

Environmental Standards Scotland

Standing Orders

October 2021

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| | | |

1. General

1.1 Environmental Standards Scotland (ESS) (in Gaelic, Ìrean Àrainneachdail na h-Alba) is a body corporate established under Schedule 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ('the Continuity Act'). ESS is the holder of a non-ministerial office within the Scottish Administration.

1.2 These standing orders, for regulation of the conduct and proceedings of ESS, are made under sections 2 to 10 of Schedule 1 of the Continuity Act.

1.3 No standing order is to be made, read, applied or suspended in such a manner that contravenes any rule of law, legislative provision, or the terms of the ESS Framework Agreement.

1.4 These standing orders are made by and can be altered or suspended, in whole or in part, by a majority of the ESS Board members.

1.5 These standing orders and their Annexes should be reviewed at least every three years.

1.6 Where these standing orders do not make specific provision, the Chair of ESS, in consultation with the Chief Executive, will have discretion to determine all questions of procedure for the conduct and proceedings of ESS. The Chair and Chief Executive are obliged to inform the Board of any determination of questions that has taken place.

2. Membership

2.1 ESS Board members are appointed to and hold office in ESS in accordance with the provisions of section 2 (1) of the Continuity Act. The collective membership of ESS will be known as, and may be referred to as, "ESS".

2.2 The ESS Secretariat will maintain a register of ESS Board members and ensure appropriate public access to information regarding membership is provided.

2.3 Membership is not representational of any personal or professional group or any professional body. ESS Board members are expected to subscribe to and comply with the code of conduct set out at Annex A.

2.4 ESS Board members will require to register their interests as defined in Annex A, within one month of the date of their appointment to ESS, in a register kept by ESS Secretariat for that purpose. This register will be available for public inspection.

2.5 Where there is any dispute as to whether a conflict of interest arises in respect of any member, the following procedure will apply:

- a. in the event of the potential conflict arising during the course of a meeting, the Chair of ESS will have the power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in that part of the meeting affected by the conflict;
- b. in the event that the potential conflict arises outwith a meeting, then the Chair of ESS will have power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in the business affected by the conflict;

- c. before ruling in either of the circumstances set out in (a) or (b) above, the Chair of ESS may take views of other ESS Board members, as he or she deems necessary;
- d. a record of the area of potential conflict, the ruling reached and by whom will be retained.

2.6 The Chair has personal responsibility to identify and declare conflicts of interest.

3. Chair of ESS

3.1 The Chair of ESS, or in the Chair's absence their nominated deputy, will preside at meetings of the Board in accordance with these standing orders. Any power or duty assigned to the Chair in relation to the conduct of a Board meeting may be exercised by the nominated deputy presiding at the meeting.

3.2 In the event that the Chair is unable to attend a meeting, and no deputy has been nominated or any nominated deputy is also unable to attend, a temporary deputy will be selected by the ESS Board members present. Any power or duty assigned to the Chair in relation to the conduct of a Board meeting may be exercised by the temporary deputy at the meeting.

3.3 The Chair will regulate discussion and debate at Board meetings and will ensure that all have an equal opportunity to express their views.

3.4 If in the opinion of the Chair any person present at a meeting is incapacitated, behaving inappropriately or without due consideration for other members or persons present, the Chair may require that person to leave the meeting.

3.5 The Chair is bound, in the same way as all other ESS Board members, by the provisions of the Code of Conduct and of standing orders 2.3 and 2.4 in respect of the registration and declaration of interests. Where a conflict of interest arises during the course of a meeting, the Chair will not be further involved in that part of the meeting affected by the conflict, and his or her nominated deputy will preside at that part of the meeting until conclusion of the relevant business. Where a conflict of interest for the Chair arises outwith a Board meeting, the Chair will not be involved in the business affected by the conflict, whether in discussion, in secure electronic communication, or by any other means. Before reaching a conclusion in either of these circumstances, the Chair may consult other ESS Board members as he or she considers necessary and appropriate. The Chair can be challenged on their interpretation of their conflict of interest by the Chair of the Audit and Risk Committee. A record of the area of potential conflict and of the action taken will be retained by the ESS Secretariat.

4. Ordinary Meetings

4.1 The Board will meet at least four times in each financial year on dates and at times and places determined by ESS Board members and specified in the notice calling the meeting. Meetings may be via teleconference or videoconference. No period longer than three months should elapse between ordinary meetings.

4.2 Provisional dates for ordinary meetings will usually be set at least three months ahead of the proposed meeting date to assist with diary planning.

4.3 Not less than seven calendar days prior to the date of a Board meeting the following documents will be issued electronically by the ESS Secretariat to each ESS Board member:

- a. a notice convening the meeting (detailing final confirmed date, time and location);
- b. an agenda detailing the business to be transacted (with each item clearly indicating whether the matter is for decision, or for scrutiny); and
- c. reports and other documents referred to in, or to be read with, the agenda (specifying whether documents are for decision, scrutiny or information).

4.4 Late papers will be issued or tabled only in exceptional circumstances and at the discretion of the Chair or his or her nominated deputy.

4.5 Papers for Board and Committee meetings will usually be issued by secure electronic transfer. Any ESS Board member who wishes to receive notice of all or any meetings and/or the agenda and papers for those meetings in paper copy, must ensure that this is agreed with the ESS Secretariat in time for the ESS Secretariat to meet the requirements of standing order 4.3.

4.6 Subject to the agreement of the Board, failure to comply with standing order 4.3 above will not affect the validity of a meeting.

4.7 Where business to be transacted has not been completed within the time allotted for a Board meeting:

- a. those present may resolve to continue the meeting in order to deal with the business; or
- b. the Board may adjourn any meeting to another date, time and place by majority agreement of Board members present; or
- c. any business not completed may become part of the agenda for a subsequent Board meeting.

4.8 All decisions will be made by the Board, unless the issues concerned are delegated to another individual, group or Committee in line with the provisions of paragraph 8 of Schedule 1 of the Continuity Act. Where issues are delegated, the Board retains overall responsibility and will put appropriate arrangements in place for scrutiny of performance.

4.9 Decisions of the Board will normally be by consensus of those present at Board meetings.

4.10 If consensus cannot be reached on a particular issue by ESS Board members attending, the Chair or another ESS Board member may ask for a vote to be taken. Any matter put to the vote is decided by a simple majority of ESS Board members present. In the event of a tie, the Chair, or in his or her absence a nominated deputy, has a second or casting vote. Voting will be by a show of hands. Only ESS Board members present at a meeting may vote and proxy voting is not allowed.

