

Net Zero, Energy and Transport Committee

27th Meeting, 2022 (Session 6), Tuesday 25
October 2022

Evidence session - Environmental Standards Scotland's Strategic Plan

Note by the clerk

Background

1. Environmental Standards Scotland (ESS) is a new independent public body to monitor the effectiveness of environmental law in Scotland and prevent enforcement gaps following the UK's exit from the EU. It was established by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021
2. ESS has an array of regulatory responsibilities pertaining to environmental law in Scotland with powers to scrutinise and investigate public authorities to improve compliance with their environmental obligations.
3. Following its formal vesting in October 2021, [ESS published its Interim Strategic Plan](#) which provided a vision for how the body intended to carry out its new role in the interim period whilst it developed and consulted on a final plan to be laid before parliament. [ESS has recently completed its consultation on a Draft Strategic Plan](#), which opened on 25 May and concluded on 17 August.

Statutory Criteria for ESS Strategic Plan

4. Under [section 22](#) of the 2021 Act, ESS has a duty to “prepare and publish a strategy that sets out how it intends to exercise its functions”. The strategy must—
 - Set out how ESS intends to monitor public authority compliance with environmental law, as well as implementation, application and effectiveness of environmental law;
 - Contain provision for people to make representations to ESS about the effectiveness of environmental law and whether public bodies are complying;
 - State how representations will be handled and how people will be kept informed of this;

- State how ESS will exercise its functions in respect of and to avoid overlap with—
 - Other statutory regimes;
 - Functions of the Scottish Public Services Ombudsman, the Commissioner for Ethical Standards in Public Life in Scotland, the Scottish Information Commissioner, Audit Scotland or the Committee on Climate Change;
 - The Scottish Parliament.
- State how ESS will determine whether to carry out investigations into matters concerning public body compliance and the effectiveness of environmental law, and how those investigations will be executed;
- State how ESS will engage with public bodies it engages with to swiftly resolve matters concerning failure to comply, reaching agreement on remedy for environmental protection; and
- State how ESS will identify and recommend measures to improve the effectiveness of environmental law.

Parliamentary Scrutiny

5. On 30th September, [Environmental Standards Scotland laid its Strategic Plan for the period 2022-25](#) before the Scottish Parliament. ESS also provided an accompanying statement for its Strategic Plan which is available in **Annexe A**. A letter from the Chair of ESS to the Convener regarding the laying of its Strategic Plan can also be found in **Annexe B**.
6. [Schedule 2](#) of the 2021 Act sets out the procedure for approval and publication of the Strategic Plan. The Scottish Parliament has 40 days from its laying date, not including periods of dissolution or recess exceeding 4 days, to consider the Strategy.
7. The Scottish Parliament has designated the Net Zero, Energy and Transport Committee as lead committee to consider the new Strategic Plan. At its meeting on 6 September, the Committee agreed it would hold a one-off evidence session with ESS in order to discuss its Strategic Plan and how this will meet its statutory obligations.
8. At its meeting on 25 October, the Committee will take evidence on the Strategic Plan from a panel of ESS representatives—
 - Neil Langhorn, Head of Strategy and Analysis;
 - Jim Martin, Chair; and
 - Mark Roberts, Chief Executive.

Next steps

9. Following its evidence session with ESS, the Committee will produce a short report on its findings to the Scottish Parliament. The Parliament will then consider a motion on whether to approve the Strategic Plan.
10. If the Parliament resolves that the strategy should not be approved, Environmental Standards Scotland must not publish the strategy but instead—
 - review and revise the strategy, having regard to any views expressed by the Parliament in relation to the strategy, and
 - lay a revised copy of the strategy before the Parliament before the end of the period of 3 months beginning with the date on which the Parliament resolved not to approve the strategy.

