



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

2021 asp 4

## PART 2

### ENVIRONMENT

#### CHAPTER 2

##### ENVIRONMENTAL GOVERNANCE

###### *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—

---

**Changes to legislation:** There are currently no known outstanding effects for the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Section 38. (See end of Document for details)

---

- (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.

---

**Commencement Information**

**II** S. 38 in force at 1.10.2021 by [S.S.I. 2021/304](#), **reg. 2(a)**

**Changes to legislation:**

There are currently no known outstanding effects for the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Section 38.