

# **UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021**

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## **EXPLANATORY NOTES**

### **OVERVIEW AND BACKGROUND**

#### **Part 2 – Environment**

#### *Chapter 2 – Environmental governance*

#### **Functions of Environmental Standards Scotland**

#### *Section 20 - Functions*

94. Section 20 sets out the functions of Environmental Standards Scotland.
95. Subsection (1)(a) confers on Environmental Standards Scotland the function of monitoring public authorities' compliance with environmental law and the effectiveness of environmental law and of how it is implemented and applied.
96. Subsection (1)(b) confers on Environmental Standards Scotland the function of investigating any question of whether a public authority is failing (or has failed) to comply with environmental law, as well as any question about the effectiveness of environmental law or whether it is (or has been) implemented or applied effectively. Environmental Standards Scotland can investigate on its own initiative or in response to information from another person, who could be, for example, a member of the public, a civic society group, a business or a public body.
97. Subsection (1)(c) allows for Environmental Standards Scotland to take appropriate action to secure a public authority's compliance with environmental law, and to secure improvement in the effectiveness of environmental law or in how it is implemented or applied.
98. Subsection (1)(d) provides that Environmental Standards Scotland has the additional functions conferred on it by this or any other enactment.
99. Subsection (2) provides for a range of supporting functions in exercise of the functions at subsection (1).
100. Subsection (2)(a) and (b) provides for Environmental Standards Scotland to carry out, commission or support any research, as well as seek any independent and expert advice, it considers appropriate. Subsection (2)(c) and (d) also enables Environmental Standards Scotland to make recommendations on any matter relevant to its functions as well as consider, assess and review data on the quality of Scotland's environment.
101. Subsection (2)(e) and (f) provides that Environmental Standards Scotland may also keep under review the implementation of any international obligation of the United Kingdom relating to environmental protection as well as have regard to developments in, and information on, the effectiveness of international environmental

*These notes relate to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) which received Royal Assent on 29 January 2021*

protection legislation. (“International environmental protection legislation” is defined, in section 46(1), to mean legislation in countries other than Scotland, and legislation made by international organisations, that is mainly concerned with environmental protection. The European Union is one example of an international organisation with a legislative function). This will allow Environmental Standards Scotland to make comparisons with the effectiveness of environmental law in other countries.

102. Subsection (2)(g) provides for Environmental Standards Scotland to collaborate with any other environmental governance body in the UK (as defined by section 46(1)), including the Office for Environmental Protection (an environmental governance body being established by the Environment Bill<sup>1</sup>), or such other persons as it considers appropriate. Other persons could include relevant international bodies, such as the European Commission. This will allow joint working on policy effectiveness, and sharing of experience and best practice.
103. Subsection (2)(h) allows for Environmental Standards Scotland to request information from public authorities regarding the exercise of their functions under environmental law. This may, for example, be for monitoring or investigatory reasons.
104. Subsection (3) sets out that, when exercising its functions, Environmental Standards Scotland must act objectively, impartially, proportionately and transparently.

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<sup>1</sup> The Environment Bill commenced its Report Stage in the House of Commons on 26 January 2021. Information on the progress of the Bill and a copy of the Bill following its Commons Committee Stage is available on the UK Parliament’s website, which can be accessed via this [web link](#).