

Submission from Scottish Land & Estates

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

We are disappointed with the level to which the Bill provides for 'keeping pace' with EU law in devolved areas and indeed its ambition of maintaining the gold standard of EU law – which we feel is weak. The keeping pace power of this Bill aligns well with the equivalent UK Act however considering the integration of UK and Scottish Policy making and the powers that will be returned to the UK from the EU we would recommend caution against creating a situation of substantial policy divergence between Scotland and the rest of the UK. Especially when we consider the number of businesses which operate on a UK wide scale and the amount of produce which moves throughout the UK. Whilst there is no legally defined internal market in the UK there is a clear integration in supply chains and movement of produce. As common frameworks are developed within the UK we would urge Scottish government to prioritise this relationship and carefully consider the potential impact of any keeping pace legislation.

Considering the range of areas where regulatory alignment would be possible it may not be appropriate for secondary legislation to be used in every instance. It is important that parliament has the opportunity to scrutinise any proposed regulatory alignment.

The main implication of the UK and devolved administrations not having a formal role in the formation of EU policy is that they will be excluded from the processing of designing the policy and will be unaware of the problem solving and thought process that has occurred as the policy is created. Without having the full picture at their disposal policy makers risk putting unsuitable and unworkable policy onto the domestic statute. Equally the process of drafting policy to suit 27 member states is known to be lengthy and often requires countries to settle for something.

We feel it would be far more appropriate for Scotland's ambition to be based on introducing policy which fits Scotland as and when needed. Rather than waiting for the EU to introduce something which Scotland has not been involved in drafting. This does not prevent Scotland from following the EU in principle, but it ensures any policy is written, first and foremost, with Scotland's unique situation in mind rather than amended to fit.

The policy memorandum states that "the Scottish Government considers it necessary to give Scottish Ministers the power to ensure that Scotland's laws may keep pace with changes to EU law, where appropriate and practicable." The Committee would welcome your views on how wide-ranging this power is likely to be given the following statutory and non-statutory constraints –

- Compliance with UK international obligations including future trade deals and other international agreements;
- Statutory and non-statutory common frameworks;

- The functioning of a UK internal market;
- The replacement of EU funding.

Considering the wide range of constraints expected we would question how often this power can be used. Again we would urge the focus of effort being on the development of common frameworks with the rest of the UK, a major recipient of Scottish produce. We would encourage future policy be developed to suit Scotland's ambition and economic activity rather than an intention to follow EU law regardless of rationale.

We would expect there to be some criteria that can be applied when considering which EU law may be appropriate for domestic application, it would be appropriate have this in the bill as a means to assess any secondary legislation that is created from this Bill.