



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

2021 asp 4

## PART 2

### ENVIRONMENT

#### CHAPTER 2

##### ENVIRONMENTAL GOVERNANCE

###### *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—
    - (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

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- 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
  - (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.
- (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.

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- (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.