4.11 ESS Board members departing early will be treated as non-attending for the purpose of any decision taken after the time of departure.

4.12 Decisions of the Board are binding on all ESS Board members and staff.

4.13 A member may have their dissent to a decision of the Board recorded provided they have attended for the whole of the discussion and decision, and ask to record their dissent immediately after the decision is concluded. The recording of any such dissent shall not affect standing order 4.12.

4.14 As paragraph 2(1) of schedule 1 of the Continuity Act provides for some variation in the number of members, and as vacancies will from time to time arise, the number of members for a quorum at a meeting of the ESS Board will be $\left\lceil \frac{n+1}{2} \right\rceil$, where n is the number of currently serving Board members (including the Chair, if not vacant) and $\lceil \]$ indicates that the number should be rounded up to the nearest whole number.

4.15 Apologies for absence should be tendered to the ESS Secretariat and will be noted.

4.16 Should an ESS Board member fail to attend two consecutive meetings of the Board without reasonable excuse, or miss three meetings of the Board in a twelve-month period, the Chair may discuss with the ESS Board member the circumstances surrounding their absence and whether the ESS Board member will be likely to have sufficient time available to carry out their Board role in future. If there is doubt about the Board member's future ability to meet the expectations of the role, the Chair may raise with the Scottish Ministers the potential removal of that member. Paragraph 2(a) of Schedule 1 of the Continuity Bill gives Scottish Ministers power to remove a member who has been absent, without permission or reasonable excuse, from Board meetings of ESS for a period of longer than three consecutive months.

4.17 The Chair, or in his or her absence a nominated deputy, may agree to hold a Board meeting by way of either tele- or video-conferencing, or permit one or more ESS Board members to join a meeting in this way when the Board is meeting in person. Where an ESS Board member attends a meeting in this way, he or she will be regarded as being present for the purposes of constituting a quorum and will be entitled to vote.

4.18 The Board (or its Committees) may invite individuals, bodies or organisations to attend its meetings or parts of its meetings, provide information and/or make representations to it about particular issues. The ESS Board (or its Committees) may also invite individuals, bodies or organisations to provide written submissions for consideration in advance of meetings of the Board (or its Committees).

4.19 All members of the ESS Executive Team will normally attend Board meetings. Any other ESS staff and/or substitutes may attend at the discretion of the Chief Executive.

4.20 The Chief Executive will ensure that the work of all Board and Committees is supported and serviced by appropriate staff.

5. Agenda

5.1 Advised by the Chief Executive (or any officer acting on behalf of the Chief Executive) and the Secretariat to the Board, the agenda for a meeting shall be agreed by the Chair of the Board, or Committee, at least ten working days in advance of the meeting. It will be circulated to ESS Board members by post and/or e-mail at least five working days prior to the meeting.

5.2 The following will be standing items on the agenda of Ordinary meetings of ESS:

- a. Declarations of interest
- b. Apologies for absence
- c. Minutes of last meeting and issues arising
- d. ESS Board Decision Tracker
- e. Report by the Chair

- f. Report by the Chief Executive
- g. Corporate and Business Plan delivery status reports, including reports on matters under investigation and highlight reports of any major change projects or programmes.

5.3 The following will be items on the agenda of ordinary meetings of the ESS at least twice a year, or whenever there are significant developments which need to be brought to the attention of the Board:

- a. Finance report
- b. Corporate risk register
- c. Staffing update

5.4 Following meetings of Board Committees, the Board will consider oral and/or written updates from the Committee on the areas of the Committee's delegated responsibility at the next Ordinary Board meeting. Minutes of meetings of Committees will also be circulated to the Board, and the Board will receive an annual written report from each Committee.

5.5 Any ESS Board member may propose an item for the Agenda of an ordinary Board meeting by contacting the ESS Secretariat, copying the proposal to the Chair, not less than 14 calendar days before the date of the meeting. The Chair of the meeting will consider the request, taking advice from the Chief Executive (or any officer acting on behalf of the Chief Executive) and the secretariat to the Board. If the Chair decides not to include the item on the Agenda, the member will be advised and the Board, or Committee, informed during the Chair's opening remarks.

5.6 Exceptionally and only with the agreement of the Board, changes may be made to the Agenda to deal with urgent business. Where an agenda changes, a revised agenda should be circulated to members or, if not practicable, tabled at the beginning of the meeting.

Special Meetings of the Board and Board decisions outwith meetings

5.7 The Chair, an ESS Board member or ESS Board members, or the Chief Executive may at any time propose a special meeting of the Board to deal with urgent business. The Chair or Chief Executive will call a special meeting of the Board on receipt of a formal request which specifies the business to be transacted at the meeting and which has the support of no fewer than 3 members of the Board. Formal requests under this standing order will be sent to the ESS Secretariat.

5.8 Where a formal request is received in accordance with standing order 6.1, the meeting shall be held within fourteen days of receipt of the request and no business shall be transacted at that meeting other than that specified in the request.

5.9 Special meetings may be held by tele- or video-conference, or individual ESS Board members may with the permission of the Chair or their nominated deputy use tele- or video-conferencing to attend an in-person Special meeting of the Board, in line with arrangements for Ordinary meetings (standing order 4.17).

5.10 Decisions of the Board and transaction of business at Special meetings will be subject to the same quorum requirements (standing order 4.14) as Ordinary meetings.

5.11 When there is urgent business that does not require a Special meeting of the Board, or when holding a Special meeting is not practical, the Chair or their nominated deputy may agree to transact Board business by secure electronic communication (e.g. secure email). Decisions made by the Board in this way will only be valid if explicitly supported in the electronic correspondence by a majority of ESS Board members.

5.12 On every occasion on which any of standing orders 6.1 to 6.5 is invoked, the circumstances will be reported to all ESS Board Members and the ESS Secretariat at the earliest opportunity. All such actions will be reported at the next Ordinary meeting of the Board.

5.13 The Board or its Committees may organise, as appropriate, discussions on longer-term issues or in-depth explorations of particular topics. Such meetings will be discursive rather than decision-taking. Decisions on whether it is appropriate to take minutes of such discussions will be made on a case-by-case basis. Decisions will also be taken on a case-by-case basis on whether to publish any minutes or output of the discussion. Output from any such discussions will be referred to the Board or to the appropriate Committee for consideration or decision.

