



## Environmental Standards Scotland Framework Document

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## **Introduction**

1. This framework document is agreed between Environmental Standards Scotland (ESS) and the Scottish Ministers. It recognises the fundamental independence of ESS and sets out how the organisation will work with the Scottish Government (SG), and the key roles and responsibilities of:

- the Board
- the Chief Executive and Accountable Officer of ESS
- the Scottish Ministers, and
- the Portfolio Accountable Officer within the SG whose remit includes liaison with ESS

2. While this document does not confer any legal powers or responsibilities, it is a formal agreement between the Scottish Ministers and ESS, and as a live document it should be reviewed by SG and ESS at least every two to three years. Any changes will be agreed between the Board and the Scottish Ministers.

3. Any question regarding the interpretation of the document will be resolved through discussion between the SG and ESS. Legislative provisions take precedence over any part of the document.

4. Copies of the document will be published on the ESS website.

## **Purpose**

5. ESS, established under The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ('the Continuity Act'), is a body corporate. It is classified among Scottish public bodies as a Non-Ministerial Office with the status of an office-holder in the Scottish Administration, thus ensuring its operational independence. ESS is directly accountable to the Scottish Parliament for the delivery of its functions. ESS is known in Gaelic as Ìrean Àrainneachdail na h-Alba.

6. The Continuity Act established ESS on a statutory basis to maintain a system of environmental governance equivalent to that provided by the institutions of the European Union, adapted to suit Scottish domestic requirements.

7. ESS' functions are set out in section 20(1) of the Continuity Act. The functions are:

(a) to monitor as it considers appropriate—

(i) public authorities' compliance with environmental law,

(ii) the effectiveness of environmental law and of how it is implemented and applied,

(b) to investigate (either on its own initiative or in response to any representations made to it by another person) any matter concerning—

(i) whether a public authority is failing (or has failed) to comply with environmental law,

(ii) the effectiveness of environmental law or of how it is (or has been) implemented or applied,

(c) to take the steps it considers appropriate to secure—

(i) a public authority's compliance with environmental law,

(ii) improvement in the effectiveness of environmental law or in how it is implemented or applied, and

(d) the additional functions conferred on it by this or any other enactment.

8. Section 20(2) of the Continuity Act sets out a range of actions ESS may take in exercising its functions:

(a) carry out, commission or support any research it considers appropriate

(b) seek any independent and expert advice it considers appropriate

(c) make recommendations in relation to any matter relevant to its functions

(d) consider, assess and review data on the quality of the environment in Scotland

(e) keep under review implementation of any international obligation of the United Kingdom relating to environmental protection

(f) have regard to developments in, and information on the effectiveness of, international environmental protection legislation

(g) collaborate with any other environmental governance body in the United Kingdom, including the Office for Environmental Protection, or such other persons as ESS considers appropriate

(h) request information from public authorities about the exercise of their functions under environmental law

9. Section 20(3) of the Continuity Act requires that in exercising its functions, ESS must act objectively, impartially, proportionately and transparently. ESS will set out in its Strategy how it will carry out its functions and ensure that it meets these requirements.

### **Governance and Accountability**

10. This section summarises the specific responsibilities and accountabilities of the key people involved in the governance of ESS and in managing its relationship with SG.

#### The Board

11. The members of ESS, including the Chair, are non-executives who form the corporate body, which is known colloquially as the Board. They are appointed by the Scottish Ministers in line with the Code of Practice for Ministerial Public Appointments in Scotland, with the approval of the Scottish Parliament. The Chair and Board Members are accountable to the Scottish Parliament and may be required to give evidence to Parliamentary Committees.

12. The Board has overall responsibility for the delivery of the organisation's strategic leadership and ensuring it meets its statutory objectives and functions of ESS, as set out at paragraph 8 above, in accordance with the aims, policies and priorities of the Scottish Ministers. In fulfilling this responsibility, individual Members, under the leadership of the Chair, will:

- a) set strategic and operational plans to deliver the functions of ESS, taking into account how ESS can play its part in contributing to the outcomes in the National Performance Framework, in collaboration with the SG and other public bodies to the extent that this is possible without compromising its independence

