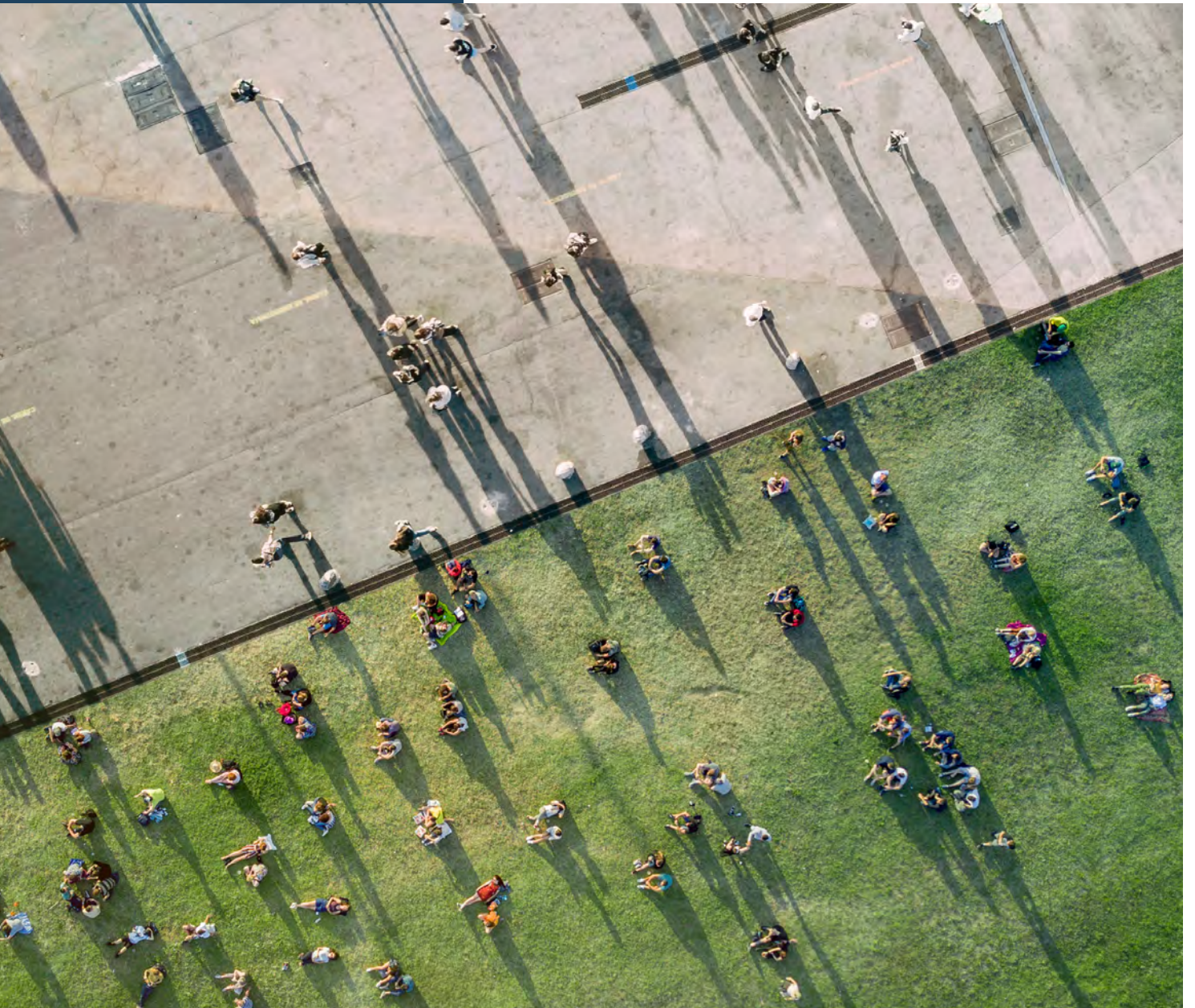

Environmental Standard Scotland
Annual Report



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Chair Foreword



Jim Martin
Chair, ESS

It is not often that a Chair and Board has the opportunity to establish a new public body from its very beginnings. Yet this was the responsibility given to us when Environmental Standards Scotland was created by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

