

Environmental Standards Scotland

**Baseline Evidence
Review –
Cross-cutting
Environmental
Governance
(Strategy and
Analysis)**

September 2022

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Executive summary

This baseline evidence review provides a high-level summary of key published information about the current position, recent policy and legislative developments in environmental governance in Scotland. This baseline evidence review is different to the other 7 topics covered, in that it has a specific focus on an area of international law and policy including related and supporting legislation, rather than an environmental policy area such as biodiversity or water. The majority of the information sources for this review have been legislation and policy, plus associated commentary and research rather than summarising published data and reports.

Introduction

A series of rapid reviews of key evidence sources were undertaken to support the identification of environmental issues of most concern. The reviews inform where we propose to focus Environmental Standards Scotland's (ESS) initial analytical work.

Eight reviews were produced, covering the environmental categories of air; biodiversity, flora and fauna; climate change; cross-cutting environmental governance; land and soil; population, human health and cultural heritage; resource use and waste; and water.

These categories are primarily intended to help Environmental Standards Scotland organise, manage and prioritise our work and are based on those used in the Strategic Environmental Assessment and the Environmental Impact Assessment processes.

Considering the evidence within each category provides a structure for our assessment.

There will be overlaps amongst these categories and to minimise duplication, topics have been covered under what we consider to be the most relevant category. For example, we have considered the issue of environmental assessment in this review though it is relevant to a number of the other reviews.

Rapid reviews were undertaken in each topic area, with a narrow scope of identifying key data sources and summarising what they tell us about how the environment is changing in Scotland. Our focus was on National or Official Statistics and Annual Reports and their related data, mainly from Government and other national

organisations, to obtain a high-level summary of current environmental conditions and to ensure confidence in the quality of the information. For this review, our focus was primarily legislation and policy, plus associated commentary and research rather than summarising published data and reports due to the nature of the topic.

The approach started with the relevant legislation, considering whether Scotland has appropriate policy, regulations and governance to achieve its current environmental targets and objectives. The reviews are not intended to be detailed explorations of individual issues, but provide an overview of the topic and summarise the current understanding and key issues. Similarly, they are not intended to provide exhaustive lists of relevant legislation. If a topic is not included, it is because it is covered in another review or we did not find any relevant published data or information within the scope of our review at this point. However, the topic will still form part of ongoing horizon scanning activity and could be explored in the future with relevant organisations.

Future stages of analysis will consider whether performance trends relate to any issues of compliance with or effectiveness of environmental legislation and scrutinise the detail underpinning trends identified.

Our monitoring and analysis work will progress through a series of stages. This ranges from horizon scanning to identify high-level areas of concern, through to a deepening analysis and understanding of how things are changing, the causes of this, and how policy and regulatory decisions affect this. All of our monitoring and analysis work will be focused on identifying areas where further investigation or use of ESS' powers may be necessary. Then supporting active investigations, and assessing whether the changes that have been made in response to our recommendations or use of powers are having the desired impact.

As we take forward the analytical priorities, it is likely that some will quickly be identified as not having any compliance or effectiveness issues that merit further analysis or investigation at this stage. These can then be returned to horizon scanning in case an issue arises in the future, and a new issue can be added to the list of those subject to more detailed analysis. The list of analysis priorities is expected to be dynamic and

regularly updated. The evidence reviews, however, are a snapshot in time as of August 2022 and there is no plan for these to be updated on a regular basis.

Summary of key baseline evidence review findings

- **Environmental Principles**

Scottish Government have established five guiding principles on the environment in domestic Scottish law as part of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. These are the principle of integration, the precautionary principle, the principle that preventative action should be taken to avert environmental damage, the principle that environmental damage should as a priority be rectified at source and the principle that the polluter should pay.

These principles are derived from the EU environmental principles set out in the Treaty on the Functioning of the European Union. The Act includes guidance on how the principles apply in Scotland and places a duty on Scottish Ministers to publish guidance on the interpretation and application of the principles.

- **Environmental Governance**

Scottish Government have estimated that around 80% of domestic environmental law in Scotland is derived from EU environmental law and policy. Following EU Exit, Scottish Government legislated to establish a new environmental oversight body, Environmental Standards Scotland, and to provide new duties and powers for Scottish Government as part of the European Union (Continuity) (Scotland) Act 2021. The Act also includes duties for public authorities such as a duty to cooperate with ESS.

England, Northern Ireland and Wales have also established equivalent environmental governance systems. In England and Northern Ireland, the Office of Environmental Protection has been fully established. In Wales, the Interim Environmental Protection Assessor (Wales) is a temporary measure whilst Welsh Government are developing legislation.

- **Access to Environmental Justice**

The Aarhus Convention establishes rights for the public that include access to environmental data, environmental decision making and environmental justice. The Committee that oversees compliance with the Convention has stated on a number of occasions that the UK and Scotland are in breach of the Convention due to the prohibitive cost of access to environmental justice. Scottish Government have stated that they are committed to the Convention and have committed to ensure a review of environmental justice, and the case for an environmental court, is undertaken during the Parliamentary term 2021-2026.

In the 2020-21 Programme for Government, Scottish Government stated that they will consult on a new Human Rights (Scotland) Bill in 2022. The proposed bill will enshrine in law a range of rights, including a proposed human right to a healthy environment

- **Keeping Pace**

Scottish Government have stated that maintaining alignment with EU law and the high standards that Scotland has enjoyed as part of the EU is a priority of Scottish Ministers. This will be achieved through both legislative and non-legislative measures, however there are several factors that may have an impact on this ambition.

Environmental standards in Scotland are influenced by a range of political and legal processes and structures. These include the EU environmental standards and any future development of EU environmental policy and law with Scottish Government's ambition of keeping pace. However, they are also influenced by the EU-UK Trade and Cooperation Agreement and any future international trade agreements, common frameworks agreed between the UK Government and Devolved Administrations and UK legislation such as the Internal Markets Act and any future legislation that has implications for devolved decision making. There remains an inherent risk of divergence from the EU and from the rest of the UK as governance structures, legislation and policy continue to develop.

- **Environmental assessment and other cross-cutting environmental issues**

A key part of protecting the environment is undertaking environmental assessments to understand the potential impacts of activities such as development and projects and programmes of work. Assessments include Strategic Environmental Assessment (SEA) for plans, programmes and strategies, Environmental Impact Assessment (EIA) for developments and projects and Habitats Regulations Appraisal for all plans and projects that could adversely affect European sites. These assessments aim to ensure that consenting bodies and developers have sufficient information to make informed decisions and avoid or mitigate environmental impacts. They also allow scrutiny of decision making and aim to ensure appropriate public participation.

