Report into the effectiveness of governance arrangements as required by section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

Briefing paper: Information considered on environmental courts.

Introduction

The Scottish Government recognises the strengths in the current balance of parliamentary, administrative and judicial roles in decision making on environmental matters and does not see any strong argument for the creation of a specialist court in addition to the environmental governance structures which have been introduced through part 2 of the Continuity Act. Our objective must be to protect environmental standards and rights through accessible and effective means, recognising that in those cases where individuals and communities have to go to court, the process can be daunting and stressful. Court action is expensive in time and in money, whether the costs fall on the individuals or are met by government. This briefing paper considers the merits and demerits of an environmental court which was informed by evidence gathered from stakeholders, a summary of the evidence provided can be found in the annex.

This briefing paper provides a summary of the information that was considered and which led to the conclusions presented in the report on matters relating to whether the establishment of an environmental court could enhance governance arrangements. The information available to the Scottish Government included information collected in evidence gathering sessions with internal and external stakeholders including environmental NGOs, public bodies and academics. Information gathered in these evidence-gathering sessions supported a range of views about the potential merits and demerits of establishing an environmental court. These sessions took place between November 2022 and February 2023 and covered the matters required in the legislation.

There are many differing views on what a potential environmental court's remit should be and its function. Suggested potential benefits put forward during the evidence gathering sessions included removing expensive legal costs, increasing judicial expertise and knowledge on environmental issues, merits review of acts and omissions, and defragmenting environmental disputes. However, the suggested benefits of an environmental court would be dependent on the court's functions and remit. Information relating to these, and other issues is included in the summary below.

The Scottish court system

An important element of background information that was considered on whether an environmental court could enhance governance arrangements is the current structure of the courts and tribunals in Scotland. Detailed information about the Scottish Courts and Tribunals Service can be found on the website - https://www.scotcourts.gov.uk/. There are some particular classes of cases that are

heard in the Scottish Land Court, as discussed below. Otherwise, environmental cases are heard in the forum considered most suitable.

The structure and procedures of the Scottish courts and tribunals have evolved over many centuries through legislation, precedent and the development of rules and procedures. The current structure of the Scottish courts and tribunals is summarised in figure 1.

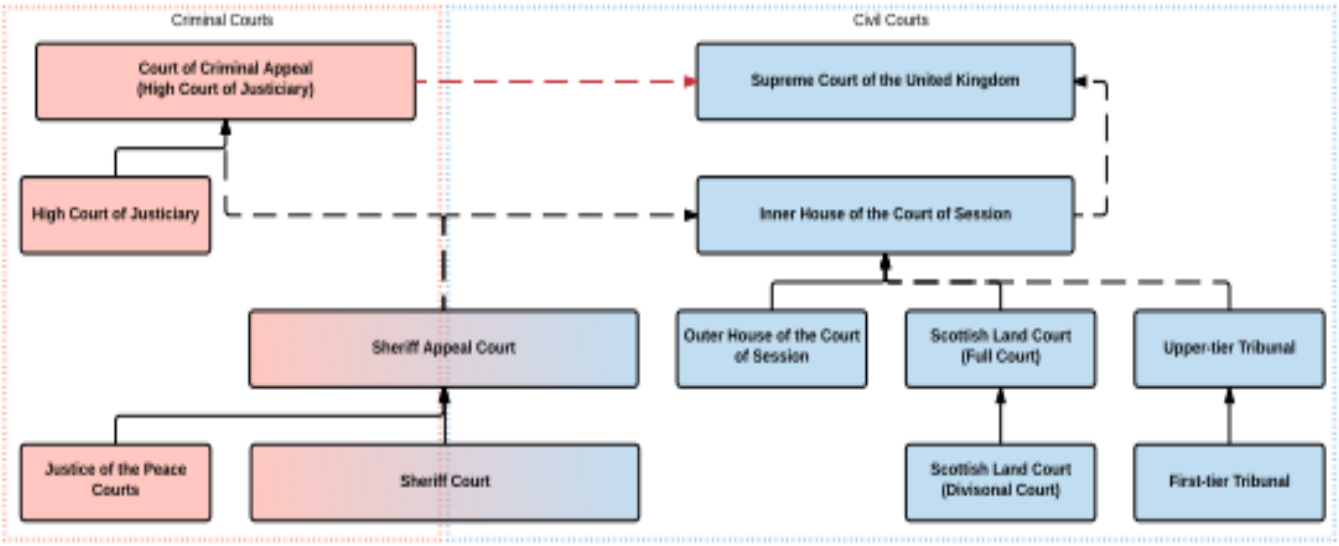

Figure 1: The Scottish Court System

Justice of the Peace Courts
A justice of the peace is a lay magistrate, appointed from within the local community and trained in criminal law and procedure. Justices sit either alone, or in a bench of three, and deal with the less serious summary crimes.

