

Environmental Standards Scotland Strategy 2026-2031

2026



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Executive summary

The RSE welcomes this opportunity to respond to Environmental Standards Scotland's (ESS) draft strategy for 2026-2031. Following Scotland's departure from the European Union, ESS has emerged as a vital mechanism to ensure continued and independent scrutiny of public sector environmental performance and the RSE has been firmly supportive of its aims since its inception. While this scrutiny function remains critically important, we believe ESS' proactive work is equally important and should be expanded.

Vision

The RSE is broadly supportive of the vision as currently articulated. However, it would be useful for the vision to move beyond a purely legislative measure of compliance. There exist many government policies, strategies, and frameworks that influence the delivery of environmental outcomes and the implementation of environmental law. Public bodies should be assessed against this broader context to ensure they are truly meeting their environmental obligations.

Principles

The RSE broadly agrees that the principles are the right ones for ESS to be working towards.

On the principle of being trusted, it would also be beneficial to include some explanatory text that outlines how ESS's own monitoring efforts are evaluated and how any external expert input is commissioned and applied in a way that safeguards ESS's independence.

On the principle of being evidence-driven, it would be reassuring to see a brief overview of how ESS would reconcile instances of scientific uncertainty or competing interests when investigating representations or in undertaking its proactive work.

Achieving the principles of being open and transparent and of engaging widely will likely require ESS to raise its public profile.

It would also be useful to know how ESS balances the proactive and reactive strands of its work, and the justification for prioritising one over the other in practice, if this does in fact occur. This is particularly significant in light of the changes introduced by the Natural Environment Bill, including a broad range of legally binding targets for nature restoration. The Bill appoints ESS as the body to lead on assessing Ministers' performance against the targets.

Priorities

The priorities themselves are largely appropriate. However, the number of topics that could fall under the priority of "resources" is potentially very extensive and so it could be necessary to briefly delineate the boundaries of this category to avoid confusion; for example, "water" is arguably a resource, but it is also listed as a separate priority.

We welcome acknowledgement in the draft Strategy that ESS "may also choose to scrutinise thematic or cross-cutting issues that span more than one priority" and that ESS will continue to monitor past areas of focus (for example, soils and air quality), which will help to build on the current evidence base.

Although the consultation mentions that ESS will consider all concerns raised by members of the public and that the priorities are principally to guide their proactive work, it would be helpful to know how the representations themselves are triaged (for example, by topic area, by potential severity of infraction, by the number of representations centred on the same incident or public body, by number of repeated infractions, etc.).

Strategic objectives

The RSE fundamentally agrees with all five of the objectives. Overall, they are well-expressed and the approaches to delivering them seem appropriate. However, the issue of resourcing remains pertinent to this discussion. If ESS is to realise these objectives, it must have access to the appropriate funding, which, in a time of increasingly constrained public finances, could prove challenging. This becomes more pressing with the prospect of ESS taking on additional responsibilities as set out in the provisions of the Natural Environment Bill.

Proposed approach to measuring performance

Accurately measuring performance and setting targets for improvement will be the most important determinant of the Strategy's success, and the overall approach to monitoring (employing the theory of change to evaluate impact, tracking longer-term impact through triennial case studies, etc.) is encouraging and contains many elements of best practice. It might have been beneficial to include (or at least signpost to) a few illustrative KPIs and PMIs to better understand the kinds of outcomes that will be assessed.

When it comes to monitoring environmental performance, it would be useful to understand whether it is always the agency under scrutiny who supplies the performance data, and, if so, whether ESS can independently verify these data in certain cases. While it is unlikely that an agency would have any incentive to provide misleading data, their monitoring systems may be inadequate and so it is nevertheless good practice to build in additional checkpoints to ensure reliability, applicability, accuracy, and public trust.

General points

1. The RSE welcomes this opportunity to respond to Environmental Standards Scotland's (ESS) draft strategy for 2026-2031. Following Scotland's departure from the European Union, ESS has emerged as a vital mechanism to ensure continued and independent scrutiny of public sector environmental performance and the RSE has been firmly supportive of its aims since its inception. While this scrutiny function remains critically important, we believe ESS' proactive work is equally important and should be expanded. By reinforcing this horizon scanning role, ESS can raise greater awareness of emerging environmental threats so that Scotland is well placed to respond early and effectively. We would also encourage ESS to consider broadening its scrutiny framework beyond environmental legislation to include other policies and strategies that influence environmental outcomes but for which no formal enforcement mechanism currently exists. As another evidence-based and independent body, the RSE would be pleased to advise ESS on the continued development and delivery of this Strategy as appropriate.
2. The below sections answer the consultation questions in turn.

