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Our Role & Our Proposed Approach

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Structure for today

- Why was ESS created & what is its role?
- What powers does ESS have?
- Our Interim Strategic Plan - how will ESS operate?
 - Communication & Engagement
 - Monitoring & Investigating
 - Raising a Concern with ESS
 - Securing Compliance & Improving Effectiveness
- Future consultation & opportunities to shape the work of ESS
- Q&A

Background

- Brexit leads to loss of European Commission's oversight and EU Court of Justice's power to compel compliance and impose sanctions



- Withdrawal from the European Union (Continuity) (Scotland) Act 2021
- ESS established as a Non-Ministerial Office
- Independent of Scottish Ministers – reports to Scottish Parliament
- New body to oversee public authorities including regulators

Functions

- To monitor & investigate compliance with environmental law and the effectiveness of environmental law and how it is implemented and applied
- To ensure public authorities' compliance with environmental law and to improve effectiveness
- Includes implementation of international obligations
- Not expected to deal with individual cases & not an appeals body
 - ❖ i.e. ESS may not take action on “a failure to comply with environmental law arising out of any decision taken by a public authority in the exercise of its regulatory functions in relation to a particular person or case (for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case)”

Scope of Remit

- Continuity Act defines “environmental law” for ESS remit

44 Meaning of “environmental law” and “effectiveness of environmental law”

(1) In this Chapter, “environmental law” means any legislative provision to the extent that it—

- (a) is mainly concerned with environmental protection, and
- (b) is not concerned with an excluded matter.

(2) Excluded matters are—

- (a) disclosure of, or access to, information,
- (b) national defence or civil emergency,
- (c) finance or budgets.

Duties and Powers

- Public authorities have a duty to cooperate with ESS
 - Key Powers:
 - ❖ To monitor and investigate environmental issues (compliance/effectiveness)
 - ❖ Information Notices – to obtain information from authorities
 - ❖ Compliance Notices – issued to public authority(s)
 - ❖ Improvement Reports – issued to Scottish Government & laid in Parliament
 - ❖ Apply for Judicial Review – if issue is ‘serious’
- BUT** – duty on public authorities & ESS to try to resolve issues informally wherever possible

