



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

2021 asp 4

## PART 2

### ENVIRONMENT

#### CHAPTER 1

##### ENVIRONMENTAL PRINCIPLES

### 13 The guiding principles on the environment

- (1) In this Chapter, references to the guiding principles on the environment are references to the following principles—
  - (a) the principle that protecting the environment should be integrated into the making of policies,
  - (b) the precautionary principle as it relates to the environment,
  - (c) the principle that preventative action should be taken to avert environmental damage,
  - (d) the principle that environmental damage should as a priority be rectified at source,
  - (e) the principle that the polluter should pay.
- (2) Those principles are derived from the equivalent principles provided for in Article 11 of Title II and Article 191(2) of Title XX of the Treaty on the Functioning of the European Union.
- (3) Accordingly, in preparing guidance under section 17 relating to the interpretation and application of the principles, the Scottish Ministers must have regard to the interpretation of those equivalent principles by the European Court from time to time.
- (4) The Scottish Ministers may by regulations—
  - (a) modify this section so as to—
    - (i) add or remove guiding principles on the environment,

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- (ii) amend any of the guiding principles for the time being specified in this section,
  - (b) further define any of the guiding principles for the time being specified in this section.
- (5) Regulations under subsection (4) may remove, amend or further define a guiding principle on the environment that is derived from the equivalent principles mentioned in subsection (2) only so far as necessary—
  - (a) to reflect the removal of or an amendment to the equivalent principle in accordance with EU law, or
  - (b) otherwise to ensure that the guiding principle reflects the equivalent principle as it has effect in EU law from time to time.
- (6) Regulations under subsection (4) are subject to the affirmative procedure.
- (7) Before laying a draft of regulations under subsection (4) before the Scottish Parliament for approval, the Scottish Ministers must consult—
  - (a) a Minister of the Crown,
  - (b) each responsible authority that is subject to the duty in section 15,
  - (c) such persons appearing to them to be representative of the interests of local government, industry, agriculture, fisheries or small businesses as they consider appropriate, and
  - (d) such other persons as they consider appropriate.
- (8) In this Chapter—
  - “making policies” includes developing, adopting or revising policies,
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

#### **14 Ministers’ duties to have due regard to the guiding principles**

- (1) The Scottish Ministers must, in making policies (including proposals for legislation), have due regard to the guiding principles on the environment.
- (2) Ministers of the Crown must, in making policies (including proposals for legislation) so far as extending to Scotland, have due regard to the guiding principles on the environment.
- (3) The duties in subsections (1) and (2) do not apply in relation to any policy or proposal so far as relating to—
  - (a) national defence or civil emergency,
  - (b) finance or budgets.
- (4) In this section, “legislation” includes—
  - (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) subordinate legislation.

#### **15 Other authorities’ duty to have due regard to the guiding principles**

- (1) A responsible authority must, in doing anything in respect of which the duty under section 1 of the Environmental Assessment (Scotland) Act 2005 (“the 2005 Act”)

applies (requirement for environmental assessment), have due regard to the guiding principles on the environment.

- (2) In subsection (1), “responsible authority” is to be construed in accordance with section 2 of the 2005 Act but does not include the Scottish Ministers or a Minister of the Crown.

## **16 Purpose of the duties under sections 14 and 15**

- (1) Those to whom the duties in sections 14 and 15 apply are to comply with the duties with a view to—
- (a) protecting and improving the environment, and
  - (b) contributing to sustainable development.
- (2) In subsection (1), “the environment”—
- (a) means all, or any, of the air, water and land (including the earth’s crust), and “air” includes the air within buildings and the air within other natural or man-made structures above or below ground, and
  - (b) includes wild animal and plant life and the habitats of wild animal and plant life.
- (3) In subsection (2)(b), “animal and plant life” includes any living organisms.