Clerks
Net Zero, Energy and Transport Committee

Annexe A

Environmental Standards Scotland – Strategic Plan – Accompanying Statement

Introduction

1. This statement accompanies the Strategic Plan that ESS has laid in the Parliament today in compliance with the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. It has been prepared to meet the requirement specified in section 2(4) of Schedule 2 of the Continuity Act and provides information about:
 - I. How Environmental Standards Scotland (ESS) consulted on a draft strategy (henceforth referred to as a Strategic Plan);
 - II. The views expressed in response to the consultation; and
 - III. How those views were taken into account in preparing the Strategic Plan that has been laid before the Parliament.
2. ESS published an Interim Strategic Plan on 1 October 2021. The Interim Strategic Plan sets out how ESS intends to carry out its role until a final Strategic Plan is approved by the Scottish Parliament.

Consultation details

3. ESS published a draft Strategic Plan for consultation on 25 May 2022 and invited responses by midnight on 17 August 2022. Responses were invited via Citizen Space, via email, or in writing. Details of the consultation and an invitation to respond were sent directly to a wide range of stakeholders, including:
 - all public authorities in relation to whom ESS has functions under the Continuity Act; and
 - a wide range of organisations in the public, private and third sector with an interest in the work of ESS.
4. Details of the consultation and how to respond were also promoted to the general public through social media and on the ESS website. In addition, ESS hosted a number of public online information sessions to explain the consultation process and what was in the draft Strategic Plan, and to provide an opportunity for attendees to ask questions. These included:
 - A general information session on 9 June 2022, which was attended by 21 people;
 - A general information session on 15 June 2022, which was attended by 14 people;
 - A session focused on the proposed analytical priorities within the draft Strategic Plan on 30 June 2022, which was attended by 23 people; and

- A session for representatives of businesses interested in the work of ESS on 27 July 2022, which was attended by 15 people.
5. Furthermore, ESS offered to attend meetings hosted by other organisations to present details of the draft Strategic Plan and the consultation process. The following organisations took up this offer:
- Scotland Europa and the Scottish Government’s EU Office on 20 June 2022;
 - The United Kingdom Environmental Law Society on 29 June 2022;
 - The Law Society of Scotland on 20 July 2022;
 - The Environmental Rights Centre for Scotland on 21 July 2022;
 - Historic Environment Scotland on 25 July 2022;
 - The Association of Environmental Clerks of Work on 25 July 2022; and
 - The Board of the Scottish Environment Protection Agency on 26 July 2022.

Summary of views expressed in the consultation

6. ESS received forty responses to the consultation. (nine from individuals and 31 from organisations). These have been published on Citizen Space (where permission to publish was given by the respondent) and can be read at: [Environmental Standards Scotland - draft strategic plan - published responses](#)
7. ESS commissioned an independent summary of the consultation responses from the James Hutton Institute. This has been published alongside the Strategic Plan and this statement on ESS’ website. The executive summary states:
 Respondents welcomed the establishment of ESS, and there was broad support for the aims and level of ambition set out in the Strategic Plan. A range of suggestions to enhance or strengthen the Plan and its contents were made, and respondents also sought clarification about some of the terminology used, to provide more information about how ESS will undertake its responsibilities. The suggestions and observations raised cover a wide range of themes in response to specific questions raised by ESS about the content and intent contained in the Strategic Plan. A number of broad themes were present across the responses, of which the most common are summarised below.
- Organisations and individuals welcomed the establishment of ESS and expressed willingness to support the activities of ESS through active collaboration and partnership working. Respondents reflected on the limited resources available to ESS and supported the prioritisation of issues within the capacity of the organisation and emphasised effective partnership working to manage the challenges of limited capacity.
 - While respondents generally reflected positively on the inclusion of collaboration in the Strategic Plan, there were also indications of concern surrounding the duplication of efforts due to similarities between ESS and other organisations as well as the risk of public confusion regarding the remit of ESS. Relationship mapping and clear indication of remits and responsibilities across organisations were just some suggestions among many to address such concerns.