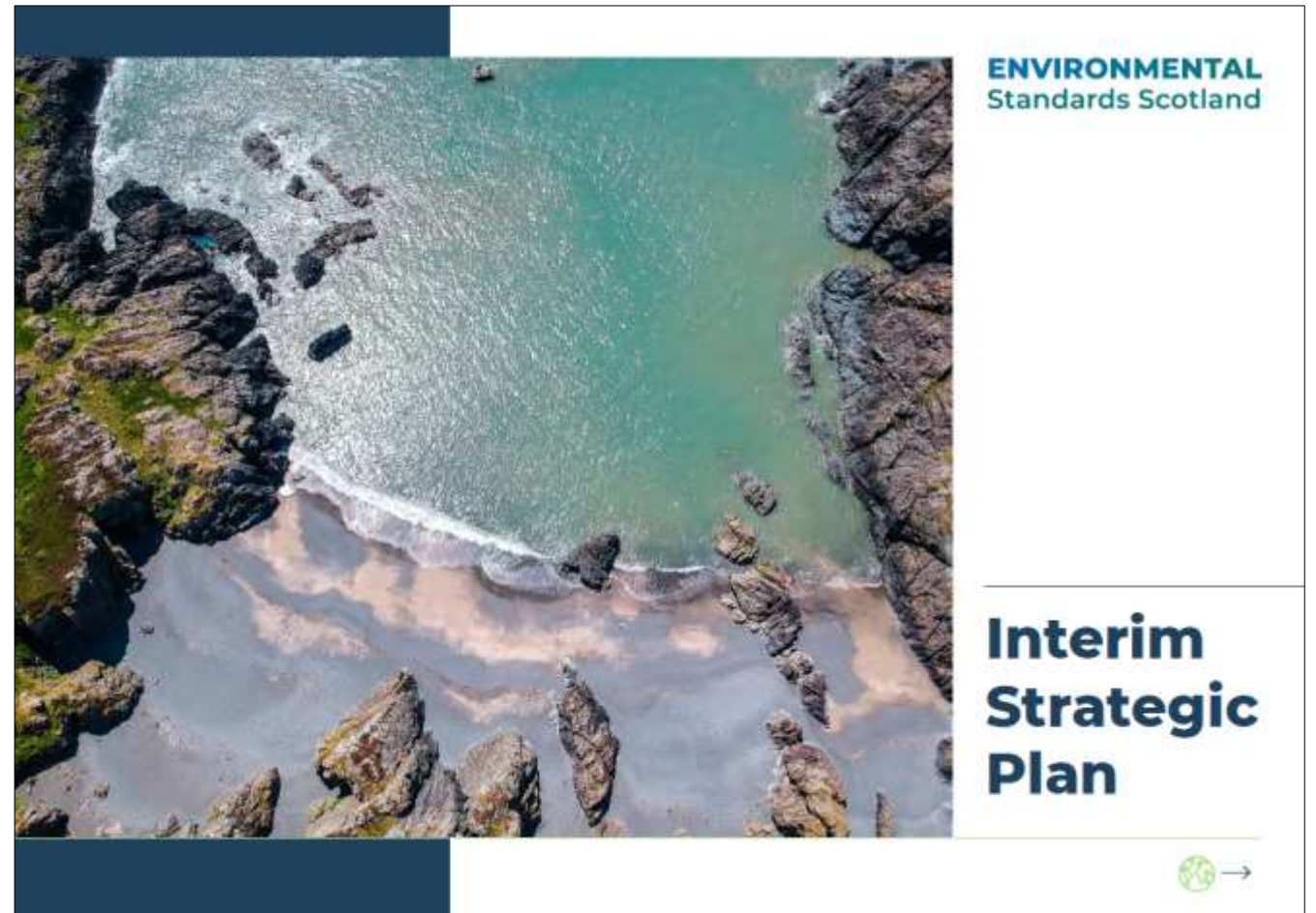
Progress

- Chairman & 4 Board Members recruited and Interim CEO and 11 staff appointed
- Established as independent body on 1st October 2021
- Interim Strategic Plan published
- Representation form published
- Investigation/Enforcement procedures prepared
- First investigation commenced
- Stakeholder engagement under way

How will ESS operate?

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- Interim Strategic Plan published on 1st October 2021
- Sets out ESS approach for period until final Strategy approved by Scottish Parliament
- Feedback welcome



How will ESS operate?

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ESS Vision

“Scotland’s communities benefit from a high quality environment, and are protected from harm through the consistent application of effective environmental laws, which are recognised internationally as setting high standards.”

How will ESS operate?

