

ENVIRONMENTAL

Standards Scotland

Ìrean Àrainneachdail na h-Alba

An investigation into the systems in place to support local authorities in the delivery of climate change targets

Body under investigation – Scottish Government

Reasons for investigation – Carbon emissions contribute to climate change, threatening human populations, habitats and wildlife. The Scottish Government declared a climate change emergency in May 2019, and the Scottish Parliament passed updated legislation to introduce a 2045 target for Scotland to achieve Net Zero, or carbon neutrality. The target, and associated milestones towards Net Zero, are ambitious and challenging. At the time of introduction, this was the most stringent legislative Net Zero target in the world and public bodies in Scotland, including local authorities, are required by the Climate Change (Scotland) Act 2009 (“the 2009 Act”) to ‘act in the way best calculated’ to contribute to the delivery of climate targets.

The 2009 Act is designed specifically for different organisations to have a role in ensuring the system in place to achieve climate change targets operates effectively. For example, Scottish Ministers must give guidance and support to public bodies in how they operate their duties, public bodies are obliged to implement and report on these duties and bodies can be designated to monitor and investigate compliance with the duties.

ESS received a representation alleging that Scottish Ministers do not provide sufficient support for local authorities, do not adequately scrutinise reporting and that Scottish Ministers and local authorities have not fulfilled their legal responsibility to act where failures to meet targets have occurred.

The consequences of not meeting climate change targets are serious, and it is crucial that public bodies meet their environmental responsibilities and that robust systems are in place to help achieve this. In light of this, and given the scale of emissions which local authorities are directly responsible for, or have levers to influence, the ESS Board have taken the decision to launch an investigation into the effectiveness of the systems in place to support local authorities in their duty to contribute to the delivery of climate change targets.

Current status – Notification to body under investigation

Q&A

Who will ESS seek information from during its investigation?

Public authorities are under a duty to co-operate with ESS and we have significant powers to require information from them. Given the number of actors involved, there may be a number of public authorities holding information relevant to our

investigation. Although the Scottish Government is the principal body under investigation, ESS will also obtain relevant information from any public authority which we identify as holding it and it is likely we will seek information from local authorities in this connection. We are also keen for anyone who believes they have relevant information to get in touch with us.

How will you investigate?

The investigation will progress through various stages, from initial planning to devising lines of enquiry and seeking information, after which all of the information we receive will be carefully analysed. We will thereafter draw our conclusions, seeking expert advice should this be considered necessary.

How long will the investigation take?

It isn't possible to fully assess the complexity of this investigation in advance and so providing a general timescale is difficult. Having said this, we will endeavour to work as quickly and efficiently as possible and will provide relevant parties with an estimate of the completion date of each investigation as soon as we can.

Will parties be updated on the progress of the investigation?

Yes – all relevant parties to an investigation will be regularly updated on our progress. A dedicated staff member will also be available should relevant parties have any questions or queries in this regard.

Will you issue a report of your findings?

Yes – ESS intends to work openly and transparently. At the conclusion of our investigations we will issue draft reports to relevant parties for comment, after which we will finalise and publish on our website.

What are the possible outcomes of your investigation?

Our governing legislation requires us to set out how we intend to engage with the public authorities we investigate with a view to swiftly resolving matters without recourse to our formal powers (what we call 'informal resolution'). As informal resolution can be a relatively quick and efficient way of securing appropriate outcomes, we will actively consider this option throughout the life of an investigation. ESS also has significant formal enforcement powers and, where we find a public authority has not complied with environmental law, we can issue a compliance notice which the public authority must implement. We can also issue improvement reports which must be acted upon through the submission of an improvement plan to Parliament.

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