

Net Zero, Energy and Transport Committee

2nd Meeting, 2024 (Session 6)

Tuesday, 16 January 2024

Environmental Governance in Scotland

Background

1. In June the Scottish Government laid in the Scottish Parliament the [Environmental governance arrangements: report](#), required under section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.
2. The 2021 Act also required the Scottish Government to consult on whether the Act's provisions on environmental governance i.e. establishing [Environmental Standards Scotland](#) and bringing EU environmental principles into domestic law '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'. It also required consultation on '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 governance arrangements'.
3. The Scottish Government launched the [consultation](#) on 2 June and it closed on 13 October (an extended date after the publication of an [additional briefing paper on environmental courts](#)). All published responses are available [here](#).
4. The Scottish Government has committed to bringing forward a Human Rights Bill in this parliamentary session, which it has stated "will recognise and include the human right to a healthy environment". The Scottish Government's report and consultation on environmental governance states that "The right will be guided by the underpinning international framework including the UN Framework Principles on Human Rights and the Environment and the Aarhus Convention" and that "Recognition of the right in Scots law will aim to ensure that Scottish Government and other public authorities exercising devolved public functions demonstrate that they are protecting, respecting and fulfilling the right in their policies and regulatory schemes".
5. The procedural aspects of a proposed right to a healthy environment e.g. access to environmental justice, are linked to the long-standing debate around Scotland's compliance with the [Aarhus Convention](#). The Aarhus Convention is an international environmental treaty that enshrines procedural environmental rights for members of the public. The Scottish Government has set out plans for strengthening

compliance with the Aarhus Convention and is working to an October 2024 deadline to respond to the [Aarhus Convention Compliance Committee](#)¹ which concluded that the United Kingdom (and Scotland, as part of the United Kingdom) is non-compliant with the Aarhus Convention on the basis that access to justice in environmental matters is "*prohibitively expensive*".

Committee Scrutiny

6. The Committee has agreed to carry out a short stocktake of the state of environmental governance in Scotland, post-Brexit and in the light of the 2021 Act. The timeline for this so far is set out below.

7. The Committee agreed at its meeting on 12 September to write to several stakeholders to seek their views on the Scottish Government's report on environmental governance arrangements. Responses were received from:

- SEPA – response [here](#)
- Scottish Water – response [here](#)
- ESS – response [here](#)
- Scottish Environment LINK – response [here](#)
- UK Environmental Law Association – response [here](#)
- Environmental Rights Centre for Scotland (ERCS) – response [here](#)

8. On 24 October, the Committee considered these responses. Some significant concerns were raised by respondents about the Scottish Government's report on environmental governance arrangements. In particular, the ERCS said the report fell short of the Scottish Government's statutory duty under the 2021 Act. They said the Scottish Government had not acted lawfully in relation to its duty under the Act to publish a report consulting on whether and how creating an environmental court could enhance environmental governance arrangements in Scotland.²

9. The ERCS, Scottish Environment LINK and the UK Environmental Law Association also raised general concerns about the quality of the Scottish Government report. They argued it was insufficient either in scope or depth of analysis. Scottish Water, SEPA and ESS provided responses in more neutral terms.

10. The Committee [wrote to the Cabinet Secretary](#) asking for a response to the concerns raised by stakeholders and notifying its intention of having an evidence session with her in the New Year. The Cabinet Secretary [responded on 8 November](#) and stated that the Scottish Government had met the requirements set out in the Continuity Act "at every stage of this process". She said it would be premature to comment further on the outcome of the consultation process prior to completion of the current statutory process: the Scottish Government laying a statement in the Parliament, including its recommendations on next steps. The timing of this

¹ The Compliance Committee was established to review compliance with obligations under the convention in a way that is non-confrontational, non-judicial and consultative. Its decisions do not have legal force.

² As noted earlier, [the Scottish Government had \(in September\) published a supplementary briefing paper on environmental courts](#) and then extended the original consultation date

statement is currently unknown. The Committee agreed to hold an evidence session with the Cabinet Secretary after the statement has been laid.

