

**Minutes of Board meeting held on 27 August 2021, 10:00 – 14:00
(Held on MSTeams)**

Present

Jim Martin (JM)	Chair
Richard Dixon (RD)	Member (present for items 1-5, part of 6, 7)
Marie Fallon (MF)	Member
Paul McAleavey (PM)	Member
Annalisa Savaresi (AS)	Member

In attendance

Transition Team:

Brendan Callaghan (BC)	Interim CEO
Neil Langhorn (NL)	Head of Interim Strategy Development
Jamie McGrandles (JMcG)	Head of Investigations
Rebecca Peppiette (RP)	Head of Secretariat
James Aldred (JA)	Business Manager (Minutes)

1.	Private session
2.	<p>Welcome and declaration of interests</p> <p>RD's and AS' declarations of interest related to air quality matters, and membership of the steering group that carried out the independent review of the Scottish Government's Cleaner Air for Scotland Strategy, remain current. These are listed in the publicly available Board Minutes of May and June 2021.</p> <p>RD declared an interest related to Friends of the Earth Scotland's submission to the Aarhus Convention Compliance Committee, and recused himself from any further discussion re ESS' consideration of air quality and Aarhus convention compliance.</p> <p>The minutes from the July meeting were approved.</p> <p>The running list of matters arising was reviewed and approved.</p>
3.	<p>CEO update</p> <p>BC shared information on the Scottish National Party (SNP)-Green co-operation agreement.</p> <p>NL reported on engagement with the clerks of the Scottish Parliament Net Zero committee and the Rural Affairs Islands and Natural Environment Committee.</p> <p>On progress toward vesting, BC confirmed that the Scottish Government Strategic Environmental Policy (SEP) Programme Board considered the ESS assurance paper on 18 August 2021, and confirmed its support for the proposed 1 October 2021 vesting date. Ministerial sign-off of financial requirements is expected to be confirmed by the 30</p>

	<p>August 2021. BC reported that his appointment as Accountable Officer had been approved by the Permanent Secretary.</p> <p>On corporate services, RP noted an expected delay to the implementation of ESS' finance system. ESS will remain financially operational at vesting, with journaling requirements being prepared for when the system goes live. BC noted that policies on information management and security were in development and would be in place as necessary by the agreed vesting date. The need for data sharing agreements with relevant stakeholders was being considered.</p> <p>The Board thanked the Transition Team for the work carried out to date towards vesting.</p>
4.	<p>Governance</p> <p>MF gave an update on the 23 August 2021 Audit and Risk Committee (the Committee) meeting. The Committee had received the draft Internal Audit plan and approved it, noting that a full Memorandum of Understanding and details of expected service costs were to be confirmed, and that the terms of reference for initial audits was to be assessed for assurance. MF also noted that it was still to be confirmed whether six month end-of-year accounts would be required for the 2021/22 financial year, or whether 18 month accounts would be presented in 2022/23. Further work is required on this and will be brought back to the October Committee for consideration.</p> <p>The Board requested that the Standing Orders be amended to clarify the relationship between the Board and its Committees, including that the Board would receive and approve the minutes of Committee meetings.</p> <p>RP presented an updated budget report, noting provision for the review of services if required. A provision for potential legal and judicial review costs will be split out from the general contingency budget going forward.</p> <p>BC presented the updated risk appetite framework, highlighting the changes made as a result of the Board's discussion session on 16 August 2021. He noted that the suite of risk management documents would be circulated by correspondence for the Board's sign-off, and a first draft of the full risk register would be brought to the September meeting for discussion. The Board reviewed the proposed risk acceptability levels and requested that the appetite for behaving in an illegal, unreasonable or irrational way be amended to averse, while retaining the suggested minimal / cautious appetite for actions that could potentially lead to judicial review.</p> <p>Subject to this amendment, the Board approved the risk appetite statement and agreed to review its operation in a years' time. It was requested that the draft risk register be reviewed by Audit and Risk Committee by correspondence, prior to the September Board meeting, and agreed that the Committee would hold ownership of the register in future.</p>

	<p>The Board considered the draft Communications Strategy and recommended that there be a closer link to the interim strategy, and that the document be simplified down for clarity. The Board requested a further operational paper be brought to the September Board setting out: who will be the ESS spokespeople; costs; social media proposals; and an update on the launch.</p>
<p>5.</p>	<p>Interim Strategy</p> <p>NL presented the final draft of the Interim Strategy, noting that it would be used as the basis for the consultation on the development of the final Strategy.</p> <p>In discussion, the Board requested:</p> <ul style="list-style-type: none"> • That the interim nature of this version of the Strategy be more fully reflected throughout the document; • That it be clarified that the final Strategy would reflect on the use of ESS’ powers and whether those powers are adequate to fulfil its responsibilities; • That it be noted that ESS is empowered to act not just where there is evidence of environmental harm, but also evidence of the <u>risk</u> of environmental harm occurring; • That further reference be made to ESS’ role in monitoring any divergence between Scottish and EU environmental standards, and in advising the Scottish Government in how to maintain its commitment to keeping pace with EU standards. <p>The Strategy was approved subject to the requested amendments.</p> <p>NL undertook to circulate the document for any comments on the detail and drafting. The Chair noted that if any substantive subsequent changes were requested to the Strategy’s direction and/or content, these would need to come to the full Board for discussion and approval.</p>
<p>6.</p>	<p>Investigations and representations</p> <p>JMcG reported that no further representations had been received since the last Board meeting.</p> <p>The Board then discussed the proposed investigation procedures and fairness approach, and:</p> <ul style="list-style-type: none"> • Noted that references to ‘natural justice’ could be considered unclear and requested that the guidance cover other, specific environmental justice principles; • Requested that reference be made to unconscious as well as conscious bias; • Noted that where reference was made to “acting only on the basis of logically probative evidence”, this potentially conflicted with the precautionary principle contained in the Continuity Act, and requested that this be resolved;

	<ul style="list-style-type: none">• Recommended the noting of the specific international obligation for authorities to provide environmental data. <p>The procedures were approved subject to these amendments.</p> <p><i>At this point RD left the meeting in accordance with his declaration of interest.</i></p> <p>JMcG presented an update on provisional planning for any investigation into air quality compliance issues</p> <p>On the possible duration of such an investigation, JMcG confirmed that service standards were in development which would provide a general timeline for investigations, but that the exact timescale for individual investigations would vary depending on their scope and complexity.</p> <p>The Board resolved to continue discussing the proposed investigation and approach at future meetings.</p> <p>JMcG then presented a paper on Scotland’s compliance with the Aarhus Convention’s requirements on access to justice as a possible issue for investigation. The Board acknowledged the paper and resolved to return to the issue at a future meeting once the capacity of the investigations team was clearer.</p>
7.	AOB <p>The Board noted the continuing uncertainty around the potential for in-person meetings and requested that hybrid meeting arrangements be put in place as a contingency.</p> <p>Date of next meeting: Friday 24 September 2021.</p> <p>Forward dates as agreed: 29 October 2021 3 December 2021 28 January 2022 25 March 2022</p> <p>Forward Audit and Risk Committee meeting dates: 18 October 2021 22nd November 2021 17th January 2022 14th March 2022</p>

James Martin
Chair, Environmental Standards Scotland
24 September 2021