



General and COVID-19 implications

- 1. The Bill confers new powers on UK Ministers to make subordinate legislation for Scotland in devolved areas of environmental law (clauses 47, 48, 50, 81, 84 and 125). Does LINK have any views about how this approach could impact on how stakeholders such as environmental NGOs participate in the development and scrutiny of environmental regulation?**

Resource and capacity constraints mean that LINK does not generally comment on subordinate legislation made at the UK level or closely monitor proceedings at Westminster. If new regulations for Scotland were proposed by the Secretary of State, we would draw on relationships with our sister body Wildlife and Countryside LINK as well as the Greener UK network of which we are members. There could be some initial challenges to expand our work to cover UK proceedings but every effort would be made. LINK has on occasion presented evidence at Westminster committees and we would engage with the Scottish Affairs Committee if they were looking into a specific area of interest. Several of our member organisations would also be able to draw on work by their colleagues monitoring environmental issues at a UK level. As any regulations made under the provisions of the UK Environment Bill ('the Bill') would involve consultation with, and the consent of, Scottish Ministers, we would hope that the Scottish Government would engage Scottish stakeholders in those discussions.

Since the Bill was first introduced in 2019, LINK has been conscious of uncertainty over which aspects of environmental law in Scotland are devolved or reserved. LINK has not been able to review and therefore comment on whether the impact of the Bill on the devolution settlement or any other constitutional arrangement is positive or negative on the environment; our focus is to ensure the legislation works to achieve the best outcome for the environment.

For the clauses cited, the Bill confers new powers on Scottish Ministers to take action in areas such as resource efficiency and water quality. If the Bill is passed, the Scottish Government would have the powers to deliver gains for the environment in a number of areas, for example by introducing Extended Producer Responsibility schemes to decrease waste. LINK believes the advantage should be taken to use these powers quickly and take a lead within the UK.

The Committee's question highlights that the UK Bill would also confer new powers in these areas on UK Ministers. However, we note that the consent of Scottish Ministers is required before any regulations would be introduced by the Secretary of State.¹ It is vitally important that the UK and Scottish administrations are able to have effective and transparent communication and that consent

¹ <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/20009.pdf> See clauses 47(3), 48(3), 50(4), 81(5), and 125(10)(b).

is sought with sufficient time for scrutiny and changes to be made. Effective communication is needed both at ministerial level and at agency level.

The Bill sets up a new independent non-departmental public body, the Office for Environmental Protection (OEP), which will cover England and Northern Ireland (and any reserved matters covered by the Bill), and we understand proposals for an equivalent Scottish watchdog have been developed. We urge the Scottish Government to bring these forward as soon as possible as a priority.² It is essential these two bodies (as well as the counterpart in Wales) have wide-ranging and effective duties to cooperate with each other. Recognising the challenges with our legislative timetable and the time required to fully set up any new public body (including agreeing budgets, appointments, offices etc.) we are deeply concerned about the number of issues that may be waiting for the establishment of the new watchdog. At the very least to ensure any backlog is minimised, interim arrangements for the receiving and logging of potential environmental issues would help the new body.

- 2. As above, the Bill sets a framework of delegated powers which enable certain areas of regulation e.g. producer responsibility to be taken forward through UK-wide regulations with the consent of Scottish Ministers. What are your views on whether these areas of regulation should be taken forward on a UK-wide basis or not? What are the environmental risks and benefits to consider including in relation to different policy areas?**

It makes sense for measures that relate to the UK internal market, such as producer responsibility and resource efficiency standards, to be taken forward on a UK-wide basis so that producers have a single set of regulations to conform to and potential efficiencies in scheme administration could be made. The environmental risk is that such measures may not be as ambitious as ones drawn up by the Scottish Government; but, given there has to be agreement from Scottish Ministers, this risk can be minimised. In general, this approach gives additional opportunities to further environmental legislation, as it can be taken forward at the Scottish or UK level and, as such, it offers potential benefits to achieving environmental outcomes. For example, given the shelving of the Scottish Circular Economy Bill, we suggest using the powers under the Bill to bring forward environmental charging - please see answer to Question 7 below.

