

Net Zero, Energy and Transport Committee
Tuesday 10 December 2024
37th Meeting, 2024 (Session 6)

Statement on the Effectiveness of Environmental Governance Arrangements

Introduction

1. In June 2023, 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. Section 41 of the 2021 Act, also requires Ministers to lay before Parliament a "Statement on the Effectiveness of Environmental Governance Arrangements" setting out the details of the consultation that was carried out, a summary of responses to it, and the Scottish Ministers' recommendations in response to those views. It laid the [Statement](#) on 19 November.

Committee Scrutiny

5. The Committee previously 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. On 12 September 2023 it agreed to write to several stakeholders to seek their views on the Scottish Government's 2023 report. These bodies responded—
 - SEPA – response [here](#)
 - Scottish Water – response [here](#)
 - ESS – response [here](#)
 - Scottish Environment LINK – response [here](#)
 - UK Environmental Law Association (UKELA) – response [here](#)
 - Environmental Rights Centre for Scotland (ERCS) – response [here](#)

6. On 24 October 2023, 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.¹
7. The ERCS, Scottish Environment LINK and UKELA also raised general concerns about the quality of the Scottish Government report. They argued it was insufficient either in scope or depth of analysis.
8. The Committee [wrote to the Cabinet Secretary](#) asking for a response to stakeholders’ concerns and notifying its intention of having an evidence session with her in the New Year. The Cabinet Secretary’s [8 November](#) response said the Scottish Government had met the requirements set out in the 2021 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 (ie the laying of the Statement under the 2021 Act).
9. After considering the letter, the Committee agreed to take evidence from a panel of environmental stakeholders and also to invite the Scottish Government to give evidence once the statement had been laid. On [16 January 2024](#) it heard from—
 - Scottish Water
 - Scottish Environment Protection Agency
 - Scottish Environment LINK
 - Environmental Rights Centre for Scotland
 - Professor Sarah Hendry, Head of Dundee Law School
 - Law Society of Scotland
10. When the Committee took evidence from ESS on its annual report on [5 March 2024](#) it also asked ESS for its views on the Scottish Government report and on next steps.
11. At the 10 December meeting, the Committee will take evidence on the Statement from the Scottish Government. At a later item on the agenda, the Committee will consider next steps on this issue.

Clerks to the Committee December 2024

¹ As noted earlier, [the Scottish Government had \(in September\) published a supplementary briefing paper on environmental courts](#) and then extended the original consultation date