

# NATURE CONSERVATION (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 - Biodiversity**

##### *Section 1 Duty to further the conservation of biodiversity*

23. **Section 1** places a general duty on public bodies and office-holders to further the conservation of biodiversity.
24. Public bodies and office-holders (collectively referred to in these Notes as “public bodies”) are defined in section 58(1) as including all bodies which carry out functions of a public nature. Courts, tribunals or other bodies exercising judicial power are not, however, public bodies for the purposes of the Act. The Act extends to all public bodies which operate in Scotland.
25. All public bodies are required to comply with the duty when exercising any functions. The duty does not, however, override the proper exercise of those functions. This means that public bodies have a legal obligation to further the conservation of biodiversity in the course of carrying out their functions.
26. In exercising the duty, public bodies must have specific regard to the 1992 Rio Convention on Biological Diversity and to any Scottish Biodiversity Strategy designated by the Scottish Ministers under section 2 of the Act. Whilst compliance with the duty is obligatory, public bodies may have significant discretion in relation to the particular action which they consider to be necessary in any particular situation. The new duty is not intended to be narrow or prescriptive, but the purpose of it is to place the onus on public bodies to take direct responsibility for the impacts which their policies and operations may have on the natural environment.
27. Although the Act itself confers no extraterritorial powers, it should be noted that the duty to conserve biodiversity is not limited solely to the biodiversity of Scotland. It applies to biodiversity in a global sense and public bodies in Scotland do therefore need to consider the effect of decisions taken, or activities carried out, within Scotland insofar as those decisions or activities may have implications in relation to biodiversity conservation outwith Scotland. This might be illustrated by the example of a public body in Scotland which is considering whether to purchase products made from materials sourced from a tropical rainforest. The biodiversity implications of that purchasing decision would need to be considered by the public body.