Topic 1: Vision

Our vision: By holding public authorities to account, we will ensure that Scotland's people and nature benefit from a high-quality, healthy environment through improved compliance with and better implementation of effective environmental law.

Q1. On a scale of 'strongly disagree' to 'strongly agree', how much do you agree or disagree that this vision, as presented in ESS' draft Strategy, is the right vision for the organisation to be working towards?

Strongly Agree	Agree
Neither agree or disagree	Disagree
Disagree strongly	

Q2. Do you have any comments on ESS' vision, as laid out in the draft Strategy?

3. The RSE is broadly supportive of the vision as currently articulated. However, it would be useful for the vision to move beyond a purely legislative measure of compliance. There exist many government policies, strategies, and frameworks that influence the delivery of environmental outcomes and the implementation of environmental law. Public bodies should be assessed against this broader context to ensure they are truly meeting their environmental obligations.
4. Additionally, ESS's definition of environmental law was perceived as being too narrow. ESS provides the following definition:

Environmental law means any law which includes provisions mainly about the environment and environmental protection including but not limited to:

1. air quality
2. contaminated land
3. climate change
4. biodiversity
5. water
6. resource use and waste

5. The draft Strategy also indicates that ESS has the discretion to determine which aspects of environmental law it will scrutinise. However, it is not clear if this would encompass other laws whose potential environmental impacts are likely to be more indirect, such as the proposed Human Rights Bill which would enshrine the right to a healthy environment. It is also not obvious if this definition would be limited to Scottish and UK laws or would also include UK and international treaties and agreements, including UK international trade agreements or the UK Internal Market Act. The latter is a particularly pertinent example.
6. In the interests of maintaining a uniform domestic market for goods and services, the Internal Market Act has stifled attempts by devolved nations to introduce novel or bespoke policy initiatives across a range of sectors, including the environment. One high-profile example was Scotland's failed Deposit Return Scheme, which would have violated the Act by introducing a refundable 20p levy on drink products entering the Scottish market to incentivise recycling by the consumer. Scottish Environment LINK has

proposed ways of reinterpreting the legislation to allow for some degree of market divergence in the name of fast-tracking progressive and innovative policy in key sectors such as the environment.¹ Should the Internal Market Act fall under the definition of environmental law for the purposes of this Strategy, a Business and Regulatory Impact Assessment of the draft Strategy would likely be required.

Topic 2: Our principles

We will:

- be independent and trusted
- be evidence driven
- be open and transparent
- engage widely
- seek to solve problems through agreement wherever possible
- prioritise our resources to maximise our impact

Q3. On a scale of 'strongly disagree' to 'strongly agree', how much do you agree or disagree that these principles, as presented in ESS' draft Strategy, are the right principles for the organisation to be working towards?

Strongly Agree	Agree
Neither agree or disagree	Disagree
Disagree strongly	

Q4. Do you have any comments on ESS' principles, as laid out in the draft Strategy?

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7. The RSE broadly agrees that the principles are the right ones for ESS to be working towards.
 8. On the principle of being trusted, it would also be beneficial to include some explanatory text that

outlines how ESS's own monitoring efforts are evaluated and how any external expert input is commissioned and applied in a way that safeguards ESS's independence.

9. On the principle of being evidence-driven, it would be reassuring to see a brief overview of how ESS would reconcile instances of scientific uncertainty or competing interests when investigating representations or in undertaking its proactive work. As a general approach, ESS must operate under the well-established Precautionary Principle.
10. Achieving the principles of being open and transparent and of engaging widely will likely require ESS to raise its public profile. In contrast to other public agencies, ESS is still relatively new and comparatively small. It is therefore likely that many people (excluding perhaps those who are already engaged in some kind of environmental advocacy and are therefore familiar with the governance landscape) have not heard of ESS. As a result, the majority of the population are likely unaware of the recourse they have to formally raise environmental concerns. Therefore, it would be good to see more information as to how that wider engagement will be carried out.
11. It would also be useful to know how ESS balances the proactive and reactive strands of its work, and the justification for prioritising one over the other in practice, if this does in fact occur. Although its annual reports provide figures for the total number of inquiries and representations received and actioned, it is unclear how much of ESS's total capacity this investigative function demands. This is particularly significant in light of the changes It would also be useful to know how ESS balances the proactive and reactive strands of its work, and the justification for prioritising one over the other in practice, if this does in fact occur. This is particularly significant in light of the changes introduced by the Natural Environment Bill, including a broad range of legally binding targets for nature restoration. The Bill appoints ESS as the body to lead on assessing Ministers' performance against the targets.
12. RSE welcomes ESS' assuming this responsibility. The RSE has previously stated its view that the Scottish Government should consider further expanding the powers of ESS through the Bill. For example, while ESS can seek judicial review when public authorities fail to comply with environmental law, it lacks the full powers of the European Commission that could

