

**The Scottish  
Government's  
compliance with its duty  
to publish an  
Infrastructure Investment  
Plan assessment**

**Case Reference IESS.23.016**

February 2024

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# 1. Executive summary

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- 1.1 Under section 94A(2) of the Climate Change (Scotland) Act 2009<sup>1</sup> ('the 2009 Act'), Scottish Ministers have a duty to publish an assessment of the extent to which spending in accordance with the Scottish Government (SG)'s Infrastructure Investment Plan ('IIP')<sup>2</sup> will contribute to emissions reductions targets.
- 1.2 Environmental Standards Scotland (ESS) received a representation from an environmental charity raising concerns that no such assessment had been produced, and that Scottish Ministers had therefore not complied with their duties under section 94A(2) of the 2009 Act.
- 1.3 During the consideration of the representation, ESS engaged with the SG and scrutinised its relevant policies, plans and supporting information. On reviewing the evidence, ESS determined that the central concern raised within the representation was well made and that no assessment meeting the requirements of section 94A(2) of the 2009 Act had been published.
- 1.4 The SG accepted ESS' finding and agreed to produce a new assessment which complied with the requirements of section 94A(2) of the 2009 Act. The SG published this assessment in January 2024. For the reasons set out in this report, ESS considers that this new assessment complies with the duty and that informal resolution has been achieved.

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<sup>1</sup> [Climate Change \(Scotland\) Act 2009 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [A National Mission with Local Impact: Infrastructure Investment Plan for Scotland 2021-22 to 2025-26](#)

## 2. Background

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2.1 In 2019, the Scottish Parliament passed the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 ('the 2019 Act'). The 2019 Act amended the 2009 Act, setting the ambitious emissions reductions targets of 70% by 2030, 75% by 2040 and achieving net zero by 2045.

2.2 In February 2021, the SG published its most recent IIP, setting out how it intends to invest in Scotland's infrastructure between 2021 and 2026. The IIP falls under the following three strategic themes:

- enabling the transition to net zero emissions and environmental sustainability
- driving inclusive economic growth
- building resilient and sustainable places

2.3 The capital spend associated with delivery of the IIP is £26 billion. One estimate suggests that 72% of public infrastructure investment in Scotland must be directed to low carbon projects to meet the goal of keeping global warming below two degrees Celsius.<sup>3</sup>

2.4 Under section 94A(2) of the 2009 Act, there is a requirement on Scottish Ministers, when publishing an IIP, to also publish an assessment of the impact the IIP is expected to have on meeting emissions reductions targets. The assessment may either be set out in the IIP itself or in a separate document (in which case it must be published at the same time as, or as soon as reasonably practicable after, the plan is published). The SG considered that

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<sup>3</sup> [The-case-for-low-carbon-infrastructure-in-Scotland.pdf \(green-alliance.org.uk\)](https://www.green-alliance.org.uk/The-case-for-low-carbon-infrastructure-in-Scotland.pdf)

Annex C of the IIP<sup>4</sup> and the Strategic Environmental Assessment (SEA) post adoption statement<sup>5</sup> fulfilled this requirement.

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<sup>4</sup> Page 49 - [A National Mission With Local Impact: Infrastructure Investment Plan for Scotland 2021-22 to 2025-26 \(www.gov.scot\)](#)

<sup>5</sup> [The Infrastructure Investment Plan 2021-22 to 2025-26 SEA Post Adoption Statement](#)

### 3. The representation

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3.1 In March 2023, ESS received a representation from an environmental charity asserting that Annex C of the IIP and the SEA post adoption statement did not fulfil the duty in section 94A(2) of the 2009 Act. The environmental charity considered that a compliant assessment should contain the following elements:

- it should be made relative to the emissions reductions targets, and therefore must identify and articulate the emissions reductions targets
- it must quantify any emissions which the Scottish Ministers expect would be attributable to investment in accordance with the IIP, including an itemised breakdown of the emissions which are expected to be attributable to each of the infrastructure projects listed in the IIP
- using the above two elements, it must then assess to what extent investment in accordance with the IIP would contribute to meeting the emissions reduction targets, and provide conclusions on whether investment in accordance with the IIP will make it more or less likely that the emissions reduction targets will be met

3.2 In the environmental charity's view, the SG's approach, as set out at Annex C of the IIP, contained none of the elements listed above, nor did it contain an assessment of the IIP or any other assessment of the effect of the IIP on greenhouse gas emissions. The outcome sought in the representation was for ESS to undertake an investigation into these issues, with a view to issuing a compliance notice to Scottish Ministers, under section 31 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. ESS considered this case to be within its remit, due to the following factors:

- the representation relates to a public authority – the SG and Scottish Ministers.
- the representation relates to environmental law – the 2009 Act
- the absence of any assessment under Section 94A(2) of the 2009 Act, as described in the representation, may constitute a failure to comply with environmental law.

