

[Redacted]
Head of Climate Change Analysis
Office of the Chief Economic Adviser – OCEA | Scottish Government

10 May 2023

Provision of Information to Environmental Standards Scotland (ESS): Climate Change Reporting - Case Reference IESS.23.016

Dear [Redacted],

I am writing to you to confirm that ESS has received a representation expressing concerns that the Scottish Government has not produced an assessment of its Infrastructure Investment Plan, as per Section 94A(2) of the Climate Change (Scotland) Act 2009 (“the 2009 Act”).

I consider that this matter is within our remit, and I am currently seeking to determine what action, if any, should be taken by ESS in this connection. To assist me in my determination, I am writing to you to request reasonable assistance under the Scottish Government’s co-operation duties as set out in section 23(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

To provide background to my request, my preliminary review of the representation is summarised below.

The representation concerns the duties imposed on Scottish ministers as set out in section 94A(2) of the 2009 Act. This duty exists to ensure that *“an assessment of the extent to which investment in accordance with the plan is expected to contribute to the meeting of the emissions reduction targets”*.

As per section 94A(3) the assessment may form part of the Infrastructure Investment Plan (IIP), or be set out in a separate document. If accompanying the IIP in a separate document, the assessment must be published at the same time.

In February 2021, the Scottish Government published ‘A National Mission with Local Impact Infrastructure Investment Plan for Scotland 2021-22 to 2025-26’. Annex C of this document is described as a ‘Carbon Assessment’ and shows a categorised red/amber/green table of projects which could be considered to be low/medium or high carbon output. The table itself appears to be indicative rather than a complete breakdown of all the infrastructure investment detailed in the IIP. The text of Annex C states that *“The most recent analysis of Budget 2021-22 estimates that 36.9% of the capital budget for the next financial year can be classed as Low Carbon and 8.5% in the High Carbon category.”* It goes on to explain that high level analysis of the IIP shows that it reflects a similar breakdown. The analysis itself is not included, there is no explanation of its methodology or scope, and no explanation of the meaning of low/medium/high carbon categories. No emissions calculations are included in Annex C to demonstrate how investment in accordance with the IIP will contribute to the emissions reductions targets.

Within Annex C is an acceptance by the Scottish Government that this taxonomic approach is crude and new methodology should be developed, both to capture all measures within the budget and in recognition of the new targets set in the 2019 Act.

The methodology development is stated to be taken forward by the Scottish Government in conjunction with the Joint Review of Budget as it relates to climate change (JRB). The JRB was completed in November 2022 and considered by the Net Zero Committee in December 2022.

ESS' review has noted that the Net Zero Committee requested further information from the JRB group on 20 December 2022, and the response by Michael Matheson MSP and John Swinney MSP on 16 January 2023 highlights that the agreed methodology for climate impact assessments is still in development. The timeline offered by the JRB final report offers the 2024/5 Budget as an opportunity to trial the new Net Zero Assessment tool.

The information I am seeking in regard to this representation is as follows :

1. Has the Scottish Government produced an assessment of the extent to which investment in accordance with the plan is expected to contribute to the meeting of the emissions reduction targets, as per Section 94A(2) of the 2009 Climate Change (Scotland) Act 2009 ?
2. If the assessment has been produced, please can you provide evidence of how the assessment meets the requirement of Section 94A(2).
3. If the assessment has not been produced, please can you provide evidence of how the Scottish Government intends to fulfil this requirement.

Responses to the above query should be submitted to me at the above email address and copied to representations@environmentalstandards.scot. Please reference our case number (IESS.23.016) in your return correspondence.

I would be grateful if you could provide the requested assistance within 15 business days of the date of this letter. If you have any questions or queries please do not hesitate to contact me via email or phone.

Yours sincerely

[Redacted]
Senior Investigations Officer

From: [Redacted]
Sent: Wednesday, May 31, 2023 9:18 AM
To: [Redacted]
Cc: [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: FW: Environmental Standards Scotland Request for Information - Case Reference IESS.23.016.

Hi [Redacted]

Attached a response to your letter

All the best

[Redacted]

Head of Climate Change Analysis
Office of the Chief Economic Adviser – OCEA | Scottish Government

From: [Redacted]
Sent: 10 May 2023 12:27
To: [Redacted]
Cc: [Redacted]
Subject: Environmental Standards Scotland Request for Information - Case Reference IESS.23.016.