## **17 Guidance**

- (1) The Scottish Ministers must publish guidance on—
- (a) the guiding principles on the environment, and
  - (b) the duties in sections 14 and 15 as read with section 16.
- (2) The guidance may, in particular, include provision about—
- (a) the interpretation of the principles,
  - (b) how the principles relate to each other,
  - (c) how the duties relate to other duties relating to the environment including the duties in the Environmental Assessment (Scotland) Act 2005,
  - (d) complying with the duties,
  - (e) how those who are subject to the duties should demonstrate that they have complied and are complying with the duties.
- (3) A person who is subject to one or other of the duties must, in doing anything in respect of which the duty applies, have regard to the guidance published under this section.
- (4) The Scottish Ministers must from time to time review guidance published under this section and may revise the guidance and publish the revised guidance.
- (5) References in subsections (2) to (4) and in section 18 to guidance under this section include references to revised guidance.

## **18 Procedure for publication of guidance**

- (1) Before publishing guidance under section 17, the Scottish Ministers must lay the guidance before the Scottish Parliament.

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- (2) The Scottish Ministers must not publish the guidance before the end of the 40-day period mentioned in subsection (5).
- (3) Before laying guidance before the Scottish Parliament under subsection (1), the Scottish Ministers must consult the following persons about the guidance—
  - (a) a Minister of the Crown,
  - (b) each responsible authority who is subject to the duty under section 15, and
  - (c) such other persons as they consider appropriate.
- (4) When laying guidance before the Scottish Parliament under subsection (1), the Scottish Ministers must at the same time lay before the Parliament a statement setting out—
  - (a) details of the consultation about the guidance that was carried out under subsection (3),
  - (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 guidance 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 guidance having been laid before the Scottish Parliament under subsection (1), the Parliament resolves that the guidance should not be published, the Scottish Ministers must not publish the guidance.
- (6) In calculating the period of 40 days, no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.

## CHAPTER 2

### ENVIRONMENTAL GOVERNANCE

#### *Establishment of Environmental Standards Scotland*

#### **19 Environmental Standards Scotland**

- (1) Environmental Standards Scotland (in Gaelic, Ìrean Àrainneachdail na h-Alba) is established.
- (2) It is a body corporate.
- (3) Schedule 1 makes further provision about Environmental Standards Scotland.

#### *Functions of Environmental Standards Scotland*

#### **20 Functions**

- (1) Environmental Standards Scotland's 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.
- (2) In exercising its functions, Environmental Standards Scotland may, in particular—
  - (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 Environmental Standards Scotland considers appropriate,
  - (h) request information from public authorities about the exercise of their functions under environmental law.
- (3) In exercising its functions, Environmental Standards Scotland must act objectively, impartially, proportionately and transparently.

## **21 Power to modify functions**

- (1) The Scottish Ministers may by regulations modify Environmental Standards Scotland’s functions for the purpose of implementing an international obligation that arises or may arise under an agreement or arrangement between the United Kingdom and the EU following the withdrawal of the United Kingdom from the EU.
- (2) Regulations under subsection (1) may modify this Act.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.
- (4) Before laying a draft of regulations under subsection (1) before the Scottish Parliament for approval, the Scottish Ministers must consult—
  - (a) Environmental Standards Scotland, and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (5) In subsection (1), “modify” includes confer or remove a function.

## **22 Duty to prepare and publish strategy on exercise of functions**

- (1) Environmental Standards Scotland must—
  - (a) prepare and publish a strategy that sets out how it intends to exercise its functions, and
  - (b) exercise its functions in accordance with the strategy.
- (2) Schedule 2 makes further provision about the strategy.

## **23 Co-operation duties of public authorities and Environmental Standards Scotland**

- (1) A public authority must co-operate with Environmental Standards Scotland, and give it such reasonable assistance as it requests (including the provision of information), in connection with the exercise of its functions.
- (2) In addition, a public authority must make all reasonable efforts to—
  - (a) swiftly resolve any matter which Environmental Standards Scotland raises concerning the authority’s failure to comply with environmental law, to make effective environmental law or to implement or apply it effectively, and
  - (b) reach agreement with Environmental Standards Scotland on any remedial action the authority should take for the purpose of environmental protection.
- (3) If Environmental Standards Scotland considers that a particular exercise of its functions may be relevant to the exercise of an environmental governance function by the Office for Environmental Protection, or any other environmental governance body in the United Kingdom, Environmental Standards Scotland must consult that body.

