

Response to the Culture, Tourism, Europe and External Relations Committee call for evidence on the Article 50 withdrawal process

by Scottish Environment LINK's Brexit Subgroup

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Scottish Environment LINK members appreciate the opportunity to respond to the Committee's call for evidence on the Article 50 withdrawal process. The majority of legislation protecting the environment, as well as other policies with a great impact on the environment (such as agriculture and fisheries), derive from EU law. Thus, the triggering of the Article 50 process raises a number of issues both in terms of environmental protections and Scotland's commitment to the UN Sustainable Development Goals. As the process stands, the UK as a whole has two years to negotiate the terms of exiting the EU; from a national point of view there are critical implications regarding the extent to which EU legislation will continue to apply.

We hope that the issues below will receive due consideration in the context of the proposed Withdrawal Bill as well as any Legislative Consent Motions that the Scottish Parliament will need to pass so that the necessary safeguards can be put in place.

Our organisations, representing the voice of the environment as well as over half a million members throughout Scotland, would like to highlight the following important implications emanating from the triggering of Article 50:

1. The need to incorporate existing standards of EU environmental protection and core EU principles of environmental protection into domestic law

No change in political or constitutional structures alters the need for well-designed and well-enforced legislation to protect and maintain our precious natural environment, currently facing tremendous challenges in terms of environmental degradation.

As a first step, a clear commitment that all EU legislation that protects our natural environment, including preambles that shed light on legislative intent, needs to be enshrined in national law. The transposition of EU laws into domestic law should not be an opportunity for deregulation.

It is equally important to address the void created in terms of implementation and enforcement by the absence of recourse to the European Commission and the European Court of Justice. This so-called 'governance gap' could be partially filled by the creation of an environmental court or tribunal, and/or a parliamentary ombudsman post, as well as improved Parliamentary scrutiny.

EU law has been developed on the basis of key principles such as the precautionary principle and the polluter pays principle as well as integrated environmental impact assessments. These principles should continue to form the basis of national environmental law in the future.

2. The need to build on existing EU environmental protections and ensure that all policies contribute to the achievement of the UN Sustainable Development Goals

Implementing the UN Sustainable Development Goals in Scotland, as well as across the entire UK, should guide policy-making across all sectors. Environmental objectives and sustainability should be embedded in sectoral legislation such as agriculture and fisheries as well as wider economic policies.

More specifically, outside of the Common Agricultural Policy regime, regulation across the UK needs to: reward farmers, foresters and other land managers for the full range of goods and services they provide; help rural businesses become more profitable and sustainable; protect and enhance the environment and the natural resources that underpin economic activity; and, spend taxpayers' money effectively, helping to create good livelihoods and jobs, and contribute to our health and well-being.

With respect to fisheries, it is not only important to strengthen and enforce existing environmental protections arising from EU law and policy, but also to adopt a progressive Sea Fisheries strategy. This should be founded on ecosystem-based management that contributes toward protecting and enhancing our seas, as well as cross-border co-operation with other jurisdictions that share stocks.

Sustainable development is a key context to decisions on trade agreements. We need a clear commitment that there will be no trading off of environmental protections in the context of trade negotiations. This would be damaging to our natural environment and it would hold back the UK's trajectory towards a more sustainable future. The UK should ensure that trade terms are in line with and, where possible, reinforce environmental goals and ambitions.

3. The need to adopt robust national processes for implementing international commitments

Regardless of the UK's decision to exit the EU, the UK (and hence the Scottish Government) will continue to be bound by international agreements on climate change (Paris Agreement), biodiversity (Convention on Biological Diversity, Aichi Targets, Bern Convention), marine protection (OSPAR) and environmental governance (Aarhus Convention). For the majority of these international agreements, the EU has contributed to the mechanisms through which obligations have been met at a national level. These mechanisms now need to be replicated within the UK to ensure that the UK continues to deliver on its international commitments. What is more, this should not impact other international agreements emanating from institutions such as the Council of Europe, or the European Landscape Convention, the only international driver for landscape conservation.

Successful achievement of our international commitments will require continued collaboration and coordination with EU and EEA partners as well as enhanced participation in wider international fora. The Scottish Government will also need to pay greater heed to the views of the various Compliance Committees, and guidance on best practice in delivering the objectives of these international agreements.

4. The need to support an inclusive and transparent process for negotiating the UK and Scotland's future relationship with the EU

Environmental policy is devolved, as is largely the case with agriculture and fisheries policies. As negotiations with EU partners gather pace, it is important that any UK Government position also reflects the interests of all four nations based on substantive and forthcoming engagement with the devolved governments and stakeholders operating in Scotland, Wales and Northern Ireland.

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Discussions with all relevant stakeholders need to be initiated in a transparent and inclusive manner to develop a cross-UK consensus on the UK's position for the future relationship with EU partners. While it is understood that the outcome of this process will provide greater powers to the devolved governments, it is important to ensure that any intra-UK arrangements, whether interim or long-term, respect the current devolution settlement and are agreed through joint mechanisms.

Discussions in Parliament, whether at Westminster or Holyrood, also need to be conducted with great transparency. In the context of the Withdrawal Bill, the powers to be conferred to government, at a UK or Scottish level, in terms of statutory instruments need to be clearly defined, time-limited, and subject to the highest level of scrutiny by Parliament.

5. The need to safeguard future funding for environmental research and nature conservation projects

Over the years, Scotland (both its environment and economy) has benefitted greatly from environment-focused investment funded by the EU. This has enabled the roll-out of important projects in Scotland while also increasing our understanding of how our environment operates as well as providing incentives for sustainable practices. Indeed, recognising the high quality of Scotland's environment, Scotland has benefitted disproportionately from funding streams such as LIFE, while agri-environment funding under pillar II of the CAP is crucial to maintaining many species and habitats dependent on sensitive land management.

To ensure that the good progress being made in those areas continues, it is important that the UK and Scottish Governments safeguard this level of funding as well as relations with European research institutes. In addition, there will need to be a new set of fair and transparent funding arrangements, based on the principle of "public goods for public money", to determine the distribution of replacement funding streams across the UK, and to enable effective implementation.

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