These assessments can be expensive and take a long time to undertake as evidence required can include long-term surveys that take years to complete. Consents can also be challenged where there are concerns about limitations in the scope or evidence that could mean the decision is not legally compliant. The effectiveness of the processes for EIA, HRA and SEA is also reliant on the capacity of organisations involved and the timing of when the assessment is considered in the development of the project, plan or programme.

Conclusions for Initial ESS Analytical Priorities

This baseline review identified a wide range of possible issues for further analysis, including the Aarhus convention, access to environmental justice, whether environmental law in Scotland is 'keeping pace', a human right to a healthy environment and the application of environmental governance in Scotland.

However, for the purposes of our initial analytical priorities, ESS will focus on:

- Developing a better understanding of access to environmental justice, including compliance with the Aarhus convention.

This priority recognises the importance of appropriate access to environmental justice for members of the public and is a topic that has previously been consulted on by Scottish Government. In keeping with the prioritisation process, the contributions of other actors and the added value that ESS can bring to an area will also be considered, in deciding where to focus future work.

Although we propose to focus on one issue in the first instance, other issues will be retained for potential future analysis and horizon scanning in line with the stages of our monitoring and analysis work set out in our strategic plan.

Cross-cutting Environmental Governance Baseline Evidence Review

1. Introduction

This baseline evidence review provides a high-level summary of key published information about the current position, recent policy and legislative developments in environmental governance in Scotland. This baseline evidence review is different to the other 7 topics covered, in that it has a specific focus on an area of international law and policy including related and supporting legislation, rather than an environmental policy area such as biodiversity or water. The majority of the information sources for this review have been legislation and policy, plus associated commentary and research rather than summarising published data and reports.

2. Methodology

A rapid review of key evidence sources has informed this report. This has focussed on scanning across the topic area, identifying key data sources and summarising what they tell us about environmental governance in Scotland and the role of Public Bodies in implementing environmental law to help achieve our environmental targets and objectives.

The scope of the work was narrow. We used the following terms: 'environmental governance', 'environmental principles', 'environmental justice', 'keeping pace', 'Aarhus Convention', 'Trade and Cooperation Agreement', 'common frameworks', 'trade agreements', 'Internal Markets Act', 'Environmental Impact Assessment', 'Strategic Environmental Assessment', 'Habitat Regulations Appraisal', to search for published information and datasets. Where necessary these terms were combined with 'Scotland', 'UK' or 'International' to search for comparisons with other countries. We also undertook specific searches of key organisations' websites. For this review, this focussed on Scottish Government, the European Commission and several specialist briefing and research services such as the Scottish Parliament Information Centre (SPICe). There is some subjectivity in the choice of terms and organisations which may have an impact and which we hope to have mitigated by consulting with key stakeholders on sources.

Our focus was on legislation and policy documents due to the nature of the topic, mainly from Government and other national organisations, to obtain a high-level summary of the state of environmental governance in Scotland. Only publicly available information was considered. We were not looking for individual research reports or grey literature on specific, detailed areas of the topic. We were also not looking for evidence of issues relating to compliance with or effectiveness of environmental legislation at this stage. We envisage that this will form part of future analysis activity on priority analytical areas.

The approach started with the relevant legislation, considering whether Scotland has appropriate policy, regulations and governance to achieve its current environmental targets and objectives. The reviews are not intended to be detailed explorations of individual issues, but provide an overview of the topic and summarise the current understanding and key issues. Similarly, they are not intended to provide exhaustive lists of relevant legislation.

Baseline evidence reviews have been undertaken in each of the ESS Environmental Categories and there are naturally some topics which could fall across a number of reviews. For example, we have considered the issue of environmental assessment in this review though it is relevant to a number of the other reviews.

If a topic is not included, it is because it is covered in another review or we did not find any relevant published data within our scope. However, the topic is likely to still form part of future horizon scanning activity and could be explored in the further with relevant organisations.

Initial drafts of the evidence reviews were shared with the ESS Board and with key identified analytical stakeholders to provide proportionate checks that no key sources had been missed and that we had not misinterpreted any of the information. As we move into more detailed analytical projects and undertake further horizon scanning, we expect to engage a wide range of experts, including academics and specialist organisations.

3. Baseline evidence for environmental sub-categories

Environmental Principles

Environmental principles underpin the legal and political frameworks established by the EU that aim to reduce and mitigate the negative impacts of anthropogenic activity on the natural environment. EU environmental law and policy is based on the four main environmental principles that are set out in Article 191(2) of the Treaty on the Functioning of the European Union (TFEU). The principles are commonly defined as:

- **The Precautionary principle** – Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- **The Polluter Pays principle** – The polluter should bear the cost of pollution control and remediation.
- **Prevention principle** – Preventative action should be taken to avoid environmental damage.
- **Rectification at Source principle** – Environmental damage should, as a priority, be rectified at source.

European Union policy on the environment also includes an overarching aim of a high level of environmental protection, as well as related and supporting principles such as integration and subsidiarity.

Environmental principles in international policy and agreements

A range of environmental principles have been established in international policy, legislation and agreements as well as being included in the core treaties of the European Union. The following international conventions and declarations have established environmental principles that influence legislation and policy at EU, UK and Scottish level:

- The Stockholm Declaration (1972) which aimed to improve the environment by encouraging governments to adhere to 26 principles¹.
- The 1992 Rio Declaration on Environment and Development set out 27 principles of sustainable development, including the integration principle, precautionary principle and polluter pays principle². The declaration also promoted public participation in decision-making.
- The UN Convention on Biological Diversity 1992 enshrined the principle of sustainable use, the ecosystem approach and the principle that environmental management should be undertaken at an appropriate spatial and temporal scale³.

Environmental principles in domestic legislation

Following the UK's exit from the EU, the EU environmental principles were established in domestic Scottish law as part of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021⁴. The Act sets out five guiding principles on the environment derived from the TFEU:

- the principle that protecting the environment should be integrated into the making of policies,
- the precautionary principle as it relates to the environment,
- the principle that preventative action should be taken to avert environmental damage,

- the principle that environmental damage should as a priority be rectified at source,
- the principle that the polluter should pay.

Scottish Ministers must, when making policies or proposals for legislation, have due regard to the guiding principles on the environment except in matters relating to national defence or civil emergency, finance or budgets. The Act places a duty on Scottish Ministers to publish guidance on the interpretation and application of the principles and states that Scottish Ministers must have regard to the interpretation of those equivalent principles by the European Court from time to time.