Dear [Redacted]

Thank you for providing your contact details for the attached letter.

Please let me know if you have any questions regarding the information request.

Kind Regards,
[Redacted]

[Redacted]
Senior Investigations Officer
[redacted]

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD



From: [Redacted]
Head of Climate Change Analysis
Office of Chief Economic Adviser
Scottish Government

To: [Redacted]
Senior Investigations Officer
Environmental Standards Scotland

1 June 2023

Dear [Redacted]

Provision of Information to Environmental Standards Scotland (ESS): Climate Change Reporting - Case Reference IESS.23.016

Thank you for your letter dated 10 May which asked the following questions with respect to the Scottish Government's Infrastructure Investment Plan published February 2021:

1. Has the Scottish Government produced an assessment of the extent to which investment in accordance with the plan is expected to contribute to the meeting of the emissions reduction targets, as per Section 94A(2) of the 2009 Climate Change (Scotland) Act 2009 ?
2. If the assessment has been produced, please can you provide evidence of how the assessment meets the requirement of Section 94A(2).
3. If the assessment has not been produced, please can you provide evidence of how the Scottish Government intends to fulfil this requirement.

It is my view that the duty under section 94A(2) of the Climate Change (Scotland) Act 2009 has been fulfilled.

The development of the IIP was subject to Strategic Environmental Assessment and a consultation on both the draft Plan and accompanying SEA Environmental Report ran from 24 September to 19 November 2020. The consultation sought views on the way Scottish

Government planned to implement the Infrastructure Commission's recommendations in the following areas:

- The inclusion of natural infrastructure
- How we prioritise – the common investment hierarchy approach
- How we best assess the impact of proposed infrastructure
- How we best assess the carbon impact of future plans

Views were also invited on the SEA Environmental Report. A further breakdown of the SEA assessment and the benefits to climate factors can be found here [A National Mission With Local Impact: Infrastructure Investment Plan for Scotland 2021-22 to 2025-26 \(www.gov.scot\)](#). The assessment findings were broadly positive, and SEA supported the focus given to the IIP. Section 4 within the reports highlights the findings of the assessment

The assessment identified that, overall, significant benefits were likely to arise for climatic factors, air quality, water, population and human health, biodiversity, cultural heritage, and material assets.

The IIP outlines ways in which Scotland's infrastructure investment will deliver transformative action across all sectors of the economy and society - with large capital investment in low carbon policies and programmes that are focused on the transition to net zero emissions set out in Chapter 4.

The IIP provides a carbon assessment within Annex C, based on a taxonomy approach. The assessment provides a summary of the analysis of the capital Budget for 2021-22 and estimated figures on low carbon vs high carbon investment, stating that the profile of the Infrastructure Investment Plan has shown that it reflects a similar share to the 2021-22 Budget analysis. The Capital Budget is carbon assessed every year using this taxonomy approach and is published alongside the Budget.

Taxonomy approaches are useful for macro-level analysis of climate impact with regards to emissions reduction, but these methodologies have limitations, and this is recognised in the IIP. In the draft IIP, the Scottish Government set out that it is minded to explore further the deployment of a more detailed methodology or methodologies; and will take this forward in conjunction with the Joint Review of the Budget on matters related to climate change. This joint review, by the Scottish Government and Parliament, concluded in December 2022, presented reforms to improve how we conduct carbon assessments. The Scottish Government has now started to implement these improvements.

I hope this letter provides a sufficient answer to your letter and demonstrates that Scottish Ministers have discharged their duty under section 94A(2) of the Climate Change (Scotland) Act 2009.

Yours sincerely

[Redacted]

[Redacted]
Senior Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

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[Redacted]

[Redacted]
Head of Climate Change Analysis,
Office of the Chief Economic Adviser,
Scottish Government.

31 August 2023

Subject: Invitation to Informal Resolution Process: ESS case reference ESS.23.016.

Dear [Redacted]

Thank you for your letter of 2 June 2023 in respect of the representation received by Environmental Standards Scotland concerning Scottish Ministers' duties under Section 94A(2) of the Climate Change (Scotland) Act 2009.