In general, we do not see risks associated with the conferring of powers to UK ministers for the policy areas in this Bill, given that powers are also given to Scottish Government to act unilaterally, and Scottish Ministers' consent is needed for any measures affecting Scotland taken by UK Ministers.

We would like to emphasise that, even in matters that relate to the UK internal market, devolved nations have imposed different regulations in the past, such as plastic bag charges, differing business rates and the forthcoming deposit return scheme; and, although there are advantages to devolved nations working together, Scotland will have increased opportunity to press forward with some of its circular economy aspirations, regardless of progress in other parts of the UK.

² <https://www.fightforscotlandsnature.scot/news/campaigners-welcome-new-scottish-environment-strategy/>

3. What are your views on how environmental law is defined in the Bill (including exceptions) including any specific implications for Scotland?

Environmental law is defined in Clause 43 as any legislative provision which is ‘mainly concerned with environmental protection.’ LINK agrees with Greener UK³ that the term ‘mainly concerned’ is ambiguous and although we welcome the explanatory notes⁴ providing some clarity as to its meaning and the helpful link to the definition of the ‘natural environment’ in clause 41, we are still concerned that it is likely to be interpreted too narrowly. Indeed, in discussions with officials as to the nature and extent of ‘reserved environmental law’, we have already experienced such narrow interpretation. A preferable model would be one based on the definition of environmental information in The Environmental Information (Scotland) Regulations 2004⁵ - this is based on accepted international definitions set out in EU Directive 2003/4 and the Aarhus Convention.

Clause 19 require UK ministers to publish a statement alongside any future bill which contains environmental law provisions stating the minister’s view the provisions will not have the effect of reducing environmental protection provided by any existing law. We share the concerns of Greener UK that this could be mistaken for a legal commitment not to regress from current environmental standards, which it is not.⁶ Restricting these clauses only to bills which contain environmental law provisions further excludes other legislation and policy that could have significant environmental impacts.

4. Does LINK have any views at this stage on how implementation of the Act may be impacted by the current health pandemic? For example, should subsequent use of certain delegated powers or areas of implementation be prioritised, and are any areas of the Bill particularly relevant to a ‘green recovery’?

The current pandemic has disrupted parliamentary scrutiny and reduced civil society’s capacity to engage with the Bill.

There are several areas of the Bill that are particularly important to a green recovery:

- **Circular Economy:** a more circular economy should be embedded in the green recovery, as it is pivotal to meeting climate change obligations and also makes for a more resilient economy. Legislation to set our economy on a more circular trajectory should be progressed. Moving forward with Extended Producer Responsibility (EPR) reforms and new EPR schemes (sections 47 and 48) and introducing measures under the sections 49 and 50 (resource efficiency) are really important in incentivising and regulating for eco-design. Furthermore, delay to the

³ [https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf) (page 12 on clauses 41, 42 and 43)

⁴ See: <https://publications.parliament.uk/pa/bills/cbill/58-01/0009/en/20009en.pdf>

⁵ <http://www.legislation.gov.uk/ssi/2004/520/regulation/2/made>

⁶ See p.6 of the Greener UK and Wildlife & Countryside LINK briefing:

[https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf)

Scottish Circular Economy Bill opens up an opportunity to progress single use charging in Scotland via this UK Bill, should the Scottish Government consent to inclusion of Scotland in clause 52 (see our response to Q7 below). In general many of the measures in Part 3 will help guide our economy to one that is greener. As such, moving ahead with these measures, in parallel with other aspects of a recovery plan, is important to help shape the nature of our economy going forward.

- **Environmental standards:** the pandemic has highlighted the value of nature to people's health and wellbeing, and the need for robust, ongoing government action and funding to address the climate and nature emergencies. It highlights the need for parallel Scottish legislation to address these matters.