3.3 ESS also considered the matter raised fell within its 'significance criteria' (as set out within ESS' Strategic Plan<sup>6</sup>) as the representation suggested non-compliance with legal duties which could undermine public confidence in environmental law and in the ability of the Scottish Government to meet its emissions reductions targets.

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<sup>6</sup> [ESS Strategic Plan 2022-25 \(environmentalstandards.scot\)](#), Chapter 5

## 4. Engagement with the Scottish Government

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- 4.1 Following receipt of the representation, ESS approached the SG in May 2023 to confirm whether Scottish Ministers had published an assessment in accordance with section 94A(2) of the 2009 Act.
- 4.2 The SG responded that, in its view, Annex C of the IIP and the SEA post-adoption statement fulfilled the duty, and confirmed that no other publication in respect of the duty had been published. The SG explained that Annex C contained a carbon assessment which was based on a taxonomy approach but accepted that these methodologies have limitations. The SG stated that it was minded to explore further the deployment of a more detailed methodology or methodologies which would be taken forward in conjunction with the Joint Review of the Budget (JRB)<sup>7</sup> on matters related to climate change. Accordingly, ESS decided to await the SG's response to the JRB process, which occurred in June 2023.
- 4.3 ESS thereafter assessed Annex C of the IIP against the section 94A(2) duty. Annex C was presented as a carbon assessment and contained a simple, example-only, 'traffic light' style taxonomy whereby each of the spending lines identified in the IIP could have red (high carbon), amber (neutral carbon) or green (low carbon) status applied. Annex C acknowledged that the approach used gave only 'a partial or crude' estimate and did not capture all measures in the budget, particularly those in the neutral category. Annex C noted that the SG had commissioned an independent research project to explore

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<sup>7</sup> The aim of the Joint SG/Scottish Parliament Review of the Budget was to improve budget information on climate change, chiefly to understand and reduce government spend that would 'lock in' future greenhouse gas emissions and align the budget and climate change plans.



alternative options<sup>8</sup> and that exploration of more detailed methodologies would be taken forward in conjunction with the JRB.

4.4 Although Annex C estimated that 36.9% of capital budget could be classed as low carbon, as the taxonomy did not link to the spending lines in the IIP, in ESS' view there was no way of identifying which projects were likely to be high, neutral, or low. It was accordingly unclear how specific capital spending could be assessed against its climate impacts. Furthermore, no explanation was given as to the meaning of red (high carbon), amber (neutral carbon) or green (low carbon) status.

4.5 The SEA post adoption statement formed the conclusion of the SEA process and described the consultation on the draft IIP and SEA, resulting in the adoption of a number of recommendations to improve environmental outcomes arising from the IIP. In ESS' view, neither of these documents, when read individually or together, provided an assessment of the extent to which investment in accordance with the IIP might contribute to meeting reductions targets such that it would satisfy the section 94A(2) duty. Accordingly, ESS concluded that the central assertion within the representation was well made and, on 1 September 2023, invited the SG to resolve matters informally.

4.6 On 14 September 2023, the SG informed ESS that Scottish Ministers had accepted that Annex C of the IIP and the SEA post-adoption statement did not meet the requirements of section 94A(2) of the 2009 Act. The SG explained that urgent work was underway to ensure that the duty was discharged in full. The SG requested a further period of time to revert to ESS on:

- the extent of the duty to be discharged
- how it proposed to discharge this duty
- anticipated timescales for completion of the work required

4.7 Subsequently, the SG agreed that the entire duty required to be discharged and that a new enhanced taxonomy would be developed to assess the extent to which the IIP is

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<sup>8</sup> [\\*Greenhouse Gas Emissions and Infrastructure Investment Decisions \(ed.ac.uk\)](#)

contributing to emissions reductions targets. A deadline of December 2023 was agreed for completion of the new assessment, which was published on the SG's website on 17 January 2024.<sup>9</sup>

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<sup>9</sup> [Supporting documents - Infrastructure investment plan 2021-2022 to 2025-2026: carbon assessment - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2024/01/17/Supporting_documents_-_Infrastructure_investment_plan_2021-2022_to_2025-2026:_carbon_assessment_-_gov.scot)

