

ENVIRONMENTAL Standards Scotland

Ìrean Àrainneachdail na h-Alba

Representation Form

The purpose of this form

We can accept and will consider (free of charge) any representation which includes any instance of concern from anyone about how public authorities discharge their environmental law responsibilities or the effectiveness of environmental law itself.

The purpose of this form is to enable you to set out your representation in a structured way so that we can carry out an initial assessment and consider what steps, if any, should or can be taken. We may also wish to contact you to discuss your representation or seek further information from you. If you have any difficulties in using or completing this form, our staff are more than happy to assist and can be contacted at Representations@environmentalstandards.scot.

Please use this form to contact us if you have specific concerns:

- that a public authority isn't complying with an environmental law;
- that an environmental law isn't being implemented or applied properly; or
- that an environmental law isn't effective in protecting the environment.

In this context a public authority means a person carrying out any function of a public nature and environmental law means any law which is mainly about the environment.

Compliance relates to whether a public authority is failing to take proper account of environmental law when exercising its functions or is acting in a way that is contrary to (or incompatible with) environmental law.

Environmental law means any law which includes provisions mainly about the environment and environmental protection, with environmental protection including:

- (a) protecting, maintaining, restoring or improving the quality of the environment,
- (b) preventing, mitigating, minimising or remedying environmental harm caused by human activities; and
- (c) monitoring, considering, assessing, recording, reporting on or managing data on anything relating to paragraphs (a) and (b).

In practical terms, the effectiveness of environmental law relates to whether the law is achieving its intended effect in protecting the environment and contributing to our international obligations relating to environmental protections.

Next steps

It is important to explain that, before considering what action should be taken, we normally expect that you will have given the relevant public authority the opportunity to respond to the issue or that you have tried to resolve your concerns through other available mechanisms. Whatever action we do take, we will write to you setting out the reasons for this and provide as much further assistance as we can.

It is also important to understand that we are not an appeal or complaints body for individual decisions taken by public authorities in the exercise of their regulatory functions in relation to a particular person or case (for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case).

The '[How to raise a concern](#)' and '[Frequently Asked Questions](#)' pages on our website provide further information on our role and may assist you in completing this form.

By submitting this form you agree to our [Data Privacy Notice](#). ESS may use the information you provide but we will not share your personal information without obtaining prior consent from you. You may tell us at any time if you wish to withdraw your representation.

When you have completed this form, please send it to Representations@environmentalstandards.scot.

Section 1 – Your representation

1. Please tell us below the name of the public authority you are contacting us about.

Scottish Government - Energy Consents Unit (ECU)

2. What area of the environment does your representation relate to? (for example, air quality/pollution, water quality/pollution, contaminated land, nature conservation, protected sites, protected species, climate change environmental assessment and monitoring).

Nature conservation (including biodiversity enhancement), environmental assessment and monitoring, and climate change (interaction with nature recovery obligations)

3. Have you already contacted the public authority about the matter?

Yes ☒ No ☐

Have you received a response?

Yes ☒ No ☐

If the answer to either of the above questions is 'no', please tell us in the box below why this is the case.

Click or tap here to enter text.

4. Does your representation relate to:

- A public authority not complying with an environmental law?
Yes ☐ No ☒ Don't know ☐
- Environmental law not being implemented or applied properly?
Yes ☐ No ☐ Don't know ☒
- An environmental law isn't effective in protecting the environment?
Yes ☐ No ☐ Don't know ☒

5. If the answer to the above questions is 'no', ESS may not be able to help you. If you have answered 'yes' or 'don't know' to any of the questions above, please tell us in the box below what the background to your representation is, including the key dates when decisions/actions were taken, and specifically what you feel has gone wrong. If possible, please include below the details of the environmental law(s) your concerns relate to and, whether there any related public authority policies, guidance and/or decisions.

It would also be of assistance if you could also provide copies of the public authority's response to you and any supporting information you have.

NPF4 establishes that development should conserve, restore and enhance biodiversity, including through measurable biodiversity enhancement. Policy 3 applies specifically to development proposals subject to Environmental Impact Assessment (EIA), with biodiversity enhancement therefore being considered as part of the EIA process. This is a central component of Scotland's planning and environmental framework, intended to ensure that climate action is aligned with nature recovery. However, there is increasing evidence that Policy 3 is not being effectively applied in practice within ECU decision-making.

Correspondence with the responsible Cabinet Secretary Ivan McKee (June 2026) confirmed that:

- NPF4 policies are treated as material considerations, rather than requirements
- The weight given to biodiversity is determined on a case-by-case basis
- There is no clear requirement to secure biodiversity enhancement through energy consents

Despite repeated attempts to seek clarification, no clear guidance or direction has been provided to ensure consistent implementation.