Scottish Environment LINK has been campaigning for a Scottish Environment Act to embed key EU environmental principles in Scots law, establish a new environmental watchdog and set targets for nature recovery.⁷ While LINK understands the Scottish Government has developed legislative proposals for the first two of these points, no bill has yet been introduced and one must be brought forward as soon as possible to secure environmental protections before the end of the transition period. Additionally, the lack of progress on developing targets for nature recovery risks Scotland falling behind other parts of the UK.

5. How might UK trade agreements impact on the ability of the Scottish Government to fully exercise devolved functions post EU exit – in particular that could relate to the areas of regulation in the Bill?

UK trade agreements will have an impact on the UK internal market. Regulations and standards followed in the UK internal market have a direct bearing on our natural environment, food, agriculture, fisheries and chemicals regulation and may be affected by trade agreements. LINK members believe a properly functioning UK internal market must maintain environmental standards. The undermining of vital environmental protections for short term 'competitive advantage', both within the internal market and internationally, must be avoided and countries that choose to maintain high environmental standards should not be put at a competitive disadvantage within the UK internal market.

To date, the internal market has operated under three different devolution settlements and alongside devolved administrations of different political leadership in Scotland, Wales and Northern Ireland. Even prior to devolution, the internal market operated with different planning, environmental and other policies implemented by the Scottish, Welsh and NI Offices respectively. In principle, based on these experiences, it should be possible to incorporate a certain degree of flexibility within the UK internal market. However, we recognise that an international trade deal may place new constraints on the internal market. Such constraints may not necessarily be negative - for example a requirement

⁷ For more detail please see: https://www.scotlink.org/files/documents/LINK-Parliamentary-Briefing-Scottish-Environment-Act_July-2019.pdf

to act to secure higher environmental standards would constrain some activity to the benefit of the environment - but LINK recognises that with delays to the UK Trade Bill this picture remains unclear.

LINK believes the Scottish Parliament should seek a role in scrutinising any proposed international agreement that has the effect of constraining (either positively or negatively) its exercise of devolved powers, and seek the right to comment on international agreements before they are finalised.

6. Do you have any views on how common frameworks could or should be developed to govern any areas of UK-wide regulation progressed under the Bill in devolved areas (including any views on the timing of how common frameworks are developed in relation to associated legislation such as the Environment Bill)?

Common frameworks should be mutually developed and agreed between the UK and devolved governments to ensure (at least) minimum common environmental standards and cross-border cooperation on shared environmental challenges. Such frameworks should include a clear statement setting out a jointly agreed overall aspiration for the environment. Standards should allow for flexibility to local circumstances but be clear on the minimum standards agreed whilst not constraining any of the four countries from implementing and delivering higher standards in areas of devolved competence where they should choose to do so.

It is LINK's view that a collaborative and joint approach, which respects the devolution settlements in the UK, is needed to ensure that robust environmental standards are protected and enhanced. Ambitious common environmental standards would ensure that there is no drive towards environmentally damaging competitive deregulation in any part of the UK. The process of developing these should be based on robust evidence and data and provide an opportunity for meaningful stakeholder engagement.

As it would be critical to understand how any common framework would interact with any international trade agreements, the frameworks must be set out in good time in advance of agreements being finalised.

7. Are there any matters which are not dealt with by this Bill which LINK would want to see included?

Given the delay to the Circular Economy Bill, the chance to confer powers to introduce charges on single-use materials in Scotland should not be passed up. Clause 52 currently confers powers to other areas of the UK to make regulations for charges for single use plastic and an amendment has been tabled to widen this to all single-use materials.⁸ LINK has urged the Scottish Government to request this clause be made applicable to Scottish Ministers as, should the amendment be passed, Scottish Ministers would have some of the powers that had been intended to be included in the Circular

⁸ Amendment 182, Alan Whitehead

Economy Bill. Conferring powers through the UK Environment Act would allow Scotland to move ahead earlier towards a circular Scotland. **LINK recommends approval of the LCM includes a request that clause 52 be applied to Scotland if amendment 182 is passed, such that clause 52 is broadened to all single-use items.**

