

Scottish Environment LINK input to Dr Ian Duncan MEP Consultation on Environmental Protection Post-Brexit

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 35 member bodies representing a range of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Our nature and biodiversity are among Scotland's greatest assets providing huge benefits for some of our key economic sectors like tourism, food and drink, as well as for the wellbeing of our society as a whole.

Consultation Questions

1. As the UK negotiates withdrawal from the EU, what are your priorities for ongoing protection of Scotland's natural environment and those who depend upon it?

The EU has been critical for the development of a lot of our legislation protecting our environment. It is critical that environmental protections are maintained and enhanced. As such, the core of EU environment legislation needs to be enshrined in national legislations.

What is more, environmental challenges know no borders and as such continued cooperation with EU partners will be required if we are to effectively address challenges such as climate change, biodiversity loss or resource scarcity.

International agreements to which Scotland and the UK will continue to be bound will need to be enshrined in national legislation where this is not already the case. Government efforts to shape ambitious international agreements and apply and implement those nationally will need to be enhanced. This would be in line with previous Scottish and UK commitments, particularly in terms of meeting the UN Sustainable Development Goals.

A key concern for LINK members is the need for EU legislation that provides environmental protections to remain part of national legislation and to be enforceable. While a lot of EU legislation is already part of national laws and will continue to be so unless these national laws are amended, a core function provided by the EU will be lost. This is the possibility for the European Court of Justice (ECJ) to react to non-compliance of legislation. Outside of the EU, UK and Scottish stakeholders will not have recourse to the ECJ as a way of addressing national shortcomings in the implementation of legislation. As a result, for the majority of legislation protecting our environment to have teeth, this legal void must be addressed urgently. LINK members have been deliberating on potential ways that this can be addressed.

It is also important to highlight, that while the pieces of EU legislation included below are of tremendous significance they do not provide a complete overview of the protections that EU law has provided for our environment. For example, Scottish government needs to maintain its commitment to restoring marine and coastal ecosystems to an ambitious and measureable level of Good Environmental Status (GES) by 2020, as required under the Marine Strategy Framework Directive (MSFD). In the case of fisheries, as explained below in greater detail, it is imperative that fisheries are compliant with EU Directives, particularly with regard to Environmental Assessments (Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA), in keeping with economic uses of the sea. It is also important that Common Fisheries Policy Standards are retained; LINK members believe they can be further improved.

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CURRENT LEGISLATION

2. Which elements of the Birds Directive would you wish to (i) retain; (ii) revise; (iii) eliminate?
3. Which elements of the Habitats Directive would you wish to (i) retain; (ii) revise; (iii) eliminate?

(i) Retain

Members of Scottish Environment LINK, and equivalent organisations across the UK, supported maintaining the EU Birds and Habitats Directive during the EU REFIT process. Indeed, after extensive deliberations the European Commission arrived at the same conclusion noting that “the European Birds and Habitats Directives remain relevant and fit for purpose”¹.

As indicated in the LINK response to the EU REFIT of the Birds and Habitats Directives², these are two key pieces of EU environment legislations that were developed in recognition of:

- The failures of individual Member States to tackle the loss of biodiversity;
- The fact that nature transcends national borders and protecting habitats and species, especially those that migrate, requires coordinated effort across Member States;
- The need to provide a level playing field for nature and for business across Europe to ensure that nature is protected for all and to provide a stable regulatory framework for business.

The Birds and Habitats Directives are the cornerstone of national and EU-wide attempts to halt and reverse the loss of biodiversity. When they are respected they work. This is supported by both scientific evidence and UK-wide reports³. In Scotland alone, a total of 396 Natura 2000 sites have been protected, with Scotland providing the largest component of the UK’s contribution to the Natura network. These sites protect 79 bird species, such as Golden Eagle and Capercaillie, 18 other types of animal species, including seal, dolphin, wild Atlantic salmon, and 56 types of habitat, including reefs, Scotland’s upland habitats and machair⁴. This is why the Scottish government was clear in its support for maintaining both pieces of legislation; a decision welcomed by the environmental charities across Scotland⁵.