11. The Committee also agreed on 24 October—
 - to discuss the Scottish Government consultation, and possible outcomes, with ESS when they give evidence on their first annual report,
 - to take evidence from a panel of environmental stakeholders.

12. The stakeholders the Committee will hear from on 16 January are:
 - Professor Simon Parsons, Director of Environment, Planning and Assurance, [Scottish Water](#)
 - Bridget Marshall, Chief Officer, [Scottish Environment Protection Agency](#)
 - Lloyd Austin, Convener, Governance Group, [Scottish Environment LINK](#)
 - Dr Shivali Fifield, Chief Officer, [Environmental Rights Centre for Scotland](#)
 - [Professor Sarah Hendry](#), Head of Dundee Law School specialising in water and environmental law
 - Jamie Whittle, Convener of the [Environmental Law Sub-Committee](#), Law Society of Scotland

13. Professor Hendry and the Law Society of Scotland provided responses to the Scottish Government consultation on the environmental governance report, which they shared with the Committee as written evidence. These are set out in **Annexe A** and **Annexe B** respectively.

Next steps

14. After this evidence, the Committee will revisit environmental governance in an evidence session with ESS, currently scheduled for 5 March. Once the Scottish Government has laid before the Parliament its statement responding to the consultation, the Committee will then schedule an evidence session with the Cabinet Secretary for a meeting at a suitable time in the Committee's work programme. The Committee will then consider next steps in relation to the environmental governance arrangements report, or environmental governance issues more generally, such as whether to issue a letter to the Scottish Government or a short report to the Parliament.

Clerks
 Net Zero, Energy and Transport Committee

Annexe A: Consultation response of Professor Sarah Hendry

Overview of environmental governance

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

The scope of the consultation seems narrow, especially in relation to environmental justice and an environmental court. The consultation refers to the ‘twin crises’ of climate and nature, and there are other ongoing consultations in this wider space, but this document could be more ambitious in its response to these crises.

The consultation limits its scope to a very narrow view of s 41 of the UK Withdrawal from the EU (Continuity) (Scotland) Act 2021, in that the consultation is expressed entirely in terms of the arrangements made under Part 2 of that Act. On the face of it, s 41 (2) (b) and (c) both extend beyond those arrangements. The general approach to environmental governance post Brexit cannot replace the institutions of the EU. The embedding of the environmental principles in the 2021 Act, and requiring public authorities to ‘have regard’ to these, was a positive step, as was the establishment of Environmental Standards Scotland (ESS), but the consultation could have provided an opportunity to review wider aspects of environmental governance.

The intention to ‘remain closely aligned to the structure of environmental law in the EU’ is to be supported, but may be threatened, for example by the UK Internal Market Act 2020 or the Levelling Up and Regeneration Bill, which are not mentioned in the consultation.

Especially in relation to environmental justice, there is a heavy emphasis on the role of the proposed Human Rights Bill for Scotland, but that consultation says very little specifically on environmental justice and certainly does not address calls for an environmental court. Further, even if that Bill progresses it will take several years to come into effect. More could be done more quickly in relation to the environment if this consultation had a wider scope and ambition.

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

No

Environmental Governance Post-Brexit

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

Given the reality of withdrawal from the EU, the establishment of Environmental Standards Scotland (ESS) was a reasonable response by Scottish Government. The ESS cannot have the resources of the EU institutions, nor the same scope or powers, and it is still at an early stage, but it cannot be the only response to either the exit from the EU or to environmental governance problems. It is not really an effective substitute for individual complaints

about non-compliance.

The consultation notes the need for ‘transformative change’ and for ‘holistic, system-wide’ solutions (p 9) and the planning frameworks discussed in section 2.2 will certainly be part of those solutions, but there is more that could be done to apply existing environmental law effectively. It would undoubtedly be helpful to have more coordination between regulatory bodies (e.g. SEPA, NatureScot) and the ESS, and for continued reflection on how ESS can support individuals and groups who are suffering environmental injustice. It seems early days to say that the governance gap has been ‘closed’ (p25).

Section 2.3 notes possible concerns about the role of the courts, and there are two separate issues here: whether courts should be able to review the merits of a decision, and whether the courts should take account of ‘wider considerations of environmental law and targets’.

