

Environmental Standard Scotland

Draft Strategic Plan Consultation

May 2022

Chair's Foreword

I'm delighted to present this draft Strategic Plan for consultation. Together with our first Annual Report, these set out our actions and achievements since our vesting date of 1st October 2021 and how we intend to carry out the vital role that has been given to us.

I am proud of the progress that we have made in establishing ESS and in beginning to deliver our functions over our first 9 months. My fellow Board members and I, have met with a wide range of organisations since we were appointed, and these discussions have emphasised the importance of the scrutiny role that we have to play, the opportunity we have to make a difference, and the high expectations of ESS as an organisation.

I am determined that we will meet these expectations to the best of our abilities.

Our ambition for Scotland is high, and ESS has a vital role to play in scrutinising, investigating and securing improvements to compliance with, and the effectiveness of, our environmental laws and standards. This draft Strategic Plan confirms our vision of a high quality environment and protection from harm for all of Scotland's communities. It sets out how we intend to approach each aspect of our role – communicating and engaging widely; analysing environmental performance and progress; investigating the most important concerns; and then, crucially, securing improvements.

The proposals in this draft Plan build upon the feedback that we have had on our Interim Strategic Plan, and on the experience that we have acquired whilst beginning to assess and investigate some of the issues that have been raised with us, or where we have identified a matter of concern.

But now we want to hear from you.

This consultation seeks feedback from anyone with an interest in our role in how we intend to carry it out. I look forward to hearing your views on what you like about our proposed approach, and where you think it could be improved. Your responses will be important in helping us to improve the final Strategic Plan that we will submit to Parliament for approval in September and ultimately in delivering on our vision for Scotland.

Please let us know what you think.

Jim Martin

Consultation

Who we are

Environmental Standard Scotland (ESS) is a new independent public body, established by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. ESS has been created to monitor the effectiveness of environmental law in Scotland and public authorities' compliance with it, and to prevent enforcement gaps arising from the UK leaving the European Union.

What are we seeking views on

We want to improve the quality of the environment in Scotland and help us achieve the highest environmental standards.

This consultation is seeking views and comments on ESS' Draft Strategic Plan. This is a statement about how we will work to scrutinise, investigate and secure improvements in public authorities' compliance with environmental law, the effectiveness of environmental law, and the way it is being implemented and applied in Scotland.

Why your views matter

Comments are invited from anybody with an interest in the draft Strategic Plan. Your responses will help to shape and inform the drafting of our final Strategic Plan, which we will submit to the Scottish Parliament by 1 October 2022 for consideration and approval.

Responding to this consultation

The consultation is open until the 17 August 2022 and you are invited to share your views with us using our online survey <https://consult.gov.scot/environmental-standards-scotland/draft-strategic-plan>

Alternatively, you can send responses to the consultation by email to enquiries@environmentalstandards.scot or by post to:

Environmental Standards Scotland
Thistle House,
91 Haymarket Terrace
Edinburgh,
EH12 5HD

We are also hosting two information sessions where you can hear more about our proposed approach and ask questions. Details of these session and further information on how to get involved are available on our website.

Next steps

We will analyse and consider responses to this consultation and will take them into account when drafting our final Strategic Plan. When we submit our final Strategic Plan to the Scottish Parliament for approval we will publish a summary of the views expressed in response to the consultation and how those were taken into account in the development of the final Plan.

Contents

Chair’s Foreword.....	I
Consultation	II
1. Why Our Role Matters	1
2. Our Role and Who We Are	3
3. Our Strategic Plan and Our Approach.....	5
4. Ensuring Compliance and Effectiveness	8
5. Investigating Environmental Concerns.....	14
6. Monitoring and Evaluating Environmental Performance and Change	19
7. Engaging and Communicating Effectively.....	24
8. Developing a High Performing Organisation.....	27
9. Measuring Our Impact.....	30
10. Our Next Steps.....	33
Annex A: Impact Assessments	34
Annex B: Proposed framework, logic model and key performance indicators	36
Glossary.....	38

1. Why Our Role Matters

1.1 Environmental Standard Scotland (ESS) is a new independent body set up to ensure compliance with, and to improve the effectiveness of, environmental law, and to prevent enforcement gaps arising from the UK leaving the European Union.

1.2 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.

1.3 Scotland is already experiencing the effects of climate change, such as increased temperatures and rainfall, with warmer, drier summers and wetter, milder winters. Climate projections for the next century indicate that these trends will not only continue, but intensify - bringing widespread impacts on the environment, society and the economy through increased flood risk, coastal change, and damage to buildings and infrastructure, amongst others.

1.4 Analysis has also shown that the abundance and distribution of Scotland's species has declined significantly in recent decades, and continues to decline.

1.5 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.

1.6 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, as well as a number of the public authorities who are responsible for implementing our environmental laws effectively. This has reinforced to us the importance of us highlighting areas where the law is not being complied with or is ineffective, and to seeking timely and practicable solutions to the problems we identify.

1.7 We recognise that we will need to work collaboratively with a wide range of partners to fulfil our functions and to achieve our objectives, and to establish a reputation as an independent, fair and strong champion for environmental protection.

1.8 We are clear that the environmental challenges facing us are urgent and serious and we are ready to play our role in upholding and improving environmental laws and standards for the benefit of nature, people, society and the economy.

2. Our Role and Who We Are

2.1 ESS is a new independent public body, created by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (The Continuity Act). We are a non-ministerial office, independent of the Scottish Government, and accountable to the Scottish Parliament.

2.2 We have been established to monitor, investigate and secure improvements to compliance with, and the effectiveness of, environmental law in Scotland.

2.3 We are led by a Chair and Board, who have significant experience in leading independent scrutiny organisations and expertise in environmental law, policy and regulation. We are headed by a Chief Executive and are organised into three specialist teams, with a main office in Edinburgh.

2.4 Our work covers all Scottish public authorities, including, for example: local authorities; health and transport authorities; the Scottish Government and its agencies; as well as organisations carrying out functions of a public nature.

2.5 Whilst our remit is within Scotland we recognise that the environment doesn't recognise administrative boundaries, and we will work closely with our counterparts in the UK (such as the Office for Environmental Protection) to support Scotland's interests in better environmental protection and enhancement across the UK and to ensure that we keep pace with improvements in Europe and elsewhere.

2.6 In undertaking our work we can investigate matters on our own initiative or in response to concerns raised by others, known as **representations**.

2.7 Public authorities have a duty to cooperate with and assist us, and to try to swiftly resolve any matters that we raise with them.

2.8 When we identify an issue, we have a range of powers available to us to help secure compliance or improvements in effectiveness, including:

- issuing an **information notice** requiring a public authority(s) to provide us with any information needed to carry out our functions;
- issuing a **compliance notice** requiring a public authority(s) to take the steps, as specified in the notice to address its failure to comply with environmental law, and to prevent that failure, and the

environmental harm associated with it, from being repeated in the future;

- issuing an **improvement report**, where we consider that the actions of a public authority(s) represents a “systemic failure”, recommending measures that Scottish Ministers and public authorities should take to ensure compliance with environmental law and/or improve its effectiveness; and
- in order to prevent or mitigate serious environmental harm, making an application for **judicial review** (or apply to the court for permission to intervene in an existing judicial review) where we consider that the conduct of a public authority(s) constitutes a “serious” failure to comply with environmental law.

