

A close-up photograph of a hand holding a dark blue pen, signing a document. The document has several checkboxes, some of which are already marked with checkmarks. The background is a blurred office setting.

Informal Resolution

Consideration of the
requirement to complete a
Strategic Environmental
Assessment to support new
legislation

July 2026

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1. Executive summary

1.1 Strategic Environmental Assessments (SEAs) are a statutory mechanism designed to ensure that environmental considerations are integrated into policy development at an early stage.

1.2 ESS received a representation alleging non-compliance by the Scottish Government in relation to the SEA undertaken for the Agriculture and Rural Communities (Scotland) Bill ('the Agricultural Bill')¹. The representation asserted that the Agricultural Bill should have been subject to a SEA due to its potential to give rise to significant environmental effects. The representation also raised concerns over the adequacy and transparency of the SEA screening process, including public access to relevant documentation.

1.3 ESS identified shortcomings in the SEA screening documentation and publication arrangements. Thereafter ESS engaged with the Scottish Government through informal resolution to ensure the SEA process undertaken for the Agricultural Bill was compliant and to seek wider improvements to the Scottish Government's approach to SEA.

1.4 The Scottish Government accepted ESS' concerns and committed to a series of remedial actions, including revising SEA screening and determination templates, strengthening reference to relevant statutory criteria and the requirement for a statement of reasons, and republishing the screening determination for the Agricultural Bill.

1.5 Having reviewed the remedial actions undertaken, ESS concludes that the identified issues have now been addressed and that compliance with the relevant legislative requirements has been secured. Accordingly, ESS considers that informal resolution has been achieved.

1.6 To support the effective implementation of the SEA process and ongoing compliance with environmental law, ESS will monitor SEA screening and publication practices in relation to any secondary legislation brought forward as part of agricultural reform measures.

¹ [Agriculture and Rural Communities \(Scotland\) Bill](#)

2. Background

2.1 SEAs are a statutory tool designed to ensure that the likely significant environmental effects of plans and programmes are identified and considered before they are adopted or implemented. SEAs also support informed and transparent decision-making by ensuring public access to relevant information and allowing opportunities for engagement. Where a SEA is not undertaken, the Responsible Authority² must demonstrate, through a statutory screening process, that the plan or programme is unlikely to have significant environmental effects.

2.2 The Agricultural Bill formed part of the Scottish Government's programme of agricultural reform following the UK's withdrawal from the European Union. The Bill contains a range of provisions, including powers relating to financial assistance to agricultural and rural communities, administrative and enforcement mechanisms, and reforms to agricultural tenancies. Many of these provisions are enabling in nature, with further detail intended to be developed through secondary legislation and associated policy instruments.

2.3 The Agricultural Bill was passed by the Scottish Parliament and received Royal Assent as the Agriculture and Rural Communities (Scotland) Act 2024 ('the 2024 Act')³.

Relevant environmental law

2.4 The Environmental Assessment (Scotland) Act 2005 ('the 2005 Act')⁴ establishes the framework for SEA in Scotland. The provisions most relevant to this report include:

- Section 5(3) – qualifying plans and programmes prepared for specified sectors, including agriculture, which must undergo SEA screening or scoping and are not eligible for pre-screening

² The Responsible Authority refers to the public body responsible for preparing or adopting a plan, programme or strategy and for ensuring compliance with the legal SEA requirements

³ [Agriculture and Rural Communities \(Scotland\) Act 2024](#)

⁴ [Environmental Assessment \(Scotland\) Act 2005](#)

- Section 5(4) – additional plans and programmes which may be subject to SEA unless excluded under Section 6. These plans and programmes are eligible for pre-screening under Section 7
- Sections 8 and 9 – the requirements for screening determinations, including consultation with statutory Consultation Authorities⁵ and the application of the Schedule 2 criteria
- Section 10 – the duty to make screening determinations and any related statement of reasons publicly available within 28 days
- Schedule 2 – the criteria for determining the likelihood of significant environmental effects

2.5 Guidance⁶ issued by the Scottish Government supports the implementation of the statutory framework and provides advice on SEA procedures and practice.

⁵ The Consultation Authorities are the statutory bodies consulted as part of the SEA process. In Scotland, these are NatureScot, the Scottish Environment Protection Agency (SEPA) and Historic Environment Scotland (HES)

⁶ [Strategic Environmental Assessment Guidance](#)

3. The representation

3.1 ESS received a representation asserting that the Agricultural Bill should have been subject to a SEA due to its potential to give rise to significant environmental effects. The representation raised concerns about transparency in the SEA process, noting that neither pre-screening nor screening⁷ documents were publicly accessible on the SEA Gateway⁸ and that this limited public scrutiny and was non-compliant with the 2005 Act and the Scottish Government's SEA guidance.

3.2 The representation sought action to ensure that the SEA screening process for the Agricultural Bill complied with the requirements of the 2005 Act, including public access to relevant SEA documentation.