It is for these reasons that LINK members consider that such legislation needs to continue being part of Scottish law. The result of the EU referendum cannot be used to turn back the clock on environmental protection. If EU legislation such as Natura 2000 was to be removed from national legislation, this would have detrimental implications for our nature. A critical impact would be that the burden of proof placed on the developer to prove that activities in a Natura site would not cause damage could be reversed.

(ii) Revise

At the same time, we recognise that implementation of the Directives can be ameliorated and thereby further contribute to meeting Scottish government its 2020 Biodiversity Challenge and pledge to UN Sustainable Development Goals. In this respect, it would be beneficial for Scottish and UK governments to also follow the activities the European Commission has already committed itself to in terms of developing an Action Plan for the better implementation of the Birds and Habitats Directive.

¹ https://ec.europa.eu/commission/2014-2019/vella/announcements/my-statement-orientation-debate-next-steps-fitness-check-birds-and-habitats-directives_en

² <http://www.scotlink.org/public-documents/joint-links-position-statement-european-commission-fitness-check-of-the-birds-and-habitats-directives/>

³ <http://www.scotlink.org/public-documents/joint-links-position-statement-european-commission-fitness-check-of-the-birds-and-habitats-directives/>

⁴ <http://www.gov.scot/Topics/Environment/Wildlife-Habitats/protectedareas/NATURA>

⁵

http://www.scotlink.org/wp/files/ScotLINK_Press_Release_environmental_groups_welcome_Scot_Gov_support_of_Nature_Directives_28Jan2016_FINAL.pdf

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(iii) Eliminate

N/A

4. Which elements of the Common Agricultural Policy (CAP), as it relates to environmental protection, would you wish to (i) retain; (ii) revise; (iii) eliminate?

Scottish agriculture is more than an industry. Alongside food production, it has the potential to deliver essential services in terms of sustainable land management and for the wellbeing of the Scottish people. It can make a tremendous contribution towards addressing some of today's greatest global challenges, such as climate change, biodiversity loss, and sustainable land management.

Many of Scotland's own national policies have been supportive of a transition towards sustainable food, farming and rural development. This is reflected in the Land Use Strategy, the Biodiversity Strategy, the Land Reform Bill, the Climate Change Bill, the Community Empowerment Bill and many other policies. The "Future of Scottish Agriculture" discussion paper explicitly references the need for Scotland to "become a world leader in green farming", which LINK members support, while the forthcoming Good Food Nation Bill will seek to ensure Scotland's food system can deliver on sustainable, affordable and nutritious food. Financial and other farming support needs to be brought in line with this broader and more progressive policy framework and help deliver the Sustainable Development Goals.

For Scottish farming to be resilient, sustainable and profitable, agricultural policy and practice needs to be developed within a broader set of principles for land use and sustainable rural development.

(i) Retain

The CAP provides a major investment in rural areas in Scotland (around £650 million per year) but this is not delivering on the economic, social and environmental outcomes it needs to. We need to transition towards a coherent 'food, farming and environment' policy for agriculture that will reinvigorate the farming sector and better deliver public goods, such as reversing decline in farmland biodiversity and the quality of farmed landscapes. **A successful transition however will depend on retaining financial support for rural land management and agriculture, rather than reducing it.**

(ii) Revise / (iii) Eliminate

The CAP has led to the development of unfair and poorly targeted payments and underinvestment in agri-environment and rural development schemes. Over the years, LINK members have called for substantive reform of the CAP without much progress; our members will continue to do so alongside European partners.

In Scotland, a transition towards a more sustainable agriculture will require us to reshape the way in which public money for agriculture is spent. We will need significant investments in: research and development, knowledge transfer and advice, alongside payments that incentivise sustainable land management and recognise and reward the wide range of public benefits that this provides. LINK is proposing a transition period away from the current ineffective and unfair system of farm subsidies to an integrated system of support for agro-ecological food production, delivering benefits for farm profitability, resource use efficiency as well as our biodiversity, climate and character and attractiveness of our countryside.

