

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

EXPLANATORY NOTES

OVERVIEW AND BACKGROUND

Schedule 2 - Environmental Standards Scotland: Strategy

207. This schedule sets out provisions for the content and preparation of the strategy that Environmental Standards Scotland is required to prepare and publish under section 22(1).

Content

208. Paragraph 1 provides that the strategy prepared under section 22(1) must set out how Environmental Standards Scotland intends to perform certain functions, including at sub-paragraph (1) how it intends to: monitor public authorities' compliance with environmental law and the effectiveness of environmental law and of its implementation and application; provide for members of the public, non-governmental organisations and others to make representations to it and keep them informed about any action it takes in relation to those representations; exercise its functions so as not to overlap with other statutory or administrative complaints regimes, or the exercise of functions by the Scottish Public Services Ombudsman, the Commissioner for Ethical Standards in Public Life in Scotland, the Scottish Information Commissioner, Audit Scotland or the Committee on Climate Change, or the exercise of functions by any committee of the Scottish Parliament appointed to consider matters relating to environmental law.
209. The strategy must also set out information on how Environmental Standards Scotland will decide whether to investigate possible failures by a public authority to comply with environmental law or the effectiveness of environmental law, as well as how it will carry out and prioritise investigations.
210. In addition, the strategy must set out how Environmental Standards Scotland will engage with public authorities with a view to swiftly resolving matters without recourse to formal powers, seeking to secure agreement to remedial action and improvements in the environment. The strategy must also set out how it will identify and recommend measures to improve the effectiveness of environmental law.
211. Sub-paragraph (2) states that the strategy must also set out the general factors that Environmental Standards Scotland will consider before exercising its functions, and how it will take account of information and form key judgments in the exercise of particular functions, including how it will determine what constitutes a systemic failure and how it will decide whether use of a compliance notice or an improvement report would be more effective. The strategy must also include any other information that Environmental Standards Scotland considers appropriate.

Procedure for publication of strategy

- 212. Paragraph 2 sets out the procedure for publishing the strategy. In particular, it provides that Environmental Standards Scotland must consult on its strategy, and present it to the Scottish Parliament for approval, alongside a report on the consultation.
- 213. If, within 40 days of it being laid, the Scottish Parliament resolves not to approve the strategy, Environmental Standards Scotland must review and revise the strategy and resubmit it to Parliament within three months. This process will repeat until a strategy is approved.

Publication of first strategy and interim strategy

- 214. Paragraph 3 states that Environmental Standards Scotland must lay its first strategy before the Scottish Parliament within the first year of its establishment. Environmental Standards Scotland may publish an interim strategy, covering the information set out at paragraph 1. Although, the publication of an interim strategy is not subject to the procedure specified in paragraph 2.

Review of strategy

- 215. Paragraph 4 provides for review and revision of the strategy.