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Convener, NZET Committee
The Scottish Parliament
Edinburgh
EH99 1SP

19 November 2024

Dear Edward,

Environmental Governance Review

I am writing to you in your role as convener of the NZET Committee to inform you that I have today laid a written statement on the effectiveness of environmental governance arrangements. I enclose a copy of the statement with this letter.

As you are aware, section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 required Ministers to review and prepare a report into the effectiveness of the governance arrangements introduced by the Act. The report was published on 1 June 2023 and a public consultation was launched. The report covered the matters required by section 41 and provided an overview of wider issues of environmental governance. An additional supplementary briefing paper presented background information on the issue of environmental courts.

Following the close of the consultation, section 41 requires Ministers to lay before Parliament a statement that sets out the details of the consultation that was carried out, a summary of any views expressed in response to the consultation, and the Scottish Ministers' recommendations in response to those views.

I would be pleased to discuss the statement with the Committee.

Yours sincerely,

GILLIAN MARTIN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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Statement on the Effectiveness of Environmental Governance Arrangements

Statement to the Scottish Parliament made under the provisions of section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

Scottish Government

November 2024

Introduction

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ('The Continuity Act') contains a range of provisions to protect Scottish law and society from the impacts of withdrawal from the EU. Part 2 of the Continuity Act comprises three key measures to protect environmental standards and promote sustainable policies: the creation of a domestic system of environmental governance including the establishment of Environmental Standards Scotland (ESS), the introduction of duties on Scottish Ministers and other public authorities to have due regard to the guiding principles on the environment, and a statutory requirement on the Scottish Ministers to publish and have due regard to an environmental policy strategy.

Section 41 of the Continuity Act requires the Scottish Ministers to review and prepare a report into the effectiveness of the governance arrangements introduced by the Act. The Act requires the report to cover the following three matters:

- whether the provisions of the Environmental Governance Chapter of the Act have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU,
- whether the law in Scotland on access to justice on environmental matters is effective and sufficient, and
- whether and, if so, how the establishment of an environmental court could enhance the governance arrangements.

The Scottish Government published its report into the effectiveness of governance arrangements on 1 June 2023. The report covered the three matters listed above and also provided an overview of wider issues of environmental governance. Following the consultation, section 41(6) of the Continuity Act states that the Scottish Ministers must lay before the Scottish Parliament a statement setting out:

- details of the consultation that was carried out,
- a summary of any views expressed in response to the consultation, and
- the Scottish Ministers' recommendations in response to those views.

Details of the consultation that was carried out

The consultation on the report into the effectiveness of governance arrangements¹ opened on 2 June 2023 and ran for 19 weeks until 13 October 2023.

The report was published and laid in the Parliament on 1 June 2023. The report and consultation were published on the Scottish Government Citizen Space webpage. Stakeholders were provided the opportunity to request printed versions of both the report and consultation document. Additionally, stakeholders also had the opportunity to provide written responses to the consultation via email or a physical copy sent to the Scottish Government. As part of the consultation, a supplementary briefing paper on an environmental court² was published for stakeholders to consider.

Once published, information about the report and consultation document, as well as the supplementary briefing paper containing background information on environmental courts, was circulated to stakeholders from a range of sectors including local authorities, public bodies, environment, academia and third sector community organisations.

As part of the consultation, the Scottish Government held three stakeholder engagement workshops in September 2023. The workshops comprised a structured discussion of the content of the report, and provided the opportunity for stakeholders to present any considerations on wider issues of environmental governance.

Responses to the consultation

The consultation received a total of 25 responses, including 20 responses via the Scottish Government Citizen Space portal and five responses received via email. Of the 25 responses, seven responses were from individuals, five were from Public Bodies/Organisations, and 13 responses were from non-governmental organisations and industry bodies.

¹ [Environmental governance arrangements: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/Environmental-governance-arrangements-report-2023/pages/1-1-introduction.aspx)

² [Environmental Governance Review Briefing Paper on an Environmental Court.pdf \(consult.gov.scot\)](https://consult.gov.scot/Environmental-Governance-Review-Briefing-Paper-on-an-Environmental-Court/)

Summary of views expressed in response to the consultation

Overview of environmental governance in Scotland following exit from the EU

The report provided a [strategic overview chapter](#) which covered wider issues of environmental governance which were raised with the Scottish Government within the evidence sessions. This section of the consultation provided respondents with the opportunity to present comments and evidence on wider issues of environmental governance in Scotland.

1. Do you have any general comments on the scope of the review and the Scottish Government approach?

There were 19 responses to this question from the 25 respondents. Respondents commented on the scope of the report and the position taken by the Scottish Government, as well as access to justice and ESS.

The report

The section 41 duty on the review and the report into environmental governance was broadly welcomed by all respondents to the consultation. However, a majority of stakeholders viewed the scope of the report as being too high level and without providing a focus on the issues that some desired. Some stakeholders encouraged the government to consider a more widely focused review looking at a wider range of issues of environmental governance. Some areas that stakeholders would like to see a greater focus on included appeals in planning law, cost of court action and enforcement action.

However, there was some agreement with the Scottish Government on the scope of the report and positions presented. Specifically, some responses agreed that any changes to the existing governance arrangements must recognise the possible delay and uncertainty in the system that any changes could cause.

Additionally, there was some criticism and disappointment with the Scottish Government's position on the wider issues of environmental governance, with some responses seeking greater detail on how the government came to this position. Furthermore, it was noted that the report in their view did not include detail on the relationship between the Scottish and UK Governments on environmental governance.

Access to justice

Points were raised in this question to the detail on ways to access to justice, particularly in relation to the Scottish Public Services Ombudsman (SPSO) and Drinking Water Quality Regulator for Scotland, noting that the report overlooks these bodies in regard to access to justice.

Points raised about ESS

Responses explored the role of ESS to date and there was widespread approval from respondents about its creation and role. However, it was argued by some respondents that in their view ESS lacks the scale of enforcement powers that respondents think are appropriate, and that new powers should be provided to the organisation so that its actions can be strengthened.

2. Do you have any further comments on wider issues of environmental governance?

There were 18 responses to this question from the 25 respondents, which commented on the role of ESS, access to justice and the current system of environmental governance after leaving the EU.

Points raised about ESS

Some respondents brought up concerns about how organisations, including public bodies and entities, share information with ESS. These respondents made some suggestions about consideration of changes to existing legislation for certain public bodies and organisations to facilitate information-sharing with ESS.