Likewise, if Section 51, Deposit Schemes, were to be extended to Scotland, it would give Scottish Ministers the option to introduce deposit return schemes to additional areas in the future, moving beyond drinks containers. The need for powers to introduce deposit schemes for additional product groups was raised by LINK in response to the Scottish Government’s consultation on the Circular Economy Bill proposals.⁹

Environmental governance and principles provisions

While the above sub-heading refers to “governance and principles”, the two questions (8 & 9) refer only to governance. Therefore, before addressing those, LINK would observe that, in relation to the EU environmental principles, we still face uncertainty about how they will be applied in Scotland, Wales and Northern Ireland in relation to reserved matters; this is a gap in the UK Bill. The Scottish Parliament should ask both the UK and Scottish Government what plans they have to address this gap to ensure that, insofar as there is “reserved environmental law & policy”, it is subject to the application of the EU principles. To do this, either the UK Bill needs amending or the Scottish Government needs to address the issue in the forthcoming Continuity Bill.

In addition, the clauses relating to the principles, insofar as they apply to England and Northern Ireland, are weak and do not replicate the current status nor remit of the principles as they currently operate in EU law.¹⁰ These weaknesses must not be replicated in the Scottish provisions in the forthcoming Continuity Bill, if the Scottish Government is to fulfil its commitment to “maintain EU standards”.

8. What are your views on provisions on how the Office of Environmental Protection is expected to cooperate or interact with any future environmental governance body in Scotland?

The OEP and any future Scottish environmental watchdog must be able to cooperate and liaise. For example, if a citizen wanted to raise an issue and got in touch with the wrong watchdog (or if the matter related to a reserved area of law), a Scottish watchdog should be able to pass that complaint on to the OEP and vice versa. An agreement between the two bodies setting out ways of working is needed.

⁹ More information available here: <https://www.scotlink.org/wp-content/uploads/2019/12/LINK-CE-consultation-response-Dec-2019-1.pdf>

¹⁰ For more detail, see Greener UK comments on clauses 16-18: [https://greeneruk.org/sites/default/files/download/2020-02/Greener UK and Link briefing for second reading of the Environment Bill February 2020.pdf](https://greeneruk.org/sites/default/files/download/2020-02/Greener%20UK%20and%20Link%20briefing%20for%20second%20reading%20of%20the%20Environment%20Bill%20February%202020.pdf)

The provisions relating to environmental principles and the OEP primarily relate to England and Northern Ireland. The role of the OEP also extends to reserved functions of UK ministers in Scotland and Wales. This approach appears to be consistent with the devolution settlements. However, it does raise some matters that require clarification.

The UK Government should be asked:

- To provide clarification, with examples, of the reserved functions of UK ministers that would be subject to oversight by the OEP.
- To indicate why the reserved functions of UK ministers in Northern Ireland are rightly subject to the environmental principles (Schedule 2, Paragraph 8(2)) but that this is not the case in regard to the reserved functions of UK ministers in Scotland (clauses 130(1) and 18(3)(c), taken together). Have ministers agreed that such functions would be addressed by any similar legislation passed by the Scottish Parliament?
- In relation to the application of these principles across the UK, can ministers outline their plans to ensure a coherent approach, and when stakeholders will be able to comment on those proposals?

9. Do you consider that the remit of the OEP is clear in relation to reserved and devolved areas?

No. This, however, is not due to the remit of the OEP, but to the weaknesses in the definition of environmental law (see Q3 above) which mean that stakeholders and others (including officials of both Governments) have difficulties determining and agreeing on the nature and extent of “reserved environmental law”.

Waste

10. How do provisions in the Bill support Scotland’s transition to a circular Economy?

Measures under sections 47, 48 (Extended Producer Responsibility), 49, 50 (resource efficiency information and standards), 55 (electronic waste tracking), 59 (transfrontier shipment of waste) and 61 (charging schemes) will potentially support Scotland’s transition to a circular economy. The new powers to introduce EPR schemes and resource efficiency requirements on products are particularly important as they will enable Scottish Ministers to regulate and incentivise eco-design of products.