The core issue is that NPF4 Policy 3 is not being effectively implemented within ECU decisions. In particular, we are concerned that projects subject to EIA are not consistently demonstrating or securing the biodiversity enhancement required by Policy 3. In practice:

- Biodiversity enhancement is not consistently required or secured
- Decisions rely on discretionary weighting, rather than clear policy application
- There is no consistent mechanism for securing or enforcing biodiversity outcomes

This creates a gap between policy intent and real-world outcomes.

We recognise that there may be uncertainty about the precise legal basis for some of these concerns. We are therefore asking ESS to consider whether the environmental legislation governing the ECU consenting process is being properly implemented and applied, and how this interacts with the environmental objectives of NPF4, particularly Policies 3 and 6.

Case study evidence

The following examples illustrate how these concerns are manifesting in practice and suggest that the issue is broader than individual decisions.

1. Battery Energy Storage Systems (BESS) – live ESS case (IESS.26.005)

There is an existing live case before Environmental Standards Scotland concerning battery energy storage systems.

This case highlights concerns that:

- Developments are progressing with limited environmental assessment
- Biodiversity impacts and opportunities are not being fully addressed
- There are concerns about how environmental assessment requirements and biodiversity considerations are being applied

This aligns closely with the concerns raised in this representation and indicates that issues with biodiversity policy implementation and environmental assessment within the ECU are already under formal scrutiny.

2. BESS and wind farm appeals currently on hold – EIA requirements

Approximately 14 battery storage and wind farm appeals are currently on hold following a ruling relating to Environmental Impact Assessment requirements.

This raises wider concerns about:

- The consistent application of EIA regulations
- How environmental impacts are assessed
- The robustness and consistency of the consenting process

This is relevant to our wider concerns because NPF4 Policy 3 applies specifically to projects subject to EIA, meaning that the EIA process is important in demonstrating and informing the biodiversity enhancement required by the policy.

3. Sloy pumped storage hydro scheme - ECU00006088

The Sloy pumped storage hydro scheme provides a further example of concerns about how biodiversity requirements are being interpreted.

In this case, both NatureScot and Loch Lomond & The Trossachs National Park Authority raised concerns that the EIA did not contain enough detail on proposed biodiversity enhancement measures to demonstrate compliance with NPF4 Policy 3.

NatureScot specifically said that the EIA did not contain sufficient detail on proposed additional biodiversity enhancement measures. The planning authority agreed and requested further discussions with the applicant before determination. However, Scottish Ministers concluded that the proposed mitigation measures were sufficient to avoid a substantial conflict with Policy 3. They suggested that a planning condition could be used to allow further discussions and development of a Biodiversity Enhancement Plan.

This case raises a wider concern about the distinction between mitigation and biodiversity enhancement. Measures which reduce or mitigate the environmental harm caused by a development are not necessarily the same as measures which deliver additional biodiversity enhancement.

It also raises questions about how the ECU responds when NatureScot and the relevant planning authority specifically identify that the evidence does not demonstrate that Policy 3 has been met.

4. Bhlaraidh Extension Wind Farm Grid Connection Works – ECU00004639

A further example concerns the loss of Ancient Woodland. The development was consented in September 2025 and involves an estimated 9.41 hectares of Ancient Woodland within a wider woodland loss of approximately 53.35 hectares.

NPF4 Policy 6 states that development proposals will not be supported where they result in loss of Ancient Woodland or adverse impacts on its ecological condition. The case therefore raises questions about how the protection afforded to Ancient Woodland under NPF4 is being interpreted and applied through the Electricity Act consenting system.

The decision recognised that the development would have a significant effect on Ancient Woodland. The proposed response was mitigation and compensatory planting of 55 hectares.

This raises questions about whether compensatory planting can adequately address the loss of an irreplaceable habitat such as Ancient Woodland, and how the ECU is applying the hierarchy of avoidance, mitigation, compensation and enhancement.

It also highlights a wider concern that biodiversity and ecological considerations may be treated as something that can be compensated for after harm has been accepted, rather than as a constraint on development in the first place.

5. Crystal Rig wind farm decision

The Crystal Rig decision has also been raised as an example where biodiversity considerations appear to have been given limited weight in the overall decision.

This adds to the wider pattern of concern about how NPF4 biodiversity policies are being interpreted alongside energy and landscape considerations in ECU decisions.

Overall pattern

Taken together, these examples suggest that the issue is broader than individual decisions or a single type of development.

Across different types of energy consent, there are concerns about:

- Inconsistent application of NPF4 biodiversity policies, particularly Policy 3
- Reliance on mitigation rather than meaningful biodiversity enhancement
- Uncertainty about how compensation and enhancement are distinguished
- Inconsistent environmental assessment
- Concerns about the consistent application of EIA requirements
- Limited or unclear mechanisms for securing and enforcing biodiversity outcomes
- The treatment of Ancient Woodland and other irreplaceable habitats
- The weight given to advice from NatureScot and planning authorities
- The overall balance between energy delivery and environmental protection

In particular, the examples suggest a potential gap between the application of NPF4 Policy 3 to EIA projects through the Electricity Act consenting process and its application by planning authorities to comparable EIA development. Planning authorities are required to make decisions in accordance with NPF4, subject to the statutory planning framework, and we are concerned that the approach taken by the ECU may not be consistent with this.