- b) regularly scrutinise current and projected performance against the aims, objectives and targets set out in plans and take decisions on remedial action where required
- c) ensure that effective governance is established and maintained, including ensuring that decision-taking is open and transparent and, with support from the Accountable Officer and the Audit and Risk Committee, ensure that key risks are identified and managed
- d) approve the annual report and accounts and ensure these are laid before the Scottish Parliament
- e) promote the efficient, economic and effective use of resources consistent with the principles of Best Value, regularly scrutinise financial performance and scrutinise compliance with the Scottish Public Finance Manual, including through collaboration and use of shared services
- f) have collective responsibility for the actions and decisions of ESS and be accountable to the Scottish Parliament
- g) promote the wellbeing, learning and development of staff, provide support and challenge to the Chief Executive on staffing matters and ensure that ESS meets the **NMO staff management responsibilities** described in the section below, and
- h) maintain the independence of ESS from Scottish Government

13. The Chair will:

- a) lead the Board, ensuring that all Board members have suitable induction to understand the role and their responsibilities, that the skills and experience of all Board members are used effectively and that the Board undertakes regular self-assessment of its performance
- b) ensure that the performance of each Board member is reviewed at least once per year and that the Board and/or individual Board members undertake development activity when required to ensure the effectiveness of the Board
- c) ensure that the Board reviews its effectiveness annually
- d) ensure that a Code of Conduct (aligned to the Model Code of Conduct for Board Members) is in place, that corporate actions are taken to implement it as

required and that members understand their responsibilities, using the guidance provided by the Standards Commission

e) ensure that the performance of the Chief Executive is reviewed on an annual basis

f) work with the Portfolio Accountable Officer or their delegate(s) and the Public Appointments Team in SG on succession planning for the Board, action necessary to fill vacancies as they arise, skills requirements and promoting diversity by encouraging applications from less represented groups, including younger people, people from minority ethnic backgrounds and people with disabilities

g) building relationships with, and representing the views of ESS to, the Scottish Parliament, the Scottish Ministers and other key stakeholders

14. Specific guidance on how the Chair and Board Members should discharge their duties will be provided in their appointment letters and in On Board – A Guide for Members of Statutory Boards. Guidance on governance good practice is available in the Scottish Public Finance Manual. A list of key aspects of governance to consider is included in the section on Governance and Risk below.

### The Chief Executive

15. The Chief Executive is a senior civil servant employed and appointed by the Board and is the principal adviser to the Board on the discharge of its functions. The Chief Executive role is to provide operational leadership to staff working for ESS and to ensure that its aims and objectives are met, its functions are delivered, and its targets are met through effective and properly controlled executive action.

16. The specific duties of the Chief Executive will be set out in a job description, and annual objectives will be agreed with the Chair and used in appraisal of the Chief Executive's performance. In addition to any other specific duties, the Chief Executive will:

a) advise the Board on the discharge of its responsibilities – as set out in this Framework Document, in the founding legislation and in any other relevant instructions and guidance issued by or on behalf of the Scottish Ministers

b) implement or oversee implementation of the decisions of the Board

- c) where appropriate, work with the Board on the preparation and implementation of a Strategic Plan, including consultation with Senior Liaison Officer and other stakeholders as appropriate and where required, and work with the Board to ensure that business plans are put in place to meet the Strategic Plan aims, objectives and performance measures.
- d) manage the staff of ESS, ensuring their wellbeing, learning and development are prioritised, and ensuring that the **NMO staff management responsibilities** set out in the section below are addressed
- e) manage the budget for ESS in line with Scottish Government Finance guidance, policies and procedures, including the Scottish Public Finance Manual, and advise the Board on financial implications of all Board decisions, ensuring that appropriate financial appraisal and evaluation techniques are followed (see the Appraisal and Evaluation section of the SPFM)
- f) manage the day-to-day relationship with SG officials, including the Portfolio Accountable Officer and Senior Lead Officer and other key stakeholders, including staff of other public bodies
- g) manage the day-to-day relationship with the Scottish Parliament
- h) promote the efficient, economic and effective use of resources consistent with the principles of Best Value

17. In advising the Board, the Chief Executive will ensure that the key governance issues highlighted in the section on Governance and Risk below are addressed.

#### The Accountable Officer

18. The Chief Executive is designated as the Accountable Officer for ESS by the Permanent Secretary of the Scottish Government, as the Principal Accountable Officer for the Scottish Administration, in accordance with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000. The Accountable Officer is personally responsible for the propriety and regularity of the public finances of ESS and ensuring that its resources are used economically, efficiently and effectively, as required by section 15 of the Public Finance and Accountability (Scotland) Act 2000 and may be called to give evidence to the Public Audit Committee of the Scottish Parliament. The responsibilities of the Accountable Officer are set out in full in the

Memorandum to Accountable Officers for Parts of the Scottish Administration in the Scottish Public Finance Manual.