UK Government raised a supreme court challenge over the legislative competence for Scottish Government proposals at the draft Bill stage⁵. This included successfully challenging Scottish Government's proposal to include the EU Charter of Fundamental Rights as part of the legislation⁶. This in effect would have included an overarching aim of a high level of environmental protection as part of the legislation. Article 37 of the Charter states that: "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."

Summary

Scottish Government have established five guiding principles on the environment in domestic Scottish law as part of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. These are derived from the EU environmental principles set out in the Treaty on the Functioning of the European Union. The Act includes guidance on how the principles apply in Scotland and places a duty on Scottish Ministers to publish guidance on the interpretation and application of the principles.

Environmental governance

Scottish Government have estimated that around 80% of domestic environmental law in Scotland is derived from EU environmental law and policy⁷.

EU legislation and policy also has a significant influence over other areas of policy and legislation in Scotland, with the UK assimilating EU law in some form since the European Communities Act 1972. EU legislation and policy applies to a range of areas including employment law, health and safety, animal health and welfare, food standards and taxation.

EU legislation is primarily delivered through Regulations and Decisions or by Directives. Regulations and Decisions are directly applicable as law by member states and as such automatically applied to Scotland. Directives require member states to implement them through domestic legislation⁸. The majority of EU legislation was transposed by the UK and devolved administrations and is therefore established in domestic law. EU legislation as it applied to the UK and Scotland on the 31 December 2020 is now part of domestic legislation as set out in section 39 of the European Union (Withdrawal Agreement) Act 2020. Whilst a member of the EU, policy and legislation on environmental governance applied to the UK and Scotland, however the UK's exit from the EU resulted in a potential governance gap.

Scottish Government consulted on environmental principles and governance in 2019 stating that their aim was to maintain effective, appropriate and proportionate environmental governance in Scotland⁷. The consultation noted that the Scottish Parliament holds Scottish Government to account for meeting its environmental ambitions and complying with international standards. It also noted that Scottish courts ensure compliance with the law and provide protection of individual rights. The consultation was informed by a Roundtable on Environment and Climate Change that identified potential gaps in three main areas⁹:

- Monitoring, measuring and reporting on environmental data and performance,
- Scrutiny, assessment and investigation of environmental matters, and

- Mechanisms for making complaints, challenging performance and enforcing action in environmental areas.

To respond to these gaps, Scottish Government developed proposals for environmental governance in Scotland and legislated to establish a new environmental oversight body as well as new duties and powers for Scottish Government as part of the European Union (Continuity) (Scotland) Act 2021.

Scottish Government Duties and Powers

The Act includes the power for Scottish Government to make provision corresponding to EU law, to allow Scottish Ministers to legislate where appropriate in line with amendments or new legislation created by the EU. Scottish Ministers must publish a policy statement on their use of this power and produce annual reports laid before the Scottish Parliament. Scottish Ministers must have due regard to the guiding principles on the environment when making policies and proposals for legislation. The Act also includes a duty to publish guidance on the interpretation and application of the principles, as noted above. Scottish Ministers also have a duty to consult on effectiveness of governance arrangements and to prepare and publish an environmental policy strategy.

Environmental Standards Scotland

The Act established Environmental Standards Scotland (ESS) to fill the environmental governance gap caused by the UK's departure from the European Union. ESS is an independent body, accountable to the Scottish Parliament. Its role is to ensure that there is effective scrutiny of public authorities' compliance with environmental law, alongside the effectiveness of environmental law and the way it is being implemented and applied in Scotland. ESS may investigate matters in response to concerns raised as representations or on its own initiative.

ESS's remit covers a broad range of environmental law, including all aspects of environmental protection and harm, particularly in relation human beings and their enjoyment of the environment. The organisation's remit covers all public authorities, including the Scottish Government and its agencies, as well as organisations carrying out functions of a public nature. Public authorities have a duty to cooperate with and assist ESS, and to try to swiftly resolve any matters. The Continuity Act provides ESS with powers to undertake these functions and ESS's approach to how the organisation will operate more fully are set out in the Strategic Plan.

Other UK Environmental Oversight Bodies

The TCA sets out how the EU and the UK should enforce relevant environmental and climate legislation. Article 394 required the UK to establish domestic authorities competent to enforce environmental and climate law and consider alleged violations of environmental law¹⁰. It states that these authorities should have adequate and effective remedies available to them, including injunctive relief as well as proportionate and dissuasive sanctions, if appropriate. Article 395 requires the EU, UK and Devolved Administrations to ensure that the European Commission and the supervisory bodies of the UK liaise with each other and co-operate on the effective monitoring and enforcement of environmental and climate law.

The Office of Environmental Protection (OEP) was legally created in November 2021, under the UK Environment Act 2021. The OEP's role and remit covers England and Northern Ireland as well as reserved matters across the UK (a matter on which only the UK Parliament in Westminster can make legislation). The OEP is established as an independent non-departmental public body, sponsored by the Department for Environment, Food and Rural Affairs.

The OEP has four main functions; scrutinising environmental improvement plans and targets, scrutinising environmental law, advising government on proposed changes to environmental law, and investigation and enforcement of environmental law by public authorities¹¹.

In Wales, an Interim Environmental Protection Assessor for Wales (IEPAW) has been appointed for two years (currently until March 2023) whilst legislation to implement a permanent body to oversee compliance with environmental law is being developed¹². The IEPAW's focus is on the functioning of environmental law, not on breaches of that law and it has no statutory enforcement or complaints investigation powers.

Public bodies' duties

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 includes a number of duties that relate to public authorities in Scotland. The Act defines a public authority as meaning a person exercising any function of a public nature with a few limited exceptions such as the Scottish or UK Parliaments, courts or tribunals and Ministers of the Crown.

Public authorities must co-operate with Environmental Standards Scotland and give it such reasonable assistance as it requests in connection with the exercise of its functions. This includes the provision of information. The Act also states that public authorities must make all reasonable efforts to swiftly resolve any matter which ESS raises concerning the authority's failure to comply with environmental law, to make effective environmental law or to implement or apply it effectively. Public Authorities also have a duty to reach agreement with ESS on any remedial action the authority should take for the purpose of environmental protection.

Section 15 of the Act also states that a responsible authority, other than reserved bodies (as defined in the Scotland Act 1998), must have due regard to the guiding principles on the environment when doing anything with the potential for significant impacts on the environment. Where public authorities are responsible authorities in terms of the Environmental Assessment (Scotland) Act 2005 they must have due regard for the guiding principles where the requirement for environmental assessment applies when preparing certain plans or programmes.

Summary

Scottish Government have estimated that around 80% of domestic environmental law in Scotland is derived from EU environmental law and policy. Following EU Exit, Scottish Government legislated to establish a new environmental oversight body, Environmental Standards Scotland, and to provide new duties and powers for Scottish Government as part of the European Union (Continuity) (Scotland) Act 2021. The Act also includes duties for public authorities such as a duty to cooperate with ESS.

