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Ìrean Àrainneachdail na h-Alba

**ENVIRONMENTAL**  
**Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

[REDACTED]

Edward Mountain MSP  
Convener  
Net Zero, Energy and Transport Committee  
Scottish Parliament  
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7 October 2024

Dear Convener,

On 9 October 2024, Environmental Standards Scotland (ESS) will publish a report summarising its scoping work on the risks posed to Scotland's soils. I enclose an embargoed copy of this report for your information.

ESS undertook this project because our Baseline Evidence Review identified a lack of sufficient data to draw conclusions on the state of soils in Scotland and a lack of effective policy to protect soils. ESS' report:

- identifies twelve risks associated with soil in Scotland and briefly assesses the evidence base available on each
- provides an initial examination of the effectiveness of existing legislation and guidance, including in light of future changes, such as climate change, and identifies gaps in policy

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- compares the condition of soil in Scotland, and the policies in place to protect it, with the EU and other nations and identifies examples of best practice
- identifies a number of issues that will be subject to more detailed scrutiny by ESS

The report makes a number of recommendations to the Scottish Government. The report concludes that there is no framework legislation to protect soils equivalent to the Water Environment and Water Services (Scotland) Act 2003 and the Air Quality (Scotland) Regulations 2000 which seek to protect our water and air. The Scottish Soils Framework was not intended to be enacted into law and as a result only a small number of tasks in the soil monitoring action plan associated with it have been implemented.

The EU is in the advanced stages of considering a Directive on Soil Monitoring and Resilience which proposes a mandatory monitoring network and improvements to soil sealing and contaminated land policy. In addition, the EU adopted the Nature Restoration Law in 2024 which sets legally binding requirements relating to the restoration of peatland soils. Scotland is at risk of falling behind international best practice if the Scottish Government does not meet its commitment to maintain alignment with EU law in this area. We recommend that the Scottish Government bring forward legislative proposals that reflect the proposed EU Soil Monitoring Law and the Nature Restoration Law by introducing a statutory duty to protect and monitor soil and reassess contaminated land and soil sealing policy.

Furthermore, the report recommends that the Scottish Government should, along with the wider public sector, commission monitoring and research to address gaps in the evidence base. There is a lack of evidence relating to soil biodiversity, contamination of soil and water by the spreading of waste such as sewage sludge on agricultural land and the impact of tree planting carbon sequestration schemes on carbon stocks. Research in these areas will improve the effectiveness of environmental law.

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While further monitoring and research is required in some areas, this does not mean legislation to monitor trends in more well understood areas cannot be introduced now. The monitoring and research should be supported by data gathered from a nationwide monitoring programme introduced by legislation to maintain alignment with the proposed EU Soil Monitoring Law.

These recommendations made by ESS (under section 20(2)(c) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021) and wider findings of the analysis will be published in the form of a report, "The risks to Scotland's soils: a scoping report". ESS has issued a copy of the report to the Scottish Government and it will be published on ESS' website.

ESS expects the Scottish Government to respond to the recommendations laid out in the report, making a statement about the action they intend to take to address them, as soon as possible and no later than six months from publication of the report.

Yours sincerely,

Mark Roberts  
Chief Executive

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