This is our first annual report and it provides an overview of our activities and progress, both in our preparation ready for vesting on 1 October 2021, and the work we carried out thereafter in our first independent six months of this financial year. It has been an exciting time, developing our approach through our Interim Strategic Plan, building our investigation processes and procedures, and creating our operating model. Together these form the basis of how we propose to carry out the role assigned to us by the Scottish Parliament. We have consulted widely, worked with partners across the UK and internationally, and listened to their views.

Our year ahead, led by our new Chief Executive Mark Roberts, will be critical

in continuing to meet our mission statement and vision, underpinned by our values and principles. We will strive to ensure that Scotland's communities benefit from a high quality environment and are protected from harm. We will do this by overseeing the consistent application of effective environmental laws, which are recognised internationally as setting high standards.

It has been a challenge to set up and succeed in creating a stable organisation, that delivers its legislative remit, during a period impacted enormously by the Covid-19 pandemic. I would like to thank the Board, ESS team, partner organisations and the supporting officials in Scottish Government, for their commitment and dedication in establishing ESS. Together we will ensure that Scotland's environmental laws and standards are complied with, and their effectiveness improved, to achieve Scotland's ambitions for the environment and climate change.

Over the next six months we will consult on our strategic plan and engage widely to help develop our approach. We will also continue to publicly share information on the representations we receive and areas of work we are considering. We welcome the opportunity to build on this principle of being open and transparent, through ongoing engagement with the Scottish Parliament and a wide range of stakeholders in Scotland and beyond.

I am proud of the progress that we have made and I look forward to our year ahead.

Jim Martin
Chair, Environmental Standards Scotland



1. Our Role

The role of Environmental Standards Scotland (ESS) is to scrutinise public authorities' compliance with environmental law, alongside evaluating the effectiveness of environmental law and the way it is being implemented and applied.

As a new independent body, set up to prevent enforcement gaps arising from the UK leaving the European Union, the establishment of ESS comes at a crucial time.

Globally we are facing significant environmental challenges. The Intergovernmental Panel on Climate Change has made clear the threat the climate emergency poses to people and planetary health, and the need to take urgent action to protect our planet. In Scotland, the Scottish Government has declared twin crises of climate change and biodiversity loss.

The environment can have a significant impact on human health and there is a growing recognition and acceptance that the right to a healthy environment is fundamental to human wellbeing and should be enshrined in law.

There has been a significant level of interest in ESS, and since the publication of our Interim Strategic Plan we have spoken to a wide range of individuals and organisations concerned about the protection and enhancement of Scotland's environment and those responsible for implementing environmental laws effectively.



This has included, for example, delivery of;

