation programme.

(c) in a way that it considers most sustainable.

- 5.2. Under the 2009 Act, public bodies subject to the climate change duties are required to have regard to the statutory guidance.

**For Further Information please contact:**

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**Implications of Report**

1. **Financial:** There are no financial implications from the report's recommendations.
2. **Legal:** None directly related to the report recommendations. The statutory guidance relates to legal duties on all public bodies in Scotland and as referenced in this report at sections 3.1 and 5.
3. **Corporate Governance:** None directly related to the report's recommendations. The development of updated statutory guidance will support the Council and all Scottish public bodies in relation to their leadership role on climate change and related governance (4.3.4 of the guidance). The guidance states that strong governance, leadership and commitment within the public sector is vital to ensure that Scotland meets its Climate Change targets and commitments.
4. **Human Resources:** None.
5. **Equalities:** None directly. The draft guidance notes that there are multiple dependencies between climate change and equalities. The concept of the 'Just Transition' is supportive to equality and justice and is outlined within the draft guidance.
6. **Island Communities Impact:** None directly. The draft guidance references Island Communities Impact Assessments, noting that island communities face direct impacts from climate change, such as increased storms disrupting ferry services and rising sea levels. The draft guidance addresses Climate Change Adaptation and references this as particularly important to island communities.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
  - ☒ Growing our economy.
  - ☒ Strengthening our Communities.
  - ☒ Developing our Infrastructure.
  - ☒ Transforming our Council.

8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
- ☒ Cost of Living.
  - ☒ Sustainable Development.
  - ☒ Local Equality.
  - ☒ Improving Population Health.
9. **Environmental and Climate Risk:** This receives significant focus within the draft statutory guidance, in relation to both climate change mitigation and adaptation.
10. **Risk:** The draft guidance aims to support public bodies in managing and addressing risks and opportunities (for example in the guidance section 4.3.5).
11. **Procurement:** None directly. The guide references sustainable procurement duty.
12. **Health and Safety:** None directly. The guidance references Health and Safety Legislation and climate change.
13. **Property and Assets:** None directly. The guidance references property and assets with regard to climate change mitigation and adaptation.
14. **Information Technology:** None directly.
15. **Cost of Living:** None directly. The guidance does reference cost of living in relation to equalities, just transition and fuel poverty concerns.

### List of Background Papers

Supporting documents for the consultation are available on the Scottish Government website - <https://www.gov.scot/publications/climate-change-duties-draft-statutory-guidance-public-bodies-consultation/>

Environmental Standards Scotland (implementing the ESS recommendations) - <https://www.gov.scot/publications/scottish-government-improvement-plan-response-environmental-standards-scotland-investigation-climate-change-delivery-improvement-report/pages/5/>

### Appendix

Appendix 1 – Draft Response to Public Bodies Climate Change Duties: Consultation on Draft Statutory Guidance.

## Draft response to the consultation

## Public bodies climate change duties: consultation on draft Statutory Guidance

## Consultation Questionnaire

Climate change and equalities

1. With respect to the protected characteristics, could the content of the Statutory Guidance be changed or added to, to strengthen any positive impacts or lessen any negative impacts as it is implemented by public bodies?

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☒ Yes☐ No☐ Don't know

If so, how? Please give us your views.

It is noted that within the guidance there are illustrative examples of fairness, equality, procedural justice and health, stated to illustrate why Scottish Government has embedded just transition principles in climate legislation and emphasised the importance of planning for a fair transition. In Orkney the concept of the Just Transition is supported - <https://www.orkneycommunities.co.uk/communityplanning/documents/orkney-climate-resilient-net-zero-vision-september-2024.pdf>

There is a growing body of research on equalities issues on islands, much of which is concerned with socio-economic inequality, and unequal access to services, in addition to the protected characteristics in the Equality Act 2010. The Orkney Partnership has long considered peripherality to be an equality issue (see Scottish Index of Multiple Deprivation).

The guidance states (p63) that “when approaching climate change and equalities, public bodies are strongly advised to take an intersectional approach and look beyond the protected characteristics to include wider socio-economic considerations such as those living in low income areas, in island communities and in remote rural areas”. It is positive to note that the guidance extends approach to include **island issues**. It is proposed that these could be further exemplified and with climate change related ‘illustrative examples’ outlined (in relation to island issues such as fuel poverty, resilience and peripherality).

