

# Scotland's Climate Change Plan – emerging implementation issues

## Joint Briefing, June 2024

### Summary

This joint briefing summarises the unresolved issues raised in three recent representations made to Environmental Standards Scotland (ESS) which concerned the Scottish Government's emissions reduction targets and the policies to meet them. These cases have relevance to both the Scottish Government's recent decision to amend its legal emissions reduction targets,<sup>1</sup> and the development of its upcoming Climate Change Plan (CCP).<sup>1</sup> Our assessment of the evidence highlights the importance of a rigorous and transparent approach to data monitoring, reporting, and assessment of progress towards delivery. Such an approach might have avoided recent policy failures. Forthcoming legislation and the new CCP are opportunities to embed improved monitoring, reporting, scrutiny and transparency.

### Introduction

The Environmental Rights Centre for Scotland (ERCS) carries out advocacy in policy and law reform to improve environmental rights and compliance with the Aarhus Convention on access to information, public participation in decision-making, and access to justice on environmental matters.

Stop Climate Chaos Scotland (SCCS) is a diverse coalition of over 70 civil society organisations campaigning together on climate change in Scotland. Its campaigns call for the Scottish Government to take bold action to tackle climate change, with Scotland delivering our fair share of action to limit global temperature rises to 1.5 degrees, championing international climate justice and inspiring others to take action.

This joint briefing summarises the unresolved issues raised in three recent representations relating to the Scottish Government's emissions reduction targets, both of which were submitted to Environmental Standards Scotland (ESS), an independent body set up to ensure the effectiveness of environmental law, and public authorities' compliance with it.

### Case 1: Breach of Section 94 of Climate Change Act

In March 2023, ERCS submitted a representation to ESS<sup>1</sup> highlighting the failure of the government to meet statutory duties under section 94A(2) of the Climate Change (Scotland) Act 2009, to publish an assessment of the extent to which investment in accordance with the Government's Infrastructure Investment Plan (IIP) is expected to contribute to the meeting of emissions reduction targets.

The Scottish Government's IIP for the 2021-2026 term outlines £26bn of investments in projects and programmes around Scotland, such as health and transport infrastructure.<sup>2</sup> It emphasises the Government's commitment to net zero and highlights investments in the natural environment. But until an intervention from ERCS, no assessment of emissions generated by the plans was published or publicly available.

Following ERCS's representation, on 31 August 2023, ESS wrote to the Scottish Government to invite them to work with ESS to pursue 'informal resolution'. Given the time delay and deeming this response to be insufficient, ERCS partnered with Good Law Project (GLP) to write to the Scottish Government informing it that ERCS and GLP would go to court if the breach was not remedied.<sup>3</sup>

Following that letter, in September 2023 the Scottish Government accepted it was in breach of its duties and promised to undertake 'urgent work' to provide a new assessment calculating how infrastructure spending would impact on Scotland's emissions reduction targets. In January 2024, the Government published its assessment,<sup>4</sup> and following this, ESS published an informal resolution report concluding that the Government had now discharged its duties.<sup>5</sup>

Given an assessment has now been published, it notionally addresses the breach and so ERCS and GLP reluctantly agreed to halt legal proceedings because of the prohibitive cost of legal action and 'the loser pays' rule.<sup>6</sup> However, ERCS and GLP wrote to the Government stressing that the assessment is clearly insufficient to discharge the S94A duty, for the following reasons:

- **Failure to assess with respect to annual climate targets:** S94A(2) requires the publication of an assessment with respect to meeting 'the emissions reduction targets', defined in S98 of the 2009 Act as, "(a) an annual target, (b) an interim target, or (c) the net-zero emissions target". Yet there is no reference to annual targets in the assessment.
- **Arbitrary assessment methodology:** The methodology for the taxonomy approach adopted in the assessment is unclear. There is very little explanation as to how the Scottish Government categorise the impact of a project, and the analysis in their 'carbon taxonomy categorisation' appears arbitrary – there is very little reasoning to justify their categorisation of each project.
- **Absence of quantification of emissions:** There is no quantification of any emissions expected from investment in accordance with the IIP.

## Case 2: Breach of Section 36 of Climate Change Act

In March 2024, ERCS submitted a new representation to ESS identifying a further breach of duty under the Climate Change (Scotland) Act 2009, concerning the Government's failure to publish a Section 36 report on policies and proposals for emissions reduction where annual targets not met.<sup>7</sup> This report is important as it is supposed to set out measures to compensate in future years for any excess emissions released.

A Freedom of Information (FOI) request revealed that no Section 36 report has yet been prepared or laid before the Scottish Parliament. However, in May the Scottish Government confirmed its intention to publish the report before Parliamentary recess on 29 June 2024. ERCS has recommended that ESS pause any further work on this representation pending publication of the report.

### Case 3: Climate Change Plan Update

There have been longstanding concerns about the effectiveness of the current process for identifying and implementing policies to deliver on emissions reduction targets. This concern arises, not least, from the regular failure to meet targets.<sup>8</sup> In part to address this concern, in April 2023 SCCS made a representation to ESS on the effectiveness of the previous CCP.<sup>9</sup> This sought to subject the previous CCP/CCPu, and the procedures for its development and adoption, to scrutiny, with a view to securing recommendations that might improve the next CCP.