11. To what extent do provisions in the Bill on waste align with EU developments under the EU Circular Economy Plan, given the Scottish Government’s ambition to continue to maintain or exceed EU environmental standards?

With regard to the parts of the Bill that apply to Scotland:

- Sections 48 and 49 align with the requirements for the introduction of minimum requirements for EPR in the EU Circular Economy Package (adopted 2018).

- Measures under sections 47, 48, 49, 50, 59 align with the EU Circular Economy Action Plan (adopted in 2020) sections on ‘waste prevention’, ‘sustainable product policy’, ‘empowering consumers and the right to repair’ and ‘waste shipment regulations’.

It should be noted that there are other parts of the Bill which do not relate to Scotland, that align with the EU Circular Economy Package - for example, those on separate collection of waste and waste reduction targets. LINK has an internal paper which notes Scottish progress against the measures in the EU Circular Economy Package which we can make available to the Committee if interested.

Water quality

12. Do you have any views on the water provisions in the Bill and how they might impact on management of the Solway Tweed River Basin District?

LINK has no detailed views on these provisions. As noted in response to Q1, any regulations made under these provisions would involve consultation with and the consent of Scottish Ministers. We would hope in such instances the Scottish Government would engage stakeholders in discussion and scrutiny of regulations.

Chemicals

13. Do you agree with which parts of the REACH Regulation are defined as ‘protected provisions’ in the REACH Schedule - do these provide assurances that a UK-wide chemicals regulation system will provide high levels of environmental protection in Scotland?

LINK has no expertise on these matters. However, we would direct the Committee’s attention to work in this area undertaken by our fellow European Environmental Bureau (EEB) member, the CHEM Trust: <https://chemtrust.org/brexit/>

14. Does LINK have any views or concerns about the readiness of a UK REACH regime for the end of the transition period (end of 2020), for example in light of the pandemic?

If the UK does not remain within REACH as part of a future UK-EU trade deal, a UK REACH administered by a new chemicals agency will come into effect at the end of the transition period. The CHEM Trust has noted that a framework for this new regime was set out in 2019 in the context that the UK leaves the EU without a deal. This regime would not provide the same level of protection for our health and the environment from harmful chemicals, given pressures on the capacity of existing UK institutions working in this area, sparse UK-only databases, limited time for stakeholder engagement and reduced data sharing with other countries.

Other

15. Do you have any views you would like to share with the Committee on aspects of the Bill that do not apply in Scotland – including the approach to setting environmental targets?

We welcome and strongly encourage the setting of environmental targets. Halting and reversing the loss of nature and enhancing the environment cannot be achieved over the short time frame of a political cycle. Putting targets into law gives them certainty and clarity that benefits everyone and drives long term investment in environmental improvements. However, targets alone will not drive improvement without a strong accountability framework for their achievement. We believe the regime set out in the Bill is weak and there is much that might be improved.

As recent reports have shown, there is no let up in the decline in nature.¹¹ The need to take action has never been more urgent. As well as being legally binding, targets must also be enforceable and ambitious. They must not be used to weaken or undermine existing targets and new targets must at least match the level of ambition in existing targets, while supporting the ratcheting up of ambition in future iterations.

Despite its weaknesses, we are pleased to see a regime set out that will result in the setting, monitoring and reporting of environmental targets in England. However, in Scotland, the Scottish Government has yet to make any proposals in relation to these issues.¹² To address the nature emergency, we need to stop and reverse the loss of our natural environment. Experience shows that legally binding targets provide a clear direction for government and stakeholders such as businesses and other operators. We need to deliver on the vision set out in the Scottish Government's Environment Strategy to restore nature in Scotland by 2045 through our own target regime.

This response represents the collective view of LINK's [Governance Group](#). 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.

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¹¹ State of Nature 2019 Scotland Report, <https://www.nature.scot/sites/default/files/2019-10/State-of-nature-Report-2019-Scotland-full-report.pdf>

¹² <https://www.fightforscotlandsnature.scot/news/campaigners-welcome-new-scottish-environment-strategy/>