Taken together, the examples also raise a question as to whether the ECU is properly applying the duty under section 1 of the Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity, so far as is consistent with the proper exercise of its functions.

In particular, the examples suggest a potential gap between the environmental outcomes intended by NPF4 and the outcomes being secured through the Electricity Act consenting process.

This is important because the ECU is responsible for decisions on developments with potentially significant and long-lasting environmental impacts. If environmental

policy is being interpreted inconsistently, there is a risk that opportunities to protect and restore nature are being lost and that public confidence in the consenting system is weakened.

We therefore consider that these examples provide evidence that the issue warrants investigation by Environmental Standards Scotland.

6. What outcome are you seeking through bringing your representation to ESS?

We are seeking an investigation by Environmental Standards Scotland into whether the Energy Consents Unit is consistently and effectively implementing environmental law and policy when determining Electricity Act energy consents.

In particular, we ask ESS to consider:

- Whether NPF4 biodiversity policies, including Policies 3 and 6, are being consistently and effectively applied
- Whether the ECU is appropriately distinguishing between mitigation, compensation and biodiversity enhancement
- Whether EIA requirements are being applied consistently and effectively, including whether sufficient information is being provided to assess biodiversity impacts and enhancement
- Whether environmental assessment requirements are being applied consistently and effectively
- Whether the current reliance on case-by-case discretion is resulting in inconsistent environmental outcomes
- Whether the concerns raised by NatureScot and planning authorities are being given appropriate weight in ECU decision-making
- Whether the ECU is properly applying the duty under section 1 of the Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity, so far as is consistent with the proper exercise of its functions
- Whether there are adequate mechanisms for securing, monitoring and enforcing environmental and biodiversity outcomes through energy consents.

We are also seeking recommendations to ensure that:

- Biodiversity enhancement is consistently secured where required by NPF4

- Irreplaceable habitats, including Ancient Woodland, receive appropriate protection
- There is greater clarity and transparency about how environmental policy is applied under the Electricity Act consenting regime
- Scotland's energy consenting system supports both climate action and nature recovery.

More broadly, we want to understand whether there is a systemic issue with the implementation of environmental law and policy within the ECU, rather than simply isolated problems with individual decisions.

7. How did you hear about ESS?

Organisation has a well established relationship.

Section 2 – Your details

The person who identified the problem should normally fill in this form. If you are acting on behalf of someone else, please check and confirm that they are content for you to do so.

First Name	Juliet
Last Name	Caldwell
Your Organisation's name (if applicable)	Scottish Environment LINK
Telephone Number	
Email address	juliet@scotlink.org
Address Line 1	5 Atholl Place
Address Line 2	
Town/City	Perth
Post Code	PH1 5NE

Preferred contact method

Email

To investigate your concerns, or make further enquiries, we normally need to contact the public authority to confirm that you have tried to resolve your concerns with them first. We may also need to discuss with the public authority the nature of your concerns. This means that we may need to share with the public authority personal information related to your case.

Diversity Monitoring

ESS would appreciate if you could assist us to ensure we are reaching as many people as possible and preventing barriers from using our service. To support this, we have an [Equality and Diversity Monitoring Form](#) available to all who submit a representation.

We understand that this information is particularly personal and sensitive, and you may not want to share it with us. So whilst we would encourage you to share your details, please note filling in this form is voluntary and will not affect our investigation of your representation.

All information shared will be confidentially held in a secure database, separate from your representation.

Declaration

By completing and signing this form, I confirm that the information given is accurate and that I provide my consent for ESS to share information about me with the public authority/authorities subject to the representation **(if you have any concerns about us sharing your information with the public authority please contact us to discuss)**.

I also understand that ESS may access and review information about my concerns held by the public authority and that, depending on the nature of the representation, this may include sensitive personal information. I also understand that my personal information will be retained by ESS as set out in our privacy notice.

Signature

*(Click image to
add a digital
signature file)*

JA Caldwell

Date

23/09/2026

Section 3 – Checklist

- Have you fully completed all sections of the form that apply to you?

Yes ☒

No ☐

- Have you included copies of all your supporting paperwork (in particular any response you have received from the public authority)?

Yes ☒

No ☐

- Please do not send us original documents. To help protect your information we do not hold original documents on our files. Any original documents you send will be returned. Also, when our involvement with your representation comes to an end, the documents we hold on our files will be destroyed in line with our records retention policy.
- If you plan to send us large amounts of documents, please put your documents in date order, putting the most recent document at the front and oldest at the back.