By reviewing and reforming the way in which support is provided for rural development and agriculture, the sector stands to gain substantially. For example, farms operating on agro-ecological principles can be profitable as well as sustainable. Modern agriculture has the potential to produce quality food in a way which reduces the use of non-renewable inputs, works intelligently with nature, delivers ecosystem services, minimises negative externalities and enhances natural capital at farm and landscape level.

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This renewed approach to agriculture will support better livelihoods for farmers and farm workers, attract new entrants (including more women) to the industry and support wider rural economy. Overall, this is more likely to retain financial support from the public and to appeal to both consumers and retailers.

In this respect, we were very happy to hear that during a Scottish Parliament debate there was broad consensus towards setting up an independent short-term Commission to develop the policy principles that ought to underpin our rural development and agricultural support framework.

5. Which elements of the Common Fisheries Policy (CFP), as it relates to environmental protection, would you wish to (i) retain; (ii) revise; (iii) eliminate?

(i) Retain

LINK Marine Group members firmly supported the recent reforms to the Common Fisheries Policy (CFP) that now provide a legal framework for sustainable fisheries management. These advances should not be lost as a result of political changes. Scottish fisheries legislation needs to build on these measures to continue positive trends to end overfishing. An ecosystem-based approach (EBM) should remain at the core of fisheries management legislation, as healthy fish stocks and their dependent fisheries are reliant on a healthy marine environment. Additionally, obligations to set scientifically determined quotas and Total Allowable Catch (TAC) limits below Maximum Sustainable Yield (MSY), based on scientific advice provided by the International Council for Exploration of the Seas (ICES) and others, should continue. A time bound ban on discards is required, with increased transparency on what is being caught, how and when. Additionally, effective protection for spawning and nursery grounds and measures to reduce non-target species bycatch, including dolphins, seabirds and other mobile species, as currently being revised under the Technical Measures, should be safeguarded. Additionally, the European Maritime Fisheries Fund (EMFF), is crucial to the long-term success of sustainable fisheries management and effective marine conservation. Recent welcome regulations to protect the deep-sea environment beyond 800m depth must of course be retained, and the emerging fisheries management proposals for offshore MPAs and SACs should be ecosystem-based contributing to the wider enhancement of Scotland's seas.

(ii) Revise

For some shellfish species such as langoustine (*Nephrops norvegicus*), stock management should be considered at the Functional Unit (i.e. population) level to allow for easier control of fishing effort and sustainable management of local stocks. Additionally, clearer and better regulation of all types of set nets is required. Measures must ensure the protection and enhancement of Priority Marine Features and of habitats supporting important life history stages for mobile species wherever they occur. Legislation needs to address the pressing issue of gear conflict by developing mobile-gear only zones, static-gear only zones and no-take zones in inshore areas.

Robust monitoring and mitigation of direct fisheries impacts on habitats (such as seabed alteration), of bycatch on non-target species (including cetaceans, turtles and seabirds) and of indirect fisheries impacts (such as impact of seabed alteration on mobile species) is essential to ensure existing management measures are sufficient to deliver a thriving marine environment. Clear publically available guidance on reporting potential infringements, as well as robust sanctions that deter infringements are key to ensure measures are effectively enforced.

(iii) Eliminate

N/A

6. Do you believe the current funding arrangements for the protection of the natural environment are adequate?

EU funds have had a critical role in enabling research for our environment as well as implementing programmes for its protection and enhancement. This funding has been critical for Scotland's environment. In particular, EU funding has both enabled the roll-out of important projects in Scotland to increase our understanding of how our environment operates as well as provided incentives for sustainable practices. To ensure that the good progress being made in those areas continues, it will be important to safeguard this level of funding.

At a time when funding for nature is coming under pressure due to decreased public funds and as a result of economic downturn, EU funding has proved particularly valuable for taking forward important national projects. For example, one such project is EcoCo LIFE which provides funding of £2.3 million for improving ecological coherence within the Central Scotland Green Network. This piece of research will provide useful insights for meeting Scotland's Biodiversity Route Map "Priority project 10: improving ecological connection". The project is led by Scottish Natural Heritage with the support of several civil society organisations, including several LINK members (<https://www.ecocolife.org.uk/>).