Sheriff Courts - criminal
The majority of cases are dealt with in the country's Sheriff Courts unless they are of sufficient seriousness to go to the Supreme Courts of the Court of Session and the High Court of the Judiciary at first instance. Criminal cases are heard by a sheriff and a jury but can be heard by a sheriff alone.

Court of Session
The Court of Session was first established in 1532 and is Scotland's supreme civil court. The Court of Session is divided into the Outer House and the Inner House.

The Court of Session Outer House
The Outer House mostly hears civil cases when they first come to court (i.e., at first instance). The Court deals with a wide range of cases including the review of local or central government decisions.

The Court of Session Inner House
The Inner House is primarily the appeal court for the Outer House. It reviews decisions, mostly from the Outer House but also occasionally from the sheriff courts, the tribunals, and other bodies.

Supreme Court
Certain decisions can be appealed to the Supreme Court of the United Kingdom, either with the permission of the Inner House or, if the Inner House has refused permission, with the permission of the UK Supreme Court.

High Court of Justiciary
The High Court of Justiciary was first established in 1672 and is Scotland's supreme criminal court. When sitting at first instance as a trial court, it hears the most serious criminal cases. Appeals are heard from the High Court, from more serious sheriff court cases and from cases referred by the Scottish Criminal Cases Review Commission. The High Court of Justiciary can refer a point of law to the Supreme Court.

Sheriff Appeal Courts
The Sheriff Appeal Court (Criminal) was established in 2015, as part of the Scottish Civil Courts Reforms, to deal with summary (less serious) criminal appeals.

The Court hears appeals against summary criminal proceedings from both the sheriff and the justice of the peace courts. An appeal against conviction is normally heard by three appeal sheriffs, while an appeal against sentence is normally heard by two appeal sheriffs.

It hears appeals against sheriff court cases. In civil standard procedure cases, the appeal is normally heard by three appeal sheriffs sitting in Parliament House, Edinburgh, while in accelerated procedure cases the appeal is normally heard by one appeal sheriff in the court where the action originated.

Sheriff Courts - Civil
Civil matters are heard by a sheriff sitting alone. For civil matters, the Sheriff Court has exclusive jurisdiction over all environmental disputes with a monetary value up to £100,000.

The Scottish Land Court
The jurisdiction of the Scottish Land Court covers disputes between landlords and tenants relating to agricultural tenancies, and matters related to crofts and crofters. The Court is both a trial court and an appeal court. Hearings in the first instance are often heard by a Divisional Court, which will hear cases at local venues and handles the main business of the Court. Decisions of the Divisional Court can be appealed to the Full Court, which will consist of at least one legally qualified judicial member and the remaining Agricultural Member with long experience of agricultural matters. Some cases are heard at first instance by the Full Court, and these cases may be appealed to the Inner House of the Court of Session.

The Land Court currently has jurisdiction to deal with wildlife matters under the Nature Conservation (Scotland) Act 2004[1], and appeals in relation to SEPA's enforcement measures are also dealt with by the Land Court, in terms of the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015[2]. In their response to the consultation on the future of the Land Court and the Lands Tribunal,

[1] Nature Conservation (Scotland) Act 2004 (legislation.gov.uk)
[2] The Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (legislation.gov.uk)

the Law Society of Scotland suggested[3] that "in light of existing jurisdiction in these matters, there may be scope for the remit of an amalgamated body to be widened to deal with other environmental matters, such as littering and matters arising under the Environmental Protection Act 1990."

Experience with environmental courts and tribunals in other countries

Overview

Another part of the information considered while producing the Report into the Effectiveness of Governance Arrangements concerned environmental courts and tribunals around the world. A detailed review of experience in other countries is provided in the UN Environmental Programme's report, *Environmental Courts, and Tribunals – 2021: A Guide for Policy Makers[4].*

The report found that while the UNEP 2016 ECT Guide observed an "explosion" in the number of environmental courts and tribunals ("ECTs") since 2000, the more recent trend is that of steady growth, with the number of operational ECTs standing at 2,116 in 67 countries.

