

# UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) ACT 2021

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## EXPLANATORY NOTES

### OVERVIEW AND BACKGROUND

#### *Schedule 1 - Environmental Standards Scotland*

#### **Independence from Ministers**

189. Paragraph 1 sets out the separation and independence of the functions of Environmental Standards Scotland from the Scottish Government.

#### **Members**

190. Paragraph 2 provides for Scottish Ministers to appoint a Chair to Environmental Standards Scotland, with a further 4 to 6 appointments of ordinary members. Appointments are subject to approval by the Scottish Parliament. When making appointments, Scottish Ministers must have regard to the desirability of ensuring that the membership, as a whole, has expertise and experience in law (including international law) relating to the natural environment, environmental science, environmental policy, and, investigatory and enforcement proceedings. Appointments may not be held by an individual for more than a 4-year period. However, a member of Environmental Standards Scotland may be reappointed if the individual is a member at the time of reappointment or, has ceased to be a member not more than three months before the date of reappointment. Members of Environmental Standards Scotland may only be reappointed once.
191. Scottish Ministers may apply further terms and conditions of membership as appropriate, and regulations may be made, subject to the negative procedure, to amend the number of members that can be appointed.
192. Paragraph 3 sets out a list of types of persons that cannot be appointed as a member of Environmental Standards Scotland because of the roles they hold. It also sets out exclusions for insolvent or disqualified persons.
193. Paragraph 4 allows for Environmental Standards Scotland, with the approval of the Scottish Ministers, to pay its members and the members of any committee established by it. This includes expenses incurred by members carrying out their functions.
194. Paragraph 5 establishes that membership of Environmental Standards Scotland ends if: the member provides written notice to the Scottish Ministers and Presiding Officer of the Scottish Parliament that the member resigns; the individual becomes disqualified from being a member for the reasons set out in paragraph 3, or the Scottish Ministers provide written notice informing a member they are to be removed. Where Scottish Ministers propose to give a member (excluding the Chair) notice under subparagraph (1)(c) that they are to be removed from being a member, the Scottish Ministers must consult the Chair of Environmental Standards Scotland. The Scottish Ministers may only remove a member with approval from the Scottish Parliament.

### **Chief executive and other staff**

195. Paragraph 6 establishes a Chief Executive for Environmental Standards Scotland. The Chief Executive may not be an appointed member of Environmental Standards Scotland. In the first instance, the Chief Executive will be appointed by the Scottish Ministers, with approval from the Scottish Parliament. All subsequent appointments will be made by Environmental Standards Scotland itself. Environmental Standards Scotland may also appoint its own staff alongside its Chief Executive. The terms and conditions of these appointments will be determined by Environmental Standards Scotland, subject to the approval of the Scottish Ministers.

### **Committees and functions**

196. Paragraph 7 allows Environmental Standards Scotland to establish committees, whose membership may include (but may not consist entirely of) persons who are not members of Environmental Standards Scotland. However, those persons are not entitled to vote at meetings of the committee.
197. Paragraph 8 provides that Environmental Standards Scotland may authorise any of its members, any committee it has established, its Chief executive or any other member of its staff to perform its functions. This does not affect Environmental Standards Scotland's responsibility for performance of the function or prevent Environmental Standards Scotland from carrying out the function itself.
198. Paragraph 9 sets out that Environmental Standards Scotland may regulate its own procedure and that of any committee.
199. Paragraph 10 provides that a vacancy in membership, a defect in the appointment of a member or the disqualification of a person from being a member after appointment, does not affect the validity of actions taken by Environmental Standards Scotland or its committees.
200. Paragraph 11 states that Environmental Standards Scotland may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or to be otherwise conducive to the performance of its functions.

### **Annual report**

201. Paragraph 12 states that Environmental Standards Scotland must prepare and publish a report of its activities on an annual basis. This must be sent to Scottish Ministers, with a copy also laid before the Scottish Parliament. Environmental Standards Scotland may determine the form and content of the annual report.

### **Resources**

202. Paragraph 13 states that the Scottish Ministers must seek to ensure that the amount of resources allocated for use by Environmental Standards Scotland is reasonably sufficient to enable it to perform its functions. Environmental Standards Scotland must include an assessment, in each report prepared under paragraph 12, of whether the amount of resources allocated for use by it in the financial year to which the report relates was sufficient to enable it to perform its functions.

### **Initial members: transitional provision**

203. Paragraph 14 allows for a body to be established before the commencement date (which is the day on which section 19 (establishing Environmental Standards Scotland) comes into force). It will be known as the "non-statutory Environmental Standards body". This provision is subject to the Scottish Parliament (by resolution) endorsing the establishment of the body by that name, and approving the appointment of the persons

*These notes relate to the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) which received Royal Assent on 29 January 2021*

nominated to be its chair and other members<sup>1</sup>. This paragraph also appoints the Chair of the non-statutory Environmental Standards body immediately before commencement date as the member to chair Environmental Standards Scotland.

204. Ordinary members of the non-statutory Environmental Standards body immediately before the commencement date are taken to be appointed as members of Environmental Standards Scotland. Appointment periods for initial members will continue to be the same as that for which they had been appointed as members of the non-statutory Environmental Standards body. Therefore, their appointment as a member expires at the time at which the period of their appointment as a member of the non-statutory Environmental Standards body would have expired.
205. Unless exceptions are agreed between the Scottish Ministers and an initial member, the other terms of a member's appointment will continue to be the same terms as those on which the member had been appointed as a member of the non-statutory Environmental Standards body, so far as consistent with the Act.

### **Application of legislation relating to public bodies**

206. Paragraph 15 applies certain legislation relating to public bodies to Environmental Standards Scotland.

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**1** A motion to this effect was passed by the Scottish Parliament on 23 December 2020, available via this [web link](#).