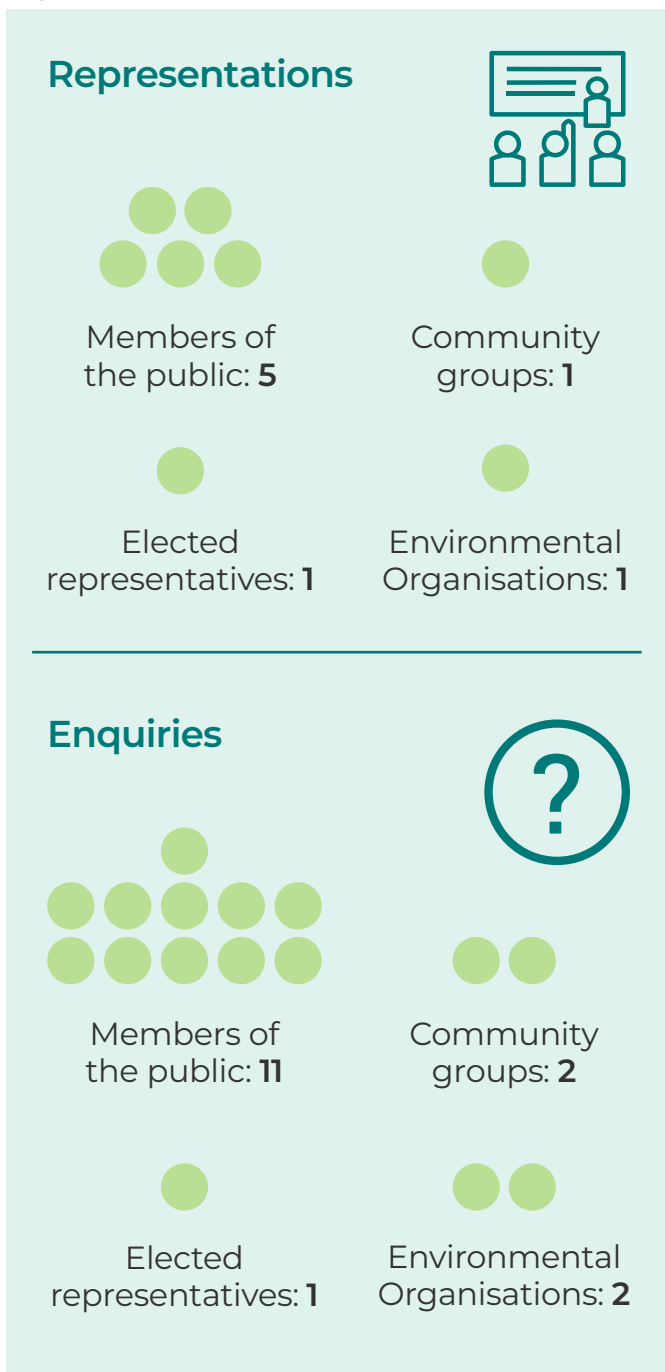
- Two online information events, which were attended by over 100 people;
- An information session attended by over 200 Scottish Environment Protection Agency (SEPA) staff;
- Bespoke presentations to over a dozen environmental organisations, groups and events; and
- Regular liaison meetings with our counterpart organisations – the Office for Environmental Protection in England and Northern Ireland, and the Interim Environmental Assessor for Wales.

This engagement has reinforced to us the importance of working collaboratively with a wide range of partners to fulfil our functions, and achieve our objectives, and to establish a reputation as an independent, fair and strong champion for environmental protection.



2. Our Work So Far in Numbers

Since 1 October 2021 we have received 24 submissions, including 16 enquiries and eight representations from members of the public, environmental groups, community groups and elected representatives from around Scotland;



Of the eight **representations** received, we are currently carrying out substantive work on four of these, including pre-investigation research and pursuing informal resolution. Details of these cases are available on our **website** and we will publish the outcome of our consideration when our work is concluded. Of the four representations which we did not take forward, we assisted two in identifying an alternative route for their concerns to be pursued and two did not meet our investigation criteria.









The outcomes of the 16 **enquiries** are broken down as follows:

5	3
Assistance given in identifying an alternative remedy	Enquiry considered to be premature (advised to raise concern with public authority)
3	2
Subject did not relate to environmental law	Subject did not meet ESS criteria for investigation
2	1
Subject moved to active casework	No response to ESS's contact