The report considers that this trend of slower growth in the number of ECTs is attributable to several factors, including:

- natural plateauing of numbers as countries completes their efforts to set up ECTs.
- increased effectiveness of existing ECTs.
- the prioritization of environmental issues in courts of general jurisdiction.
- the presence of judges who are well versed in environmental matters.
- the growing belief that environmental justice can be achieved through existing systems (reflected in the increasing number of environmental cases in general courts); and
- the growing popularity of settling disputes out of court through alternative dispute resolution.

This report highlights that there are many ECTs around the world[5]. Many of these ECTs take different forms and models, with no single one-size-fits-all design. The report identifies different models of good practice in environmental justice and recognises that individual countries will put arrangement in place that suit their unique ecological, historical, legal, judicial, religious, economic, cultural and political environment. The number of operational ECTs around the world in 2021 stood at 2,116 in 67 countries, of which 1,883 are courts and 233 are tribunals[6]. Notably out of the 1,883 environmental courts across the world, 1560 are in Brazil, China, or Malaysia, leaving the rest of the world with 323.

The report highlights that there are several methods of dispute resolution for environmental disputes, which includes through an environmental court, green chambers in general courts, environmental divisions in courts, green benches and

[3] The Scottish Land Court and the Lands Tribunal for Scotland : A consultation on the future of the Land Court and the Lands Tribunal : Scottish Government analysis of responses
[4] Environmental Courts and Tribunals – 2021: A Guide for Policy Makers | UNEP - UN Environment Programme
[5] Environmental Courts and Tribunals – 2021: A Guide for Policy Makers | UNEP - UN Environment Programme
[6] Environmental Courts and Tribunals – 2021: A Guide for Policy Makers (unep.org)

judges, independent administrative tribunals, quasi-independent environmental tribunals, and captive tribunals[7]. Notably, environmental courts and tribunals and high environmental standards are not exclusive, as there are countries with environmental courts with generally low standards of protection. It can be determined that the institution of environmental courts does not appear to be either necessary or sufficient for the achievement of high environmental quality and protection.

Environmental courts also encounter several challenges in handling environmental cases, as highlighted by the UN report. The report highlights that research reveals a mixed sentiment among survey participants, whether they belong to countries with or without environmental ECTs, regarding their nation's present capacity to handle environmental cases effectively. Furthermore, respondents from countries with operational ECTs indicated that they were uncertain about their nation's ability to handle environmental cases proficiently. Nonetheless, numerous challenges confront ECTs, potentially hindering their capacity to effectively manage environmental cases. These challenges encompass factors like inadequate government and stakeholder support, the non-prioritisation of environmental concerns, insufficient IT resource capacity, and hardware, and a lack of enforcement of environmental legislation.

Australia – New South Wales

During the evidence gathering sessions for the Report into the Effectiveness of Governance Arrangements, the Land and Environment Court of New South Wales (NSW) was cited as an example. Established in 1980, it became the world's first specialist environmental court as a superior court of record. The court's jurisdiction encompasses civil and criminal cases related to environment, planning, building, and mining matters[8]. Many countries have regarded the Land and Environment Court of NSW as a model while establishing their own specialised environmental courts or tribunals. Notably some states in Australia have followed the example of New South Wales in creating a specialised court, such as the Planning and Environment Court of Queensland. Other nations such as India (National Green Tribunal), and Brazil (Environmental Special Court), have developed similar courts suited to their political and judicial environment. It's important to note that the establishment and functioning of these specialised courts can vary in terms of their jurisdiction, scope, and authority. While some countries may directly take inspiration from successful models like the Land and Environment Court of New South Wales, others might adopt different approaches based on their legal and institutional frameworks.

The Land and Environment Court of New South Wales occupies a specialised position within the state's judicial system. As a specialised court, it complements the broader judicial hierarchy of New South Wales, standing alongside other specialised courts in its judicial system. The court operates as a court of first instance for many land use and environmental cases, while also handling administrative decision reviews related to planning and environmental matters[9][10]. The judicial landscape of New South Wales differs significantly from that of the UK and Scotland. New South

[7] Environmental Courts and Tribunals – 2021: A Guide for Policy Makers (unep.org)

[8] https://www.lec.nsw.gov.au/

[9] Pearce, C. (2018). 'Does the "One-Stop Shop" Need Refurbishing? Evaluating the Review Jurisdiction of the NSW Land and Environment Court'. University of New South Wales.