England, Northern Ireland and Wales have also established equivalent environmental governance systems. In England and Northern Ireland, the Office of Environmental Protection has been fully established. In Wales, the Interim Environmental Protection Assessor (Wales) is a temporary measure whilst Welsh Government are developing legislation.

Access to Environmental Justice

The EU-UK Trade and Cooperation Agreement (TCA) sets out how the EU and the UK should provide appropriate access to justice for environmental and climate legislation. Article 394 states that national administrative or judicial proceedings should be available to natural and legal persons to bring actions against violations of such law and to seek effective remedies, including injunctive relief¹³. It also states that the proceedings should not be prohibitively costly and should be conducted in a fair, equitable and transparent way.

This is based on the principles established in the Aarhus Convention. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention) was agreed on 25 June 1998 in Aarhus (Denmark). All EU Member States, including the UK as a member at that time, also ratified the Convention. The objective of the Aarhus Convention is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to their health and well-being¹⁴. Scottish

Government have stated that they are committed to the Convention and that the arrangements are not affected by the UK's exit from the EU¹⁵.

Access to Environmental Justice - Legislation

The Aarhus Convention establishes rights for the public (individuals and their associations) regarding the environment¹⁴. It has three 'pillars':

- **Access to environmental information:** the right to be informed and have access to information about the environment that is held by public authorities.
- **Public participation in environmental decision making:** the right to participate in environmental decision-making. Public authorities must make arrangements to allow comment on proposals for projects, plans and programmes relating to the environment and for these comments to be given due account.
- **Access to Justice:** the right of easy and effective access to justice to challenge public decisions that have been made without respecting the two above rights or environmental law in general¹⁶.

The Convention also requires implementation of these rights to be 'fair, equitable, timely and not prohibitively expensive'.

The first pillar has been incorporated into Scots law through the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 and through the creation of the Scottish Information Commissioner. The second pillar has been incorporated in the Environmental Assessment (Scotland) Act 2005¹⁷.

The second and third pillars are given effect through environmental appeals and judicial review¹⁸. Scottish Government consulted on access to environmental justice as part of the Scottish court fees 2022-2025: consultation in 2021. Scottish Government have committed to ensure a review of environmental justice, and the case for an environmental court, is undertaken during the current parliamentary session.

Access to Environmental Justice - Compliance

There is a history of debate and some evidence of support for an environmental court in Scotland. In response to a 2016 Scottish Government consultation ‘Developments on Environmental Justice in Scotland’, analysis showed that ‘a substantial majority of the respondents favoured the introduction of an environmental court or tribunal’. Scottish Government decided that, due to uncertainties around Brexit and the scope or type of court, it was not appropriate to introduce an environmental court at that time.

Scotland’s legal system has been found to be in breach of the Aarhus convention in ten consecutive findings since 2014 by the UNECE Aarhus Convention Compliance Committee and other institutions. This is because the costs of legal action to protect and uphold environmental laws in Scotland (and the rest of the UK) are considered prohibitively expensive which does not meet the Convention’s Article 9(4). The Aarhus Convention’s governing institutions have called for reform ‘as a matter of urgency’ and a plan of action by July 2022. Scottish Government have committed to ensure a review of environmental justice, and the case for an environmental court, is undertaken during the Parliamentary term 2021-2026.

The UK Government and Wales are also in breach of the Aarhus Convention; however, Friends of the Earth and other NGOs have stated that Scotland has more substantial issues to resolve¹⁹. The legal aid system in England and Wales allows for legal aid in the public interest, which includes environmental cases, however the Scottish legal aid system has historically not awarded aid in such cases. Scotland has only made limited use of Protected Cost Orders to reduce the financial burden to the applicant in environmental cases. These are required due to the position for Judicial Reviews that the ‘losing’ party pays in the UK, which is not the case for some other countries, or is significantly limited in some countries such as Belgium¹⁹. The Scottish legal system is also perceived to have more restrictive conditions for an individual or organisation to be eligible to initiate a judicial proceeding as applicants must demonstrate “title and interest” in order to take a case. This could act as a disincentive to applicants and therefore could contravene the Convention’s ambition of broad access to justice.

Other countries and administrations have also been found to be in breach of the Aarhus Convention. The Compliance Committee concluded in 2017 that the EU was in breach of Article 9(3) and 9(4) of the Convention by failing to provide potential applicants sufficient means to challenge alleged breaches of environmental law in EU courts²⁰.

The EU have agreed to review the findings and remedy any issues by the end of 2023.

The Environmental Rights Centre for Scotland and other eNGOs are calling for swift and effective changes to Scottish law to resolve these issues and have noted that there is also a need to deliver compliance with the Aarhus Convention more strategically to address wider barriers to accessing environmental justice as well as the cost barrier. In particular, they have called for the establishment of an environmental court or tribunal in Scotland²¹.

Over the last decade there has been an increase in Environmental Courts globally. Currently²² there are estimated to be more than 1500 environmental courts or tribunals in 44 countries. This figure has risen rapidly since 2009 an initial study for the United Nations Environment Programme identified 350.

Access to Environmental Justice – Planned Action

DEFRA have led on the action plan for the UK which was submitted on the 1 July 2022 with input from the Scottish Government²². The action plan highlighted UK Government and Scottish Government proposals to resolve issues identified by the Compliance Committee and the current status of related activities. The next stage is for the Aarhus Compliance Committee to review and respond to the action plan.

Scottish Government consulted on access to environmental justice as part of the “Scottish court fees 2022-2025: consultation” in 2021 including whether environmental cases within the meaning of the Aarhus Convention should be exempt. Scottish Government have committed to ensure a review of environmental justice, and the case for an environmental court, is undertaken during the Parliamentary term 2021-2026.

Human Rights and the Environment

In the 2020-21 Programme for Government, Scottish Government stated that they will consult on a new Human Rights (Scotland) Bill in 2022. The proposed bill will legally protect a range of rights, including a proposed human right to a healthy environment ‘with substantive and procedural elements’. The UN has appointed a Special Rapporteur on Human Rights and the Environment with a remit to examine the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The Special Rapporteur also promotes best practices of the use of human rights in environmental policymaking²³.

The Special Rapporteur has stated that a human right to a healthy environment should include features such as clean air, a safe climate and access to safe water and adequate sanitation. It should also include sustainably produced food, non-toxic environments in which to live and a healthy natural environment. The Special Rapporteur also noted that any human right to a healthy environment should include effective mechanisms to ensure environmental laws are properly enforced and to allow people to exercise their individual environmental rights, including the Aarhus Convention rights.

