**BUSINESS AND REGULATORY IMPACT ASSESSMENT**

The Climate Change (reporting on Climate Change Duties) (Scotland) Order 2015: to require specific public authorities to prepare standardised annual reports.

September 2015

**PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT**

Contents

**TITLE OF PROPOSAL**

**PURPOSE AND INTENDED EFFECT**

Background

Objective

Rationale for Government intervention

**CONSULTATION**

Development Phase

Within Government

Public consultation

Analysis of Consultation Responses

**OPTIONS**

Options proposed

Sectors and groups affected

**BENEFITS**

Options

**COSTS**

Options

Costs

**SCOTTISH FIRMS IMPACT TEST**

Competition assessment

Timing

**LEGAL AID IMPACT TEST**

**ENFORCEMENT, SANCTIONS AND MONITORING**

Background

Enforcement and sanctions

Monitoring

**TITLE OF PROPOSAL**

The Climate Change (Reporting on Climate Change Duties) (Scotland) Order 2015: to require specific public authorities to prepare standardised annual reports

**PURPOSE AND INTENDED EFFECT**

* For each financial year, a listed body must prepare a report on compliance with its climate changes duties.
* The listed body must send the report to the Scottish Ministers within a period of 8 months from the end of that year.

**Background**

1. The Scottish Government announced in July 2015 that the 2013 annual emission reduction target had been missed. This is the fourth consecutive year the annual target has been missed. Further action is required across a wide range of climate change activities, if our demanding climate change targets are to be met. The public sector in Scotland has a leading role to play in combatting climate change and accurately reporting progress and activity.

# Evidence gathered in support of Scottish Government Report on Proposals and Policies (RPP2) suggests that there is scope to significantly increase emissions reductions in the public sector. Statutory reporting, which relevant bodies are required to complete, is one area of climate change action where Scottish Government has powers to do more, but so far, has chosen not to do so.

**Objective**

1. The main objectives of the proposed policy, the use by Ministers of the powers in the Climate Change (Scotland) Act 2009 to introduce a statutory reporting requirement are to:

* support compliance with the Public Bodies Duties;
* consolidate climate change information from public sector;
* introduce a standard methodology to improve data consistency;
* encourage continuous improvement and transparency;
* improve board engagement and leadership action and inform Scottish Government strategic reporting and future policy/support.

**Rationale for Government intervention**

# Ministers intend to introduce a statutory reporting requirement for “major players” in the public sector. A robust reporting system will provide a more detailed picture of the sector’s overall performance, assessed and reported annually. Currently, most of the sector already collects data on a voluntary basis. Shifting to a statutory reporting requirement (referred to as ‘Required Reporting’ hereafter) will enable a consistent approach to be adopted by using a standard climate change reporting template and therefore develop an improved reporting system over time.

**CONSULTATION**

**Development Phase**

1. A public consultation on the proposal ran for 14 weeks opening on 20 February 2015 and closing on 29 May 2015. Views were sought on the introduction of a statutory requirement on public sector major players to report compliance with the climate change public bodies duties. The key driver to introducing a reporting requirement is to improve the quality and consistency of climate change information available to Scottish Ministers, policy officials and the public sector community itself.
2. We asked for views on the potential impact of the changes in reporting climate change progress and activity, including any concerns. We also welcomed comments on how the climate change reports should be annually validated, analysed and monitored in the future.
3. The consultation did not seek views on the provisions of the 2009 Act, as this is already in force. The aim of the consultation paper was to make clear what the statutory reporting requirement would entail and which organisations would be involved.

**Within Government**

1. Prior to the consultation Scottish Government officials consulted with Energy, Transport, Built Environment, Heat, Climate Change, Behaviour Change, ICT and Procurement colleagues to help develop the standard reporting template. Discussions also took place with Sustainable Scotland Network (SSN) and Convention of Scottish Local Authorities (COSLA) and the Environmental Association of Universities and Colleges (EAUC) on the level of data needed to inform future climate change policy, funding and support. The resulting template, which was co-produced with the Climate Leaders Officers Group (CLOG) captures information on key emission sources and supports emerging policy topics.

**Public consultation**

1. The Scottish Government identified a list of public sector major player organisations that would be required to report on compliance with the climate change duties. All public bodies listed as major players were directly alerted to the public consultation.
2. As well as directly contacting stakeholders with a known interest, the consultation was also promoted on the homepage of the Scottish Government website and via a Sustainable Scotland Network (SSN) members newsletter and other media routes.
3. The full consultation package was published in different formats on the Scottish Government website (<http://www.scotland.gov.uk/Consultations/Current>).