6. Minutes

6.1 Minutes will be kept of each ESS Board and Committee meeting, recording the members present, staff in attendance, apologies tendered and accepted for non-attendance, issues considered, decisions reached and actions agreed.

6.2 Within five working days of a meeting, draft minutes will be sent by the ESS Secretariat to the Chair of ESS for approval. The Chair will return the draft minutes, with such revisions they wish made to the draft, to the ESS Secretariat within five working days. The revised draft minutes returned by the Chair of ESS, or, where it is not possible for any reason to obtain a revised draft from the Chair of ESS, an unrevised draft, will be circulated to all ESS Board members within fifteen working days of the meeting. The draft minutes will be included on the agenda at the next Ordinary meeting for approval.

6.3 Where those present at a meeting of ESS or any of its committees determine that any part of the business conducted is confidential, that part of the proceedings will be minuted separately and will not be published under standing order 6.4.

6.4 Minutes will be published on the ESS website in final form within seven calendar days of the meeting at which they were approved. Minutes will be made available on the ESS website for two years following the date of the meeting after which time they will be removed and placed in an electronic archive by the ESS Secretariat.

6.5 Decisions on issues of immediate importance to operational staff may be disseminated to them, in advance of the minutes of the meeting recording the decision being approved or published, but only with approval of the person chairing the meeting.

7. Committees

7.1 Committees are established under paragraph 7 of Schedule 1 to the Continuity Act and will operate strictly in accordance with the terms of their remit.

7.2 When establishing Committees, ESS will:

- a. determine the chair, membership and period(s) of appointment;

- b. in consultation with the Committee, establish the terms of reference and the frequency of meetings; and
- c. determine procedures, including the Committee's quorum and which of these standing orders will apply to the conduct of the Committee

7.3 Committees may comprise ESS Board members and individuals who are not ESS Board members. The membership of each Committee must include at least two ESS Board members. The quorum for the Committee must require at least one ESS Board member to be present for any Committee business to be transacted.

7.4 Members of a Committee who are not ESS Board members are not entitled to vote at meetings of the Committee.

7.5 Members of a Committee who are not ESS Board members are nevertheless bound by the provisions of the Environmental Standards Scotland Code of Conduct.

7.6 The Board may delegate to its Committees such of its functions as it considers appropriate. The Board, however, remains responsible for the performance of its functions.

7.7 The following will be standing committees of ESS:

- a. Audit and Risk Committee.

7.8 ESS will review its Committee structure at least once every three years.

7.9 The minutes and decisions of Committees will be reviewed and approved at each subsequent Board meeting. Minutes will be published on the ESS website in final form within seven calendar days of the Board meeting at which they were approved.

8. Decisions Reserved for ESS and Scheme of Delegation

8.1 The following matters are reserved for the ESS Board:

- a. approval of a strategy that sets out how ESS intends to exercise its functions under section 22 and Schedule 2 of the Continuity Act;
- b. the decision to issue an improvement report under section 29 of the Continuity Act, and the content of any improvement report;
- c. the decision to issue a compliance notice under section 31 of the Continuity Act, and the content of any compliance notice;
- d. the decision to apply for or participate in judicial review under section 38 of the Continuity Act;
- e. the decision to establish any Committee acting on behalf of ESS, and the remit and reporting arrangements for such a Committee;
- f. corporate financial and audit reporting arrangements;
- g. corporate performance management reporting arrangements;
- h. approval of annual accounts; and
- i. standing orders, including a scheme of delegation.

8.2 The Board has agreed a scheme of delegation setting out responsibility for other matters, which is included at Annex B. The scheme of delegation will be reviewed by the Board at least once per year.

9. Correspondence

9.1 It is essential that ESS as a body corporate has an overview of all correspondence, including any correspondence with individual members. The ESS Secretariat will receive and log all official correspondence to and from ESS body corporate. Any such correspondence received or sent by an individual member in relation to ESS will be copied to the ESS Secretariat for this purpose. The Chief Executive will, as part of their delegated responsibilities, ensure that any important or contentious issues arising from correspondence are highlighted to the Board as appropriate.

10. Urgent actions

10.1 The Chief Executive will usually deal with all matters that are not reserved exclusively to the Board under standing order 9.1, including any urgent matters, and will keep the Board informed as required.

10.2 Where urgent action is required on any matter that is reserved exclusively to the ESS Board under standing order 9.1, the Chair has the authority to deal with the issue. The Chair will in such circumstances inform the Board of the action taken at the earliest opportunity, and certainly no later than at the next meeting of the Board.

11. Public statements

11.1 Public statements concerning ESS will normally be made by the Chair, another ESS Board member, the Chief Executive or by another member of staff authorised by the Chair or the Chief Executive.

12. Signing of Documents

12.1 Where any documents are required to be executed on behalf of ESS, they shall be signed:

- a. by the Chair (or their nominated deputy), plus one other ESS Board member; or
- b. by any person operating within their remit under the scheme of delegation.

13. Confidentiality

13.1 All ESS Board members, the ESS Secretariat and any other person present at a meeting of the ESS Board have a duty:

- a. not to discuss items of business agreed under standing order 7.3 to be confidential with any person who was not present at that meeting unless authorised to do so by the Chair of ESS or the Chief Executive; and
- b. not to comment on any matter in any way that undermines the principle of collective responsibility for decisions reached at such meetings.

13.2 The duty set out in standing order 14.1 is in addition to the statutory obligation on confidentiality of proceedings under section 40 of the Continuity Act.

13.3 This standing order is without prejudice to the terms of the Public Interest Disclosure Act 1998.

14. Security of documents

14.1 ESS Board members will be held personally responsible for the safe custody of any papers or documents which have been received by or entrusted to them in the course of their duties. The loss of any such documents must be reported immediately to the Chief Executive, the Senior Information Risk Owner (SIRO) and, in the absence of either the Chief Executive or the SIRO, the ESS Secretariat.

15. Members' remuneration and expenses

15.1 ESS will remunerate ESS Board members, and any other persons appointed to any Committee established by the Board, in accordance with the scales set out in Annex C, provided that the person is not already in receipt of a publicly-funded salary or payment for the time they expend on ESS business.

15.2 ESS will reimburse expenses incurred by ESS Board members, and any other persons appointed to any Committee established by the Board, in accordance with the scales set out in Annex C.

15.3 The scales for remuneration and reimbursement of expenses will be reviewed annually by ESS, and any proposed changes will be agreed with Scottish Ministers as required by paragraph 4 of Schedule 1 of the Continuity Act.