ESS Principles

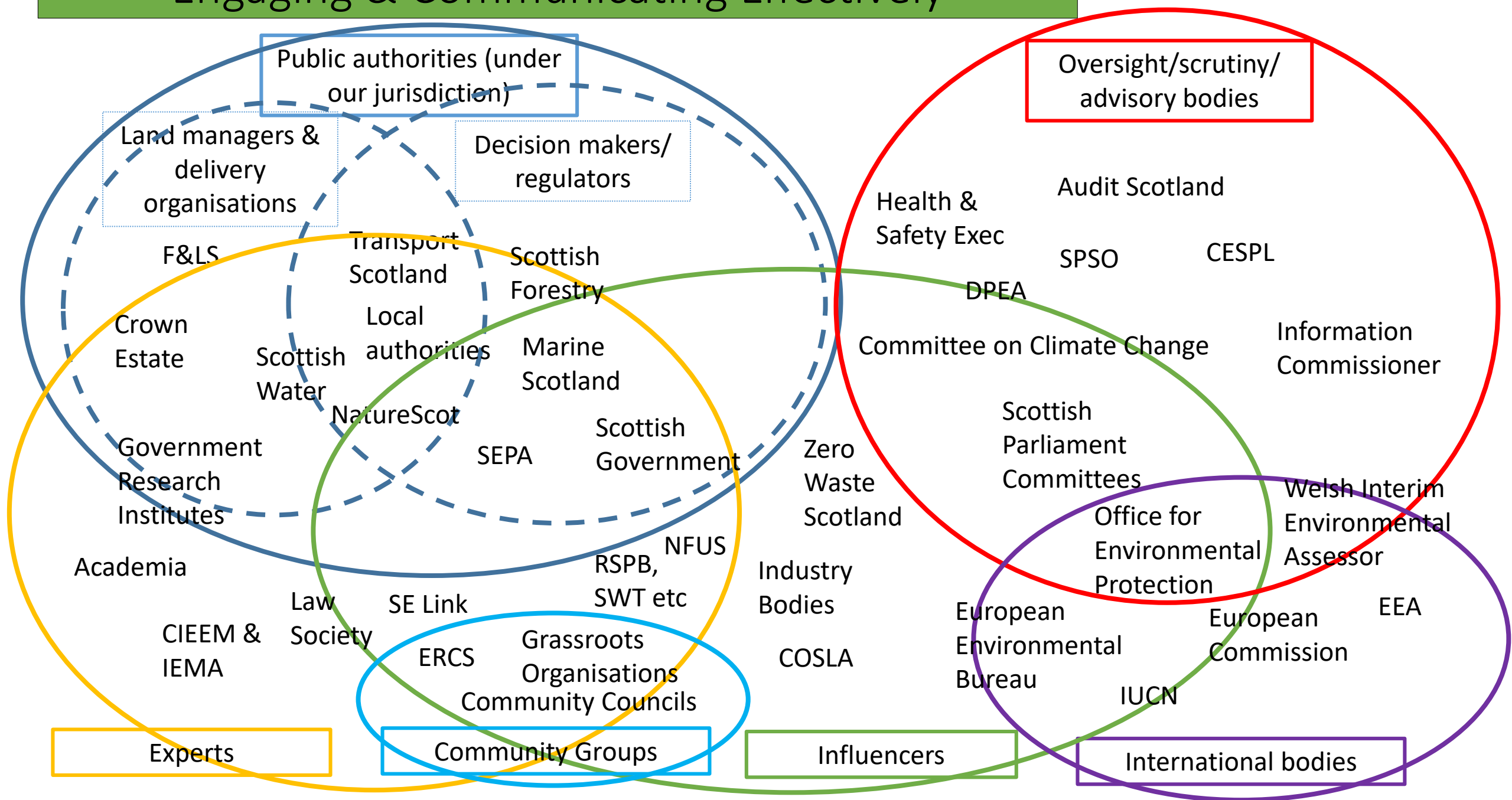
- We will **target our efforts and resources** where we can add most value – focusing where our contribution is needed most or will make most difference.
- We will **seek to resolve issues through agreement** wherever possible – having recourse to our formal powers where we judge it is necessary to deliver the outcome expected.
- We will be **evidence driven** – seeking a wide range of inputs and expertise to inform our work and to support our decisions and advice.
- We will be **open and transparent** – keeping people informed about the progress of our work and providing opportunities to input to and influence it.
- We will **seek opportunities to work in partnership** with others – working closely with all relevant stakeholders to ensure that our collective efforts deliver benefits for environmental protection and enhancement.