Our system of judicial review does not permit review of cases on their merits, but this causes significant distress for third parties and there is an argument that third party appeal on the merits is required at least for ‘Aarhus cases’ (and see further my response on access to justice below).

The taking into account of ‘environmental law and targets’ is a curious phrasing. Environmental law in the sense of legally binding requirements should certainly be considered by the courts in reviewing consents, and by regulators in deciding these in the first place. If what is meant is something more general such as the environmental principles, if these cannot be considered by the courts then it is hard to see how the duty to have regard to these could ever be enforceable or have any legal weight.

The same section suggests that the role of the courts will be further discussed in the consultation on the proposed Human Rights Bill for Scotland, which it is, but the proposal there for structural interdicts would involve just such a wide and policy-relevant approach by the courts. Arguably a specialist environmental court, working with ESS, would be well placed to assess both individual cases and government policy and strategy against ‘environmental law and targets’ in a way that would assist public authorities, regulators, and private parties, to better understand how environmental law should be applied in a consistent and principled way. This would improve both governance and environmental justice.

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

Appropriate resourcing is essential, and not just for ESS. SEPA is still recovering from its loss of data, for example, which may be affecting various functions, whilst local authorities are stretched across a wide set of essential services including those relating to planning and the environment. Scottish Water as a public body has a far better reputation than the English providers, but there are issues in Scotland with CSOs too and very little data is available.

Specifically on ESS, the sole improvement report to date has been accepted in its entirety by the Scottish Government – given the known failures to comply with air quality standards in many locations, it would be good to see concrete progress here as a priority. The recent admission by the Government that it had ‘fallen short’ of the requirements of the Climate Change (Scotland) Act and would work with ESS to resolve this urgently appears to have happened due to the intervention of third sector environmental organisations, which would suggest that even between Scottish Government and ESS there are deficiencies in relation to good environmental governance.

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

No

Access to justice on Environmental Matters

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

The consultation recognizes several well known problems – on costs, legal aid, and Aarhus compliance. However there do not seem to be any specific proposals for further improvement. Legal aid will be reviewed, as will Protective Expenses Orders –but this is urgent, and not just because current arrangements may not be Aarhus compliant. Access to justice generally is in a parlous state.

Other initiatives that are in place (the environmental crime taskforce, expert support for prosecutors and judges, and the exemption to court fees for Aarhus cases) are welcome, but may not be sufficient. Protective Costs Orders are important but there are still difficulties for those seeking review, and not every environmental review is an Aarhus case.

The consultation says the Scottish Government’s position is that third party rights of appeal are not necessary for compliance with the Aarhus Convention, but I would disagree. In the Northern Irish case the Aarhus Convention Compliance Committee stated clearly that third party challengers should be able to seek a review on the merits.

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

The references to the proposals for a new Human Rights Bill for Scotland are again canvassed in relation to access to justice. Whilst enshrining a right to a healthy environment in domestic law would be a positive step, it is not the solution to access to justice issues and certainly not in a reasonable timescale, as the full implementation of such a Bill will be several years away. If environmental standards are set and enforced appropriately, with adequate resources, and individuals and communities are empowered and supported to ensure the law is upheld, that would be a quicker and more effective way of improving quality of life and providing a clean

and healthy environment than waiting for the enactment and implementation of a new Human Rights (Scotland) Bill.

Although I support incorporation of the proposed right to a healthy environment, it is disappointing that in a small country with abundant natural resources and a highly developed public administration, with swathes of environmental regulation going back many decades, that we need a human right to provide citizens with a clean environment. Enforcing the environmental standards that already exist would go a long way to achieving the rights that are proposed here.

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

No.

Governance Arrangements and Environmental Court

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

It is disappointing that Scottish Government seem to have set their minds against a specialist court or tribunal, and more disappointing that there is no recognition in the consultation of the significant body of argument and evidence that has been made for such a court, both recently and over many years. The narrow interpretation of s 41 of the Continuity Act in framing the consultation is especially limiting in relation to an environmental court.

