

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

Improvement report

Case Reference IESS.21.012

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1. Executive summary and key findings

- 1.1 The Scottish Government has declared a twin biodiversity and climate crisis. It legislated in 2019 to set a target of achieving net zero by 2045. At the time, this target was considered to be among the most ambitious anywhere in the world¹.
- 1.2 Public bodies have had a range of climate change duties since 2009 which aim to contribute to the delivery of net zero. Environmental Standards Scotland (ESS) received a representation concerning a number of these duties, including the support and scrutiny provided by Scottish Ministers of how local authorities contribute to meeting climate change targets.
- 1.3 Reducing the emissions of public bodies is an important contributor to meeting climate change targets². Scope 1 emissions cover direct emissions from owned or controlled sources. Scope 2 emissions cover indirect emissions from the purchase and use of electricity, steam, heating and cooling. Scope 3 emissions include all other indirect emissions that occur in the upstream and downstream activities of an organisation, for example: emissions from wider supply chains; emissions from the use of local authority services; contracted out services; and investments.
- 1.4 The contribution of local authorities' emissions to the total emissions of all public bodies in Scotland is 38%, and local authorities contribute the largest share of public sector total reported emissions³. At a UK level, local authorities' direct emissions account for between three to five percent of an area's emissions. Of all UK emissions, 82 percent are estimated to be within the scope of influence of local authorities⁴. The representation asserted that, without adequate support and scrutiny, it would be difficult to achieve the net zero target.

¹ [How Scotland is addressing the climate emergency - Energy Saving Trust](#)

² The emissions of public bodies are categorised as either Scope 1, 2 or 3 emissions.

³ [Sustainable Scotland Network Analysis Report 2021 to 2022 \(pdf\)](#)

⁴ Climate Change Committee 2022 Progress Report to the UK Parliament and 'Local Authorities and the Sixth Carbon Budget. Within 'Build Back Greener', the UK Government's Net Zero plan, the quoted figure for local authorities' Scope 3 emissions is 82%.

1.5 Scotland has failed to achieve eight out of twelve of its targets, which will become increasingly difficult to meet in the 2020s⁵. The consequences of not achieving climate targets are serious. It is crucial that local authorities demonstrate leadership by meeting their climate change responsibilities and that robust systems are in place to help realise this. In light of what was alleged within the representation, and given the scale of emissions which local authorities are directly responsible for, or have levers to influence, ESS took the decision to launch an investigation into the effectiveness of the systems in place to support local authorities in their contribution to the delivery of climate change targets.

1.6 The purpose of this investigation was to consider: the duties placed on local authorities and Scottish Ministers in respect of the delivery of climate legislation; the support that is available to this end; and the reporting and monitoring of performance.

1.7 The following key points have been identified from ESS' investigation:

- there is inconsistency across the reports submitted by local authorities, and no definitive overview of how their activity has been calculated to achieve best effect
- the data maturity of emissions calculations is weak, and reported emissions data is unreliable
- there is no legal obligation on local authorities to report on Scope 3 emissions, which is the largest proportion of emissions
- clarity on the proportionate extent of Scope 3 emissions is missing
- there is no legal obligation for local authorities to produce climate plans
- although there is evidence to show that Scottish Ministers are co-operating with public bodies, Scottish Government guidance to public bodies is out of date, or non-statutory, and there is no single, comprehensive, up-to-date, accessible source for climate practitioners
- strategies for co-ordinating government policy with local authority plans is weak, and although support for co-ordination between local authorities is available and well-regarded, the reporting process does not fulfil its aim to encourage knowledge sharing between local authorities

⁵Climate Change Committee [Progress-in-reducing-emissions-in-Scotland-2022-Report-to-Parliament \(pdf\)](#)

- there is no evidence that public bodies' climate change delivery is monitored against reported progress, evaluated or scrutinised, despite there being a legal mechanism to do so

1.8 In view of the above, ESS made the following recommendations to Scottish Ministers:

1. Make climate, adaptation and sustainability plans at local authority level compulsory
2. Ensure that the planned statutory guidance covers the full breadth of local authorities' climate change responsibilities and includes the changes which will be required as a result of the recommendations contained within this report
3. Introduce a separate reporting framework for local authorities
4. Make the reporting of Scope 3 emissions mandatory for local authorities
5. Identify or introduce an appropriate monitoring body and give the monitoring body the necessary powers, including the powers to: scrutinise compliance; follow-up on climate plans; and recommend improvements in climate activity

1.9 In line with ESS' Strategic Plan, ESS invited the Scottish Government to work with it to resolve the issues identified⁶. The Scottish Government has agreed to put in place measures which implement recommendations 1, 2, 3 and 5.