Summary

The Aarhus Convention establishes rights for the public that include access to environmental data, environmental decision making and environmental justice. The Committee that oversees compliance with the Convention has stated on a number of occasions that the UK and Scotland are in breach of the Convention due to the prohibitive cost of access to environmental justice. Scottish Government have stated that they are committed to the Convention and have committed to ensure a review of environmental justice, and the case for an environmental court, is undertaken during the Parliamentary term 2021-2026.

In the 2020-21 Programme for Government, Scottish Government stated that they will consult on a new Human Rights (Scotland) Bill in 2022. The proposed bill will enshrine

in law a range of rights, including a proposed human right to a healthy environment.

Keeping Pace

Part 1 of the European Union (Continuity) (Scotland) Act 2021 establishes the power and framework that enables Scottish Ministers to continue to keep devolved Scottish law aligned with EU law, known as 'keeping pace'.

Scottish Government have stated that maintaining alignment with EU law and the high standards that Scotland has enjoyed as part of the EU is a priority of the Scottish Ministers. This will be achieved through both legislative and non-legislative measures. The power provided in section 1 of the Act is intended to maintain the Scottish Ministers' ability to make subordinate legislation in order to keep devolved Scots law aligned with EU law as the latter develops.

Section 7(1) of the Act requires Scottish Ministers to prepare and lay before the Scottish Parliament a report explaining how the section 1(1) power to make provision corresponding to EU law has been used during the reporting period. This is defined in subsection (2) as one year from the day which section 1(1) comes into force and further one-year periods from that date onwards. The first such report in October 2021 noted that Scottish Ministers' default position will be to align with EU law, however there will be occasions where constraints or the nature of the provisions may change this position. This includes technical provisions only relevant to EU member states, or where Scottish Ministers judge that to align in full would not serve Scotland's wider interests, for example due to constraints such as the working of the UK Internal Market Act.

Retained EU law

To ensure legal continuity, the UK Government developed a new category of law as part of the European Union (Withdrawal) Act 2018, known as "retained EU law". This took a 'snapshot' of all EU law that applied in the UK at the point of EU exit and brought it into the UK's domestic legal framework as "retained EU law".

This means that EU environmental standards as they were at the point of EU exit still apply in Scotland as retained law. However, stakeholders have raised some concerns about the extent to which certain aspects of EU regulation have been retained. Some EU environmental law, such as the Habitats and Birds Directives relies on case law as part of its implementation.

There are also areas of EU environmental law including the regulation of chemicals, pesticides and emissions trading systems which were applied through EU centralised systems such as EU REACH²⁴ or the EU emissions trading system²⁵. These have been replaced by newly created domestic governance systems such as UK ETS which are not exact copies of EU governance systems and may diverge further over time²⁶.

Trade Agreements

The EU-UK Trade and Cooperation Agreement (TCA) was signed on 30 December 2020, applied provisionally on the 1 January 2021 and entered into force on 1 May 2021²⁷. This agreement included the right for the EU and the UK to decide and establish their respective environmental protection measures and included an agreement to “continue to strive to increase their respective environmental levels of protection”.

The TCA includes ‘Level Playing Field’ or ‘non-regression’ provisions that aim to ensure that specific environmental and climate protections cannot be lowered in a way that negatively impacts trade. It also includes a rebalancing measure that enables a party to act, such as imposing trade tariffs, where a dispute has arisen about a significant divergence in environmental or climate protection or subsidy control.

The TCA therefore establishes a minimum ‘floor’ in terms of environmental protection in the UK, however this is only in relation to the impact on trade between the EU and the UK. ENGOs and other organisations have raised concerns about the limitations of the TCA and its measures²⁸.

The UK is also negotiating other trade deals with international partners and countries. These have the capacity to have an impact on environmental standards in Scotland,

both through the establishment of higher standards in an international agreement and through the reduction of environmental standards. The UK Government retains the constitutional power to negotiate and agree international trade agreements. Whilst Scotland and other Devolved Administrations may be consulted, any international trade agreement can impinge on Scottish Governments ability to set and apply environmental standards potentially. It remains to be seen to what extent future trade agreements interact with environmental standards, however a US government document outlining the US-UK Negotiating Objectives in 2019 specifically mentioned the objective to²⁹:

“Establish a mechanism to remove expeditiously unwarranted barriers that block the export of U.S. food and agricultural products in order to obtain more open, equitable, and reciprocal market access.”

Whilst the positions and objectives set out by specific governments are subject to change and likely to be amended following negotiations, this indicates that there is a risk of future pressures on environmental standards in the UK and Scotland due to trade.

UK Legislation and Policies

Common Frameworks are being developed in several policy areas between the UK and Devolved Administrations. They are non-legislative or legislative agreements on collective approaches to regulation for specific policy areas that were previously governed by EU law and which intersect with areas of devolved competence³⁰.

Common Frameworks are expected in a range of policy areas such as agriculture, air quality, chemicals and pesticides, and resources and waste. They could provide agreed regulatory floors for key areas of devolved policy and legislation however environmental groups have raised concerns in some areas about the risk of a ‘race to the bottom’³¹. It is expected that they will enable the UK Government and the Devolved Administrations to make different choices on how to implement the rules in some of these policy areas where appropriate³².

UK internal trade was previously facilitated by the EU single market whilst the UK was a member of the EU. The UK Internal Market Act 2020 (IMA) was developed following the UK's decision to leave the single market and aims to establish coherent and consistent market access and support for the UK internal market³³.

Two market access principles for goods and services are enshrined in the Internal Market Act:

- the principle of mutual recognition means that any good or service that meets regulatory requirements in one part of the UK can be sold in any other part, without having to adhere to different regulatory requirements in that other part;
- the non-discrimination principle establishes a prohibition on direct or indirect discrimination based on treating local and incoming goods and services differently

The principle of an effective internal market is supported by many stakeholders in terms of the facilitation of effective internal trade. However, concerns have been raised by Devolved Administrations and other stakeholders about the impact that the Act has on the development of environmental standards in devolved nations and the risk of a 'race to the bottom'. Welsh Government raised a judicial review due to the perceived uncertainty imposed by the Act on Welsh Government's ability to legislate³⁴.

Summary

Scottish Government have stated that maintaining alignment with EU law and the high standards that Scotland has enjoyed as part of the EU is a priority of the Scottish Ministers. This will be achieved through both legislative and non-legislative measures however there are several factors that may have an impact on this ambition.