In your letter you advised that development of the document 'A National Mission with Local Impact: Infrastructure Investment Plan for Scotland 2021-22 to 2025-26' ("the IIP") and the accompanying Strategic Environmental Assessment had been subject to a consultation. You noted that the consultation considered the questions of assessing the climate impacts of proposed infrastructure. You also drew attention to the Carbon Assessment in Annex C of the published IIP and concluded that in your view the Section 94A(2) duty had been discharged. Unfortunately your letter did not address my second question, which was a request for evidence of how the referenced documents meet the Section 94A(2) duty.

In respect of whether Annex C meets the standard of the Section 94A(2) duty to expressly demonstrate *the extent to which spending in accordance with the Infrastructure Investment Plan has contributed to emissions reductions targets*, I am unclear how the taxonomy included in Annex C demonstrates compliance with this duty. I note that no commentary or calculation as to the extent of the contribution of infrastructure investment towards emissions reductions is provided – only an estimate of whether projects are considered to be a high, medium or low carbon. Furthermore, no definition of high, medium or low carbon is included and there is no methodology or scope ascribed to the Annex C assessment. It is indicative rather than inclusive –

none of the projects described in Annex D have a H/M/L carbon status attached – and therefore does not appear to demonstrate the relationship between the taxonomic assessment and the planned investment.

As observed in my letter of 10th May, within the content of Annex C, there is a recognition that the high level taxonomy approach is crude, and that a new methodology was to be developed in conjunction with the Joint Review of Budgets (JRB). You confirmed this in your response to me.

It is not apparent that the JRB has considered the Section 94A(2) duty. Its focus appears to have concentrated on the Section 94 duties associated with budget publications. These duties do not contain any reference to the Infrastructure Investment Plan or climate targets and therefore I am unclear how they can be considered to fall within the ambit of a Section 94A(2) assessment.

From the evidence I have seen, in my view the assertion made within the representation is well made.

At this stage, I would like to invite the Scottish Government to work with ESS to pursue informal resolution of these matters and would be grateful if you could let me know whether the Scottish Government is willing to engage with ESS to this end.

If we are unable to reach informal resolution, I can confirm that ESS' Board will consider the other options available, which may include taking enforcement action.

I would be grateful if you additionally copy your response to me to our representations inbox representations@environmentalstandards.scot or by post. Please reference our case number (IESS.23.016) in your return correspondence.

I would also be grateful if you could provide the requested assistance within 2 weeks of the date of this letter. If you have any questions or queries, please do not hesitate to contact me at the above e-mail address.

Yours sincerely

[Redacted]
Senior Investigations Officer

From: [Redacted]
Sent: 14 September 2023 17:17
To: Deputy Director Infrastructure and Investment [Redacted]
Cc: [Redacted]
Subject: RE: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

Thanks Daniel.

[Redacted]
Senior Investigations Officer
[redacted]

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General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Daniel Hinze [Redacted]**On Behalf Of** Deputy Director Infrastructure and Investment
Sent: Thursday, September 14, 2023 4:56 PM
To: [Redacted]
Cc: [Redacted]Deputy Director Infrastructure and Investment [Redacted]; SGLD Head of MPNR [Redacted]; Philip Raines [Redacted]
Subject: RE: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

Thanks [Redacted],

I (or my job share partner Kat White) will come back to you as soon as possible on people and dates. MSTeams works for us.

Daniel

From: [Redacted]
Sent: Thursday, September 14, 2023 2:28 PM
To: Daniel Hinze [Redacted]
Cc: [Redacted]; Deputy Director Infrastructure and Investment [Redacted] Director of Budget and Public Spending [Redacted] DG Scottish Exchequer Mailbox [Redacted] SGLD Head of MPNR [Redacted]; Philip Raines [Redacted]
Subject: RE: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

Dear Daniel,

Thank you for your response. I would like to begin the informal resolution process with a call between ESS and your team, preferably on MST. Please could you let me know your available dates and who you would like to include ?

Kind regards,
[Redacted]

[Redacted]
Senior Investigations Officer
[redacted]

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General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Daniel Hinze [Redacted]

Sent: Thursday, September 14, 2023 11:29 AM

To: [Redacted] ESS Representations <Representations@environmentalstandards.scot>

Cc: [Redacted] Deputy Director Infrastructure and Investment [Redacted] Director of Budget and Public Spending [Redacted] DG Scottish Exchequer Mailbox [Redacted] SGLD Head of MPNR [Redacted] Philip Raines [Redacted]

Subject: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

Dear [Redacted],

Please find a response to your letter addressed to [Redacted] on 31 August.