2.9 Nevertheless, we will always try to resolve matters informally with public authorities wherever possible. Section 4 provides further detail on our proposed approach to utilising our formal powers.

2.10 We are not regulators, and do not for example, grant consents, permissions or provide licenses. We are an oversight body and have powers to scrutinise the actions of public authorities on all aspects of environmental law.

3. Our Strategic Plan and Our Approach

3.1 Our draft Strategic Plan is a statement about how we as an organisation will work to deliver our purpose. We want to be ambitious and our **vision** is that:

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.

3.2 Our role is clear and our **mission statement** is that:

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.

3.3 The following strategic outcomes set out the intended results of our work, and will help guide the action we take to achieve our vision, and deliver on our purpose;

- We have taken effective action to ensure public authorities' compliance with environmental law and to improve the effectiveness of the law;
- We have prioritised and investigated the most important matters of concern and identified the action needed to rectify problems and improve compliance and effectiveness;
- We have engaged in building knowledge on environmental performance, are well informed about developments in EU and international standards and practice, and have formed effective partnerships with bodies collecting, collating and scrutinising environmental data;
- Our role is widely understood and we are regularly engaged in work to improve compliance and the effectiveness of environmental law and how it is applied;
- We are an effective and efficient organisation.

3.4 Figure 1. sets out the building blocks of our strategy, which will support the achievement of our Mission Statement and Vision. These are underpinned by our Values and Principles.



Figure 1. Strategy building blocks

3.5 Our approach will be informed by our **values** and **principles**, which will guide all that we do.

3.6 Our **Values** set out in figure 2 on the right, embody the organisation that we strive to be, how we want to be viewed by our stakeholders, and how those who work for us feel.

3.7 Our five **Principles** set out in figure 3 below will inform how we approach our work.

Figure 2. Values

Others view us as	Our staff feel
Independent	Respected
Transparent	Included
Trusted	Innovative
Effective	Collaborative

Figure 3. Principles

- 1. 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
- 2. 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
- 3. We will be evidence driven** – seeking a wide range of inputs and expertise to inform our work and to support our decisions and advice
- 4. We will be open and transparent** – keeping people informed about the progress of our work and providing opportunities to input to and influence it
- 5. 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

3.8 The following sections of the plan describe our approach to delivering each of our strategic outcomes in detail. These outcomes are mutually supporting and only by developing each aspect of our role will we be able to fulfil our remit effectively:

- Chapter 4 begins by describing our proposed approach to securing compliance and improvements to the effectiveness of environmental law, which directly relates to our mission statement.
- Chapter 5 explains our approach to Investigations
- Chapter 6 explains our approach to Monitoring and Evaluation
- Chapter 7 explains our approach to Communication and Engagement
- Chapter 8 Explains our proposed approach to becoming a high performing organisation
- The Plan finishes by describing in how we will measure our performance and outlines our next steps.

Consultation Questions:

Do you have any comments on our Vision and Mission Statement?

Do you have any comments on our Strategic Outcomes?

Do you have any comments on our Values and Principles?

4. Ensuring Compliance and Effectiveness

Strategic Outcome

We have taken effective action to ensure public authorities' compliance with environmental law and to improve effectiveness of the law.

Key Guiding Principles

1. 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

2. 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

What we will do:

4.1 The Continuity Act provides us with a range of powers to secure compliance with the law and to bring about improvements to the effectiveness of environmental law and how it is implemented.

4.2 The Continuity Act also makes clear that we and public authorities are expected to work together to swiftly resolve concerns about compliance and effectiveness, and to agree any remedial action needed to protect the environment.

4.3 We will always seek to work constructively with public authorities to reach **informal resolution** and we will actively consider this option at all stages. Agreeing effective remedial action in this way will often be a more expedient and efficient way of securing favourable outcomes.

4.4 Prior to an investigation, when considering matters of concern we may undertake 'pre-investigation' enquiries (for example, to ascertain whether the concerns are justified and to consider whether informal resolution is appropriate). Public authorities are duty-bound to assist us and we will let them know the nature and purpose of our enquiries.

4.5 Where we consider there to be evidence of an environmental failure, and that it is appropriate for informal resolution, we will liaise with the public authority concerned explaining the reasons for our view. We will either invite representatives of the public authority to discuss and agree, within a reasonable timescale, suitable compliance measures and/or

improvement measures, or, where there is a strong justification, set out in advance any measures that we consider are required to resolve the failure.

4.6 Whilst we may have a view on how things need to change, there may be a number of ways to resolve an issue successfully. Where a public authority suggests an alternative approach, we will consider whether we consider the approach is satisfactory, seeking external expert advice if required.

4.7 Where informal resolution is reached, we will agree with the public authority a reasonable timescale for the measures to be implemented and explain the evidence required to confirm compliance. We will record the measures agreed and will monitor their implementation, for future reporting and analysis.

4.8 Where it is not possible to resolve a matter by informal resolution in a reasonable timescale we will use our statutory powers to prevent further harm or to reduce the risks to the environment or public health, and to ensure the necessary action is taken to put matters right.

Case study: Informal resolution - Acoustic Deterrent Devices

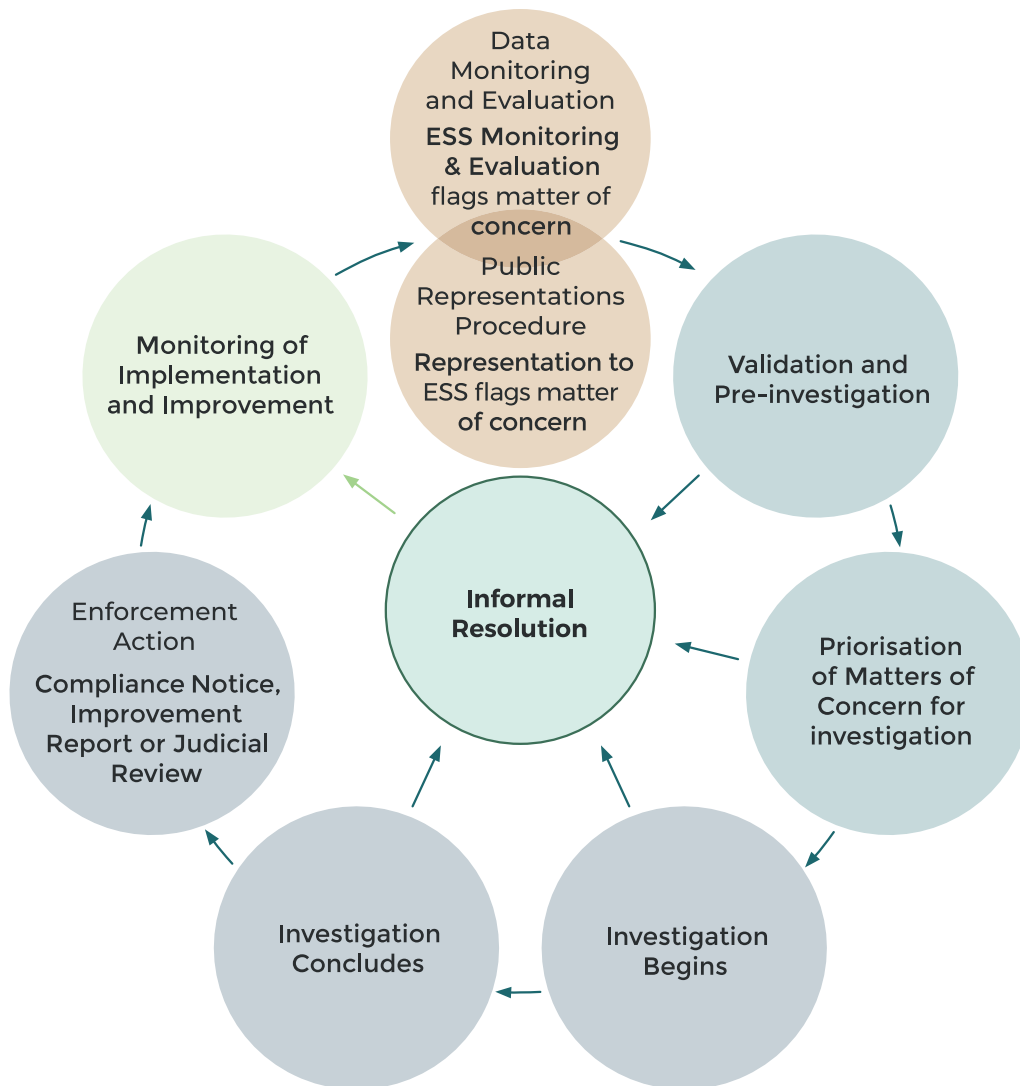
Acoustic Deterrent Devices (ADDs) are used in the aquaculture industry to prevent seal attacks at fish farms. These devices have the potential to disturb European Protected Species such as dolphins and porpoises, which are protected under the Conservation (Natural Habitats, &c.) Regulations 1994. Their deployment must comply with the *Aquaculture Code of Practice: Containment of and Prevention of Escape of Fish on Fish Farms in relation to Marine Mammal Interactions*, which came into force in November 2021. 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 not harm marine mammals.

