



SUMMARY

- Environmental challenges cross borders and joint working to tackle the nature and climate emergency will be increasingly necessary. In that regard it is welcome that the UK and EU have stated their intention to continue to ‘maintain and improve their respective high standards.’ **However, the EU-UK Trade and Cooperation Agreement is light on detail and proposed mechanisms to promote shared ambition or joint environmental action.**
- Through the Withdrawal from the EU (Continuity) (Scotland) Act 2021, Scottish Ministers have a new power to ‘keep pace’ with EU law and are required to use this power for the purpose of ‘advancing or maintaining’ environmental standards. **As a consequence, Scotland is in a position to continue to improve environmental standards and regulations into the future.**
- With the EU moving forward in developing its Biodiversity Strategy and implementing a European Green Deal, there are several areas where the Scottish Government should keep pace to restore nature and deliver a green recovery from the effects of the Covid-19 pandemic.

Trade deals influence the day-to-day decisions taken on environmental issues. The EU-UK Trade and Cooperation Agreement (‘the Agreement’) marks the formal end of the EU transition period and is welcome inasmuch that nature is protected from the disastrous consequences of a no-deal exit. However, the Agreement does not provide answers to all of the environmental gaps arising from the UK’s departure from the EU, and governments across the UK continue to have work ahead to ensure robust environmental protections and governance remain in place.

In Scotland, the Agreement must be seen in the context of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (‘Continuity Act 2021’). This new legislation has granted Scottish Ministers the power to ‘keep pace’ with EU law and requires that the power be for specific purposes, including to ‘maintain and advance’ environmental standards. LINK members greatly welcome this Act and the opportunity it presents to remain dynamically aligned with EU environmental standards.

Non-regression

To address the nature and climate crises, LINK members agree with Greener UK’s assessment that ‘an enforceable non-regression mechanism that is broad in scope and applies irrespective of its possible impacts on trade or investment should be a basic prerequisite for all trade agreements.’¹ As part of level playing field provisions in the Agreement both the UK and EU have agreed not to weaken or reduce levels of environmental or climate protection from where they stood at the close of 2020. This is a safeguard against either side lowering environmental standards, however it is limited to regression of standards only when they would affect trade or investment.

LINK members are concerned that the Agreement seeks only to uphold non-regression to limited situations where a weakening of standards would impact trade or investment between the UK and the EU.

¹ Greener UK, 2020. [Initial environmental analysis of the EU-UK Trade and Cooperation Agreement.](#)

However, the provisions in the Continuity Act and introduction of the keeping pace powers give Scotland a route to continue to maintain, or indeed exceed, environmental standards. This ensures there is ample opportunity for the Scottish Government to move forward in a number of areas. For example the EU is moving forward in developing its Biodiversity Strategy to 2030 and is currently consulting on legally-binding nature restoration targets. This is a key area where the Scottish Government should seek to keep pace as a matter of urgency and can take a leadership role ahead of COP15. In light of the recent conclusions of the Dasgupta Review that “our unsustainable engagement with Nature is endangering the prosperity of current and future generations”² Scotland should seek to keep pace with EU developments to place nature’s recovery at the heart of Scotland’s national recovery from Covid-19. This must be a key part of the work programme of the successor committee of the ECCLR committee.

Enforcement and access to justice

Effective governance mechanisms are required across the UK nations to ensure there are no unintended rollbacks of environmental standards. The provisions in the Continuity Act 2021 are a strong starting point for Scotland, notably through the creation of the new Environmental Standards Scotland (ESS) watchdog. It is essential that ESS is well-resourced to fulfill its crucial role in upholding Scotland’s environmental standards.

However, LINK members believe that ESS must be given greater enforcement powers to ensure standards are upheld, most notably in response to individual cases of a failure to comply with environmental law.³

Improvements must also be made to ensure Scotland fulfils the public’s right to access to environmental justice, right to information and right to public participation in environmental matters, as granted by the Aarhus Convention. Despite the Scottish Government’s assertions of compliance with the Convention, barriers to public interest litigation are significant, and the Aarhus Convention’s decision-making bodies have consistently found the Scottish legal system to be in breach of the Convention on the third category on access to justice. There is scope for ESS to monitor Scotland’s compliance with such international environmental law. The ECCLR Committee (and its successor committee in the next parliamentary session) should seek confirmation that Scotland is continuing to meet its existing obligations.

In conclusion, Scotland must continue to keep pace and indeed aim to exceed EU environmental standards. The Continuity Act 2021 allows the Scottish Government and Parliament to continue to be ambitious in implementing policies and legislation to robustly address the nature and climate crises.

This response represents the collective view of LINK’s Governance Group. Members may also respond individually in order to raise more detailed issues that are important to their particular organisation.

For more information please contact: Vhairi Tollan, Advocacy Manager, vhairi@scotlink.org

² UK Government. 2021. *The Economics of Biodiversity: The Dasgupta Review - Headline Messages*. LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899), core funded by Membership Subscriptions and by grants from NatureScot, Scottish Government and Charitable Trusts.
Registered Headquarters: 13 Marshall Place, Perth, PH2 8AH
Advocacy Office: Dolphin House, 4 Hunter Square, Edinburgh, EH1 1QW