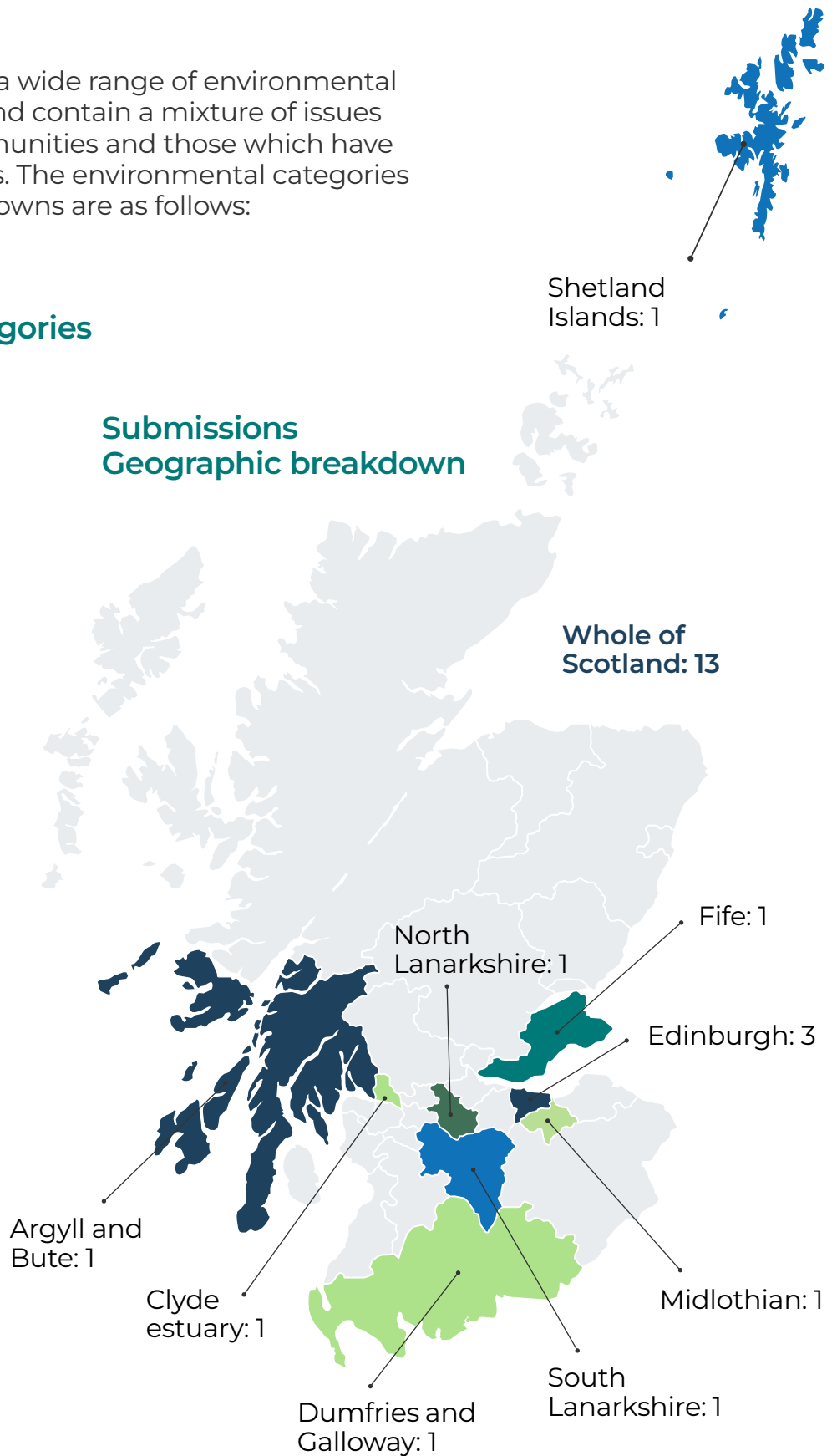


The **submissions** cover a wide range of environmental categories and topics and contain a mixture of issues which affect local communities and those which have nationwide implications. The environmental categories and geographic breakdowns are as follows:

Submissions Environmental Categories

-  Biodiversity & ecosystems: **6**
-  Population, human health and cultural heritage: **4**
-  Air: **3**
-  Climate change: **3**
-  Water: **3**
-  Environmental governance: **2**
-  Land and soil: **2**
-  Resource use and waste: **1**

Submissions Geographic breakdown



3. Our Strategy and Our Approach

On the day we vested – 1 October 2021 – we published an Interim Strategic Plan, setting out how we intended to carry out our role until our final Strategic Plan is considered by the Scottish Parliament.

Feedback on the Interim Strategic Plan from representatives of environmental organisations, community groups, public authorities and research institutes has been positive, with broad support for our proposed approach and the principles that will underpin all of our work.

