

Case ID: IESS.23.020

Description: Consideration of the effectiveness of the Scottish Government’s Climate Change Plan

Case Summary

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| <p>What was the issue?</p> | <p>Environmental Standards Scotland (ESS) received a representation raising concerns that the Scottish Government’s previous Climate Change Plans had been insufficient, as evidenced by multiple failures to meet statutory greenhouse gas emission targets.</p> |
| <p>What did ESS do?</p> | <p>ESS accepted the case for ‘pre-investigation’. ESS reviewed existing scrutiny of past Climate Change Plans to identify themes and issues where ESS may consider using its enforcement powers to pursue improvement.</p> |
| <p>What was ESS’ conclusion?</p> | <p>ESS agrees with the findings regarding past Climate Change Plans from parliamentary committees, the Climate Change Committee and Audit Scotland. ESS considers that the Scottish Government’s most recent Climate Change Plan did not fully meet statutory requirements to: (1) provide quantified emission reductions for individual proposals and policies and (2) provide clear timelines for all proposals and policies. The effectiveness of the Scottish Government’s monitoring and delivery of proposals and policies is also a potential concern to ESS.</p> <p>In 2019, legislation introduced new reporting requirements for future Climate Change Plans. The most recent plan (2021) was not required to meet all of these.</p> <p>The Scottish Government is currently preparing a draft of its next Climate Change Plan. If the draft of the next Climate Change Plan is not compliant with statutory requirements (including those introduced in 2019) or poorly implemented, ESS will consider further intervention at that time.</p> |

Background

The Climate Change (Scotland) Act 2009 ('the 2009 Act') established a framework for reducing greenhouse gas emissions in Scotland. It included mandatory emission reduction targets. The 2009 Act requires Scottish Ministers to produce a plan every five years setting out how the emissions reductions targets would be achieved.

Following Section 35 of the 2009 Act, these plans were known as reports on proposals and policies (RPP). The first three plans delivered under these obligations were RPP1 (2010), RPP2 (2013) and RPP3 (2018).

The 2009 Act required a Climate Change Plan to include:

- Scottish Ministers' proposals and policies for meeting the emissions reduction targets
- the timescales over which the proposals and policies will take effect
- the contributions of each proposal and policy towards meeting emissions reduction targets. These had to be broken down across four areas (energy efficiency, energy generation, land use, and transport)¹
- how the Scottish Government expects its proposals and policies to affect different sectors of the Scottish economy
- an assessment of the progress towards implementing proposals and policies set out in earlier reports (amended in 2019 to include only the 'immediately preceding plan')

The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 ('the 2019 Act') amended the 2009 Act. Section 35 was retitled 'Climate Change Plan'. The 2019 Act also brought the date by which net zero has to be achieved forward to 2045 and modified interim emission reduction targets. The 2019 Act required:

¹ The 2019 Act amended this requirement to seven sectors: (a) energy supply, (b) transport (including international aviation and shipping), (c) business and industrial process, (d) residential and public (in relation to buildings in those sectors), (e) waste management, (f) land use, land use change and forestry, and (g) agriculture

- in addition to the seven sectors,¹ Scottish Ministers' proposals and policies to be set out across a number of themes. These include establishing regional land use partnerships, development of district heating, public procurement of ultra-low emission vehicles, and whole farm approach to emissions accounting
- estimates of the costs and benefits associated with the proposals and policies
- the incorporation of the principles of just transition and climate justice
- demonstration of how the plan will contribute to sustainable development

The Scottish Government updated RPP3 (2018) in 2020. The revision is referred to as the Climate Change Plan Update ('the CCPu'). The draft CCPu was laid in the Scottish Parliament on 16 December 2020 and was scrutinised by four parliamentary committees. These committees collectively made 166 recommendations to the Scottish Government.² However, in March 2021, the Scottish Government finalised the CCPu without any amendments, citing the limited amount of time until the pre-election period ahead of the Scottish Parliament election in May 2021. The Scottish Government published a letter on 24 March 2021 with its responses to the committees' recommendations.³ It deferred to the next government to address a number of outstanding issues. It also cited uncertainties relating to the Covid-19 pandemic and the United Kingdom's exit from the European Union as limiting its ability to report on certain matters within the CCPu.