19. The Accountable Officer may consult the Portfolio Accountable Officer and/or the Senior Lead Officer on any aspect of accountable officer duties.

20. Where the duties of the Accountable Officer and the Chief Executive are not combined by one person, the Accountable Officer will work closely with the Chief Executive on governance, and in particular to ensure that the key governance issues highlighted in the section on Governance and Risk below are addressed.

The Scottish Ministers

21. The Scottish Ministers appoint the Chair and Board Members, in line with section 2 of Schedule 1 of the Continuity Act, subject to the approval of the Scottish Parliament, but they do not oversee the performance of ESS, which will be scrutinised by the Scottish Parliament. The Scottish Ministers will work with the Board in line with the Shared Principles set out below.

22. The Scottish Ministers will:

- a) determine the proposed budget, ensuring that this is sufficient for ESS to carry out its functions and secure the necessary Parliamentary approval
- b) approve pay remits or proposals and superannuation arrangements for the staff, Chief Executive, Chair and Board members, as determined by ESS.
- c) approve the terms and conditions of staff and the Chief Executive, as determined by ESS
- d) where appropriate approve terms for staff, consent to disposal of land or guarantees and consent to the location of ESS' premises
- e) consult ESS if they propose to modify ESS' functions by means of Regulations under section 21 of the Continuity Act

SG Portfolio Accountable Officer

23. The Principal Accountable Officer for the Scottish Administration (the Permanent Secretary of the SG) designates each Director General as the Portfolio Accountable Officer (AO) for particular portfolio areas. The Portfolio AO will delegate

their public body duties to the Director, Environment and Forestry as Senior Lead Officer in managing the relationship between SG and ESS.

24. On behalf of the SG, the Portfolio AO's duties are to establish a framework for the relationship between SG and a public body, oversee the operation of that framework, ensure the public appointments to the body are made appropriately and ensure that appropriate assurance is provided on governance of the body. The responsibilities of a Portfolio Accountable Officer are set out in detail in the Memorandum to Accountable Officers for Parts of the Scottish Administration.

25. The Portfolio AO will:

- a. make sure the framework document is agreed between the Scottish Ministers and the Board of ESS, reviewed regularly and oversee the operation of the roles and responsibilities set out
- b. in line with Code of Practice for Ministerial Appointments, ensure that public appointments are made in good time and secure appropriate skills, experience and diversity amongst Board members, working with the Chair on succession planning
- c. support regular and effective engagement between ESS and the relevant Scottish Ministers
- d. make sure there is clear, documented delegation of day-to-day responsibilities to a Senior Lead Officer and that the Board and senior officials of ESS are aware of these delegated responsibilities
- e. ensure ESS is made aware of strategic developments that may impact the organisation and that the organisation's position is taken into account in SG policy decision and it has due regard for advice provided by ESS
- f. ensure appropriate Scottish Government corporate services are available to support and facilitate the work of ESS
- g. ensure appropriate appraisal and reporting arrangements are in place for the Chair
- h. meet the Chair of ESS at least twice annually to discuss Scottish Government policy and strategy as they relate to the work of ESS and, as

appropriate, to discuss matters of governance including arrangements for the appointment and appraisal of Board members

26. The Portfolio AO remains personally answerable to the Scottish Parliament for the implementation of this framework.

#### SG Senior Lead Officer

27. The Senior Lead Officer is the Director of Environment and Forestry.

28. The Senior Lead Officer (or the Deputy Director Future Environment Division on their behalf) will:

- a. develop and advise Ministers on the strategic direction of ESS in the context of wider departmental or cross-governmental objectives
- b. advise Ministers on their response to strategic performance information
- c. ensure that ESS has the delegations and authorities necessary for effective delivery and continuous improvement

#### SG Liaison Team

The Senior Lead Officer is supported by the Future Environment Division (FED) in maintaining the formal liaison relationship with ESS through an SG Liaison Team comprised Environment and Forestry Sponsorship Hub and the FED Deputy Director. On behalf of Ministers and the Director of Environment and Forestry Directorate, the Liaison Team carry out a number of formal functions with respect to ESS, including to maintain effective arrangements for communicating and exchanging information, seeking Ministerial/Director views and sign off where required and day to day support and advice such as access to key SG contacts.