2. With respect to inequality caused by socio-economic disadvantage, could the content of the Statutory Guidance be changed or added to, to strengthen any positive impacts or lessen any negative impacts as it is implemented by public bodies?

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☒ Yes☐ No☐ Don't know

If so, how? Please give us your views.

The guidance identifies that – *“People experiencing social and economic disadvantage often have less power and influence to inform decisions about their lives and their communities. This is due to lack of resources such as knowledge, prestige and beneficial connections. Inequalities in power, influence and decision making are underlying drivers of both health inequalities and the unjust distribution of climate impacts. Empowering communities to exercise control over decisions which support their ability to adapt, such as local development and coastal management plans and housing rights, is important in achieving a just transition to a climate resilient and net zero Scotland”*.

Again island issues could be further exemplified for public bodies. In relation to fuel poverty, island and rural local authorities generally had the highest proportion of the least energy efficient dwellings. There is no gas grid and therefore residents rely on more expensive heating fuels such as electricity and oil. Rates of fuel poverty are generally higher in island Local Authorities with around a third of residents experiencing fuel poverty in Argyll and Bute (32%), Highland (33%), Orkney Islands (31%) and Shetland Islands (31%) councils, while the average for Scotland is 24% -

- reference [Scottish islands: data overview 2023 - gov.scot](https://www.gov.scot/publications/scottish-islands-data-overview-2023/pages/introduction.aspx)

A further information source regarding socio-economic disadvantage, is the work completed by Dynamic Coast on social vulnerability and coastal erosion impacts. Although the Dynamic Coast project is referenced, it may be helpful for the guidance to specifically reference this work on disadvantage

[https://www.dynamiccoast.com/files/dc2/ DC2\\_WS6\\_CE\\_Disadvantage\\_FINAL.pdf](https://www.dynamiccoast.com/files/dc2/ DC2_WS6_CE_Disadvantage_FINAL.pdf)

### **Taking climate into account in decision making**

- 3. Does the guidance make it clear how public bodies can fulfil the requirement to ‘best calculate’ the climate impact of their actions?**

- ☐ Yes
- ☒ Partially
- ☐ No
- ☐ Don't know

Please provide comments below.

The guidance states – *“it is essential, if public bodies are to be compliant with their obligations under the 2009 Act, that the climate change duties are a part of decision making; and that the thought process behind the decision can be clearly demonstrated and explained”*. The guidance then references various sources / methods to assist with integrating climate thinking into the decision-making process, both quantitative and qualitative. A small number are outlined.

Although these are helpful, for some public bodies it will be hard to spare time to review and apply these as appropriate. This situation could possibly be improved with more tailored combined guidance, sourced across the materials, although it is acknowledged that would be a lengthy task to create. An alternative could be some tables (or graphics) outlining contents of each and flagging useful sections and why. The guidance is helpful and references most areas, but further attention could help some users such as smaller public bodies.

An area where more guidance could be given, relates to longer term transition planning (for example towards interim targets such as 2035, 2045 etc). Although the guidance references some relevant sources such as IFRS and TCFD, more tailored guidance would be helpful, for example with regard to medium term planning and business cases for decarbonisation.

**4. Does the guidance make it clear how public bodies should take future climate scenarios into account when making plans and investment decisions?**

- ☐ Yes
- ☒ Partially
- ☐ No
- ☐ Don't know

Please provide comments below.

This is addressed, but as mentioned above, scenarios and planning for transitions could benefit from some condensed guidance, tailored for public bodies. Scenario analysis is not directly explained. TCFD terms such as physical risk and transition risk are used in the Green Book / scenario section, but the terms are only explained later in the guidance. More introductory narrative could help users along with examples. It could be helpful in this section to also explain how these new approaches can help with Corporate Risk Registers. It is understood that in many cases, qualitative scenario analysis would be appropriate.

For many public bodies this section will include new approaches. The guidance could be improved with some further explanation.



## **The first duty: reducing emissions (climate change mitigation)**

### **5. Do you have any comments about the guidance provided in this chapter (chapter 5) on complying with the first duty?**

Please give us your thoughts. For example, are there any gaps or are there ways that you think it could be improved.