3.3 ESS considered the case to fall within its statutory remit on the basis that:

- the representation related to a public authority – the Scottish Government
- the representation related to environmental law – the Environmental Assessment (Scotland) Act 2005
- the failure (as set out in the representation) constituted non-compliance with environmental law

3.4 ESS also determined that the issues met its significance criteria. The concerns raised suggested potential non-compliance with the SEA regime, including the

⁷ Pre-screening is the preliminary assessment for certain plans, programmes or strategies (falling under Section 5(4) of the 2005 Act) to determine whether they can be excluded from the requirement to undertake a SEA.

Screening is the assessment used to determine whether a qualifying plan, programme or strategy (falling under Section 5(2) of the 2005 Act) is likely to have significant environmental effects and therefore require a SEA to be undertaken.

⁸ The Scottish Government's SEA Gateway is a central administrative unit that co-ordinates all SEA correspondence between the authorities responsible for preparing a plan, programme or strategy (known as the Responsible Authority) and the Consultation Authorities as required by the 2005 Act. Historically, the SEA Gateway also administered the SEA Database, which was used to publish SEA documentation.

adequacy of screening determinations, transparency of decision making, and public access to environmental information. ESS considered that shortcomings in these areas had the potential to undermine informed decision making and public scrutiny in relation to plans and programmes capable of affecting the environment.

4. ESS' consideration and findings

4.1 As part of its consideration of the concerns raised in the representation, ESS made enquiries of the Scottish Government in respect of the SEA process undertaken for the Agricultural Bill.

4.2 The Scottish Government confirmed that the Agricultural Bill was classified as a Section 5(3) qualifying plan and not a Section 5(4) plan and therefore underwent SEA screening rather than pre-screening. A screening report was submitted to the Consultation Authorities in September 2022, all of whom agreed that a SEA was not required at that early stage, noting that the Agricultural Bill was largely enabling in nature. The Consultation Authorities recommended that the position be kept under review.

4.3 The Scottish Government explained to ESS that most components of the Agricultural Bill, including provisions relating to financial assistance, administrative control systems, and fair work provisions, were considered unlikely to have significant environmental effects at the primary legislation stage. However, proposals relating to the modernisation of agricultural tenancies were identified as having the potential to give rise to significant environmental effects and were subsequently addressed through the Land Reform (Scotland) Bill⁹, which was subject to SEA¹⁰ and public consultation¹¹.

4.4 The Scottish Government also advised that SEA requirements would be given further consideration as secondary legislation and associated policy instruments arising from the Agricultural Bill are developed¹². It further acknowledged that

⁹ [Land Reform \(Scotland\) Bill](#)

¹⁰ [Supporting documents - Strategic Environmental Assessment \(SEA\) for the Agricultural Tenancies proposals Environmental Report - gov.scot](#)

¹¹ [Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Use Tenancy Proposals Consultation: report](#)

¹² The Scottish Government confirmed that, to date, the powers contained within the 2024 Act have not yet been exercised.

technical reasons affecting the SEA Gateway delayed the publication of screening documentation and contributed to public accessibility issues.

4.5 On reviewing the evidence available at that time, ESS identified the following failings regarding the Scottish Government's compliance with, and the effective implementation of the requirements of the 2005 Act:

SEA screening and statement of reasons

4.6 The SEA screening documentation did not include a statement of reasons demonstrating how relevant statutory criteria¹³ had been applied, as required under Section 8 of the 2005 Act. It was therefore unclear whether a statement of reasons had been produced for the Agricultural Bill, which indicated non-compliance with Section 8 of the 2005 Act.

Publication of SEA documentation

4.7 ESS identified that the screening determination and associated statement of reasons had not been displayed on the Scottish Government's website, as required under Section 10(2)(b) of the 2005 Act. While the Scottish Government explained that this was due to the retirement of the SEA Database, ESS' position remained that the statutory publication requirements had not been met.

SEA gateway functionality and reliability

4.8 ESS identified concerns regarding the robustness and reliability of the arrangements for publishing and accessing SEA documentation following the retirement of the SEA Database. The Scottish Government explained that this arose because the software underpinning the database could no longer be hosted on its platform. Responsibility for publishing SEA documentation therefore rested with individual Responsible Authorities, while the SEA Gateway could provide documents on request. ESS considered that the resulting gaps in public access to SEA

¹³ Statutory criteria include the characteristics of the plan, programme or strategy, the nature of its potential environmental effects, and the characteristics of the areas likely to be affected. These criteria are set out in Schedule 2 of the 2005 Act and are used to determine whether a proposal is likely to have significant environmental effects and therefore require SEA.

documentation raised concerns about the effectiveness of these arrangements. ESS also considered that providing documents only on request did not satisfy the statutory requirement to display documents on an authority's website.

Clarity of SEA guidance and terminology

4.9 ESS identified ambiguity in the Scottish Government's SEA guidance regarding terms such as 'small areas at local level' and 'minor modifications', which are central to determining whether SEA screening is required. ESS considered that this ambiguity risked the potential for inconsistent application of the 2005 Act across Responsible Authorities.

