

Case Summary

Case ID IESS.24.026 - Consideration of the Scottish Government's duty to publish a report when annual greenhouse gas targets are not met

What was the issue?

Section 33 of the Climate Change (Scotland) Act 2009 ('the 2009 Act') requires that Scottish Ministers produce annually a report comparing greenhouse gas emissions to annual targets. If a report issued under section 33 (a 's33 report') shows that the emissions exceeded an annual target, section 36 of the 2009 Act requires that Scottish Ministers must 'as soon as reasonably practicable' produce a report (a 's36 report') setting out proposals and policies to compensate in future years for the excess emissions.

ESS received a representation raising concerns that the s36 report had not yet been published as of June 2024, which was a year since the publication of the s33 report. The representation asserted that Scottish Ministers were therefore non-compliant with the requirements of section 36 of the 2009 Act.

What did ESS do?

After reviewing the underpinning legislation and timescales, ESS accepted the case for pre-investigation. ESS observed that the last time this requirement was triggered, the Scottish Ministers published their s36 report on 27 October 2021, which was within five months of the s33 report being issued. It was therefore concerning to ESS that the recent timescales far exceeded previous efforts.

The Scottish Government cited the United Kingdom pre-election period and summer recess of the Scottish Parliament for the delay in publication, and stated its intention to publish the s36 report 'as soon as reasonably practical' after recess. Whilst acknowledging these factors, ESS explained to the Scottish Government that it would consider what steps should be taken to achieve compliance (including taking formal enforcement action) should the s36 report not be published in September 2024.

What was the outcome?

The Scottish Government published the s36 report on 5 September 2024.¹ In ESS' view, Scottish Ministers have now fulfilled their obligation to publish a report following s36 of the 2009 Act.

ESS is aware that, following the Climate Change Committee's advice that Scotland's interim emissions reduction target for 2030 is beyond what can be achieved, the Scottish Government has brought forward proposals to amend the 2009 Act.² These proposals are currently being scrutinised by the Scottish Parliament. They bring into focus the purpose and frequency of s36 reporting, as well as the content and level of detail required to be included in reports to enable effective scrutiny of the policies and proposals that will ensure missed emissions are compensated for. ESS will continue to monitor and contribute, as required, to Parliamentary scrutiny of this aspect of the forthcoming legislation.

¹ [Reducing greenhouse gas emissions - proposals and policies: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2024/09/20240905_s36_report.pdf)

² [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Bill: position paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2024/09/20240905_bill_position_paper.pdf)