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**Changes to legislation:** There are currently no known outstanding effects for the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, SCHEDULE 2. (See end of Document for details)

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## SCHEDULE 2

(introduced by section 22(2))

### ENVIRONMENTAL STANDARDS SCOTLAND: STRATEGY

#### *Content*

- 1 (1) The strategy prepared and published under section 22(1) must set out how Environmental Standards Scotland intends to—
- (a) monitor—
    - (i) public authorities' compliance with environmental law, and
    - (ii) the effectiveness of environmental law and of how it is implemented and applied,
  - (b) provide for persons (including members of the public, non-government organisations and other bodies) to make representations to it about 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) handle those representations, including how it will keep persons informed about its handling of their representations,
  - (d) exercise its functions in a way that respects and avoids any overlap with—
    - (i) other statutory regimes (including statutory provision for appeals) or administrative complaints procedures,
    - (ii) 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,
    - (iii) the exercise of functions by any committee of the Scottish Parliament for the time being appointed by virtue of standing orders, whose responsibilities include considering matters relating to environmental law,
  - (e) determine whether to carry out an investigation into 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,
  - (f) carry out and prioritise any such investigations,
  - (g) engage with the public authorities it investigates with a view to —
    - (i) swiftly resolving (so far as possible without the need to issue a compliance notice or prepare an improvement report) any matter concerning a failure to comply with environmental law, to make effective environmental law or to implement or apply it effectively, and
    - (ii) reaching agreement on any appropriate remedial action to be taken for the purpose of environmental protection, and
  - (h) identify and recommend measures to improve the effectiveness of environmental law or of how it is implemented or applied.

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- (2) In addition, the strategy must set out—
- (a) the general factors that Environmental Standards Scotland intends to consider before exercising its functions (including its power to require public authorities to provide information),
  - (b) how Environmental Standards Scotland intends to—
    - (i) take account of different kinds of information (for example, evidence, research, independent and expert advice and developments in international environmental protection legislation) for the purpose of exercising its functions,
    - (ii) determine what constitutes a systemic failure for the purpose of section 26(2),
    - (iii) determine whether a failure to comply with environmental law could be addressed more effectively by issuing a compliance notice (rather than by preparing an improvement report) for the purpose of section 26(3),
    - (iv) determine whether a failure to comply with environmental law is serious for the purposes of section 38(1)(a) and (4)(a),
    - (v) determine whether environmental harm is serious for the purposes of section 38(1)(b) and (4)(b), and
  - (c) any other information that Environmental Standards Scotland considers is appropriate to include.

**Commencement Information**

**II** Sch. 2 para. 1 in force at 1.10.2021 by S.S.I. 2021/304, reg. 2(c)

*Procedure for publication of strategy*

- 2 (1) Before publishing the strategy under section 22(1), Environmental Standards Scotland must lay a copy of the strategy before the Scottish Parliament for approval.
- (2) Environmental Standards Scotland must not publish the strategy before the end of the 40-day period mentioned in sub-paragraph (5).
- (3) Before laying a copy of the strategy before the Scottish Parliament under sub-paragraph (1), Environmental Standards Scotland must—
- (a) consult the following persons on a draft of the strategy—
    - (i) each public authority in relation to whom Environmental Standards Scotland has functions under section 20(1),
    - (ii) any other person whom Environmental Standards Scotland considers is likely to have an interest in the exercise of its functions, and
    - (iii) the general public, and
  - (b) send a copy of the strategy that is to be laid before the Parliament to the Scottish Ministers before the end of the period of 6 weeks beginning with the day after the day on which the consultation ends.
- (4) When laying a copy of the strategy before the Scottish Parliament under sub-paragraph (1), Environmental Standards Scotland must at the same time lay before the Parliament a statement setting out—

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- (a) details of the consultation on a draft of the strategy that was carried out under sub-paragraph (3)(a),
  - (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 strategy 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 strategy having been laid before the Scottish Parliament under sub-paragraph (1), the Parliament resolves that the strategy should not be approved, Environmental Standards Scotland must not publish the strategy but instead—
- (a) review and revise the strategy, having regard to any views expressed by the Parliament in relation to the strategy, and
  - (b) lay a copy of a revised strategy 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 strategy.
- (6) Sub-paragraph (5) applies in relation to any strategy revised under that sub-paragraph as it applies in relation to the first strategy.
- (7) In calculating the period of 40 days mentioned in sub-paragraph (5), no account is to be taken of any period during which the Parliament is dissolved or in recess for more than 4 days.

**Commencement Information**

**I2** Sch. 2 para. 2 in force at 1.10.2021 by S.S.I. 2021/304, reg. 2(c)

*Publication of first strategy and interim strategy*

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- (1) Sub-paragraphs (2) and (3) apply to the publication of the first strategy under section 22(1).
  - (2) Environmental Standards Scotland must lay a copy of the strategy before the Scottish Parliament under paragraph 2(1) before the end of the period of 12 months beginning with the day on which section 19 comes into force (being the day on which Environmental Standards Scotland is established).
  - (3) For the purpose of paragraph 2(3)(a), it is immaterial that anything done by way of consultation was done before that paragraph comes into force (whether before or after the Bill for this Act was passed).
  - (4) Before publishing the first strategy under section 22(1), Environmental Standards Scotland may publish an interim strategy that sets out how it intends to exercise its functions during the transitional period.
  - (5) An interim strategy published under sub-paragraph (4) must set out the information specified in paragraph 1.
  - (6) But the procedure for publication set out in paragraph 2 does not apply to the publication of an interim strategy.

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- (7) Environmental Standards Scotland must exercise its functions, during the transitional period, in accordance with any interim strategy it publishes under sub-paragraph (4).
- (8) In this paragraph, “transitional period” means the period beginning with the day on which section 19 comes into force and ending on the day on which the first strategy is published under section 22(1).

**Commencement Information**

**I3** Sch. 2 para. 3 in force at 1.10.2021 by S.S.I. 2021/304, reg. 2(c)

*Review of strategy*

- 4 (1) Environmental Standards Scotland—
- (a) must, from time to time, review the strategy published under section 22(1), and
  - (b) may, if it considers it appropriate, revise it.
- (2) The following provisions apply in relation to any strategy revised under sub-paragraph (1) as they apply in relation to the first strategy published under section 22(1)—
- (a) paragraph 1, and
  - (b) paragraph 2, unless the revision makes only minor modifications to the strategy.

**Commencement Information**

**I4** Sch. 2 para. 4 in force at 1.10.2021 by S.S.I. 2021/304, reg. 2(c)

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