**Analysis of the Consultation Responses on the Business and Regulatory Impact Assessment (BRIA - Question 13).**

1. A draft Business and Regulatory Impact Assessment was enclosed as part of the consultation documentation. Question 13 of the questionnaire also sought views on potential business and regulatory impacts.
2. The BRIA question was worded - *“Do you think that the policy proposal presented may impact on business, the third sector (voluntary) or any other relevant areas”?* This question was open and invited narrative comments.
3. Out of 73 consultation respondents, 49 (67%) answered this question, of which 30 were organisations (a response rate of 59%) and 19 were individuals (a response rate of 86%).
4. Potential impacts from this policy proposal were identified by 42 of the 49 respondents to this question (57% of all consultation respondents). 7 respondents (10% of all respondents) did not foresee any impacts. The remaining 24 respondents (33% of all respondents) either did not respond or gave a response equivalent to ‘no comment’.
5. The main potential issues identified were: The adoption of lower carbon policies: several respondents suggested that, through this policy proposal, the public sector would be setting a good example to businesses and the third sector and encouraging them to adopt lower carbon policies and practices.
6. External consultancy opportunities: several respondents commented on potential opportunities for business and third sector organisations to support public bodies to establish systems to fulfil the new reporting requirements and undertake the reporting itself, as well as with actions to reduce carbon emissions.
7. Procurement resource implications: several respondents highlighted the issue of public sector procurement and contracts between public bodies and business and third sector organisations. It was suggested that additional management information was likely to be required to enable the calculation of carbon emissions arising from such contracts. This would have resource implications for the contractors. Guidance was requested on what could reasonably be requested from contractors.
8. Financial Savings: a small number of respondents mentioned the potential for this proposal to generate savings through improving business understanding of resource use; to help identify areas for potential savings, both financial and environmental; to stimulate sectors such as energy efficiency appliances; and ultimately to lower energy bills.
9. Improved availability of environmental information: was mentioned here by a small number of respondents in terms of potential benefits to the specific sectors mentioned in the question.
10. Waste of money and time: several respondents, all individuals, considered this a potential impact of the proposal. Around half of those respondents also expressed scepticism about climate change in principle.
11. Area-wide emissions – abolition of reporting: 1 respondent commented that this would have a negative impact on the sectors specified in the question.

**OPTIONS**

**Options proposed**

1. In considering how best to address the range of objectives identified in paragraph 3 above and the views of respondents as set out in the consultation responses, three possible options were identified:

* Option 1 – Doing nothing;
* Option 2 – Continue with a voluntary approach to public sector climate change reporting and improve the reporting guidance;
* Option 3 – Use the powers in the Act to introduce a statutory requirement for relevant public bodies to report on compliance with the climate change public bodies duties.

**Sectors and groups affected**

1. Sectors and groups affected include:
   1. Public Bodies – major players managing the use of publically funded resources should not be subject to loss of amenity and facilities as a consequence of the policy proposals.
   2. Sustainable Procurement – professional staff procuring products, services and properties could benefit from reduced overall costs as a result of striving for increased sustainability performance through improved policies, procedures and practices generated by the requirement to publically report annual progress and activity.
   3. Scottish Government – the sponsorship of public sector support services such as Adaptation Scotland, Resource Efficient Scotland, Energy Saving Trust and the Sustainable Scotland Network may see an increase in service uptake for policy and technical support from major players.
   4. Validation – public sector auditors may have to train staff in relevant areas of data capture and management to enable accurate and consistent information to be reported annually under the reporting requirement;
   5. Consultancy Network in Scotland - Some major players may need to commission private sector consultants to help develop and produce climate change reports. The consultancy network in Scotland could find it difficult to respond to demands for specialist climate change services at peak times of the reporting year.

**BENEFITS**

1. The policy proposals relate to changes to existing climate change reporting to support required (mandatory) reporting of climate change duties compliance. When assessing the effectiveness of the three options above to achieve the desired outcomes indicated in paragraph 3 the following observations were made:

**Option 1 – Benefits**

1. This option offers no benefits. There would be no improvement or other gains to climate change reporting information and techniques. No significant improvements would be evident in climate change information available to Ministers. This option would not address any of the issues identified in paragraph 4 above.

**Option 2 – Benefits**

1. Any benefits gained by a continued voluntary approach and the introduction of updated and improved guidance would be wholly dependent on the level of use of that guidance. Benefits would, at best, be identical to those possible under option 3, but only in respect of those practitioners who chose to adopt new methods in line with the guidance.

**Option 3 – Benefits**

1. The achievement of the objectives set out in paragraph 3 could be realised. Multiple benefits through improved practices would be accrued as a result of a statutory reporting requirement being introduced. Although most major players already report climate change or sustainability information annually, a small minority do not publish any climate change information. This policy proposal will enable all major players to formally report their compliance with the climate change public bodies duties in an open fashion and demonstrate robust management of public funds and climate change action.

**COSTS**

**Option 1 – Do nothing.**

1. There would be no direct cost arising from this option. However this option would not improve climate change reporting by public bodies. Inconsistency would remain with regard to application of the reporting guidance and the level of reporting that occurs. Such an arrangement is considered untenable by Scottish Ministers and members of the Public Sector Climate Leaders Forum.

**Option 2 – Continue with a voluntary approach to public sector climate change reporting and improve existing reporting guidance.**

1. Where a person chooses to follow the advice in the reporting guidance, the cost implications would be similar to those of option 3. However, it would be difficult to envisage how effective this option would be and what improvements would result that would meet the objectives in paragraph 3.

