

## ESS Board Meeting – 21 June 2021

**Present:** Jim Martin (ESS), Brendan Callaghan (ESS), Neil Langhorn (ESS), Paul McAleavey (ESS), Marie Fallon (ESS), Lloyd Austin (LINK), Aedan Smith (RSPB), Shivali Fifield (ERCS), Diarmid Hearn (NTS), Bruce Wilson (SWT), Barry Fisher (KSB), Calum Duncan (MCS), Vhairi Tollan (LINK).

**Apologies:** Jason Reeves (CIEEM), Charles Dundas (LINK).

### 1. Update from Jim Martin

- It is 6 months since the Scottish Parliament agreed to set up ESS.
- They see themselves as independent of the SG, public bodies and NGOs. The SG is a body under their jurisdiction.
- The ESS Board want the organisation to ‘add value and make a difference’.
- They hope to establish as a statutory body in late summer/early autumn, this will place Scotland ahead of England and Wales in having a watchdog established.
- As ESS is a unique organisation, there are few models they can copy.
- They have secured HQ premises in Edinburgh, have launched a website and have published their ‘Mission, Vision & Values’ statement.
- The ESS team have undertaken stakeholder engagement since January, including with SEPA, NatureScot, RSPB, NFUS. Jim Martin was keen to stress that ESS see themselves as independent of all these stakeholders.
  
- ESS Strategy: the Act requires this to be published within 1 year from ESS being ‘vested’ (formally established). They will publish an interim strategy at the time of vesting.
- The interim strategy will set out:
  - How they intend to go about their business.
  - How they intend to collect/monitor/analyse data.
  - How they will assess the effectiveness of environmental law.
  - How they intend to investigate representations (complaints).
  - How they will engage stakeholders.
- They will continue to develop their ‘main’ strategy and will publish this one year after vesting.
- The need to think through carefully how they will engage a wide a range of stakeholders – may have sectoral/thematic consultations.
  
- Jim was clear to stress that they can’t give precedence to any organisation, including government agencies.
- He suggested that this would have implications for LINK too – ‘need to judge between the balance of consulting with LINK as a body and the bodies that make up LINK.’
- Also keen to stress that they are not an additional level of appeal. They believe a complaint needs to be raised with the public body involved in the issue in the first instance to give them an opportunity to remedy it, before coming to ESS. They will signpost people bringing representations to the relevant public authority so they don’t become ‘a de facto appeals body.’

- They want to continue a constructive relationship with LINK – how regular the meetings are will depend on the volume of ESS’s work and balancing engagement with other stakeholders.
- The Board will also determine, from time to time, if there are issues that ESS wants to investigate proactively.
- Jim is frustrated by provisions in the act which restrict what ESS can tell people about their investigations.

## 2. Questions from LINK

- Diarmid asked if ESS intends to respond to Scottish Government consultations in the same way the Scottish Land Commission does and if they will develop policy positions on issues.
  - Jim said that hadn’t been decided. The OEP has been asked to give evidence on various matters by the UK Government but this still needs to be established by ESS.
  - Jim feels that one of the strengths of ESS is that they’re not another policy body.
- Lloyd asked how they are raising public awareness of the existence of ESS.
  - Brendan said this is being developed through their work on the strategy. They are considering who will be the audience for their strategy – how to communicate this to the wider public as well as parliament. They see themselves as a public facing body.
  - As ESS builds its operational capacity they will be thinking about comms and how they will publicise their activity.
  - They may publicise their own self-initiated investigations and ask for public input through a citizen science type approach.
- Calum asked if ESS will investigate failures to apply environmental law (i.e. marine legislation not being implemented) in the same way the EU did. Will they have in-house environmental expertise as the European Commission does?
  - Jim said they don’t have the same resources of the EC and so will be relying on independent panels of experts. They have discussed with the EC how it goes about its business.
  - Not having the resources of the EC should not be a barrier to ESS doing good work.
  - ESS staff won’t be experts in every field but they will have expertise in asking the right investigative questions and assessing data.
- Calum asked for more detail on where they will get environmental advice from.
  - Jim confirmed the advice won’t just come from government agencies or those they are tasked with investigating.
- Shivali asked for confirmation that ESS is assessing cyber security risks to ensure they are not at risk from cyber attack as SEPA was.
  - Brendan confirmed they are taking appropriate steps to ensure they are secure. They are using the experience from Scottish Government officials who helped set up the SNIB and SLC.

- They will be using the same IT and procurement contractors as the Scottish Government initially.
- Diarmid asked if ESS are speaking with colleagues in Europe, i.e. Scotland Europa.
  - Jim confirmed that they have been talking about how they will interact with but are careful about the signals they send the Scottish Government by engaging with Europe. They haven't reached out to Scotland Europa yet.
  - Jim doesn't think the original ESS budget has given a good estimate to cover the cost of liaising with Europe (and other duties).
  - The Brexit deal includes a provision that the EU will consult with 'scrutiny bodies' in the UK – ESS believe they are one of these scrutiny bodies but they do not know if DEFRA or the Cabinet Office share this view. Jim is making it clear in meetings that ESS expects to formally liaise with the EU under this provision.
  - Paul McAleavey (board member) is based in Europe and has contacts with EC colleagues.
- Lloyd reminded ESS that LINK is a member of the European Environmental Bureau.
- Lloyd asked if ESS will be making any comments about ESS budget during the parliament's budget scrutiny process.
  - Jim confirmed they will be putting forward a more developed budget proposal. They will have a better idea of staffing, ops and IT costs for future years. He is meeting Michael Matheson this week and will let him know ESS are looking at their budget.
- Date of next meeting:
  - Agreed to keep in touch on a 'no surprises' basis.
  - ESS are about to enter a busy period, Jim advised meetings will be useful to update on big developments.
  - Jim agreed it would be useful for LINK members to give board members 'snapshots' of environmental problems at a future meeting to build knowledge. The possibility of site visits was discussed.
  - Vhairi and Neil to keep in touch about future meeting dates.