



UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

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PART 2

ENVIRONMENT

CHAPTER 2

ENVIRONMENTAL GOVERNANCE

Improvement reports and improvement plans

26 Improvement report

- (1) Environmental Standards Scotland may prepare an improvement report if it considers that, in exercising its functions (including regulatory functions), a public authority has failed to—
 - (a) comply with environmental law,
 - (b) make effective environmental law, or
 - (c) implement or apply environmental law effectively.
- (2) Environmental Standards Scotland may also prepare an improvement report if it considers that the combined effect of two or more public authorities exercising their functions (including regulatory functions) in the same or a similar way constitutes a systemic failure by those authorities to—
 - (a) comply with environmental law,
 - (b) make effective environmental law, or
 - (c) implement or apply environmental law effectively.
- (3) Before preparing an improvement report in respect of any failure arising out of a public authority exercising its regulatory functions, Environmental Standards Scotland must be satisfied that the failure could not be addressed more effectively by issuing a compliance notice under section 31(1) instead.

Status: This is the original version (as it was originally enacted).

- (4) An improvement report is a report setting out the details of the alleged failure and recommending measures that the Scottish Ministers, or any other public authority, should take in order to—
- (a) comply with environmental law, or
 - (b) improve the effectiveness of environmental law or of how it is implemented or applied.

27 Restrictions on preparing an improvement report

Environmental Standards Scotland may not prepare an improvement report in respect of—

- (a) a failure to comply with environmental law arising out of any decision taken by a public authority in the exercise of its regulatory functions in relation to a particular person or case (for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case), or
- (b) a failure to comply with environmental law arising out of particular conduct if—
 - (i) it has issued a compliance notice under section 31(1) in respect of the same failure arising out of the same conduct, and
 - (ii) it has not subsequently withdrawn the compliance notice under section 35(1).

28 Content of an improvement report

An improvement report must—

- (a) set out the grounds for preparing the report, including details of the alleged conduct and circumstances which have caused Environmental Standards Scotland to conclude that a public authority has failed, or (as the case may be) that two or more public authorities have collectively failed, to—
 - (i) comply with environmental law,
 - (ii) make effective environmental law, or
 - (iii) implement or apply environmental law effectively,
- (b) explain Environmental Standards Scotland's reasons for reaching that conclusion (including details of the relevant environmental law and any evidence, research, expert advice or other information which it took into account),
- (c) set out the impact of the failure (including any environmental harm, risk of environmental harm or missed opportunity to improve the quality of the environment), and
- (d) propose a timescale for the Scottish Ministers, or other public authority, to take the remedial measures recommended in the report.

29 Improvement report: procedural requirements

Where Environmental Standards Scotland prepares an improvement report under section 26(1), it must—

- (a) send a copy of the report to the Scottish Ministers,
- (b) lay a copy of the report before the Scottish Parliament, and
- (c) publish a copy of the report.

30 Improvement plan

- (1) Where Environmental Standards Scotland lays a copy of an improvement report before the Scottish Parliament under section 29, the Scottish Ministers must respond to the report by preparing an improvement plan.
- (2) An improvement plan must set out—
 - (a) what the Scottish Ministers propose to do in response to the recommendations in the improvement report, including in particular—
 - (i) the measures that the Scottish Ministers propose to take to implement the recommendations (in full or in part),
 - (ii) the proposed timescale for implementing the recommendations,
 - (iii) the arrangements for reviewing, and reporting on, progress in implementing the recommendations, and
 - (b) if the Scottish Ministers do not intend to implement the recommendations in the improvement report (in full or in part), the reasons for that.
- (3) The Scottish Ministers must lay a copy of the improvement plan before the Scottish Parliament either—
 - (a) before the end of the period of 6 months beginning with the date on which the improvement report was laid before the Parliament, or
 - (b) before the end of the period of 9 months beginning with that date, if the Scottish Ministers consider that it is necessary to consult other persons (or the public more generally) about the plan.
- (4) When laying a copy of the improvement plan before the Scottish Parliament in accordance with subsection (3)(b), the Scottish Ministers must at the same time lay before the Parliament a statement setting out—
 - (a) details of the consultation about the plan that was carried out under that subsection,
 - (b) a summary of any views expressed in response to the consultation, and
 - (c) either—
 - (i) details of how those views (if any) have been taken into account in preparing the plan that is laid before the Parliament, or
 - (ii) a statement that no views were expressed in response to the consultation or that no account has been taken of views expressed.
- (5) If, within 40 days of a copy of the improvement plan having been laid before the Scottish Parliament under subsection (3), the Parliament resolves that the plan should not be approved, the Scottish Ministers must—
 - (a) review and revise the plan, having regard to any views expressed by the Parliament in relation to the plan, and
 - (b) lay a copy of a revised improvement plan before the Parliament before the end of the period of 3 months beginning with the date on which the Parliament resolved not to approve the plan.
- (6) Subsection (5) applies in relation to any revised improvement plan as it applies in relation to the first improvement plan.
- (7) Once the Scottish Parliament resolves that the improvement plan laid under subsection (3), or any revised improvement plan laid under subsection (5)(b), should be approved, the Scottish Ministers must publish the plan.

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- (8) In calculating the period of 40 days mentioned in subsection (5), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.