Engagement, and the work we have undertaken since the publication of the Interim Strategic Plan, has reinforced to us the importance of:

- Engaging widely and seeking opportunities to work in partnership. For example, by seeking to hear from all those involved in issues we are scrutinising, and agreeing liaison arrangements with other scrutiny and oversight bodies;
- Being open and transparent about the work that we are undertaking, for example, by publishing updates on our website about the issues we have received representations on, or are actively investigating;
- Ensuring that our work is driven and informed by accurate and high quality evidence, for example, through detailed baseline assessments of the evidence available on environmental performance and change, to inform a proposed set of future analytical priorities;

- Seeking to resolve issues informally wherever possible, for example, as part of the pre-investigation work that we have done on representations received. This has enabled us to identify potential solutions that can be agreed with the public authority, thereby avoiding the need for a formal investigation; and
- Taking steps to target our efforts and resources on the most important issues and those where we can add most value, for example, by developing criteria to help us to prioritise issues for investigation, or analysis, and to work with other scrutiny organisations.

The draft Strategic Plan, which we have published for consultation alongside this Annual Report, therefore builds upon the approach set out in the Interim Plan. It provides further detail about how we propose to fulfil the role given to us by Parliament and the steps we will take to achieve our strategic objectives and, ultimately, our vision.



Photo by Iain Ferguson ©



4. Ensuring Compliance and Effectiveness



Our Interim Strategic Plan and Business Plan outlined that we will take action to ensure Public Authorities' compliance with environmental law and its effectiveness. We will use the statutory powers available to us to prevent further harm, or reduce the risks to the environment or public health, and ensure the necessary remedial action is taken to put matters right.

We have undertaken a range of work to ensure that we have been ready to secure compliance. Key achievements include:

- Engaging widely with environmental stakeholders and public bodies on our approach to compliance;
- Establishing the procedures which guide how we will investigate and identify the action needed to rectify problems and improve compliance and effectiveness;
- Testing our approach to informal resolution, which is the process whereby we engage with the public authorities concerned to secure compliance without the need to resort to our formal enforcement powers;
- Establishing our approach to the use of our formal enforcement powers;
- Continuing to build relationships with a range of organisations who we can work with to seek expert advice when required.

Case Study: Informal Resolution

Acoustic Deterrent Devices (ADDs) are used in the aquaculture industry to prevent seal attacks at fish farms. These devices have the potential to disturb European Protected Species such as dolphins and porpoises, which are protected under the Conservation (Natural Habitats, &c.) Regulations 1994. Under these regulations, an ADD which disturbs protected species can only be used if the operator has obtained a license or provided sufficient evidence to demonstrate that the planned use will cause no harm.

ESS received a representation expressed concerns that some fin fish farm operators may have used ADDs without a license, and queried the sufficiency of Marine Scotland's investigation and enforcement actions.

In our preliminary review of the representation, we engaged positively and constructively with Marine Scotland, seeking information from them to understand better the plans in place to ensure compliance with the Regulations and the Aquaculture Code of Practice, as no fin farm operators have been licensed to date for ADD use. We also sought information in respect of Marine Scotland's enforcement processes.

As a result of our engagement, Marine Scotland has indicated their agreement to make changes to their enforcement procedures and to provide public updates on enforcement works. Our engagement with them continues and full details of the outcome will be published on our website in due course.



5. Investigating Environmental Concerns

Our Interim Strategic Plan and Business Plan set out our intention to focus our work on the most important matters of environmental concern.

We have undertaken a range of work, which has enabled us to receive and act upon environmental concerns. Key achievements include:

- Training a small team of investigators, who are responsible for taking forward the work on the representations and enquiries received;
- Engaging extensively with environmental stakeholders on our approach to investigations and to understand the issues that are of concern to them;
- Establishing the policies and procedures, which guide how we will investigate and the standards by which we will operate. These policies will ensure that our approach to investigations is robust, consistent and procedurally fair;
- Developing our website to ensure that everyone is clear about our remit and how to raise concerns with us, including the publication of our Representation Form and a set of Frequently Asked Questions advising how to bring environmental concerns to us;
- Supporting parties submitting representations, particularly where they are unfamiliar with our processes, to ensure their concerns are accurately recorded;
- Reviewing and assessing representations received, to identify candidates for investigation and advise on alternative routes for cases not suitable for investigation by us;
- Creating an (interim) case management system to enable us to track investigations and representations;
- Initiating and undertaking significant work to progress our first investigation into the Scottish Government's plans to deliver compliance with nitrogen dioxide limits as part of air quality standards.

