

SUBMISSION FROM SCOTTISH ENVIRONMENT LINK

Summary

- The UK Internal Market involves issues around regulations and standards that have a direct bearing on our natural environment, such as food, agriculture, fisheries, chemicals regulations and others.
- Environmental standards are critical for addressing the nature and climate emergency, to which the Scottish Government has already made welcome commitments. The clear need for higher environmental standards in order to address these crises should be a key consideration in discussions around the UK internal market.
- LINK has welcomed the Scottish Government's commitment to "maintain or exceed the EU's environmental standards". We look forward to this commitment being underpinned by a statutory power or duty of 'non-regression' or 'dynamic alignment' in the forthcoming Continuity Bill.
- It is LINK's view that 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.
- Common frameworks should be developed and mutually agreed between the UK and devolved governments to ensure minimum common environmental standards and cross-border cooperation on shared environmental challenges. Standards should allow for flexibility to local circumstances and minimum standards should not constrain any of the four countries from delivering higher standards in areas of devolved competence where they should choose to do so.
- LINK's priorities on this topic, going forward, will be
 - Ensuring compliance with existing international law on the environment;
 - Delivering on the Scottish Government's commitment "to maintain or exceed EU environmental standards" and address the nature and climate emergency; and
 - Seeking to ensure that any future international agreement do not require a lowering of standards or impede ambition for the restoration of our environment.

Introductory comments

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. LINK provides a forum for these organisations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. LINK works mainly through groups of members working together on topics of mutual interest, exploring issues and developing advocacy to promote sustainable development respecting environmental limits.

LINK welcomes the Committee's consideration of the issues raised by this inquiry – 'Brexit', the ongoing discussions of trade, other international agreements and the UK's internal market', have direct implications for environmental standards and policy in Scotland. Environmental standards are critical for addressing the nature and climate emergency, to which the Scottish Government has already made welcome commitments. The clear need for higher environmental standards in order to address these crises should be a key consideration in discussions around the UK internal market. LINK

is therefore interested in the UK's 'internal market' insofar as it relates to *environmental outcomes*, and our specific points below are made within that in mind.

LINK has welcomed the Scottish Government's commitment to "maintain or exceed the EU's environmental standards". We look forward to this commitment being underpinned by a statutory power or duty of 'non-regression' or 'dynamic alignment' in the forthcoming Continuity Bill.

The above commitment has, of course, led to comments about possible "regulatory divergence" within the UK, should Governments in other parts of these islands choose to diverge from EU standards – and thus concern about the operation of the 'UK Internal Market'. This inquiry is thus very timely and should address these issues; it should conclude that the Scottish Government's commitment to EU level environmental standards can, and should, be supported.

Devolution, itself, is a form of regulatory divergence – the powers for the Scottish Parliament to legislate in devolved areas means that regulations in Scotland are often different to those in England, Wales and Northern Ireland. Indeed, for Scotland, this has always been the case – issues of Scots Law, education, planning and many environmental regulations were different in Scotland, before devolution, when the (then) Scottish Office under successive UK Governments had responsibility for these matters. However, notwithstanding this, there is the matter of compatibility with international law and international agreements, including on trade, made by the UK Government. This duty applies to both the UK Government and Devolved Administrations.

The UK's membership of the European Union over the past 40 years has provided a common framework in the form of rules and standards, that has constrained regulatory divergence in areas of devolved competence across the four countries of the UK – or, at least, required any divergence remain compatible with common objectives and minimum standards. It is important to note that this common framework has not restricted countries from going above and beyond standards, and there are examples where Scotland has opted to do so, for instance in their rules around Strategic Environmental Assessment. However, now that the UK has exited the EU, the opportunities for regulatory divergence across the UK countries are increased. Any lowering of environmental standards could place our nature and climate at risk.

LINK, in previous submissions to the Finance and Constitution Committee¹, has emphasised that common objectives and minimum standards in a number of crucial environmental areas must be agreed in order to safeguard our natural environment and continue to address cross-border environmental challenges. These issues are equally as relevant in the context the UK 'Internal Market' and the Committee will wish to recognise the links between this inquiry and its work on Common Frameworks.

Responses to the Committee's specific questions

1. What is the UK internal market?

- LINK is not aware of any formal or legal, definition, but would be interested to hear the Committee's conclusions. Presumably, however, like the EU's single market, it is characterised by freedom of people, goods, services and capital to move, work, be bought/sold/invested in any part of the UK.
- Some matters that affect this market are subject to regulatory alignment (e.g. UK-wide common regulations), but many are not. Of those that are not, this is often the result of devolution – that is Devolved legislatures/administrations choosing different options. However, some geographic differences in approach existed before devolution and, of course, the UK government can apply 'regional targeting' to its application of reserved policies.