Our Interim Strategy

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Engaging & Communicating Effectively



Monitoring & Evaluating Environmental Performance & Change

The European environment — state and outlook 2020

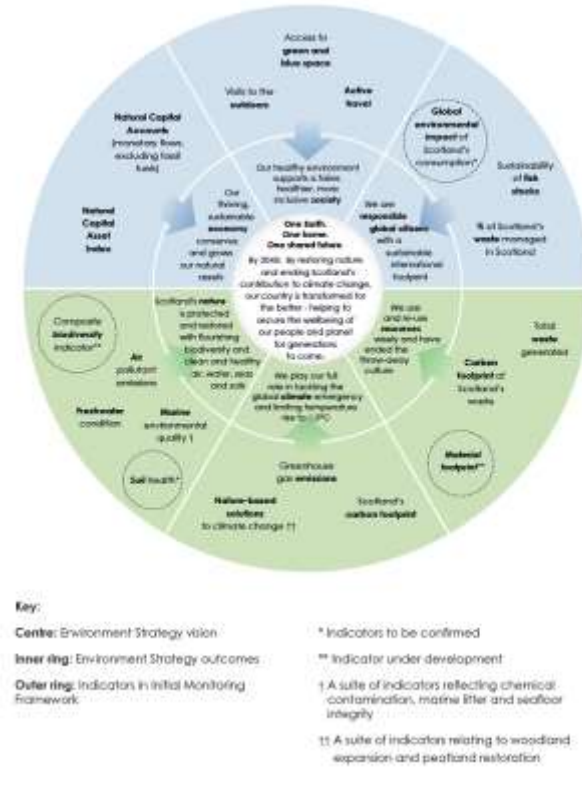
Knowledge for transition to a sustainable Europe

TABLE ES.1 Summary of past trends, outlooks and prospects of meeting policy objectives/targets

Theme	Past trends and outlook		Prospects of meeting policy objectives/targets		
	Past trends (10-15 years)	Outlook to 2030	2020	2030	2050
Protecting, conserving and enhancing natural capital					
Terrestrial protected areas					
Marine protected areas					
EU protected species and habitats					
Common species status and distribution					
Soil health condition and services					
Water ecosystems and wetlands					
Hydrogeological processes					
State of marine biodiversity and biodiversity					
Pressures and impacts on marine ecosystems					
Urbanisation and land use by agriculture and forestry					
Soil condition					
Air pollution and impacts on ecosystems					
Chemical pollution and impacts on ecosystems					
Climate change and impacts on ecosystems					
Resource-efficient, circular and low-carbon economy					
Material resource efficiency					
Circular use of materials					
Waste generation					
Waste management					
Greenhouse-gas emissions and mitigation efforts					
Energy efficiency					
Renewable energy sources					
Emissions of air pollutants					
Industrial emissions from industry					
Clean industrial technologies and processes					
Emissions of chemicals					
Water abstraction and its pressures on surface and groundwater					
Sustainable use of the seas					
Safeguarding from environmental risks to health and well-being					
Concentrations of air pollutants					
No pollution impacts on human health and well-being					
Population exposure to environmental noise and impacts on human health					
Preservation of quiet areas					
Pollution pressures on water and risks to human health					
Chemical pollutants and risks to human health and well-being					
Climate change risks to society					
Climate change adaptation strategies and plans					
Indicative assessment of past trends (10-15 years) and outlook to 2030			Indicative assessment of prospects of meeting selected policy objectives/targets		
Improving trends/developments dominate			Year Largely on track		
Trends/developments show a mixed picture			Year Partially on track		
Lowering trends/developments dominate			Year Largely not on track		

Note: The year for the objectives/targets does not indicate the exact target year but the time frame of the objectives/targets.

