

LINK Summary of Report: 'Environmental Governance: effective approaches for Scotland post-Brexit'

Scotland has strong standards for environmental protection, but to date we have relied on EU arrangements to implement and enforce these. Building on the work done by the [Scottish Government's Expert Roundtable](#), this report considers international examples of environmental governance arrangements and proposes practical solutions to the challenges Scotland will face if the UK leaves the EU.

Scottish Environment LINK has always welcomed the Scottish Government's commitment to maintaining the same environmental standards should we leave the EU. This commitment was reinforced in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill in 2018, which proposed duties to ensure that vital EU environmental principles would continue to underpin Scottish legislation and policy-making.¹ In light of the Scottish Government's recent consultation into environmental principles and governance, it's clear that there is also strong public support for this with 70% of respondents calling for environmental principles to guide future policy. Earlier this year, members of the public and 37 environmental NGOs backed LINK's Fight for Scotland's Nature campaign with over 22,000 people writing to the First Minister in May 2019 calling for robust environmental governance arrangements.

LINK has further welcomed the commitment in the 2019-20 Programme for Government that measures on environmental principles and governance will be included in the new Continuity Bill, but these must be meaningful, adequate and equivalent to existing EU processes. The Continuity Bill must set out a robust model of future governance arrangements.

Based on [this report](#), Scottish Environment LINK recommends the Scottish Government:

- Creates an independent Parliamentary Commissioner for the Environment;
- Establishes a dedicated Environmental Court;
- Streamlines and strengthens environmental governance in Scotland.

This would form a comprehensive response to the risks of EU exit and mean that Scotland's institutions are as strong as the environmental protections they uphold. It would ensure that government and its agencies are held to account, providing a fundamental democratic safeguard and giving the environment a strong voice at a time when it urgently needs to be heard.

Regardless of the outcomes of Brexit, the strength of our environmental governance system in Scotland is more important than ever if we are to tackle the twin climate and nature emergencies and meet the Scottish Government's ambitions in this regard.²

¹ Scottish Environment LINK, 2017. <http://www.scotlink.org/public-documents/environmental-organisations-welcome-uk-leading-environmental-commitments-in-scottish-continuity-bill/>

² First Minister's Questions, 9 May 2019.

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12083&i=109348&c=2173331&s=biodiversity>

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An Independent Environment Commissioner

A Scottish Parliamentary Commissioner for the Environment must be created as an urgent response to EU exit. This would:

- Ensure that environmental protections are being implemented and enforced correctly;
- Receive public complaints about failures to apply environment; and
- Investigate potential breaches of environment law, and refer serious cases to the Courts.

A Scottish Environment Commissioner would be appointed by and accountable to Parliament in order to be fully independent of government and provide effective accountability. It must be sufficiently and independently resourced and empowered to achieve its aims. An Environment Commissioner should be established during any transition period. In the event of a No Deal exit interim measures must be put in place until the Environment Commissioner is operational.

A Scottish Environmental Court

A dedicated Scottish Environment Court should be established over the longer-term to work alongside the Environment Commissioner. A specialist forum would be better equipped to hear cases relating to the environment and determine appropriate remedies than currently achieved through the Judicial Review process, which is narrow in scope, prohibitively expensive and does not meet the conditions for accessibility under the Aarhus Convention. Irrespective of the Brexit process, the Scottish Government should initiate a meaningful assessment of the merits and means to establish an environmental court.

Streamlining and strengthening environmental governance in Scotland

Environmental governance should be treated as a functional system, and new arrangements should be tailored to fit Scottish circumstances. Existing arrangements, such as parliamentary scrutiny should be reviewed, strengthened and scope expanded where necessary.

Summary of Report

This comprehensive new report proposes practical solutions for addressing a post-Brexit environmental governance gap in Scotland. The report builds on previous research³ and examines existing international models and best practice, such as the Future Generations Commissioner for Wales, the Parliamentary Commissioner for the Environment in New Zealand and Environmental Courts in Sweden and Australia.

This research raises interesting considerations of what good environmental governance looks like. Perhaps most importantly it establishes that environmental governance is a functional system comprising legislation, policy and strategy, institutions and powers, and civil society. Scotland is starting from a place of relative strength, with a strong foundation to build upon and achieve the Scottish Government's stated and commendable environmental ambitions. However, it must be recognised that much of this merit has arisen from EU membership.

³ Environmental Governance in Scotland after Brexit: report, 2018. <https://www.gov.scot/publications/report-roundtable-environment-climate-change-environmental-governance-scotland-uks-withdrawal/>

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The report supports previous conclusions that existing arrangements in Scotland will be inadequate to safeguard the environment if the UK leaves the EU. It argues that there is a case to be made for establishing new institutions in Scotland to carry out scrutiny and enforcement of environmental law, as well as strengthening existing arrangements.

The report concludes that “***what we stand to lose is serious and must be addressed and that serious reform of our governance arrangements is necessary with or without the UK’s EU withdrawal and its consequences for Scotland***”, noting that further changes and improvements above and beyond EU exit considerations may well be needed in order to be effective and robust enough to tackle the climate and nature crises.

Report recommendations:

- Creation of a Parliamentary Commissioner for the Environment (PCE);
- Consideration of a dedicated Environment Court, building on the findings of the 2016 Environmental Justice consultation;
- Identify short-term interim environmental governance arrangements need to be implemented immediately in response to EU exit, particularly in the event of a No Deal exit;
- Improve understanding about environmental governance and its importance amongst the general public, including the risks of EU exit and how they can be addressed;
- Strengthening and realigning existing elements of environmental governance in order to deliver the Scottish Government’s ambitions to tackle the climate and nature crises;
- Treat the environmental governance system in Scotland as a functioning whole.

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