A small number of responses expressed support for the Scottish Government's position on not expanding the role of ESS, especially in relation to individual planning and consenting decisions.

One response noted that the ESS Strategic Plan states that ESS will ensure that Scotland keeps pace with developments in environmental law and policy in Europe and elsewhere. However, the respondent questioned how ESS will do this and if it is the role of ESS to provide recommendations where legislation fails to align with the EU.

Access to justice

Several respondents argued that there is a connection between environmental damage and the high cost of accessing justice. They argued that the prohibitive cost of accessing justice deters individuals and organisations from taking action to prevent environmental damage.

Additionally, some responses pointed to what they saw as a lack of transparency in the decision-making processes of regulatory bodies and the government in environmental governance. This lack of transparency is argued to erode confidence that decisions are being made in a fair manner, taking into account all relevant interests. These responses also noted that the lack of confidence is exacerbated by the perception that certain duties imposed on public bodies are not resulting in material differences.

Some responses noted that stakeholders continue to challenge decisions, leading to expensive and time-consuming review and redress procedures for public bodies. It is argued that these issues are attributed to resource constraints rather than deficiencies in the legal frameworks.

Environmental governance following the exit from the EU

Numerous responses indicated that in their opinion several gaps in environmental governance existed before the UK's withdrawal from the EU, including the monitoring, measuring, and reporting on environmental data, the implementation of environmental law, and the introduction of more powers to enhance access to justice. It was suggested that while some of these have been addressed by the Continuity Act, others are argued to persist, and some respondents called for a comprehensive review to address these gaps in greater detail.

A limited number of responses contended that the UK's exit had left Scotland outside of EU jurisdictions and that they believed that there had not been an adequate replacement for these EU institutions.

Environmental Principles

The introduction of the new duty on Ministers and public bodies to consider the environmental principles was mentioned. One response noted that the new duty would not apply to every regulatory and operational decision. The response noted that legislation and caselaw does set procedures for making regulatory decisions and embed the principles. However, the respondent argued much of this caselaw comes from the EU and will lose precedence after 1 January 2024, under the Retained EU Law Act. The respondent concluded that in their view it is unclear what the implications of this change will have on individual regulatory decisions, particularly in the event of a successful challenge in the UK Courts.

Whether the provisions of the Continuity Act have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU?

This [section of the report provided an overview of environmental governance following the exit of the UK from the EU](#), covering issues such as environmental law, existing governance arrangements, [the role of Environmental Standards Scotland](#) and how this compares to governance within the EU. The answers to each question are summarised below.

1. Do you have any comments on the content of chapter three and the Scottish Government policy on this subject?

There were 18 responses to this question from the 25 respondents. A majority of responses focused on the role and remit of ESS and its formation, while a smaller number of responses explored access to justice and the judicial system.

Points raised about ESS

Some responses expressed concern about a requirement for stakeholders to demonstrate systemic failure to ESS in order for it to raise an investigation into a

particular issue. The responses argued that NGOs and community groups often lack the resources to identify and report systemic failures, which impacts on local communities efforts to achieving action to address local concerns.

These respondents further argued that the report should contain more detailed information about ESS investigations and the level of representations received. They raised concerns about the exclusion of individual cases from ESS's remit, asserting their belief that it unhelpfully constrains its powers. Specifically, some responses argued that individual cases can have a significant impact on the environment and the exclusion of individual cases from ESS remit therefore limits their ability to uphold environmental law and protect the environment. Additionally, some responses argued that this puts environmental governance in Scotland at a disadvantage compared to England and Northern Ireland.

However, a small number of responses supported the Scottish Government's position as they believe that it was appropriate for ESS not to consider individual cases, as long as ESS effectively addressed systemic issues.

Additionally, some responses noted that ESS is settling into its role well, and expressed their support for its strategic plan. However, some argued it was premature for the Scottish Government to conclude that ESS is effective, especially in the absence of meaningful improvements in its areas of investigation.

Moreover, it was pointed out in some responses that ESS has limited powers, particularly as it cannot conduct investigations in areas such as national defence and financial budgets.

Several respondents challenged ESS's effectiveness, as they felt it did not fully replicate the functions of the European Commission and the Court of Justice, and that ESS could not be the sole response to leaving the EU and broader environmental governance issues. They highlighted issues such as the lack of legal expertise, focus on challenging regulatory and performance failures, and limitations on individual cases.

One response expressed their support for more coordination between regulatory bodies and ESS, particularly in supporting individuals and groups seeking environmental justice.

Some responses suggested that, in their view, the impact of the proposed Human Rights Bill for Scotland and a specialist environmental court working proactively with ESS would be better suited to assess individual cases and government policy against environmental law and targets.

One response noted that in their view it remains unclear how ESS exercises their powers and functions, especially when they may interfere with the activities of other regulators. Several responses urged the Scottish Government to continue monitoring the effectiveness of the Continuity Act in ensuring governance arrangements as ESS develops in its role. Some respondents expressed concerns that ESS isn't utilising its powers, especially regarding the investigation of enforcement by public bodies and environmental damage.

Several responses argued that the text of the Continuity Act presumes that effective environmental governance existed before the UK's exit from the EU, which they disagreed with. Some recognised that replacing the external framework provided by the EU would be a significant task, and felt the current arrangements were working well in the current context.

Access to justice and the judicial system

Most of the responses pointed out the loss of routes to access justice or address environmental damage due to the exit from the EU.

A small number of responses discussed accessing justice and the barriers. They argued for changes in the judicial review system to allow cases to be reviewed on their merits, particularly for Aarhus cases.

2. Do you have any further comments on the existing environmental governance arrangements?

There were 13 responses to this question from the 25 respondents. The majority of respondents to this question reiterated their response that it was too early to establish any firm conclusions.

Points raised about ESS

Some stakeholders agreed with the report that ESS has been working effectively and welcomed their flexible approach to investigations, for example some noted that the fact that ESS can pause an investigation but ensure monitoring of an issue is an effective way to ensure resolution without the application of resources to the management of enforcement action. It is their view that this would allow resource to be allocated to practical solutions.

Other responses supported the Scottish Government's position that it remains appropriate that individual cases are excluded from the remit of ESS as, in their view, ESS should focus on issues of systematic failure. Additionally, some respondents welcomed the suggestion in the report for the government to continue to work on removing friction from the system.

A small number of respondents commented that it is essential that the government should work to ensure that appropriate resource is provided to ESS and public bodies, particularly SEPA as it recovers from a loss of data. The need for more accessible and better data from all public bodies was argued by some.