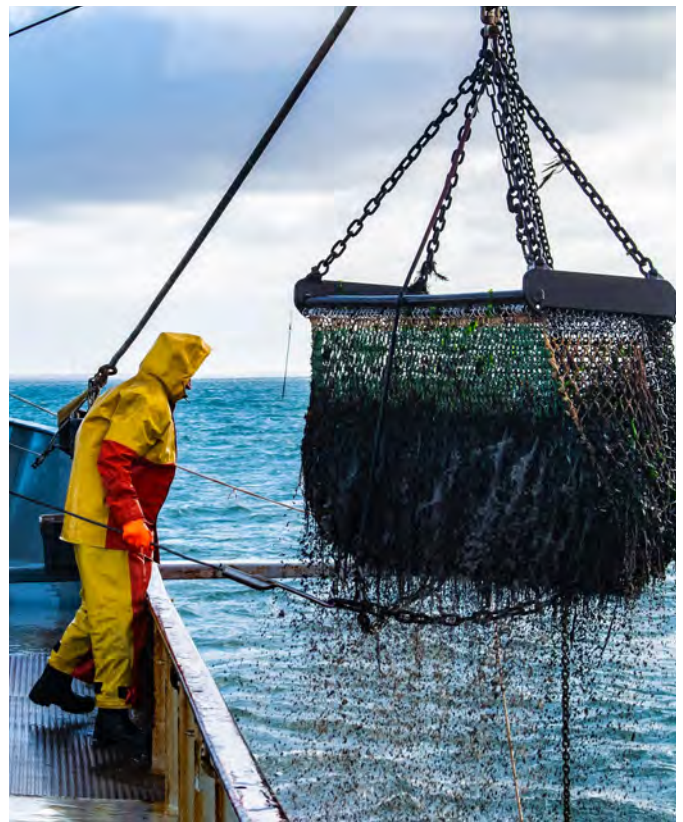


Photo from Unsplash.com/Paul Einerhand



Case study: Air quality investigation

Air pollution (including the pollutant nitrogen dioxide – NO₂) is widely recognised as causing significant health effects and is estimated to contribute towards over 2000 premature deaths per year in Scotland.

Governments across Europe have acknowledged these impacts and many, including Scotland, have passed legislation to achieve ‘limit levels’ as required by the Cleaner Air For Europe Directive 2008/50/EC. Meeting air quality limit levels in respect of nitrogen dioxide is a legal requirement and governments must have in place adequate action plans to achieve the set limit levels within the ‘shortest time possible’.

In March 2021 the European Court of Justice (ECJ) delivered its judgment that, across the UK, exceedances of statutory air quality limit levels in respect of NO₂ had remained ‘systematic and persistent’ for at least seven years (2010- 2017). As a result of the ECJ’s judgment the ESS Board considered this issue from a Scottish perspective, including any role that ESS should have.

The Board concluded that there was a complex regulatory landscape and, whilst efforts to improve air quality continue, questions remained as to whether air quality limit levels for NO₂ will be met going forward.

Taking into account our assessment and prioritisation factors, and in view of the serious, longstanding and intractable nature of the failure to meet limit levels, we decided to launch an investigation into the arrangements put in place by the Scottish Government to deliver compliance with statutory air quality limit levels in respect of NO₂.

Information notices were issued to SEPA, a number of local authorities and the Scottish Government, seeking information to inform our investigation, and we are considering the responses before determining next steps.

Full details of the outcome of our investigation will be published on ESS’ website in due course.