16. Interpretation

16.1 In these standing orders and accompanying annexes:

“a non-ministerial office holder within the Scottish Administration” means a body named as such in Section 126 (8)(a) of the Scotland Act 1998 as amended by an Order of Council made by Her Majesty under subsection (b) of that section;

“ESS Secretariat” means any officer or officers appointed by the CEO of ESS to act in this capacity;

“financial year” means the period beginning with the establishment of ESS and ending on 31 March next occurring and each subsequent period of a year ending on 31 March;

“ESS website” means www.environmentalstandards.scot.

ANNEX A: MEMBERS' CODE OF CONDUCT

1. Introduction to the Code of Conduct

1.1 The Scottish public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties. You must meet those expectations by ensuring that your conduct is above reproach.

1.2 The Ethical Standards in Public Life etc. (Scotland) Act 2000, "the Act", provides for Codes of Conduct for local authority councillors and members of relevant public bodies; imposes on councils and relevant public bodies a duty to help their members to comply with the relevant code; and establishes a Standards Commission for Scotland, "The Standards Commission" to oversee the new framework and deal with alleged breaches of the codes.

1.3 The Act requires the Scottish Ministers to lay before Parliament a Code of Conduct for Councillors and a Model Code for Members of Devolved Public Bodies. This Model Code for members was first introduced in 2002 and has now been revised following consultation and the approval of the Scottish Parliament. These revisions will make it consistent with the relevant parts of the Code of Conduct for Councillors, which was revised in 2010 following the approval of the Scottish Parliament. This Code of Conduct is based on the revised Code of Conduct for Members of Devolved Public Bodies, published in February 2014.

1.4 As an ESS Board member, it is your responsibility to make sure that you are familiar with, and that your actions comply with, the provisions of this Code of Conduct.

Appointments to the Boards of Public Bodies

1.5 Public bodies in Scotland are required to deliver effective services to meet the needs of an increasingly diverse population. In addition, the Scottish Government's equality outcome on public appointments is to ensure that Ministerial appointments are more diverse than at present. In order to meet both of these aims, a board should ideally be drawn from varied backgrounds with a wide spectrum of characteristics, knowledge and experience. It is crucial to the success of public bodies that they attract the best people for the role and therefore it is essential that a board's appointments process should encourage as many suitable people to apply for positions and be free from unnecessary barriers. You should therefore be aware of the varied roles and functions of ESS and of wider diversity and equality issues. You should also take steps to familiarise yourself with the appointment process that your board (if appropriate) will have agreed with the Scottish Government's Public Appointments Team.

1.6 You should also familiarise yourself with how ESS policy operates in relation to succession planning, which should ensure public bodies have a strategy to make sure they have the board members in place with the skills, knowledge and experience necessary to fulfil their role economically, efficiently and effectively.

Guidance on the Code of Conduct

1.7 You must observe the rules of conduct contained in this Code. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not at any time advocate or encourage any action contrary to the Code of Conduct.

1.8 The Code has been developed in line with the key principles listed in Section 2 and provides additional information on how the principles should be interpreted and applied in

practice. The Standards Commission may also issue guidance. No Code can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice initially from the ESS Secretariat. The ESS Secretariat may refer the matter to the Chief Executive or Chair of ESS if appropriate. You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals.

1.9 You should familiarise yourself with the Scottish Government publication “On Board – a guide for board members of public bodies in Scotland”. This publication will provide you with information to help you in your role as a member of ESS and can be viewed on the Scottish Government website.

Enforcement

1.10 Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of this Code of Conduct and where appropriate the sanctions that shall be applied if the Standards Commission finds that there has been a breach of the Code. Those sanctions are outlined in **Annex A1**.

2. Key Principles of the Code of Conduct

2.1 The general principles upon which this Code is based should be used for guidance and interpretation only. These general principles are:

Duty: You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of ESS and in accordance with the core functions and duties of that body.

Selflessness: You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity: You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity: You must make decisions solely on merit and in a way that is consistent with the functions of ESS when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

Accountability and Stewardship: You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that ESS uses its resources prudently and in accordance with the law.

Openness: You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty: You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of ESS and its members in conducting public business.

Respect: You must respect fellow members and employees of ESS and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as an ESS Board member.

2.2 You should apply the principles of this Code to your dealings with fellow members of ESS, its employees and other stakeholders. You should also observe the principles of this Code in dealings with the public when performing duties as a member of ESS.

3. General Conduct

3.1 The rules of good conduct in this section must be observed in all situations where you act as an ESS Board member.

Conduct at Meetings

3.2 You must respect the chair, your colleagues and the Chief Executive and staff of ESS in meetings. You must comply with rulings from the chair in the conduct of the business of these meetings.

Relationship with Board Members and Employees of the Public Body (including those employed by contractors providing services)

3.3 You will treat your fellow board members and any staff employed by the body with courtesy and respect. It is expected that fellow board members and employees will show you the same consideration in return. It is good practice for employers to provide examples of what is unacceptable behaviour in their organisation. Public bodies should promote a safe, healthy and fair working environment for all. As an ESS Board member you should be familiar with ESS policies in relation to bullying and harassment in the workplace and also lead by example in your own behaviour.

Remuneration, Allowances and Expenses

3.4 You must comply with ESS rules regarding remuneration, allowances and expenses.

Gifts and Hospitality

3.5 You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour, or disadvantage, to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions or provision of services at a cost below that generally charged to members of the public.

3.6 You must never ask for gifts or hospitality.

3.7 You are personally responsible for all decisions connected with the offer or acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in ESS. As a general guide, it is usually appropriate to refuse offers except:

- a. isolated gifts of a trivial character, the value of which must not exceed £50;
- b. normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- c. gifts received on behalf of ESS.

3.8 You must not accept any offer of a gift or hospitality from any individual or organisation which stands to gain or benefit from a decision ESS may be involved in determining, or who is seeking to do business with ESS, and which a person might reasonably consider could have a bearing on your judgement. If you are making a visit in your capacity as a member of ESS then, as a general rule, you should ensure that ESS pays for the cost of the visit.

3.9 You must not accept repeated hospitality or repeated gifts from the same source.

3.10 You should familiarise yourself with the terms of the Bribery Act 2010 which provides for offences of bribing another person and offences relating to being bribed.

Confidentiality Requirements

3.11 There may be times when you will be required to treat discussions, documents or other information relating to the work of ESS in a confidential manner. You will often receive information of a private nature which is not yet public, or which perhaps would not be intended to be public. You must always respect the confidential nature of such information and comply with the requirement to keep such information private.