One response noted that not all of the legislation within the remit of ESS was derived from the EU, and this is shown by the breadth of work carried out by ESS. This response argued that ESS's remit includes keeping under review the implementation of any international obligation of the United Kingdom relating to environmental protection.

Governance arrangements and external engagement

Some responses argued that existing governance arrangements have, in their view, contributed to the nature and biodiversity crisis, and have helped protect businesses and landowners from improving their environmental responsibility.

Another response noted that the Memorandum of Understanding between ESS, the Interim Environmental Protection Assessor for Wales and the UK Office for Environmental Protection (OEP) in September 2022³, is a small but essential building block in the framework of environmental governance for Scotland. This response indicated that it will take time to understand if this is sufficient in ensuring that the relevant information is shared via regular communication between ESS, the Environmental Protection Assessor for Wales and OEP. The respondent concluded that this is important as there is now an understanding that the separation of devolved and reserved powers is not clear, and expressed disappointment that the report overlooks this.

3. Do you have any further information or evidence on the issues presented in chapter three?

There were nine responses to this question from the 25 respondents. Some of the topics discussed in response to this question included the Scottish Government's biodiversity consultation, the performance of ESS and comparison with governance arrangements in the EU.

Biodiversity consultation

Several responses raised the Scottish Government consultation on biodiversity. It was highlighted that within the biodiversity consultation, there is a proposal to create an independent review body to report on the progress in meeting the statutory nature recovery targets. One respondent argued that this will be an important element of environmental governance, and more detail is needed on how this would work with ESS and other public bodies.

Points raised about ESS

Some responses questioned the findings of the report regarding the performance of ESS. These responses noted that it is still early, but in their view that ESS has shown that it has an unwillingness to challenge the constraints of individual versus issues of systematic failure, and that ESS has a bureaucratic, slow and conservative approach on identifying and addressing environmental failures and delivering access to justice. One response argued that ESS has failed to pursue cases by handing cases to the SPSO, the information commissioner, or regulators, which they deemed unacceptable.

EU comparisons

Some responses covered the changes in governance arrangements compared to that of the EU. Some of these challenged the report's findings that ESS is accessible

³ [Memorandum-of-Understanding-between-the-Office-for-Environmental-Protection-20221011.pdf \(environmentalstandards.scot\)](#)

and often more accessible than the European Commission, as the Commission had significant engagement with governments and NGOs. A small number of responses covered the changes with the EU and how this impacts public bodies. These responses argued that some of these differences have resulted in public bodies and local authorities being more involved in environmental governance than previously; indicating that this was because bodies have to respond to more requests for information from ESS than was required under arrangements with the EU. Some responses noted that the changes have resulted in higher demands on resources which have not been covered with any additional funding from government.

Whether the law in Scotland on access to justice on environmental matters is effective and sufficient?

This [section of the report covered evidence around access to justice on environmental matters in Scotland](#), presents stakeholders' input and the Scottish Government position on ensuring that there is effective access to justice on environmental matters in Scotland.

1. Do you have any comments on the content of chapter four and the Scottish Government position on this subject?

There were 16 responses to this question from the 25 respondents. Responses covered a wide range of topics including the measures to improve access to justice, ESS and whether it provides an additional route to access to justice, the Aarhus Convention, third party right of appeal, standard of review and forestry protection.

Measures to improve access to justice

Some responses argued that this section of the report lacks evidence. The responses suggest that there is not a meaningful consideration of the failures of process and outcome around access to information which is the first step towards access to justice. Some responses stated that, in their view, while the number of developments listed in the report may help improve access to justice, the outcome of these are uncertain and do not promise definite improvements.

On the developments to improve access to justice included in the report, several responses welcomed the proposed recognition of the right to a healthy environment but suggested that it is unclear how this will lead to any substantial change in enforceable rights within several years. Some responses noted that there is a lack of detail on how this new right would be enforced.

A small number of responses raised concerns that the rules for Protective Expenses Orders (PEOs) can be complex and require disclosure of personal information, and that the review on PEOs does not guarantee improvements.

On legal aid, some responses stated that it should be expanded to public interest environmental litigation to ensure that civil society and NGOs are eligible, which in their view would improve access to justice. Alternatively, other responses noted that

it is important to strike a balance between access to justice and ensuring appropriate safeguards are in place against spurious litigation. Particularly, as it is noted that judicial reviews are complex and costly for all parties, including the public purse, while there can also be an opportunity cost. Therefore, these responses argue that it would not be appropriate to extend legal aid to NGOs or community groups.

Some responses did welcome the indication that the Scottish Government will continue to explore ways to improve expert support within the judiciary.

Measures suggested by stakeholders to improve access to justice

Some responses argued that qualified one-way costs shifting (QUOCS) should be introduced for public interest environmental litigation to replace the 'loser pays' rule. One response also highlighted that the report fails to note that the exemption of fees for Aarhus cases relates to only a small part of seeking justice at the Court of Session and by limiting the exemption to Court of Session, this excludes cases in the Sheriff Courts or the Land Court.

Does ESS provide an additional route to access justice

Several responses suggested that as ESS is the only oversight body, it plays a big role in delivering access to justice. However, it was also argued that ESS does not provide sufficient access to justice as it is argued that there are often delays in determining if they can take a case, due to specificity, or if it is best managed by approaching the regulator or duty holder. It was suggested that this was particularly the case where ESS passes a case to the SPSO, as SPSO has a backlog of cases which leads to delays. Another response focused on the need for an environmental court, indicating that since ESS is not a court or adjudicative body, arguing that its existence alone does not meet the Aarhus Convention requirements on access to justice and an environmental court may be necessary.

Some responses raised concern over the loss of the oversight of the Court of Justice of the EU, and the access to justice through it, while other responses raised concerns over the lack of merits-based reviews of environmental cases.

Aarhus Convention, third party right of appeal and standard of review

On the Aarhus Convention, some of the responses welcomed the acknowledgement that Scotland is not complying with the Aarhus Convention in relation to the cost of accessing justice, and argued that the Scottish Government should commit to complying with the Convention⁴. One response argued that the report states without any justification that third party rights of appeal are not required to comply with the Convention, when the Committee has held that there are very similar arrangements in Northern Ireland who are in breach. This response argued that there should be a

⁴ The relevant section at page 28 of the Report states "The Scottish Government is committed to ensuring that there is effective access to justice on environmental matters in Scotland. We are aware of our obligations under the Aarhus Convention and work is in progress in relation to the areas of concern raised by the ACCC in order to ensure Scotland's compliance with the requirements of the Aarhus Convention."

re-consideration of equal rights of appeal in planning, and that the Scottish Government position may not be in compliance with the Aarhus Convention.