#### The Scottish Parliament

29. Accountability: ESS is directly accountable to the Scottish Parliament for the performance of its statutory functions. The Chief Executive, as Accountable Officer, is personally responsible, and accountable to the Parliament. The Parliament has the power to require any ESS Board member or member of ESS staff to attend a Parliamentary Committee.

30. Parliamentary Questions: The Scottish Ministers will not be accountable through Parliamentary Questions for the operations of ESS. Where a Parliamentary Question relates to operational matters of ESS, the Ministerial reply will indicate that this is the case and refer the MSP to ESS.

31. Correspondence: Should Scottish Ministers receive correspondence about ESS' operations from MSPs, members of the public or other stakeholders, this will be forwarded to ESS. The Government will inform the correspondent that their letter or email has been passed to ESS, and ESS will reply to them directly (within its published response timescales).

### **Shared Principles**

32. ESS and the Scottish Ministers confirm that they will adhere to the following shared principles.

- a. ESS and the Scottish Ministers are committed to good and effective communications with each other, especially where the work of one has bearings upon the responsibilities of the other. In particular the Scottish Ministers will keep ESS informed of any policy changes or issues that may be relevant to its operation
- b. ESS will not act in such a way as might compromise, or be seen to compromise, its own independence
- c. Scottish Ministers will not act in such a way as might compromise, or be seen to compromise, the independence of ESS
- d. ESS will remain politically neutral
- e. ESS will carry out its functions with integrity, will promote transparency and will ensure that appropriate summaries of its activity and financial performance are available for scrutiny by the Scottish Parliament
- f. ESS has (section 24 of the Continuity Act) a statutory right of access to any relevant information held by the Scottish Government that ESS may reasonably require for the purpose of performing its functions. This right of access is subject to section 39 of the Continuity Act
- g. ESS is bound by the confidentiality requirements set out in the Code of Conduct for Members of ESS and section 40 of the Continuity Act

- h. ESS and the Scottish Ministers will both work in ways which support the best principles of corporate governance and financial accountability as set out in the Scottish Public Finance Manual
- i. ESS will therefore ensure that the relevant Directorate is informed in advance of any significant announcements or publications which may have implications for the Government
- j. The Directorate will, in turn, inform ESS in advance of any significant announcements or publications which may have implications for ESS or the scrutinised sector.
- k. The Government and ESS will establish and maintain effective working relations through regular contact with each other, including regular meetings

## **NMO staff management responsibilities**

### Broad responsibilities for NMO staff

33. The Chief Executive, challenged and supported by the Board, has responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward staff are to ensure that:

- ESS HR policies, practices and systems comply with employment and equalities legislation, and standards expected of public sector employers
- the level and structure of staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness (subject to the SG Pay Policy for Staff Pay Remits)
- the performance of staff at all levels is regularly appraised and performance management systems are reviewed from time to time
- staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the body's objectives
- proper consultation with staff takes place on key issues affecting them, as appropriate, including working in partnership with trade unions
- effective grievance and disciplinary procedures are in place, and

- effective whistleblowing policy and procedures consistent with the Public Interest Disclosure Act 1998 are in place

#### Pay and conditions of service

34. ESS matches SG Main terms and conditions for its staff, and Senior Civil Service terms and conditions for its Chief Executive, including future pay settlements. Payment of salaries by ESS will comply with the Tax Planning and Tax Avoidance section of the SPFM. Proposals on non-salary rewards will comply with the guidance in the Non-Salary Rewards section of the SPFM.

#### Pensions, redundancy and compensation

35. ESS staff will normally be eligible for a pension provided by Principal Civil Service Pension Scheme (PCSPS). Staff may opt out of the PCSPS, but the employers' contribution to any personal pension arrangement, including stakeholder pension, will normally be limited to the national insurance rebate level.

36. Any proposal by ESS to pay any redundancy or compensation for loss of office, requires the prior approval of the Scottish Ministers. Proposals on compensation payments will comply with the Settlement Agreements, Severance, Early Retirement and Redundancy Terms section of the SPFM. This includes referral to the Scottish Ministers of any proposed severance scheme (for example, a scheme for voluntary exit), business case for a settlement agreement being considered for an individual, or proposal to make any other compensation payment. In all instances, a body should engage with the Senior Lead Officer prior to proceeding with proposed severance options, and prior to making any offer either orally or in writing.

