

# **Environmental Standards Scotland Framework Document**

Agreement between  
The Scottish Ministers

and

Environmental Standards Scotland

1 October 2021



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

**ENVIRONMENTAL**  
Standards Scotland

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### Version control

Reviewed and approved

	<b>Approved</b>	<b>Next Review</b>
Board and Scottish Government	31 August 2021	As required, but before 31 August 2024
Scottish Government	10 December 2021	Minor amendments at 1.1, 2.1(g) and 3.4 for factual accuracy.

## 1. INTRODUCTION

1.1 Environmental Standards Scotland (“ESS”), established by Chapter 2 of Part 2 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Continuity Act”), is a body corporate. It is classified amongst Scottish public bodies as a Non-Ministerial Office with the status of an office-holder in the Scottish Administration, thus ensuring its operational independence. ESS is directly accountable to the Scottish Parliament for the delivery of its functions. ESS is known in Gaelic as Ìrean Àrainneachdail na h-Alba.

1.2 The Continuity Act established ESS on a statutory basis to maintain a system of environmental governance equivalent to that provided by the institutions of the European Union, adapted to suit Scottish domestic requirements<sup>1</sup>.

1.3 This Framework Document sets out the terms of an agreement between Environmental Standards Scotland and the Scottish Ministers in relation to the governance, financing and operation of the functions of ESS. It forms a key part of the governance and accountability framework within which ESS will operate. The document does not create legal obligations or confer legal powers or responsibilities on either party. Legislative provisions shall take precedence over any part of this document.

1.4 While the Framework Document’s principal purpose is to define key roles and responsibilities underpinning the relationship between ESS and the Scottish Ministers, it fully reflects ESS’ direct accountability to the Scottish Parliament. Nothing in this document affects, or is intended to affect, in any way the direct accountability of ESS to the Scottish Parliament, including its Finance Committee, for the performance of its statutory functions. See paragraph 5.1.

1.5 The Framework Document has been drawn up jointly by ESS and the Scottish Government.

1.6 The document begins by setting out a number of shared principles to which the Scottish Ministers and ESS will adhere. It then summarises the functions of ESS and sets out the roles and responsibilities of the Scottish Ministers; the Chair and Members of ESS; ESS’ Chief Executive, including the specific role of Accountable Officer; the staff of ESS; and the Scottish Government Director, Environment & Forestry.

1.7 The document also sets out roles, responsibilities and requirements in relation to: financial management and resources including budget allocation, audit and risk management, and shared services and contracts; accountability to the Scottish Parliament; planning and reporting including ESS strategy, corporate plan and annual reports; Freedom of Information policy; and information and data sharing. Finally, provision is made for review and publication of the Framework Document.

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<sup>1</sup> ESS was established on a non-statutory basis in January 2021, following the end of the transition period after the UK’s exit from the EU, to ensure continuity of oversight of environmental standards and devolved public bodies’ compliance with those standards. The non-statutory ESS did not have any statutory functions or powers, but was able to gather and consider information in line with the functions set out in the Act, with the cooperation of public bodies

## **2. SHARED PRINCIPLES**

2.1 Environmental Standards Scotland (“ESS”) and the Scottish Ministers (“Ministers”) confirm that they will adhere to the following shared principles.

- a. ESS and Scottish Ministers will work for the protection and improvement of Scotland’s environment, and for the wellbeing of our communities now and in the future;
- b. ESS will not act in such a way as might compromise, or be seen to compromise, its own independence;
- c. Scottish Ministers will not act in such a way as might compromise, or be seen to compromise, the independence of ESS;
- d. ESS will remain politically neutral;
- e. ESS will carry out its functions with integrity and in such a way as to promote transparency, ensuring that appropriate summaries of its analysis and activity are available for scrutiny by the Scottish Parliament, academic commentators and others, and that records are retained to allow external assessment of its work;
- f. ESS and Ministers are committed to good and effective communications with each other, especially where ESS is considering the actions and decisions of Ministers. Ministers wish to ensure that ESS has access to all relevant information to be able to consider issues on their merits, and that there is a collaborative effort to find improvements to regulatory practice and policy in the interests of good environmental standards. Ministers will keep ESS informed of policy developments and progress on implementing changes. ESS will keep Ministers informed of its developing priorities and working practices;
- g. ESS has (section 24 of the Continuity Act) a statutory right of access to any relevant information held by the Scottish Government that ESS may reasonably require for the purpose of performing its functions. This right of access is subject to section 39 of the Continuity Act.
- h. ESS is bound by the confidentiality requirements set out in the Code of Conduct for Members of Environmental Standards Scotland. ESS and Ministers will comply with the provisions on disclosure of information and confidentiality at sections 39 and 40 of the Continuity Act. They will ensure full consultation about any matters arising from interpretation of these provisions; and,
- i. ESS and the Scottish Ministers will both work in ways which support the best principles of corporate governance and financial accountability as set out in the Scottish Public Finance Manual.