Some respondents raised concerns about the standard of review applicable in judicial review proceedings. In particular, the respondents commented that the Wednesbury unreasonableness standard⁵ is set very high and is difficult to overcome.

Protection of forestry

One response argued that there is very little access to justice in Scotland in regard to protecting forests and woodlands in Scotland, as Scottish Forestry has not worked with Procurator Fiscal in prosecuting illegal tree felling, while the introduction of non-native species has gone unchallenged.

2. Do you have any further comments on existing access to justice on environmental matters?

There were nine responses to this question from the 25 respondents. Responses covered a range of topics including the right to a healthy environment, the Aarhus Convention, legal aid, expert witnesses and ESS.

Scottish Public Services Ombudsman (SPSO)

It was noted by one respondent that the SPSO will have a central role in public service complaints in relation to the right to a healthy environment, which may require changes to SPSO's powers to ensure they can do more in a more rights-based environment.

Aarhus Convention

A number of responses noted their disappointment that the paper does not mention or address the issues of merits based rulings. These noted that Article 9.2 of the Aarhus Convention requires a state to provide its citizens (and NGOs) with access to a review procedure before a body established by law, to challenge the substantive and procedural legality of any decision, act or omission". Respondents noted that this is subject to an ongoing representation to the Aarhus Convention Compliance Committee in respect of Scotland. Some stakeholders noted their disappointment that the report does not recommend a wider review to consider such issues.

Legal aid

Legal aid was brought up as a barrier to justice within multiple responses, with stakeholders reiterating that it needs substantial and urgent changes. Respondents argued that PEOs and QUOCS dimensions need to be effectively addressed to rebalance the legal process in relation to costs and power. Additionally, some responses argued that the way courts currently process work does not allow

⁵ A decision, an action or a failure to act by a public body may be challenged by way of judicial review on the grounds of irrationality or unreasonableness. This is sometimes referred to as 'Wednesbury unreasonableness' after the case *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948)*. A decision is Wednesbury unreasonable if it is "so unreasonable that no reasonable authority could ever have come to it".

comparability or fairness between Sheriff Courts and the Court of Session regarding fees.

Expert witnesses

Other responses indicated that there is a need to improve the use of expert witnesses in courts, and argued that this could be achieved easier through the creation of an environmental court.

Points raised about ESS

It was suggested by some responses that while the report highlights the ability of ESS to provide an additional route to access, this is contradicted by their inability to deal with individual cases.

Right to a healthy environment

Some responses noted that whilst enshrining a right to a healthy environment in domestic law would be a positive step, it is not the solution to improve access to justice and not in a reasonable timescale, as the full implementation will be several years away. These responses argued that it would be more effective to ensure environmental standards are set and enforced appropriately, with adequate resources, and communities supported to ensure the law is upheld. It was noted within one response that the new right could help highlight that environmental governance arrangements may not be working as well as they could be.

Information and access

One respondent stated that effective access to justice requires attention not just to the formal procedures for resolving disputes but also to much earlier stages of information and education on legal rights and processes, as well as timely access to expert advice.

3. Do you have any further information or evidence on the issues presented in chapter four?

There were seven responses to this question from the 25 respondents. Responses to this question centred around legal aid, greater transparency and evidence brought to public bodies and further expert support to prosecutors.

Legal aid

Some responses noted that while legal aid could be expanded so that it is available to NGOs, this would be heavily dependent on government finances which, as evidence suggests, are extremely strained. Therefore, it would depend on spending decisions by government.

Greater transparency and evidence

Other responses insisted that there is a need for greater transparency and evidence around the requests, cases and complaints which are brought forward to public bodies, ESS, government and parliament. In particular, respondents would like better

available data on ESS and their cases to help to inform a meaningful public discussion.

Expert support to prosecutors

It was commented that efforts to provide further expert support to prosecutors would be welcomed and supported by some respondents. Respondents noted that public bodies work with environmental crime units, which help to provide a standing offer of training and support on environmental matters, and suggested that the Scottish Government engage with public bodies to explore how these initiatives can be built upon.

Whether and, if so, how the establishment of an environmental court could enhance the governance arrangements introduced by the Continuity Act?

This [section of the report provided an overview of the evidence on whether an environmental court can enhance existing governance arrangements](#), and presented the current position of the Scottish Government on the issue.

1. Do you have any comments on whether an environmental court would enhance environmental governance arrangements and the Scottish Government position on this subject?

There were 17 responses to this question from the 25 respondents. The responses focussed on a number of issues such as whether an environmental court could enhance governance arrangements, the previous consultation on environmental governance arrangements in February 2019, the Aarhus Convention, how an environmental court could improve access to justice and next steps.

Environmental court and governance arrangements

Several of the responses expressed their support for the creation of an environmental court or tribunal. However, there is less consensus amongst responses on the remit of such a court or tribunal and how this would be established. Several stakeholders expressed their disappointment at the Scottish Government's position that it was not convinced that the creation of an environment court would enhance governance arrangements. Some respondents argued that there is a lack of thinking and consideration on how the overall system of environmental governance could be different and how an environmental court could be a significant element of a new system.

It was also suggested that governance arrangements could be improved by the introduction of other initiatives, such as a statutory tribunal. It was suggested this could be used to deal with environmental matters that go beyond legal issues. This response noted that a statutory tribunal can be less intimidating than court and allows people to represent themselves.

Several stakeholders noted that in their view the current governance arrangements in relation to access to justice are fragmented and unsatisfactory. They therefore argued that an environmental court would help improve access to justice, as it would be a clear method for people to access justice, and a court would also help ESS to enforce environmental standards.

Some responses suggest there is considerable evidence that an environmental court would enhance environmental governance arrangements. They argued that environmental courts in other countries have helped to develop judicial expertise in environmental law. It was suggested that in Sweden the use of technically trained judges in environmental courts has improved the quality of judgements, while the Land and Environment Court of New South Wales has developed the concept of 'ecologically sustainable development' and developed planning principles. Lastly, it is argued that the environmental courts have helped incorporate alternative dispute resolution, with the Planning and Environment Court of Queensland appointing an alternative dispute registrar to help settle cases.

