

Regulatory Reform (Scotland) Bill Briefing for Stage 3

LINK provided written and oral evidence at Stage 1 of the Regulatory Reform (Scotland) Bill. We support regulatory reform that integrates and streamlines regulation while affording environmental protection. A healthy, functioning and well-protected natural environment is an essential prerequisite for a sustainable economy and for the wellbeing of society. However, LINK expressed concern at the outset that the proposed sustainable economic growth duty for regulators is confused and could compromise environmental protection.

This briefing outlines LINK's views on amendments tabled at Stage 3 of the Bill. We focus on the amendments that are relevant to LINK's priorities.

Sustainable economic growth and sustainable development

The economic growth duty received much attention and debate at Stages 1 and 2 of the bill. Indeed, the duty was seriously questioned by a number of individuals and organisations including the Law Society of Scotland, legal academics at the University of Dundee, the Association of Salmon Fishery Boards, Carnegie UK Trust, UNISON, Oxfam and also the Parliament's Rural Affairs, Climate Change and Environment committee.

LINK believes the duty is unnecessary. We note that several regulators who have a primary responsibility to protect our environment already have duties to consider economic issues. This concern has been expressed by the RACCE Committee, which did not believe that this duty would add anything that regulators already do.

LINK also considers the duty unhelpful and could confuse and compromise regulators' work and their achievement of environmental protection and improvement. We agree with the Rural Affairs, Climate Change and Environment Committee when they state that this 'would confuse regulators'. We fear the greatest risk remains the unintended consequences of this move on our legal system, amounting to a 'lawyers' charter' instead of assisting with practical decision making and streamlining regulation. Furthermore, we do not wish for the costs of these potentially protracted legal battles challenges to fall on local authorities and public bodies.

Ministers have already removed the duty from the planning system. The current provisions in the Bill would mean that regulators are subject to the duty when carrying out their regulatory functions but not when carrying out planning functions. LINK is perplexed that Scottish Government is pursuing such an inconsistent approach in stating that a *legislative duty* is needed for some functions, while *policy direction* is sufficient for others. This is absolutely confusing for regulators and is entirely nonsensical.

LINK recommends that amendments 16, 17, 19, 20 and 22 in the name of Alison Johnstone MSP are supported so that the sustainable economic growth duty for regulators is removed from this Bill. In the event that the duty is retained, **LINK supports amendments 15, 18 and 21 in the name of Alison Johnstone MSP** which serve to substitute sustainable economic growth with sustainable development – a universally recognised term with precedent in Scottish legislation.

Offences relating to supply of carrier bags: fixed penalty notices

LINK strongly supports regulations requiring suppliers to charge for single use carrier bags. We welcomed the Stage 2 amendment to make provision for fixed penalty notices which will facilitate implementation of the carrier bag charging system. **We, therefore, urge members to vote against amendment 1** in the name of Murdo Fraser MSP which proposes to remove that provision for penalties.

Planning authorities' functions: fees and charges

LINK supports amendment 14 in the name of Margaret McDougall MSP, to leave out section 41. We are opposed to a system that would financially penalise planning authorities for failing to meet targets. We are well aware of the need to have timely, efficient and consistent processing of applications and planning authorities must have sufficient resources and expertise to do this. Taking money from underperforming planning authorities will not help to improve the service and there is a real danger that this would lead to an increased divergence in the quality of service between planning authorities. Such a move could increase the pressure on authorities to grant permission before an application has been fully assessed, potentially resulting in significant detrimental environmental impacts and possible breaches of legislation such as the Habitats Regulations.

In the event that Amendment 14 is not passed, **LINK supports amendments 10-13 in the name of Margaret McDougall MSP** as these amendments improve section 41 by clarifying the principles on which performance will be gauged; requiring consultation on those principles; making provisions for safeguard to prevent further impingement on performance; and ensuring Ministers support authorities in improving their performance.

Recommendations

- We strongly urge members to support the following amendments – 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22.
- We urge members to resist amendment 1.
- LINK supports the principle of integrated and effective environmental regulation but we are extremely concerned about the possible inclusion of a sustainable economic growth duty in primary legislation. **Therefore, should this duty be retained, LINK urges members to vote against the bill as a whole.**

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