## **3. ENVIRONMENTAL STANDARDS SCOTLAND FUNCTIONS AND TRANSPARENCY**

### **Functions and Actions**

3.1 Environmental Standards Scotland’s functions are set out in section 20(1) of the Continuity Act. The functions are:

- a. to monitor as it considers appropriate -
  - i. public authorities' compliance with environmental law;
  - ii. the effectiveness of environmental law and of how it is implemented and applied.
- b. to investigate (either on its own initiative or in response to representations made to it by another person) any matter concerning -
  - i. whether a public body is failing (or has failed) to comply with environmental law;
  - ii. the effectiveness of environmental law or of how it is (or has been) implemented or applied.
- c. to take the steps it considers appropriate to secure -
  - i. a public authority's compliance with environmental law;
  - ii. improvement in the effectiveness of environmental law or in how it is implemented or applied.
- d. the additional functions conferred on it by the Continuity Act or any other enactment.

3.2 Section 20(2) of the Continuity Act sets out a range of actions ESS may take in exercising its functions;

- a. carry out, commission or support any research it considers appropriate;
- b. seek any independent and expert advice it considers appropriate;
- c. make recommendations in relation to any matter relevant to its functions;
- d. consider, assess and review data on the quality of the environment in Scotland;
- e. keep under review implementation of any international obligation of the United Kingdom relating to environmental protection;
- f. have regard to developments in, and information on the effectiveness of, international environmental protection legislation;
- g. collaborate with any other environmental governance body in the United Kingdom, including the Office for Environmental Protection, or such other persons as Environmental Standards Scotland considers appropriate; and,
- h. request information from public authorities about the exercise of their functions under environmental law.

3.3 Section 20(3) of the Continuity Act requires that in exercising its functions, ESS must act objectively, impartially, proportionately and transparently. ESS will set out in its Strategy how it will carry out its functions and ensure that it meets these requirements.

### **Independence and Scrutiny**

3.4 As provided in paragraph 1(1) of Schedule 1 of the Continuity Act, ESS is not subject to the direction or control of any member of the Scottish Government in performing its functions. The only exceptions to this, as set out at paragraph 1(2) of Schedule 1, are

matters in the Continuity Act or in other Acts, with the most important exception being the provisions of the Public Finance and Accountability (Scotland) Act 2000. ESS is accountable to the Scottish Parliament for the performance of its functions, and must lay its Strategy before the Parliament before it can be adopted.

3.5 Environmental Standards Scotland in carrying out its functions is also subject to the jurisdiction of the Scottish Public Sector Ombudsman (SPSO). ESS will maintain a complaints and appeals procedure which complies with the statement of principles published by the SPSO and which it will publish on its website and via other appropriate media.

### **Information Handling**

3.6 In order to perform its functions, ESS requires access to data and information held by the Scottish Government and other public authorities. The conditions for this access are set out in sections 23, 24, and 39 of the Continuity Act. Section 40 of the Continuity Act sets out the confidentiality of proceedings, with section 40(1) listing what ESS must not disclose and section 40(2) describing where subsection 1 does not apply. The expectation of both ESS and Ministers is that most information will be provided to ESS under the cooperation duty.

3.7 ESS has a statutory duty under section 20(2) of the Continuity Act to consult the Office for Environmental Protection or any other similar environmental governance body in the UK where its work may be relevant to the work of the other body. In addition, ESS is free to develop cooperation with other governance bodies, for example to share knowledge of areas of regulation or to commission research.

### **Access to Information**

3.8 In this section “information” encompasses information held in all media, including electronic, and extends to numerical and other data.

3.9 ESS has a right of access at reasonable times to any relevant information held by the Scottish Government that ESS may require for the purpose of performing its functions. ESS may, under section 20 of the Continuity Act, issue an information notice requiring information from Scottish Government (or any public authority) and Scottish Government would have to provide the information, subject to the provisions of section 35 of the Continuity Act. In line with the duty on Scottish Government (and other public authorities) at section 19 of the Continuity Act and the shared principles at section 2 of this Framework Document, Scottish Government will share relevant information with ESS wherever possible without the need for an information notice to be issued.

3.10 ESS is bound by the confidentiality requirements set out in the Code of Conduct for Members of Environmental Standards Scotland.

### **Public Communications**

3.11 Consistent with the shared principle of good and effective communications outlined in section 2 of this Framework Document, ESS and the Scottish Government will wherever possible share with each other, in advance, any public communications that either intends to issue which have a bearing on the functions of ESS.

## **4. ROLES AND RESPONSIBILITIES**

4.1 The relevant powers and duties of Environmental Standards Scotland and of the Scottish Ministers are set out in the Continuity Act. The Chief Executive, as Accountable Officer, is personally responsible for safeguarding the public funds for which they have charge and for ensuring propriety and regularity in the handling of those funds. Scottish Ministers are not responsible for ESS' day to day operations, nor for its discharge of its monitoring and investigation functions.

### **The Scottish Ministers**

4.2 In accordance with paragraph 2(1) of Schedule 1 of the Continuity Act, the Scottish Ministers will appoint a member to chair ESS and between four and six other members. Paragraph 3 of Schedule 1 of the Continuity Act sets out persons who may not be appointed as members. All appointments are subject to the approval of the Scottish Parliament. Appointments to ESS are public appointments and subject to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 and the Gender Representation on Public Boards (Scotland) Act 2018. Appointment decisions should be fair and open and based on merit. The appointments process is a regulated one.

