

FINANCE AND CONSTITUTION COMMITTEE

COMMON UK FRAMEWORKS CALL FOR EVIDENCE

SUBMISSION FROM

Scottish Environment LINK¹ welcomes the opportunity to respond to the Committee's inquiry on Common UK Frameworks. LINK members have participated in previous calls for evidence issued by the Scottish Parliament Committees. Previous relevant LINK evidence can be found here:

- [Scottish Environment LINK submission to the Environment, Climate Change and Land Reform Committee on possible common/shared frameworks and related issues](#)
- [Scottish Environment LINK submission to call for evidence on the impact of the European Union \(Withdrawal\) Bill upon the devolution settlement and the expected legislative consent memorandum](#)

Evidence summarised below will focus on the questions specified by the Committee.

1. What should replace the current EU policy-making processes across the UK:

From the outset, Scottish Environment LINK members have maintained that to effectively protect and enhance our environment, all four UK countries need to work together while respecting the devolution settlements. Depending on the policy area and given a variety of environmental considerations, LINK members would argue that other governments (e.g. Republic of Ireland) should also be involved.

As has been previously stated, one of the key benefits of EU legislation is that it provides common standards allowing EU member states to tackle shared problems jointly, for example, nature protection, climate change or air and water pollution which have a clear transboundary impact. The same logic applies to the UK and its four countries.

The loss of common EU standards, as a result of the UK's exit from the EU, could potentially compromise the transition of Scotland and that of the entire UK towards a low carbon and sustainable society. In the absence of any common standards and coordination, the four countries of the UK could decide to take different approaches to the management of common resources and introduce varying degrees of environmental ambition. This would not only drive a race to the bottom in terms of standards due to competitive de-regulation but it would also hamper efforts of jurisdictions with higher standards.

This is why, since September 2016, LINK members have called for an open and transparent dialogue on this crucial issue of common frameworks, with opportunities for stakeholder engagement and parliamentary input.

Our understanding of the status of discussions around frameworks is the following:

- Both the Scottish Government and the Joint Ministerial Committee acknowledge the importance of a common approach:
 - Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell, has stated that that there is a "clear acceptance that there will be the need for some common approaches

¹ Scottish Environment LINK (www.scotlink.org) 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. Its member bodies represent a wide community of environmental interests, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment.

across the UK to some matters when the UK withdraws from the EU"². This was also outlined in the "[Scotland's Place in Europe](#)" (December 2016) and other Scottish Government documents.

- At a UK-wide level, the Joint Ministerial Committee (JMC) which stated that "common frameworks will be established where they are necessary in order to enable the management of common resources" in October 2017³.
- LINK members also note the publication by the UK Government of a [framework analysis](#) setting out areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland.
 - LINK understands that this was a working draft which had not been agreed by the devolved administrations. It is not clear whether an updated version or other analysis will be published and at what time.
 - The document itself does not provide any insight to how the analysis was conducted, and conclusions drawn or other parameters that were taken into account.
 - The document does not provide any insight as to future policy and the potential for collaboration across the UK, nor does it provide insight into the type of legislative and non-legislative frameworks that may be required and what form or shape these will take.
 - In terms of the environment, it is worrying to see that these are almost entirely considered as issues only requiring non-legislative frameworks. This is potentially concerning as it does not seem to fully appreciate the transboundary nature of environmental issues and need for cooperation on the basis of common standards.
 - Furthermore, there are some notable omissions from the analysis, such as invasive non-native species policy, with no explanation provided as to why this has been excluded.
 - As such, the framework analysis does not meet LINK member ambitions for an open and transparent dialogue on areas of UK-wide cooperation where common frameworks may be needed or may be desirable.
- LINK also understand that the civil servants from across the UK have engaged in a series of 'deep-dive' exercises, including on environment, marine/fisheries and rural affairs. LINK members have had limited engagement with government officials on those exercises and believe that a more open dialogue involving stakeholders would be helpful. LINK members seek confirmation from all UK governments that there will be an opportunity to provide input to the deep dives as part of a wider discussion on common frameworks.

Despite this accepted view and urgency to address the issue of common frameworks, LINK members note with regret the absence of any apparent progress at the level of the JMC.

As such, the developments and reflections outlined above reinforce LINK's conviction that:

- A collaborative and joint approach across the UK is needed to ensure that environmental standards are protected and enhanced.
- Any post-Brexit frameworks must set up ambitious common environmental standards across the UK to manage our shared resources and address transboundary effects. This would ensure that there is no drive towards competitive deregulation in any part of the UK that would damage our environment.
- Any common frameworks should be based on existing EU legislation and provide ambitions for the future. They should put core EU environmental principles into the domestic statute book – and this can be done in a variety of ways: for example, through a UK-wide policy statement which sets out ambitions with separate Acts or through a single Act with an LCM process or a combination of Westminster and Holyrood legislation.

