

LINK Consultation Response

Environmental
Standards Scotland –
Draft Strategic Plan

16 August 2022



Scottish
Environment
LINK

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Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland. LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Governance Group.

1. Do you have any comments on our Strategic Outcomes, set out in chapter 3?

Our strategic outcomes are;

- **We have taken effective action to ensure public authorities' compliance with environmental law and to improve the effectiveness of the law;**
- **We have prioritised and investigated the most important matters of concern and identified the action needed to rectify problems and improve compliance and effectiveness;**
- **We have engaged in building knowledge on environmental performance, are well informed about, developments in EU and international standards and practice, and have formed effective partnerships with bodies collecting, collating and scrutinising environmental data;**
- **Our role is widely understood and we are regularly engaged in work to improve compliance and the effectiveness of environmental law and how it is applied.**
- **We are an effective and efficient organisation**

We broadly support the vision and mission statement. "Communities" are often interpreted as meaning local communities of place. However, the role of ESS must also be to support the national

community as a whole, as well as communities of interest. An alternative form of words, such as “people and communities”, may more accurately capture ESS’s role.

On the mission statement, we suggest adding “...and that Scotland’s people can seek redress where necessary and have their environmental rights upheld” or similar. We also note that the terms ‘environment’ and ‘climate change’ are not mutually exclusive.

2. Do you have any comments on our Strategic Outcomes, set out in chapter 3?

Our strategic outcomes are;

We have taken effective action to ensure public authorities’ compliance with environmental law and to improve the effectiveness of the law;

We have prioritised and investigated the most important matters of concern and identified the action needed to rectify problems and improve compliance and effectiveness;

We have engaged in building knowledge on environmental performance, are well informed about, developments in EU and international standards and practice, and have formed effective partnerships with bodies collecting, collating and scrutinising environmental data;

Our role is widely understood and we are regularly engaged in work to improve compliance and the effectiveness of environmental law and how it is applied.

We are an effective and efficient organisation

We broadly support the strategic outcomes as drafted.

The first strategic outcome relates to ensuring “compliance with environmental law”. We note that “environmental law” is not defined in the draft Strategic Plan, and believe that this should include any legislation relating to or with significant impact on the environment, including secondary legislation.

In addition we suggest that “providing people with the opportunity to raise concerns, seek redress and have their environmental rights upheld” be added as an additional strategic outcome.

3. Do you have any comments on our Values and Principles, set out in chapter 3?

Our Values

Others View us as

Our Staff feel

Independent

Respected

Transparent

Included

Trusted

Innovative

Effective

Collaborative

Our Principles

- 1. We will target our efforts and resources where we can add most value – focusing where our contribution is needed most or will make most difference**
- 2. We will seek to resolve issues through agreement wherever possible – having recourse to our formal powers where we judge it is necessary to deliver the outcome expected**
- 3. We will be evidence driven – seeking a wide range of inputs and expertise to inform our work and to support our decisions and advice**
- 4. We will be open and transparent – keeping people informed about the progress of our work and providing opportunities to input to and influence it**
- 5. We will seek opportunities to work in partnership with others – working closely with all relevant stakeholders to ensure that our collective efforts deliver benefits for environmental protection and enhancement**

On point 2, while aiming to resolve issues through agreement is a welcome approach, we note that, in line with point 4, such resolutions should be transparent.

This section should refer explicitly to the guiding principles on the environment under the Continuity Act.

Specifically, on point 3, we support an evidence driven approach but believe that there may be circumstances in which, in the absence of evidence, the precautionary principle must be applied.

4. Do you have any comments on our proposed approach to resolving matters informally with public authorities, set out in chapter 4?

We broadly support the outlined approach to resolving matters informally. However, with reference to the organisation’s stated principle of being “open and transparent”, we note that while the strategy states that the organisation will publish issues subject to live investigations and pre-investigation casework, it is not clear what information will be publicly available in relation to informal resolutions. In contrast it is explicitly stated that compliance notices will be reported publicly.

While it may not be appropriate to publish all details of cases resolved informally, we believe there should be a presumption of transparency. To that end, the strategy should make clear how it will report informal resolutions and in what circumstances information on these will be published or withheld.

5. Do you have any comments on our proposed approach to determining what constitutes a systemic failure, set out in chapter 4?

Figure 4 in this section outlines that data monitoring/evaluation sits, alongside public representations, at the start of the process that could lead to enforcement action, including in the case of systemic failure. It is our view that a systemic failure is evident where national targets for improving environmental outcomes are not being met, and would suggest that monitoring

performance against such targets (including emissions reductions and nature restoration) be explicitly built into this approach.

7. Do you have any comments on our proposed approach to determining whether a compliance failure or environmental harm is serious, set out in chapter 4?

We do not believe that reversibility should be a determining factor in whether an environmental harm is serious. Environmental harm should not be treated as less significant on the basis that it could be remediated in future.

8. Do you have any comments on our proposed approach to deciding whether, and how to prioritise and carry out our investigations, set out in chapter 5?

Instances of neglect should include scrutinising the capacity and resources (including skills, expertise and budgets) of public bodies to deliver government ambitions.

10. Do you have any comments on our draft priority topics for further analysis? Do you have any suggestions for key sources of data and intelligence that we should consider, as set out in chapter 6?

We would welcome views on our proposed set of initial analytical priorities and suggestions of any key sources of data or intelligence that we should be considering. We will be undertaking further work during the consultation period to verify and quality assure our work and will discuss our baseline summaries of the evidence with key data and knowledge partners.

We are content with the headline areas for consideration, although arguably “marine” should be a distinct category from “water”.

The areas proposed for further analysis, particularly under biodiversity and climate, are very high level. While we accept that a period of scoping is required, it is difficult to comment on whether these areas will be sufficiently robust.

Under biodiversity, the reference to control of invasive non-native species is welcome but arguably other areas, such as deer management, should be similarly included.

Under water, the priority to “develop a better understanding of the threats to the marine environment” is insufficient. Marine protection is a reasonably advanced policy area with further policy change expected in this parliament. ESS should be scrutinising the success of Marine Protected Areas, as well as wider threats to the marine environment. There will be a complementary role for the OEP to play in areas of marine policy that are reserved, and we would encourage ESS to work with OEP to deliver this.

11. Do you have any comments on our proposed approach to avoiding unnecessary overlap with other regulators, oversight and scrutiny bodies, as set out in chapter 7?

We agree that ESS should deliver added value, and support efforts to avoid unnecessary overlap. We welcome the commitment to work collaboratively with the Office of Environmental Protection and emphasise the importance of effective oversight of reserved and cross-border issues.

14. Do you have any comments on our proposed approach to measuring our impact, as set out in chapter 9?

Paragraph 9.5 could be interpreted as meaning that public bodies have the choice not to give due consideration to recommendations. This could be strengthened.

15. Do you have any comments on our proposed key performance indicators, as set out in Annex B?

At least one KPI should refer to the ambition in ESS's vision that "Scotland's communities benefit from a high quality environment".

This response was compiled on behalf of the Governance Group and is supported by:

Badenoch and Strathspey Conservation Group
Cairngorms Campaign
Chartered Institute of Ecology and Environmental Management
Environmental Rights Centre for Scotland
National Trust for Scotland
Marine Conservation Society
RSPB Scotland
Scottish Wild Land Group
Scottish Wildlife Trust
Keep Scotland Beautiful
Whale and Dolphin Conservation

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Scottish Environment LINK the voice for Scotland's environment



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