

Submission from the National Trust for Scotland

UK Withdrawal from The European Union (Continuity) (Scotland) Bill

Thank you for the opportunity to comment on the UK Withdrawal from The European Union (Continuity) (Scotland) Bill. The National Trust for Scotland are the largest member organisation in Scotland. We are a conservation charity supported by more than 365,000 members and it is our goal to safeguard Scotland's natural heritage for generations to come.

In April 2019, the First Minister declared a 'Climate Emergency'. The Trust welcomed this declaration and the further commitments to tackling climate change the Scottish Government made thereafter. The Trust believes exceptional environmental standards are key to tackling the Climate Emergency and supports the Scottish Government's ultimate aim for Scotland to be a world leader in the fight against climate change.

The intention to "maintain or exceed EU environmental standards" by keeping pace with EU policy via the UK Withdrawal from The European Union (Continuity) (Scotland) Bill as introduced is a welcome sight, however there are limits to what protections the bill offers in its current form. Recommendations:

- Strengthen wording in the Bill to place a stronger duty on Scottish Ministers to uphold Scotland's environmental standards in line with EU laws
- Seek approval of the Scottish Parliament before any divergence from EU environmental law
- Establish common frameworks on minimum environmental standards across UK and devolved administrations
- Any new trade deals that are made must not negatively impact on the established common environmental framework
- It is essential that the ESS is truly independent of Government and able to hold its actions to account, in particular keeping pace with EU environmental laws
- The Bill must maintain that Environmental Standards Scotland has secure and transparent funding

The Trust believe that the bill could be reinforced by including a specific duty to use keeping pace powers to deliver and maintain high environmental outcomes. The Scottish Government has on several occasions committed to "maintain or exceed" EU environmental standards following EU withdrawal¹. In its current form, the draft Bill enables Scottish Ministers to keep pace with EU law, but it does not require them to do so. There is therefore a risk that the current or successive governments in Scotland

¹ Environmental principles and governance after Brexit: consultation, February 2019.
<https://www.gov.scot/publications/consultation-environmental-principles-governance-scotland-4/>

would not use these powers. A duty written into the bill with a requirement to keep pace with EU environmental standards would prevent any regression of environmental standards taking place.

The decision to remain aligned with the EU may cause substantial policy divergence, but will serve to maintain the status quo and build on this. Should any part of the UK regress from EU standards, this may have an impact on the other devolved administrations. To mitigate this, common frameworks could be developed and agreed upon between the UK Government and the devolved administrations. Such frameworks could have minimum standards which allow each government to create higher standards in devolved areas should they see fit.

The Trust are comfortable with the proposals within the Bill to maintain regulatory alignment using secondary rather than primary legislation in order for the proposed keeping pace powers to be used most effectively.

The current duty to have regard to the environmental principles could be strengthened by changing the wording to 'act in accordance with; or 'comply with'. Such wording would strengthen the duty on Scottish Ministers and give the people of Scotland a clear assurance that Scotland's environment will be protected in line with the standards set out by the EU. High environmental standards are key to deliver the Sustainable Development Goals and the established climate change targets.

Should a situation present itself where it is in the environment's interests to diverge from EU law, a provision could be included to allow for this. However, this should be robust in that Ministers' should be required to present a clear case for this and seek the approval of Parliament before taking such an action.

The EU environmental principles should not only apply to Scottish Ministers' but also to decision makers at local authority level. At present, local authorities only have regard to the principles when carrying out Strategic Environmental Assessments.

In leaving the EU, the UK and devolved administrations views and wishes will no longer be considered. However, there are a number of environmental challenges that span the EU and the UK and it is of high importance for co-operation to continue on such matters. As mentioned Q1, the keeping pace proposals in the Bill as drafted should place a duty on Scottish Ministers to match the laws set out by the EU and deliver a sustainable environment, sustainable agriculture and food production, encourage biodiversity and the safeguarding of our natural environment for generations to come.

The Trust are of the view that the devolved administrations must be fully involved in any future trade deals and other international agreements. Any deals must include high levels of transparency and be open to full scrutiny from all parliaments, stakeholders and the public alike.

Any new trade deals that are made must not negatively impact on the EU environmental standards. The Scottish Government have established legally binding climate change targets but need to go further to set clear standards with other administrations across the UK in order to protect Scotland's nature and natural capital. Nature and natural capital support several established Scottish Government targets on health and wellbeing², food production³ and the tourist industry⁴.

To be effective in setting standards that work to protect the environment for all (particularly where devolved and reserved matters cross such as trade and the environment), all four nations of the UK must work together to establish what this might look like and how these will be maintained when establishing new trade and other international deals.

The Trust urges the UK and devolved administrations to work together constructively to produce a common framework related to environmental matters and that this is issued for parliamentary and public consultation in order to provide transparency and scrutiny.

