

Status: Point in time view as at 30/01/2021.

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

VALID FROM 01/10/2021

SCHEDULE 1

(introduced by section 19(3))

ENVIRONMENTAL STANDARDS SCOTLAND

Independence from Ministers

- 1
- (1) In performing its functions, Environmental Standards Scotland is not subject to the direction or control of any member of the Scottish Government.
 - (2) Sub-paragraph (1) is subject to any contrary provision in this or any other enactment.

Appointment of members

- 2
- (1) Environmental Standards Scotland is to consist of—
 - (a) a member appointed by the Scottish Ministers to chair Environmental Standards Scotland, and
 - (b) at least 4 but no more than 6 other members appointed by the Scottish Ministers.
 - (2) The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.
 - (3) In appointing members, the Scottish Ministers must have regard, among other things, to the desirability of ensuring that the membership (taken as a whole) has expertise or experience in—
 - (a) law (including international law) relating to the natural environment,
 - (b) environmental science,
 - (c) environmental policy, and
 - (d) investigatory and enforcement proceedings.
 - (4) A member is appointed for such period not exceeding 4 years as the Scottish Ministers determine.
 - (5) The Scottish Ministers may reappoint a person as a member if—
 - (a) the person—
 - (i) is a member at the time of reappointment, or
 - (ii) ceased to be a member not more than 3 months before the date of reappointment, and
 - (b) the person has not previously been reappointed.
 - (6) Sub-paragraphs (2) and (4) apply to the reappointment of a person as a member as they apply to the appointment of a person as a member.
 - (7) The Scottish Ministers may determine other terms and conditions of membership in relation to matters not covered by this Act.

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- (8) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting a different number for a number for the time being mentioned there.
- (9) Regulations under sub-paragraph (8) are subject to the negative procedure.

Persons who may not be members

- 3 (1) The Scottish Ministers may not appoint a person as a member if sub-paragraph (2) or (3) applies to the person.
- (2) This sub-paragraph applies to a person who is—
- (a) a member of—
 - (i) the Scottish Parliament,
 - (ii) the House of Commons,
 - (iii) the House of Lords,
 - (iv) Senedd Cymru, or
 - (v) the Northern Ireland Assembly,
 - (b) a member of the Scottish Government,
 - (c) a Minister of the Crown,
 - (d) an office-holder in the Scottish Administration,
 - (e) an office-holder of the Crown in right of Her Majesty's Government in the United Kingdom,
 - (f) a councillor of a local authority,
 - (g) the holder of any other relevant elective office as defined by paragraph 1(8) of schedule 7 of the Political Parties, Elections and Referendums Act 2000,
 - (h) a civil servant,
 - (i) an employee of a local authority.
- (3) This sub-paragraph applies to a person who is or has been—
- (a) insolvent,
 - (b) disqualified as a company director under the Company Directors Disqualification Act 1986,
 - (c) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005,
 - (d) disqualified under a disqualification provision analogous to either of those mentioned in paragraphs (b) and (c) anywhere in the world.
- (4) For the purpose of sub-paragraph (3)(a), a person is or has been insolvent if—
- (a) the person's estate is or has been sequestrated,
 - (b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,
 - (c) the person is or has been the subject of any other kind of arrangement analogous to either of those mentioned in paragraphs (a) and (b) anywhere in the world.

Members' remuneration and expenses

- 4 (1) Environmental Standards Scotland may pay—
- (a) its members, and
 - (b) the members of any committee established by it,

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such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) Environmental Standards Scotland may pay—

- (a) its members, and
- (b) the members of any committee established by it,

such sums as it may, with the approval of the Scottish Ministers, determine in respect of expenses incurred by them in performing their functions.

Early termination of membership

5 (1) A person's membership of Environmental Standards Scotland ends if—

- (a) the person gives notice in writing to the Scottish Ministers and the Presiding Officer of the Scottish Parliament that the person resigns,
- (b) the person becomes disqualified from being a member,
- (c) the Scottish Ministers give the person notice in writing that the person is removed from being a member.

(2) The Scottish Ministers may remove a member under sub-paragraph (1)(c) only if—

- (a) the member has been absent, without permission or reasonable excuse, from meetings of Environmental Standards Scotland for a period of longer than 3 consecutive months,
- (b) the member has been convicted of a criminal offence, or
- (c) the Scottish Ministers consider that the member is—
 - (i) unable to perform the member's functions, or
 - (ii) unsuitable to continue as a member.

(3) Where they propose to give a person, other than the person who is the member appointed to chair Environmental Standards Scotland, notice under sub-paragraph (1)(c) that the person is to be removed from being a member, the Scottish Ministers must consult the member appointed to chair Environmental Standards Scotland.

(4) The Scottish Ministers may remove a member under sub-paragraph (1)(c) only with the approval of the Scottish Parliament.

(5) For the purpose of sub-paragraph (1)(b), a person becomes disqualified from being a member if paragraph 3(2) or (3) applies to the person.

Chief executive and other staff

6 (1) Environmental Standards Scotland is to have, as a member of staff, a chief executive.

(2) The chief executive may not be a member of Environmental Standards Scotland.