**Option 3 - Use the powers in the Act to introduce a statutory requirement for relevant public bodies to report on compliance with the climate change public bodies duties.**

1. Most public bodies have been reporting climate change information over recent years and already have experience in this area. These public bodies will nevertheless need to allocate staff resources to collect and record the relevant information requested in the new required reporting form. Although discretionary, some less experienced bodies new to reporting may decide to employ private sector services to assist in the production of an annual report.

1. However, commissioning private sector companies to provide these support services will have time and cost implications which could be considered prohibitive and therefore restrict such action. This potential outsourcing may also diminish over time as major player expertise develops and data capture procedures are established. Taking the above factors into account, it is anticipated that a very limited number of public bodies will commission private sector consultants.

**Estimated cost of “Required” reporting**

1. There are approximately 150 public bodies identified as major players, each of whom would be expected to report climate change information annually. The time spent by each public body will vary greatly depending on the level of capability in preparing and validating the relevant climate change data.
2. According to the Scottish Corporate Sector Statistics 2013, there are approximately 343,105 enterprises in Scotland includes the self-employed. This proposal impacts directly on a very small subset of these (150 public bodies) It is expected that most public bodies will enlist the free help of the Scottish Government sponsored Sustainable Scotland Network, Adaptation Scotland or Resource Efficient Scotland advisory services, in preference to commissioning a private sector consultant at cost.

1. It was clear from the consultation, that respondents found it very difficult to put a figure on the amount of additional time to be allocated beyond their current level of voluntary reporting. Given we do not know at this stage how many, if any, major players will outsource all or part of the reporting work, it is difficult to assess the impact on business. However, it could be assumed that a small number of players who are new to reporting climate change information may commission the preparatory work which could have a positive impact on the consultancy market in Scotland.
2. From a Scottish Government policy perspective, any staff costs incurred in monitoring the submitted climate change reports or contributing to the further development of reporting guidance, would be absorbed into the running costs of the Climate Change Hub of Scottish Government.

**SCOTTISH FIRMS IMPACT TEST**

1. The Scottish firms impact test regards all firms with fewer than 50 full time employees as being small businesses and those with less than 10 as micro businesses. Guidelines state that a concerted effort should be made to consult small and micro businesses over policy proposals. As stated above in paragraph 34, this proposal will impact on only a small subset of Scottish business, the public bodies specified as major players in Scotland.
2. The public consultation enabled interested parties, including small and micro business to respond during the public consultation period. Consultation responses were analysed and considered as part of the final BRIA. Given the proposals to introduce required reporting of climate change information is aimed at a small subset of public bodies and does not directly involve the business sector, it is anticipated that the proposals will have little impact on businesses.

1. There is a possibility that a small number of public bodies, new to this type of reporting, may choose to employ consultants to undertake work to produce climate change reports. This is a discretionary matter for those public bodies and as such, remains uncertain at this time. However, it is clear, that if certain public bodies choose to outsource this work, it could result in the increased uptake of consultancy services and result in a positive impact on private sector businesses between 1 April and 30 November each year, when major players are required to report climate change information in accordance with the public bodies duties.

**Competition Assessment**

1. It is not envisaged that any of the aspects identified in this assessment will impact significantly on competition between companies. We are satisfied the policy proposal to introduce a climate change reporting requirement will not significantly impact on competition within the market.

**Timing**

1. In support of this policy proposal, a standard climate change reporting form for major players has already been made available to public bodies on a trial basis for their 2014/15 reports. Following consultation, and subject to Parliamentary scrutiny, Minister’s propose that the mandatory reporting requirement will then apply from 2015/16 onwards, with the first required reports due by 30 November 2016.

**LEGAL AID IMPACT TEST**

1. It is not envisaged that there will be any additional demands placed on the legal system by this proposal. Accordingly, it is not considered that there will be any effect on individuals' right of access to justice through availability of legal aid or on possible expenditure from the legal aid fund.

**ENFORCEMENT, SANCTIONS AND MONITORING**

1. All matters relating to enforcement, sanctions and monitoring will be considered within the powers in the Climate Change (Scotland) Act 2009.

**Enforcement and sanctions**

1. Any future introduction of penalties for non-compliance by a major player with the Climate Change Public Bodies Duties will be considered based on the provision in the Climate Change (Scotland) Act 2009. Enforcement powers under the Act on compliance with the public bodies duties will be considered based on the views of the consultation respondents and Scottish Government climate change policy staff.
2. The current Scottish Government intention is for supportive rather than punitive action to be taken, in the case of a major player being unable to demonstrate compliance with the public bodies duties.

**Monitoring**

1. The Scottish Government is committed to monitoring the effectiveness of “Required” reporting, based on the analysis of the climate change reports submitted. A climate change public sector report will be produced and presented to the Public Sector Climate Leaders Forum (PSCLF) annually. The sector report will be used to inform future SG policy and support.
2. Contact: Howard Steele, Scottish Government Climate Change – Public Bodies Duties Team. E-Mail - [howard.steele@scotland.gsi.gov.uk](mailto:howard.steele@scotland.gsi.gov.uk)