4.3 The Continuity Act allows Ministers to determine the period of appointments of members of ESS, up to a maximum of 4 years. Ministers may reappoint members on one occasion only; members may thus serve a total of two consecutive terms, subject to the requirements of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland which specifies that a member's (including the chair's) total period of appointment may not exceed 8 years. To allow flexibility in the timing of reappointments (for example, in obtaining Parliamentary approval), an individual may be reappointed if currently a member or was a member in the three months prior to reappointment. Reappointments are subject to evidence of effective performance and to members continuing to have the skills, knowledge and experience required on ESS at the time of reappointment.

4.4 Ministers will consult ESS if they propose to modify ESS' functions by means of Regulations under section 21 of the Continuity Act.

4.5 The independence of ESS is safeguarded by paragraph 1 of Schedule 1 of the Continuity Act, which provides that ESS is not subject to the direction or control of any member of the Scottish Government in performing its functions, other than in the limited circumstances specified in that Act and in other enactments.

4.6 The Scottish Ministers determine the Budget proposals to be submitted to the Parliament in the Budget Bill, including the proposed budget for Environmental Standards Scotland. Ministers are responsible for ensuring that this budget is sufficient to enable ESS to carry out its remit effectively. The process for agreeing ESS' budget allocation is described in section 6 on Financial Management and Resources.

### **Board of Environmental Standards Scotland**

4.7 Environmental Standards Scotland will consist of a Chair and between four and six other members (also referred to as "Board members", "the members of ESS" or "ESS members") appointed by the Scottish Ministers with the approval of the Scottish Parliament.

ESS will be diverse and inclusive, and have an appropriate mix of a range of relevant knowledge, skills and experience including, but not limited to, environmental policy, environmental law, regulation, public sector governance and corporate leadership.

4.8 In line with paragraph 4 of Schedule 1 of the Continuity Act, ESS will, with the approval of Ministers, determine the remuneration of members of ESS and arrange for the reimbursement of expenses incurred by them on ESS business.

4.9 Paragraph 7 of Schedule 1 of the Continuity Act makes provision for ESS to establish committees and to appoint members onto them. The role of the Audit and Risk Committee is described at sections 6.10 and 6.11 below. It is for ESS to determine the composition of its committees and it is free to appoint individuals who are not members of ESS to a committee provided that there is at least one Board member on every committee. Committee members who are not members of ESS are not entitled to vote at committee meetings. ESS can remunerate and provide allowances and reimburse expenses for members of committees at rates approved by Scottish Ministers.

4.10 Under paragraph 8 of Schedule 1 of the Continuity Act, ESS may authorise any of its members, any committee established by it, any member of staff or any other person to perform any of its functions to whatever extent ESS decides. This enables ESS to delegate functions to individual Board members, to the Audit and Risk Committee or any other committee, to the Chief Executive or other members of staff, or to third parties (for example, to commission advice on specialist environmental law or other professional expertise). Further details are set out in ESS Standing Orders and ESS Scheme of Internal Delegation. ESS, however, remains responsible for the performance of its statutory functions.

4.11 ESS operates within Standing Orders which set out procedure, including what constitutes a quorum. These are published on ESS' website. The Standing Orders set out arrangements for Board members acting corporately as a board for the purposes of governance. The Standing Orders also set out a Code of Conduct for Members of Environmental Standards Scotland and provide for the circumstances in which Board members must declare any interest on a subject under discussion or consideration.

4.12 If legal proceedings are brought against any Board member by a third party, ESS will meet any civil liability which is incurred by that Board member in the execution of their functions, provided that the Board member has acted honestly and in good faith and did not act recklessly or negligently.

### **Chair of ESS**

4.13 The primary duty of the Chair of ESS is to provide leadership, direction, support and guidance to ESS in the successful, effective and efficient performance of its functions. In doing this, the Chair will exercise particular leadership responsibilities in relation to the following matters:

- a. formulating and articulating ESS' strategy and direction;
- b. in shaping the Board, ensuring that all members of ESS, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities; and that they receive appropriate induction and on-going training,

including on the financial management, reporting requirements and other duties of public bodies in Scotland;

- c. in exercising responsibility for taking forward succession planning for ESS, that ESS has, and continues to have, the skills, experience, knowledge and diversity that it needs to be effective;
- d. that best use is made of ESS' skills mix in carrying out its functions; that ESS takes appropriate action to address any skills gaps; and that effective arrangements are in place for the on-going review of Board members' contribution to ESS' work, including ensuring that a suitably rigorous process is in place for annual appraisal by the Chair of all Board members; and,
- e. building relationships with and representing the views of ESS to the Scottish Parliament, the Scottish Ministers and other key stakeholders.

4.14 The Chair will also ensure:

- a. that in reaching decisions ESS has due regard to all appropriate data and information;
- b. that actions and decisions taken by ESS are in accordance with its statutory obligations and are consistent with its aims and objectives;
- c. high standards of propriety and regularity throughout ESS and its staff; and,
- d. that, in carrying out the appraisal of the Chief Executive, the performance of the Chief Executive is managed to meet both the needs of ESS and the requirements of the Cabinet Office Strategy on Senior Civil Service performance management, including reference to both the Cabinet Office's and the Scottish Government's requirements for delivery of business, corporate and capability objectives. The final appraisal form will be subject to countersignature by the Director, Environment & Forestry, but the Director will not participate in the appraisal itself. The purpose of the Director's role, as part of this appraisal process, is to ensure consistency in standards and to provide oversight for the Chief Executive's development and welfare. The Director will not be involved in the setting of operational objectives.

