

UK Withdrawal from the European Union (Continuity) (Scotland) Bill (Part 1)

Briefing for Stage 3 Debate

Scottish Environment LINK (LINK) and the Human Rights Consortium Scotland (HRCS) welcome the opportunity to share our views regarding the amendments lodged at Stage 3 in relation to Part 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill.

Summary

LINK and HRCS welcome Part 1 of this Bill and congratulate the Parliament and Government on the approach between Stages 2 and 3 to find broad consensus on key points.

We strongly **welcome Amendment 7, in the name of Angela Constance MSP**, which sets out clearly that, amongst other things, keeping pace powers should be used to maintain or advance environmental and rights standards. Ministers when using the powers are to have due regard to this core purpose.

What now? We highlight several areas for MSP consideration:

1. Plans for Government monitoring processes in order to keep pace
2. Civil society participation in keeping pace decision-making
3. Commitment to non-regression on human rights accountability
4. Environmental Standards Scotland's role around keeping pace powers

Background

LINK and HRCS welcome this Bill and specifically the Part 1 keeping pace power. This is a necessary and practical tool that can enable the maintenance and progress of human rights and environmental standards in Scotland. It helps to fulfil the Scottish Government's commitment to "maintain or exceed environmental standards"¹ post-Brexit and to stand up for human rights in the face of the risks created by Brexit². These commitments have been widely welcomed by stakeholders.

However, these welcome commitments will not be delivered by the existence, in itself, of this power. Instead, including in the Bill a clear purpose that the powers should be used to maintain or advance environmental and rights standards will:

- clarify the intent behind dynamic alignment with the European Union, providing enhanced legal certainty and clarifying the positive outcomes that alignment would have for Scotland.
- provide direction to Ministers on use of the powers to shape decision-making and rightly limit ministerial discretion.
- increase transparency and accountability of law making, particularly as this relates to use of secondary legislation.

¹ For example <https://www.gov.scot/publications/consultation-environmental-principles-governance-scotland-4/>

² First Minister Nicola Sturgeon MSP, 2017, quoted <https://humanrightsleadership.scot/>

- act as a guide for future Scottish Ministers in determining which parts of EU law they should keep pace with.

Above all, putting environmental and rights standards at the heart of the Bill demonstrates and acts on one of the significant risks of being outside the EU – that of falling behind our European neighbours on these standards. Keeping pace powers are simply a practical legislative tool – it is entirely appropriate and sensible for Parliament to direct Ministers to use this tool to improve people’s lives by protecting our environment and human rights.

Amendment 7

Amendment 7, in the name of Angela Constance MSP, provides an opportunity to add such a purpose to the Bill, and is therefore warmly welcomed and fully supported by both LINK and HRCS.

To inform the discussion, LINK and HRCS would make the additional observations: -

- Such a purpose does not make the use of the power absolute or inflexible. It remains a discretionary power – however, it does give Ministers a “sense of direction” as to what they should be seeking to achieve by its use. As such, it helps ensure “consistency and predictability” for people and business both in Scotland and the EU (as noted in the policy memorandum and [FCC stage 1 report](#)³).
- While the amendment focuses on the areas listed, the purpose does NOT prevent Ministers using the power in areas not listed.
- The amendment does not prevent Ministers exceeding EU standards, and this remains a policy option open to them – as does the use of primary legislation (as opposed to s.1 powers) to maintain or exceed EU standards.

Amendments 22 & 23

LINK and HRCS further welcome and support amendments 22 & 23 which provide that reports to the Parliament, under section 7 of the Bill, must indicate how the use of the power has contributed to achieving the purpose introduced by amendment 7. This ensures greater transparency and scrutiny and will enable MSPs (and stakeholders) to be reassured that the purpose is being met – and to raise questions, if necessary, should there be uncertainty.

What now? Keeping pace in practice

Once this Bill is passed and the keeping pace powers are open for use by Parliament, it is important that:

1. The Government establish the processes and capacity required to properly monitor developments in the EU for the purpose of identifying areas where we need to ‘keep pace’. We note that this chimes well with a recommendation of the First Minister’s Advisory Group on Human Rights Leadership for a National Monitoring Mechanism. We note too that such monitoring should go beyond EU law itself to include wider policy developments and initiatives. **Ministers might be asked to comment on their planned approach to such EU monitoring.**

³ Paragraph 37.

2. Brexit has led to an all-time low in policy and law-making civil society participation at Westminster. Many across civil society have felt excluded from decision-making and this has only been accentuated by a lack of time for debate and scrutiny of Brexit law-making by MPs. **Ministers might be asked to reiterate their welcome commitments to engage with civil society around how to keep pace on environmental and rights standards.**
3. In the midst of important steps in Scotland to progress and lead around human rights, the UK Government has initiated two reviews: one around the use of judicial review in courts; the second on the Human Rights Act 1998. In the context of negative rhetoric around courts and human rights by leading politicians and the media in recent years, together with a reluctance by the UK Government to make rights standards a baseline in UK-EU negotiations, these reviews raise significant concerns.

Judicial review and the Human Rights Act are crucial tools that hold government to account on protection of human rights. They protect our most vulnerable people, and being able to challenge governments and other public bodies is at the heart of our democracy. We know that the Human Rights Act is an essential tool to creating a fair and just society. We welcome the Scottish Parliament and Scottish Government's repeated commitments of support for the Human Rights Act. **We invite MSPs to reiterate this commitment and to do all they can to dissuade others from any weakening of rights accountability, but instead to continue to press for full realisation and protection of human rights in the UK. Ministers might be asked to underline their commitment to legislate, in the next Parliament, to implement the recommendations of the National Taskforce for Human Rights Leadership.**

4. Part 2 of the Bill focuses on environmental matters, including the establishment of Environmental Standards Scotland (ESS). While there is no linkage, on the face of the Bill, between the two parts, the new purpose (amendment 7 above) includes maintaining and advancing environmental protection. **Ministers might be asked whether they consider that ESS should, or will, have any role in advising on the use of the section 1(1) power for environmental purposes.**

Conclusion

Putting a purpose at the heart of the Bill makes clear the Government's objective for the power and provides clarity and certainty to stakeholders and on the law. Above all, as the Brexit transition period comes to an end, it ensures that Scottish Ministers and the Scottish Parliament use this practical legislative tool to guard against regression and continue to show leadership and commitment to high environmental and rights standards.

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