¹ https://www.parliament.scot/S5_Finance/Inquiries/Scottish_Environment_LINK.pdf

- Environmental regulations are a mix of reserved (e.g. CITES, offshore oil & gas) but primarily devolved (e.g. planning, nature conservation, pollution control) matters. International and EU agreements have provided an element of common objectives and approach in the past, but there is, and always has been, differences between the UK's different jurisdictions. The 'internal market' operated with different planning and conservation systems before devolution and still operates with systems that have grown more different since devolution.

2. How will international treaties, including trade deals, impact on the UK internal market?

- If a Treaty imposes requirements on the UK Government and/or the Devolved Administrations in relation to any of the features of the 'internal market' described above, then there will become an obligation, in international law, to comply with that requirement.
- New trade deals could affect a number of areas of regulation relating to the environment, including food production and standards, fisheries, and chemicals regulations. There may be pressure on the devolved governments to lower standards in these areas to avoid competitive disadvantage under, or simply comply with, new trade deals agreed by the UK Government. Our responses to questions 6 and 7 underline this potential impact, and the need for scrutiny of the issue by devolved legislatures.
- The environment is a sector that is subject to a variety of environmental treaties (e.g. UNFCCC, CBD, CITES, Bern, Bonn, Montreal, Aarhus, etc). Although, in the past, some of these are 'implemented via EU law, others were implemented without an EU 'tier'. The UK Government and Devolved Administrations have considerable experience of applying these international obligations – although, at times, their actions have been, and still are, insufficient.
- The Scottish Government's announcement of an 'environmental watchdog'² was welcomed by LINK³. This independent body should play a key role in monitoring Scotland's compliance with international environmental law.

3. What are the priorities and challenges for Scottish businesses and organisations in operating within a UK internal market?

- In addition to analysis and advocacy on environmental regulations, LINK and its members operate in the internal market in relation to issues such as employment, charity regulation and land management. Some of these matters are reserved and regulations are identical UK-wide, others are devolved and are different in each UK nation (either because of legislation passed in devolved legislatures or because of pre-devolution differences).
- Businesses and organisations are, therefore used to differences in regulations existing across the UK, as indeed they vary between jurisdictions worldwide. The challenges such variations provide can, however, be reduced by clarity, publicity and engagement – to ensure that implementation is as smooth as possible and well understood by all concerned.
- For LINK and its members, the priorities, going forward, will be (a) ensuring compliance with existing international law on the environment – currently good, but still incomplete; (b) delivering on the Scottish Government's commitment "to maintain or exceed EU environmental standards"; and (c) seeking to ensure that any future international agreement do not require a lowering of standards or impede ambition for the restoration of our environment.

4. What institutional structures will be required to administer and enforce the UK internal market?

- In general, this is not a matter on which LINK has a locus or seeks to comment; it is a matter for the UK Government and the devolved administrations.
- However, in relation to environmental issues, and the application of environmental regulations applying with all parts of the internal market, LINK would reiterate the importance of the OEP (in England and in relation to reserved matters) and the devolved 'watchdogs', such as that announced by

² <https://news.gov.scot/news/protecting-scotlands-environment>

³ <https://www.fightforscotlandsnature.scot/news/campaigners-welcome-new-scottish-environment-strategy/>

the Scottish Government. These bodies should have “compliance with retained EU law and ongoing international commitments” within their remits.

5. What mechanisms should be available to challenge ‘unfair’ internal market practices?

- In general, this is not a matter on which LINK has a locus or seeks to comment; it is a matter for the UK Government and the devolved administrations.
- However, in relation to environmental issues, the OEP and devolved watchdogs should operate appropriate complaints systems that are available to those who feel that environmental standards and obligations are not being met.
- They might also advise/adjudicate if it was alleged that environmental regulations were ‘unfair’ (although it would be for the appropriate Parliament to make amendments, if they wished, based on such advice).

6. What will be the impact of the UK internal market on devolved powers?

- To date, the internal market has operated both under all the three different devolution settlements and alongside the various devolved administrations of various political persuasions in Scotland, Wales and Northern Ireland. Moreover, prior to devolution, the market operated with different planning, environmental and other policies implemented by the then Scottish, Welsh and NI Offices.
- In principle, based on the above, there should be little impact of the internal market *per se*. However, the reliance on the internal market to implement across the UK any future international agreement, affecting devolved matters such as the environment, might constrain options available to the devolved administrations. Such a constraint might be positive (if it requires action to secure environmental benefit) or negative (if it prevents such action). However, it is the international agreement (and the UK Government’s consent to that agreement) that provides the constraint, not the internal market.

7. What should be the role of the Scottish Parliament in relation to scrutinising the UK internal Market?

- Based on the above analysis, LINK believes that 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, such as those on the environment.
- The Parliament might wish to have sight of and be able to comment, before ratification, any international agreements, including trade deals, that are likely to impose obligations in relation to devolved matters. The nature and effect of any view the Parliament might take would be a matter for the UK Government and devolved administrations to agree.

This response represents the collective view of LINK’s Governance Group.