Environmental standards in Scotland are influenced by a range of political and legal processes and structures. These include the EU environmental standards and any future development of EU environmental policy and law with Scottish Government's ambition of keeping pace. However, they are also influenced by the EU-UK Trade and

Cooperation Agreement and any future international trade agreements, common frameworks agreed between the UK Government and Devolved Administrations and UK legislation such as the Internal Markets Act and any future legislation that has implications for devolved decision making. There remains an inherent risk of divergence from the EU and from the rest of the UK as governance structures, legislation and policy continue to develop.

Environmental assessment and other cross-cutting environmental issues

Scottish Government's Environment Strategy recognises that the environment is interlinked with a range of other interests and policy areas including the economy, energy, planning and human health and wellbeing³⁵. The environment is also key in managing and responding to extreme weather events and flooding and Scottish Government have stated that the climate and nature crises are intrinsically linked³⁶.

A key part of protecting the environment is undertaking environmental assessments to understand the potential impacts of activities such as development and projects and programmes of work³⁷. These assessments also allow scrutiny of decision making and aim to ensure appropriate public participation.

Strategic Environmental Assessments (SEA)

Strategic Environmental Assessment (SEA) in Scotland is implemented via the Environmental Assessment (Scotland) Act 2005³⁸. This makes provision for the assessment of the environmental effects of plans, programmes and strategies, including as set out in Directive 2001/42/EC of the European Parliament and of the Council. The Scottish Act applies SEAs more widely than the minimum required by the Directive and aims to ensure that interested and affected parties can understand the environmental impacts and contribute to the decision making.

The Act requires the responsible authority to ensure that an environmental assessment is carried out during the preparation of a relevant plan or programme. During the plan/programme preparation process a number of statutory consultees must be consulted about the potential impacts. The designated statutory consultation authorities are SEPA, NatureScot and Historic Scotland. The duty to undertake, or commission, the assessment applies to the responsible authority, which principally includes Scottish Ministers, Scottish Parliament and public authorities. The Act applies to plans that are prepared or adopted by a responsible authority at national, regional or local level.

SEAs aim to ensure that the process for preparing plans and programmes (e.g. development plans) effectively considers environmental issues and where identified seeks to mitigate negative impacts and enhance positive impacts. SEAs support rigorous and transparent production and review of plans, programmes and strategies and aims to ensure that the environment is a key part of public sector decision-making. The SEA process also provides an effective framework to ensure that Environmental Impact Assessment (EIA) are targeted appropriately for specific projects³⁹. SEAs are recommended by the Organisation for Economic Co-operation and Development (OECD) as an effective tool when planning or coordinating development assistance as they help decision makers to better understand how environmental, social and economic considerations fit together⁴⁰. RSPB and the WWF commissioned a review of SEAs in Scotland to consider how better SEAs can help deliver biodiversity and climate change mitigation targets⁴¹. The review noted that a significant impact on the efficacy of SEAs was linked to timing and resources. Where SEA is considered at the outset of a project and sufficient capacity exists to apply the approach fully, they are beneficial. Where this is not the case, due to lack of capacity or constrained options where the SEA is only considered late in the process the value added is limited.

Environmental Impact Assessments (EIA)

Environmental Impact Assessments are a systematic assessment of the likely significant environmental effects that could occur due to a proposed development or project. The regulations in Scotland make provision for the assessment of

developments or projects as required by EU Directive 2011/92/EU (“EIA Directive”). The requirements for EIAs and the processes set out in the related regulations are intended to ensure that developers, and organisations or individuals undertaking relevant projects, consider the potential and likely effects on the environment at the earliest stage possible and seek to avoid, reduce or offset identified effects. There are several different types of EIA covering a range of issues including agriculture, energy, forestry, marine, planning and development and trunk roads. The process of assessing and determining an EIA is intended to be transparent and publicly accessible, applicants and public authorities are required to publicise and provide access to documents and supporting information. Projects that do not automatically require an EIA are screened to establish whether EIA applies and if so, it is the developer's responsibility to provide the appropriate information as part of an EIA Report. This is to allow the consenting authority to make a decision on whether permission should be granted, with or without conditions to mitigate the environmental impact(s).

EIAs are required for the following regimes: Planning, Energy, Marine licensing, Transport, Agriculture, Land drainage, Forestry, Flood management, Ports and harbours and Controlled activities. Guidelines vary between regimes, but the majority of regimes explicitly require the EIA to identify, describe and assess the project's direct and indirect impact on factors. These include population and human health; biodiversity, and in particular protected species and habitats; land, soil, water, air and climate; and material assets, cultural heritage and the landscape. Screening decisions and consenting are normally undertaken by the Scottish Ministers, the relevant planning authority or by an appropriate public authority. Statutory consultees normally include the relevant planning authority, Historic Environment Scotland, NatureScot and SEPA as well as any public body who has a relevant interest in the decision, dependant on what type of development is being assessed. Some of the EIA regulations have specific requirements related to sensitive areas, in particular, protected sites for species or habitats, scheduled ancient monuments and land with area designations such as national parks.

Development and planning EIAs are implemented in Scotland via the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017⁴². The majority of planning applications do not require an EIA, however significant and largescale projects often do. All developments that fall within the categories set out in Schedule 1 of the 2017 EIA Regulations require an EIA. These include major infrastructure such as large power stations and motorways, as well as industrial sites and large intensive agriculture developments. There are also a range of developments listed in Schedule 2 to the 2017 EIA Regulations that may require an EIA dependant on whether they are likely to have a significant effect on the environment such as wind farms and intensive fish farming. This is assessed by the relevant Local Authority or Scottish Ministers who consider a range of factors such as the location, size and type of development. Consultees can include the Health and Safety Executive, the Office for Nuclear Regulation and any public body who has a relevant interest in the decision, dependant on what type of development is being assessed.

Energy projects and electrical works EIAs are implemented via the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017⁴³. Relevant developments include electricity works related to generating stations or above ground powerlines, including renewable energy developments such as windfarms.

Marine licencing EIAs are implemented via the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017⁴⁴. All developments that fall within the categories set out in Schedule 1 of the 2017 EIA Regulations require an EIA. These include major infrastructure such as power plants and motorways, as well as industrial sites and extraction of petroleum or natural gas. There are also a range of developments listed in Schedule 2 to the 2017 EIA Regulations that may require an EIA dependant on whether they are likely to exceed the relevant threshold.

Transport and trunk roads EIAs are implemented via the Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017⁴⁵ and the Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017⁴⁶. The majority of works undertaken on the trunk roads and transport network do not require an EIA, any environmental issues identified for these projects are considered

through non-statutory environmental review processes. Major works which have the potential for significant environmental impacts are subject to EIA and the related requirements for assessment and consultation.