ESS received a representation regarding Marine Scotland's duties to ensure that the aquaculture industry complies with the 1994 Regulations. The 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 1994 Regulations and the code, 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 in respect of ensuring compliance with the 1994 Regulations. Full details of the outcome of this representation will be published on our website in due course.

Figure 4. illustrates the process described above, that we will follow to verify concerns, to investigate and to secure improvements.



4.9 We will issue a **compliance notice** where we consider that:

- there has been a failure by a public authority to comply with environmental law when exercising their regulatory powers and it is likely that this may continue, or be repeated; and
- harm to the environment has been caused, is continuing to be caused, or is at risk of being caused as a result; and

- the issuing of a single or multiple notices will adequately address the lack of compliance, for example by requiring changes to an organisation(s) procedures or handling of an issue,

4.10 When issuing compliance notices, we will be: clear on the environmental law in question, the **regulatory function** to which non-compliance relates and provide full reasons for our view on why non-compliance occurred, including the actual or potential environmental harm involved. We will also set out what action needs to be taken by the public authority to achieve compliance and will ensure that the steps required are implemented and fully evidenced. We will not normally utilise compliance notices where the lack of compliance represents a systemic failure or is likely to be repeated by other authorities in similar circumstances, instead we would consider issuing an improvement report.

4.11 A public authority, issued with a compliance notice can appeal to the Sheriff, subject to certain grounds set out under the Continuity Act.

4.12 If a public authority fails to comply with a compliance notice, without a reasonable excuse, we can then report the matter to the Court of Session.

4.13 We will report publicly on the cases where we have issued compliance notices, including the remedial action taken by the public authority.

4.14 We will issue an **improvement report** where we consider that:

- there is a failure by one or more public authority to comply with the law, the resulting impact on the environment is widespread, and a systemic change is required to improve compliance and/or effectiveness; and
- action is required by the Scottish Government to improve environmental law or its application

4.15 We will generally only issue improvement reports where we consider that a compliance notice will not resolve the issue. This could be where the function being exercised by the public authority is not covered by a compliance notice (e.g. a non-regulatory function), or where we find that the problem goes beyond the actions of a single public authority, and reflects a pattern of conduct across multiple public authorities which points towards a structural flaw in the system (what we describe as a '**systemic failure**'), or where there is a need to review and amend the relevant legislation itself.

4.16 When issuing improvement reports, we will provide full reasons for why we believe that the public authority(s) has failed to either: comply

with environmental law; make effective environmental law; or implement or apply environmental law effectively. We will also set out the impact of the failure and the timescale by which we consider that the necessary action should be taken.

4.17 We will provide a copy of the improvement report to Scottish Ministers and the Scottish Parliament, and will publish it on our website. The Scottish Government are then required to produce an improvement plan and submit it to Scottish Parliament for approval.

4.18 **Judicial review** is the process by which a court reviews a decision, act, or failure to act by a public body or other official decision maker. Alongside, and notwithstanding, our powers to issue a compliance notice or improvement report, we have the power to make an application for judicial review, or to become a party to a judicial review taken by another party, in relation to a public authority's conduct in the following circumstances:

- the conduct of the public authority constitutes a serious failure to comply with environmental law; and
- it is necessary to make the application to prevent, or mitigate, serious environmental harm.

4.19 In contrast to compliance notices and improvement reports, before taking this action we have to be satisfied that both the failure of the public authority to comply is serious and that the application for judicial review is necessary to prevent or mitigate serious environmental harm. We will also want to consider the urgency with which we need to act.

4.20 In determining whether any environmental harm that has been caused is **serious** or whether there is a risk of **serious** environmental harm which requires to be prevented, the factors which we believe appropriate to consider include:

- is the conduct systemic and/or longstanding in nature;
- is the conduct flagrant or deliberate; or
- does the conduct demonstrate negligence on the part of the public authority?

4.21 In determining whether the environmental harm caused (or at risk of occurring) by the failure to comply is serious, factors which we believe appropriate to consider include:

- The size and scale of the harm caused (or at risk of occurring) to the environment and/or to human health;
- The significance and sensitivity of the area affected (or at risk of being affected) by the environmental harm; or

- The reversibility of the environmental harm if action is not taken

Consultation Questions:

Do you have any comments on our proposed approach to resolving matters informally with public authorities?

Do you have any comments on our proposed approach to determining what constitutes a systemic failure?

Do you have any comments on our proposed approach to determining whether a compliance failure could be addressed more effectively by a compliance notice than an improvement report?

Do you have any comments on our proposed approach to determining whether a compliance failure or environmental harm is serious?

5. Investigating Environmental Concerns

Strategic Outcome

We have prioritised and investigated the most important matters of concern and identified the action needed to rectify problems and improve compliance and effectiveness.

Key Guiding Principles

1. 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

3. We will be evidence driven – seeking a wide range of inputs and expertise to inform our work and to support our decisions and advice

What we will do:

5.1 When matters of concern are brought to our attention we will undertake a preliminary review to gather the information we need to determine whether they are suitable for investigation. We may become aware of matters of concern through either a representation or through our own monitoring and analysis.