## **Board members of ESS**

4.15 Board members are collectively responsible for the leadership and direction of Environmental Standards Scotland, and for ensuring that it carries out its statutory functions effectively and efficiently and that it achieves its published aims and objectives as recorded in the Corporate Plan. ESS has full discretion over how it fulfils and delivers its statutory functions.

4.16 In particular, Board members will:

- a. establish the Strategy required under section 18(1) of the Continuity Act, in line with the requirements set out in Schedule 2, and ensure that ESS exercises its functions in accordance with the Strategy;
- b. maintain ESS' independence from the Scottish Government;

- c. communicate widely ESS' aims and objectives;
- d. protect and enhance public confidence in ESS and its reputation amongst national and international environmental bodies;
- e. provide leadership and commitment to the development and promotion of effectiveness, efficiency, economy and equality throughout ESS;
- f. oversee the recruitment, retention and motivation of staff with the required technical, management and administrative skills to carry out ESS' functions;
- g. ensure that strong appropriate working relationships are established and maintained between ESS and key bodies to ensure cooperation and to respect and avoid any overlap, including with Scottish Government, SEPA, NatureScot, local authorities and other relevant institutions and stakeholders;
- h. ensure that ESS conducts its business with integrity and transparency, and that ESS demonstrates high standards of corporate governance at all times;
- i. comply with any statutory or administrative requirements specified in the Scottish Public Finance Manual (SPFM) for the use of public funds, including requirements relating to Value for Money; Best Value; and risk management, governance and internal control;
- j. assure itself of the effectiveness of the internal control and risk management systems of ESS, by establishing an Audit and Risk Committee;
- k. ensure that records are retained to provide an audit trail for the external assessment of its work and its use of public funds; and,
- l. ensure compliance with all legal responsibilities.

4.17 Individual members of ESS are accountable to the Chair for their conduct as members of ESS. Members should act in accordance with the responsibilities of ESS as a whole and must comply at all times with the Code of Conduct and with the rules relating to conflicts of interest and to the use of public funds. In this context, "public funds" means not only funds provided to ESS by the Scottish Ministers but also other funds falling within the stewardship of ESS.

### **Chief Executive of ESS**

4.18 The Chief Executive's primary role is to lead ESS in the effective delivery of its mission and mandate. In doing this their main responsibilities include:

- a. being the primary source of advice to Board members and ensuring that they are provided with high quality, impartial, transparent and honest information and advice on all areas of ESS' responsibilities;
- b. providing effective leadership to the staff of ESS and exercising responsibility for their recruitment, retention, management, motivation and development;
- c. ensuring that relevant financial considerations are made clear to ESS at all stages in reaching and executing decisions;

- d. ensuring that ESS and staff remain alert to the public interest in ensuring that their decisions are taken in a fully informed legal context and ensuring that the legal implications of any course of action are considered at the earliest opportunity and that all briefing to ESS is informed by such advice;
- e. delivering the efficient and cost-effective day-to-day management of ESS' functions;
- f. overseeing the commitment of ESS to good and effective communications and relationship management with the Scottish Parliament, the Scottish Government, partners and stakeholders;
- g. ensuring the efficient and effective use of staff and other resources in line with the principles of Value for Money and Best Value, including where appropriate through participation in collaborative procurement and shared service arrangements (see paragraph 6.12 below);
- h. making sure that strategic human resource planning is aligned with ESS' objectives;
- i. ensuring that human resource policies and procedures are effectively managed to the required standards for all staff employed by ESS;
- j. putting in place robust systems of management and control within the organisation which support the fulfilment of ESS' statutory functions, aims and objectives; and ensuring the identification, management and mitigation of risks to inform decisions on financial and operational planning;
- k. ensuring that adequate resources are in place for ESS to fulfil its planning and reporting responsibilities as set out in section 7. of this Framework Document;
- l. overseeing the preparation for each financial year of the annual accounts of ESS; arranging for an audit of the annual accounts to be carried out by the Auditor General for Scotland (AGS), or by auditors appointed by the AGS, in the appropriate time period; and signing the annual accounts and associated governance statements (see paragraph 7.4-5);
- m. preparing ESS' annual report, laying the annual report and accounts before the Scottish Parliament and arranging for their publication;
- n. ensuring adherence to Scottish Government equalities and diversity policies, and relevant legislation, as they apply to ESS staff and to third parties acting on behalf of ESS; and in ESS' role as a public body in the promotion of equality and diversity; and,
- o. ensuring that appropriate organisational policies and procedures are in place to fulfil ESS' duties and responsibilities in respect of Freedom of Information and data protection.

4.19 In exercising responsibility for the day-to-day leadership and operation of the functions of ESS, the Chief Executive works under the direction of the Chair of ESS and in accordance with this Framework Document. In particular, the Chief Executive is held to account by ESS for the management of ESS' budget and business plans, the leadership and management of its staff, and the efficient and effective delivery of ESS business.

4.20 The Chief Executive is designated as the Accountable Officer for ESS by the Permanent Secretary of the Scottish Government, as the Principal Accountable Officer for the Scottish Administration, in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000. Further details of the Accountable Officer's responsibilities are set out at paragraphs 4.25 to 4.30 below.