Yours sincerely,

Daniel

Daniel Hinze | Deputy Director Infrastructure and Investment (job share - working days: Weds to Fri) |
The Scottish Government | 3-D (South) Victoria Quay Edinburgh EH6 6QQ | [Redacted]

I am sending this email at a time convenient to me. I do not, however, expect you to respond at a time which is not convenient to you.

Key finance documents:

[Public Finance and Accountability \(Scotland\) Act 2000](#) imposes the duty on civil servants to ensure that resources of the Scottish Administration are used [economically, efficiently and effectively](#)
[Scottish Public Finance Manual](#) includes the duty to [appraise and evaluate](#)

Our key publications:

[Infrastructure Investment Plan](#)

[Capital Spending Review](#)

[Scottish Budget for 2023 to 2024](#)

[Major capital projects progress update - March 2023](#)

From: [Redacted]
Sent: Wednesday, September 20, 2023 8:38 AM
To: [Redacted]
Cc: Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

Hello [Redacted], Monday works best for us – should we say 1pm ?

[Redacted]
Senior Investigations Officer
[redacted]

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0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: [Redacted]
Sent: Tuesday, September 19, 2023 4:59 PM
To: [Redacted]
Cc: Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Invitation to Informal Resolution Process - ESS case reference ESS.23.016

[Redacted]

It will be myself and Kat White joining the call. Would next Monday (25th) or Tuesday (26th) suit you?

Thanks
[Redacted]

[Redacted] | Infrastructure and Investment Division | The Scottish Government
Victoria Quay Edinburgh EH6 6QQ
[Redacted]

Please note that my working days are Monday to Thursday

E: [Redacted]

[Redacted]
Senior Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

[Redacted]

Your ref: ESS.23.016
14 September 2023

Dear [Redacted],

Subject: Invitation to Informal Resolution Process: ESS case reference ESS.23.016.

Thank you for your letter of 31 August 2023. The Scottish Government is grateful to ESS for the invitation to pursue informal resolution of these matters and will engage with ESS to that end.

The issues raised in your letter of 31 August and in earlier correspondence have been carefully considered and the Scottish Ministers now accept that the documentation published to date falls short of the requirements of section 94A of the Climate Change (Scotland) Act 2009. Urgent work is underway on a remedy to ensure that the duty is discharged in full and as soon as possible.

At this stage and in light of the position now accepted, the Scottish Ministers' intention is to revert to ESS in substance on the extent of the duty to be discharged, on remedy, and on anticipated timescales separately and seek an additional period of at least 28 days in which to do so.

The Scottish Ministers appreciate that there is real scope for this matter to be resolved through the informal resolution process and look forward to working with ESS towards this outcome. Engagement in this process it is not intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

Yours sincerely,

Daniel Hinze
Deputy Director, Infrastructure and Investment Division

E: [Redacted]

[Redacted]
Balfour+Manson LLP

BY EMAIL ONLY TO:
[Redacted]

Dear [Redacted]

Climate Change (Scotland) Act 2009 – Section 94A
**Assessment of climate impact of Infrastructure Investment
Plan Judicial Review – response to letter before claim**

The issues raised in your letter of 5 September 2023 and in earlier correspondence from your clients have been carefully considered and the Scottish Ministers now accept that the documentation published to date falls short of the requirements of section 94A of the Climate Change (Scotland) Act 2009. Urgent work is underway on a remedy to ensure that the duty is discharged in full and as soon as possible.

I enclose a copy of a letter of today's date from the Scottish Ministers to Environmental Standards Scotland accepting the invitation to pursue informal resolution of these matters. You will note the intention to revert to ESS in substance on the extent of the duty to be discharged, on remedy, and on anticipated timescales under separate cover and that an additional period of at least 28 days in which to do so is proposed. The intention is also to revert to you in similar terms and within a similar timescale.

Judicial review proceedings would be premature while the resolution process with ESS is underway and where there is real scope for resolution without the need for litigation. Nothing in this letter is intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

I look forward to hearing from you.