5.2 Representations made to us may trigger an immediate investigation because of the significance or urgency of the matter of concern. In deciding whether to immediately investigate, ESS will take into account the following factors:

- **Importance** - does the matter arise from an alleged serious or potentially serious incident concerning the environment? Does the matter raise public health concerns? Is the matter something which seriously affected, or could seriously affect, the welfare of any member of the public? Does the matter concern an alleged failure or potential failure to meet international obligations?
- **Neglect** – does the matter concern allegations of serious neglect of systemic non-compliance? Could the matter undermine public confidence?

5.3 We anticipate that, more commonly, evidence from representations and other indications of public concern will be combined with findings from our monitoring and evaluation work to identify matters of concern

that are appropriate for investigation. In prioritising this work, ESS will take into account the following factors:

- **Importance** - We will consider the scale of the problem, the significance of the environmental feature affected, risks to public health or environmental quality, and the urgency with which change is required.
- **Neglect** - We will consider whether the issue appears to be systemic or long standing or appears to have had a low level of attention and investment to date.
- **Added-value** - We will focus on issues where we can make the biggest difference, as well as considering the strategic fit of the issue with our purpose, and whether similar action is being taken or could be taken by another body.

5.4 Where we decide that a matter of concern is not a priority for investigation we may continue to monitor the issue, and gather or assess data and evidence about compliance and effectiveness, so that we can reconsider our decision at a later date. Any parties who have been involved in our consideration of a matter (including public authorities, NGOs, technical experts or members of the public) will be updated regularly during this process.

5.5 Where we decide to investigate a matter of concern, we will notify the public authorities and relevant parties of our decision. The public authorities will then have an opportunity to respond, explain their approach, share any evidence and seek any clarification from us.

5.6 For each investigation, we will publish the broad issues we expect to investigate and the relevant timescales on our website. By making this publicly available, any interested parties can be aware of the issues we propose to investigate and engage with us or contribute, by providing evidence, examples or case studies.

5.7 During our investigation, we will seek to gather information from the public authority(s) concerned through the issuing of Information Notices, which enable us to set out the timescales by which the required information is to be received. Using Information Notices also allows us to enforce our requests for information through the courts should a public authority fail to comply.

5.8 When using Information Notices, ESS will tell the public authority which information is to be provided and the purpose for which it is required. For example, we may ask for any applicable policies or procedures connected to the matter under investigation, or information that will enable us to establish questions of fact that we are seeking to

help us understand the decision making process and course of events relevant to the investigation.

5.9 We may seek advice from specialists or technical experts in particular fields to help us understand/interpret complex or technical issues or evidence relating to decisions and actions. This will help us reach an informed opinion on whether the law has been complied with, and/or whether it is being applied effectively. Legal advice may also be required at various stages of our investigation process. For example, to help assess whether an issue falls under ESS' remit, or to understand the legal responsibilities of a particular public authority.

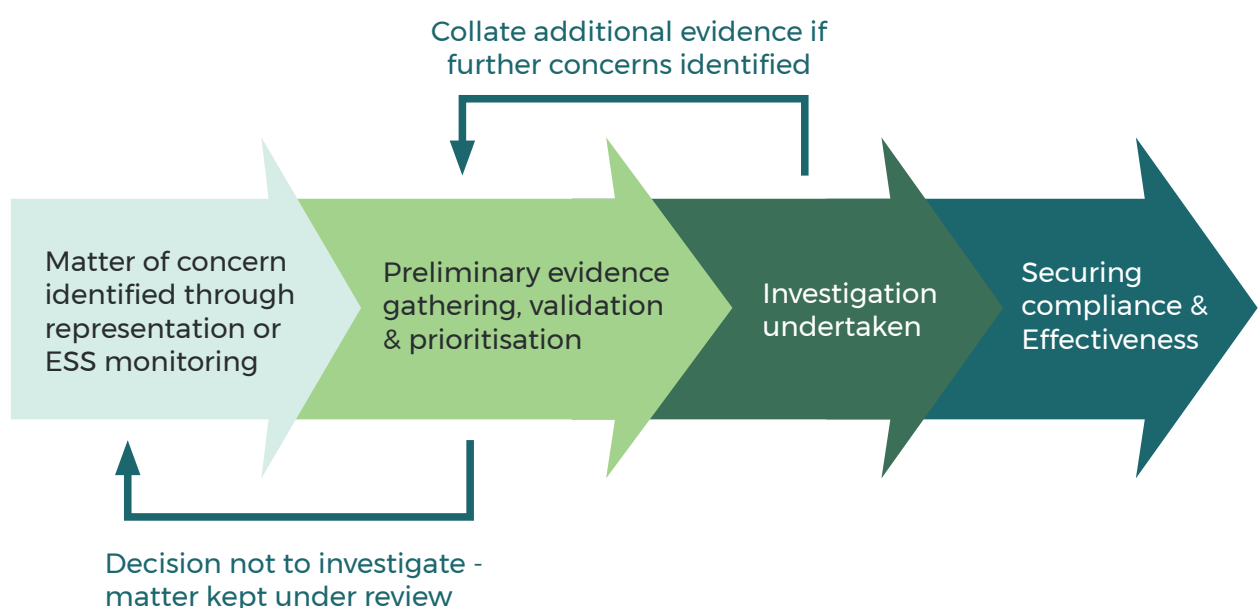
5.10 We will work quickly and efficiently throughout our investigations, and provide relevant parties with updates and an estimate of the completion date of each investigation as soon as we can.

5.11 Once we have concluded our investigation we will issue draft reports to relevant parties setting out our provisional findings, including any recommendations or compliance action. The public authority will have the opportunity to comment on our proposed conclusions, including any actions that are considered necessary to rectify the situation and/or to prevent failures from happening again in future.

5.12 At this stage we will discuss with the public authority whether they are able to commit to action(s) that would enable us to resolve the matter informally, or whether formal enforcement action is necessary.

5.13 We will then finalise and issue a report setting out the findings of our investigation. This process is summarised in figure 5 below.

Figure 5. Describes the process by which we will gather evidence, and prioritise and carry out investigations



5.14 Although the Continuity Act restricts us from disclosing certain types of information, when exercising our functions we will work openly and transparently throughout all stages of the investigation process, and adhere to the principle of procedural fairness. Details of all active and completed investigations will be published on our website at the following link [Investigations - Environmental Standards Scotland](#)

Case study of 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.

Consultation Question:

Do you have any comments on our proposed approach to deciding whether, and how to prioritise and carry out our investigations?

6. Monitoring and Evaluating Environmental Performance and Change

Strategic Outcome

We have engaged in building knowledge on environmental performance, are well informed about developments in EU and international standards and practice, and have formed effective partnerships with bodies collecting, collating and scrutinising environmental data.

Key Guiding Principles

3. We will be evidence driven – seeking a wide range of inputs and expertise to inform our work and to support our decisions and advice

5. 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

What we will do:

6.1 Our investigations may be triggered by either a representation made to us, or through our own monitoring and analysis highlighting an issue of concern. It is therefore important that ESS develops a robust system for monitoring environmental performance in Scotland, how this is changing, and where there may be non-compliance or ineffectiveness.

6.2 The context within which we operate is continuously evolving and ESS will also need to keep abreast of legislative, policy and regulatory changes in the rest of the UK, Europe and beyond to highlight potential issues of concern, where environmental standards are being strengthened or tightened, and/or better ways of delivering our environmental objectives. In particular, we will want to consider whether – as Scottish Ministers made a commitment to do during the passage of the Continuity Act through Parliament – Scotland is ‘keeping pace’ with environmental standards in the European Union.