On the other hand, several responses expressed their agreement with the Scottish Government position that there is no strong case to establish an environmental court at this point. With some responses noting the different range of routes to access justice on environmental matters which currently exist.

Previous consultation

Some responses commented that the report did not highlight that the majority of respondents to a previous consultation in February 2019, on Environmental Principles and Governance After Brexit, were in favour of introducing an environmental court and tribunal. Responses further argued that support for an environmental court within the evidence sessions that informed the report had also been overlooked.

Aarhus Convention

A key argument put forward for an environmental court by respondents was that it would help to ensure the Scottish Government meets its requirements as part of the Aarhus Convention in regards to access to justice. Responses argued that without a fuller understanding of whether the current system discourages cases coming to court and whether desired outcomes are achieved, potential barriers to access to environmental justice should be considered further as part of any decision on an environmental court or tribunal.

Improving access to justice

Additionally, some respondents suggest that over time environmental courts develop innovative approaches and solutions to environmental cases, which improve access to justice, mainly as these reduce the cost of litigation. In their view this would improve environmental decision making, as governments look to meet the challenges of the climate and nature emergencies.

Next steps

Some responses argued that the Scottish Government should agree to conduct an in-depth consultation on an environmental court. With some stakeholders also querying what further evidence the Scottish Government would need to reconsider its position on an environmental court.

2. Do you have further comments on whether an environmental court can enhance governance arrangements?

There were eight responses to this question from the 25 respondents. Responses focussed on routes of appeal, judicial reviews and how an environmental court could enhance environmental protections.

Routes of appeal

Some respondents argued that the routes of appeal, and the way that these are accessed and used on regulatory decisions on environmental matters, appear to be fragmented and inconsistent. Responses argue that the overall landscape demands further attention to produce a more coherent system that is easier to engage with and allocates decision-making to appropriate levels which are governed by appropriate procedures that enhance access to justice.

Justice system

Some stakeholders argued that having arrangements in which environmental litigation is carried out in different courts and tribunals has resulted in a fragmented and inefficient system, and that the creation of an environmental court could provide a focus point for environmental issues and improve access to justice. Furthermore, some stakeholders contend that the fragmented system does not allow legal and scientific expertise on environmental issues to be built up within the judiciary, as in their view, judges may not be exposed to environmental disputes on a regular basis.

Judicial review

It is argued that existing mechanisms, such as judicial review, act as a glass ceiling, which can be seen but are routes to justice in name only. Some respondents argued that there is limited access to justice on the basis that judicial reviews are costly, inaccessible and complex, and that the level of environmental expertise within the judicial system is limited.

Environmental protections

Arguments were made by several respondents on the need for radical change to ensure a high standard of environmental protection and that the creation of an environmental court be a step in the right direction. Certain responses also noted that in their view an environmental court would improve enforcement, with some responses insisting that too few environmental cases are enforced. Their view was that this would help to interpret and apply a complex area of law in a coherent way, which would benefit public bodies and authorities.

3. Do you have any further evidence or information on whether an environmental court can enhance governance arrangements?

There were nine responses to this question from the 25 respondents. Responses covered protection of woodlands and the fragmentation of the judicial system.

Woodland protection

One respondent reiterated the view that Scottish Forestry have not used their regulatory powers, while the Procurator Fiscal is argued not to prosecute woodland protection cases.

Judicial system

It was argued within several responses that the current judicial system needs reform, as it is fragmented with multiple routes of appeal against regulatory decisions on environmental matters.

Report of Stakeholder Engagement Workshops

Overview

As part of the consultation on the report into the effectiveness of governance arrangements, the Scottish Government engaged in discussions with stakeholders. This included three workshops on the 5th, 7th, and 12th, of September. The workshops aimed to raise awareness of the report, encourage consultation responses, and engage with stakeholders directly. The agenda focused on the content of the report firstly covering the three areas which the Scottish Government was required to consult on through the Continuity Act, before offering stakeholders the opportunity to provide general comments on wider issues of environmental governance. The key points have been collated from all workshops and listed by chapter below. An attendance list for each workshop can be found below.

Existing Governance Arrangements

Questions discussed at the workshops included:

1. What is your experience with the new governance arrangements post-Brexit, particularly with ESS?
2. How does this compare with arrangements in the EU (do you agree with the differences listed within the report)?
3. Do you feel there are any gaps within the new governance arrangements since leaving the EU?

Summary of Points:

- There is widespread satisfaction amongst many of the stakeholders with their relationship with ESS and how ESS is functioning. Specifically, the differences in the local approach that ESS adopts compared to the EU is welcomed.
- Stakeholders did note that there is a significant difference between the remit of ESS and the EU, as ESS can be specific and there is a greater level of scrutiny. ESS is more accessible than the EU Commission. In addition, the remit of ESS extends to all environmental law, not only to EU environmental law, which widens the scope, for example to forestry.
- While ESS has worked to fill some gaps left by the exit from the EU, some stakeholders consider that there are still some gaps in environmental governance, some of which existed prior to exit from the EU.
- Some stakeholders hold that the report implies that ESS has a wider remit than it does, as the loss of the EU Commission, European Court of Justice, and the monitoring of European Environment Agency has created gaps that ESS cannot address on its own.
- Some stakeholders hold the view that there are clear gaps in governance relating to the monitoring and scrutiny of policies and public bodies.
- While most feedback about ESS is positive it was considered by some participants that ESS has a lack of urgency to take things to court, has a narrow remit and it is unknown if it has adequate remedies to achieve a solution (e.g., lack of the ability to issue penalties).

- Some participants commented that where there is an alleged violation of laws, ESS requires a considerable amount of evidence which is difficult for small organisations to obtain.
- Additionally, some stakeholders think that the report and government should consider how effective the ESS informal arrangements are at achieving success and how these are maintained.
- Stakeholders raised the issue as to whether the report may be looking too inward and considered that the report could have covered whether Scotland remains aligned with the EU. Some stakeholders' view was that there are developments within the EU that Scotland may not be keeping aligned with, for instance, the developing standard for pesticide use: the EU Green Deal sets out ambitious targets, including a 50% reduction in overall use and risk of chemical pesticides and a 50% reduction in hazardous pesticides by 2030.
- Some participants thought that the report should have considered in greater depth broader questions related to environmental governance, specifically how new governance structures impact the public sector and if there are adequate structures to support the public sector.

Access to Justice

Questions discussed at the workshops included:

1. Do you feel that the ongoing work and policy proposals will improve access to justice?
2. Do you have any comments on the proposed recognition and inclusion of the human right to a healthy environment in the new Human Rights Bill?
3. Are you aware of other initiatives that government should be aware of or considering on improving access to justice?