[10] Law Society of New South Wales, (2019). Practitioner's Guide to the Land and Environment Court.

Wales boasts a range of specialized courts dedicated to handling specific legal areas in addition to the Land and Environment Court. In comparison, Scotland has one specialised court in the Scottish Land Court, while the Sheriff and High Courts handle all other cases. This highlights the difference in the judicial landscape between Scotland and New South Wales, as the number of specialised courts differs between the two due to variations in legal systems, jurisdictions, and the specific needs of each country/state.

New Zealand

The Environment Court of New Zealand was also referenced by stakeholders as an example which Scotland could follow. Established in 1996, the court has jurisdiction over planning, resource consents, and environmental issues. In accordance with the New Zealand Resource Management Act of 1991, the court has the authority to address various impacts of planning applications, encompassing issues such as congestion, pollution, as well as social and economic ramifications[11]. Similar to New South Wales, New Zealand has an array of specialist courts including, but not limited to, a land court and family court[12].

United Kingdom

The United Kingdom has three separate legal systems; one each for England and Wales, Scotland and Northern Ireland. While there are no specific environmental courts or tribunals in the UK, the UN Environmental Programme report notes that there are five courts and tribunals within the UK that are of a specific nature and consider environmental issues. These are, the Scottish Land Court[13], the English Environmental Tribunal for Appeals[14], the Northern Irish Lands Tribunal[15], the Agricultural Land Tribunal in Wales[16], and the Planning Court of England[17].

Environmental cases considered in ECTs in other countries.

The information that was considered in the preparation of the report indicated that there is no single model for established ECTs in other countries as to the range of types of cases related to the environment that fall within their remit. Some of these courts have the ability to review individual planning and consenting decisions on their merits, consider climate change litigation[18] and environmental human rights cases, in addition to environmental crimes.

Planning and consenting

It has been suggested by some stakeholders that an environmental court should have the ability to review individual planning and consenting decisions on their merits, for example through a 'third party right of appeal.' Currently the Scottish courts can consider whether a decision has been taken in line with the law, whilst some ECTs in other jurisdictions may consider the merits of such cases.

[11] https://www.environmentcourt.govt.nz/
[12] Courts | New Zealand Ministry of Justice
[13] The Scottish Land Court (scottish-land-court.org.uk)
[14] Environmental fines or notices: appeal against a regulator - GOV.UK (www.gov.uk)
[15] The Lands Tribunal | Department of Justice (justice-ni.gov.uk)
[16] Welcome to the | The Agricultural Land Tribunal for Wales (gov.wales)
[17] Planning Court - GOV.UK (www.gov.uk)
[18] NSW bushfire survivors win legal battle ordering EPA to take action on climate crisis | Climate science | The Guardian

Third party rights of appeal were considered by the Scottish Parliament during the passage of the Planning (Scotland) Act 2019. The amendments seeking to introduce third party rights of appeal were considered by parliament but were not passed.

See section 4.9 of the report for a discussion of third party right of appeal.

Climate Change
There has been an increasing trend in many jurisdictions for legal action against plans, proposals or developments on the basis that there are inconsistencies with national laws and targets on climate change. We are not aware of any actions on this basis in Scotland, although we are aware of Judicial Review cases of this type in the English legal system[19]. This was demonstrated when the High Court of England and Wales ordered the UK Government to outline exactly how its net zero policies will achieve emissions targets, after it failed to meet its obligations under Climate Change Act 2008.

There is a strongly developed system of climate change targeting and planning in Scotland, with regular oversight and challenge to the Scottish Government's plans by the Scottish Parliament.

The Climate Change (Scotland) Act 2009[20] was amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019[21], which increased the ambition of Scotland's emissions reduction targets to net zero by 2045 and revised interim and annual emissions reduction targets. The amendments also updated arrangements for Climate Change Plans to meet the targets and includes new measures. In addition, Environmental Standards Scotland is currently investigating the Scottish Government on the systems that have been put in place to support local authorities in the delivery of climate change targets.

Land ownership
A proportion of cases that are considered in some of the ECTs referenced above, relate to a wide range of land dispute issues. Some of these include contract disputes over the ownership of land and the protection of indigenous people's land rights in these countries.