Chapter 5 largely addresses expected emission sources for public bodies and generally appears to be in line with recent / earlier guidance. The guidance is not overly prescriptive and we would suggest this is an important principle (to maintain).

In addition to many widely used decarbonisation approaches, the guidance recognises that estate rationalisation will also be a consideration, stating that “public bodies should focus on reducing emissions that planned to remain as part of the estate into the long term”.

Section 8.3.4 addresses the GHG emissions of electricity consumption. The guidance references an approach that ‘should’ be followed and in this, does not cater for the use of Renewable Energy Guarantee of Origin Certificates (REGOs). Some public bodies may currently be using REGOs or reporting zero emissions via the purchase of ‘green’ electricity tariffs. It is suggested that the guidance should not be overly prescriptive on this issue, other than being clear that public bodies ‘must’ be transparent if they use additional GHG accounting approaches and that in such cases, they must be supplementary to the recommended approach.

A concern recognised in the guidance, relates to a current situation of high electricity prices (page 103). Some approaches are mentioned whereby public bodies could aim to mitigate costs (e.g. through greater use of renewables generation on site). It would be helpful for public bodies to receive further business case guidance and support for such approaches.

Section 8.3.6 regarding emissions from land, is recommending some approaches that may be inappropriate (excessive) for the public sector. Public bodies should not have to create a full GHG inventory of their landholdings before engaging in land-based projects. The GHG protocol guidance that is referenced is aimed at companies / land-based sectors and is not yet published. Carbon offsetting remains a confusing field and for the public sector, it may not be appropriate to apply the same standards and guidance (with associated verification costs) that is understandably being established for corporate entities. Public bodies should be encouraged to progress projects and be guided to be cautious in how they communicate claims regarding land-based carbon removals.

Some of the guidance on Scope 3 emissions needs to be careful in language and in the principle. Scope 3 emissions are someone else’s scope 1 and 2 emissions. This is therefore an area of influence rather than direct consequence (albeit agreed it is a significant one). Therefore it would arguably, not be correct to use phrases such as “*It is estimated that typically 90% of an organisation’s emissions fall under scope 3*”. The following article provides some alternative view on this issue - <https://ghginstitute.org/2024/04/02/myth-busting-are-corporate-scope-3-emissions-far-greater-than-scopes-1-or-2/>

### **6. Do you think the Carbon Management Plan template is suitable for its intended purpose as outlined in Annex A?**

☒ Yes

☐ No

☐ Don’t know

Please give us your thoughts.

Broadly suitable - the CMP format is a guide and is not prescriptive.

**7. Do you think the Climate Change Plan template for local authorities is suitable for its intended purpose as outlined in Annex B?**

☒ Yes

☐ No

☐ Don't know

Please give us your thoughts.

Broadly suitable - the format is a guide and is not prescriptive.

**The second duty: adaptation**

**8. The guidance lays out an approach whereby public bodies should: review the Scottish National Adaptation Plan (SNAP); identify the objectives relevant to them; contribute towards those objectives; and, where relevant, report annually on progress in their public bodies climate change duties report.**

**To what extent do you agree or disagree with this proposed approach?**

☐ Strongly agree

☒ Somewhat agree

☐ Neither agree nor disagree

☐ Somewhat disagree

☐ Strongly disagree

☐ Don't know

Please provide any additional comments below.

The approach makes good sense. The only concern will be that nearly all issues in SNAP3 will be relevant and therefore this could increase the annual reporting burden (potentially increasing costs upon Local Authorities or displacing their focus).

To ease reporting burden, consideration should be given to whether adaptation is better reported over a longer time interval (e.g every 2 or 3 years). Given the formative nature of the Adaptation agenda, this may be more appropriate and for example would align with the timescale for public bodies biodiversity reporting. Emissions and Climate Change mitigation reporting should continue annually.

**9. Do you have any other comments about the guidance provided in this chapter (chapter 6) about complying with the second duty?**

Please give us your thoughts. For example, are there any gaps or are there ways that you think it could be improved.

No further entry at this stage.