In addition, it is also understood that some charitable trusts employ Rangers to manage areas of landscape and cultural value and to provide education and information to both local communities and visitors. Some of these funds have come from European sources and will no longer be available post-Brexit.

As such, the absence of the availability of EU funds, including funds specific for nature, will have a negative impact on Scotland's environment. This is likely to add to the budgetary pressures already faced by governments as the potential for allocating more funds for environmental projects is limited. For example, LINK members have highlighted the need to fund monitoring strategies for pollinators, implementing the Scottish Land Use Strategy, resourcing for the enforcement of MPA management measures, fisheries regulations and the governance structures necessary for regional-level planning of fisheries (and interacting sectors).

The impacts of a potential Brexit are already being felt across the environment sector. For example, earlier in 2016, two LINK members (RSPB and Plantlife) finalised a submission of an £11 million bid for EU LIFE+ funding to support the control and eradication of the invasive non-native species *Rhododendron ponticum* and restore the biodiversity and declining status of key Special Areas of Conservation (SACs). This bid has now been withdrawn due to the considerable uncertainties associated with LIFE funding beyond 2018. The project would have helped deliver both the Scottish Government's strategy on *Rhododendron ponticum* and a key project in the Government's Route Map for Biodiversity. While the organisations are rethinking the bid, the scale of the original project, which included significant parts of the Scottish west coast, is likely to be lost in the absence of alternative funding. Supporting landscape scale action against non-native invasive species is one of the key benefits that membership of the EU allowed.

FUTURE CHALLENGES**7. What future challenges do you believe should be included in any post-Brexit environmental legislation?**

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As indicated earlier in our submission, LINK members believe that it will be critical to maintain EU environmental protections and avoiding a race to the bottom by seeking to “reduce red tape” for the sake of “better regulation”. Very often references to “red tape” are in fact valuable environmental (and social) protections that need to be safeguarded.

What is more, the environmental challenges we are facing are not limited to national boundaries. It is important to maintain links with EU and global partners and work together to meet challenges such as climate change and biodiversity loss.

For example, when it comes to marine species, international cooperation is needed to ensure adequate management measures are in place to protect our marine environment. Fisheries management requires shared international frameworks and a high level of coordination with our neighbours. Catch limits must be based on independent scientific assessment targeted at the restoration of healthy fish stocks and therefore requiring management across appropriate borders. The UK is a party to both the UN Convention on the Law of the Sea 1982 (UNCLOS) and the Fish Stocks Agreement 1995. The imperative to achieve environmental integration of fisheries with conservation, ensuring compliance and confidence in the achievement of international and domestic policy is further driven by the Scottish Government’s international responsibilities under WSSD⁶ OSPAR⁷ and ICES⁸, and national commitments under the National Marine Acts⁹. These treaties mean the UK will still have to negotiate and share responsibilities with neighbouring states in the waters around the UK and on the high seas.

Close collaboration and exchange with EU partners is needed also to ensure the UK and Scotland can benefit from environmental policy advances being made at the EU level.

8. What funding arrangements do you believe are required to address upcoming environmental challenges?

As indicated in response to question (6), EU funding has provided much needed resources to conduct different research projects that have helped our environment. Guaranteeing access to EU level research funds, for example Horizon 2020, will be particularly important if Scotland and the UK can maintain a high calibre of research.

9. Do you believe that stakeholder involvement in the determination of environmental regulation is adequate? How would you like to see it reformed?

LINK members would like to see environment considerations mainstreamed across policy areas. While there is generally a good degree of involvement of E-NGOs and environmental charities when it comes to the development of environmental regulation, it is important that this is extended in a meaningful way to the development of other critical policy areas such as food, agriculture and fisheries. In line with the UK’s and Scotland’s commitment to the UN Sustainable Development Goals it will be important that involvement of civil society and environmental considerations are taken into account in terms of investment and budget decisions.

For more information, please contact:

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⁶ World Summit on Sustainable Development, Johannesburg, 2002.

⁷ Oslo-Paris Convention for the Protection of the Marine Environment of the North East Atlantic, 1992.

⁸ International Council for Exploration of the Sea

⁹ Marine and Coastal Access Act, 2009 and Marine Scotland Act, 2010.

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