3.12 It is unacceptable to disclose any information to which you have privileged access, for example derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purposes of personal or financial gain, or for political purposes or used in such a way as to bring the ESS into disrepute.

3.13 When joining a meeting of the ESS Board or any ESS Committee by tele- or videoconference, it is the responsibility of the ESS Board or Committee member to ensure that they are joining from a sufficiently private location not to compromise the confidentiality of any ESS business.

Use of ESS Facilities

3.14 Members of ESS must not misuse facilities, equipment, stationery, telephony, computer, information technology equipment and services, or use them for party political or campaigning activities. Use of such equipment and services etc. must be in accordance with the ESS' policy and rules on their usage. Care must also be exercised when using social media networks not to compromise your position as an ESS Board member.

Appointment to Partner Organisations

3.15 You may be appointed, or nominated by ESS, as a member of another body or organisation. If so, you are bound by the rules of conduct of these organisations and should observe the rules of this Code in carrying out the duties of that body.

3.16 Members who become directors of companies as nominees of ESS will assume personal responsibilities under the Companies Acts. It is possible that conflicts of interest can arise for such members between the company and ESS. It is your responsibility to take advice on your responsibilities to ESS and to the company. This will include questions of declarations of interest.

4. Registration of Interests

4.1 The following paragraphs set out the kinds of interests, financial and otherwise which you have to register. These are called “Registerable Interests”. You must, at all times, ensure that these interests are registered, when you are appointed and whenever your circumstances change in such a way as to require change or an addition to your entry the ESS Register. It is your duty to ensure any changes in circumstances are reported within one month of them changing.

4.2 The Regulations¹ as amended describe the detail and timescale for registering interests. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. **Annex A2** contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse or cohabitee.

Category One: Remuneration

4.3 You have a Registerable Interest where you receive remuneration by virtue of being:

- a. employed;
- b. self-employed;
- c. the holder of an office;
- d. a director of an undertaking;
- e. a partner in a firm; or
- f. undertaking a trade, profession or vocation or any other work.

4.4 In relation to 4.3 above, the amount of remuneration does not have to be registered, and remuneration received as a member of ESS does not have to be registered.

4.5 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two, “Related Undertakings”.

¹ SSI - The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 Number 135, as amended.

4.6 If you receive any allowances in relation to membership of any organisation, the fact that you receive such an allowance must be registered.

4.7 When registering employment, you must give the name of the employer, the nature of its business, and the nature of the post held in the organisation.

4.8 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

4.9 Where you undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication, and the frequency of articles for which you are paid.

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and the nature of its business.

4.11 Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

4.12 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

4.13 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

4.14 The situations to which the above paragraphs apply are as follows:

- a. you are a director of a board of an undertaking and receive remuneration declared under category one – and
- b. you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

4.15 You have a registerable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 4.19 below) have made a contract with ESS:

- a. under which goods or services are to be provided, or works are to be executed; and
- b. which has not been fully discharged.

4.16 You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Houses, Land and Buildings

4.17 You have a registerable interest where you own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the body to which you are appointed.

4.18 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in houses, land and buildings could potentially affect your responsibilities to ESS and to the public, or could influence your actions, speeches or decision making.

Category Five: Interest in Shares and Securities

4.19 You have a registerable interest where you have an interest in shares comprised in the share capital of a company or other body where:

- a. this may be significant to, of relevance to, or bear upon, the work and operation of ESS; and
- b. the nominal value of the shares is:
 - i. greater than 1% of the issued share capital of the company or other body; or
 - ii. greater than £25,000.

4.20 Where you are required to register the interest, you should provide the registered name of the company in which you hold shares; the amount or value of the shares does not have to be registered.

Category Six: Gifts and Hospitality

4.21 You must register the details of any gifts or hospitality received within your current term of office. This record will be available for public inspection. It is not however necessary to record any gifts or hospitality as described in paragraph 3.7a to 3.7c of this Code.

Category Seven: Non-Financial Interests

4.22 You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of ESS. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

4.23 In the context of non-financial interests, the test to be applied when considering appropriateness of registration is to ask whether a member of the public might reasonably think that any non-financial interest could potentially affect your responsibilities to the organisation to which you are appointed and to the public, or could influence your actions, speeches or decision-making.

5. Declaration of Interests

General

5.1 The key principles of this Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of ESS. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 Public bodies inevitably have dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in ESS and its members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason.

5.3 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but whether anybody else would think that you might be influenced by the interest. You must, however, always comply with the objective test (“the objective test”) which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as an ESS Board member.

5.4 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution. If a board member is unsure as to whether a conflict of interest exists, they should seek advice from the Chair.

5.5 As an ESS Board member you might serve on other bodies. In relation to service on the boards and management committees of limited liability companies, public bodies, societies and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare an interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significance, should it not be declared. You must always remember the public interest points towards transparency and, in particular, a possible divergence of interest between ESS and another body. Keep particularly in mind the advice in paragraph 3.15 of this Code about your legal responsibilities to any limited company of which you are a director.

Interests which Require Declaration

5.6 Interests which require to be declared may be financial or non-financial. They may or may not cover interests which are registerable under the terms of this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration. The paragraphs which follow deal with (a) your financial interests (b) your non-financial interests and (c) the interests, financial and non-financial, of other persons.

5.7 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as an ESS Board member. In the context of any particular matter you will need to decide whether to declare an interest. You should declare

an interest unless you believe that, in the particular circumstances, the interest is too remote or without significance. In reaching a view on whether the objective test applies to the interest, you should consider whether your interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is an ESS Board member as opposed to the interest of an ordinary member of the public.

Your Financial Interests

5.8 You must declare, if it is known to you, any financial interest (including any financial interest which is registerable under any of the categories prescribed in section 4 of this Code).

5.9 There is no need to declare an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.10 You must withdraw from the meeting room until discussion of the relevant item where you have a declarable interest is concluded. There is no need to withdraw in the case of an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

Your Non-Financial Interests

5.11 You must declare, if it is known to you, any non-financial interest if:

- a. that interest has been registered under category seven (Non-Financial Interests) of section 4 of this Code; or
- b. that interest would fall within the terms of the objective test.

5.12 There is no need to declare an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.13 You must withdraw from the meeting room until discussion of the relevant item where you have a declarable interest is concluded. There is no need to withdraw in the case of an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

The Financial Interests of Other Persons

5.14 The Code requires only your financial interests to be registered. You also, however, have to consider whether you should declare any financial interest of certain other persons.