Agricultural and land drainage EIAs are implemented in Scotland via the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017⁴⁷. Relevant developments include construction works or other installations as well as interventions in the natural surroundings and landscape involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes, restructuring of rural land holdings on agricultural land, irrigation or drainage.

Forestry EIAs are implemented via the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017⁴⁸. Relevant developments include any “forestry project” that includes afforestation, deforestation, forest quarry works or forest road works. Forest quarry and road works refer to quarrying or road construction or maintenance on land used for the purpose of forestry.

Flood management EIAs are implemented via the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017⁴⁹. These regulations apply to relevant flood protection schemes and ensure that these schemes properly take into account their impact on the environment.

Ports and harbours EIAs are implemented by the Harbour Works (Environmental Impact Assessment) Regulations 1999⁵⁰ and the Harbour Works (Environmental Impact Assessment) (Amendment) Regulations 2000⁵¹. These regulations apply to relevant harbour works and ensure that these schemes properly take into account their impact on the environment.

Although smaller projects may require an EIA, particularly in sensitive areas such as protected sites, it is primarily larger projects that require an EIA. The process can be very expensive for developers and it can take years to complete where long-term surveys are required to understand the potential impacts⁵². Where projects have an EIA undertaken as part of the consenting process, they may still be challenged if there are

concerns about legal compliance of the EIA or EIA report due to the scope or content being limited. In response to proposed reforms of EIA by UK Government in England, the RSPB has stated that EIA could be improved by making the process more outcome focussed, more transparent by sharing information digitally, standardisation of Environmental Statements and ensuring that EIAs have a greater bearing on development decision making⁵³.

Habitats Regulations Appraisal (HRA)

In Scotland, the Habitats Directive is implemented via the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)⁵⁴. This piece of legislation is often called the Habitats Regulations. The Habitats Directive refers to European Union Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. The Directive led to the establishment of a network of European sites (previously known as Natura 2000 sites) and sets out how the sites should be protected. It also extends to other topics such as European Protected Species in conjunction with the Birds Directive 79/409/EEC.

A Habitats Regulations Appraisal (HRA) is required for all plans that are considered likely to have an adverse effect on a European site⁵⁵. This includes Special Protected Areas (SPAs) and Special Areas of Conservation (SACs). The HRA includes both the process of determining whether an Appropriate Assessment is required and the Appropriate Assessment itself. Any plan or project that could affect a European site will require a HRA, regardless of the distance from the European site. The competent authority must assess whether there is enough evidence to decide beyond reasonable scientific doubt that there will not be an adverse impact on the integrity of the European site. Where there is deemed to be the potential for an adverse impact, the competent authority can still issue a consent if it is content that there are no alternative options and there is overriding public interest. A lack of evidence is not sufficient reason to allow consent⁵⁶.

The competent authority can include “any Minister, government department, public or statutory undertaker, public body of any description, or person holding a public office”⁵⁷. For example, for planning applications the local planning authority is the competent authority. Scottish Forestry is the competent authority for forestry activities and SEPA is the competent authority for Controlled Activities Regulations (CAR) authorisations in the water environment. NatureScot provides advice on HRAs and must be consulted where an Appropriate Assessment is required.

Some specific activities are reserved matters that are managed via UK Government, in these cases the Conservation of Habitats and Species Regulations 2017 apply in Scotland. This includes consents granted under Sections 36 and 37 of the Electricity Act 1989. Similarly, the Offshore Marine Regulations 2017 apply in Scottish waters for activities that require consent more than 12 nautical miles from land. In England and Wales, a Habitats Regulations Appraisal is known as a Habitats Regulations Assessment. As with EIA and SEA, the effectiveness of the HRA process is reliant on the scope and content, as well as the capacity of the public bodies involved and the timing of when HRA is considered as part of the proposed plan.

Summary

A key part of protecting the environment is undertaking environmental assessments to understand the potential impacts of activities such as development and projects and programmes of work. Assessments include Strategic Environmental Assessment (SEA) for plans, programmes and strategies, Environmental Impact Assessment (EIA) for developments and projects and Habitats Regulations Appraisal for all plans and projects that could adversely affect European sites. These assessments aim to ensure that consenting bodies and developers have sufficient information to make informed decisions and avoid or mitigate environmental impacts. They also allow scrutiny of decision making and aim to ensure appropriate public participation.

These assessments can be expensive and take a long time to undertake properly as evidence required can include long-term surveys that take years to complete. Consents

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 - [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](#)

Summary and recommendations in relation to the Aarhus Compliance Committee findings - [Briefing-on-Judicial-Expenses_ERCS-Nov21.pdf](#)

Summary of the UK-EU trade deal - [What does the UK-EU Deal mean for environmental standards in Scotland? – SPICe Spotlight | Solas air SPICe \(spice-spotlight.scot\)](#)

The first annual report to Parliament on progress in developing the Environment Strategy for Scotland - [Environment strategy for Scotland: progress report - gov.scot \(www.gov.scot\)](#)

Scottish Environment Link report on Environmental Governance - [Environmental Governance: effective approaches for Scotland post-Brexit - Scotlink](#)

Scottish Government summary of environmental assessment legislation and policy - [Environmental assessment - gov.scot \(www.gov.scot\)](#)

Summary of Habitat Regulations Appraisals and related guidance - [Habitats Regulations Appraisal \(HRA\) | NatureScot](#)

5. End Notes

¹ United Nations, *Conference on the Human Environment, 5-16 June 1972, Stockholm, 2022*, <https://www.un.org/en/conferences/environment/stockholm1972> (accessed August 2022).

² United Nations, *A/CONF.151/26 (Vol. I) Report of the United Nations conference on environment and development, 1992*,

Compliance Committee Fifty-seventh meeting Geneva, 27–30 June 2017 Item 9 of the provisional agenda Communications from members of the public Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union, 2017, [1708985 \(unece.org\)](#) (accessed August 2022).

21 Environmental Rights Centre for Scotland, *Scotland's non-compliance with the Aarhus Convention on prohibitive expense: Recommendations for a plan of action on judicial expenses*, 2022, [Briefing-on-Judicial-Expenses_ERCS-Nov21.pdf](#) (accessed August 2022).

22 United Nations, *Plan of action for decision VII/8s (United Kingdom)*, 2022, [frPartyVII.8s_01.07.2022_plan_action.pdf \(unece.org\)](#) (accessed August 2022).

23 United Nations, *Special Rapporteur on human rights and the environment*, 2022, [OHCHR | Special Rapporteur on human rights and the environment](#) (accessed August 2022).