Human rights
In some jurisdictions with Environmental Courts, the right to a healthy environment is recognised in law and this brings forward cases for consideration by these courts. The Scottish Government has developed proposals for the recognition and inclusion of the human right to a healthy environment as part of a planned Human Rights Bill[22].

The Scottish Government's proposals for the right to a healthy environment are still in development, and there will be careful consideration of the results of the Bill's consultation on the proposals. However, it is likely that the proposals brought forward in draft legislation to the Parliament will include a model for all of the incorporated

[19] https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf
[20] Climate Change (Scotland) Act 2009 (legislation.gov.uk)
[21] Climate Change (Emissions Reduction Targets) (Scotland) Act 2019
[22] A Human Rights Bill for Scotland: consultation - gov.scot (www.gov.scot)

rights that is built largely on duties conferred upon those bodies delivering public functions, with a focus on non-judicial routes for securing rights and for any redress. Judicial remedies will generally be a last resort where other means of securing rights are not able to find a solution in particular cases, or are not appropriate, for example because of substantial immediacy and scale of a threat to an individual's rights. Subject to the will of the Parliament on the legislation, it is not expected that the recognition of the right to a healthy environment will lead to a significant number of court actions in Scotland in the next few years.

It has been suggested[23] that a dedicated ECT could provide the specialism and expertise to enforce the procedural element of the right to a healthy environment whilst also enhancing environmental governance.

Environmental crime
Depending on the particular structure and status of the courts in different countries with ECTs, criminal cases with respect to the environment can form a part of the caseload of established environmental courts.

Many environmental cases in Scotland are resolved before they need to be considered by a Court through the use of fixed monetary penalties[24] and alternative resolution measures by SEPA. If criminal environmental cases do proceed to the Courts, they will often be heard in the Justice of the Peace Court and the Sheriff Court with more serious crimes being heard in the High Court.

Numbers of environmental cases
It was discovered during the consideration of the report that the numbers of environmental crime cases prosecuted in the courts is relatively small. In the period between 2016-17 and 2018-19, there were only 97[25] criminal cases that could be considered to be an environmental case. The Law Society of Scotland's response[26] to the 2016 consultation said they did not believe that an environmental court would either be effective or provide value for money, given the relatively small number of cases which end up being pursued.

In the response to the 2016 consultation, the Scottish Government also considered there would be relatively few cases heard in a specialist environmental court given the diversity of environmental matters and the relatively small number of cases which end up being pursued. The response concluded that it is unlikely that the number of criminal cases would sustain a specialist criminal ECT. As mentioned previously measures taken by SEPA through the use of fixed monetary penalties and alternative resolution has reduced the number of less serious criminal cases needing to be resolved in court.

In the report 'Why Scotland needs an ECT' published by ERCS in 2021, it was suggested that an ECT with a broad environmental jurisdiction could have an annual caseload of at least several hundred cases. The report also suggested[27] that if the

[23] The clear and urgent case for a Scottish Environment Court Briefing, May 2023 - SEC-briefing_May23v2.pdf (ercs.scot)s
[24] Enforcement | Scottish Environment Protection Agency (SEPA)
[25] Source: Scottish Government Criminal Proceedings database - Average conviction of environmental crimes from 2017 onwards: EIR release - gov.scot (www.gov.scot)
[26] The Law Society of Scotland's response
[27] https://www.ercs.scot/wp/wp-content/uploads/2023/03/Why-Scotland-needs-an-ECT-Oct-2021.pdf

barriers to access to environmental justice in civil litigation were removed then a greater number of environmental cases would be pursued in the court. The report also suggests that there are already established tribunal-type bodies that have annual caseloads below 100 cases per year. Recent figures[28] suggest that some chambers of the First-tier tribunal have a caseload of fewer than 100 per year. The Tax Chamber received only 11 appeals in the year 2022/23, however it should be noted that this Chamber hears appeals in relation to two devolved taxes only.

Cost of legal action on environmental matters

Information relating to the cost of establishing an ECT proved difficult to determine as part of the preparation of the Report into the Effectiveness of Governance Arrangements, given the variable factors that need to be considered, such as the remit and scope of the court. The direct costs in the running of the court must also be considered, these include the recruitment of judges, clerks and administrative staff and the potential training needed for these roles, as well as the additional resource needed to set the court up.