**The third duty: acting in the most sustainable way**

**10. Having considered the content of the chapter (chapter 7), is it clear how public bodies should implement the third duty, to act in the most sustainable way?**

- ☐ Yes
- ☒ Partially
- ☐ No
- ☐ Don't know

Please give us your thoughts.

Many public bodies will be seeking to address this duty through their core Council Plans, through collaborations such as Community Planning or via Economic Development programmes. The guidance could be made more relevant if these are considered and examples outlined.

**11. Do you have any other comments about the guidance provided in this chapter (chapter 7) about complying with the third duty?**

Please give us your thoughts. For example, are there any gaps or are there ways that you think it could be improved.

As above – relevant links to Council programmes and activity could be expanded / exemplified.

**Reporting of scope 3 emissions**

**12. To what extent do you agree or disagree with the proposed baseline reporting of the scope 3 emission categories outlined in section 8.3.5.1 of the guidance?**

- ☐ Strongly agree
- ☒ Somewhat agree
- ☐ Neither agree nor disagree
- ☐ Somewhat disagree
- ☐ Strongly disagree
- ☐ Don't know

Please provide any additional comments below.

We have engaged in SSN hosted workshops with Scottish Government representatives and supported a proportionate (phased) approach to this new reporting requirement.

OIC would recommend that in addition, a 'comply or explain' principle is adopted in relation to scope 3 emission reporting.

**13. Do you think that any other categories of scope 3 emissions should be included in the recommended baseline for reporting, where these are relevant and applicable? Please tick all that apply.**

- ☐ Purchased goods, works and services
- ☐ Capital assets (e.g. construction)
- ☐ Upstream transportation and distribution
- ☐ Upstream leased assets
- ☐ Downstream transportation and distribution
- ☐ Processing of sold products
- ☐ Use of sold products
- ☐ End-of-life treatment of sold products
- ☐ Downstream leased assets
- ☐ Franchises
- ☐ Investments

If you ticked any of the categories of scope 3 emissions above, please provide an explanation. This field can also be used for any other comments related to this chapter.

The approach here should follow a principle of materiality. Bodies should be free to include sources relevant to their situation.

The guidance should address re-baselining, following addition of new sources.

**Overall reflections**

**14. Do you think that the guidance fulfils its stated purpose of providing support to public bodies in putting the climate change duties into practice?**

- ☒ Yes
- ☐ No
- ☐ Don't know

Please provide further comments below.

The guidance is thorough and references across to many wider guidance sources and standards (some of which are aimed at companies / sectors). In this regard, it is too extensive for some small public bodies and there would be value in producing a condensed guide. Without this, smaller public bodies will find the guide challenging.

As mentioned in the response at Q4, scenarios and planning for transitions could specifically benefit from simplified condensed guidance, tailored for public bodies.

### **15. Do you have any further comments about the guidance?**

Please give us your thoughts. For example, are there any gaps or are there ways that you think it could be improved.

As above - there would be value in producing a condensed guide.

It could be helpful for the guidance to outline a 'comply or explain' principle. This will let public bodies make realistic decisions about their capabilities based on their current resources. This also encourages open and honest (transparent) reporting. The guidance does in places reference such approaches, but it does not directly state a comply or explain principle. This could be considered.

The guidance should carefully consider whether adherence to certain standards might disincentivise some climate action by public bodies. An example is the situation with land-based projects and also consideration of carbon offsetting. Public bodies should not necessarily be expected to adhere to standards that are intended for the private sector. Such standards may be suitable as a working basis (e.g. to follow principles). In some very formative areas of climate action like the blue economy, there are emergent habitat restoration practices that could contribute to carbon sequestration and climate change mitigation. These and other innovations (e.g. public sector acting as a renewables generator) should be encouraged by the guidance. Strict adherence to some carbon accounting standards, can act to stifle such innovations.

The guidance references formative developments such as the Scottish Climate Intelligence Service (SCIS). This development will extend Local Authority reporting into area-based emissions and low carbon transitions. As well as supporting Local Authorities, this new service could have resource implications for Local Authorities.

The guidance could include the example of the Islands Centre for Net Zero - <https://www.icnz.org/> within the section addressing Growth Deals. In addition, the guidance does not reference the Carbon Neutral Islands initiative - <https://www.gov.scot/policies/renewable-and-low-carbon-energy/carbon-neutral-islands/>