5.15 You must declare if it is known to you any financial interest of:

- c. a spouse, a civil partner or a co-habitee;
- d. a close relative, close friend or close associate;
- e. an employer or a partner in a firm;
- f. a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- g. a person from whom you have received a registerable gift or registerable hospitality;

- h. a person from whom you have received registerable expenses.

5.16 There is no need to declare an interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.17 You must withdraw from the meeting room until discussion of and voting on the relevant item where you have a declarable interest is concluded. There is no need to withdraw in the case of an interest which is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.18 This Code does not attempt the task of defining “relative” or “friend” or “associate”. Not only is such a task fraught with difficulty but is also unlikely that such definitions would reflect the intention of this part of the Code. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as an ESS Board member and, as such, would be covered by the objective test.

The Non-Financial Interests of Other Persons

5.19 You must declare if it is known to you any non-financial interest of:

- a. a spouse, a civil partner or a co-habitee;
- b. a close relative, close friend or close associate;
- c. an employer or a partner in a firm;
- d. a body (or subsidiary or parent of a body) of which you are a remunerated member or director;
- e. a person from whom you have received a registerable gift or registerable hospitality;
- f. a person from whom you have received registerable election expenses.

5.20 There is no need to declare the interest if it is so remote or insignificant that it could not reasonably be taken to fall within the objective test.

5.21 There is only a need to withdraw from the meeting if the interest is clear and substantial.

Making a Declaration

5.22 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed, you must declare the interest as soon as you realise it is necessary.

5.23 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words “I declare an interest”. The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

Frequent Declarations of Interest

5.24 Public confidence in a public body is damaged by perception that decisions taken by that body are substantially influenced by factors other than the public interest. If you would have to declare interests frequently at meetings in respect of your role as a board member you should not accept a role or appointment with that attendant consequence. If ESS Board members are frequently declaring interests at meetings, then they should consider whether they can carry out their role effectively and discuss with the chair. Similarly, if any appointment or nomination to another body would give rise to objective concern because of your existing personal involvement or affiliations, you should not accept the appointment or nomination.

Dispensations

5.25 In some very limited circumstances dispensations can be granted by the Standards Commission in relation to the existence of financial and non-financial interests which would otherwise prohibit you from taking part and voting on matters coming before ESS and its committees.

5.26 Applications for dispensations will be considered by the Standards Commission and should be made as soon as possible in order to allow proper consideration of the application in advance of meetings where dispensation is sought. You should not take part in the consideration of the matter in question until the application has been granted.

6. Lobbying and Access to ESS Board Members

Introduction

6.1 In order for ESS to fulfil its commitment to being open and accessible, it needs to encourage participation by organisations and individuals in the decision-making process. Clearly, however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which ESS conducts its business.

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual members. The rules in this Code set out how you should conduct yourself in your contacts with those who would seek to influence you. They are designed to encourage proper interaction between ESS Board members, those they represent and interest groups.

Rules and Guidance

6.3 You must not, in relation to contact with any person or organisation that lobbies do anything which contravenes this Code or any other relevant rule of ESS or any statutory provision.

6.4 You must not, in relation to contact with any person or organisation who lobbies, act in any way which could bring discredit upon ESS.

6.5 The public must be assured that no person or organisation will gain better access to or treatment by, you as a result of employing a company or individual to lobby on a fee basis on their behalf. You must not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which you accord

any other person or organisation who lobbies or approaches you. Nor should those lobbying on a fee basis on behalf of clients be given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming from another ESS Board member.

6.6 Before taking any action as a result of being lobbied, you should seek to satisfy yourself about the identity of the person or organisation that is lobbying and the motive for lobbying. You may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that you know the basis on which you are being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code.

6.7 You should not accept any paid work which would involve you:

- a. lobbying ESS on behalf of any person or organisation or any clients of a person or organisation; or
- b. providing services as a strategist, adviser or consultant specifically related to the work of ESS, for example, advising on how to influence ESS and its members. This does not prohibit you from being remunerated for activity which may arise because of, or relate to, membership of ESS, such as journalism or broadcasting, or involvement in representative or presentational work, such as participation in delegations, conferences or other events.

6.8 If you have concerns about the approach or methods used by any person or organisation in their contacts with you, you must seek the guidance of the Chair or Chief Executive of ESS.

ANNEX A1: SANCTIONS AVAILABLE TO THE STANDARDS COMMISSION FOR BREACH OF THE CODE

- (a) Censure – the Commission may reprimand the member but otherwise take no action against them;
- (b) Suspension – of the member for a maximum period of one year from attending one or more, but not all, of the following:
- i) all meetings of the public body;
 - ii) all meetings of one or more committees or sub-committees of the public body;
 - (iii) all meetings of any other public body on which that member is a representative or nominee of the public body of which they are a member.
- (c) Suspension – for a period not exceeding one year, of the member’s entitlement to attend all of the meetings referred to in (b) above;
- (d) Disqualification – removing the member from membership of that public body for a period of no more than five years.

Where a member has been suspended, the Standards Commission may direct that any remuneration or allowance received from membership of that public body be reduced, or not paid. Where the Standards Commission disqualifies a member of a public body, it may go on to impose the following further sanctions:

- (a) Where the member of a public body is also a councillor², the Standards Commission may disqualify that member (for a period of no more than five years) from being nominated for election as, or from being elected, a councillor. Disqualification of a councillor has the effect of disqualifying that member from their public body and terminating membership of any committee, sub-committee, joint committee, joint board or any other body on which that member sits as a representative of their local authority.
- (b) Direct that the member be removed from membership, and disqualified in respect of membership, of any other devolved public body (provided the members’ code applicable to that body is then in force) and may disqualify that person from office as the Water Industry Commissioner.

In some cases the Standards Commission do not have the legislative powers to deal with sanctions, for example if the respondent is an executive member of the board or appointed by the Queen. Sections 23 and 24 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 refer.

Full details of the sanctions are set out in Section 19 of the Act.

² Paragraph 3(2) of schedule 1 of the Continuity Act prohibits the appointment of a councillor to be a member of the ESS, but the sanction is included here for information.

ANNEX A2: DEFINITIONS

“**Chair**” includes Board Convener or any person discharging similar functions under alternative decision-making structures.

“**Code**” code of conduct for members of devolved public bodies

“**Cohabitee**” includes a person who is living with you in a relationship similar to that of a civil partner or spouse.