Kind regards,

[Redacted]

Enc: Letter to ESS dated 14 September 2023

From: Katherine White [Redacted]

Sent: Monday, September 25, 2023 2:00 PM

To: [Redacted] Deputy Director Infrastructure and Investment [Redacted] Philip Raines [Redacted]

Subject: RE: ESS meeting on s.94A - SGLD/Policy pre-meet

Hi folks – below is a note of the ½ hour meeting we had with ESS officials,

Thanks,

Kat

Attendees

Kat White, [Redacted] – Scottish Government, IID

[Redacted] – ESS

ESS ([Redacted]) gave a short introduction to the purpose and remit of the ESS, including their approach to investigations - noting that the May correspondence (with [Redacted]) related to pre-investigation work.

The ESS reiterated that they are of the opinion that the representation made by the ERCS was well made.

ESS spoke about the informal resolution process being bespoke to the case and they would expect regular engagement (referenced monthly), as the case required.

SG confirmed that by 12th October, Scottish Ministers will set out their proposed approach to completing the assessment, how this complies with the duty, and a timescale for completing the assessment.

SG plans to offer ESS an update to this ahead of the published response.

ESS plan to communicate with ERCS as they would in any other investigation to give assurances that SG is responding positively to the informal resolution process.

E: [redacted]

[redacted]

Balfour+Manson LLP

BY EMAIL ONLY TO:
[redacted]

Your ref: SM/CG ENV10/1 & GOO323/2

12 October 2023

Dear [redacted]

1. Climate Change (Scotland) Act 2009 – Section 94A
**Assessment of climate impact of Infrastructure
Investment Plan Judicial Review – substantive response
to letter before claim**

I refer to our recent correspondence on the above matter. In my letter dated 14 September in which it was accepted by the Scottish Ministers that the documentation published to date falls short of the requirements of section 94A of the Climate Change (Scotland) Act 2009, the intention to revert to you in substance on the extent of the duty to be discharged, on remedy, and on anticipated timescales was indicated.

The section 94A duty

In your letter dated 5 September 2023, it is asserted that in order to discharge the section 94A duty any assessment must contain three elements:

- "1. identification of the current emissions reductions targets;*
- 2. an assessment of the emissions expected to be produced as a result of the implementation of the IIP; and*
- 3. an assessment as to whether the implementation of the IIP makes it more or less likely that the current emissions reduction targets will be met."*

The correspondence to date does not explain the legal basis for this interpretation of the section 94A duty and I should be grateful for such explanation in support of your position. In any event, the Scottish Ministers do not agree that the second element is a strict requirement under the legislation. There is no express requirement in section 94A that requires that information to be provided. The section 94A duty was not intended by Parliament to be overly prescriptive in light of the recognised uncertainties around methodologies for assessing emissions impacts.

1F North, Victoria Quay, Edinburgh EH6 6QQ

Remedy and anticipated timescales

The Scottish Ministers are committed to complying fully with the section 94A duty and, as you are aware, are engaging with ESS on this matter through the informal resolution process. To this end, the Scottish Ministers intend to publish an assessment of the extent to which investment in accordance with the plan is expected to contribute to the meeting of the emissions reduction targets in Part 1 of the 2009 Act. In the context of the informal resolution process, it is the Scottish Ministers' intention to share with ESS the proposed assessment prior to publication. This will be done as soon as possible and before the end of the calendar year, with publication anticipated in early course thereafter.

An enhanced taxonomy approach will be adopted and will include an assessment on whether the IIP is contributing positively to the emissions reduction targets.

The Scottish Ministers appreciate your clients' concerns. It is hoped that this update provides reassurance that a remedy is underway and that the Scottish Government is absolutely committed to tackling the twin challenges of climate change and biodiversity loss. As has already been announced, the Scottish Ministers intend to publish an update of the IIP pipeline alongside the 2024-2025 Budget. The assessment to be published in satisfaction of the section 94A duty shall be updated accordingly.

Nothing in this letter is intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

I look forward to hearing

from you. Kind regards,

[Redacted]

From: [Redacted]
Sent: Friday, November 10, 2023 2:57 PM
To: Daniel Hinze [Redacted]
Cc: [Redacted]Katherine White [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Follow up ESS Case reference IESS.23.016

Thanks, does 10 o'clock on Thursday 23rd work? I will send over a Teams invite if so. Can you let me know who else to invite from your team please?