### *Information notices*

## **24 Power to require information**

- (1) Environmental Standards Scotland may, by issuing a notice in writing (an “information notice”), require a public authority to provide information which Environmental Standards Scotland reasonably requires for the purpose of exercising any of its functions.
- (2) An information notice must specify—
  - (a) the information, or the nature of the information, which is to be provided,
  - (b) the purposes for which, and the particular matters in connection with which, it is required,
  - (c) the form in which it is to be provided,
  - (d) the means by which it is to be provided, and
  - (e) the date on or by which, or the period within which, it must be provided.
- (3) Environmental Standards Scotland may withdraw an information notice by giving notice in writing to that effect to the public authority to whom the information notice was issued.
- (4) In this section, “information” includes—
  - (a) any document or a copy of, or extract from, any document,
  - (b) documents of any type or copies of, or extracts from, such documents,

- (c) any explanation or other information (including unrecorded information).

## **25 Failure to comply with an information notice**

- (1) Where a public authority fails, without reasonable excuse, to comply with an information notice issued to it under section 24(1), Environmental Standards Scotland may report the matter to the Court of Session.
- (2) After receiving a report under subsection (1), and hearing any evidence or representations on the matter, the Court may (either or both)—
  - (a) make such order for enforcement as it considers appropriate,
  - (b) deal with the matter as if it were a contempt of the Court.

### *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.
- (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

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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.
- (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.

### *Compliance notices*

## **31 Compliance notice**

- (1) Environmental Standards Scotland may issue a compliance notice to a public authority if Environmental Standards Scotland considers that—
  - (a) in exercising its regulatory functions, the public authority—

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- (i) is failing to comply with environmental law, or
  - (ii) has failed to comply with environmental law in circumstances that make it likely that the failure will continue or be repeated, and
- (b) its failure to comply with environmental law is causing, or has caused, environmental harm or a risk of environmental harm.

- (2) A compliance notice is a notice requiring the public authority to whom it is issued to take the steps set out in the notice in order to address its failure to comply with environmental law.

### **32 Restrictions on issuing a compliance notice**

- (1) Environmental Standards Scotland may not issue a compliance notice 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 it has prepared an improvement report under section 26(1) or (2) in respect of the same failure arising out of the same conduct.
- (2) A compliance notice issued in contravention of subsection (1) is of no effect.

### **33 Content of a compliance notice**

- (1) A compliance notice must include the following information—
- (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the regulatory function of the public authority to which the alleged failure to comply with environmental law relates,
    - (ii) the provision of environmental law to which the alleged failure relates,
    - (iii) the alleged conduct which has caused Environmental Standards Scotland to conclude that the public authority is failing to comply with environmental law or has failed to comply with environmental law and the failure will likely continue or be repeated,
    - (iv) Environmental Standards Scotland’s reasons for reaching that conclusion, and
    - (v) the environmental harm or risk of environmental harm being caused, or having been caused, by the alleged failure,
  - (b) details of the steps that Environmental Standards Scotland requires the public authority to take in order to address its failure to comply with environmental law (which may include steps designed to remedy or mitigate, or prevent any continuance or repeat of, the failure),
  - (c) the date of issue of the notice,
  - (d) the period within which the required steps are to be taken,
  - (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (f) information about the right to appeal, including the period within which an appeal may be made, and

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(g) an explanation of the consequences of failure to comply with the requirements of the notice.

(2) The reference in subsection (1)(d) to the period within which the required steps are to be taken is a reference to such period of not less than 28 days, beginning with the date on which the notice was issued, as Environmental Standards Scotland determines.

### **34 Variation of a compliance notice**

(1) Environmental Standards Scotland may vary a compliance notice so as to extend the period mentioned in section 33(1)(d) (“the compliance period”).

(2) A compliance notice may be varied under subsection (1)—

- (a) at any time before expiry of the compliance period,
- (b) by giving notice in writing to that effect to the public authority to whom the compliance notice was issued.

(3) The variation of a compliance notice under subsection (1) does not affect the date of its issue for the purpose of section 36(2)(a).

### **35 Withdrawal of a compliance notice**

(1) Environmental Standards Scotland may withdraw a compliance notice.

(2) A compliance notice may be withdrawn under subsection (1)—

- (a) at any time before completion of the steps that are to be taken to comply with the requirements of the notice,
- (b) by giving notice in writing to that effect to the public authority to whom the compliance notice was issued.