1.10 In respect to recommendation 4, where informal resolution has not been achieved, this improvement report has been laid in the Scottish Parliament under ESS' statutory powers and Scottish Ministers must respond to this recommendation in the form of an improvement plan to the Scottish Parliament.

1.11 ESS would like to thank the various individual local authorities, the Scottish Government, Sustainable Scotland Network (SSN) Secretariat, the Convention of Scottish Local Authorities and other stakeholders for the co-operation and assistance they provided during the investigation.

⁶ Hereinafter referred to as 'informal resolution'.

2. The role of ESS

2.1 ESS was established under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”) to fill the environmental governance gap caused by the UK’s departure from the European Union. ESS is an independent body, accountable to the Scottish Parliament. The role of ESS is to ensure there is effective scrutiny of public authorities’ compliance with environmental law, alongside the effectiveness of environmental law and the way it is being implemented and applied in Scotland. ESS may investigate matters in response to concerns brought to its attention (known as representations), or on its own initiative.

2.2 ESS’ remit covers a broad range of environmental law, including all aspects of environmental protection and harm, particularly in relation to human beings and their enjoyment of the environment. All public authorities, including the Scottish Government and its agencies, as well organisations carrying out functions of a public nature, fall within the remit of ESS. Public authorities are under a duty to cooperate with and assist ESS, and to try to swiftly resolve any matters that ESS raises with them. The Continuity Act provides ESS with powers to:

- issue an information notice requiring a public authority to provide ESS with any information ESS requires to carry out its functions
- issue a compliance notice requiring a public authority to take the steps specified in the notice to address its failure to comply with environmental law (and to prevent that failure and the environmental harm associated with it from being repeated in the future)
- issue an improvement report where ESS considers that the actions of a public authority has failed to comply with environmental law, make effective environmental law, or implement or apply environmental law effectively
- make an application for judicial review (or apply to the court for permission to intervene in civil proceedings) where ESS considers that the conduct of a public authority constitutes a ‘serious’ failure to comply with environmental law and it is necessary to prevent, or mitigate, ‘serious’ environmental harm
- make recommendations in relation to any matter relevant to ESS’ functions

3. Duties of public bodies under the Climate Change (Scotland) Act 2009

3.1 The aim of the Climate Change (Scotland) Act 2009 ('the 2009 Act') was to establish a framework to drive greater efforts in order to reduce greenhouse gas emissions in Scotland. The 2009 Act created mandatory climate change targets to reduce Scotland's greenhouse gas emissions and is divided into six parts.

3.2 The representation submitted to ESS focused on the following provisions contained within part 4 of the 2009 Act:

- public bodies' duty to act in 'the way best calculated' to contribute to climate change targets, and to act in a way that they consider most sustainable, as set out in section 44 of the 2009 Act
- Scottish Ministers' duty to provide guidance and co-operate with relevant public bodies to help those bodies comply with their climate change duties, as set out in section 45 of the 2009 Act
- the adequacy of the monitoring and evaluation of climate change responsibilities, as set out in sections 47-52 of the 2009 Act

3.3 Part 4 of the 2009 Act is designed specifically for different actors to have a role in ensuring that public bodies play their part in contributing to meeting emissions targets. For example, Scottish Ministers must give guidance to public bodies in how they operate their duties, public bodies are obliged to implement and report on these duties, and bodies can be created to monitor and investigate compliance with the duties. The operation and implementation of these duties is considered below.