Summary of Points:

- Stakeholders noted that it is positive that the report acknowledges the concerns of the Aarhus Compliance Committee around access to justice.⁶ The UK is a signatory to the Aarhus Convention, and some stakeholders drew attention to its importance with respect to access to justice and to work across the UK to address the matters raised by the Compliance Committee.
- Some stakeholders indicated that there is a need for greater information on how the Scottish Government will aim to comply with the Aarhus Convention by October 2024, with views expressed that there is no clear commitment that current proposals will meet compliance and if these do not, that further proposals will be guaranteed.
- Several participants noted that the Aarhus Compliance Committee has yet to comment on third party right of appeal in Scotland, and therefore the report

⁶ The relevant section at page 28 of the Report states "The Scottish Government is committed to ensuring that there is effective access to justice on environmental matters in Scotland. We are aware of our obligations under the Aarhus Convention and work is in progress in relation to the areas of concern raised by the ACCC in order to ensure Scotland's compliance with the requirements of the Aarhus Convention."

and Scottish Government position that the planning system is inclusive could yet be challenged.

- There is significant support amongst stakeholders for the inclusion and recognition of the right to a healthy environment within the Human Rights Bill. Some stakeholders noted that there is a need for more information on the enforcement of the rights.
- Some participants discussed how environmental issues are now becoming more connected to health issues, and the inclusion and recognition of a right to a healthy environment will increase awareness of the link between environment and health. The governance review could be an opportunity to consider structures of community empowerment and how institutions can support communities in achieving positive health outcomes.
- Some stakeholders raised concern with the developments considering the right to a healthy environment. There are concerns about how this will work in practice and change the procedural arrangements. The proposals within the Human Rights Bill can be seen to present complexity and there is a lack of detail on the role public bodies will play in ensuring these rights and how they will react to it.
- Stakeholders noted that improved signposting of routes to justice within the current system could help improve access to justice.
- Participants suggested that there is an argument for increased expertise within the system, for example, training has been provided to councillors in planning policy, a similar pilot could be run for judges.
- Some stakeholders argued that, because of Judicial Review, not enough cases are reviewed on the basis of merit. This is an issue which they felt should have been addressed in the report.
- Stakeholders noted that the Programme for Government (22/23) sets out proposals for new land reform, which will make requirements and regulations more enforceable, and asked whether similar developments will be trialled elsewhere to improve access to justice.
- Most stakeholders welcomed the policy proposals listed in the report as these may improve access to justice. However, they argued that these processes are underway and have unknown outcomes. Therefore, it was argued that government should make a commitment that if these fail to address issues within access to justice then further measures will be proposed.

Environmental Court

Questions discussed at the workshops included:

1. Do you think an environmental court could enhance existing governance arrangements?
2. Are you aware of any advantages or disadvantages of establishing an environmental court in Scotland?
3. At what level do you see an environmental court considering issues – at the level of policy/ guidance, or at the level of individual decisions?

4. Do you consider that the court would be able to order a material change in the actions of government, for example requiring new infrastructure or clean up actions?
5. How would any new actions required by the court be funded?
6. Would the court's decisions to demand actions be subject to requirements such as the principles duty, environment assessment, consultation, carbon assessment, etc?

Summary of Points:

- Some stakeholders argued that the government should present more information on how effective the current system is of dealing with environmental cases, particularly the routes to access justice.
- It was noted that while ESS has not taken any investigations/cases to court, this will inevitably happen over time, and this may highlight the effectiveness of the current system and access to justice.
- Certain stakeholders expressed concerns around access to the courts, particularly how costly this can be, and argued that an environmental court could improve access to court for stakeholders.
- A number of stakeholders voiced their support for the creation of an environmental court arguing that it would significantly enhance the existing governance arrangements. Several voiced their disappointment with the position of the government on the issue.
- It is argued that a dedicated environmental court would be flexible, offer better routes to justice and new methods of dispute resolution. Due to this, it was argued that the court would provide cost savings over the longer term through efficiencies.
- Stakeholders noted that there is already an existing specialist court in Scotland, the Scottish Land Court. It was argued that this could be expanded to include issues of the environment, and therefore the government would not need to start from scratch.
- Some stakeholders suggested that access to justice requires reforms to legal aid and protective expenses orders as a part of achieving Aarhus compliance to deliver fairer, cheaper, quicker access to process and outcomes. A small number of participants expressed doubts that the right to a healthy environment will deliver meaningful change.
- Some stakeholders queried where the jurisdiction of an environmental court would begin and end as issues such as planning would incorporate many sub-issues. More expertise on environmental matters in the current judicial system could be a useful alternative to a specialist court.
- Several stakeholders agreed that there may need to be consideration of the pros and cons of an environmental court, including compromises which may involve the expansion of the Scottish Land Court and increased specialisation within the existing system. On the latter, there is evidence that increased specialism within the judicial system brings benefits such as improved resolution.

- Some participants noted that a ‘one stop shop’ environmental court is attractive to access to justice, however, they thought that the government should think about the jurisdictional boundaries of an environmental court. These stakeholders also noted that the Court of Session still has excessive costs associated to access and it could be argued that creation of a specialist court or tribunal could lower costs.

Wider Issues of Environmental Governance

Questions discussed at the workshops included:

1. Do you have any further comments on additional matters of environmental governance which are covered in chapter 2 of the report?
2. Do you have any further comments on additional matters which are not covered in the report?

Summary of Points:

- Most stakeholders welcomed the publication of the Statutory Guidance on the Environmental Principles as it further reduces any gaps in governance following the exit from the EU. However, policies which are developed with a principle as the focus need to consider the resource implications of enforcement. For example, while policies which are based on the polluter pays principle are welcomed, enforcement of these policies places a cost on local authorities which needs to be considered by government.
- Some participants raised concerns around the potential impact of applying principles to international trade agreements and how this could be balanced.
- Some comments were raised which noted the role of local government in ensuring environmental governance operates successfully as these are the organisations that will likely enforce and deliver change. Therefore, it is important that information on existing arrangements and new developments is shared across all levels of government.
- Some environmental stakeholders insisted that the review of governance arrangements is too narrow and that broader questions on the whole framework of environmental governance are needed – e.g., the role of local authorities and public bodies, accountability and scrutiny and division of responsibilities?