Figure 1: Overview of indicators in the Environment Strategy Initial Monitoring Framework



- ESS will conduct its own independent analysis of data & research on Scotland's environment
- Aiming to bring together evidence to understand the causes & identify where there may be issues with compliance/effectiveness
- Practical and outcome focused – serving the investigative needs of ESS
- Aim to publish a forward work programme of issues

Scanning & Priority Topic Identification

Scoping & Framing

Analysis

Pre-investigation support

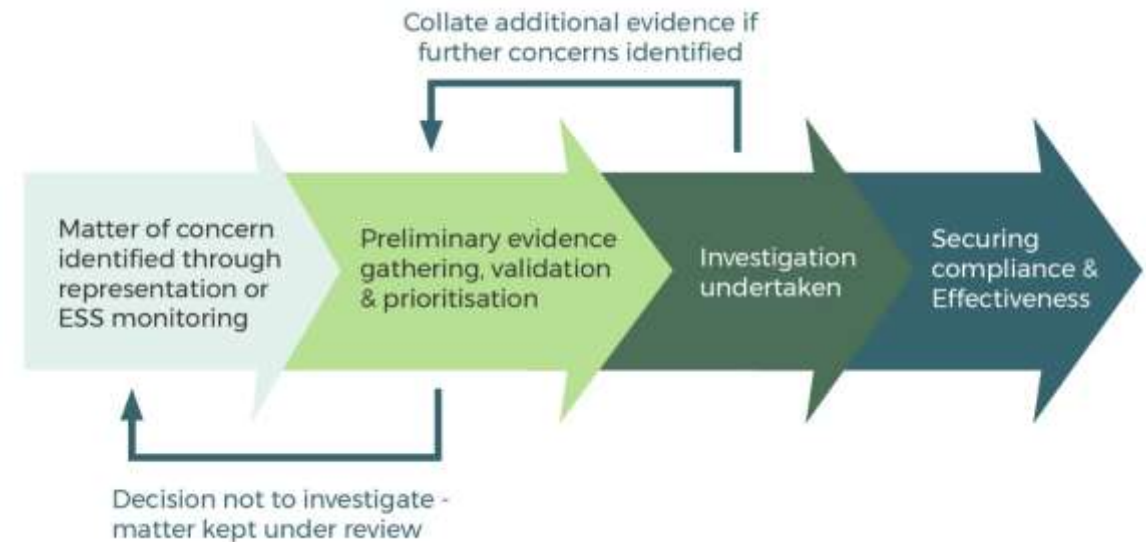
Investigation support

Post-investigation impact assessment

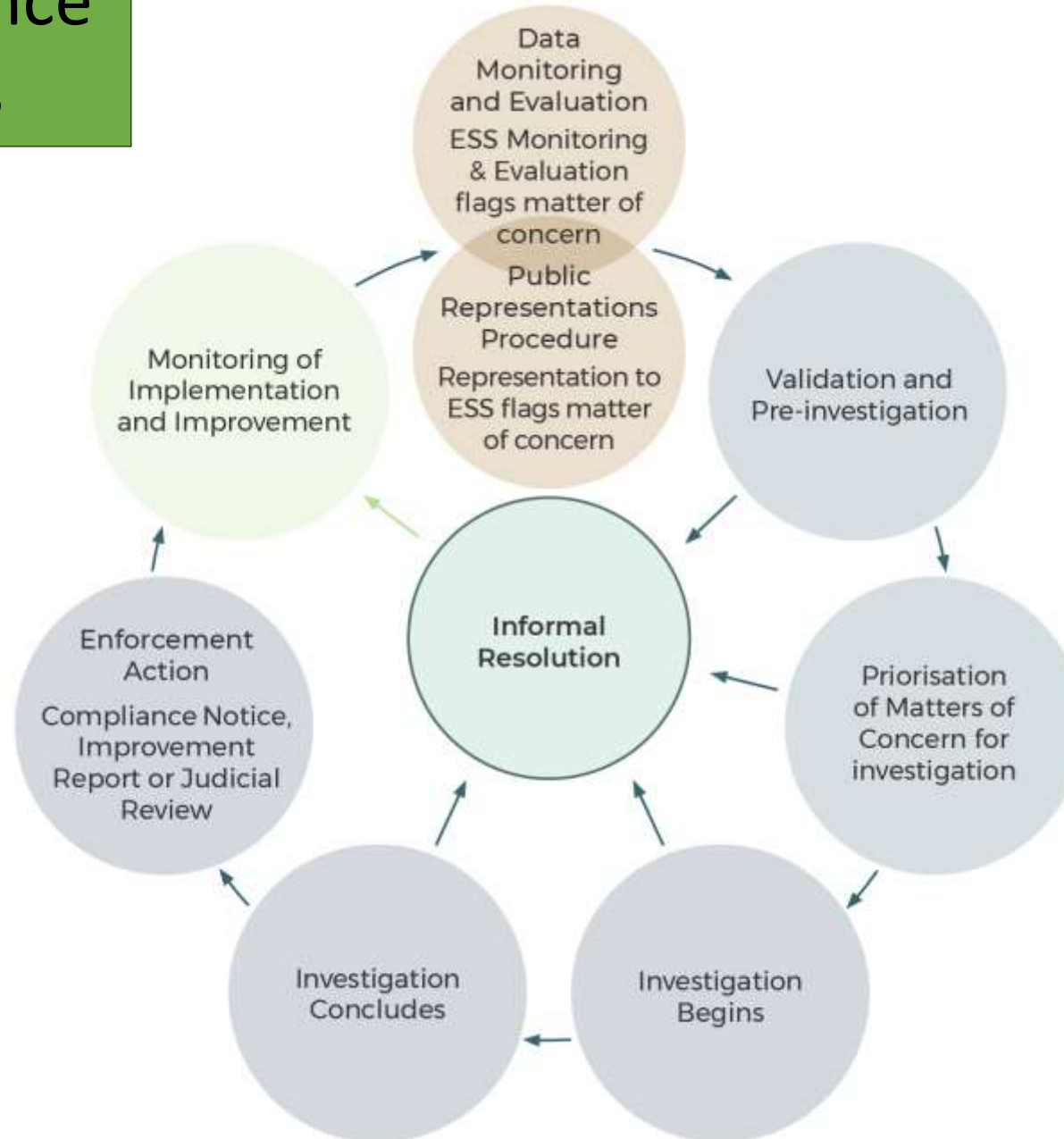
Investigating the Most Important Environmental Concerns

- Investigation can be prompted by a representation to ESS or by our own monitoring
- Preliminary assessment, validation & prioritisation undertaken → investigation
- Investigation completed – conclusions drawn – final report published

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Ensuring Compliance & Effectiveness



Raising a concern with ESS

- Anyone can raise a concern via a 'representation' form on our website
- ESS staff can help to focus the representation
- We will refer or signpost to an alternative course of remedy where appropriate
- Representation must be about non-compliance or ineffectiveness of environmental law
- Will normally expect:
 - Issue to have been raised with the public authority concerned first
 - Clear identification of the area of law that the concern relates to
 - Clear identification of why it's believed there is non-compliance or ineffectiveness
- We will update the person raising the representation once we have decided whether to investigate and will update them as the case progresses

ESS Investigation into Air Quality

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“An investigation into the Scottish Government's plans and approach to ensuring future compliance with legal limits on nitrogen oxide levels”

- European Court of Justice Judgement issued in March 2021
- 2010-2017 – “systematic and persistent” failure to meet NO₂ limits
- Focus on Scottish Government & arrangements to secure compliance



Shaping the Future of ESS

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- ESS must prepare and consult on a final strategy – setting out how it intends to carry out its role
- Final strategy must be submitted to Parliament for approval by 1st October 2022
- Detailed engagement on certain aspects of the strategy planned for February-May 2022
- Formal consultation on the strategy planned for May-August 2022

Questions & Answers

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- What questions do you have about our role and our proposed ways of working?
- Is there any further information that you would like about the work of ESS?



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Thank you for attending

Further questions?

enquiries@environmentalstandards.scot

www.environmentalstandards.scot