The Climate Change Committee ('the CCC') is the independent body with a statutory role to provide expert advice to the Scottish Government on emissions reduction targets and on Scotland's progress in reducing emissions. The CCC provided an assessment of the CCPu in December 2021 and made 70 recommendations to the

² [Environment, Climate Change and Land Reform Committee letter dated 17 March 2021](#)

[Rural Economy and Connectivity Committee letter dated 4 March 2021](#)
[Economy, Energy and Fair Work Committee undated document titled 'Climate Change Plan'](#)

[Local Government and Communities Committee letter dated 4 March 2021](#)

³ [Cabinet Secretary for Environment, Climate Change and Land Reform letter dated 24 March 2021](#)

Scottish Government. In its May 2022 response, the Scottish Government accepted 66 of these recommendations fully or partially and identified the next Climate Change Plan as the mechanism for addressing a number of the recommendations.⁴

In April 2023, Audit Scotland published a performance audit focused on how the Scottish Government is set up to deliver climate change goals.⁵ This was not a direct review of the CCPu, but was more broadly focused on governance and risk management. Some of its findings related to the content of the CCPu and its implementation.

Section 35(1)(a) of the amended 2009 Act requires the next Climate Change Plan to be approved by the Scottish Parliament by 23 March 2025. This is five years from when the 2019 Act came into force. The Scottish Government committed, in the Bute House Agreement,⁶ to provide a draft Climate Change Plan during the first half of the current parliamentary session (by the end of November 2023). However, in November 2023 the Scottish Government announced a delay, citing the UK Government's changes in net zero commitments as having repercussions on Scotland's strategy. The Scottish Government has not provided a new timetable for publishing the draft Climate Change Plan, stating only that progress will be made in line with statutory deadlines.

The next Climate Change Plan must meet all of the amended reporting requirements introduced by the 2019 Act. The Scottish Parliament's Session 5 Environment, Climate Change and Land Reform Committee (ECCLR Committee) acknowledged that the 2021 CCPu did not have to incorporate all the new requirements of the 2019 Act, as it was an update of the 2018 Climate Change Plan.

Section 33 of the 2009 Act requires annual monitoring reports to be laid in the Scottish Parliament which compare actual emissions to the emission reduction targets. These reports rely on published Official Statistics on Scottish greenhouse

⁴ [The Scottish Government – Response to the Climate Change Committee Progress reducing emissions in Scotland – 2021 Report to Parliament, May 2022](#)

⁵ [Audit Scotland – How the Scottish Government is set up to deliver climate change goals, April 2023](#)

⁶ [Scottish Government and Scottish Green Party – draft shared policy programme, November 2021](#)

gas emissions. These are published annually (typically in June) two years in arrears. The most recent data is for 2021 (published in June 2023) and demonstrates that the Scottish Government missed its target of reducing emissions by 51.1% against a 1990 baseline by 1.2%. While the Scottish Government met its target in 2020, the CCC described the emissions reductions achieved that year as 'transient' and relating to pandemic restrictions. Between 2010 and 2021, Scotland failed to meet its annual emissions reductions targets eight times.

Summary of concerns reviewed by ESS

The representation received by ESS states that, as emissions reductions targets have been missed, the proposals and policies in RPP3 and its update, the CCPu, have been insufficient. It contends that the Scottish Government is at significant risk of not meeting its upcoming targets. The organisation which submitted the representation therefore believes that potential issues exist with:

- the effectiveness of Part 3 of the 2009 Act
- the Scottish Government's implementation of Part 3 of the 2009 Act, and/or
- the Scottish Government's compliance with Part 3 of the 2009 Act

The representation did not specify failings or weaknesses with individual policies within RPP3 and the CCPu. It suggested that the Scottish Government's failure to implement ideas from stakeholders and respond to past recommendations from parliamentary committees contributed to the failure to meet targets. It also noted that a number of recommendations from parliamentary committees had been left for the current Scottish Government to respond to and that no visible progress had been made on these.

The representation asked ESS to carry out an investigation (including a retrospective review of previous Climate Change Plan efforts) to identify 'lessons learnt' and ensure that the next Climate Change Plan is as comprehensive and effective as possible.

Assessment

In response to the representation, ESS sought to determine where it could add value without duplicating existing scrutiny work. ESS also looked at where it might use its powers of enforcement should the new Climate Change Plan not meet all the requirements of the 2009 Act and the 2019 Act. ESS' pre-investigation work has focused on reviewing the existing scrutiny work by the parties noted above and the Scottish Government's responses to the recommendations made by those parties.