4. Climate change planning

- 4.1 Local authorities have a key role to play in achieving climate change targets and can drive and influence action on climate change through: the services they deliver; their regulatory and strategic functions; and as major employers, large-scale procurers and social landlords. They can also provide an important leadership role, setting an example for others to follow.
- 4.2 Climate plans can play a key part in how local authorities demonstrate to their electorates the actions they are taking to tackle climate change, and how they intend to implement and comply with the duties set out within section 44 of the 2009 Act.
- 4.3 Climate plans can be tailored to meet the particular circumstances of any local authority, but would normally include the climate target itself, strategic priorities, timescales for achieving the target and the strategies for delivery. For example, Renfrewshire Council's website contains an example statement of how they intend to set out and implement their Net Zero by 2030 Plan:
- ‘While implementing the first phase of the plan, the Council will continue work on Phase 2 and this will include a detailed road map setting out the area’s targets, quantified delivery plans, an emissions modelling tool, a carbon budget for Renfrewshire and an adaptation plan that will outline a programme of priority actions to respond to the impacts of climate change.’
- 4.4 There is no requirement on local authorities to have a climate plan and the Scottish Government confirmed to ESS during its investigation that it is a matter for public bodies how they interpret section 44 of the 2009 Act. Of the 32 local authorities in Scotland, 24 reported having a climate plan, and a further three reported having a plan in progress. 28 local authorities have declared a climate emergency⁷.
- 4.5 ESS met with local authority climate practitioners during the investigation. Feedback received was that few local authorities had clarity on what the duties are and none had ever faced compliance action, or received any feedback on their performance,

⁷ Audit Scotland - [Scotland's councils' approach to addressing climate change \(audit-scotland.gov.uk\)](https://www.audit-scotland.gov.uk)

although they felt they had complied with their reporting duties. Practitioners felt that the duties allowed flexibility and were helpful in driving decision making and conversations with partners, but that the sustainability duty is vague.

4.6 ESS acknowledges that local authorities carry out a range of functions, and the actions required to contribute to the delivery of climate targets may be different across sectors and geographical location. Local authorities are also accountable to their local electorates which may influence the decisions taken in respect of delivery. It is therefore understandable that a level of discretion is afforded to public bodies in how they approach the implementation of their section 44 duties. However, local authorities have functions in common, which common policies and assessment could be applied to, even across local authorities as diverse as those found in Scotland. The plans themselves should be high quality and a diversity of approach by local authorities should not undermine the overall standard that the plans should demonstrate, or key information which they should contain.

4.7 In ESS' view, having a duty open to interpretation, and delegating responsibility to public bodies to judge for themselves what the best calculated or most sustainable action should be creates an accountability gap.

4.8 Against the backdrop of declared crises, where climate targets are not being met and the window for taking effective action narrows, in ESS' view, it is important for this gap to be addressed. Accordingly, ESS recommended **that the Scottish Government introduces a standard Climate Plan template with mandatory reporting for local authorities.**

4.9 In ESS' view, the template should incorporate what is required for local authorities to demonstrate how they are acting in the way best calculated in contributing to climate targets, adaptation programme and sustainability duties. The template should also be capable of yielding reliable data (internally and externally) for continuous assessment and improvement on the question of whether local authorities are 'acting in the way best calculated'. Climate plans should also be clear as to whether they are area-based or specific to the local authority.

- 4.10 In ESS' view a standard template for climate plans will support consistency and quality in the production of local authority climate plans.
- 4.11 During the informal resolution process, the Scottish Government accepted the importance of local authorities having appropriate plans to comply with their duties and explained that, to this end, it will propose that that the forthcoming Climate Intelligence Service (CIS)⁸ will develop a common climate change plan template.
- 4.12 The Scottish Government confirmed that, once it has developed workable standard templates, it intends to consult, under section 44(7) of the 2009 Act, on an order under section 44(3) of the 2009 Act, requiring local authorities to maintain appropriate plans for complying with their duties under section 44. The Scottish Government also confirmed that new statutory guidance, expected to be introduced in March 2025, will cover climate plans for local authorities and will also contain guidance on climate plans for other public bodies, which public bodies must have regard to.
- 4.13 In ESS' view, the Scottish Government has provided a sufficiently clear pathway to achieve the outcome sought and ESS will monitor and publicly report on progress in this connection.**