On 28<sup>th</sup> February 2024, ESS published its initial findings and recommendations.<sup>10</sup> In their summary report, ESS concludes “there is clear evidence that the CCPu failed to meet the requirements of Section 35(5) of the 2009 Act to quantify the emission reductions associated with all individual proposals and policies.” ESS expects the next Climate Change Plan to address this failure:

*“In addition, the next Climate Change Plan must:*

- *set out clear timelines for individual proposals and policies*
- *establish clear ownership and responsibility for individual proposals and policies*
- *incorporate all the new reporting requirements introduced in the 2019 Act*
- *address unresolved recommendations from previous parliamentary committee and CCC scrutiny of the CCPu*
- *allow sufficient time for scrutiny of the draft and incorporate feedback before finalisation.”*

SCCS warmly welcomed ESS’s five positive recommendations for the next Climate Change Plan – a critical document that must now set out fair and fast new actions to get climate action in Scotland fully on track. The Scottish Government must quickly adopt and adhere to these recommendations, and in particular, ensure that the next Climate Change Plan clearly quantifies how the Government’s policies will contribute to emission reductions and ensure Scotland’s rightly ambitious climate targets are met.

It is clear that there were some critical failures to comply with legal requirements in the production of the last Plan, which is the blueprint for delivering Scotland’s emission cuts. Such failings led to a weaker, less effective Plan, likely contributing to failures to meet annual climate targets and, unless addressed, will mean future targets are in jeopardy.

## Discussion - implications for future climate action

The Committee on Climate Change's recent review of progress towards Scotland's climate targets concluded that 'the acceleration required in emissions reduction to meet the 2030 target is now beyond what is credible'.<sup>11</sup> While this has long been suspected, this was the first 'official' recognition – and the Scottish Government's response, on 18 April 2024, was to announce a revision to the statutory targets framework and a further delay to the next CCP.<sup>12</sup>

This situation raises a number of questions, including: how did the Scottish Government reach this point, and why is it failing to deliver promised reforms at the speed and scale required? And more importantly, if Scotland is to get back on track and meet net zero targets, what needs to change in the future?

The cases discussed here relate to those involving representations for SCCS or ERCS. These and other cases<sup>13</sup> illustrate why the lack of action that has allowed targets to be missed and underscore the need to strengthen reporting duties and develop transparent mechanisms to evaluate progress as part of a credible delivery plan. Effective policy implementation will require enhanced data transparency, robust reporting, and accurate assessment methodology. Such measures can strengthen trust and accountability, help to identify any gaps or problem areas early on, and improve learning on how to maximise progress in the transition to net zero.

## Recommendations

To get emission reductions back on track, the Scottish Government should:

- **Ensure that any revised targets framework retains a credible pathway to net zero by 2045**, supported by an improved monitoring, reporting, scrutiny and transparency regime to aid implementation;
- **Apply Measurable, Ambitious, Transparent, Credible, Holistic (MATCH) criteria** to develop robust emissions assessment methodology and provide quantifiable data for objective climate impact assessments;
- **Introduce new reporting duties in the upcoming Climate Change Plan** to improve transparency and effective public scrutiny; and
- **Enhance and respond positively to scrutiny by the Scottish Parliament and consultation with the public** – including via the proposed "new [climate] assembly/participative process."<sup>14</sup>

## For more information contact

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- <sup>1</sup> ERCS (March 2023) [ERCS representation to ESS: Assessment of climate impact of Infrastructure Investment Plan, Climate Change \(Scotland\) Act 2009, Section 94A.](#)
- <sup>2</sup> Scottish Government (Feb 2021) [A National Mission with Local Impact: Infrastructure Investment Plan for Scotland 2021-22 to 2025-26](#)
- <sup>3</sup> ERCS (Sept 2023) [Scottish Government faces legal action over missing climate assessment – press release](#)
- <sup>4</sup> Scottish Government (January 2024) [Infrastructure investment plan 2021-2022 to 2025-2026: carbon assessment](#)
- <sup>5</sup> ESS (Feb 2024) [The Scottish Government’s compliance with its duty to publish an Infrastructure Investment Plan assessment](#)
- <sup>6</sup> See ERCS (July 2022) [Evaluation of Scotland’s Action Plan on access to environmental justice](#) and ERCS (Nov 2021) [Recommendations for a plan of action on judicial expenses](#)
- <sup>7</sup> ERCS (March 2024) [ERCS representation to ESS: Failure to publish S36 Report](#)
- <sup>8</sup> At the time that the submission was made, the CCC was [reporting that](#) “the Scottish Government has failed to achieve 7 of the 11 legal targets”; it has now become [8 out of 12](#)
- <sup>9</sup> SCCS (April 2023) [Stop Climate Chaos Scotland representation to ESS: The preparation and implementation of Climate Change Plan\(s\)](#)
- <sup>10</sup> ESS (Feb 2024) [Case Summary: Consideration of the effectiveness of the Scottish Government’s Climate Change Plan](#)
- <sup>11</sup> Climate Change Committee (March 2024) [Progress in reducing emissions in Scotland: 2023 Report to Parliament](#)
- <sup>12</sup> Scottish Government (April 2024) [Climate Change Committee Scotland report - next steps](#), Net Zero Secretary statement, 18 April 2024
- <sup>13</sup> Such as ESS (Dec 2023) [Climate change delivery investigation: Improvement report](#)
- <sup>14</sup> Scottish Government (April 2024) [Letter from Net Zero Secretary to Convenor of the Net Zero, Energy and Transport Committee](#), 18 April 2024