(3) Where a compliance notice is withdrawn under subsection (1), it is to be treated as if it had never been issued.

### **36 Appeal against a compliance notice**

(1) A public authority to whom a compliance notice has been issued may appeal to a sheriff against Environmental Standards Scotland’s decision to issue the notice on the ground that—

- (a) it has not conducted itself in the manner alleged in the notice,
- (b) the alleged conduct specified in the notice does not constitute—
  - (i) a failure to comply with environmental law, or
  - (ii) a failure to comply with environmental law in circumstances that make it likely that the failure will continue or be repeated, or
- (c) the alleged failure to comply with environmental law specified in the notice is not causing, or has not caused, environmental harm or a risk of environmental harm.

(2) An appeal under this section—

- (a) must be made before the expiry of the period of 21 days beginning with the date of issue of the notice (“the 21-day period”), but
- (b) may be made later with the sheriff’s permission.

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- (3) The sheriff may give permission under subsection (2)(b) for an appeal to be made after the expiry of the 21-day period only if the sheriff is satisfied that the public authority has a good reason for not making the appeal before the expiry of that period.
- (4) In determining an appeal under this section, the sheriff may—
  - (a) cancel the compliance notice, or
  - (b) confirm the notice, either with or without modifications.
- (5) Where an appeal is made under this section, the period mentioned in section 33(1)(d) is suspended until the appeal is finally determined or is withdrawn.

### **37 Failure to comply with a compliance notice**

- (1) Where a public authority fails, without reasonable excuse, to comply with a compliance notice issued to it under section 31(1), Environmental Standards Scotland may report the matter to the Court of Session.
- (2) After receiving a report under subsection (1), and hearing any evidence or representations on the matter, the Court may (either or both)—
  - (a) make such order for enforcement as it considers appropriate,
  - (b) deal with the matter as if it were a contempt of the Court.

#### *Judicial review and other civil proceedings*

### **38 Power to apply for judicial review or intervene in civil proceedings**

- (1) Environmental Standards Scotland may make an application for judicial review in relation to a public authority's conduct (whether or not it has issued a compliance notice or prepared an improvement report in respect of that conduct) if Environmental Standards Scotland considers that—
  - (a) the conduct constitutes a serious failure to comply with environmental law, and
  - (b) it is necessary to make the application to prevent, or mitigate, serious environmental harm.
- (2) Subsection (3) applies where legal proceedings relate to an alleged failure by a public authority to comply with environmental law (however the allegation is framed in those proceedings).
- (3) Environmental Standards Scotland may, either with the court's permission or at the court's invitation, intervene in the proceedings for the purpose of making a submission to the court on an issue arising in the proceedings.
- (4) Environmental Standards Scotland may apply under subsection (3) to intervene in proceedings only if it considers that—
  - (a) the allegation relates to a serious failure by a public authority to comply with environmental law, and
  - (b) it is necessary to intervene to prevent, or mitigate, serious environmental harm.

- (5) The court may grant permission to, or invite, Environmental Standards Scotland to intervene under subsection (3) only if it is satisfied that Environmental Standards Scotland’s intervention is likely to assist the court.
- (6) For the purpose of subsection (1) or (3), Environmental Standards Scotland is to be treated as having sufficient interest in the subject matter of any application which it may make or of any legal proceedings in which it may intervene.
- (7) In this section—
- “court” means the Court of Session, the sheriff, the Sheriff Appeal Court or the Scottish Land Court,
- “legal proceedings” means civil proceedings before a court, including appeal proceedings and proceedings on an application for judicial review.

### *Disclosure of information*

## **39 Disclosure of information to Environmental Standards Scotland**

- (1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a public authority from providing Environmental Standards Scotland with information necessary for the exercise of Environmental Standards Scotland’s functions in accordance with—
- (a) the authority’s duty to co-operate under section 23(1), or
- (b) an information notice issued under section 24(1).
- (2) But nothing in this Chapter requires a public authority to provide Environmental Standards Scotland with information that the authority—
- (a) would be entitled to refuse to provide in civil proceedings on grounds of confidentiality of communications, or
- (b) would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.
- (3) Nothing in this Chapter requires or authorises a disclosure of information which, although made in accordance with a duty or a power provided for in this Chapter, would contravene the data protection legislation.
- (4) In subsection (3), “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