4.21 The appointment of the Chief Executive is conducted in line with the Civil Service Commissioners' Recruitment Principles as they apply to senior civil servants in Scotland.

4.22 ESS may advertise externally and will appoint a Chief Executive through open and fair competition. Once appointed, this Chief Executive will be a senior civil servant, employed by and accountable to ESS for the day-to-day running of the organisation and its operational performance. The Chief Executive is not a member of ESS. The Chief Executive is appointed by ESS and employed by it on such terms as it may, with the approval of Ministers, determine.

4.23 The Chief Executive's remuneration is agreed in accordance with the performance and award arrangements for members of the relevant Senior Civil Service pay band.

4.24 The Chief Executive's annual performance report will be written by the Chair of ESS and countersigned by the Director, Environment & Forestry, Scottish Government.

### **Accountable Officer**

4.25 The Chief Executive is designated as the Accountable Officer by the Permanent Secretary of the Scottish Government, as the Principal Accountable Officer for the Scottish Administration, in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000. As Accountable Officer, the Chief Executive is personally responsible for safeguarding the public funds for which they have charge and for ensuring propriety and regularity in the handling of those public funds. The Accountable Officer has a duty to obtain Value for Money and Best Value in the operational performance of the organisation and for ensuring that effective governance and operational arrangements are in place to secure internal control and risk management.

4.26 As Accountable Officer, the Chief Executive is personally responsible for ensuring that ESS complies with the requirements of the Scottish Public Finance Manual (SPFM). The Chief Executive should act – and take steps necessary to ensure that ESS corporately acts – in accordance with the principles of the SPFM and the terms of relevant guidance in the SPFM and other financial instructions and guidance issued by the Scottish Ministers. (See also paragraph 6.7 below.) The full range of responsibilities of the Accountable Officer are set out in the Memorandum to Accountable Officers for Parts of the Scottish Administration, published in the SPFM.

4.27 It is incumbent on the Chief Executive to combine their Accountable Officer responsibilities to the Scottish Parliament with responsibilities to ESS. The Chair and members of ESS should be fully aware of, and have due regard to, the responsibilities and statutory duties placed upon the Chief Executive as the Accountable Officer.

4.28 The Accountable Officer may consult the Director, Environment & Forestry on any aspects of the duties applying to Accountable Officers in the Scottish Administration. The

Accountable Officer must consult the Director on any action which they consider is inconsistent with their duties on financial, regulatory or propriety grounds, and specifically where they seek written authority from the Scottish Ministers in terms of section 8 of the SPFM or a direction from ESS.

4.29 In practice, the Chief Executive will delegate authority to other employees of ESS but they cannot on that account disclaim responsibility. The Chief Executive cannot assign accountability to any other person for any of the responsibilities set out in this Framework Document (subject to section 10 of the Memorandum to Accountable Officers for Parts of the Scottish Administration, which covers absence of the Accountable Officer).

4.30 The Chief Executive is responsible for informing the Principal Accountable Officer for the Scottish Administration about any complaints about ESS accepted by the Scottish Public Services Ombudsman (SPSO) for investigation and about ESS' response to any subsequent recommendations from the SPSO.

### **Staff of ESS**

4.31 The Chief Executive will put appropriate workforce planning arrangements in place to ensure that ESS can deliver future service requirements.

4.32 The Chief Executive is responsible for the learning and development of staff, both as individuals and collectively, and for ensuring that all staff have the knowledge, skills and experience required for ESS to deliver its functions effectively. The learning and development strategy will pay particular attention to ESS' own organisational priorities.

4.33 ESS, through its Chief Executive, is responsible for determining its organisational and management structure and the number and levels of staff below the level of the Senior Civil Service (SCS). The creation of SCS posts, and their reward, is part of a UK-wide scheme and ESS will need the agreement of the Scottish Government to create any SCS posts. ESS will also need to agree with Scottish Government the means of recruitment, and levels of reward, for any SCS posts, including the post of Chief Executive.

4.34 ESS is committed to effective communication with its staff and staff representatives and will establish and maintain local partnership arrangements with staff representatives. These partnership arrangements reflect Scottish Ministers' commitment to Fair work.

4.35 All staff employed by ESS have a duty to the Chief Executive, and through the Chief Executive to ESS, to support the efficient and effective operation of ESS' statutory functions and the achievement of ESS' aims and objectives.

4.36 ESS staff are civil servants and are required to adhere to the standards set out in the Civil Service Code (specifically, the version applicable to staff in non-Ministerial Offices in Scotland); this sets out the framework within which all civil servants work, and the core values and standards of behaviour which they are expected to uphold. Staff are appointed by open and fair competition; and ESS is responsible for ensuring that staff recruitment arrangements are fair, open and transparent in line with the Civil Service Commissioners' Recruitment Principles. All recruitment, including for Senior Civil Service posts, will adhere to the Scottish Government's recruitment policies and procedures.

4.37 ESS staff are civil servants, as part of the Scottish Administration, and not the Scottish Government. Under paragraph 6 of Schedule 1 of the Continuity Act, staff are employed by ESS.