#### **Strategy and business plans**

37. As per section 22 of the Continuity Act, ESS' Strategy sets out how it will exercise its functions. Schedule 2 of the Act sets out the required content of ESS' Strategy.

38. ESS' Strategy is contained within its Strategic Plan, which includes:

- purpose and principal aims
- ESS' role in contributing to the national outcomes set out in the National Performance Framework, including any collaboration with other public bodies

- analysis of the environment in which it operates
- key objectives and associated key performance targets for the period of the plan, and the strategy for achieving those objectives
- indicators against which its performance can be judged, and
- details of planned efficiencies, describing how better value for money will be achieved, including through collaboration and use of shared services

39. The Strategic Plan will inform the development of a separate business plan for each financial year, which will include key targets and milestones for the year immediately ahead, and be linked to budgeting information so that, where possible, resources allocated to achieve specific objectives can be identified. ESS will send a copy of the annual business plan to the SG Liaison Officer each year for information.

40. ESS may review its Strategy from time to time and, unless making only minor modifications, must: undertake public consultation on the draft; send a copy of the draft to Scottish Ministers; lay the draft before the Scottish Parliament for approval.

### **Annual report and accounts**

41. ESS will publish an annual report of its activities together with its audited accounts after the end of each financial year. The annual report and accounts will cover the activities of any corporate, subsidiary or joint ventures under the control of ESS. It will comply with the Government Financial Reporting Manual (FReM) and outline the body's main activities and performance against agreed objectives and targets for the previous financial year.

42. The accounts will be prepared in accordance with relevant statutes and the specific accounts direction (including compliance with the FReM) and other relevant guidance issued by the Scottish Ministers. Any financial objectives or targets set by the Scottish Ministers should be reported on in the accounts and will therefore be within the scope of the audit.

43. As soon as reasonably practicable after the end of each financial year, the ESS will prepare an annual report on how it has carried out its statutory functions during that year. The annual report will contain an outline of ESS' main activities and performance. As part of the Scottish Administration, ESS is subject to the accountability and audit provisions of Part 2 of the Public Finance and Accountability

(Scotland) Act 2000, including the duty to prepare annual accounts. For each financial year ESS will produce accounts of expenditure incurred in the fulfilment of its statutory functions. The annual accounts must be prepared in accordance with the relevant legislation and the specific Accounts Direction (including compliance with the FReM) and other relevant guidance issued by the Scottish Ministers. The annual accounts will be audited by the Auditor General for Scotland (AGS) or by auditors appointed by the AGS.

44. The annual report and audited accounts will be laid before the Scottish Parliament and will be published. A copy will be provided to the Scottish Government in advance of publication.

### **External audit**

45. The Auditor General for Scotland (AGS) audits, or appoints auditors to audit, ESS' annual accounts. The accounts are laid before the Scottish Parliament together with the auditor's report and any report prepared by the AGS. The AGS, or examiners appointed by the AGS, may also carry out examinations into the economy, efficiency and effectiveness with which the body has used its resources in discharging its functions and/or carry out examinations into the arrangements made by ESS to secure Best Value.

46. The AGS, or the AGS' appointed auditors or examiners, have a statutory right of access to documents and information held by relevant persons, including any contractors to or recipients of grants from ESS. ESS will ensure that this right of access to documents and information is made clear in the terms of any contracts issued or conditions of any grants awarded and will also use its best endeavours to secure access to any other information or documents required which are held by other bodies.

### **Internal audit**

47. ESS will:

- establish and maintain arrangements for internal audit in accordance with the Public Sector Internal Audit Standards and the Internal Audit section of the SPFM, and

- set up an Audit and Risk Committee of its Board, in accordance with the Audit Committees section of the SPFM, to advise both the board and the Accountable Officer

### **Budget management and delegated authority**

48. Each year the Portfolio AO or Senior Lead Officer will confirm a budget allocation for ESS and will provide details of the budget monitoring information required. ESS will comply with the format and timing of the monitoring information requested and with any requests for further information.

