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Environmental Standards Scotland

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Environmental Standards Scotland

The new environmental watchdog, Environmental Standards Scotland (ESS) was formally launched at the beginning of October.¹ It is established under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 and is a body independent of government, accountable to the Scottish Parliament. It has been created to fill the governance gap arising from the loss of the oversight provided by EU institutions over how authorities in the UK are living up to their environmental commitments.

In its mission statement, ESS says that it will “ensure that Scotland’s environmental laws and standards are complied with, and their effectiveness improved – to achieve Scotland’s ambitions for the environment and climate change.” More specifically, it describes its role as being: “to scrutinise, investigate and secure improvements in public authorities’ compliance with environmental law, the effectiveness of environmental law, and the way it is being implemented and applied in Scotland.” The fact that its statutory remit includes the effectiveness of environmental law, not just formal compliance with the law, is important, as is the fact that international law is also included within its scope.

ESS can scrutinise all public authorities in Scotland and is given a range of powers to enable it to operate, although it is hoped that most of its work will be done without recourse to these; authorities are under a statutory duty to cooperate with ESS and seek agreed solutions. Its formal powers are:

- Information notices, to gather information from authorities;
- Improvement notices, served on the Scottish Government and requiring an improvement plan to address the failings identified, a plan which must be approved by the Scottish Parliament;
- Compliance notices, where a failure to comply with environmental law is causing environmental harm or is likely to do so; such notices can be appealed to the sheriff court and failure to comply can be referred to the Court of Session as a contempt of court;
- Judicial review, where there is a serious failure to comply with environmental law, and action is needed to prevent or mitigate serious environmental harm.

Matters of environmental concern can be raised with ESS by individual members of the public, community groups, non-governmental organisations, businesses, and public authorities. Its role, however, is not to act as a further level of appeal or complaint against individual decisions, actions or failures to act, although individual cases may help to highlight more systemic issues deserving attention. The Interim Strategic Plan,² published at the launch of ESS, sets out how it will seek to identify and prioritise matters of concern, undertaking a preliminary review to decide on the matters to be more fully investigated. More systematic monitoring will also be undertaken, seeking to work in collaboration with others. A full strategy will be prepared and consulted on in the coming months.

Scotland is ahead of the rest of the UK in filling the environmental governance gap. The Environment Bill that has been making slow progress at Westminster creates the Office for Environmental Protection that will operate in England and Northern Ireland (with less power but additional advisory roles). In Wales a non-statutory Interim Environmental Protection Assessor has been appointed, pending legislative reform promised for the next few years.

No institution created under domestic law can match the power that the EU authorities could exercise over the government, but ESS has been established with an independence and range of

¹ <https://environmentalstandards.scot/>

² <https://environmentalstandards.scot/about-us/interim-strategic-plan/>

powers that give it the opportunity to be a watchdog with “bite”. Early challenges will include identifying priorities and establishing constructive working relationships with those under its scrutiny, but Scotland has the opportunity to lead the rest of the UK in showing that the effectiveness of environmental law is something to be taken seriously.

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