If the Government had said that they recognized the arguments, but (for example) that the resource commitment was not justified, or that there was not sufficient business for such a court, that would have been better than not responding to the arguments at all. The framework provided by the Tribunals (Scotland) Act 2014 could potentially reduce any cost implications. The suggestion that environmental justice provisions in the proposed Human Rights Bill for Scotland will make a court unnecessary is not borne out by the current consultation on that proposal.

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

As noted above, a specialist court or tribunal could help to interpret and apply a complex area of law in a coherent way, to the benefit of authorities, regulators, private parties and communities. Environmental courts in other jurisdictions have been able to do this. This should be combined with urgent attention to the barriers and limitations on bringing court action and other justice mechanisms.

The closing words of the consultation are that 'there are promising signs that the system of governance will continue to work as intended, with very few instances of recourse to the courts'. This may be intended to refer to the role of ESS to bring review or intervene in court proceedings, but as a general statement it seems to overlook the unmet legal need of people and communities. When those suffering

environmental harm or degradation cannot afford legal representation and the ordinary courts are full, it is unsurprising that cases do not arise often.

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

No

Annexe B: Consultation Response from the Law Society of Scotland

Review of the Effectiveness of Environmental Governance

13 October 2023

Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law, Planning Law, and Access to Justice committees welcome the opportunity to consider and respond to the Scottish Government's consultation: *Review of the Effectiveness of Environmental Governance* (the "**Consultation**").³ We have the following comments to put forward for consideration.

General Comments

We welcome the publication of the Report into the Effectiveness of Governance Arrangements (the "**Report**"),⁴ the Consultation, and supplementary briefing paper on an environmental court (the "**Briefing Paper**").⁵ We consider that there is a clear need for consideration of the issues in this area, particularly following the UK's exit from the EU, and welcome the Consultation.

We note the high level of generality with which the Report and Briefing Paper engages with these issues, in relation to which there have been considerable developments and legislative activity over recent years, particularly with the passage of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the "**Continuity Act**"). As detailed below, even if the broad pattern of relationships is considered to be adequate, there are a number of areas where we consider that improvement is needed – many of which pre-date the UK's exit from the EU – and reforms intended to remedy gaps in environmental governance following the UK's exit from the EU are not the only matters which merit attention.

We note also the interaction between environmental governance more generally and human rights law in Scotland. We recently provided detailed comments on the Scottish Government's ambitious plans to create a new framework for embedding

³ [Review of the Effectiveness of Environmental Governance](#)

⁴ [Environmental Governance Arrangements: Report](#)

⁵ [Environmental Governance Review Briefing Paper on an Environmental Court](#)

international human rights in Scotland through the introduction of the prospective Scottish Human Rights Bill.⁶

Our response noted that we welcome measures aimed at better securing and enforcing environmental rights, and we offered detailed comments on the proposed introduction of a right to a healthy environment in Scotland (as detailed at Part 5 of the consultation on the proposed Bill).⁷ Whilst the right to a healthy environment is relied on in the Report as filling some of the gaps within the wider environmental governance framework, we note that it could be a number of years before such a right is enshrined in law – and as highlighted in our response, we call for greater detail and guidance around the procedural and substantive aspects of the rights proposed in relation to a healthy environment, and how these will be implemented.

Overview of environmental governance

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

The approach taken in this review is to consider the structures at a high level, without addressing the many unresolved concerns raised before the UK's exit from the EU about aspects of environmental governance and access to environmental justice in Scotland.

We note that such issues include concerns regarding the nature of appeals in areas including planning law, the cost of going to court and related access to justice implications (both issues also raising concerns over compliance with the Aarhus Convention), the fragmentation of the regulatory appeal structure, ensuring that enforcement action is taken, and the extent to which consultation and public participation processes are genuinely meaningful. These were all the subject of debate and criticism even before the emergence of the “governance gap” as a result of the UK's exit from the EU. We consider that these matters require attention at a more detailed level, even if the overall pattern setting the roles, functions and powers, executive oversight, and judicial bodies is broadly appropriate.

The Report considers the “effectiveness” of environmental governance arrangements in Scotland. The term “effectiveness” is vague in this context, and we would welcome consideration of these issues against a more tangible metric. There are many considerations here which do not appear to have been addressed in detail, such as how “effectiveness” should be measured and what the test is for a good outcome. If the relevant metrics are unclear, then this gives rise to challenges in tracking and measuring key performance.