## **40 Confidentiality of proceedings**

- (1) Environmental Standards Scotland must not disclose—
- (a) information obtained under section 23(1) or 24(1), or
- (b) correspondence between Environmental Standards Scotland and a public authority that—
- (i) relates to a particular information notice or compliance notice, or to the preparation of a particular improvement report,
- (ii) is, or contains, such a notice or an unpublished draft of such a report.
- (2) Subsection (1) does not apply to—

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- (a) a disclosure (other than a disclosure of an information notice, a compliance notice or an unpublished draft of an improvement report) made with the consent of the public authority who provided the information or correspondence,
- (b) a disclosure made for purposes connected with the exercise of Environmental Standards Scotland's functions,
- (c) a disclosure made to the Office for Environmental Protection, or any other environmental governance body, for purposes connected with the exercise of an environmental governance function,
- (d) a disclosure of information, or correspondence, that relates only to a matter in relation to which Environmental Standards Scotland does not intend to take any further action under this Chapter,
- (e) a disclosure made for the purposes of civil proceedings,
- (f) a disclosure made for the purposes of the investigation or prosecution of any offence or suspected offence or for the purposes of the prevention or detection of crime,
- (g) a disclosure made in pursuance of an order of a court or tribunal,
- (h) a disclosure made in accordance with any other enactment requiring or permitting the disclosure.

*Duty to consult on effectiveness of governance arrangements*

**41 Duty to consult on effectiveness of governance arrangements**

- (1) The Scottish Ministers must—
  - (a) prepare a report on the matters mentioned in subsection (2), and
  - (b) after preparing the report, consult the persons mentioned in subsection (3).
- (2) The matters referred to in subsection (1)(a) are—
  - (a) whether the provisions of this Chapter have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU,
  - (b) whether the law in Scotland on access to justice on environmental matters is effective and sufficient, and
  - (c) whether and, if so, how the establishment of an environmental court could enhance the governance arrangements referred to in paragraph (a).
- (3) The persons referred to in subsection (1)(b) are—
  - (a) Environmental Standards Scotland,
  - (b) such persons as appear to the Scottish Ministers to be representative of the interests of persons likely to be affected by the governance arrangements referred to in subsection (2)(a), and
  - (c) such other persons as the Scottish Ministers consider appropriate.
- (4) The consultation under subsection (1)(b) must begin before the end of the period of 6 months beginning with the date on which Environmental Standards Scotland publishes the strategy under section 22(1).
- (5) The Scottish Ministers must, as soon as reasonably practicable after the consultation under subsection (1)(b) begins, lay before the Scottish Parliament a copy of the consultation document.

- (6) Following the consultation under subsection (1)(b), the Scottish Ministers must lay before the Scottish Parliament a statement setting out—
- (a) details of the consultation that was carried out under subsection (1)(b),
  - (b) a summary of any views expressed in response to the consultation, and
  - (c) the Scottish Ministers’ recommendations in response to those views.

### *Interpretation of Chapter 2*

#### **42 Meaning of “public authority”**

In this Chapter, “public authority” means a person exercising any function of a public nature that is not—

- (a) a function of any of the following persons—
  - (i) Environmental Standards Scotland,
  - (ii) a court or tribunal,
  - (iii) the Scottish Parliament,
  - (iv) the Parliament of the United Kingdom,
  - (v) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975),
  - (vi) a body to which paragraph 3 (reserved bodies) of Part III of schedule 5 of the Scotland Act 1998 applies, or
- (b) a function in connection with proceedings in the Scottish Parliament or the Parliament of the United Kingdom.

#### **43 Meaning of “failing to comply with environmental law”**

For the purposes of this Chapter, any reference (however expressed) to a public authority failing (or having failed) to comply with environmental law is a reference to any of the following conduct by the authority—

- (a) the authority failing (or having failed) to take proper account of environmental law when exercising its functions,
- (b) the authority exercising (or having exercised) its functions in a way that is contrary to, or incompatible with, environmental law,
- (c) the authority failing (or having failed) to exercise its functions where the failure is contrary to, or incompatible with, environmental law,

and references to “compliance with environmental law” are to be construed accordingly.

