



Introduction

Our environment does not respect borders, but the way it is managed is determined by the legal structures we put in place to govern it. With powers over the environment devolved to Holyrood, the Scottish Parliament and Government are the key actors in ensuring Scotland sets and maintains high environmental standards. But there remains a gap in ensuring political rhetoric turns into reality. Proper environmental governance is vital for Scotland at the start of the UN's Decade of Ecosystem Restoration and in a year when crucial international summits on biodiversity (COP15) and climate (COP26) are expected to take place.

The UK's exit from the EU also posed a threat by potentially weakening the environmental safeguards Scotland has had in place for decades. 80% of environmental protections in the UK stem from EU law and institutions. Following the UK's exit from the EU and the end of the transition period, Scotland has implemented the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ('the Continuity Act') to remain aligned with EU law where practicable. However there still remain several key measures that must be put in place for Scotland to have robust and effective environmental law.

With the nature and climate crises already impacting Scotland's most sensitive ecosystems and species, it is vital that high environmental standards are maintained and exceeded wherever possible. Furthermore, as the economic recovery from the Covid-19 pandemic is rolled out in the years ahead, strong environmental regulations must remain in place to build resilience to a range of threats from climate change, flooding, biosecurity and food insecurity.

This briefing sets out five key things you need to know about Scotland's environmental governance and it should be improved to maintain standards in the post-EU context.

1. Scotland must keep pace with EU environmental standards and fully embed environmental principles into decision-making.

The last parliament passed welcome legislation providing that Scottish Ministers should, where possible, keep pace with improvements in European environmental standards. The Continuity Act sets out that Scotland should align with the EU in order to 'maintain and advance' environmental protections (as well as human rights and social standards). This will be vital if Scotland is to achieve its aspiration of being a world leader in tackling the nature and climate emergency, with the EU already setting out an ambitious Biodiversity Strategy and action for a circular economy that Scotland should match. The Act also incorporates key EU environmental principles, such as the precautionary principle and polluter pays principle, into Scots law for the first time.

The legislation requires Ministers to prepare policy statements on how they will keep pace with progress at the EU level and in applying the environmental principles in Scotland. **It is vital that these policy statements are set out early in this parliamentary session and that MSPs seek to ensure they are as powerful as possible.**



2. Scotland's new environment watchdog must be empowered to uphold standards.

The Continuity Act also established a new Scottish environment watchdog, Environmental Standards Scotland (ESS). ESS will oversee the Scottish Government and public bodies' compliance with environmental law, in part take over the role formerly held by the European Commission. **It is critical that ESS is fully funded to carry out this vital task** and ensure Scotland's environmental standards remain robust.

ESS will produce its proposed strategy in the autumn, and this will need to be approved by Parliament. MSPs will wish to carefully scrutinise this to ensure that ESS lives up to expectations and helps ensure high environmental standards are maintained. Thereafter, the Government is required by the Continuity Act to review, and consult on, the effectiveness of ESS and wider governance issues. As part of this, consideration should be accorded again to the question of "individual cases".

3. Scotland needs an Environmental Court.

While the creation of ESS is welcome and necessary, it will not be sufficient on its own to fill the environmental governance gaps created by the UK's exit from the EU. In 2018, the Scottish Government's Roundtable on Environment and Climate Change assessed Scotland's environmental governance and, along with independent research commissioned by LINK, found that loss of access to the Court of Justice of the EU would create a gap relating to access to justice and the ability to review the substance of environmental cases. The benefits of a dedicated environmental court or tribunal – of which there are over 1,500 across 44 countries in the world – include more accommodation for the nuances of environmental law, particularly in regards to scientific and legally technical issues and the involvement of specialist environmental judges and legal teams. **The specialism of an environmental court or tribunal can make it fairer, cheaper and quicker for decision-makers and those working with the environment to receive consistent and robust decisions.** The consultation on governance issues (see above) is required to include consideration of an Environmental Court.

4. Common frameworks on the environment must be agreed jointly by all UK nations.

The loss of common EU standards, as a result of the UK's exit from the EU, pose a challenge for the four nations of the UK working together to address shared environmental challenges and the transition to a low carbon, sustainable society. A collaborative and joint approach, which respects devolution settlements, is needed to ensure that environmental standards are protected and enhanced. Ambitious, agreed common environmental standards would ensure that there is no drive to environmentally damaging and competitive deregulation in any part of the UK. For more information see this [previous LINK briefing](#).

5. A human right to a healthy environment should be enshrined in Scots law.

The Scottish Government has pledged to bring forward a Human Rights (Scotland) Bill in this parliament, in response to the risk of the weakening of the UK Human Rights Act following Brexit. The Taskforce on Human Rights Leadership has recommended that this legislation includes a human right to a healthy environment. The substantive elements of human right to a healthy environment have been articulated by the UN Special Rapporteur on human rights and the environment and include 'the right to clean air, safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work study and play, and a healthy biodiversity and ecosystem.' This is currently not protected by human rights laws in Scotland and



enshrining it would support and underpin other human rights and enable better decision-making for the environment.

The procedural elements of the human right to a healthy environment are enshrined in the international Aarhus Convention and include a right for citizens to have environmental laws and decisions reviewed before a court or tribunal. Scotland is already obliged to implement the Aarhus Convention, however, its legal system has been found to be in breach due to the prohibitive costs of challenging environmental laws at judicial review. For further detail, please see this [briefing for MSPs](#).

This response is supported by the following LINK member organisations:

Badenoch and Strathspey Conservation Group
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RSPB Scotland
Scottish Wild Land Group
Scottish Wildlife Trust
Whale and Dolphin Conservation
Woodland Trust Scotland
WWF Scotland

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

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