Workshop Attendance

The organisations that attended these sessions are as follows:

- Scottish Courts and Tribunals Service
- SEPA
- NatureScot
- Royal Botanic Gardens
- Public Health Scotland
- ESS
- Green Action Trust
- Dumfries and Galloway Council

- Highland Council
- CEMVO Scotland
- Badenoch and Strathspey Conservation Group
- Environmental Rights Centre for Scotland
- The National Trust for Scotland
- Forestry and Land Scotland
- SE Link
- Fisheries Management Scotland
- Sustainable Scotland Network
- COSLA
- ECAP Consultancy
- Law Society of Scotland
- RSPB

Scottish Ministers’ recommendations in response to the views raised in the consultation

Following the close of the consultation, section 41 of the UK Withdrawal from the European Union (Continuity) Act 2021⁷ (the ‘Continuity Act’) requires Scottish Ministers to lay before the Scottish Parliament a statement comprising:

- details of the consultation,
- a summary of any views expressed in response to the consultation, and
- the Scottish Ministers’ recommendations in response to those views.

This section of the statement will set out Ministers’ recommendations in response to the views raised in the consultation on the report and sets out our reasoning behind those recommendations.

Environmental Governance Arrangements

The first matter that the Continuity Act requires to be covered by the report is “whether the provisions of this Chapter have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU.”

The report set out an overview of environmental governance in Scotland following exit from the EU. This discussed the roles of government, of parliament, of regulatory bodies and ESS and of the courts, in promoting and protecting high environmental standards. The report also set out the early experience with the operation of the provisions of the Continuity Act that established ESS and gave it its powers and functions. The report concluded that the Scottish Government is content that the provisions in Chapter 2 of the Continuity Act establishing ESS and providing for its powers and functions have ensured that there continues to be effective and appropriate governance relating to the environment following the withdrawal of the United Kingdom from the EU. The report emphasised the independence of ESS and made some observations about the operation of the system of environmental governance, including with respect to the treatment of cases involving a concern about the application of environmental law in a single location.

As set out in the Consultation Analysis, the responses on the environmental governance arrangements section of the report were generally positive on the creation of ESS. There were some calls for changes to the approach of ESS to the consideration of individual cases.

Some responses to the consultation from environmental NGOs stated that the report did not give sufficient consideration to wider issues of environmental governance, such as the role of public bodies and wider environmental quality concerns. It was argued that the report should have discussed the quality of environmental

⁷ [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2021/11/section/41)

governance, encompassing government and regulators as well as ESS, impacts on environmental outcomes such as air pollution, water pollution, biodiversity and the climate crisis. The report set the particular issues of the effectiveness of the Continuity Act's provisions of environmental governance in a wider context. The focus of the report, consultation and response under section 41 of the Continuity Act is directed to consideration of the matters listed in section 41(2): wider consideration of environmental outcomes and policies is therefore outside the scope of this review, though may be referenced to provide relevant background. Indeed, the Continuity Act provides separately for an environmental policy strategy which will consider strategic policy issues.

In the period since the publication of the report in June 2023, ESS has continued to carry out and develop its role, conducting a number of significant investigations. The Scottish Government respects ESS's independence and has been itself the subject of a number of investigations. As is clear in the relevant Continuity Act provisions, it is for ESS to make their judgement about the prioritisation of matters for investigation, and they are accountable to the Parliament for the effective performance of their duties. Further experience of the operation of the Continuity Act environmental governance provisions since June 2023 has not changed the view that we took in the report.

Having fully considered the views raised in the consultation, the Scottish Government's recommendation is that there is no need to revise the environmental governance provisions in the Continuity Act.

The report discussed the exclusion of individual cases from ESS's remit, and recalled that this issue was discussed at length during the passage of the Continuity Bill. As anticipated in the report, this remains a concern for some stakeholders as was reflected in some consultation responses. ESS's consideration of representations about local or site specific environmental concerns is guided by its strategy and by the provisions of the Continuity Act.

Three provisions of the Continuity Act that have an important bearing on the exercise of ESS's functions with respect to local environmental concerns are set out below:

- ESS are excluded from using their enforcement powers with respect to "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 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)." The intention behind this provision was to ensure that ESS did not become an appeals body for regulatory decisions with impact on the environment such as permitting and planning decisions (sections 27 and section 32 of the Continuity Act).
- ESS are required to set out in their strategy how it will exercise its functions in a way that respects and avoids any overlap with other statutory regimes (including statutory provision for appeals) or administrative complaints procedures. (Schedule 2, para 1(1) of the Continuity Act)

- Where ESS may prepare an improvement report with respect to the failure of two or more public authorities if it “considers that the combined effect of two or more public authorities exercising their functions (including regulatory functions) in the same or a similar way constitutes a systemic failure by those authorities”. (Section 26(2) of the Continuity Act, note that at section 26(1) there is no requirement to identify a systemic failing with respect to an improvement report covering a single public authority.)

In its strategy, ESS sets out its practices for accepting representations and carrying out investigations, within the framework set by the Continuity Act. Nothing in the framework in the Act prevents ESS from investigating concerns within its remit from individual communities, including where concerns relate to compliance with, or the effective application of, environmental law by a single local authority or planning authority. There are examples of investigations that have been triggered by representations about local compliance matters, for example a representation received by ESS asserted that a local authority in Scotland was not complying with several environmental laws in respect of ‘permitted development’ works, despite the potential for adverse impacts on protected areas and/or trees⁸. As a result of ESS’s investigation, the local authority agreed to make changes to their procedures with respect to future cases.

Having considered the views expressed in consultation, the Scottish Government remains of the view that this exclusion as set out in section 27 and section 32 of the Continuity Act is appropriate, and that it should remain the case that it is not ESS’s role to act as a point of appeal for individual planning, licencing and consenting decisions. ESS’s role is to ensure that public authorities comply with environmental law in the exercise of their functions, not to review their judgement on individual regulatory or consenting decisions. ESS can also consider the effectiveness of the environmental law and policy that sets the framework for individual regulatory decisions. We also consider that the provision requiring ESS to avoid overlap with other appeals and complaints procedures is justified, and that it is appropriate that there is a requirement to identify systemic failure where an improvement report covers two or more public authorities.

Considering the views expressed in the consultation, there is a perceived difficulty in bringing to the attention of ESS matters concerning the application of environmental law in a particular geographical area, and the environmental impact on a particular group or community. We understand the position raised in consultation responses that communities can feel powerless in the face of circumstances leading to them suffering poor environmental quality. We recognise that it is not always straightforward to separate concerns about the application of environmental law in a local area from the impact of individual regulatory decisions for which ESS is not a point of appeal. We also understand that, as ESS seeks to avoid overlap with other appeals and complaint processes, communities may perceive ESS as being unresponsive to their concerns.