¹ Report - The Internal Market Act: a challenge to devolution - Scotlink

refer defaulters to the European Court of Justice, where substantial fines could be imposed on member states. This gap in meaningful enforcement of environmental law could be remedied by expanding the powers of ESS.

13. However, affording ESS these new powers will have corresponding resource implications. The Office for Environmental Protection (OEP) operating in England and Northern Ireland has been able to produce powerful and well-evidenced assessments of government progress on environmental targets due to its resources. Increasing ESS's budget to absorb these additional responsibilities will be crucial to ensuring it can fulfil its duty of holding the government to account.
14. With regard to the principle of prioritising efforts and resources to maximise impact, we would suggest replacing the word "impact" with "benefit" to align with the language used in the vision (i.e. "By holding public authorities to account, we will ensure that Scotland's people and nature benefit from a high-quality, healthy environment through improved compliance with and better implementation of effective environmental law").
15. Care should be taken in depicting environmental performance over time (see graphic on page eight as an example). Shorter timelines (e.g. reporting on progress since 1994) can obscure or misrepresent more profound long-term trends of decline (the 'shifting baseline syndrome' that does not recognise the deterioration in the environment that occurred before the first timepoint on the graph).

Topic 3: Our priorities

Our priorities - while we will consider all concerns raised with us by members of the public, we will focus most of our proactive work around four priorities:

- **Climate change: Scotland's approach to mitigation and adaptation**
- **Nature: Scotland's approach to reversing the decline in biodiversity**
- **Resources: Scotland's approach to reducing resource use and waste and developing a circular economy**

- **Water: Scotland's approach to improving the freshwater and marine environments**

Q5. On a scale of 'strongly disagree' to 'strongly agree', how much do you agree or disagree with ESS' approach to prioritisation, as set out in sections 3.1-3.5 of the draft Strategy?

Strongly Agree	Agree
Neither agree or disagree	Disagree
Disagree strongly	

Q6. Do you have any comments about ESS' approach to prioritisation, as laid out in the draft Strategy?

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16. The priorities themselves are largely appropriate. However, the number of topics that could fall under the priority of "resources" is potentially very extensive and so it could be necessary to briefly delineate the boundaries of this category to avoid confusion; for example, "water" is arguably a resource, but it is also listed as a separate priority. Although this may be beyond the scope of a high-level strategy document, we would also point out that any pursuit of a domestic circular economy should necessarily avoid the offshoring of emissions or waste to other countries (alternatively, this could perhaps be captured by the alternative wording of "developing an ethical circular economy"). We also wonder whether the reference to reducing resource use should also include explicit mention of reducing associated emissions to capture the whole product life cycle.
 17. Climate change (coupled with nature depletion) is by now widely accepted as the defining environmental crisis of our time. Despite this urgency, measuring progress towards net zero remains a complicated task and many current methodologies have significant shortcomings. As a recent RSE report remarked, static metrics are incongruous with a dynamic phenomenon like climate change.² Instead, governments should look to "frame standards as providing a blueprint towards reaching net zero,

² [The role of the quality infrastructure in scaling net zero - Royal Society of Edinburgh : Royal Society of Edinburgh](#)

rather than demanding precise compliance with what is ultimately a temporary definition of net zero.” The Strategy should accept this complexity and explain how ESS will strive to ensure accountability in this space despite these practical challenges.