## 5. ESS analysis

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- 5.1 During the passage of the Climate Change (Emissions Reductions Targets) (Scotland) Bill, the Scottish Parliament debated the need for greater clarity about the direct and indirect impact of infrastructure investments on greenhouse gas emissions<sup>10 11</sup>. However, there were concerns about the limitations of existing methodologies for assessing the impact of infrastructure spend on emissions. The Parliament ultimately agreed an amendment to the Bill which formed the basis of the duty contained in section 94A(2) of the 2009 Act.
- 5.2 The then Cabinet Secretary for Environment, Climate Change and Land Reform noted that the amendment recognised the importance of decisions about infrastructure investment decisions on greenhouse gas emissions but was not overly prescriptive, given the uncertainties and challenges around methodologies for assessing such impacts. The Cabinet Secretary committed to commissioning research to understand better how spend on infrastructure could be assessed for its impact on emissions.
- 5.3 A number of key terms and phrases within section 94A(2) of the 2009 Act are not defined, including ‘assessment’, ‘extent to which’ or ‘contribute to meeting’. Other reporting and assessment requirements exist elsewhere in the 2009 Act (as amended by the 2019 Act), with varying degrees of specificity required depending on the provision. Some contain detailed and prescriptive reporting requirements, with a high level of specificity required of reports (e.g. Climate Change Plans under sections 33 and 34); some are less prescriptive, but contain general direction as to content (e.g. reports on emissions attributable to consumption of goods and services under section 37); and others, including the assessment required by section 94A(2), are framed in broad terms, with no indication of what the report must or ought to contain.
- 5.4 In considering the lower level of specificity required by section 94A(2), it is clear that the Scottish Parliament settled on what was essentially a pragmatic ‘middle ground’ which recognised the uncertainties and challenges associated with the methodology, while also

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<sup>10</sup> [Meeting of the Parliament: ECCLR/18/06/2019 | Scottish Parliament Website](#)

<sup>11</sup> [Meeting of the Parliament: 25/09/2019 | Scottish Parliament Website](#)

requiring Scottish Ministers to set out, in broad terms, an assessment of how any IIP would contribute to meeting emissions reductions targets.

5.5 The new carbon assessment remains relatively high level in nature and does not specifically quantify the scale or intensity of an individual project's effect on future greenhouse gas emissions. However, when compared with reporting requirements elsewhere in the 2009 Act, and in light of the intention behind the reporting provisions, ESS does not consider that such quantification is necessary to achieve compliance with the requirements of section 94A(2). For the following reasons, in ESS' view, the revised assessment meets the requirements of Section 94A(2) of the 2009 Act:

- reference is made to the revised emissions reductions targets of the 2019 Climate Change (Scotland) Act, which were absent from Annex C and the SEA post adoption statement
- via the enhanced taxonomy (and supplementary commentary outlining how the impact value has been arrived at), a greater indication is given of the extent to which spending is expected to contribute to those emissions reductions targets, which were absent from the JRB, Annex C and the SEA post adoption statement
- an assessment is now made in respect of each spending line within the IIP
- where possible, the assessment links the IIP spending lines to the Climate Change Plan (CCP) update as a method of comparing outcomes
- it demonstrates the significance of meeting the targets, i.e. of having a positive influence, by providing an outline of measures intended to bring down and maintain the emissions reductions targets
- information is provided to satisfy the public interest in giving sufficient detail and specificity to enable, at least in a high-level way, a view to be taken on whether what is proposed is effective and appropriate for meeting the emissions reduction targets

## 6. Conclusion

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- 6.1 How the SG allocates its infrastructure investment spending is important to achieving emissions reductions targets. Accordingly, the impact of this investment on emissions should be clear and transparent. To this end, Scottish Ministers are under a legislative requirement to assess and report on the extent to which this spending is expected to contribute to meeting emissions reductions targets.
- 6.2 During ESS' consideration of the representation, the Scottish Ministers accepted that these requirements had previously not been met. ESS considers that Scottish Ministers have now taken reasonable steps to address the concerns and is satisfied that the requirements of section 94A(2) of the 2009 Act are now being met.
- 6.3 Notwithstanding this, the SG has acknowledged that the assessment of the impact of its infrastructure investments on greenhouse gas emissions is an ongoing process that will evolve with improved knowledge and methodologies. Other mechanisms also exist which should allow for scrutiny of this impact, such as Scotland's CCP, which is currently being developed by the SG. ESS will continue to monitor developments in this area to ensure they are effective in driving continuous improvement and that environmental law is being implemented effectively.

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