“**Group of companies**” has the same meaning as “group” in section 262(1) of the Companies Act 1985. A “group”, within s262 (1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.

“**Parent Undertaking**” is an undertaking in relation to another undertaking, a subsidiary undertaking, if

- a) it holds a majority of the rights in the undertaking; or
- b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or
- c) it has the right to exercise a dominant influence over the undertaking
 - (i) by virtue of provisions contained in the undertaking’s memorandum or articles or
 - (ii) by virtue of a control contract; or
- d) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the rights in the undertaking.

“**A person**” means a single individual or legal person and includes a group of companies.

“**Any person**” includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.

“**Public body**” means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, as amended.

“**Related Undertaking**” is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.

“**Remuneration**” includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.

“**Spouse**” does not include a former spouse or a spouse who is living separately and apart from you.

“Undertaking” means:

a) a body corporate or partnership; or

b) an unincorporated association carrying on a trade or business, with or without a view to a profit.

ANNEX B: SCHEME OF INTERNAL DELEGATION

1. Introduction

1.1 Section 9 of the Standing Orders sets out the functions which are reserved to the Board. Other functions are delegated to Committees or to the Chief Executive as set out in the following table, but the Board remains ultimately responsible for performance of all functions in line with the provisions of paragraph 8 of schedule 1 of the Continuity Act.

1.2 Where this scheme delegates responsibility to the Chief Executive, that responsibility may be delivered by or with the support of other members of the ESS staff, but the Chief Executive will remain accountable to the Board for effective delivery.

| ESS Responsibility | Delegated Responsibility | Delegated to |
|---|--|-----------------|
| 1. Governance, Scrutiny and Risk | | |
| <i>The Chief Executive, as Accountable Officer, has responsibilities that are set out in the 'Memorandum to Accountable Officers for parts of the Scottish Administration' in the Scottish Public Finance Manual. These responsibilities are outlined in the ESS Framework Document and are not delegated by the ESS Board.</i> | | |
| 1.1 Ensure effective governance and scrutiny of all aspects of ESS business. | 1.1.1 Ensure that ESS internal governance and control arrangements are sound and that issues which raise any concern to the Chief Executive as Accountable Officer and/or which may have reputational consequences for ESS are presented to the Board for thorough scrutiny. This includes any issues of regularity or propriety in the use of public funds, protection of ESS assets and/or any proposals which are novel or contentious. | Chief Executive |
| | 1.1.2 Lead the staff of ESS, supporting their wellbeing and skills development while ensuring their effective engagement and delivery of business. Ensure that plans are in place for succession and continuity of core business in the event of vacancies or significant unavoidable absence. | Chief Executive |

| ESS Responsibility | Delegated Responsibility | Delegated to |
|--|---|--------------------------|
| 1.2 Establish and maintain the overall framework for risk management and assurance. | 1.2.1 Scrutinise and approve overall approach to risk identification and risk management. | Audit and Risk Committee |
| | 1.2.2 Approve audit plans and review of sources of assurance on all aspects of ESS governance. | Chief Executive |
| | 1.2.3 Oversee drafting of risk management documents for Audit and Risk Committee. Implement agreed approach to risk management, ensure identified risks are documented and action is taken where required to manage these and provide regular updates on risk to the Board and Audit and Risk Committee. | Chief Executive |
| 2. Strategy, Planning and Performance | | |
| 2.1 Set strategic direction of the organisation including: approving the strategy required under section 18 of the Continuity Act, approving the corporate plan and annual business plans and setting the performance framework. | 2.1.1 Oversee drafting of strategy, corporate plans and business plans to timetables agreed with the Board and provide robust analysis and advice on resource implications of all proposed commitments, targets and deliverables to support Board decision-taking. | Chief Executive |
| 2.2 Ensure delivery of statutory functions and meet agreed plans and targets, approving remedial action where required. | 2.2.1 Lead the staff of ESS to deliver the statutory functions of ESS, to meet agreed plans and targets and provide regular monitoring reports on performance to the Board. Highlight any emerging risks or issues that may prevent or are preventing successful delivery and offer advice on options for remedial action. Ensure remedial actions agreed with the Board are implemented effectively. | Chief Executive |

| ESS Responsibility | Delegated Responsibility | Delegated to |
|--|---|---------------------|
| 2.3 Ensure ESS meets its responsibilities on performance reporting to the Scottish Parliament and the general public. | 2.3.1 Oversee drafting of the annual report and any other agreed reports and/or performance data in good time for the Board to scrutinise the drafts. Ensure that final reports and data are published to the agreed timetable. | Chief Executive |
| 2.4 Ensure that ESS meets its commitments to effective working with Scottish Government, stakeholders and other national and international environmental governance organisations. | 2.4.1 Establish and maintain working relationships with relevant staff in Scottish Government, other stakeholder bodies in Scotland and with staff in national and international environmental governance organisations. Advise and support the Board on its engagement with these other bodies. | Chief Executive |
| 3. Resources and Expenditure | | |
| 3.1 Ensure that ESS has the necessary people and services in place to deliver its strategy and deliver statutory, corporate plan and business plan requirements. | 3.1.1 Advise the Board on resource requirements in each Spending Review or Scottish Budget process and support the Chair in engagement with Ministers as necessary. Oversee analysis to be provided to Scottish Government during the Spending Review or Scottish Budget process and engage directly with Scottish Government staff on the implications of any proposals under consideration. | Chief Executive |

| ESS Responsibility | Delegated Responsibility | Delegated to |
|---|--|--------------------------|
| 3.2 Agree the internal allocation of revenue and capital expenditure to support delivery of ESS functions within budgets approved each year by the Scottish Parliament. | 3.2.1 Provide analysis and advice to the Board on the allocation of revenue and capital budgets within the totals approved and manage ESS expenditure during the financial year to ensure that ESS does not breach its overall revenue or capital budget. Within this constraint, approve adjustments to spending allocations in-year up to 5% of total revenue or capital budgets respectively where necessary to ensure value for money and effective performance of ESS functions, in line with the agreed strategy, corporate plan and business plan. Report financial performance regularly to the Board, highlighting any changes within delegated limits. Where changes in spending plans above the delegated limit appear necessary, present these to the ESS Board for scrutiny in good time for decisions to be taken. | Chief Executive |
| 3.3 Establish medium-term financial plans to ensure the financial sustainability of ESS | 3.3.1 Oversee work to analyse future financial requirements alongside the overall public funding outlook and bring draft medium-term financial plans to the Board for scrutiny. | Chief Executive |
| 3.4 Ensure that ESS provides a proper account of its use of public funds. | 3.4.1 Scrutinise annual accounts and governance statement, and review accounting policies as required. Final annual accounts will be signed off by the Board. | Audit and Risk Committee |