Photo by Peter Devlin ©



6. Monitoring and Evaluating Environmental Performance and Change



Our Interim Strategic Plan and Business Plan outlined the intention for our work to be driven by a detailed understanding of environmental performance and change in Scotland and noted that we intended to access and analyse a wide range of data, research and reports to guide our work.

We have undertaken a range of work to map and assess key sources of data and intelligence and have established a team and systems to help us analyse these. Key achievements include:

- Establishing a small team of specialist analysts, scientists and policy experts to drive this work, with six staff appointed and a further five to be recruited in the next six months;
- Commissioning a SEFARI (Scotland Environment, Food, and Agriculture Research Institutes) fellowship to provide us with advice on the options for accessing and analysing relevant data and intelligence, and the skills and resources that we will need to enable us to do so effectively. The final report is available on the [SEFARI website](#);
- Undertaking a baseline review of the evidence available on progress towards environmental targets and standards in Scotland. This review has identified a number of potential priority areas and issues for further analysis, upon which we are seeking feedback as part of the consultation on our draft Strategic Plan;

- Developing and implementing the key internal procedures and processes required for our analysis work and quality assuring the outputs to ensure that our conclusions are robust;
- Establishing relationships and partnerships with a wide range of organisations who can help us to identify and access the key data and intelligence that we will need to undertake our role effectively. In the next twelve months we will seek to expand, deepen and mature these partnerships and relationships.



7. Engaging and Communicating Effectively



Our Interim Strategic Plan and Business Plan identified the need for us to communicate and engage widely to promote understanding of our role and to establish good working relationships with a wide range of organisations who can inform and support our work.

We have taken a number of steps to explain our role to interested stakeholders and to begin to establish liaison and co-operation relationships with other scrutiny, advice and oversight bodies, including:

- Holding a public launch attended by over 100 people/organisations;
- Reporting to the Net Zero, Energy and Transport Committee in October 2021 on our progress at the point we vested;
- Hosting two public information sessions in January 2022 to explain our role and to answer queries from stakeholders. The sessions were attended by over 100 people and feedback from the events was positive;
- Engaging directly with a wide range of stakeholders, including meetings with and presentations to: Scottish Environment LINK, RSPB Scotland, the Law Society of Scotland, the Environmental Rights Centre for Scotland, the UK Ports Association, the Sustainable Scotland Network, the Coastal Communities Network, the Royal Environmental Health Institute for Scotland, Fisheries Management Scotland, the UK Noise Association, and a range of public authorities under our jurisdiction;
- Establishing positive working relationships with the Office for Environmental Protection in England and Northern Ireland, and the Interim Environmental Assessor in Wales. We are developing a Memorandum of Understanding (MoU) setting out how we will liaise and collaborate with our counterpart bodies in the rest of the UK, particularly on issues of common interest or where environmental problems cross administrative boundaries;
- Establishing signposting arrangements with a number of advisory, oversight and scrutiny bodies, as required by the Continuity Act, to minimise unnecessary overlap. We are in the process of progressing MoUs with the Committee on Climate Change and the Joint Nature Conservation Committee, setting out mutual expectations and future liaison and cooperation arrangements;
- Updating our website with details of our role and our initial work, including a detailed Q&A on our remit and functions and a page listing our ongoing casework;
- Utilising social media to promote understanding of our role. Since October 2021 our number of followers on Twitter has reached 335 and 146 on LinkedIn;
- Contracting public relations firm 3X1 to provide us with day-to-day support on communications and media monitoring;
- Recently appointing a Communications Officer who will help guide the development and implementation of our communications plan and enhance our reputation and presence.