6.3 Our monitoring and analysis work will involve assessing a wide range of data, progress reports and research findings to glean insights into where environmental regulation is working well, and where it is not. We will primarily bring together and synthesise evidence from existing sources to identify where further analysis or investigation is most needed, but may occasionally commission new primary research or data gathering.

6.4 To help prioritise issues, we will collate, synthesise and assess the evidence about potential issues of concern (including matters of public concern) against a range of criteria, including:

- **Importance** – the size and risk of the potential impact on the environment and/or public health;
- **Neglect** – recent trends in performance; the urgency with which improvement is required; whether the issue appears to be systemic and/or longstanding; whether there has been action taken on the issue, or further action is planned in the near future; and
- **Added-value** – whether there are other oversight or scrutiny bodies who are planning to take, or who could take, action to address concerns.

6.5 We will cast our net widely – identifying and interrogating data, reports, submissions and intelligence from partners and stakeholders that can help us identify where there may be non-compliance or ineffective implementation of the law. We will work with the equivalent scrutiny bodies across the UK and other partners to identify and access the data and information that we need.

6.6 If our work identifies a significant gap in the evidence base that impacts on our ability to scrutinise compliance and effectiveness we will work with other organisations to secure further data or research to address this. This may involve working with partners in government and public authorities, research institutes and universities, or other scrutiny and advisory bodies. In addition, we may occasionally issue calls for evidence to help supplement our own findings.

6.7 Our analysis must be robust, reliable and objective and we will quality assure the evidence we use: considering the timeliness and suitability of the information; the methodology applied for data collection and analysis; comparability; accuracy; and reliability.

6.8 Our quality assurance process will be proportionate and will consider the robustness of the evidence and any uncertainties. Any analysis we undertake will set out clearly the results of our quality assurance process, the strength of the evidence base and any caveats or limitations that apply.

6.9 Our monitoring and analysis work will progress through a series of stages – from horizon scanning to identify high-level areas of concern, through a deepening analysis and understanding of how things are changing, the causes of this, and how policy and regulatory decisions affect this (see figure 6). All of our monitoring and analysis work will be focused on identifying areas where further investigation may be necessary, then supporting active investigations, and assessing whether the changes

that have been made in response to our recommendations are having the desired impact.

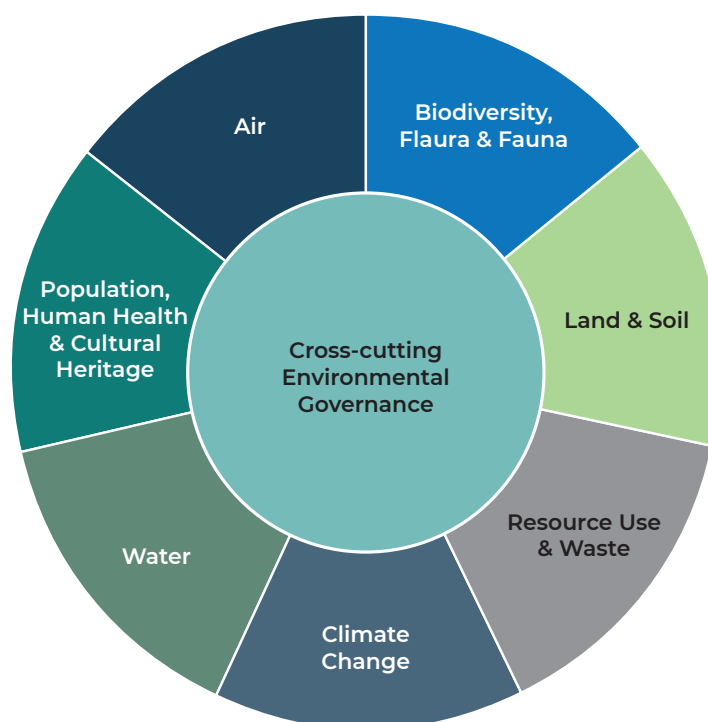
Figure 6. Analytical Process



6.10 To help track where we have been active we have identified eight environmental topic areas and 45 sub-categories to enable us to capture what types of concerns have been flagged to us and in which areas we have undertaken investigation or analysis. Figure 7 provides a visual representation of our categorisation – which is based upon those used in the Strategic Environmental Assessment and the Environmental Impact Assessment processes.

6.11 It should be stressed that we do not have targets for how our effort should be deployed across different areas – we are not aiming for an equal amount of our resource to be committed to each environmental topic area. Instead this framework is intended to help us identify where concerns are focused and where we have undertaken follow-up work, to ensure that we do not inadvertently neglect one particular area.

Figure 7. Environmental Topic Areas



6.12 Our initial analysis to date has been focused on the early stages of our analytical process – scanning across all topic areas, identifying the key data sources, summarising what they tell us about how the environment is changing in Scotland and whether we are on track to achieve our environmental targets and objectives.

6.13 This work and the proposed prioritisation criteria discussed in paragraph 6.4, has identified the following issues as of most concern and where we propose to focus our initial analytical work:

Air quality

- Progress against air quality targets/standards

Biodiversity

- Biodiversity decline (with a particular focus on further analysis of pressures and mitigation strategies, for example protected areas)
- Control of invasive non-native species

Climate Change

- Progress against greenhouse gas emission targets
- Progress on climate change adaptation

Land and Soil

- Developing a better understanding of the current status of soil health, controls and monitoring

Population and human health

- Developing a better understanding of current noise levels, controls and the impact on human health

Resource Use and Waste

- Progress against waste and recycling targets and the development of the circular economy
- Prevention of waste crime

Water

- Developing a better understanding of threats to the marine environment
- Sewage discharge into the freshwater environment
- Progress against River Basin Management Plan objectives

Cross-cutting Environmental Governance

- Developing a better understanding of access to environmental justice, including compliance with the Aarhus convention.

6.14 At the time we submit our final Strategic Plan to Parliament we will confirm our future analytical priorities – enabling environmental

organisations, research institutes, universities, professional bodies and public authorities to know where we intend to focus our analysis, and to feed in their own intelligence and insights where appropriate.

Consultation Questions:

We would welcome views on this proposed set of initial analytical priorities and suggestions of any key sources of data or intelligence that we should be considering. We will also be undertaking further work during the consultation period to verify and quality assure our work and will discuss the evidence we have identified and our initial conclusions with key data and knowledge partners.

Do you have any comments on our proposals for monitoring compliance and effectiveness, and taking account of different types of information?

Do you have any comments on our draft priority topics for further analysis?
Do you have any suggestions for key sources of data and intelligence that we should consider?

7. Engaging and Communicating Effectively

Strategic Outcome

Our role is widely understood and we are regularly engaged in work to improve compliance and the effectiveness of environmental law and how it is applied.

Key Guiding Principles

4. We will be open and transparent - keeping people informed about the progress of our work and providing opportunities to input to and influence it

5. 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

What we will do:

7.1 ESS is a new organisation, operating in a new, post- EU exit institutional landscape. We will therefore seek to engage widely and openly to promote awareness and understanding of our role, to ensure that we are well informed about concerns about compliance and the effectiveness of environmental law, and are engaged in discussions about forthcoming changes and reform in Scotland and beyond.