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

The Report defines “environmental governance” as including “administrative, regulatory and judicial structures” (page 6). However, there is very little attention paid

⁶ Accessible [here](#).

⁷ [A Human Rights Bill for Scotland: Consultation](#)

to the initial administrative stages of regulatory decision-making. We consider key considerations, such as who is making regulatory decisions, by what procedure, and with what levels of stakeholder and public participation, require greater attention. If the initial process is one that all parties consider to be fair and that leads to “getting it right first time”, this reduces the need for the inevitably more formal, expensive, and time-consuming review and redress procedures.⁸ Finding consensus (as far as possible) on the overall policies that will guide individual decisions and giving the public confidence that any representations they make are being taken seriously are key elements of this. It is important that there is public confidence that initial decisions are being taken in a fair way that balances all relevant interests appropriately (although we are mindful that views will differ on what is “appropriate”), particularly to minimise pressure on appeal and review mechanisms.

There are many duties on public bodies to have regard to various environmental considerations, e.g. biodiversity (Nature Conservation (Scotland) Act 2004 ss 1-2A), climate change and sustainable development (Climate Change (Scotland) Act 2009, ss 44-46) (and in future the environmental principles under ss 13-18 of the Continuity Act).

We note that Scottish Government targets on climate change have not yet been met,⁹ which raises concerns whether these duties are making a material difference to the weight such considerations have in competition with more tangible economic issues. This suggests that a lot more must be done to ensure that the climate and biodiversity emergencies are truly taken seriously in all elements of environmental governance. Given the transboundary effects of environmental impacts, such concerns around the importance of meeting environmental targets and sufficient weight being given to such considerations are similarly applicable to the UK Government’s approach to environmental governance.

We consider it important that there is effective monitoring and enforcement action being taken against those apparently in breach of, for example, planning, pollution, and other laws – and that this is appropriately resourced and prioritised by the relevant authorities. We are aware of concerns about these aspects being recurring themes raised by those affected by environmental issues. Until the public is confident that the rules in place will be properly enforced, there will be a lack of confidence in the regulatory system as a whole, as well as unresolved grievances about specific instances. These concerns could be pointed to as indicative of failings in effective environmental governance.

For understandable reasons, the Report does not cover governance of environmental matters within reserved competence under the devolution settlement, or where UK Ministers can exercise powers within devolved areas. We note that the interplay of these matters can cause added challenges and complexity to

⁸ We welcome in this context the recent publication of the third edition of the Scottish Government’s Right First Time guide, accessible [here](#).

⁹ We note, for example, that the annual emissions reduction target for 2021 was not met – as set out in the Scottish Greenhouse Gas Statistics 2021, laid before the Scottish Parliament by the Scottish Ministers under section 33 of the Climate Change (Scotland) Act 2009, dated June 2023, accessible [here](#).

environmental governance in Scotland, particularly if such powers are exercised in significant ways.

Environmental Governance Post-Brexit

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

The heading of Chapter Three (echoing the Continuity Act) presumes that there was “effective and appropriate governance relating to the environment” to be continued following the UK’s exit from the EU. We note that there were concerns raised around many aspects of environmental governance prior to the UK’s exit from the EU, as mentioned above.

Although following the UK’s exit from the EU there is no longer a wholly external oversight mechanism with compliance powers to impose fines that take money out of the national account (as opposed to it being moved between budgets), we note the many positives of the current scheme, particularly in comparison to the current arrangements in the rest of the UK.

We consider that the absence of a power for Environmental Standards Scotland (“ESS”) to review individual decisions is acceptable so long as single decisions can provide the spur for investigating a wider issue. We note that this approach was highlighted in Case ID: IESS.22.018¹⁰ on permitted development affecting designated sites, where ESS considered that the representation “raised broader concerns regarding the local authority’s guidance, policies, and procedures”.