Future SEA commitments

4.10 ESS noted the absence of a clear implementation plan setting out how SEA requirements would be applied to future secondary legislation arising from the Agricultural Bill.

5. Informal resolution

5.1 Informal resolution is the process by which ESS seeks to agree effective remedial actions with a public authority to resolve identified issues without recourse to formal enforcement measures. ESS considers informal resolution to be proportionate and effective where issues can be addressed through constructive engagement.

5.2 Following ESS' invitation to address the identified issues informally, the Scottish Government agreed to work with ESS to strengthen the SEA screening process, guidance and publication arrangements.

5.3 In response to the concerns identified by ESS, the Scottish Government committed to a number of remedial actions, including:

- revising the SEA screening report and screening determination templates
- strengthening explicit reference to the relevant statutory criteria within SEA determination documentation
- updating internal SEA guidance to clarify the requirement for a statement of reasons
- updating internal SEA guidance and resources to link to European Commission guidance¹⁴ to improve the clarity and consistency of interpretation of key terms
- republishing the screening determination and statement of reasons for the Agricultural Bill, which is now publicly available on the Scottish Government's SEA screening determinations webpage¹⁵

5.4 In considering whether the updated screening determination addresses the concerns previously identified, ESS had regard to relevant case law, which establishes that while screening determinations are preliminary in nature, they must engage with the material issue of the likely environmental effects and provide sufficient reasoning to allow an informed reader to understand why the conclusion regarding likely significant environmental effects has been reached.

¹⁴ [SEA Guidance](#)

¹⁵ [SEA screening determinations - gov.scot](#)

5.5 ESS had previously concluded that the original screening determination for the Agricultural Bill did not meet this standard, as it asserted that significant environmental effects were unlikely without explaining how the application of the statutory criteria supported that conclusion. ESS considers that the updated screening determination for the Agricultural Bill now meets the required standard, as it provides clear reasoning for its conclusion and explains how the relevant statutory criteria were applied. Therefore compliance with Section 8 of the 2005 Act and the publication requirements of Section 10 has now been ensured.

5.6 The Scottish Government provided further information regarding the future application of SEA requirements to measures arising from the 2024 Act. It advised that a SEA had been prepared at programme level and had informed the development of the Agricultural Reform Route Map¹⁶ and the Rural Support Plan framework. The Scottish Government further advised that future iterations of the Rural Support Plan would provide the framework for the implementation of agricultural reform and would be the principal mechanism through which future SEAs would be undertaken, where relevant and applicable. To ensure effective implementation and ongoing compliance with environmental law, ESS will monitor the application of SEA requirements in relation to any secondary legislation or other measures arising from the 2024 Act. The Scottish Government confirmed that the powers contained within the 2024 Act have not yet been exercised.

5.7 Regarding the arrangements for publishing and accessing SEA documentation following the retirement of the SEA Database, the Scottish Government clarified that responsibility for publishing SEA documentation rests with the relevant Responsible Authority and not the SEA Gateway. The Scottish Government also confirmed that, where Scottish Ministers are the Responsible Authority, relevant SEA documentation is published on its website¹⁷.

ESS welcomes the actions taken by the Scottish Government and considers that these measures reduce the risk of similar compliance issues arising in future and support the effective implementation of the SEA regime.

¹⁶ [Agricultural Reform Route Map](#)

¹⁷ [Publications - gov.scot](#)

6. Conclusion

6.1 ESS identified a number of procedural shortcomings with the SEA process undertaken for the Agricultural Bill. In particular, ESS found that the original SEA screening determination did not contain a clear statement of reasons demonstrating how the relevant statutory criteria had been applied, and that the screening determination and associated documentation had not been displayed on the Scottish Government's website.

6.2 On the basis of the available evidence, ESS considered that the SEA screening process for the Agricultural Bill did not comply with the requirements of the 2005 Act.

6.3 The Scottish Government accepted ESS' concerns and committed to remedial actions. These included revising the SEA screening determination template, strengthening explicit reference to the statutory criteria within screening determinations, updating internal SEA guidance to clarify the requirement for a statement of reasons and to improve the clarity and interpretation of key terms, and republishing the screening determination for the Agricultural Bill.

6.4 Having reviewed the updated screening determination (as published) and the additional information provided by the Scottish Government, ESS is now satisfied that the deficiencies previously identified have been addressed. Accordingly, ESS concludes that the SEA screening process for the Agricultural Bill is now compliant with the requirements of the 2005 Act.

6.5 ESS welcomes the steps taken to strengthen compliance with statutory requirements and the wider improvements to SEA screening practice. These improvements should contribute to greater transparency, support legal robustness and consistency in the application of SEA requirements going forward.

6.6 ESS considers that the matters raised by the representation have been appropriately resolved through informal resolution. To ensure the effective implementation of the SEA process and ongoing compliance with environmental law, ESS will monitor the Scottish Government's SEA practice for any secondary legislation made using the powers of the 2024 Act.

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