7.2 We have already established positive working relationships with the Office for Environmental Protection in England and Northern Ireland, and the Interim Environmental Protection Assessor in Wales, and are currently finalising a Memorandum of Understanding (MoU) setting out how we will liaise and collaborate with these counterpart bodies on matters of common interest. The MoU will be finalised by the time the Strategic Plan is submitted to Parliament and will be made available on our website.

7.3 We are also developing MoUs with the Committee on Climate Change and the Joint Nature Conservation Committee, setting out mutual expectations and future liaison and cooperation arrangements with these key evidence and advisory bodies. These MoUs will also be finalised by the time the Strategic Plan is finalised, and will published on our website.

7.4 Given the need for us to keep abreast of relevant changes in environmental regulation in Europe and beyond we will continue to develop our relationships with the European Union and other international bodies, and to participate in relevant forums and knowledge exchange events.

7.5 We are establishing liaison and signposting arrangements with a number of other advisory, oversight and scrutiny bodies, as required by the Continuity Act. We will monitor and periodically review these arrangements so as to continue to build positive relationships and to avoid unnecessary overlap. In addition, we have begun to map out relationships with a wide range of bodies to ensure that people are directed to the most appropriate source of advice and support to address their concerns.

7.6 We will be open to anyone (individuals, community groups, environmental groups, businesses, land managers or public authorities) raising a concern with us (known as making a representation) about compliance with, or the effectiveness of, environmental law in Scotland.

Receiving Representations

To help us target our efforts and prioritise our resources effectively and efficiently we ask anyone wishing to raise a concern with us to complete a simple form, setting out certain details and facts about the issue that they want to make a representation about.

This is standard practice for oversight and regulatory bodies and mirrors the approach taken by the European Commission prior to EU-exit.

We are determined that no one should be disadvantaged because of this requirement and we will provide advice and support to those who need help setting out their concerns to us. Our experience over our first few months of operation suggests that this approach is welcomed by those raising concerns and helps ensure that their representation is within our remit and clearly focused.

However, the Continuity Act is clear that we have not been established to consider complaints about public authorities, nor to act as an appeal body on individual decisions.

In some cases another scrutiny or oversight body will be better placed to consider the matter of concern and in these circumstances we will discuss with the person, group or organisation making a representation how best to signpost or refer them on to an alternative source of advice and resolution.

7.7 We will keep those who have made representations to us informed about our consideration and investigation of their matter of concern. We will always aim to be as open and transparent as possible with all relevant parties about progress, within the limits placed on us under the Continuity Act and other legislation.

7.8 We will also continue to publish on our website the nature of the matters we are currently working on, including our live investigations, pre-investigation casework and a detailed Q&A on our remit and functions. In time we will report publicly on the conclusions and outcomes of our work in the same way, as set out in section 5 of this Plan.

7.9 We will continue to be transparent in our reporting by publishing our Business Plan each year, setting out the key priorities and outputs to be delivered in the next 12 months, alongside our general performance and progress. In line with public body requirements we will meet our corporate reporting responsibilities, including reporting annually to the Scottish Parliament each year.

7.10 We plan to continue to develop our communication with key stakeholders in the public, private and voluntary sector, and develop our communications plan to broaden our reach. We will regularly share information through our communications platforms including the ESS website, Twitter and LinkedIn social media accounts.

7.11 We will finalise our Communications Strategy and publish this alongside our final Strategic Plan – enabling all those with an interest in our work to understand our approach and how we intend to promote our role and our work.

Consultation Questions:

Do you have any comments on our proposed approach to receiving and handling representations?

Do you have any comments on our proposed approach to avoiding unnecessary overlap with other regulators, oversight and scrutiny bodies?

8. Developing a High Performing Organisation

Strategic Outcome

We are an effective and efficient organisation.

Key Guiding Principles

1. 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

5. 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

What we will do:

8.1 We will ensure our plans and operational activity are regularly reviewed and accountable. Our Board meets regularly and the minutes of its meetings are available on our website, as are the minutes of the Audit and Risk Committee. Our [Business Plan](#) is regularly reviewed and made publicly available, alongside other key documents such as our [Framework Document](#) setting out how we will work with the Scottish Government and our [Standing Orders](#). We will continue to be transparent in this way, and will share all updates and changes as the organisation develops.

8.2 We are accountable to the Scottish Parliament and have a legal duty to report on our activities each year. The first formal report to Parliament has been published and is available on our website. All future annual reports will be made available on the website as soon as practically possible following the end of each financial year.

8.3 As a public body, we operate in line with the Public Finance and Accountability (Scotland) Act 2000 and have a duty to produce annual accounts in line with the Government Financial Reporting Manual. The first set of accounts will be produced for the 18 month period, from October 2021 to March 2023. Internal and external Audit arrangements are in place. We will continue to review our set-up and corporate services arrangements to ensure their effectiveness, taking into account all feedback and audit recommendations.

8.4 We have established a well-managed organisation with secure finances and corporate functions. Our budget allocation for 2022/23 is set out below.

	2022/23 projected (£000)
Income (£000)	
Funding	2,192
Expenditure (£000)	
Board	61
Staffing	1,587
Corporate and shared services	286
Communications and events	70
External advice and support	164
Set-up costs	24
Total	2,192

N.B. Until final accounts are published, and the remaining areas of set-up and recruitment are complete, budget totals may change.

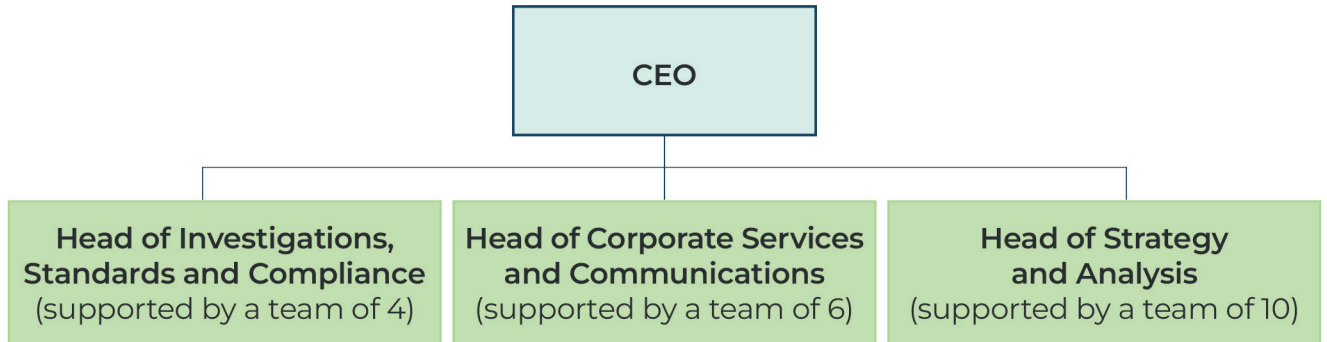
8.5 We will continue to maintain a clear approach to how we allocate and prioritise our spending to ensure best value. In order to operate efficiently within this budget, we have secured cost effective arrangements for our corporate services. We have put in place shared services and contracts for the services needed to operate as an independent body, including human resources, IT, financial systems, procurement, communications, legal support and audit provisions. These provisions will be reviewed by us through Board and Audit and Risk Committee scrutiny, to ensure efficient and effective use of resources.