4.38 ESS will require an HR management service independent of SG (including pay negotiations, pay awards, payroll and pensions) for ESS staff. ESS has further decided that they will look to analogue to the terms set by the Scottish Government Main (SGM) bargaining unit. ESS staff terms and conditions will initially be aligned with SGM terms and conditions of employment and ESS will adapt core Scottish Government HR policies and procedures. ESS will review its HR service provision from time to time to ensure that these arrangements continue to meet its operational needs in partnership with their recognised Trade Unions.

4.39 The Scottish Government has a Partnership Agreement with its recognised trade unions covering all matters relating to the general welfare, terms, conditions and working practices of staff. For the purposes of SGM terms and conditions and collective bargaining the recognised unions are the Public and Commercial Service Union (PCS), Prospect and FDA. Collectively the recognised unions form the Council of Scottish Government Unions (CSGU).

4.40 The staff are members of, or are eligible to join, the Civil Service pension arrangements.

4.41 Although it is not open to ESS, while it remains part of SGM, to undertake independent review of its terms and conditions, specific elements can be discussed centrally with Scottish Government HR and the CSGU, where variation might be in the interests of improved efficiency and effective management and having regard to the need to recruit, retain and motivate staff. Any ESS-specific changes to terms and conditions will only be made after discussion and agreement between Scottish Government HR and ESS and following consultation with the CSGU.

4.42 Staff health, safety and wellbeing are key priorities for ESS as an employer. ESS is strongly committed to providing a workplace free from unfair discrimination and from bullying, and to ensuring the fair treatment of all its staff.

4.43 Responsibility for health and safety management lies with the Chief Executive in line with the requirements of the Health and Safety at Work Act 1974 and other relevant legislation, guidance and/ or best practice. ESS is responsible for the health and safety not only of its staff but also of visitors to its premises.

#### **Director, Environment & Forestry, Scottish Government**

4.44 Scottish Government's Director, Environment & Forestry will work closely with the Chair and CE of ESS to ensure that effective working relationships are maintained between the Scottish Government and ESS. The Director will be answerable to the Scottish Ministers for maintaining and developing with ESS positive relationships characterised by openness, trust and respect. The Deputy Director, Future Environment, supported by their team, will have day-to-day responsibility for discharging these and any other functions

delegated by the Director, working with colleagues across the Scottish Government as necessary.

4.45 The Director will promote organisational alignment between ESS and the Scottish Government, as appropriate while fully respecting the independent functions of ESS, by ensuring that:

- a. the Chief Executive or, where appropriate, the Chair and members of ESS, are aware of strategic developments and corporate decisions which may affect ESS' functions or operations; and
- b. an appropriate Framework Document (i.e. this document) is in place and is reviewed and maintained as appropriate under the arrangements set out in Section 9 below.

4.46 The Director:

- a. may consult with the Accountable Officer of ESS on any aspect of that person's duties in terms of the SPFM;
- b. will provide guidance on any matter where the Accountable Officer seeks advice in relation to a written authority from Scottish Ministers in terms of section 8 of the SPFM; and
- c. will provide advice to the Accountable Officer on any matter which would require a direction from Board members.

4.47 Other responsibilities of the Director include:

- a. providing support and constructive challenge as appropriate while fully respecting the independent functions of ESS, to ensure that ESS is high performing and continuously improving;
- b. provide assurance to Scottish Ministers that an effective system of governance of ESS is in place and working;
- c. supporting the Scottish Ministers in the discharge of their duties in respect of ESS;
  - ensuring, where necessary, that appropriate core Scottish Government corporate services are available to support and facilitate the work of ESS;
  - carrying out an annual appraisal of the Chair; and
  - countersigning the annual appraisal of the Chief Executive, in their capacity as a Senior Civil Servant.

4.48 Taking account of the Annual Report and other information provided by or requested from ESS, the Director will be responsible for advising the Scottish Ministers about ESS' operation and performance.

4.49 The Director will meet the Chair of ESS at least twice annually to promote effective relations between Scottish Government and ESS and, as appropriate, to discuss the

Scottish Ministers statutory responsibilities with respect to ESS including funding and arrangements for the appointment and appraisal of Board members.

4.50 The Director will notify the Chair and/or Chief Executive of appropriate points of contact. In particular, they will provide ESS with a single point of contact in Environment and Forestry Directorate who will be responsible for ensuring efficient and effective communication between ESS and the Scottish Government on operational and administrative matters.

4.51 The Scottish Government will provide information and data requested by ESS in a timely manner and ensure that ESS has access to all data and information held by the Scottish Government which is relevant to ESS' discharge of its duties and functions. The Director will ensure that arrangements are put in place to provide information efficiently and effectively (See also section 9. below).

## **5. ENVIRONMENTAL STANDARDS SCOTLAND AND THE SCOTTISH PARLIAMENT**

### **Accountability to the Scottish Parliament**

5.1 ESS is directly accountable to the Scottish Parliament for the performance of its statutory functions. The Chief Executive, as Accountable Officer, is personally responsible, and accountable to the Parliament, for safeguarding, and for ensuring efficiency, propriety and regularity in the use of, public funds for which they have charge. The principal routes of accountability to the Parliament are through the Chair and the Chief Executive as Accountable Officer. The Chair, the Accountable Officer or, where appropriate, members of ESS staff will give written or oral evidence to the Scottish Parliament Net Zero, Energy & Transport and Rural Affairs, Islands & Natural Environment Committees, or to other Committees of the Parliament, when invited to do so. The Parliament has the power to require any ESS Board member or member of ESS staff to attend a Parliamentary Committee.