[Redacted]
Senior Investigations Officer
[redacted]

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0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Daniel Hinze [Redacted]
Sent: Friday, November 10, 2023 2:42 PM
To: [Redacted]
Cc: [Redacted]Katherine White [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Follow up ESS Case reference IESS.23.016

Hello [Redacted],

Yes, that would work (except Wednesday or Friday). The work is progressing well and we are starting the QA stage.

Daniel

From: [Redacted]
Sent: Friday, November 10, 2023 2:37 PM
To: Daniel Hinze [Redacted]
Cc: [Redacted]Katherine White [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Follow up ESS Case reference IESS.23.016

Thanks Daniel,
We discussed a follow up meeting the last time we spoke – what's your availability w/b 20th November?

It would be useful to understand how the taxonomic approach to producing the S94A(2) assessment is going to look in practice. The initial timeline you were working to was the end of December so I am keen to see, with that deadline rapidly approaching, the implementation of the remedy going smoothly.

[Redacted]
Senior Investigations Officer
[redacted]

General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Daniel Hinze [Redacted]
Sent: Wednesday, November 8, 2023 9:04 AM
To: [Redacted]
Cc: [Redacted] Katherine White [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: Follow up ESS Case reference IESS.23.016

Hello [Redacted]

Sorry for not responding earlier – I'm off on Mondays/Tuesdays.

We are discharging the duty as a whole through the assessment. It shouldn't be long until we've finalised it – I'll get back to you on timelines when I've caught up with colleagues.

Daniel

From: Susan Kenworthy [Redacted]
Sent: Monday, November 6, 2023 4:46 PM
To: Daniel Hinze [Redacted]
Cc: [Redacted]
Subject: Follow up ESS Case reference IESS.23.016

Dear Daniel

I am just following up on your letter of 14th September in which you advised that you intended to revert to ESS by 16th October on the extent of the duty to be discharged, on the remedy and on timescales.

I appreciate that we have discussed this informally and you have indicated the remedy and timescales. However, I am not clear on your assessment of the extent of the duty to be discharged, and would be grateful for your formal confirmation of this in writing, with the remedy and timescales.

Kind regards,

[Redacted]
Senior Investigations Officer
[redacted]

General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

E: [Redacted]

[Redacted]
Balfour+Manson LLP

BY EMAIL ONLY TO:
[Redacted]

Your ref: SM/CG ENV10/1 & GOO323/2
Our ref: LIT/19940/AT

8 November 2023

Dear [Redacted]

Climate Change (Scotland) Act 2009 – Section 94A
**Assessment of climate impact of Infrastructure
Investment Plan Judicial Review – further response in
connection to letter before claim**

Thank you for your letter dated 26 October and for expanding on the basis for your interpretation of the section 94A duty, all of which is noted.

The Scottish Ministers wish to reiterate their commitment to complying fully with the section 94A duty. This will be done through the publication of the assessment as soon as possible and, as you know, the Scottish Ministers are engaging with ESS on this matter. The proposed assessment is to be shared with ESS ahead of publication in the specific context of ESS's statutory functions and the informal resolution process. Your request that the proposed assessment is also shared with your clients prior to publication is noted but I do not have instructions to do so.

I understand that your clients will be advised by ESS of any decision taken in respect of the representation made. Separately, I shall keep you updated on developments of note. As previously set out, the Scottish Ministers appreciate your clients' concerns and are working at pace on the remedy. It is, of course, open to your clients to challenge the assessment in due course if so advised, but I would hope that would not be considered necessary.

Nothing in this letter is intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

Kind regards,
[Redacted]

E: [Redacted]

[Redacted]
Balfour+Manson LLP

BY EMAIL ONLY TO:
[Redacted]

Your ref: SM/CG ENV10/1 & GOO323/2
Our ref: LIT/19940/AT

12 December 2023

Dear [Redacted]

**Climate Change (Scotland) Act 2009 – Section 94A
Assessment of climate impact of Infrastructure Investment Plan
Judicial Review – further response in connection to letter before claim**

Thank you for your letter dated 23 November.

As you note, the Scottish Ministers accept that the documentation published to date falls short of the requirements of section 94A of the Climate Change (Scotland) Act 2009 and have been keeping you and ESS regularly updated on the intended remedy, on anticipated timescales, and on the plans to share the proposed assessment with ESS ahead of publication in the specific context of ESS's statutory functions and the informal resolution process.