#### **44 Meaning of “environmental law” and “effectiveness of environmental law”**

- (1) In this Chapter, “environmental law” means any legislative provision to the extent that it—
- (a) is mainly concerned with environmental protection, and
  - (b) is not concerned with an excluded matter.
- (2) Excluded matters are—
- (a) disclosure of, or access to, information,
  - (b) national defence or civil emergency,

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- (c) finance or budgets.
- (3) In subsection (1), “legislative provision” means—
  - (a) provision contained in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (b) provision contained in any other enactment which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament.
- (4) The Scottish Ministers may by regulations provide that a legislative provision specified in the regulations is, or is not, within the definition of “environmental law” in subsection (1) (and this Chapter applies accordingly).
- (5) Regulations under subsection (4) are subject to the affirmative procedure.
- (6) Before laying a draft of regulations under subsection (4) before the Scottish Parliament for approval, the Scottish Ministers must consult—
  - (a) Environmental Standards Scotland, and
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (7) In this Chapter, references to the effectiveness of environmental law are references to the effectiveness of environmental law, or any particular aspect of it—
  - (a) in achieving its intended effect by reference to its contribution to—
    - (i) environmental protection, and
    - (ii) improving the health and wellbeing of Scotland’s people, and achieving sustainable economic growth, so far as consistent with environmental protection, and
  - (b) in contributing to the implementation of any international obligation of the United Kingdom relating to environmental protection,
 and references to “effective environmental law” are to be construed accordingly.

#### **45 Meaning of “environmental protection”, “environmental harm” and “the environment”**

- (1) In this Chapter, “environmental protection” means—
  - (a) protecting, maintaining, restoring or improving the quality of the environment,
  - (b) preventing, mitigating, minimising or remedying environmental harm caused by human activities,
  - (c) monitoring, considering, assessing, recording, reporting on or managing data on anything relating to paragraphs (a) and (b).
- (2) In this Chapter, “environmental harm” means—
  - (a) harm to the health of human beings, animals, plants or any other living organisms,
  - (b) harm to the quality of the environment, including—
    - (i) harm to the quality of the environment taken as a whole,
    - (ii) harm to the quality of air, water or land, and
    - (iii) other impairment of, or interference with, biodiversity or ecosystems,
  - (c) offence to the senses of human beings,
  - (d) damage to property, or



- (e) impairment of, or interference with, amenities or other legitimate uses of the environment.
- (3) In this Chapter, “the environment”—
- (a) means all, or any, of the air, water and land (including the earth’s crust), and “air” includes the air within buildings and the air within other natural or man-made structures above or below ground, and
  - (b) includes wild animal and plant life and the habitats of wild animal and plant life.
- (4) In subsection (1), “human activities”—
- (a) means human activities of any kind (whether industrial, commercial or otherwise), and any connected activities, that are capable of causing, or liable to cause, environmental harm, and
  - (b) includes (with or without other activities) the production, treatment, keeping, depositing or disposal of any substance.
- (5) In subsection (3)(b), “animal and plant life” includes any living organisms.

#### **46 Interpretation of Chapter 2: general**

- (1) In this Chapter—
- “application for judicial review” means an application to the supervisory jurisdiction of the Court of Session,
  - “compliance notice” means a notice issued under section 31(1),
  - “the environment” has the meaning given by section 45(3),
  - “environmental governance body” means a person on whom an environmental governance function has been conferred,
  - “environmental governance function” means a function that is similar to a function conferred on Environmental Standards Scotland,
  - “environmental harm” has the meaning given by section 45(2),
  - “environmental law”, “effectiveness of environmental law” and “effective environmental law” have the meanings given by section 44, “environmental protection” has the meaning given by section 45(1),
  - “improvement report” means a report prepared under section 26(1) or (2),
  - “information notice” means a notice issued under section 24(1),
  - “international environmental protection legislation” means legislation of countries and territories outwith Scotland (including legislation of other parts of the United Kingdom), and of international organisations (including the EU), that is mainly concerned with environmental protection,
  - “international obligation of the United Kingdom” includes any obligation that arises or may arise under an international agreement or arrangement to which the United Kingdom is a party,
  - “Office for Environmental Protection” has the meaning given by section 21 of the Environment Act 2021,
  - “public authority” has the meaning given by section 42,
  - “regulatory functions” means—
    - (a) functions conferred by or under any enactment of—
      - (i) imposing requirements, restrictions or conditions in relation to an activity,

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- (ii) setting standards and outcomes in relation to an activity, or
- (iii) giving guidance in relation to an activity, or
- (b) functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity,

“strategy” means a strategy prepared under section 22(1).