² The Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell, addresses Scottish Parliament on the UK Government's EU (Withdrawal) Bill: <https://beta.gov.scot/publications/eu-withdrawal-bill-ministers-speech/>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf

- Frameworks should act as an ambitious common baseline on top of which individual countries can pursue more ambitious standards.
- The policies underpinning the environmental standards set in any common frameworks, particularly non-legislative ones, must be legally binding and part of domestic law. At the same time, any joint frameworks must allow for policy to be adapted or differ when circumstances require this, such as climate, geography, local biodiversity, and local traditions. It would not be appropriate to pursue a “one size fits all” approach as this could potentially lead to negative environmental outcomes.

In LINK’s view, it is now critical to establish is the kind of coordination and types of frameworks that might be needed. Members of Scottish Environment LINK, alongside other environmental NGOs across the UK vigorously support that any common frameworks are co-designed and co-developed among the relevant governments⁴.

As mentioned earlier, any shared or common frameworks must **respect the different devolution settlements of the UK. Any common or shared framework needs to be jointly developed and agreed (co-designed and co-developed)**. This means that all concerned governments need to have an equal say in the process and the relevant parliaments need to be involved in a meaningful way. In addition, frameworks could involve any or all of the countries of the United Kingdom as well as the Republic of Ireland, British Isles or other countries.

While it would be difficult to provide an estimation of the number of frameworks that could be required, it is clear that **different types of frameworks are possible** (as indicated later on in our submission) and that they could provide different levels of policy detail and granularity depending on the policy area.

As mentioned in previous LINK submissions, there are a number of examples of intra-UK coordination as well as UK/Irish cooperation⁵. The same is true for the Nordic countries which cooperate further through the Nordic Council while several studies have been conducted regarding examples of asymmetrical cooperation between EU member states and different levels of governance. It will be important to assess those against the criteria outlined above and through appropriate stakeholder consultation as well as deliberation with Parliament, to develop an approach to the inter-governmental structures needed post-Brexit.

What is needed is a process for agreeing such common frameworks that takes into account current intra-UK government coordination methods and arrangements, how they have performed, how they could be improved and whether they are fit to meet the challenges that leaving the EU creates.

LINK would like to take the opportunity of the present call for evidence to present its views about how such frameworks could be agreed and developed:

- Any such framework initiative needs to be developed in a transparent way, in line with international law and particularly the Aarhus Convention, and allow for stakeholder consultation. It is therefore concerning that the October 2017 JMC statement did not make any reference to public or stakeholder consultation.
- LINK members believe that the process should be based on **robust evidence and data**, including impact assessments and scenario development adapted for relevant policy areas.
- The process should also provide ample opportunities for **meaningful stakeholder engagement** and input across the UK countries.

⁴ GUK & Environmental Links UK joint position paper on “Brexit and Devolution”:

http://greeneruk.org/resources/Brexit_and_devolution.pdf

⁵ http://www.scotlink.org/wp/files/documents/SELINK_ECCLR-response-to-UK-frameworks-Governance-gap_final.pdf

- It would also be critical to understand how any such frameworks would interact with the provisions of any trade legislation with other countries, international agreements as well as the final exit agreement with the EU and future relationship with EU countries.

In considering the common features of these UK frameworks, it is important to note one key similarity among those that are functioning more effectively: some form of secretariat or resource to underpin their functioning.

LINK members note that different inquiries by UK parliamentary committees as well as independent reports have flagged the limitations of current inter-governmental arrangements. For example, the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) noted in its report the “underdeveloped nature of inter-institutional relations” while the Committee Chair noted that “We cannot go on with the notion that the devolved administrations are treated as an afterthought by Whitehall, particularly as all the devolved administrations are run by different political parties. It is, therefore, vital that the UK government's commitment to engage with the devolved administrations is meaningful”. The PACAC report adds that “At the intergovernmental level, relations have long been criticised for the ineffectiveness of formal machinery such as the Joint Ministerial Committee (JMC) and the reliance, instead, on informal and, often, ad-hoc arrangements, driven more by short term political pressures than by a genuine desire for trust and understanding. At the inter-parliamentary level, relations have been even more limited and modest in scope”⁶.

In this respect, on 23 July, David Lidington MP, Minister for the Cabinet stated that “Ministers agreed that officials should take forward a review of the existing intergovernmental structures and the underpinning Memorandum of Understanding and report their findings to the Committee in due course.”⁷

While these statements are very welcome, we would like to note that it is now urgent to clarify what specific action will be undertaken, in what timeframe, whether discussions will be transparent and how stakeholders will be engaged.

LINK members are concerned that in the absence of an inter-governmental platform where all four governments are represented, there will be little chance of developing any genuinely co-designed common frameworks, for the protection and enhancement of our environment.

2. Addressing the governance gap in relation to the monitoring, implementation and enforcement of frameworks:

We warmly welcome the statements by both the Committee and Scottish Government recognising the need to address the governance gap created by the loss of the functions of EU bodies.