18. It could also be useful to refer to the priorities as “interacting priorities” in recognition of their interdependencies. We welcome acknowledgement in the draft Strategy that ESS “may also choose to scrutinise thematic or cross-cutting issues that span more than one priority” and that ESS will continue to monitor past areas of focus (for example, soils and air quality), which will help to build on the current evidence base.
19. Although the consultation mentions that ESS will consider all concerns raised by members of the public and that the priorities are principally to guide their proactive work, it would be helpful to know how the representations themselves are triaged (for example, by topic area, by potential severity of infraction, by the number of representations centred on the same incident or public body, by number of repeated infractions, etc.). This also relates to the earlier principle of being trustworthy in terms of providing a clear indication of how representations will be evaluated and resolved. In addition, it is important that under-represented and marginalised groups are also shown to be included.

Topic 4: Strategic objectives

Section 4 of ESS’ draft Strategy presents five strategic objectives and describes the approach ESS proposes to take to deliver these objectives:

- **Objective 1: Securing compliance and improving effectiveness**
- **Objective 2: Analysing and investigating environmental concerns**
- **Objective 3: Monitoring and scrutinising environmental performance**

- **Objective 4: Engaging and communicating effectively**
- **Objective 5: Being an efficient and effective organisation**

For each objective, please indicate how much you agree or disagree with the approach to meeting the objective. If you have concerns about each objective or ESS’ approach to delivering any of the objectives, please outline these in the open comment field of the relevant question. If you have no concerns about the approach to delivering the objective, please select ‘no concerns’.

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20. The RSE fundamentally agrees with all five of the objectives. Overall, they are well-expressed and the approaches to delivering them seem appropriate. However, the issue of resourcing remains pertinent to this discussion. The first three objectives arguably comprise ESS’s raison d’être (with the latter two objectives focused on continuous improvement and operational excellence). However, these three objectives alone demonstrate the massive breadth of ESS’s remit. If ESS is to realise these objectives, it must have access to the appropriate funding, which, in a time of increasingly constrained public finances, could prove challenging. The draft Strategy does reference ESS submitting an annual letter to the Scottish Parliament commenting on the adequacy of its budget, but it is unclear whether this translates into any sort of budgetary flexibility in the short-term that would allow ESS to be more responsive and effective. This becomes more pressing with the prospect of ESS taking on additional responsibilities as set out in the provisions of the Natural Environment Bill.
 21. It might be helpful to include a diagram that graphically depicts how ESS’s objectives intersect with other regulatory or enforcement bodies, such as Audit Scotland, SEPA, the Crown Office and Procurator Fiscal Service (COPFS), and OEP.

Topic 5: Proposed approach to measuring performance

Q7. Do you have any comments about ESS's proposed approach to evaluating its impact and measuring its performance, as outlined in Section 5 of the draft Strategy?

22. Accurately measuring performance and setting targets for improvement will be the most important determinant of the Strategy's success, and the overall approach to monitoring (employing the theory of change to evaluate impact, tracking longer-term impact through triennial case studies, etc.) is encouraging and contains many elements of best practice. It might have been beneficial to include (or at least signpost to) a few illustrative KPIs and PMIs to better understand the kinds of outcomes that will be assessed. For example, it would be useful to know how ESS will differentiate between different outcomes, such as the number of enforcement actions taken and the actual environmental benefit of those enforcement actions, as these will not necessarily be synonymous. Similarly, some of the objectives (such as engaging and communicating effectively) will be harder to quantify and so the approach to monitoring these must be well-evidenced.

23. When it comes to monitoring environmental performance, it would be useful to understand whether it is always the agency under scrutiny who supplies the performance data, and, if so, whether ESS can independently verify these data in certain cases. While it is unlikely that an agency would have any incentive to provide misleading data, their monitoring systems may be inadequate and so it is nevertheless good practice to build in additional checkpoints to ensure reliability, applicability, accuracy, and public trust. As one example, the RSE's inquiry into public financial support for tree planting and forestry drew attention to the high number of forestry projects that are screened out of Environmental Impact Assessment (EIA) procedures by Scottish Forestry on the grounds that they are unlikely to lead to significant environmental impacts. However, concerns have been raised that this approach could overlook projects that do genuinely warrant an EIA, particularly those operating on a commercial scale. In this case, there could be a role for ESS in independently verifying these EIA decisions to ensure the best possible outcomes for communities and the environment.

Additional information

Any enquiries about this advice paper should be addressed to Daria Tuhtar, RSE Policy Manager (dtuhtar@theRSE.org.uk). Responses are published on the RSE website (www.rse.org.uk).



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