⁸ The creation of the CIS was one of the key recommendations from the Net Zero, Transport and Energy Committee Inquiry into the role of local government and its cross-sectoral partners in financing and delivering a net-zero Scotland. Although not yet operational, it is being developed by COSLA, Solace, Scottish Cities Alliance, local authorities, Improvement Service and Edinburgh Climate Change Institute as a partnership-funded (including Scottish Government funding) intelligence service to support Local Authorities. It is anticipated that the CIS will provide all 32 Local Authorities with the data-informed evidence, insights and intelligence that they need for continuous improvement of their climate change plans. It will also help with the development of the skills and knowledge to ensure that local authorities can take better climate-informed decisions in relation to investment and service delivery.

5. Guidance and co-operation

- 5.1 Under section 44 of the 2009 Act, Scottish Ministers are under a duty to co-operate with relevant public bodies to help them comply with their climate change duties. Under section 45 of the 2009 Act, Scottish Ministers must also give guidance to public bodies in relation to their climate change duties.
- 5.2 The only statutory guidance issued by Scottish Ministers to public bodies, in the pursuance of their climate change responsibilities under the 2009 Act, was issued in 2011⁹ ('the 2011 Guidance'). In response to ESS' enquiries, the Scottish Government explained that new statutory guidance would be available from 2025.
- 5.3 Further non-statutory interim guidance, entitled 'Public Sector Leadership in the Global Climate Emergency'¹⁰ ('the 2021 Interim Guidance') was published by the Scottish Government in 2021. This is described as guidance to Scotland's public bodies to help them address climate change, amongst other priorities (its scope includes health and biodiversity loss).
- 5.4 ESS completed a review of all material available to public bodies in the pursuance of their climate duties as part of the evidence gathering for this investigation. The review found 26 separate pieces of government and third-party guidance signposted to public bodies towards the fulfilment of their climate duties.
- 5.5 A number of questions were drawn from this research, which were directed towards local authorities to assess how they view the support and guidance available. Feedback received from the local authorities was that, in a number of areas, there were significant gaps in guidance, including procurement and funding alignment. Other feedback related to the lack of a direct link between the guidance and Scotland's Net Zero target, with a lack of clarity over which areas of policy had been updated to reflect this step-change in ambition. Local authorities also reported to ESS that there was a

⁹ [Public Bodies Climate Change Duties: Putting Them Into Practice - Guidance Required by Part 4 of the Climate Change \(Scotland\) Act 2009 \(pdf\)](#)

¹⁰ [Public sector leadership on the global climate emergency: guidance - gov.scot \(www.gov.scot\)](#)

large gap between expectations and resource and that climate change was not perceived to be 'the day job' for most employees.

5.6 In ESS' view, the guidance available to local authorities has failed to keep pace with the significant changes which have occurred in the landscape since the introduction of the 2009 Act, nor does it cover the breadth and complexity of the responsibilities placed on local authorities in fulfilling their climate duties. Accordingly, ESS recommended to the Scottish Government **that the new statutory guidance covers the full breadth of local authorities' climate change responsibilities and the changes which will be required as a result of the recommendations contained within this report.**

5.7 During the informal resolution process, this recommendation was accepted by the Scottish Government. The Scottish Government explained that it plans to produce new statutory guidance for public bodies to support them in meeting their climate change duties, which will include mitigation, adaptation and acting sustainably. The Scottish Government also confirmed that the guidance will also cover Scope 3 emissions and that the reporting framework for local authorities will be derived from the guidance. The Scottish Government aims to produce a draft of the guidance by the end of the calendar year, with formal consultation planned for April-June 2024, as required under section 45 of the 2009 Act. Final publication of the guidance is planned by end March 2025.

