

T: 0300 244 4000
E: scottish.ministers@gov.scot

Edward Mountain MSP
Convener Net Zero, Energy and Transport
Committee
Scottish Parliament
netzero.committee@Parliament.Scot

8 July 2024

Dear Convener,

Environmental Standards Scotland – Appointment of Chair

Thank you for your letter of 27 June in response to the information provided by Màiri McAllan, the Cabinet Secretary for Net Zero and Energy in relation to the Appointment of Chair to Environmental Standards Scotland.

As you may be aware, I will be fulfilling the role of Cabinet Secretary for Net Zero and Energy while Ms McAllan is on maternity leave and as such, will be taking forward this important appointment. I hope to build on progress to date, working closely with the Net Zero, Energy and Transport Committee (the Committee) to ensure appropriate Parliamentary scrutiny in line with the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the 2021 Act”) and the requirements of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland.

Parliamentary Scrutiny

I note the Committee’s decision to reserve the option to meet with any proposed candidate and that the Committee will decide later in the process whether this meeting will be a formal or informal engagement, held either in public or private. The Parliamentary Scrutiny section of the applicant pack has been updated to reflect this position which you can find at Annex A.

Further to this, I note the Committee will continue to consider and publish all material it receives in relation to this appointment round on the Scottish Parliament website, including information on the nominated candidate in line with the Committee’s Privacy Statement.

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Commissioner for Ethical Standards in Public Life in Scotland

I am pleased to confirm the Commissioner for Ethical Standards in Public Life in Scotland (the Commissioner) has appointed Paul Matheson as an independent Public Appointments Adviser (PAA) to provide oversight of this appointment round and ensure adherence of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (2022). Paul is a full member of the selection panel and has been involved in the process from the outset. As PAA, Paul is answerable only to the Commissioner and not Ministers, their Directorates nor to any public body. The Commissioner usually appoints Public Appointment Advisers to all Chair appointment rounds.

ESS' Independence from Ministers

A key risk identified in this round relates to the importance of maintaining ESS' independence from Ministers; a requirement of Schedule 1, Paragraph 1 of the 2021 Act which states:

Independence from Ministers

1 (1) In performing its functions, Environmental Standards Scotland is not subject to the direction or control of any member of the Scottish Government.

(2) Sub-paragraph (1) is subject to any contrary provision in this or any other enactment.

The Selection Panel has discussed this risk directly with the Commissioner and in the Cabinet Secretary's letter of the 17 June, the Committee was asked to confirm it is content the arrangements and conditions set out for this appointment process are appropriate to maintain ESS' required independence from Ministers.

In this regard, I note the Committee's request to strengthen the language in the Applicant Information Pack to emphasise the independent nature of the Chair of ESS. I have taken account of this and amended the text on page 2 of the Pack (Letter to Applicants), which can be viewed at Annex B. On page 5 of the Pack, candidates are also directed to a detailed list of people who may not be members of ESS which is detailed in Schedule 1, Paragraph 3 of the 2021 Act.

Further to this, the Selection Panel is content the Fit and Proper Persons Checks and candidate's declaration of interests, provide sufficient opportunity to identify any issues that could affect the independence of ESS from Ministers and/or the independent nature of the Chair role.

Next Steps

Officials will now take the necessary steps to commence advertising in July, as per the timetable submitted to the Committee, with shortlisting and interviewing expected to take place in August / September.

I will consider recommendations from the selection panel in late September and will write to the Committee in October setting out who Scottish Ministers are recommending for appointment. At this time, I will invite the Committee to confirm its preference for engaging with the nominee as outlined in Annex A.

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Yours sincerely,



GILLIAN MARTIN

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ANNEX A

Parliamentary Scrutiny

Under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Scottish Ministers may appoint individuals to ESS only if the Scottish Parliament has approved the appointment. Consequently, the Scottish Parliament will consider for approval the appointment of the individual Scottish Ministers have assessed as being most able for this Chair role.

The candidate selected by the appointing Minister will be considered by the Scottish Parliament's Net Zero Energy and Transport Committee (the Committee). This may involve meeting the Committee to discuss the nominees' relevant skills, understanding and experience. This may be formal or informal (in either public or private as the Committee decides). This is part of the appointment process. A formal invitation will be issued by the Committee with further details prior to the session. Candidates should be aware, if the Committee decides to meet publicly with a nominee, this will form part of a meeting of the Committee and will be broadcast online via Scottish Parliament TV.

Following its consideration of the nominee, the Committee will report its findings to the Scottish Parliament and there will be a Chamber motion and vote on the approval of candidate, which may comprise of a short parliamentary debate. The candidate would not be expected to attend this.

If nominated for appointment by the Minister, information from the candidate's application form and a summary of the evidence from the assessment process will be shared with the Committee and will be published on the Scottish Parliament website via the Committee's report after consideration of the appointment. This will include how the candidate's skills contribute to the requirement on the Scottish Ministers that ESS, as a whole, has experience and knowledge in the attributes set out in UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 and will confirm the candidate's suitability for public appointment, including the results of the fit and proper person test.

Personal contact details will be redacted and information on protected characteristics from the Public Appointments monitoring form such as age, ethnic grouping, disability and sexual orientation etc, will not be shared. However, in order to arrange the private session with the Committee, the candidate's contact details; email address and phone number, will be passed to the Committee in order that they can issue an invitation to meet with them.

By applying for this Chair role, candidates agree to the sharing of this data for the above purposes only.

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ANNEX B

Letter to Applicants - (Page 2 of Applicant Information Pack)

Cabinet Secretary for Net Zero and Energy
Mairi McAllan MSP



T: 0300 244 4000
E: scottish.ministers@gov.scot

Dear applicant

Appointment of the Chair of Environmental Standards Scotland

Thank you for expressing an interest in the position of Chair of Environmental Standards Scotland (ESS). In the following pages you will find information about ESS, the work of the Board and the skills required for the role.

ESS was established in 2021 and is an important presence in Scotland's environmental governance landscape. Under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, ESS has been established as an independent Non-Ministerial Office, tasked with ensuring the effectiveness of environmental law in Scotland and assessing how public authorities, **including the Scottish Government**, are complying with the law and adhering to standards.

In this respect, it is of the utmost importance that ESS maintains independence from the Ministers of the Scottish Government and that the Chair of ESS understands their role in maintaining this standard both personally and in terms of ESS' functions.

The Board of ESS and in particular, the Chair, is responsible for leading the organisation in fulfilling this role. The Board currently has significant experience across environmental regulation, expertise in European environmental policy and law, environmental science and organisational governance. ESS is now looking for a new Chair that will lead the Board and organisation into the next stage of its development, including the development of ESS' second strategic plan.

Ministers value very highly the benefits of having different experience and points of view on our Boards and we are keen that people from all walks of life apply for public appointments. I particularly welcome applications from women, disabled people, LGBT+ people, people from ethnic minority communities and people aged under 50 and from those living within Scotland's island communities.

For further information about the role, please contact Mark Roberts, CEO of ESS (mark.roberts@environmentalstandards.scot) or Rebecca Peppiette, Head of Corporate Services and Communications (rebecca.peppiette@environmentalstandards.scot).

For more general information, please see the [ESS website](#).

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Yours sincerely,



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