As mentioned in Q1 The Trust believe that the bill could be reinforced by including a specific duty to use keeping pace powers to deliver and maintain high environmental outcomes. In its current form, the draft Bill enables Scottish Ministers to keep pace with EU law, but it does not require them to do so. There is therefore a risk that the current or successive governments in Scotland would not use these powers. A duty written into the bill with a requirement to keep pace with EU environmental standards would prevent any regression of environmental standards taking place and would place additional pressure on the UK Government to align with this duty.

At the end of the transition period, the UK government and the devolved administrations will no longer be bound by EU law. Powers over agriculture, fisheries, food standards and environmental policy will return to the devolved governments, creating the possibility of divergence in these areas

which could have the potential to create barriers to trade. In October 2017 the UK Government agreed to develop frameworks to "enable the functioning of the UK internal market". However, no frameworks have yet been agreed. The proposed UK Internal Market Bill may affect the ability of the UK and devolved administrations to work to established environmental principles and to be held to account over these.

As a result, it is crucial to work together to come to an agreement around minimum environmental standards within which the UK internal market can function. Should an agreement of minimum environmental standards across all UK nations and a

² Our Natural Health Service, updated 6th April 2020.

<https://www.nature.scot/professionaladvice/contributing-healthier-scotland/our-natural-health-service>

³ Good Food Nation policy, 2014. <https://www.gov.scot/policies/food-and-drink/good-food-nation/> ⁴

Natural Capital and Green Spaces: Protecting and enhancing Scotland's natural assets, 2019

<https://economicactionplan.mygov.scot/sustainability/natural-capital/>

transparent framework detailing how these standards will work with newly established trade agreements, the Scottish Government risk jeopardising their ultimate environmental goal of keeping pace with the EU environmental standards.

The intention to keep pace with EU standards in the bill as introduced is a welcome sight, however there are limits to what protections the bill offers in its current form.

The Trust believe that the bill could be reinforced by including a specific duty to use keeping pace powers to deliver and maintain high environmental outcomes. The Scottish Government has on several occasions committed to “maintain or exceed” EU environmental standards following EU withdrawal . In its current form, the draft Bill enables Scottish Ministers to keep pace with EU law, but it does not require them to do so. There is therefore a risk that the current or successive governments in Scotland would not use these powers. A duty written into the bill with a requirement to keep pace with EU environmental standards would prevent any regression of environmental standards taking place.

The current duty to have regard to the environmental principles could be strengthened by changing the wording to ‘act in accordance with; or ‘comply with’. Such wording would strengthen the duty on Scottish Ministers and give the people of Scotland a clear assurance that Scotland’s environment will be protected in line with the standards set out by the EU. High environmental standards are key to deliver the Sustainable Development Goals and the established climate change targets.

The significant difference between the pre and post-Brexit powers proposed in the UK Withdrawal from The European Union (Continuity) (Scotland) Bill is the requirement for Scottish Ministers to adhere to changes in EU law. If adherence was not forthcoming pre-Brexit, the European Commission and the Court of Justice of the EU were able to intervene. However, under the proposed Bill the powers to keep pace with EU law are at Ministers’ discretion. The Trust support the introduction of a duty on Scottish Ministers to keep pace with EU law.

The Trust welcomes the establishment of the new environmental watchdog – Environmental Standards Scotland (ESS). Our own research carried out in October 2019⁴ found that 81% of our representative sample supported the creation of an independent body to replace the current oversight role of the European Commission. This support was consistent among both Leave and Remain voters at 81% and 90% respectively.

It is essential that the ESS is truly independent of Government and able to hold its actions to account, in particular - keeping pace with EU environmental laws. In its current form, the Bill states in Schedule 1, section 1(1) that the watchdog is “not

⁴ The accountability gap: Scottish environmental protections post-Brexit. National Trust for Scotland (2019) <https://s3-eu-west-1.amazonaws.com/ws-nts/Production/assets/downloads/TheAccountability-Gap-environmental-protections-post-Brexit.pdf?mtime=20191016103321>

subject to the direction or control of any member of the Scottish Government”. However, Section 1(2) of the Bill allows exceptions to be made “in this or any other enactment”. This statement places the Scottish Government in a position to make exceptions to direct or control the work of the ESS and therefore places its independence under question.

As set out in Q1, The Trust urge that a specific duty is placed on Scottish Ministers to use keeping pace powers to deliver high environmental outcomes. Considering the Covid 19 crisis, The Trust also encourages the Scottish Government to make a commitment to a green and sustainable program of recovery backed by new targets safeguarding nature, biodiversity and landscape. The Scottish Government have established legally binding climate change targets but need to go further to set clear targets in order to protect Scotland’s nature and natural capital.

Should a situation present itself where it is in the environment’s interests to diverge from EU law, a provision could be included to allow for this. However, this should be robust in that Ministers should be required to present a clear case for such an action and seek the approval of Parliament before taking such an action.

The Bill must maintain that Environmental Standards Scotland has secure and transparent funding.

The Bill as drafted does not set out provisions for funding ESS in particular but will be subject to the Scottish Government’s annual budget process. The Trust encourage Scottish Ministers to commit to multi-annual, ring-fenced funding and to report annually on its funding in line with the UK Office for Environmental Protection.