- Several respondents emphasised the need to include the biodiversity and climate crises as a critical backdrop to the work of ESS. Respondents sought further reference to environmental improvement and protection as a priority and intended outcome of the organisation's work.
- Respondents highlighted questions regarding how ESS might work to ensure compliance with environmental law as well as to identify areas where environmental law may need to be strengthened, or where ESS's remit may extend to areas beyond environmental law and policy but which still impact the environment and its condition.
- There was a substantial level of support for ESS's commitment to transparency and openness. Respondents sought clarification on how transparency will be implemented in practice, while also ensuring fairness to those being investigated.
- Respondents requested clarity about how ESS will become accessible to the public for raising concerns or representations, and how those making representations will be kept informed of progress. ESS was encouraged to work to reduce the institutional, social and cultural barriers experienced by marginalised groups to engaging in the work of ESS.
- A strong level of support was indicated for the adoption of informal investigations and resolutions, alongside requests for clarity on how the informal approach will be made transparent and the point at which the resolutions will be escalated to the formal approach.
- Respondents raised questions about the resourcing issues faced by public and other bodies, and the increase in resource requirements that the work of ESS will likely place on them through its role to regulate and scrutinise their work.
- Some respondents expressed support for ESS to have the ability to raise resource concerns as part of their reporting. Similarly, respondents raised concerns about the potential level of expectation placed on ESS and its own resources to manage a broad and crucial remit. Respondents emphasised that ESS should provide support and assist with securing resources to facilitate public authorities' compliance with environmental law.

Overall, respondents welcomed the important role ESS will assume in upholding and improving environmental law and asserted hopes that ESS would help Scotland establish more ambitious, internationally recognised, environmental standards. While many of the approaches, values and commitments outlined in the draft Strategic Plan were met with support, respondents gave numerous suggestions to strengthen the existing plan, with emphasis on transparency, communication, partnership working, and environmental protection. It was understood that ESS is a new organisation, with this in mind respondents asserted that ESS must maintain a clear sense of purpose to function effectively and drive forward environmental standards in Scotland.

Summary of how views expressed have been taken into account in preparing the Strategic Plan laid before the Parliament

8. The following changes have been made to the Strategic Plan that has now been laid before Parliament:
- In response to suggestions for additions and changes to the Vision, Mission Statement, Values and Principles, minor additions and changes have been made to make clearer our aims and ambition. In particular, reference to 'people' and 'nature' have been added to the Vision, and 'nature' to the mission Statement. These reflect respondents views on ESS being inclusive, and ensuring that the biodiversity crisis is acknowledged more clearly alongside the climate crisis.
 - In response to suggestions for changes to the Strategic Outcomes, minor adjustments to the text have been made.
 - In response to requests for clarity over whether ESS would focus only on ensuring compliance with existing laws, the Strategic Plan has been updated to make clear that identifying gaps or shortcomings in environmental law and policy will also form part of the organisation's role.
 - In response to requests for clarification of ESS' approach to informal resolution, the text in section 4 has been updated to make clear that ESS will publish details of all issues resolved informally on our website. The first example of this on the use of Acoustic Deterrent Devices is now available at: [Investigations - Environmental Standards Scotland](#)
 - In response to comments about the criteria for, and circumstances in which, ESS will seek a Judicial Review, the text has been revised to make clearer ESS' intent. Furthermore, in response to a number of comments concerning the specific use of the term "negligence" the text has been redrafted to replace that specific wording.
 - In response to requests for more detail and/or clarification about ESS' proposed approach to investigations and use of our formal enforcement powers, the text has been updated to make clearer ESS' intentions. Further details on the approach will also be made available on ESS' website.
 - In response to a number of comments and queries about the criteria for prioritising and selecting issues for investigation, the text has been redrafted to make this aspect of the Strategic Plan clearer.
 - In response to some concerns and requests for clarification about when and how ESS will engage with public authorities informally, the text in the Strategic Plan has been revised to re-emphasise a commitment to engaging informally to try to achieve swift resolution wherever possible.
 - In response to comments about ESS' proposed approach to the use of information notices, the text has been updated to make clearer the approach

to confirm that ESS will always engage with public authorities informally before issuing an information notice. This will provide an opportunity for the authority to highlight any difficulties that they anticipate in providing the information sought and/or to clarify the scope of the request.

