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Environmental Standards Scotland: Strategic Plan

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Environmental Standards Scotland: Strategic Plan

Environmental Standards Scotland (ESS) has issued for consultation a Draft Strategic Plan that sets out its mission, values, principles and approach to fulfilling its task of ensuring the effectiveness of and public authorities' compliance with environmental law.¹ The Plan reflects the role set out for ESS in the European Union (Continuity) (Scotland) Act 2021, with an emphasis on the use of informal processes in ensuring compliance with environmental law, and takes account of the role of ESS as a comparatively small body with limited resources. <<Responses are required by 17 August – *will this be before publication date? If so, omit*>>

ESS declares that it will seek to resolve issues informally with authorities wherever possible, noting the statutory obligation on public authorities to assist its work. Nevertheless, it will have recourse to its formal powers, such as compliance notices, where considered necessary to deliver the expected outcomes (see (2021) 208 SPEL 123). Improvement reports will be used where there is a problem that goes beyond a single public authority or where there is a need to review and amend the underlying legislation. Judicial review will be reserved for cases where there is a serious failure to comply with environmental law and action is necessary to prevent or mitigate serious environmental harm. Issues to be considered in assessing this includes the systemic or longstanding nature of the problem and any flagrant or deliberate conduct or any negligence on the part of the public authority.

In determining where to focus its efforts, ESS will take account of importance in terms of the scale of the problem, the significance of the environmental feature at risk, risks to the public and to environmental quality, and urgency. Potential breaches of international obligations will be a further marker of significance. Neglect will also be considered, in terms of whether the issue is systemic, long-standing or appears to have received too little by way of resources or attention. ESS aims to focus on issues where it can make the most difference, including considering whether there are other bodies in a position to intervene.

Given the importance of members of the public being able to make representations to ESS about issues of concern, considerable attention is given to the communications strategy (a formal Communications Strategy will be published with the final Strategy Plan) and how representations will be assessed. Whether from its own investigations or representations received, ESS will gather preliminary evidence to assess whether an issue that has been raised merits full investigation. Representations which are considered not to merit an investigation will be kept under review. Information on investigations and further matters being considered will be published (as is already the case on ESS's website).²

The Plan identifies a number of "environmental topic areas" that will help to structure ESS's consideration of the state of environmental compliance and implementation and within these areas 13 issues are identified where its initial analytical work will be directed. These include progress against air quality targets (already the subject of an investigation), noise and human health, sewage discharges into fresh waters and access to justice, including compliance with the Aarhus Convention.

Given the fact that Scotland's environment does not exist in isolation, the Plan reveals that ESS is working on Memoranda of Understanding setting out how it will work with the broadly equivalent bodies elsewhere in the UK (the Office for Environmental Protection (OEP) and the Interim Environmental Protection Assessor in Wales) and also with the Committee on Climate Change and the Joint Nature Conservation Committee. It is also developing relations with bodies in the EU and

¹ <https://www.environmentalstandards.scot/wp-content/uploads/2022/05/ESS-Strategic-Plan-for-consultation-20220524-vA56578875.pdf>

² See <https://www.environmentalstandards.scot/keep-up-to-date/investigations/>

beyond. Unlike the OEP for England and Northern Ireland, ESS does not have a specific role in relation to official government strategy. However, the Plan mentions that in judging its own outcomes ESS will be assessing progress on the Scottish Government's Environment Strategy indicators.

As a new but fairly small body with a potentially very broad remit, ESS faces a considerable challenge in ensuring that it can identify suitable priorities and focus its energies appropriately in order to make a difference. The Draft Plan sets out its thinking clearly, and its commitment to transparency and regular reviews promises that it will play an important and responsive role in ensuring that the legal measures put in place to protect and enhance Scotland's environment do indeed deliver on their promise.

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