8.6 We have attracted a team of highly skilled and motivated staff. We have put in place an initial staff team of 17 (including our new permanent Chief Executive Officer Mark Roberts) and we will recruit towards our full staffing complement of 24 by Autumn 2022, to ensure we are suitably resourced to perform our role.

8.7 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. The team structure includes a Chief Executive and three senior heads of functions, each covering one of the three main areas of ESS' operation. The structure

showing the senior roles, and the number of team members under each function, is set out in **Figure 8** below:

Figure 8. Organisation structure



8.8 To retain our reach, and ensure our organisational wellbeing and effective ongoing development, we have contracted a range of independent human resources related support. With this in place, we will prioritise the development of our new team by implementing our Learning and Development programme, pulse surveys and events, to build our organisational culture, with a particular focus on equalities and wellbeing.

8.9 We have established our core internal communications plan and will continue to create an inclusive culture where all team members are consulted and involved in the development of key policy areas, and information is readily shared and available on our intranet. This includes the work we currently have underway to meet our equalities duties, and to prepare our business sustainability plan for monitoring and minimising our impact on the environment.

Consultation Question:

Do you have any comments on how we maintain our ambition to be a high performing organisation?

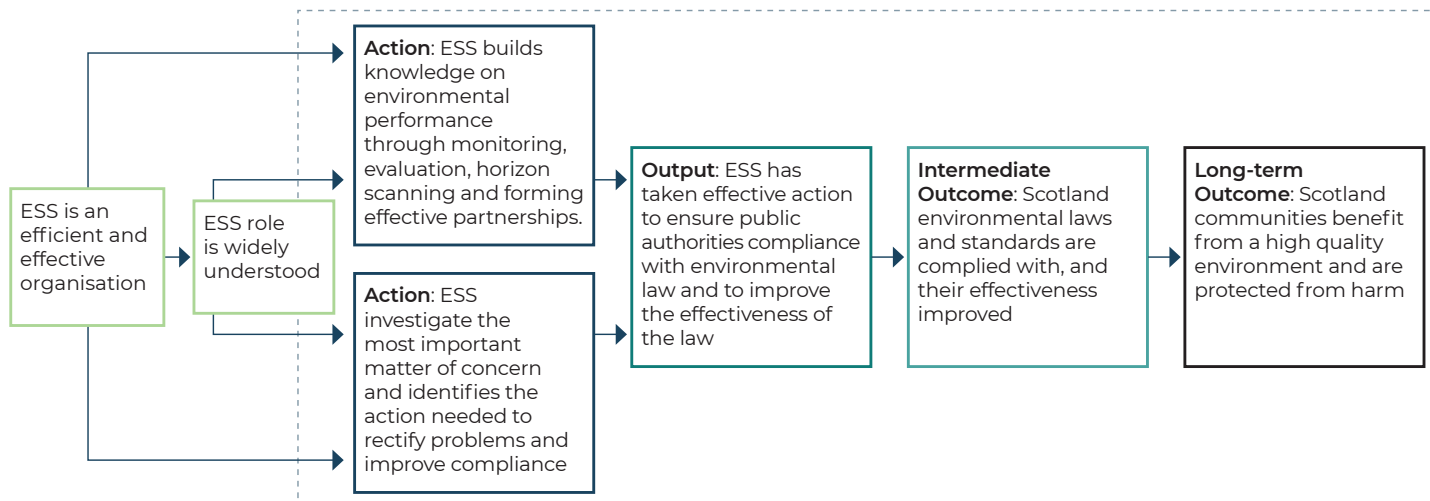
9. Measuring Our Impact

9.1 It is vital that we are effective – and are perceived to be effective – in fulfilling our new scrutiny role. To be able to build trust in the post-EU exit system of environmental governance and scrutiny we must be able to demonstrate clearly how the action that we are taking is delivering results.

9.2 We therefore propose to implement a performance measurement framework that will enable us to identify how we are helping to deliver improvements to environmental outcomes in the real world – by improving compliance with and/or the effectiveness of environmental law in Scotland.

9.3 Having reflected on our initial proposals set out in the Interim Strategic Plan we now propose to adopt a ‘logic model’ approach which identifies and articulates how the resources that we deploy, and the work that we undertake, can bring about change to Scotland’s policy and regulatory environment and, ultimately, improve environmental quality and public health. This is illustrated in the following diagram:

Figure 9. Shows a summary of our logic model approach, from actions, outputs, intermediate outcomes, to meeting our long term outcomes.



9.4 As set out earlier in the plan, two of our key areas of activity are investigating the most important matters of concern and building knowledge of environmental performance through monitoring and evaluation, horizon scanning and forming effective partnerships (in the logic model these are described as our actions). We believe that, through these activities, we will be able to identify the changes needed to rectify problems and improve compliance and effectiveness. As a result we will be

able to instigate change through informal resolution, compliance notices, improvement notices and judicial review (our outputs).

9.5 Assuming that public authorities take the recommendations seriously and implement policy or regulatory change where required, this will ensure public authorities' compliance with environmental law and the effectiveness of the law are improved (our intermediate outcome). There are many other factors which contribute to environmental outcomes, and our contribution to improving compliance and effectiveness is only one. Nevertheless, the changes we instigate will, in turn, contribute towards the achievement of Scotland's ambitions for the environment and climate change (our long-term outcome).

9.6 To monitor our impact, we propose to develop and track a set of key performance indicators (KPIs) at each level of this logic model, covering our activities through outputs and intermediate outcomes, to long-term outcome. In addition, we propose to develop ways of assessing the impact we are having – for example, monitoring whether the changes made have had the desired effect, or through case studies of our added-value and our contribution towards the achievement of long-term outcomes.

9.7 Of course, our outcomes can only be delivered if we are an efficient and effective organisation, which engages and communicates effectively so that our role is well understood. These objectives underpin our logic model and we will also develop a series of 'corporate' KPIs to monitor our performance in these areas.

9.8 Annex B sets out our full set of draft KPIs which we will report on in our annual report to Parliament (including, wherever possible, breaking these down by environmental category to offer further insights). In our annual report we will provide accompanying commentary on what we believe the KPIs tell us about: how we are performing; what progress we are making towards our long-term outcomes; and what action we intend to take to improve our performance in the coming year.

9.9 Demonstrating the impact that we will have is not straightforward. Nevertheless, we believe that this approach – and the KPIs that we will report on – will enable us to monitor the efficiency and effectiveness of what we are doing and to demonstrate whether we are on track to achieve our vision.

9.10 Some of the KPIs proposed are simple to deliver and data to enable us to identify our baseline and track progress is already being collected (for example, the number of representations received). For others, further work will be needed before we can establish a baseline and a suitable methodology for measuring progress. For example, we are undertaking further work to develop a staff survey that measures employee

satisfaction/engagement and also to determine how best to assess our environmental sustainability. We will also develop proposals for how ESS assesses progress on the Scottish Government's Environment Strategy indicators.

9.11 We will progress this work in parallel with this consultation and a final set of proposed KPIs will be presented as part of the finalised Strategic Plan presented to the Scottish Parliament for approval in September.

Consultation Questions:

Do you have any comments on our proposed approach to measuring our impact?

Do you have any comments on our proposed key performance indicators?

