



The Scottish Parliament  
Pàrlamaid na h-Alba

Màiri McAllan MSP  
Cabinet Secretary for Transport, Net  
Zero and Just Transition  
Scottish Government

**Net Zero, Energy and Transport  
Committee**

c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

By email only

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2 November 2023

Dear Cabinet Secretary,

**Environmental Governance**

*Environmental Governance*

As you may be aware, the Committee wrote to a number of stakeholders on 20 September seeking their views on the Scottish Government's *Environmental governance arrangements: report*<sup>1</sup>. In their responses, they raised some significant concerns.

In particular, the Environmental Rights Centre for Scotland ("ERCS") said the report had fallen short of the Scottish Government's statutory duty under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. They said the Scottish Government had acted unlawfully in relation to its duty to publish a report consulting on whether and how the establishment of an environmental court could enhance environmental governance arrangements in Scotland.

We understand that the Scottish Government produced a supplementary briefing paper<sup>2</sup> that considered environmental courts and that the consultation date was extended to enable further consideration of this.

ERCS also said it was:

"... deeply disappointed by the Consultation and the Report. We have significant concerns regarding the poor quality of the Report. The Report is superficial in its analysis, narrow in scope, and appears pre-determined in its conclusions".<sup>3</sup>

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<sup>1</sup> [Supporting documents - Environmental governance arrangements: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-environmental-governance-arrangements-report)

<sup>2</sup> [Environmental Governance Review Briefing Paper on an Environmental Court.pdf \(consult.gov.scot\)](https://consult.gov.scot/environmental-governance-review-briefing-paper-on-an-environmental-court.pdf)

<sup>3</sup> [Submission from ERCS to the Net Zero, Energy and Transport Committee, dated 6 October](#)

Scottish Environment LINK likewise said it was disappointed that the report:

“...took a narrow approach to the consideration of environmental governance. We consider this a missed opportunity to examine the environmental governance gaps post-EU Exit in the context of needing to scale up action on the nature and climate crises and a governance landscape that was insufficient even while the UK was a member of the EU. The report clearly sets out the Scottish Government’s position, despite this being a consultation to gather views, and fails to include substantive discussion of how Ministers arrived at these positions or what evidence base was drawn upon”.<sup>4</sup>

We note that in their response to Scottish Government consultation, the UK Environmental Law Association (“UKELA”) had stated that, overall:

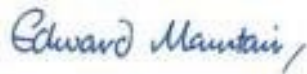
“... the Report lacks depth and without really considering the necessary detail and scrutiny that is required at this time; some two years after Brexit. It considers matters at a high level of generality without really engaging with many of the issues that have given rise to concern, nationally and internationally, over a number of years”.<sup>5</sup>

We are aware that your consultation has recently closed and that you will now be considering responses. We write to draw your attention to these trenchant criticisms of the report and would be grateful if you could outline your response to them, particularly the view that the report, and the work that proceeded it, did not meet the requirements set out in legislation.

I would be grateful for a response by 28 November 2023. It is the Committee’s intention to revisit this issue after receiving your response. As part of this, we would expect to invite you to provide oral evidence to the Committee at a date to be confirmed in the New Year. Clerks will be in touch in due course to arrange a suitable time for this.

I look forward to hearing from you.

Yours sincerely,



Edward Mountain MSP  
Convener  
**Net Zero, Energy and Transport Committee**

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<sup>4</sup> [Submission from Scottish Environment LINK, dated 10 October](#)

<sup>5</sup> [Submission from UKELA, received 12 October](#)