| ESS Responsibility | Delegated Responsibility | Delegated to |
|---|---|-----------------|
| 4. Procurement | | |
| 4.1 Ensure that procurement of all goods and services required for the effective functioning of ESS is carried out in line with legislation and relevant guidance, and represents good value for money. | 4.1.1 Procure goods and services necessary for ESS operations, using established shared or collaborative contracts accessible by ESS wherever possible, or oversee individual procurements for ESS in line with guidance and legislation for goods or services up to £25,000. Anything over this limit will be signed off by the Board. | Chief Executive |
| | 4.1.2 Bring a business case, including benefits and appropriate contingency allowance, to the Board for any necessary goods or services above the £25,000 threshold and carry out procurement, in line with guidance and legislation, within the agreed limits including contingency allowance and ensuring delivery of the benefits. Any revisions to the business case benefits or costs must be approved by the Board. | Chief Executive |
| 5. Statutory Compliance | | |
| 5.1 Ensure that ESS meets all statutory obligations, including in relation to health and safety, employment, data protection, freedom of information and equality. | 5.1.1 Monitor ESS compliance with statutory obligations, keeping records as required and taking actions wherever possible within delegated responsibility to ensure full statutory compliance as soon as is practicable after the establishment of ESS. | Chief Executive |
| | 5.1.2 Identify any significant risks or issues of non-compliance with statutory requirements which may have a negative impact on the reputation or finances of ESS or may lead to legal challenge – and ensure these are highlighted to the Board at the earliest opportunity. | Chief Executive |

| ESS Responsibility | Delegated Responsibility | Delegated to |
|--|--|-----------------|
| 6. Communications | | |
| 6.1 Establish the ESS approach to communications and ensure that both proactive and reactive communications are handled effectively. | 6.1.1 Oversee preparation of a draft media and communications strategy (covering both proactive and reactive communications) for consideration by the Board and support the Board on reviewing and updating the strategy to an agreed timetable. | Chief Executive |
| | 6.1.2 Deliver and maintain an effective ESS website and social media accounts, in line with the agreed strategy. | Chief Executive |
| | 6.1.3 Oversee the issuing of proactive media statements and announcements, cleared in advance with the Chair of ESS. | Chief Executive |
| | 6.1.4 Authorise reactive media statements on a day-to-day basis, consulting the Chair or nominated Deputy in advance if possible. | Chief Executive |

ANNEX C: REMUNERATION AND EXPENSES

1. Remuneration

1.1 In line with paragraph 4(1) of the Continuity Act, ESS will pay ESS Board members and members of any ESS Committee a daily fee at a rate approved by the Scottish Ministers. The current rate of daily fee is £300 per day for the Chair of ESS and £200 per day for ESS Board members, including Committee Chairs.

1.2 Daily fees will not be paid to any Board or Committee member who is already receiving a salary from the public purse that covers the time being spent on ESS business.

2. Expenses

2.1 Travel and subsistence expenses necessarily incurred on ESS business will be refunded. Board and Committee members, in common with ESS staff, must ensure that any travel costs reflect good value to the public purse and that any mode(s) of travel reflect environmental guidelines on minimising carbon emissions.

2.2 The rates in the table below are the current rates for the most commonly incurred travel and subsistence costs. Claims for any travel or subsistence costs not included in the table below should be discussed with the Chief Executive, in advance of incurring the expense if at all possible. The Chief Executive may consult the Chair if necessary.

Rates in force on 1 January 2021

| Expense type | Rate or limit | Receipt required? |
|--------------------------------|---|-------------------|
| Bed and breakfast | London £100 per night. Elsewhere £75 per night | Yes |
| Overnight staying with friends | £36 per night | No |
| Day subsistence over 5 hours | £4.90 per day | Yes |
| Day subsistence over 10 hrs | £10.70 per day | Yes |
| 24-hour subsistence | London £24.10 per 24 hrs. Elsewhere £23.50 per 24 hrs | Yes |
| Personal incidental expenses | £5 per night | Yes |
| Motor mileage rate | £0.45 per mile | No |
| Motorcycle mileage rate | £0.24 per mile | No |
| Passenger supplement | £0.05 per mile | No |
| Pedal cycle allowance | £0.20 per mile | No |
| Car parking | – | Yes |
| Toll charges | – | No |

This table reflects Scottish Government Travel and Subsistence rates. Paragraph 2 of Schedule 1 of the Continuity Bill makes provision for ESS to agree appropriate rates with Scottish Ministers as required.

Register of Appointed Member Interests

Category One: Remuneration

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.3 – 4.11 refer.

| Member | Organisation | Role |
|---|---------------------|-------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| Appointed Member to Audit and Risk Committee | Organisation | Role |
| | | |

Category Two: Related Undertakings

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.12 – 4.14 refer.

| Member | Name of Organisation | Nature of Business | Relationship to company where you hold a remuneration position |
|---|-----------------------------|---------------------------|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Appointed Member to Audit and Risk Committee | Name of Organisation | Nature of Business | Relationship to company where you hold a remuneration position |
| | | | |

Category Three: Contracts

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.15 – 4.16 refer.

| Member | Description of the contract and its duration |
|---|---|
| | |
| | |
| | |
| | |
| | |
| Appointed Member to Audit and Risk Committee | Description of the contract and its duration |
| | |

Category Four: Houses, Land and Buildings

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.17 – 4.18 refer.

| Member | Registerable House, Land or Building |
|---|---|
| | |
| | |
| | |
| | |
| | |
| Appointed Member to Audit and Risk Committee | Registerable House, Land or Building |
| | |

Category Five: Interest in Shares and Securities

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.19 – 4.20 refer.

| Member | Registered name of company in which you hold shares |
|---|--|
| | |
| | |
| | |
| | |
| | |
| Appointed Member to Audit and Risk Committee | Registered name of company in which you hold shares |
| | |

Category Six: Gifts and Hospitality

Environmental Standards Scotland Code of Conduct, Section 4, paras 4.21 refers.

| Member | Gifts received |
|---|-----------------------|
| | |
| | |
| | |
| | |
| | |
| Appointed Member to Audit and Risk Committee | Organisation |
| | |