5.8 **In ESS' view, the Scottish Government has provided a sufficiently clear pathway to achieve the outcome sought and ESS will monitor and publicly report on progress in this connection.**

6. Reporting

- 6.1 Section 46 of the 2009 Act empowers Scottish Ministers to require public bodies to prepare reports ‘on compliance with climate change duties’. Scottish Ministers can, by order, set out the form of these reports and what they must contain¹¹. The current format for public bodies’ annual climate returns contains sections on the public body profile, i.e. role, budget, staffing, governance, climate projects, emissions information, actions towards the statutory adaptation duty, procurement and validation.
- 6.2 There are 188 public bodies with climate reporting duties in Scotland, including the 32 local authorities. The reports are collated by the Sustainable Scotland Network Secretariat into an annual report and published on the SSN website¹².
- 6.3 The 2021 interim guidance for public bodies states that they **must** record all Scope 1 and 2 emissions, whereas ‘relevant’ Scope 3 emissions **should** be reported. ESS notes that only one local authority provided Scope 3 procurement emissions information. Within this guidance there is significant potential for varied interpretation of what is relevant and what should be reported. Reliable data on the actual scale of Scope 3, which is judged to form the largest proportion of emissions, is therefore unavailable.
- 6.4 The inconsistent approach to the collection of local authorities’ indirect emissions data, and lack of mandatory reporting of indirect emissions data creates, in ESS’ view, a knowledge gap. Where all data is not provided and there is no test to determine whether or not all ‘relevant’ data has been collected, the risk of under-reporting is problematic. It appears that local authorities are at present unable to give a true picture of the extent of their total emissions. This presents particular strategic planning issues for local authorities.
- 6.5 In ESS’ view the current reporting arrangements are ineffective in collecting essential information, such as Scope 3 emissions. As Scope 3 emissions are judged to form the

¹¹ [The Climate Change \(Duties of Public Bodies: Reporting Requirements\) \(Scotland\) Order 2015 \(pdf\)](#); The reporting template was subject to consultation by public bodies before adoption across all public bodies in 2016.

¹² [Sustainable Scotland Network](#)

largest proportion of local authorities' emissions, in ESS' view, the reporting of this category of emissions should be made mandatory.

- 6.6 Local authorities are in a unique position of their ability to provide climate emissions information across their geographical extent. In ESS' view, the introduction of a separate annual reporting template for local authorities will allow meaningful capture of emissions reductions against policy or action. This could result in wider roll out of successful strategies for where local authorities have functions in common, and give a realistic calculation of climate emissions across local authority areas.
- 6.7 Although all public bodies are covered by the existing reporting requirements, in light of the scale of emissions local authorities are responsible for, and have levers to influence, ESS recommended to the Scottish Government **that a separate reporting framework should be created for local authorities**. ESS recognises that calculating Scope 3 emissions is complex. There will need to be development of methodologies to enable this. However, ESS considers it important that a more proactive approach is taken in the reporting of Scope 3 emissions. Accordingly, ESS also recommended that the Scottish Government **makes the reporting of Scope 3 emissions mandatory for local authorities**.
- 6.8 In respect of the separate reporting framework, during the informal resolution process the Scottish Government accepted this recommendation, explaining that the new statutory guidance will cover Scope 3 and area-based emissions and that a separate framework will be developed for local authorities. In ESS' view, the Scottish Government has provided a sufficiently clear pathway to achieve the outcome sought in this connection and ESS will monitor and publicly report on progress in this connection.
- 6.9 In respect of the reporting of Scope 3 emissions, although the Scottish Government acknowledged that more should be done in this area, it explained that it could not support the mandatory nature of the recommendation and instead proposed the following pathway for improvement:

- exploration of a strong voluntary response from public bodies on increasing measurement, reporting and action on Scope 3 emissions pending the new statutory guidance (by end of 2023)
- development of clear and robust expectations in the new statutory guidance on Scope 3 emissions (anticipated to be completed by mid-2025)
- development of, and investment in, improved methodologies around Scope 3 emissions across this period

6.10 While the Scottish Government's proposal to develop and invest in improved methodologies for the reporting of Scope 3 emissions is welcome (and consistent with its overarching co-operation duty), in ESS' view there is insufficient assurance within the proposal that the outcome sought will either be achieved (including within a reasonable timescale) or maintained. Similarly, while the development of clear and robust expectations within the new statutory guidance is welcome, ESS' understanding is that legal duties cannot be created through statutory guidance and thus it would be open to local authorities to decide not to report on Scope 3 emissions.