In addition, any new environmental court will cause indirect costs, in particular litigation costs to the claimant and public authority through the continued use of legal Counsel. Other possible indirect costs could include the potential disruptive impact an ECT could have on local communities, businesses, and national infrastructure projects.

Environmental NGOs argued that the establishment of an environmental court has the potential to enhance affordability and address issues concerning the costs of environmental litigation. An environmental court could be established with structures and processes that support cases being advanced at a low (or comparatively lower) cost. Designing an environmental court with a focus on affordability could lead to a reduction in overall costs and judicial expenses. Nonetheless, it is essential to acknowledge that these cost savings may result in additional financial burdens being borne by the taxpayer.

There are a number of different strands which make up legal costs;

- Solicitors' fees;
- Court fees – the Scottish Government introduced an exemption from court fees in the Court of Session for 'Aarhus cases' from July 2022;
- Counsel's fees – all cases heard in the Court of Session have to be presented by an advocate or solicitor-advocate;
- Expenses to be paid to the other party in the event that the action is unsuccessful. In the event that a Protective Expenses Order has been granted, these will be capped (currently at £5,000).

Given the complexity of many environmental cases, parties may still opt to instruct Counsel even if an environmental court, which was intended to not require legal Counsel, were to be established.

Access to justice is currently supported by a system of Protective Expenses Orders (PEOs) for environmental appeals and judicial reviews in the Court of Session. An

[28] scottish-tribunals-annual-report-2022-2023-.pdf (judiciary.scot)

appellant can apply for a PEO, which can be granted should the court determine that the applicant has a legitimate interest in the matter, and the legal proceedings would otherwise be considered prohibitively expensive. If a PEO is granted, it imposes cost caps, limiting the applicant's liability in expenses to the respondent to £5,000 and the respondent's liability to the applicant to £30,000. Following a consultation on court fees, in July 2022 the Scottish Government introduced an exemption for court fees in Aarhus cases in the Court of Session to strengthen compliance with the requirements of the Aarhus Convention.

The Scottish Civil Justice Council, an independent body responsible for drafting court rules, is undertaking a review of the rules governing PEOs.

To date, a relatively small number of PEOs have been applied for in the Court of Session. PEOs can be granted in environmental cases and also at common law. Data provided by the Scottish Courts and Tribunals Service indicated that as at September 2022, 15 PEOs had been applied for in the Court of Session in environmental cases. 12 of those applications were successful and led to the granting of a PEO.

Expertise and specialisation

During the consideration of the report, one of the reasons cited by stakeholders for the establishment of an environmental court was the view that the judiciary often lacks the expertise and knowledge to effectively and sufficiently deliver environmental justice. It has been suggested that the creation of an environmental court[29] could allow for the development of expertise amongst the appointed judges and enhanced by providing specialist continuing professional development to its judges. Environmental stakeholders have suggested that appointing technical experts to sit alongside the judges to advise them and facilitate interdisciplinary decision-making could help increase expertise.

The United Nations Environment Programme has set out[30] a range of different processes for providing expertise and specialisation in hearing environmental cases. This includes:

- using a mix of law-trained and science-trained judges to decide cases on an equal footing,
- assigning environmental cases to general court judges, which is complimented with additional training to increase expertise and specialism, and
- training general judges in environmental law, which helps in cases where the environment is not only the consideration in the case.

In the response to the consultation on Developments in environmental justice in Scotland[31] the Scottish Government set out the possible advantages of many environmental cases being best heard in a local sheriff court rather than a centralised specialist court. A local sheriff court is also more likely to have an extensive experience and knowledge of the particular area to where the dispute has

[29] Why Scotland needs an ECT – October 2021 - Why-Scotland-needs-an-ECT-Oct-2021.pdf (ercs.scot)
[30] Environmental Courts and Tribunals – 2021: A Guide for Policy Makers

[31] The Scottish Government response - Developments in environmental justice in Scotland: analysis and response - gov.scot (www.gov.scot)

taken place. It also could be argued that the establishment of an environmental court could take expertise and specialism away from other parts of the court system, and place greater stress on the Courts.

It is also important that environmental cases are considered amongst other issues because careful consideration would be required as to the definition of an environmental case and it may not be appropriate for nuisance actions to be heard in an environmental court. This is because any complicated environmental case is likely to cover a number of issues that are not related specifically to the environment and relate to many different issues, such as cultural, social and economic issues. In addition, the models of ECTs that have been advanced are very different to the current court system, which may create issues of possible unfairness if cases are considered on different procedures in different courts.