24 European Chemicals Agency, *Understanding REACH*, 2022, [Understanding REACH - ECHA \(europa.eu\)](#) (accessed August 2022).

25 European Commission, *EU Emissions Trading System (EU ETS)*, 2022, [EU Emissions Trading System \(EU ETS\) \(europa.eu\)](#) (accessed August 2022).

26 UK Government, *Guidance Participating in the UK ETS*, 2022, [Participating in the UK ETS - GOV.UK \(www.gov.uk\)](#) (accessed August 2022).

27 The European Commission, *The EU-UK Trade and Cooperation Agreement*, 2022, [The EU-UK Trade and Cooperation Agreement | European Commission \(europa.eu\)](#) (accessed August 2022).

28 The Scottish Parliament, *What does the UK-EU Deal mean for environmental standards in Scotland?*, 2022, [What does the UK-EU Deal mean for environmental standards in Scotland? – SPICe Spotlight | Solas air SPICe \(spice-spotlight.scot\)](#) (accessed August 2022).

29 Office of the United States Trade Representative, Executive Office of the President, *United States-United Kingdom Negotiations Summary of Specific Negotiating Objectives*, 2022, [Summary of U.S.-UK Negotiating Objectives.pdf \(ustr.gov\)](#) (accessed August 2022).

30 UK Government, *Frameworks Analysis 2021: Breakdown of areas previously governed by EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland*, 2022, [Frameworks Analysis 2021 \(publishing.service.gov.uk\)](#) (accessed August 2022).

31 Friends of the Earth, *UK Environmental Policy Post-Brexit: A Risk Analysis*, 2022, [Environment-and-Brexit-Risk-Analysis-C-Burns-Et-al-2018.pdf \(brexitenvironment.co.uk\)](#) (accessed August 2022).

32 The Scottish Parliament, *Rural Affairs, Islands and Natural Environment Committee UK Common Frameworks*, 2022, [UK Common Frameworks | Scottish Parliament Website](#) (accessed August 2022).

33 UK Government, *United Kingdom Internal Market Act 2020*, 2020, [United Kingdom Internal Market Act 2020 \(legislation.gov.uk\)](#) (accessed August 2022).

34 Welsh Government, *Written Statement: Legal challenge to the UK Internal Market Act 2020 – Update*, 2021, [Written Statement: Legal challenge to the UK Internal Market Act 2020 – Update \(29 June 2021\) | GOV.WALES](#) (accessed August 2022).

35 Scottish Government, *The Environment Strategy for Scotland: vision and outcomes*, 2020, [2. The context - The Environment Strategy for Scotland: vision and outcomes - gov.scot \(www.gov.scot\)](#) (accessed August 2022).

-
- 36 Scottish Government, *Environment strategy for Scotland: progress report*, 2022, [2. Progress, challenges and opportunities - Environment strategy for Scotland: progress report - gov.scot \(www.gov.scot\)](#) (accessed August 2022).
- 37 Scottish Government, *Environmental assessment*, 2022, [Environmental assessment - gov.scot \(www.gov.scot\)](#) (accessed August 2022).
- 38 Scottish Government, *Environmental Assessment (Scotland) Act 2005*, 2022, [Environmental Assessment \(Scotland\) Act 2005 \(legislation.gov.uk\)](#) (accessed August 2022).
- 39 Scottish Government, *A basic introduction to Strategic Environmental Assessment (SEA)*, 2009, [Strategic Environmental Assessment \(SEA\) \(www.gov.scot\)](#) (accessed August 2022).
- 40 OECD, *Applying Strategic Environmental Assessment GOOD PRACTICE GUIDANCE FOR DEVELOPMENT CO-OPERATION*, 2006, [Applying Strategic Environmental Assessment \(oecd.org\)](#) (accessed August 2022).
- 41 Collingwood Environmental Planning, *Win-Win by 2020: How better Strategic Environmental Assessment can help deliver biodiversity and climate change mitigation targets by 2020*, 2009, [Microsoft Word - SEA critique Interim Report Final 08_12_09fin.doc \(rspb.org.uk\)](#)
- 42 Scottish Government, *The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017*, 2022, [The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 43 Scottish Government, *The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017*, 2022, [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 44 Scottish Government, *The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017*, 2022, [The Marine Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 45 Scottish Government, *The Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017*, 2022, [The Transport and Works \(Scotland\) Act 2007 \(Environmental Impact Assessment\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 46 Scottish Government, *The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017*, 2022, <https://www.legislation.gov.uk/ssi/2017/137/contents/made> (accessed August 2022).
- 47 Scottish Government, *The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017*, 2022, [The Agriculture, Land Drainage and Irrigation Projects \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 48 Scottish Government, *The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017*, 2022, [The Forestry \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 49 Scottish Government, *The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017*, 2022, [The Flood Risk Management \(Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts\) \(Scotland\) Amendment Regulations 2017 \(legislation.gov.uk\)](#) (accessed August 2022).
- 50 UK Government, *The Harbour Works (Environmental Impact Assessment) Regulations 1999*, 2022, [The Harbour Works \(Environmental Impact Assessment\) Regulations 1999 \(legislation.gov.uk\)](#) (accessed August 2022).

51 UK Government, *The Harbour Works (Environmental Impact Assessment) (Amendment) Regulations 2000*, 2022, [The Harbour Works \(Environmental Impact Assessment\) \(Amendment\) Regulations 2000 \(legislation.gov.uk\)](#) (accessed August 2022).

52 Law Society of Scotland, *EIA: the regimes change*, 2017, <https://www.lawscot.org.uk/members/journal/issues/vol-62-issue-07/eia-the-regimes-change/> (accessed August 2022).

53 RSPB, *Towards improving environmental assessment and enabling nature's recovery*, 2022, [rspb-towards-improved-environmental-assessment-report-nov-2021.pdf](#) (accessed August 2022).

54 UK Government, *The Conservation (Natural Habitats, &c.) Regulations 1994*, 2022, [The Conservation \(Natural Habitats, &c.\) Regulations 1994 \(legislation.gov.uk\)](#) (accessed August 2022).

55 NatureScot, *Habitats Regulations Appraisal (HRA): likely significant effects*, 2022, [Habitats Regulations Appraisal \(HRA\) | NatureScot](#) (accessed August 2022).

56 NatureScot, *Habitats Regulations Appraisal (HRA): likely significant effects*, 2022, [Habitats Regulations Appraisal \(HRA\) | NatureScot](#) (accessed August 2022).

57 UK Government, *The Conservation (Natural Habitats, &c.) Regulations 1994*, 2022, [The Conservation \(Natural Habitats, &c.\) Regulations 1994 \(legislation.gov.uk\)](#) (accessed August 2022).

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