6.11 For these reasons, ESS does not consider that the Scottish Government has provided a sufficiently clear pathway for achieving the outcome sought, namely the mandatory reporting by local authorities of their Scope 3 emissions. Accordingly, this improvement report has been laid in the Scottish Parliament under ESS' statutory powers and Scottish Ministers must respond to this recommendation in the form of an improvement plan to the Scottish Parliament.

7. Monitoring and scrutiny

- 7.1 Section 47 of the 2009 Act allows for Scottish Ministers to appoint a body to monitor whether relevant public bodies are complying with their climate change duties and whether they have regard to any statutory guidance. Sections 48 to 52 sets out the powers of such a monitoring body and how it may report to Scottish Ministers.
- 7.2 The Scottish Government confirmed to ESS that a monitoring body had not yet been appointed, and reiterated that it was for public bodies to self-determine compliance with their climate duties. The Scottish Government confirmed that it did not use section 46 reports to assess compliance against the section 44 duties and that, should a public body be challenged by way of judicial review, the Scottish Government's position is that compliance should be tested in the courts¹³. Accordingly, there does not appear to be any objective method used to determine whether a local authority is acting in the best way calculated to contribute to emissions targets or the adaptation programme, or acting sustainably.
- 7.3 In response to ESS' enquiries regarding self-monitoring, one local authority provided an example of undertaking compliance tests against their climate change duties. This action is not consistent across all 32 local authorities. Of those that do, self-testing is reported to be helpful in understanding resource gaps for delivery. Should a compliance test conducted by a local authority determine non-compliance, there is no mechanism to report this to Scottish Ministers. There is also no standardised method for public bodies to self-determine compliance against their section 44 duties.
- 7.4 The question of consequences of non-compliance was raised during the public consultation on section 46 reporting duties¹⁴. Respondents to consultations overall felt

¹³ It is notable that in the introductory paragraph to Part 2 of the consultation 'The role of public sector bodies in tackling climate change' Consultation and Analysis 2019', the consultation states that statutory reporting was introduced as a way of demonstrating compliance with climate change duties. This is not a stated aim of the 2015 Order, nor within the accompanying guidance, produced by SSN.

¹⁴ Question nine of the consultation on Section 46 Reporting Duties. The question switches focus from reporting duties to climate duties and was asked as follows: "What should the consequences be if a major player does not comply with the climate change public bodies duties?"

that the approach should be supportive, rather than punitive. However, it is unclear how support could be mobilised or targeted effectively, since there is no mechanism to report non-compliance. ESS supports the view that action to address non-compliance by public bodies should be constructive.

7.5 Whilst ESS' investigation found real commitment among local authority climate change practitioners to continuously improve, and it is commendable that some local authorities self-assess compliance with their climate change duties, in ESS' view a monitoring body is the essential 'safety net' that is needed to: ensure compliance; provide support, direction and assurance; and drive continuous improvement.

7.6 Whilst ESS does not consider it necessary to take a view on whether a monitoring body should have, to date, been appointed, evidence exists of inconsistency in local authority reporting and it is unclear how Scottish Ministers can presently be sufficiently assured that public bodies are fulfilling the full scope of their responsibilities under section 44 of the 2009 Act.

7.7 In light of this, and the other findings within this report, ESS recommended **that the Scottish Government identifies or introduces a body with the remit to monitor the system of climate duties compliance holistically (including the monitoring of the implementation and effectiveness of those duties)**. In ESS' view, it is critical that this body should be able to move quickly where performance is sub-optimal, be consistent with the pace required to meet the net zero target, and thus it should have the requisite power to direct action when deemed necessary.

7.8 During the informal resolution process, the Scottish Government explained that central assessment in detail of 32 individual local authorities would be a 'huge challenge' and that it would strongly prefer that monitoring arrangements should be closely related or integrated into existing scrutiny systems. To this end, the Scottish Government made enquiries with a number of oversight bodies. However, the role of monitoring body did not fit with existing remits or skill sets. The Scottish Government considered that ESS may be an appropriate monitoring body and suggested that, with appropriate funding, ESS could be nominated under section 47 of the 2009 Act ('a section 47 monitoring body').