The majority of the recommendations relate to specific proposals and policies to meet climate change targets (examples: peatland/forest restoration rates, the planned use of negative emissions technologies for abatement,⁷ strategies to reduce private car use, delivery of low-carbon heating). The statutory emissions reductions targets may be achieved by the combined reductions arising from the implementation of all proposals and policies. Other organisations, and especially the CCC, are better placed to analyse individual proposals and policies and to advise the Scottish Government accordingly.

ESS' assessment has focused on the recommendations which relate to structural or governance issues, taking into account relevant statutory duties and the effectiveness of the implementation of environmental law. These fell into three categories:

Recommendations relating to 2009 legal duties. There were two primary issues in this category which point to a potential failure to comply with environmental law:

- four parliamentary committees, the CCC and Audit Scotland concluded that the CCPu failed to meet the requirement to present the contributions of each proposal and policy to meeting the emissions reduction targets. This issue originated in RPP3 when the Scottish Government introduced 'emission envelopes' – reduction targets for different sectors developed by modelling –

⁷ The CCPu defines Negative Emissions Technologies (NETs) as 'technologies which remove greenhouse gases from the atmosphere on a permanent basis through the use of carbon capture and storage (CCS) systems and networks'. The CCPu states NETs 'will play an important part in the pathway to net zero, compensating for the residual emissions in hard-to-decarbonise sectors, such as agriculture and international aviation'.

and was carried through to the CCPu. RPP3 and the CCPu did not provide the contributions of each proposal and policy towards meeting the envelopes. ESS also reviewed the findings of the English High Court case *Friends of the Earth, ClientEarth, Good Law Project v. Secretary of State for Business, Energy and Industrial Strategy*. This found that the UK Government's net zero strategy failed to quantify the abatements associated with all its plans and policies and ordered the UK Government to publish an updated strategy

- two parliamentary committees identified the lack of timelines for some proposals and policies. This applied to more 'tentative' plans and policies – e.g. those seeking to develop, consult, research, explore and engage with stakeholders

Recommendations relating to 2019 legal duties. ESS considered 18 recommendations from parliamentary committees relating to statutory duties or requirements introduced in the 2019 Act. Although, as noted above, the Scottish Government was not required to meet these in the CCPu. The Scottish Government must meet these in the next Climate Change Plan.

Recommendations relating to implementation. These covered topics broader than specific proposals and policies and related to implementation, application of environmental law, or governance. ESS evaluated each of the 18 recommendations for its compatibility with ESS' remit and added value. Following this evaluation, ESS identified one general theme of concern:

- both the ECCLR Committee and Audit Scotland noted concerns regarding the monitoring framework, the governance arrangements for monitoring progress and ownership of the responsibilities to deliver the CCPu proposals and policies. This suggests a potential issue with the effectiveness of environmental law or how environmental law is implemented by the Scottish Government

ESS considers that there is clear evidence that the CCPu failed to meet the requirements of the 2009 Act to quantify emission abatements for all proposals and policies. The Scottish Government acknowledged the absence of abatement contributions in response to ECCLR's recommendations, stating 'it has not been

feasible to conduct emissions assessments of every policy and proposal given the uncertain context in which the plan was developed'. The Scottish Government stated its intention to provide quantified abatements in the next Climate Change Plan in its response to the CCC, stating, 'our plan for the next Climate Change Plan, which is due to be published in draft in late 2023, is to include emissions abatement in this assessment, and to be as transparent and granular as possible'.

The Scottish Government's responses to recommendations relating to the absence of timescales note uncertainties caused by the Covid-19 pandemic and the United Kingdom's exit from the European Union and, in response to the ECCLR Committee in March 2021, it deferred to the next government to consider this.

In September 2021, the Scottish Government provided assurances that all the parliamentary committees' recommendations will be considered and incorporated in the next Climate Change Plan.⁸

Conclusion

There has been considerable scrutiny of the system of climate planning and reporting. The Scottish Government deferred resolution of many issues identified by this scrutiny to the current parliamentary session and the next Climate Change Plan.

ESS considers that 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

⁸ [The Scottish Government – written question and answer: S6W-02800, dated 9 September 2021](#)

- 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

It is not yet clear when the Scottish Government will consult on a draft Climate Change Plan. ESS will review the draft Climate Change Plan when the Scottish Government presents it for consultation and will report and/or act as it considers necessary.

February 2024