

Scottish Green Party Debate: Revoking Article 50, 27 March 2019

Summary

- Scottish Environment LINK members wish to take the opportunity of the debate on Revoking Article 50 to highlight the consequences of a No Deal Brexit for the environment.
- Environmental policy has been an EU competence for decades. As such the bulk of national laws underpinning our environment stem from the EU. The UK's exit from the EU creates a number of risks for our environment as highlighted in previous LINK submissions¹ as well as the recent Finance and Constitution Committee report on Common Frameworks².
- At the same time, the Scottish Government's commitments to maintain or enhance EU environmental protections have been very welcome³. They set a level of ambition which will require additional action to reach and maintain, particularly in the event of EU exit.
- However, the prospect of a No Deal Brexit would undermine existing protections as well as future ambitions in profoundly fundamental way.
- While it is comforting that the Scottish Parliament has already voted against a No Deal, LINK members urge the Scottish Parliament and Government to ensure environmental protections are upheld and enhanced regardless of the potential outcome of Brexit.
- A No Deal Brexit would be damaging for environmental protections in 3 key ways:
 1. It is unlikely that the full spectrum of existing environmental protections will be fully operational on exit day due to the breadth of EU legislation that needs to be brought into domestic law;
 2. Scotland will cease to have access to EU enforcement mechanisms and other functions currently provided by EU bodies with no alternatives or equivalent domestic processes in place; and
 3. Scotland's environment will lose access to EU environmental principles which as the Cabinet Secretary for Environment, Climate Change and Land Reform has stated are 'key tools that can help us to meet international ambitions such as the UN Sustainable Development Goals'.

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

Environmental charities in Scotland and across the UK strongly believe that a No Deal Brexit needs to be averted. If Brexit is to go ahead, this cannot come at a cost to our environment. We simply cannot afford to unpick environmental protections at a time of global ecological crisis when we should be seeking to enhance our environment.

This briefing sets out the concerns of LINK members in terms of the prospect of the UK exiting the EU without a deal.

¹ <http://www.scotlink.org/wp/files/documents/LINK-Response-to-Inquiry-on-Common-Frameworks.pdf>

² <https://digitalpublications.parliament.scot/Committees/Report/FCC/2019/3/25/Report-on-Common-Frameworks>

³ <https://consult.gov.scot/environment-forestry/environmental-principles-and-governance/>

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Overall, joint action across the EU has been a good thing, enabling us to tackle environmental issues such as pollution and climate change in a coordinated way across 28 different countries.

As such the prospect of EU exit poses a number of significant risks for our environment and our ability to hold governments to account when it comes to enforcing important legislation, from air quality and climate change to the protection of our species and habitats.

While many ENGOs [suggested](#) ahead of the 2016 referendum vote that on the basis of environmental grounds, it would be safer for the UK to remain in the EU, since then ENGOs in Scotland and across the UK have been trying to find ways to ensure our environment does not suffer as a result of Brexit, if and when this happens.

In this context, the Scottish Government issued on 16 February a consultation on Environmental Principles and Governance in Scotland and previously the Cabinet Secretary for Environment, Climate Change and Land Reform set up an expert roundtable which identified gaps in Scotland's environmental governance emanating from the loss of functions currently carried out by EU bodies such as the European Commission, the European Court of Justice and EU agencies.

It is therefore understood that in the event of Brexit, governments across the UK would need to agree on additional measures to safeguard our environment, particularly in terms of the future role of internationally recognised environmental principles enshrined in EU treaties as well as governance arrangements to ensure environmental laws are upheld. At the moment, consultations are ongoing on those issues in Scotland and Wales; while Defra has put forward proposals for legislation.

LINK members are concerned that the progress being made in terms of developing solutions for a future where the UK and Scotland are outside the EU will be severely comprised by the prospect of a No Deal Brexit.

1. A No Deal Brexit means that the full spectrum of existing environmental protections will not be fully operational on exit day

The prospect of EU exit led to the need for existing EU laws to be transposed to domestic law in a way that ensures that this legislation can operate post-Brexit. This has led to civil servants in the UK and Scottish Governments reviewing each piece of EU legislation, including environmental legislation, to amend it so it can continue to function on exit day.

This arduous process will not be finished by the end of March. Indeed, even for legislation that has already gone through this process, it is anticipated that a further review will be needed to catch any errors. This was to be expected given the enormity of the task and the resources required to support it. But the risk of a No Deal means that the UK Government commitment to have a fully functioning statute book by exit day will not be met.

In addition, environmental NGOs including members of Scottish Environment LINK have expressed [concerns](#) about whether the way that EU law is being transposed in domestic law fully retains the spectrum of environmental protections we currently enjoy. This is partly because this process is not replicating the important EU governance mechanisms which ensure that legislation is effectively implemented, as explained below.

2. A No Deal Brexit means Scotland will not have access to EU enforcement mechanisms

A No Deal Brexit means Scotland will no longer be able to have recourse to important EU mechanisms which ensured that environmental legislation was effectively monitored, reported on and enforced.

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Of particular concern are the key functions of the European Commission and European Court of Justice in terms of investigating and addressing cases where environmental law was not enforced. The European Commission's complaints procedure has led to positive results of our environment. It is therefore key that these functions are replicated, if and when Brexit happens.

To address this, Scottish Environment LINK members have called for the creation of an independent and well-resourced watchdog. However, [the Scottish Government launched a consultation](#) on this matter only in mid-February and will not have begun deliberations on solutions to this issue before mid-May.

What is more, the Scottish Government has not publicised any views about the measures it will take under a No Deal scenario. In other words, there is no publicly available information that provides reassurances about what interim measures the Government is proposing to take forward in the case of No Deal.

This means that under a No Deal scenario, on exit day legislation for the environment in Scotland may not only be incomplete, but it will also be less enforceable compared to today.

3. A No Deal Brexit means Scotland's environment will lose access to EU environmental principles

While the Scottish Government is proposing a duty for Ministers to have regard to the EU's environmental principles, this will not be in legislation under the current timeframes for EU exit. This is because this proposal is being consulted on at the moment, alongside the potential governance concerns and solutions highlighted earlier.

In 2017, Environment Secretary Roseanna Cunningham stated that "the four EU principles of precaution, prevention, pollution at source and 'polluter pays'... are essential to maintaining Scotland's environmental achievements". As part of the EU, Scotland's courts, businesses and governments have been able to apply the four EU environmental principle in their decision-making. They have formed an essential component of environmental law and underpin most of our environmental legislation.

Under a No Deal Brexit, we will lose the overarching framework for policy-development provided by the EU and underpinned by these principles. Even more worryingly, in that scenario we will have nothing similar to fall back to. Scotland, in contrast to countries such as Wales, France or Switzerland, has not embedded environmental principles in domestic law.

Environmental charities from across the UK strongly believe that a No Deal Brexit needs to be averted. If Brexit is to go ahead, this cannot come at a cost to our environment. This is why LINK members have sought to ensure that Scotland and the UK can retain a close relationship with EU partners, including retaining membership to EU agencies such as the European Environment Agency. We simply cannot afford to unpick environmental protections at a time of global ecological crisis when we should be seeking to enhance our environment.

For more information contact:

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