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

We consider in many respects it is too early to come to any firm conclusions on the effectiveness of the existing arrangements. There are a range of relevant points to consider in reaching a proper conclusion in the coming months and years, including: how robust and effective ESS will be, how satisfactory its informal resolution of cases proves to be in changing practice, and what happens when the Scottish Government’s response to an improvement report is viewed as inadequate.

Given the important role that ESS plays in the current framework of environmental governance, we consider that it is necessary that ESS is suitably resourced, able to thoroughly consider representations made to it, and willing to act promptly to take effective enforcement action where necessary.

More generally, we consider that strong collaboration between the UK Government and devolved administrations is of considerable importance. This is particularly significant given the transboundary effects of environmental impacts and avoiding ‘environmental regulatory tourism’. We also welcome the use of common frameworks

¹⁰ Accessible [here](#).

where appropriate as a way of avoiding undesirable fragmentation and the potentially disruptive impact of policy divergence.

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

The current Scottish Government consultation *Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity*¹¹ contains a proposal for an Independent Review Body to report on progress in meeting the statutory nature recovery targets (page 75). We note that the Report does not discuss the role or function of this body.

While this will provide an important element in the framework of environmental governance, we note that greater detail of the composition and role of the body would be welcomed. More widely, we highlight the need for environmental concerns to be embedded in all decision-making, with the resources to support that – such as the capacity to make the biodiversity assessments necessary for the Biodiversity Strategy to be delivered.

Access to justice on Environmental Matters

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

Although section 4.2 of the Report lists a number of developments in relation to access to justice, the outcome of several of these is still uncertain and they do not promise definite improvements, and certainly not in the immediate future. These are therefore not guaranteed improvements on the current position.

The plans detailed in section 4.4 of the Report for recognising a human right to a healthy environment in Scotland similarly will not lead to any enforceable rights substantially changing the legal landscape for several years, in view of the proposal for the two-stage introduction of the right, initially purely as a procedural matter for public authorities (as noted at Part 7 of the consultation on the prospective Scottish Human Rights Bill).

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

We consider that effective access to justice requires attention not just to the formal procedures for resolving disputes, but also to the much earlier stages of information and education about legal rights and processes, as well as timely access to expert advice. It is likewise essential that there is a well-funded and resourced legal aid regime in place to ensure such legal advice is accessible to all affected members of the public. Improvements in these areas are needed if effective access to justice is to be secured.

¹¹ [Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity](#)

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

We have no comments to make.

Governance Arrangements and Environmental Court

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

We note the discussion in the Report and the Briefing Paper on the considerations for introducing an environmental court. We welcome the publication of the Briefing Paper, noting that the discussion in the Report of the key issues is minimal and lacking detail. We note that Section 41 of the Continuity Act places a requirement on Scottish Ministers to consult on the effectiveness of the governance arrangements introduced by the Continuity Act, and for Scottish Ministers to prepare a report on “whether and, if so, how the establishment of an environmental court could enhance the governance arrangements”.

We consider it important that thorough consideration has been given to the points covered in the Report and the Briefing Paper – and understand that concerns have been raised by stakeholders in relation to whether the content of the Report and Briefing Paper is sufficient to fulfil the statutory duty under section 41(1) of the Continuity Act.

We recognise that there are a range of considerations in the question of establishing a separate court to deal with environmental matters, and since such matters can be technical in nature, it is important that there is sufficient technical expertise in the court to deal with cases arising.

We have noted previously that there may be merit in a designated court procedure for environmental matters, similar to the procedure for commercial matters, or for specialisation to be undertaken.¹²

We highlight more generally that there are many arguments that a well-designed environmental court could provide significant improvements to access to justice in Scotland, and would have welcomed greater consideration of these in both the Report and the Briefing Paper.

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

The current pattern of routes of appeal against regulatory decisions on environmental matters is fragmented and inconsistent. Whether or not an environmental court is created, we consider that this aspect of the overall landscape merits further attention to produce a more coherent system that is easier for all those

¹² In our response to the Scottish Government’s Consultation on Environmental Principles and Governance in Scotland in May 2019, accessible [here](#).

involved to engage with and allocates decision-making to appropriate levels governed by appropriate procedures that enhance access to justice.

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

We have no comments to make.