On top of this, environmental cases are often appealed many times and the introduction of a new lower environmental court of first instance has the potential to add two further appeal stages for environmental cases, firstly to the Sheriff Appeal Court and secondly, to the Inner House of the Court of Session. If decisions go through all the appeal stages possible, the total cost of challenging a decision by an authority is likely to be much increased.

How to respond to the consultation

Individuals and organisations are encouraged to engage with the content of the Report into the Effectiveness of Environmental Governance Arrangements through the public consultation available on Citizens Space - Review of the Effectiveness of Environmental Governance - Scottish Government - Citizen Space (consult.gov.scot). We have extended the deadline to 13 October 2023 for consultation responses to allow individuals and organisations time to consider the additional information and submit their response.

If you need to use specialist accessibility software that is not compatible with the system, you may request to a copy of this briefing paper by emailing EnviroGovReview@gov.scot.

Annex

Key themes from evidence sessions with stakeholders outwith Scottish Government

Entries in the table are opinions and information that were raised in evidence sessions conducted by the review team with stakeholders outwith the Scottish Government. These included members from organisations with an interest and expertise in the matters, such as SE Link, Law Society of Scotland and Environmental Standards Scotland. No views should be ascribed to individuals or to individual organisations. These were inputs to the review process, and do not represent Scottish Government policy.

Whether and, if so, how the establishment of an environmental court could enhance governance relating to the environment.	
Are you aware of any established environmental courts in other countries and whether the presence of an environmental court has enhanced environmental governance in those countries?	• Stakeholders are aware of the diversity of definitions on what is an environmental court, and the need to analyse how well do peoples interpretation of an environmental court sits with the Scottish legal system, and the need to be aware of the financial and governance restraints. • New Zealand and New South Wales provide interesting examples. • Stakeholders have published research on international examples
Are there ways in which you consider that the establishment of an environmental court could enhance governance arrangements?	• Uncertain if the existence of ESS either reduces or increases the need for an environmental court, must consider constraints to environmental justice before establishing a court, e.g., financial and resourcing constraints. Should also consider whether the creation of an environmental court outweighs the need for other cases within the judicial system to be considered, this needs to be justified. • An environmental court may provide more confidence to achieve environmental justice and may need to be specific of what the court is aiming to do. • Some stakeholders have high ambitions for a potential environmental court with a scope much broader than the environmental governance arrangements in the Continuity Act. They believe that an environmental court could be designed to enhance governance and could resolve the five barriers they identify to effective environmental justice: information, standing, time limits, costs and culture. They also consider that an environmental court would allow the creation of a wider and more balanced set of case law, as at present this is driven mainly by cases brought by developers. With further separation from the EU legal framework over time, there is a need for greater expertise

	to maintain effective habitats protections. They consider that the Land Court merger is an opportunity for consideration of a more fundamental reform to create a court of this nature. • Some stakeholders highlighted that in developing an environmental court government will need to focus on the activity more than structure of the court, as the activity will have a role in influencing the structure of the court. The formation of the court should identify areas in which there is a lack of expertise within the existing judicial and look to build expertise in these areas. • Regardless of whether an environmental court is developed or not, stakeholders raised the expert witness training which the University of Aberdeen provides to academics and scientists to improve the use of their expertise in court, this was viewed as useful and could be expanded to help communities access their expertise. • Some stakeholders would prefer to see expertise built within the existing judicial system rather than create an environmental court. • Some stakeholders noted that if an environmental court were to be established it must have the appropriate resources and tools, in particular there may need to be a review of current charges and fixed penalties to help the court achieve meaningful justice. • There may be lessons to learn from the approach of the Land Court as a lower cost route. • There are separate issues that could be considered around the potential for judges to specialise in environmental cases without the creation of a separate environmental court
Do you consider that there would be any disadvantages to establishment of an environmental court for governance arrangements?	• Need to consider that the creation of an environmental court in line with some stakeholders ambitions would take a different direction than the current judicial system and therefore there would have to be considerable consideration to how it could be integrated into the wider system and aligned. • Stakeholders raised that if the court were to just take on the current level of judicial reviews on the environment, then the activity would be fairly limited, but if it were open to other areas such as planning then it could have significant levels of activity.