### **Parliamentary Questions**

5.2 The Scottish Ministers will not be accountable through Parliamentary Questions for the operations of ESS. Operations of ESS include its monitoring and investigation work and steps it may take to secure compliance with or improvement in the effectiveness of environmental law.

5.3 Parliamentary Questions to the Scottish Ministers may, however, seek information about environmental matters for which the Scottish Government has a general responsibility, but which the Scottish Ministers cannot provide without assistance from ESS. While remaining responsible for their answers to Parliamentary Questions, the Scottish Ministers may seek information from ESS to enable them to respond to such questions.

5.4 Where a Parliamentary Question relates to operational matters of ESS, the Ministerial reply will indicate that this is the case and that the Question has been passed to the Chief Executive of ESS for reply.

## **Correspondence from Members of the Scottish Parliament**

5.5 When Members of the Scottish Parliament (MSPs) seek information from ESS on matters for which it is responsible – whether directly or in a Parliamentary Question passed to the Chief Executive by the Scottish Ministers under paragraph 5.4 above – the Chief Executive will reply, normally within 20 working days of receipt of the correspondence or, as the case may be, the forwarded Parliamentary Question.

5.6 Correspondence from and to MSPs will normally be published on the ESS website, in the same way that answers to Parliamentary Questions are publicly available, subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 2018.

## **6. FINANCIAL MANAGEMENT AND RESOURCES**

### **Environmental Standards Scotland Budget Allocation**

6.1 Environmental Standards Scotland is funded directly from the Scottish Consolidated Fund.

6.2 ESS is part of the Scottish Administration and will have its own level 2 budget set out in the annual Budget Bill. The Scottish Government will liaise with ESS to identify its budgetary requirements which will be reflected in the Budget Bill which Ministers present to the Scottish Parliament. It is for the Scottish Ministers to determine the budget proposals to be submitted to the Scottish Parliament within the Budget Bill, including the proposed budget for ESS.

6.3 When setting budgets as part of the annual draft Budget process, ESS may identify its multi-year resource needs. The Scottish Ministers will subsequently provide a clear indication of funding for the forthcoming financial year (year 1) and indicative funding for years 2 and 3 which can be reviewed should there be significant changes in circumstances.

6.4 Paragraph 13 (1) of Schedule 1 of the Act sets out that the Scottish Ministers must seek to ensure that the amount of resources allocated for use by Environmental Standards Scotland is reasonably sufficient to enable it to perform its functions. Where agreement on ESS budget cannot be reached between the parties, the following protocol will be used. In the first instance, there will be a meeting between the Chief Executive, as Accountable Officer, and the Director. If agreement cannot be reached at official level, there will be a meeting between the Chair of ESS on the one hand and the Cabinet Secretary for Net Zero, Energy and Transport and the Cabinet Secretary for Finance and the Economy on the other. Every effort will be made by all three parties to ensure agreement. It will ultimately be for the Scottish Ministers to determine the budget allocations within the Budget Bill and for the Scottish Parliament to approve those allocations.

6.5 Subject to the limits imposed by the budget allocated to ESS and other applicable guidance from the Scottish Ministers, ESS has full authority to incur expenditure on individual items.

6.6 ESS is responsible for managing its budget for each financial year to enable it to meet its statutory functions and for ensuring that expenditure does not exceed the budget approved by Parliament.

6.7 ESS has established and will maintain appropriate financial procedures in accordance with the principles of, and restrictions within, the SPFM and will ensure that appropriate delegated authority, counter-fraud and anti-bribery, IT and information security, and whistle-blowing policies are in place and rigorously applied.

6.8 ESS will, as requested throughout the financial year, provide to the Scottish Government Financial Management Directorate's Programme Management Division budget and monitoring information on performance and forecast outturn in relation to its budget.

### **Audit and Risk Management**

6.9 As Environmental Standards Scotland is part of the Scottish Administration, the Principal Accountable Officer requires that ESS has in place systems that provide assurance on the propriety and regularity of ESS' use of Scottish Administration resources. ESS is required to implement appropriate Audit arrangements in accordance with the SPFM. Internal Audit of ESS is undertaken by the Scottish Government Internal Audit Directorate. ESS is subject to external Audit by the Auditor General for Scotland (AGS) and/or other auditors appointed by the AGS.

6.10 ESS' internal and external Audit work is overseen by its Audit and Risk Committee. The Audit and Risk Committee is chaired by a Board member (not the Chair). The Committee's membership includes the Committee Chair and one other Board member and may also include an independent external member. The membership of the Committee will include at least one individual with recent and relevant financial experience. The Committee's Terms of Reference are set by ESS, to which the Committee reports.

6.11 ESS is required to implement and monitor appropriate risk management arrangements as part of a comprehensive corporate governance framework in accordance with relevant guidance in the SPFM. This involves the active identification, monitoring, and reporting of risk and risk profile changes, in order to gain assurance that risk management is effective and to identify when further mitigating action is necessary as part of a comprehensive and co-ordinated approach to managing risk and the successful delivery of ESS' functions. The Audit and Risk Committee will oversee this work.