- (2) In this Chapter, references (however expressed) to—
- (a) a public authority failing to comply with environmental law are to be construed in accordance with section 43,
  - (b) a public authority failing to make effective environmental law are references to the authority—
    - (i) failing to exercise any function it has of making, confirming or approving subordinate legislation, or
    - (ii) failing to exercise that function in such a way, so as to secure the effectiveness of environmental law.

### CHAPTER 3

#### ENVIRONMENTAL POLICY STRATEGY

#### **47 Environmental policy strategy**

- (1) The Scottish Ministers must prepare and publish an environmental policy strategy.
- (2) The strategy must set out—
  - (a) objectives for protecting and improving the environment,
  - (b) policies and proposals for achieving the objectives (or a summary or indication of such policies and proposals), and
  - (c) arrangements for monitoring progress towards achieving the objectives.
- (3) In preparing the strategy the Scottish Ministers must have regard to the desirability of securing that environmental policy—
  - (a) aims at a high level of environmental protection,
  - (b) contributes to sustainable development,
  - (c) contributes to improving the health and wellbeing of Scotland’s people,
  - (d) contributes to objectives in policy areas other than environmental policy,
  - (e) integrates environmental policy objectives into the development of policies in other areas,
  - (f) responds to global crises in relation to climate change and biodiversity.
- (4) The strategy may consist of one or more documents (and the reference in subsection (3) to the strategy includes any document forming part of it).
- (5) The Scottish Ministers may designate one or more documents as forming the strategy or part of the strategy, whether the document or documents was or were prepared before or after this section comes into force (and whether before or after the Bill for this Act was passed).

- (6) In preparing the strategy or any document forming part of it, and before designating any document as forming the strategy or part of the strategy, the Scottish Ministers must consult—
- (a) such persons as they consider would be likely to be affected by the proposals in the strategy or document,
  - (b) such persons as they consider have appropriate expertise or experience in relation to the matters covered by the strategy or document,
  - (c) such other persons (if any) as they consider appropriate.
- (7) For the purpose of subsection (6), it is immaterial that anything done by way of consultation was done before this section comes into force (whether before or after the Bill for this Act was passed).
- (8) Before publishing the strategy or any document forming part of it, the Scottish Ministers must lay before the Scottish Parliament—
- (a) a copy of the strategy or document, and
  - (b) a statement setting out—
    - (i) details of the consultation about the strategy or document that was carried out under subsection (6),
    - (ii) a summary of any views expressed in response to the consultation, and
    - (iii) either details of how those views (if any) have been taken into account in preparing the strategy or document or a statement that no views were expressed in response to the consultation or that no account has been taken of views expressed.
- (9) The Scottish Ministers—
- (a) must from time to time review the strategy, and
  - (b) may revise the strategy or any document forming part of it.
- (10) Subsections (3) and (6) to (8) apply to the preparation and publication of a revised strategy or any document forming part of it as they apply to the preparation and publication of the first strategy or any document forming part of it.
- (11) The Scottish Ministers must, in making policies (including proposals for legislation), have due regard to the strategy.
- (12) The Scottish Ministers must, before the end of each reporting period, lay before the Scottish Parliament a report containing an explanation of progress towards preparation of the strategy.
- (13) The reporting periods are—
- (a) the period of one year beginning with the day on which this section comes into force,
  - (b) each subsequent period of one year while the duty under subsection (12) has effect.
- (14) The duty under subsection (12) ceases to have effect when a copy of the strategy or any document forming part of it is laid before the Scottish Parliament under subsection (8) provided that consultation in accordance with subsection (6) was carried out in relation to the strategy or document after this section comes into force.
- (15) In this section—

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“the environment” and “environmental protection” have the meanings given by section 45,

“making policies” includes developing, adopting and revising policies.