49. The statement of budgetary provision will set out the budget within the classifications of resource Departmental Expenditure Limits (RDEL), capital DEL (CDEL) and Ring-fenced (non-cash) (RfDEL) – and, where applicable, Annually Managed Expenditure (AME). These categories are explained in Annual Budgeting Process in the SPFM, and ESS will not transfer budgetary provision between the categories without the prior approval of the SG Finance Directorate, which should be sought directly or via the Senior Lead Officer. Transfers within the categories are at the discretion of the Board or, subject to delegated authority, the Chief Executive or relevant senior manager, if these do not breach any other constraints, for instance the approved pay remit.

### **Governance and Risk**

50. Guidance on governance requirements is available in several documents referred to earlier in this framework document:

- the Scottish Public Finance Manual (SPFM)
- the Audit and Assurance Committee Handbook
- On Board - A Guide for Members of Statutory Boards

51. If in any doubt about a governance issue, the Chair or Chief Executive may consult the Senior Lead Officer who may in turn put them in touch with the SG Public Bodies Unit, the SG Governance and Accountability Team and/or other teams with relevant expertise.

52. The Board and Chief Executive are advised to pay particular attention to guidance on the following issues.

### Risk management

53. ESS must develop an approach to **risk management** consistent with the Risk Management section of the Scottish Public Finance Manual. Where a risk or issue has wider implications for SG or other public bodies, or where SG may have a role in the management of a risk or issue, the Chief Executive or Chair should ensure that this is brought to the attention of the Senior Lead Officer as early as possible and should consider alignment with the SG approach to risk management as appropriate.

54. The Board should have a clear understanding of the key risks, threats and hazards it may face in the personnel, accommodation and cyber domains, and take action to ensure appropriate **organisational resilience**, in line with the guidance in: Having and Promoting Business Resilience (part of the Preparing Scotland suite of guidance) and the Public Sector Cyber Resilience Framework.

### Internal Control

55. The Board should establish **clear internal delegated authorities** with the Chief Executive, who may in turn delegate responsibilities to other members of staff and establish an assurance framework consistent with the internal control framework in the SPFM.

56. **Counter-fraud** policies and practices should be adopted to safeguard against fraud and theft - see the Fraud section of the SPFM.

57. Any **major investment programmes or projects** undertaken should be subject to the guidance in the Major Investment Projects section of the SPFM and in line with delegated authorities. **ICT investment plans** must be reported to the SG's Office of the Chief Information Officer.

58. ESS must comply with the requirements of the **Freedom of Information** (Scotland) Act 2002 and ensure that information is provided to members of the public in a spirit of openness and transparency. ESS must also register with Information Commissioners Office and ensure that it complies with the **Data Protection Act 2018** and the General Data Protection Regulations, commonly known as **GDPR**.

### Budget and finance

59. Public bodies should not invest in any venture of a speculative nature.

60. Non-standard **tax** management arrangements should always be regarded as novel and/or contentious. Relevant guidance is provided in the Tax Planning and Tax Avoidance section of the SPFM. ESS must comply with all relevant rules on taxation, including **VAT**, recover input tax where it is entitled to do so.

61. **Optimising income** (not including grant-in-aid) from all sources should be a priority, and SG Finance should be kept informed about any significant projected changes in income. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by SG Finance. Fees or charges for any services supplied must be determined in accordance with the Fees & Charges section of the SPFM.

62. **Gifts, bequests or donations** received score as income and should be provided for in the agreed resource DEL and capital DEL budgets, but should not fund activities or assets normally covered by budget allocation or fee income, and conflicts of interest must be considered – see the principles in the Gifts section of the SPFM.

63. **Borrowing** cannot be used to increase ESS' spending power. All borrowing must be from the Scottish Ministers in accordance with guidance in the Borrowing, Lending & Investment section of the SPFM.

64. Any lending must be in line with the guidance in the Borrowing, Lending & Investment section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated limit ESS must not **lend money, charge any asset, give any guarantee or indemnity or letter of comfort, or incur any other contingent liability** (as defined in the Contingent Liabilities section of the SPFM), whether or not in a legally binding form, without the prior approval of SG Finance. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

65. An accurate and up-to-date record of **current and non-current assets** should be maintained, consistent with the Property: Acquisition, Disposal & Management section of the SPFM. 'Non-current' assets should be disposed of in accordance with the SPFM. The SG's Property Division should be consulted about relevant proposed

disposals of property that the NMO holds for operational purposes (rather than investment) at the earliest opportunity so it may be advertised internally.

66. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. When an asset (including any investment) suffers **impairment**, when there is significant **movement in existing provisions** and/or where **a new provision needs to be created**, this should be communicated to SG Finance as soon as possible to determine the implications for the NMO's budget.

67. Any **funding for expenditure on assets by a third party** should be subject to appropriate arrangements to ensure that they are not disposed of without prior consent and that a due share of the proceeds can be secured on disposal or when they cease to be used by the third party for the intended purpose, in line with the Clawback guidance in the SPFM.

68. As stipulated in Annex 1 of the SPFM, ESS must ensure that specific sanction for expenditure has been obtained from Financial Management Directorate in all cases where it is required. **It is required for any expenditure not covered by standing delegated authorities e.g. losses and special payments in excess of specific delegated authorities; novel, contentious or repercussive expenditure. In cases not covered by the Budget Act, e.g. in connection with a service not contemplated when the Budget Bill was presented, you must ensure that Financial Management Directorate is informed in order that appropriate advice can be given, and, if necessary, the parliamentary procedures followed.** ESS is also responsible for the collection and bringing to account in due form of all receipts of any kind connected with the budget and accounts for which you are responsible

69. Unless covered by a specific delegated authority, prior approval from SG Finance is required before **making gifts or special payments or writing off losses**. Special payments and losses are subject the guidance in the Losses and Special Payments section of the SPFM. Gifts by management to staff are subject to the guidance in the Non-Salary Rewards section of the SPFM.

70. Before entering into or continuing any **finance, property or accommodation-related lease** arrangement, the NMO must be able to demonstrate that the lease offers better value for money than purchase and that all options of sharing existing

public sector space have been explored. Non-property/ accommodation related operating leases are subject to a specific delegated authority. There must be capital DEL provision in the budget allocation for finance leases and other transactions which are in substance borrowing.

71. **Procurement** policies should reflect relevant guidance in the Procurement section of the SPFM and any other relevant guidance issued by the SG's Procurement and Property Directorate. The SG's directory of SG Framework Agreements, is available to support organisations but they should check the Framework Agreement's 'buyer's guide' before proceeding to ensure they are eligible to use the Framework

72. All matured and properly authorised **invoices** relating to transactions with suppliers should be paid in accordance with the Expenditure and Payments section of the SPFM wherever possible and appropriate within the target of payment within 10 working days of their receipt.

73. ESS is subject to the policy of self-insurance. Commercial **insurance** must however be taken out where there is a legal requirement to do so and may also be taken out in the circumstances described in the Insurance section of the SPFM - where required with the prior approval of SG Finance. In the event of uninsured losses being incurred the SG shall consider, on a case by case basis, whether or not it should make any additional resources available to the NMO. SG Finance will provide a Certificate of Exemption for Employer's Liability Insurance.

74. The EU State aid regime was effectively revoked from UK law from 1 January. Following this, subsidy control provisions were covered by the UK-EU Trade and Cooperation Agreement (TCA) and the UK's international obligations, including various Free Trade Agreements and those arising as a consequence of World Trade Organisation membership. However, a new UK subsidy control regime came into force on 4 January 2023 as a result of UK Government's Subsidy Control Act 2022. Currently, any activity that a public body undertakes itself, or funds other bodies to undertake, that can be offered on a commercial market for goods and services, is subject to the regulations set out in the Subsidy Control Act 2022. A full assessment is required prior to disbursing any funding, subject to the guidance in the subsidy control section of the SPFM.

## Remuneration

75. **Remuneration, allowances and any expenses paid to the Chair and Board Members** must comply with the latest SG Pay Policy for Senior Appointments and any specific guidance on such matters issued by the Scottish Ministers.

76. **Staff pay, pensions and any severance payments** must be in line with the requirements of Public Sector Pay Policy and the responsibilities described in the section on NMO Staff Management Responsibilities.

77. All individuals who would qualify as employees for tax purposes should be paid through the payroll system with **tax deducted at source**.

## Banking and cash management

78. **Banking** arrangements must comply with the Banking section of the SPFM.

79. **Cash management** arrangements need to be addressed as well as overall budget management. Any cash provided to ESS to support the allocated budget for the year in question will be authorised by the Scottish Parliament in the annual Budget Act. ESS will normally receive monthly instalments based on updated profiles and will not seek any payment in advance of need. Budget provision not drawn down by the end of the financial year will lapse.