The Scottish Ministers wish to repeat the assurances previously given that work on the remedy is advancing at pace. This remains the case and engagement with ESS continues. I understand that you are dissatisfied with the content of my last letter and would hope that these repeated assurances are of comfort. The Scottish Ministers fully appreciate your clients' concerns and cooperative approach and wish to reiterate their commitment to complying fully with the section 94A duty through the publication of the assessment as soon as possible.

Nothing in this letter is intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

Kind regards,
[Redacted]

From: [Redacted]
Sent: 22 December 2023 15:05
To: Katherine White [Redacted]
Cc: [Redacted]
Subject: RE: ESS correspondence = Scottish Government IIP Case Progress

Thanks Katherine, I will be back in touch in the new year. Until then, I hope you have a lovely Christmas break.

[Redacted]
Senior Investigations Officer
[redacted]

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General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Katherine White [Redacted]
Sent: Friday, December 22, 2023 2:48 PM
To: [Redacted]
Cc: Deputy Director Infrastructure and Investment [Redacted]
Subject: ESS correspondence = Scottish Government IIP Case Progress

Dear [Redacted]

Please find attached a letter and copy of the draft IIP Carbon Assessment, as previously discussed. Daniel and I will be online at various points over the holidays but [Redacted] and colleagues not back until week of the 8th and would be happy to meet to discuss this with you then.

Wishing you a peaceful break over the festive season.

Kind regards
Katherine

E: [Redacted]

[Redacted]
Senior Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

[Redacted]

Your ref: ESS.23.016
22 December 2023

Dear [Redacted]

Subject: ESS case reference ESS.23.016.

Please find attached alongside this letter a copy of our proposed carbon assessment of the 2021 Infrastructure Investment Plan. This is being shared with Environmental Standards Scotland ahead of publication in the specific context of the informal resolution process.

I have also provided below a high level view on how the assessment meets the statutory duty.

Scottish Ministers have a statutory duty to publish an assessment of the extent to which investment in accordance with the Infrastructure Investment Plan is expected to contribute to the meeting of the emissions reduction targets (section 94A(2) of the Climate Change (Scotland) Act 2009). As explained in the Carbon Assessment of the 2021 Infrastructure Investment Plan, the Scottish Ministers' overall proposed approach to delivering emissions reduction targets is set out in the Climate Change Plan, with the pathway most recently set out in the Climate Change Plan Update (CCPu), published in December 2020.

It is important to note that it was recognised when the section 94A(2) duty was introduced that it was not intended to be overly prescriptive, given the current uncertainties around methodologies for assessing such impacts. Scottish Ministers consider that the Carbon Assessment of the 2021 Infrastructure Investment Plan, read together with the CCPu, satisfies the statutory duty to assess the contribution that the Infrastructure Investment Plan is expected to make to the meeting of emissions reduction targets. Together these documents provide sufficient information for the public to assess how the proposed policies make it more or less

likely that emissions reduction targets will be met, recognising that any such assessment is qualified at this stage as technology and knowledge develops, including the approach to any of the particular projects referred to in the Plan.

We are proposing to publish the assessment during the w/c 15th January so as not to delay remedying the accepted breach of the statutory duty. I'd be grateful if you could confirm whether we are in a position to bring the informal resolution process to a conclusion ahead of publication.

Nothing in this letter is intended to restrict Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

Yours sincerely,

Katherine White
Deputy Director, Infrastructure and Investment Division

From: [Redacted]

Sent: Friday, December 22, 2023 3:55 PM

To: [Redacted]

Cc: [Redacted]

Subject: RE: Climate Change (Scotland) Act 2009 – Section 94A (B+M/ENV/10/1 & GOO323/01)

Dear [Redacted]

**Climate Change (Scotland) Act 2009 – Section 94A
Assessment of climate impact of Infrastructure Investment Plan
Judicial Review – further response in connection to letter before claim**

I am contacting you in my colleague [Redacted] absence.

In response to your attached letter of 14 December 2023, I can confirm that, as previously indicated, the proposed assessment has now been shared with ESS in the specific context of the informal resolution process, with a view to that process reaching a conclusion prior to publication. We have advised ESS that while Ministers hope that matters can be resolved with ESS ahead of publication, they do not wish to delay remedying the accepted breach of the statutory duty so are intending to publish the assessment during the week commencing 15 January 2024.