8. High Performing Organisation

Our Board, transition team, new staff members, Scottish Government supporting units and key partners have been focused on ensuring that we operate as an effective and efficient organisation. Key achievements include:

- Establishing **our Board** and Audit and Risk Committee, and agreeing **Standing Orders** and **Terms of Reference** for their operation and governance;
- Finalising a **Framework Document** to set out the terms of the agreement between us and the Scottish Ministers. This relates to our governance, financing and operation, alongside key internal procedures for our work in areas such as investigations, compliance activities and risk management;
- Putting in place arrangements for the corporate support services needed for us to operate as an independent body, including human resources,

IT, financial systems, procurement, communications, legal support and audit provisions;

- Developing the policies and plans required for our operation, alongside developing our Customer Service Standards for dealing with representations;
- Establishing a well-managed organisation with secure finances and corporate functions, with a clear approach to how we allocate and prioritise our spending.

Our first year accounts will cover the period 1 October 2021 to 31 March 2023, therefore there will be no formal accounts published until after the end of March 2023. Until final accounts are published, and the remaining areas of set-up and recruitment are complete, budget totals may change across both financial years set out below.

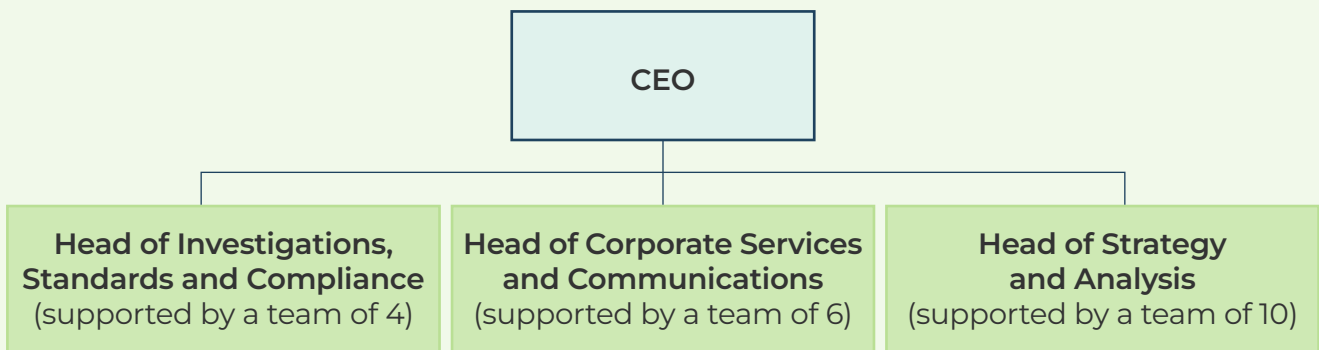
	2021/22 Budget (£000)	2022/23 Budget (£000)
Income (£000)		
Funding	1,308	2,192
Expenditure (£000)		
Board	60	61
Staffing	683	1,587
Corporate and shared service	257	286
Communications and events	40	70
External advice and support	92	164
Set-up costs	176	24
Total	1,308	2,192





- Recruiting a staff team of 17 highly skilled and motivated staff, including our new Chief Executive Officer Mark Roberts, aiming to reach our full staffing compliment of 24 by the end of 2022.

Our staff team is currently drawn from eight local authority areas across Scotland and our Board members live locally, nationally and internationally, all working through hybrid working arrangements linked to our base at Thistle House in central Edinburgh. Our team structure includes a Chief Executive and three senior heads of functions, each covering one of the three main areas of operation. The structure showing the senior roles, and the number of team members under each function, is set out below:



- Continuing to be open and transparent about the progress of our work, including by publishing our **Business Plan** which sets out our key priorities and outputs to be delivered across 2021-22 and 2022-23. Our general performance and progress towards our strategic aims will be monitored through our corporate reporting duties and a suite of Key Performance Indicators. This will be developed and agreed as part of the consultation on our 2022-25 Strategic Plan and monitored annually via reporting to Scottish Parliament.




9. Next Steps

In the next 12 weeks we are seeking to consult and engage widely about our draft Strategic Plan and in the coming 12 months to deepen and broaden our engagement and relationships with the Scottish Parliament and a wide range of bodies within Scotland, the rest of the UK, Europe and beyond.

Our final October 2021 to March 2023 Annual Report will reflect the findings from this work, include our full set of accounts and align with our updated Business Plan.





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