10. Our Next Steps

10.1 While this consultation is underway, we will continue to work to the 2021/22 Business Plan, which sets out our ongoing work, alongside the key priorities for the organisation through to the end of March 2023.

10.2 The consultation is open until 17th August 2022 please share your views with us using our online survey <https://consult.gov.scot/environmental-standards-scotland/draft-strategic-plan>. Alternatively, you can send responses to the consultation by email to enquiries@environmentalstandards.scot or by post to:

Environmental Standards Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HD

10.3 We will analyse and consider responses to this consultation and will take them into account when drafting our final Strategic Plan. When we submit our final Strategic Plan to the Scottish Parliament for approval we will publish a summary of the views expressed in response to the consultation and how those were taken into account in the development of the final Plan. Following the approval of the final Strategic Plan by Parliament we will monitor progress against it and will periodically review and update it.

Consultation Questions

Our plan has set out how we intend to go about our functions, including for example the factors we will take into account before we investigate or take informal enforcement action.

Are there any other factors that you think we should consider before exercising our functions?

Do you have any other comments on our draft Strategic Plan and our proposed approach to fulfilling our remit?

Annex A: Impact Assessments

To ensure that we meet the duties placed on us as a public body we have considered the need for a number of impact assessments. As part of this, we have undertaken work to understand the potential for our Strategic Plan – and what it says about the way we intend to carry out our role – to impact on the environment, businesses and people – especially groups with protected characteristics, those in particular geographical locations, or groups with differing socioeconomic status.

We have integrated assessment thinking into the drafting process by gathering evidence to consider, assess and understand potential impacts against key questions and guidance provided by the Scottish Government. We recently tested our initial conclusions at an internal workshop.

The results of our initial assessments are:

Environment

Strategic Environmental Assessment (SEA) is a means to judge the likely impact of a public plan on the environment and to seek ways to minimise that effect, if it is likely to be significant.

The approach set out in the draft Plan has been pre-screened in accordance with the statutory requirements of the Environmental Assessment (Scotland) Act 2005. It is considered that the Plan is likely to have no or minimal impacts on the environment.

Businesses

A Business and Regulatory Impact Assessment (BRIA) is used to analyse the cost and benefits to businesses and the third sector of any proposed legislation or regulation and policy changes, with the goal of using evidence to identify the proposal that best achieves policy objectives while minimising costs and burdens as much as possible.

In considering the three BRIA proposal questions, our initial assessment is that a BRIA is not required. The draft Plan sets out how ESS will undertake its purpose, which largely replaces the scrutiny functions previously carried out by the EU. It is therefore considered unlikely that our Strategic plan will impose new or additional costs on relevant businesses or third sector organisations, impose new additional costs on public sector organisations that deliver services, or involve a transfer of costs or benefits from one group to another, even where it does not change overall net costs or benefits. Nevertheless, we plan to engage with a number of representatives of business organisations during the course of our consultation to test this conclusion.

Equalities, Children's Rights & Well-being, Fairer Scotland Duty

An Equalities Impact Assessment (EQIA) is used to consider how a policy may impact, either positively or negatively, on different sectors of the population in different ways.

The Children's Rights and Wellbeing Impact Assessment (CRWIA) is a tool that can help to meet the public body duty on securing better or further effect of the requirements of the UN Convention on the Rights of the Child (UNCRC).

The Fairer Scotland Duty requires public bodies to pay due regard to how they can reduce inequalities caused by socio-economic disadvantage when making strategic decisions.

During our initial screening and framing of these assessments, we could find no evidence that the draft Plan would be likely to have significant differential impacts on any of the groups with protected characteristics under the Equality Act 2010, including children and young people, and those of different socio economic status. Based on this, we don't believe that further Equalities, Children's impact or Fairer Scotland Assessment are required.

During the evidence gathering process, we did however find useful information in relation to age, digital poverty and socioeconomic status, which was helpful in understanding who may be most, or least likely to engage with us and how we might ensure that no one with a concern about their environment is prevented from accessing our services. This will be particularly useful in informing how we communicate with and support people to raise concerns – ensuring that we engage the widest possible audience and that our role is understood by everyone in Scotland. This will help inform the development of our forthcoming communication strategy (see section 7).

Consultation Question:

Do you have any comments on the interim conclusions of our impact assessments?

Are there any sources of information that you can suggest we use to assess the potential impact of our Plan?

Annex B: Proposed framework, logic model and key performance indicators

Table 1: set out our Activity/Output/Outcome Key Performance Indicators

Activites	Outputs	Intermediate outcomes	Outcomes
Number of investigations completed	Number of investigations resulting in - Compliance notices - Improvement reports - Judicial review	Percentage of recommendations implemented from - Compliance notices - Improvement reports - Judicial review	ESS' assessment of progress on Scottish Government Environment Strategy indicators
Number of analysis projects completed	Number and proportion of issues resolved informally	- Informal resolution	
Number of representations considered			

Table 2: sets out our Communication and Corporate Key Performance Indicators

Engaging & Communicating Effectively About Our Role and How to Raise Concerns
Number attending public/stakeholder engagement sessions and percentage of feedback positive
Number of parliamentary appearances and number of citations in reports or meetings
Number of social media followers
Number of new and return visits to ESS website
Website audit results (for accessibility and usability)*
Public and stakeholder perception of ESS' role**
An Efficient and Effective Organisation
Percentage of service standards met
Public body corporate indicators (including complaints, number of FOIs, leavers/joiners, invoices paid within 10 days)
Positive results of external audit reporting**
Board and staff diversity information
Staff engagement* **
Percentage of staff time spent on learning and development
Organisational sustainability**

* This will be reported every 3-5 years, rather than annually as for other indicators.

** Indicators still to be developed.

Glossary

Compliance Notice – a notice which ESS can issue setting out the steps a public authority must take in order to address its failure to comply with environmental law.

Continuity Act – UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 – the legislation passed by the Scottish Parliament in 2021 creating ESS and setting out functions, powers and obligations.

Improvement report – a report which ESS can issue recommending measures that the Scottish Ministers, or any other public authority, should take in order to comply with environmental law, or improve the effectiveness of environmental law or of how it is implemented or applied. The report is issued to the Scottish Ministers and laid in the Scottish Parliament. Scottish Ministers must then lay an Improvement Plan in Parliament for approval, setting out how they intend to address the recommendations made in the Improvement Report.

Informal resolution – the process by which ESS works with public authorities to swiftly resolve concerns about compliance and effectiveness, and to agree any remedial action needed to protect the environment, without having recourse to our formal enforcement powers.

Information Notice – a legal notice used by ESS to require public authorities to provide us with the information we reasonably require in the exercise of our functions.

Judicial review – the process by which a court reviews a decision, act or failure to act by a public body or other official decision maker.

Regulatory function – specifically defined in the Continuity Act as:

- functions conferred by or under any enactment of:
 - i) imposing requirements, restrictions or conditions in relation to an activity,
 - ii) setting standards and outcomes in relation to an activity, or
 - iii) giving guidance in relation to an activity, or
- functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity.

Representation – the term for when a matter of environmental concern is formally raised with ESS.

Systemic failure – an identified problem which goes beyond the actions of a single public authority, and reflects a pattern of conduct across multiple public authorities pointing towards a structural flaw in the system.

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