Nothing in this email correspondence is intended to restrict the Scottish Ministers' ability to advance any particular argument in the event that judicial review proceedings are raised and the Scottish Ministers reserve the right to do so.

Kind Regards,

[Redacted]

Environmental Standards Scotland / Scottish Government – Infrastructure
Investment Plan
Thursday 11th January 2024

Attendees:

Daniel Hinze, Scottish Government
[Redacted], Scottish Government
[Redacted] Environmental Standards Scotland
[Redacted] Environmental Standards Scotland

Note of Meeting:

- [Redacted] acknowledged receipt of the carbon assessment report. Set out that ESS would not be able to complete the informal resolution process before publication. Requested acknowledgment of the ongoing informal resolution discussions alongside publication.
- [Redacted] set out what was driving the publication timescales and acknowledged the impact on the informal resolution process.
- Both SG and ESS agreed the importance of continued engagement.

From: [Redacted]
Sent: Wednesday, January 17, 2024 1:07 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: IIP S94A assessment

Thank you

[Redacted]
Senior Investigations Officer
[redacted]

ENVIRONMENTAL
Standards Scotland
Irean Àrainneachdail na h-Alba

General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: [Redacted]
Sent: Wednesday, January 17, 2024 1:05 PM
To: [Redacted]
Subject: RE: IIP S94A assessment

Hi [Redacted]

Here's a link to the publication - [Carbon Assessment of the Infrastructure Investment Plan for Scotland 2021-22 to 2025-26 - gov.scot \(www.gov.scot\)](#)

Thanks
[Redacted]

From: [Redacted]
Sent: Tuesday, January 16, 2024 10:41 AM
To: [Redacted]
Cc: [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: IIP S94A assessment

Great, thanks for letting me know.

[Redacted]
Senior Investigations Officer
[redacted]

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0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: [Redacted]
Sent: Tuesday, January 16, 2024 10:06 AM
To: [Redacted]
Cc: [Redacted] Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: IIP S94A assessment

Hi [Redacted]

Thanks for your email. I was just about to email you to let you know that the report will be published on the Scottish Government website tomorrow at 1pm.

Further to our discussion last week, I can confirm that we do not consider it appropriate to add a line to the publication to state that we are still in the informal resolution process with yourselves. However, we continue to want to engage and work towards resolution and are confident meaningful engagement can continue after publication.

Thanks
[Redacted]

From: [Redacted]
Sent: Tuesday, January 16, 2024 9:59 AM
To: [Redacted]
Subject: IIP S94A assessment

Hi [Redacted], just a really quick question – did you publish the assessment yesterday? I can't find it online?

Please can you send me a link? Thanks very much,

[Redacted]
Senior Investigations Officer
[redacted]

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Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: [Redacted]
Sent: Monday, March 11, 2024 1:44 PM
To: Katherine White [Redacted]
Cc: Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: IIP S94A assessment

Dear Kat, thank you for your e-mail.

I can confirm that we should have notified you of the outcome of our work and understand completely why you would wish to know this. I would like to offer you my sincere apology for this oversight. I will remind the team of this.

If you wish to discuss this further please don't hesitate to let me know.

Kind regards
[Redacted]

[Redacted]Head of Investigations, Standards
and Compliance [Redacted]

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Standards Scotland
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General Enquiries | enquiries@environmentalstandards.scot
0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: Katherine White [Redacted]
Sent: Monday, March 11, 2024 11:42 AM
To: [Redacted]
Cc: [Redacted]Deputy Director Infrastructure and Investment [Redacted]
Subject: RE: IIP S94A assessment

Dear [Redacted],

We noted with interest that the ESS has now published a response to the resolution process regarding the Infrastructure Investment Plan on 26th February. We are pleased that you have found our assessment to be acceptable as a remedy.

Can I ask whether it is routine that you would notify the participants in the review of the outcome? We only happened on the update by chance and it would have been helpful to know so that we can update our Ministers and other interested teams.

Kind regards,
Kat

Katherine White (*she/her*)
Deputy Director (job share) | Infrastructure & Investment Division | Scottish Government
Mobile: [Redacted]

My working days are Monday to Wednesday. Please note I work as part of a job-share. Please use the email [Redacted] for emails relating to the Division.