(3) The Scottish Ministers are to appoint the first chief executive with the approval of the Scottish Parliament.

(4) Environmental Standards Scotland is to appoint each subsequent chief executive.

(5) Environmental Standards Scotland may appoint other staff.

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- (6) The chief executive and other staff are to be appointed on such terms and conditions as Environmental Standards Scotland, with the approval of the Scottish Ministers, determines.

Committees

- 7 (1) Environmental Standards Scotland may establish committees.
- (2) The membership of a committee may include (but may not consist entirely of) persons who are not members of Environmental Standards Scotland but those persons are not entitled to vote at meetings.

Authority to perform functions

- 8 (1) Environmental Standards Scotland may authorise—
- (a) any of its members,
 - (b) any committee established by it,
 - (c) its chief executive, or
 - (d) any other member of its staff,
- to perform such of its functions (and to such extent) as it may determine.
- (2) The giving of authority under sub-paragraph (1) to perform a function does not—
- (a) affect Environmental Standards Scotland's responsibility for the performance of the function, or
 - (b) prevent Environmental Standards Scotland from performing the function itself.

Regulation of procedure

- 9 Environmental Standards Scotland may regulate its own procedure (including quorum) and that of any committee.

Validity of things done

- 10 The validity of anything done by Environmental Standards Scotland or its committees is not affected by—
- (a) a vacancy in membership,
 - (b) a defect in the appointment of a member,
 - (c) the disqualification of a person from being a member after appointment.

General powers

- 11 Environmental Standards Scotland may do anything which appears to it—
- (a) to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or
 - (b) to be otherwise conducive to the performance of its functions.

Annual report

- 12 (1) Environmental Standards Scotland must, as soon as practicable after the end of each financial year—

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- (a) prepare and publish a report on its activities during that year,
 - (b) send a copy of the report to the Scottish Ministers, and
 - (c) lay a copy of the report before the Scottish Parliament.
- (2) It is for Environmental Standards Scotland to determine the form and content of each report.

Resources

- 13 (1) 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.
- (2) Each report prepared under paragraph 12 must include an assessment by Environmental Standards Scotland 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.
- (3) Sub-paragraph (2) does not affect the generality of paragraph 12(2).

Initial members: transitional provision

- 14 (1) This paragraph applies if—
- (a) before the commencement date, a body known as Environmental Standards Scotland is established (the “non-statutory Environmental Standards body”) in pursuance of a resolution of the Scottish Parliament—
 - (i) endorsing the establishment of the body by that name, and
 - (ii) approving the appointment of persons nominated to be its chairing and other members, and
 - (b) the body is still in existence immediately before the commencement date.
- (2) The person who was, immediately before the commencement date, the chairing member of the non-statutory Environmental Standards body is, on that date, taken to have been appointed under paragraph 2(1)(a) as the member to chair Environmental Standards Scotland.
- (3) Any person who was, immediately before the commencement date, a member (other than the chairing member) of the non-statutory Environmental Standards body is, on that date, taken to have been appointed under paragraph 2(1)(b) as a member of Environmental Standards Scotland.
- (4) A person to whom sub-paragraph (2) or (3) applies is referred to in this paragraph as an “initial member”.
- (5) An initial member's period of appointment as a member—
- (a) is to continue to be the same as that for which the member had been appointed as a member of the non-statutory Environmental Standards body, and
 - (b) accordingly expires at the time at which the period of appointment as a member of the non-statutory Environmental Standards body would have expired.
- (6) Except as may be agreed between the Scottish Ministers and an initial member, the other terms of the member's appointment are to continue to be the same as the

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terms on which the member had been appointed as a member of the non-statutory Environmental Standards body so far as consistent with this Act.

- (7) In this paragraph, “commencement date” means the day on which section 19 comes into force.

Application of legislation relating to public bodies

- 15 (1) In schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), before the entry relating to Food Standards Scotland insert— “Environmental Standards Scotland”.
- (2) In schedule 1 of the Freedom of Information (Scotland) Act 2002 (Scottish public authorities: non ministerial office holders in the Scottish Administration), after paragraph 7A insert—
“7AA Environmental Standards Scotland.”.
- (3) In schedule 2 of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), under the heading “Executive bodies”, before the entry relating to Food Standards Scotland insert— “Environmental Standards Scotland”.
- (4) In schedule 8 of the Public Services Reform (Scotland) Act 2010 (information on exercise of public functions: listed public bodies), before the entry relating to Food Standards Scotland insert— “Environmental Standards Scotland”.
- (5) In the schedule of the Public Records (Scotland) Act 2011 (authorities to which Part 1 applies), under the heading “Scottish Administration”, before the entry relating to Food Standards Scotland insert— “Environmental Standards Scotland”.
- (6) In the schedule of the Procurement Reform (Scotland) Act 2014 (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13D insert—
“13E Environmental Standards Scotland.”.
- (7) In schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 (public authorities), before the entry relating to Food Standards Scotland insert—

“Environmental Standards Scotland”.

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,

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- (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.
- (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),

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- (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.

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—
 - (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

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(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.

Publication of first strategy and interim strategy

3 (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.

(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).

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

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- (b) paragraph 2, unless the revision makes only minor modifications to the strategy.

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