- In response to comments on the categories proposed for organising ESS' work to monitor and analyse environmental progress in Scotland, some minor changes have been made to the nomenclature used and emphasis has also been placed on the interdependencies between the categories. In addition, further details about the proposed approach to monitoring and analysis, and a forward work programme, will be published on ESS' website.
- In response to requests for clarity on the extent to which ESS will consider cultural heritage within its remit, adjustments to the text have been made to confirm that concerns about cultural heritage (including landscape) are within the organisation's remit, and could be considered for analysis or investigation if they were considered a high enough priority.
- In response to requests for more detail and clarification on how ESS will avoid overlap with a range of different organisations, further text has been added about the different types of relationships envisaged. A diagram has also been added to illustrate the different types of organisations and relationships involved.
- In response to queries and requests for clarification on how ESS will update people about cases under consideration and what information can be published (given the restrictions placed on ESS by the Continuity Act and other legislation), references to our service standards and the limitations on what can be published have been added.
- In response to requests to make the process for raising representations as accessible as possible, the text has been updated to confirm ESS' commitment to this. In addition, text has been added to emphasise ESS' intention to proactively engage with disadvantaged and/or under-represented communities to ensure that its role is understood and that groups are able to raise concerns.
- In response to various comments about the resourcing pressures on ESS and public authorities in the current fiscal environment, the text has been amended to emphasise the need for ESS to retain flexibility in the deployment of staff and financial resources. A clearer reference to ESS' commitment to diversity and equality among staff recruitment and development has also been added. In relation to resourcing pressures on public authorities under ESS' scrutiny, the Continuity Act is clear that finance or budgets are excluded from the definition of "Environmental Law". However, ESS may comment on resourcing issues when examining compliance or the effectiveness of how environmental law is being implemented or applied.
- In response to queries about budgeting and financial reporting, an update on ESS' audit plans and a commitment to assess the process of establishing ESS and key procedures and processes has been included in the plan.

- In response to a range of comments and queries on ESS' approach to measuring performance, the text in the Strategic Plan has been redrafted to ensure that it adequately describes the proposed approach, including the use of both quantitative and qualitative measures. There was broad support for the logic model approach proposed, but further work has been undertaken to develop and finalise the indicators that will be used by ESS to report progress in the organisation's annual reports to the Parliament. Further details on the methodology and definitions to be used for each indicator will be published on the ESS website.
 - In response to concerns about the potential resource implications for public authorities of enhanced levels of scrutiny by ESS (in comparison with the European Commission), the Strategic Plan has been updated to emphasise the organisations commitment to resolving issues swiftly wherever possible. It has been concluded that no further impact assessments are required at this time. ESS will continue to monitor and seek feedback on the implementation of the Strategic Plan and to consider the potential impact on businesses, equality groups and the environment.
 - Finally, in response to a number of queries about certain phrases used in the draft Strategic Plan, some additions have been made to the glossary to clarify and define them, where relevant via reference to the provisions of the Continuity Act.
9. Various other changes have been made to the text of the Strategic Plan to reflect minor points of clarification or correction raised by consultees.

Conclusion

10. This statement provides details of:

- I. How Environmental Standards Scotland (ESS) undertook consultation on its draft Strategic Plan;
- II. What views were expressed in response to the consultation; and
- III. How those views were taken into account in preparing the Strategic Plan that has been laid before the Parliament.

11. ESS looks forward to Parliamentary scrutiny of the Strategic Plan and would be happy to provide further details to support its consideration.

Environmental Standards Scotland
30 September 2022

Annexe B

Letter to the Net Zero, Energy and Transport Committee from Jim Martin, Chair of Environmental Standards Scotland

30 September 2022

Dear Mr Mountain,

It continues to be an exciting week for Environmental Standards Scotland, and following my letter to you yesterday regarding our first Improvement Report I am delighted to write that this morning ESS laid our proposed Strategic Plan before the Scottish Parliament for approval, as required by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

The proposed strategic plan has been redrafted to take into account the comments we received through the consultation that we carried out over the summer. The proposed plan is also accompanied by a statement to Parliament, setting out a summary of the views expressed in the consultation and how they were reflected in the plan.

The Continuity Act includes a period for parliamentary approval of the proposed strategic plan of up to 40 days and I look forward to the committee's consideration of it.

Yours sincerely

Jim Martin
Chair, Environmental Standards Scotland