



The Scottish Parliament
Pàrlamaid na h-Alba

Bruce Crawford MSP
Convener
Finance and Constitution Committee

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22 May 2018

Dear Bruce,

EU Environmental Principles, Trade Policy and Trade Deals

The Environment, Climate Change and Land Reform Committee is currently undertaking an inquiry into EU environmental and animal welfare principles and how these may be incorporated into Scots Law following the UK's exit from the European Union. The Committee issued a [call for evidence](#) on its inquiry which closed on 29 March. The Committee received 26 [written submissions](#) and then [heard from stakeholders](#) and from the Cabinet Secretary for Environment, Climate Change and Land Reform on [8 May](#).

The Committee agreed to write to your committee to highlight the issues that arose in relation to how the environmental principles might relate to trade policy and trade deals after Brexit.

The Committee received evidence setting out how the negotiation of future trade deals might be affected by placing the environmental principles in Scots Law, and whether it is possible that future trade agreements might prevent the Scottish Parliament putting the environmental principles into Scots law at a later date.

Evidence suggested that whilst environmental principles do not tend to feature in in trade deals, modern trade agreements increasingly include environmental chapters. Client Earth referenced Michel Barnier speaking of the possibility of a non-regression clause in a future free-trade agreement between the UK and EU which would be less about environmental standards in the UK and more about trade competition. This could be to ensure that UK does not undercut the EU by lowering its standards, so what he is referring to is a tool in the trade context.

The Committee also heard that complying with the technical requirements (such as environmental standards) of other countries or trading partners can

create barriers and as a result, it was suggested Scotland may wish to align itself closely with the EU rules “for the sake of removing friction”.

Those giving evidence did not consider the principles as they are currently enshrined in the continuity bill would have an impact on the negotiation of any UK trade deal. Professor MacLeod-Little suggested that the UK Government would be considering the environmental principles as policy principles, and the Scottish Government would be considering them as they are in statute. This did not necessarily mean the UK and Scottish Governments would take a different view on how the principles are to be interpreted in a particular case.

Witnesses suggested the incorporation of the principles into Scots law would, in effect, provide a backstop to any deregulation of food standards or the environment. However, some evidence suggested the principles on their own are too broad and in the negotiation of any trade deal, another country’s interpretation of the precautionary principle may be very different. The Committee heard that the issues in relation to the differences in interpretation between trading partners can often be in the application of the principles, in particular in the application of the precautionary principle, and differing views on how to balance risk against benefit. It was also suggested that trade agreements which include arbitration clauses could present a future challenge to placing environmental principles in Scots Law at a later date.

The Committee explored where the Scottish Government saw the environmental principles in relation to international trade deals and what discussions had taken place between the Scottish and UK Governments.

The Committee heard that the Scottish Government consider environmental protections to be key aspects of trade policy. The Cabinet Secretary for Environment, Climate Change and Land Reform stated there is “an issue about where are we now, as we are going to lose the superstructure of EU law that embeds the four principles that we have been discussing. We want to find a way of ensuring that Scotland continues to have those principles as part and parcel of what we do, but in doing that we are not moving beyond what already is the situation in the EU.” The Cabinet Secretary emphasised Scotland will continue to have the principles as a backstop.

The Cabinet Secretary also confirmed she did not expect potential future trade deals to present an obstacle to Scotland putting the principles into Scots law whether through a national policy statement or legislation.

In the event the principles are included in legislation, the Committee heard, it was not clear how the principles would be applied in future trade deals.

The Committee also explored the potential threat that the adoption of more stringent environmental principles and regulation into Scots law could limit Scotland’s ability to compete on a level playing field with other parts of the UK. In response the Cabinet Secretary said “that would depend on where you wanted to put the level playing field. If the level playing field is that we toss all our environmental regulation and principles out of the window, frankly, that is not where I want to be...There may be an attempt to remove some of their application, but I think that we would want to resist that.”

The Committee has now agreed to hear from the Round Table on the Environment and Climate Change, established by the Scottish Government at the end of last year, and I have instructed the Clerks to ensure you are aware of progress of this inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graeme Dey', with a stylized flourish at the end.

Graeme Dey MSP
Convener
Environment, Climate Change and Land Reform Committee