7.9 The monitoring body recommended by ESS goes beyond mere compliance. For example, it is anticipated that the monitoring body would be able to consider the adequacy of local authorities' climate plans or policies and be able to make recommendations to improve climate change activity. In essence, the purpose of ESS' recommendation was to ensure a dedicated resource existed (with an adequate remit) to facilitate the successful delivery of local authorities' climate change responsibilities, which would include the enhanced system of reporting as per ESS' recommendations.

7.10 In ESS' view, a section 47 monitoring body would be unable to take the kind of action required. Furthermore, a section 47 monitoring body has no enforcement powers and can be directed by Scottish Ministers, including how it exercises its functions. This would compromise the independence of the monitoring body.

7.11 Notwithstanding this, ESS is satisfied that, with adequate funding, it could discharge the role of monitoring body through its existing powers¹⁵. **Accordingly, in ESS' view, the Scottish Government has provided a sufficiently clear pathway to achieve the outcome sought. ESS will continue to liaise with the Scottish Government in respect of the set- up of the monitoring body (which ESS expects should be in place prior to the new statutory guidance being published) and the funding required in this connection. ESS will assess and publicly report on progress in this connection.**

¹⁵ Under the Continuity Act, ESS has the power to consider whether a public authority is complying with its legal duties and can issue a compliance notice where a public authority is found to be in breach. In respect of the broader role envisaged by the recommendation, under section 20(2)(c) of the Continuity Act, ESS has the power to make recommendations in relation to 'any matter relevant to its functions'.

8. Conclusion

8.1 Having considered the implementation and application of the duties contained within the 2009 Act, in ESS' view the central assertions made within the representation are well made. ESS concludes that **there are significant structural weaknesses in respect of the delivery of climate change targets, the support that is available to local authorities to this end and the reporting and monitoring of performance.**

Specifically:

- there is inconsistency across the reports submitted by local authorities, and no definitive overview of how their activity has been calculated to achieve best effect
- the data maturity of emissions calculations is weak, and reported emissions data unreliable
- there is no legal obligation on local authorities to report on Scope 3 emissions, which is the largest proportion of emissions
- clarity on the proportionate extent of Scope 3 emissions is missing
- there is no legal obligation for local authorities to produce climate plans
- although there is evidence to show that Scottish Ministers are co-operating with public bodies, Scottish Government guidance to public bodies is out of date, or non-statutory, and there is no single, comprehensive, up-to-date, accessible source for climate practitioners
- strategies for co-ordinating government policy with local authority plans is weak, and although support for co-ordination between local authorities is available and well regarded, the reporting process does not fulfil its aim to encourage knowledge sharing between local authorities
- there is no evidence that public bodies' climate change delivery is monitored against reported progress, evaluated or scrutinised, despite there being a legal mechanism to do so

8.2 Accordingly, ESS concludes that the weaknesses described above constitute a failure to make effective environmental law and a failure in how environmental law has been implemented and applied, the consequences of which carries the risk of contributing to failing to meet Scotland's climate change targets.

- 8.3 ESS considers that strengthening the operational and governance arrangements through the recommendations made to the Scottish Government will lead to enhanced transparency, support and accountability.
- 8.4 Of the five recommendations for improvement that have been made to the Scottish Government, four have been accepted and a delivery plan for implementation has been submitted. ESS considers that the Scottish Government has provided a sufficiently clear pathway to achieve the outcomes sought in four of these recommendations and will monitor the implementation of these recommendations and report publicly and to the Scottish Parliament on progress.
- 8.5 Of the single recommendation that was not accepted by the Scottish Government, ESS has set out its reasons for why it is important that local authorities should be required to report on their Scope 3 emissions and considers that measures needed to achieve this should be completed prior to the issuing of the new statutory guidance, which is anticipated to be published in March 2025.
- 8.6 Under section 30 of the Continuity Act, Scottish Ministers must prepare an improvement plan and lay this before the Scottish Parliament, setting out what they propose to do in response to this recommendation¹⁶.

¹⁶ The improvement plan must be laid before the Scottish Parliament within a maximum of nine months from ESS laying this report.

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