### **Shared Services and Contracts**

6.12 In the interests of efficiency, effectiveness and economy, ESS and the Scottish Ministers are committed to identifying appropriate opportunities for shared services. Unless agreed otherwise before the next review of this Framework Document, the Scottish Government will provide corporate support for the following functions: Financial Management (Scottish Government Accounting Systems: SEAS and EaseBuy); Information Systems and Telephony; Estates and Facilities Management; Internal Audit; and

Procurement. These corporate support functions will be kept under review, to ensure they meet the ongoing needs of ESS.

6.13 The Scottish Government and ESS will seek to agree individual shared service arrangements for each of the corporate functions listed, including costs, service arrangements and service standards. In line with the requirements of the SPFM, ESS will enter into discussions with the Director, Environment & Forestry before making any alternative financial or contractual arrangements for the delivery of shared corporate services.

6.14 The relevant Scottish Government officials will provide appropriate assurance to ESS' Accountable Officer within the required timeline for ESS audit and assurance processes and procedures.

6.15 ESS will continue to have access to contracts placed by the Scottish Government - including framework agreements - for the provision of products and services. ESS may, however, enter into contracts on its own behalf, if allowable under statutory responsibilities and procurement law, where Board members and the Accountable Officer consider this to be the most efficient and effective option that delivers Best Value in meeting ESS' business requirements.

## **7. STRATEGY, PLANNING AND REPORTING**

### **Strategy and Planning**

7.1 Schedule 2 of the Continuity Act, introduced by section 18(1), sets out the content of the Strategy which ESS is required to prepare and publish. It also sets out: the requirements for consultation on the draft Strategy; the arrangements for laying the proposed Strategy before the Scottish Parliament and providing a copy to Scottish Ministers; and the timescales for Parliamentary scrutiny and any subsequent required revision of the Strategy. ESS is required to review the Strategy from time to time, and, if making any other than minor modifications, must follow the same process of consultation and laying of the updated Strategy before Parliament and copying to Scottish Ministers.

7.2 The Strategy set by ESS will be the key document setting out how it will exercise its functions. In addition, ESS will undertake corporate and business planning and reporting in a similar way to other public bodies, focusing on performance and the effective use of resources.

### **Corporate Planning and Business Plans**

7.3 ESS will prepare and publish an Interim Strategic Plan, which will set out ESS' vision, values and strategic objectives; the outcomes against which the achievement of these objectives will be measured; and its main activities for the planning period to support these objectives and outcomes. The Plan will also contain financial and resource forecasts for the efficient and effective operation of ESS and will be supported by annual business plans.

## **Annual Report and Accounts**

7.4 As soon as reasonably practicable after the end of each financial year, ESS will prepare an annual report on how it has carried out its statutory functions during that year. The annual report will contain an outline of ESS' main activities and performance. As part of the Scottish Administration, ESS is subject to the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000, including the duty to prepare annual accounts. For each financial year ESS will produce accounts of expenditure incurred in the fulfilment of its statutory functions. The annual accounts must be prepared in accordance with the relevant legislation and the specific Accounts Direction (including compliance with the Financial Reporting Manual (FRM)) and other relevant guidance issued by the Scottish Ministers. The annual accounts will be audited by the Auditor General for Scotland (AGS) or by auditors appointed by the AGS.

7.5 The annual report and audited accounts will be laid before the Scottish Parliament and will be published. A copy will be provided to the Scottish Government in advance of publication.

## **Freedom of Information**

7.6 ESS will adopt the Model Publication Scheme November 2018 (or as revised) produced by the Scottish Information Commissioner.

## **8. POLICY**

8.1 Under the overall strategic direction and oversight of Board members, ESS will develop and implement policy in relation to any aspect of its functions and will provide guidance to staff on such policies.

8.2 The Scottish Ministers will consult ESS on all policy and legislative proposals which the Scottish Government is developing and which may have an operational impact on ESS, including its assessment of the effectiveness of environmental law and its oversight role. The Scottish Ministers will consult ESS in reasonable time to allow ESS to make representations and for those representations to be fully considered before final decisions are taken or publicised.

8.3 The Scottish Ministers will also consult ESS when they are engaged with the United Kingdom Government in relation to policy or legislation that may have an operational impact on ESS.

8.4 Scottish Ministers and ESS will be guided by a shared commitment to the aim of good and effective communications, in order to ensure that both environmental policy and environmental governance are informed by a good shared understanding.

8.5 ESS will, in carrying out its functions, establish and maintain close working relationships with partners and stakeholders.

## **9. REVIEW AND PUBLICATION**

9.1 This Framework Document will be reviewed in consultation with the Scottish Ministers at least every three years.

9.2 It may be reviewed at any other time if either the Scottish Ministers or ESS so wish, on the basis of arrangements that they will agree in writing at that time. Any proposals to amend the Framework Document either by the Scottish Government or ESS will be taken forward in consultation.

9.3 Copies of this Framework Document, and of any subsequent editions following amendment, will be placed in the Scottish Parliament Information Centre and published on ESS' website. The Framework Document will form part of ESS' publication scheme under the Freedom of Information (Scotland) Act 2002 provisions.