

Cabinet Secretary for Net Zero, Energy and Transport

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Edward Mountain MSP  
Convener  
Net Zero, Energy and Transport Committee

30 September 2022

Dear Edward,

### **NZET Committee & ESS Board Appointments**

I write to set out the process and rationale for Parliamentary approval for the appointment of two additional members to the board of Environmental Standards Scotland (“ESS”).

As Scottish Parliament has a role in approving the appointment of those persons whom the Scottish Ministers have assessed as being most suitable to be members of ESS, my officials have engaged with your Committee Clerk on how best to support the Parliament in this role. The proposed plan set out below is consistent with similar ministerial appointments assessed by the NZET Committee.

Provisions to establish Environmental Standards Scotland as Scotland’s environmental governance body were included in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the Act”). The Act and supporting UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Consequential Provisions and Modifications) Order 2021 provided for ESS to be established as a Non-Ministerial Office in the Scottish Administration, independent of Ministers and directly accountable to the Parliament. The Bill for the Act completed its passage through the Parliament during December 2020, establishing ESS on a non-statutory basis and confirming the appointment of four board members to the non-statutory body.

Schedule 1, paragraph 2(1) of the Act establishes that Environmental Standards Scotland is to consist of (a) a member appointed by the Scottish Ministers to chair Environmental Standards Scotland, and (b) at least 4 but no more than 6 other members appointed by the Scottish Ministers. Appointments to ESS are to be proposed and made by Scottish Ministers, subject to approval by the Scottish Parliament (Schedule 1, paragraph 2(2)).

Scottish Ministers formally approved vesting of ESS as a statutory body, able to exercise its full functions and powers, and the appointment of James Martin (ESS chair) and four board members in September 2021. Schedule 1, paragraph 2(1)(b) of the Act provides for the appointment of two additional board members, subject to approval by Scottish Parliament.

In anticipation of making two further appointments, the Scottish Government (working with the ESS Board Chair) has established a candidate selection panel. The panel has now agreed a skills matrix and person specification, in line with provisions in Schedule 1, paragraph 2(3) of the Act, which seeks to ensure that membership (taken as a whole) has expertise or experience in (a) law (including international law) relating to the natural environment, (b) environmental science, (c) environmental policy, and (d) investigatory and enforcement proceedings. The assessment process is supported by a Public Appointments Adviser, appointed by the Ethical Standards Commissioner, who is a member of this selection panel.

The Act provides that the Scottish Parliament has a role in approving the appointment of persons whom the Scottish Ministers have assessed as being most suitable to be members of ESS. I will, therefore, write to seek your formal approval of any candidates for membership proposed by Scottish Ministers following the selection process. I will include a statement demonstrating how the process has fulfilled the legislative requirements, and setting out the expertise and experience of proposed appointment persons, with respect to the requirements under Schedule 1, paragraph 2(3) of the Act. I anticipate that this will take place in early 2023, subject to NZET Committee availability.

Committee members, of course, have the option to review and comment on the appointment plan prepared by the ESS candidate selection panel prior to advertisement. However, I am aware of the considerable pressure on the Committee's time and that you may consider that the best use of Committee members' time and experience would be to engage with Scottish Ministers' recommendations for appointment, directly after the selection panel has completed its work. This would seem to be a proportionate, pragmatic way to proceed and would allow the roles to be advertised in early October.

I would be happy to discuss this further with the Committee. I am confident that the Parliamentary stage of the process will be a positive part of these nationally important appointments, and I look forward to working with you and board members of Environmental Standards Scotland as they play their part in ensuring environmental laws and standards are adhered to in Scotland.

**MICHAEL MATHESON**