

Environmental Standards Scotland draft strategy 2026-2031

15 August 2025

Legislation and
Governance Unit

We welcome the draft strategy and the work that Environmental Standards Scotland (ESS) has done to date to hold public authorities to account on their compliance with environmental law and to scrutinise the effectiveness of environmental law in Scotland and how it is implemented.

We suggest that recognition of the [economic impact](#) of nature degradation is added to the fifth paragraph of the chair's foreword to reflect the importance of early action to tackle both the climate and nature crises.

Gaps in environmental protection

We welcome the commitment in paragraph 1.2 to identify gaps in environmental protection. It would be helpful to clarify how ESS intends to address any identified gaps and where these will be published.

Ensuring compliance with environmental law

We note the commitment in paragraph 1.6 for ESS to consider whether individual regulatory decisions might indicate systemic or cumulative problems with compliance, or with the effectiveness of environmental law. It would be helpful for examples of where this has occurred to be shared, so that those seeking to make representations fully understand the potential to connect individual decisions with wider compliance issues.

The Continuity Act steers ESS towards resolving failures to comply with environmental law swiftly and without, as far as is possible, the need to issue a compliance notice or an improvement report.

Paragraph 4.2 states that ESS will use its statutory powers if it decides it is necessary. This should also recognise that not all failures to comply with environmental law can be resolved through agreement, such as a serious breach where the public authority disputes the alleged non-compliance.

It seems unlikely that ESS will not encounter any breaches in the new strategy period on which a tougher approach may be needed. If the next strategy period concluded without any statutory enforcement action, this may weaken ESS's enforcement authority and risk creating a culture where cases suited to resolution through negotiation are always given priority.

We therefore suggest that ESS should aim, within the new strategy period, to make greater use of its full suite of enforcement powers, with “wherever possible” in the fifth principle replaced with “where this is appropriate and proportionate”.

Retaining flexibility

We agree that ESS should retain some flexibility outside the four priorities in paragraph 3.3, especially given forthcoming changes in administration which could see a shift in focus or direction on environmental policy.

We agree that ESS should continue to follow up on its previous scrutiny work on soils, especially considering the Scottish government’s holding response on the recommendation for it to make use of its ‘keeping pace’ power.

Keeping pace with positive EU developments

We note the commitment in paragraphs 2.3 and 4.7 for ESS to monitor developments in European and international environmental standards and law to highlight areas where changes or further progress is needed, particularly in relation to the aim of maintaining alignment with EU law.

It would be helpful to clarify whether this monitoring will focus on the four proposed priority areas (climate, nature, resources and water) or whether there would be scope to extend it to other areas of EU policy development.

ESS role on scrutinising statutory nature recovery targets

We note that, subject to the Natural Environment (Scotland) Bill entering into law, ESS will act as the Independent Review Body scrutinising progress towards the delivery of Scotland’s new statutory nature recovery targets.

This is a significant new responsibility and must be accompanied by an appropriate increase in resourcing as many organisations, [including ESS](#), argued in their evidence on the bill, so that the work can be carried out effectively and in addition to, not at the expense of, existing responsibilities.

Evaluation impact

We suggest that theories of change for major investigations and analytical projects should be published to provide transparency on the underlying assumptions and intended environmental outcomes. Key performance indicators should also be published, and subject to consultation where appropriate.

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