ESS is required under the Continuity Act to develop their strategy which includes their approach to the discharge of their investigatory functions. When ESS come to

⁸ [ESS-Case-summary-IESS.22.018.pdf \(environmentalstandards.scot\)](#)

review its strategy, under the provisions of Schedule 2 of the Act, we recommend that it should give further consideration to the conditions where it would be appropriate to investigate the individual circumstances of a local area, group or community, given the restrictions on exercise of its powers and functions. We also recommend that there should be careful communication of the position with stakeholders and communities. We note and welcome ESS's new community engagement programme⁹, which includes a series of workshops to encourage individuals, groups and communities to meet and talk to ESS about the environmental issues that matter to them.

Having fully considered the views raised in the consultation, the Scottish Government's recommendation is that ESS, when they revise their strategy, should give further consideration to the conditions where it would be appropriate to investigate the individual circumstances of a local area, group or community, given the restrictions on the exercise of its functions. We further recommend that the Parliament considers this matter in their oversight of ESS's activities and in particular when reviewing a draft revised strategy in due course.

Access to justice on environmental matters

The second matter that the Act requires to be covered by the report is "whether the law in Scotland on access to justice on environmental matters is effective and sufficient."

The report considered various issues that had been identified in the evidence gathering sessions about access to justice on environmental matters, in particular with respect to the costs of access to the courts. The report also discussed the concerns that have been raised by the Aarhus Convention Compliance Committee with respect to the costs of access to justice on environmental matters. The report set out a number of measures that have been taken with respect to these costs, and further steps that are under consideration.

The Scottish Civil Justice Council reviewed Protective Expenses Orders (PEOs) and has introduced changes, which include:

- a PEO will carry over to proceedings in the Inner House as standard, regardless of whether the petitioner or respondent is appealing the original decision;
- a provision has been added to explicitly provide for the confidentiality of all financial information provided by the petitioner or respondent;
- a provision has been added so that there is improved clarity on the potential exposure to an interveners expenses; and
- consideration will be given to consulting on a proposal to extend PEOs to certain relevant litigation in the sheriff courts.

⁹ [Environmental Standards Scotland rolls out new community engagement programme - Environmental Standards Scotland](#)

In addition, we previously exempted court fees for Aarhus cases in the Court of Session which supports the system of PEOs which can restrict the applicant's liability in expenses to the respondent to £5,000 and the respondent's liability to the applicant to the sum of £30,000.

The report also discussed our proposals to recognise the right to a healthy environment in a Human Rights Bill. Policy proposals for this Bill had been subject to separate consultation. In a letter of 4 September 2024 to the Convenor of the Equalities, Human Rights and Civil Justice Committee, following the publication of the Scottish Government's Programme for Government 2024/25, it was explained that the Human Rights Bill would not be introduced this parliamentary session and further engagement will be conducted with stakeholders to develop proposals. We are continuing to develop our thinking and take into account views expressed through the consultation on the best approach to recognising and including the right to a healthy environment in the Bill. However, there are a number of challenges to incorporating the right as it has only recently been recognised internationally and it is not contained within an international treaty, unlike the other rights the Bill is incorporating. As with all the Human Rights Bill proposals, we will carefully consider our approach and next steps, and engage with stakeholders as we further develop the Bill. The challenges of climate change, biodiversity and nature loss have direct impacts on people's rights both here in Scotland and across the world and it is important our approach recognises these challenges whilst allowing us the flexibility to align with the international position as it continues to develop.

The majority of the 25 responses to the consultation raised concerns about access to justice on environmental matters. These concerns included the level of costs involved in accessing the courts, and calling for the establishment of an environmental court, a third party right of appeal in the planning process and lower costs for accessing justice on environmental matters. Stakeholders were largely supportive of proposals for the recognition of the right to a healthy environment in Scots law.

Having fully considered the views raised in the consultation, the Scottish Government will continue to work to improve access to justice on environmental matters. We will carry out further engagement with stakeholders on our approach to environmental rights.

Environment court

The final matter that the Act requires to be covered by the report is “whether and, if so, how the establishment of an environmental court could enhance the governance arrangements [in Chapter 2 of the Continuity Act].”

The report set out that the Scottish Government does not see any strong argument for a change in the balance of parliamentary, administrative and judicial roles in decision making on environmental matters, or for the creation of a specialist court. This is our conclusion generally with respect to environmental matters, and also for the issue set out in the Continuity Act for consideration in the report, with respect to a possible role for an environmental court in strengthening the system of environmental governance. Indeed, there are promising signs that the system of

governance will continue to work as intended, with very few instances of recourse to the courts.

In responses to the consultation, there was strong support from environmental NGOs and ESS for the establishment of an environment court. In general, little detail was given about the nature of a court in the Scottish judicial system, although various international examples were discussed in consultation responses as providing useful models to draw from. Some stakeholders called for a further process to consider the possible creation of a specialist court.

In addition to the content of the report, we made available additional briefing on some of the information considered by the review on the Scottish judicial system and the experience of environmental courts in other jurisdictions. As highlighted by stakeholders in their responses to the consultation, environmental courts play a valuable role in the environmental governance structures in some jurisdictions. However, the Scottish Government remains of the view that the creation of a specialist court is not necessary to achieve high environmental standards and progress on nature and climate targets. We also believe that creation of a specialist court would be a costly and disruptive process at a time when we need to focus on the actions necessary to achieve our targets for 2045. We therefore are not going to recommend the creation of a specialist court for the environment in Scotland. The role of the Land Court will continue to develop following the merger with the Lands Tribunal. We will continue to consider on a case-by-case basis whether new or amended environmental legislation should specify that cases should be heard by the Land Court, taking full account of the capacity of that Court.

We are aware that some stakeholders have drawn connections between the proposed statutory recognition of the right to a healthy environment and the role of a potential specialist court for the environment. As we consider our next steps on the right to a healthy environment, we shall continue to engage with stakeholders on the design of structures and mechanisms for securing individuals' environmental rights, including where appropriate through access to justice through the courts.

Having fully considered the views raised in the consultation, the Scottish Government will continue to consider on a case-by-case basis whether new or amended environmental legislation should specify that cases should be heard by the Land Court, taking full account of the capacity of that Court.