As has been flagged in previous submissions by a variety of stakeholders including academics and environmental NGOs, on leaving the EU, Scotland and the rest of the UK will lose the governance and enforcement roles of the Commission, European Court of Justice and other EU bodies.

To ensure that retained EU law has the same practical impact, governance mechanisms are needed to take on the functions of existing EU bodies. Such a body or institution must have:

1. adequate resources,

⁶ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-and-constitutional-affairs-committee/news-parliament-2015/inter-institutional-relations-in-the-uk-report-published-16-17/>

⁷ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-23/HCWS905/>

2. be independent of government,
3. have relevant expertise and
4. have sufficient legal powers to enforce the law and hold the various governments to account.

This may require the creation of new bodies (either at the UK level or at country level) to ensure the governance gap is addressed; this would be in addition to any joint policy frameworks. Similarly, existing bodies may need to have some functions expanded or strengthened to compensate for functions currently performed by EU bodies.

Our shared concerns as NGOs are captured in a position paper issued by Greener UK⁸.

We therefore welcome the commitments by Scottish Government to launch a public consultation on the EU environmental principles and the environmental governance gap this autumn. We also welcomed the recent report published by the Scottish Government's Roundtable on Environment and Climate Change which aims to provide an overview of the extent of the governance gap, its implications and potential solutions⁹. Members of Scottish Environment LINK actively participated in the development of this report.

LINK members maintain that we need robust mechanisms to ensure that we continue to monitor, implement and enforce environmental protections. To achieve this a suite of measures are needed, including a means for citizens, communities and NGOs to raise concerns and complaints. This may be best achieved by the creation of a "watchdog" body, that is empowered to refer cases of non-compliance to the courts, possibly in first instance of an environmental court.

LINK members also recognise that these are issues that affect the whole of the UK; not just Scotland. As these are joint challenges, we believe there is merit in having a UK-wide discussion on the potential solutions which will need to be developed in a way that is consistent with devolution. This view is reflected in the Roundtable report which notes that if a new statutory public body is part of the solution, then this could be achieved in a number of ways (a single UK legal body or four separate national bodies cooperating when needed or with a co-owned unit/function to address UK-wide aspects). However, finding what solution is best "will require all four administrations to work jointly to secure the best balance, respecting the devolution settlement and allocation of authority".

LINK members wish to underline that while some aspects of the governance gap will require specific solutions that are tailored or are unique to political and legal system in Scotland, adequate consideration needs to be paid to issues that will affect the whole of the UK (for example the implementation and enforcement mechanisms for common frameworks) or issues which on the borders between the UK countries.

In a joint response with Environment Links UK, Scottish Environment LINK noted its regret that there has been no truly intergovernmental process or equal-basis engagement which comes close to 'co-design' and highlighted particularly our understanding that Defra appears not to have shared the principles and governance consultation with the devolved administrations before publishing it.

In seeking to address the governance gap, we hope that the Scottish Government and Scottish Parliament will assess the benefits of seeking to retain membership to EU agencies such as the European Environment Agency which already includes non-EU member states. Maintaining links to those networks of expertise where best practice and data can be shared and compared is invaluable.

⁸ http://greeneruk.org/resources/Greener_UK_Governance_Gap.pdf

⁹ <https://www.gov.scot/Resource/0053/00536067.pdf>

3. The interaction between frameworks and the negotiation of new international agreements including free trade deals:

LINK members have been previously invited by the Finance and Constitution Committee to provide evidence on the UK Trade Bill. Some of the following reflections will echo points made in the [oral evidence session](#) of 18 April.

With respect to the negotiation of free trade deals, LINK members share concerns of other third sector organisations which would like to see greater transparency, parliamentary scrutiny and involvement from across the UK parliaments as well as stakeholder engagement when it comes to the negotiation of trade deals.

Most importantly, LINK members are also keen that there is a clear commitment from the UK Government that trade deals will not negatively impact environmental standards in any of the four UK countries. LINK would be open to discussing how this can be achieved and what mechanisms could we put in place to ensure this is follow through.

As noted in the October 2017 JMC (EN) communique, one of the principles used to determine where UK-wide frameworks may need to be established is with respect to ensuring that the UK Government “can negotiate, enter into and implement new trade agreements and international treaties”. In our view, this reinforces the need to address the processes and institutions that will help develop, maintain and manage frameworks across the UK. It is clear that given the policy interactions between trade (reserved) and environment (devolved) there needs to be a way to ensure that environmental protections in Scotland are not compromised as a result of UK Government negotiations on trade deals. This is particularly important as LINK members have maintained that environmental frameworks need to provide an ambitious baseline upon which individual countries can built on.

It would therefore make sense to ensure that future inter-governmental processes allow for the views of devolved governments and parliaments to be taken into account in trade negotiations – there needs to be a ‘two-way street’ of communication. While the UK Government’s White Paper acknowledged the above points, it did not indicate what specific actions or measures it would take to address those concerns.

Furthermore, it is the understanding of LINK members that while the negotiation of international agreements is a role reserved to the UK Government, the implementation of such agreements for the environment falls on the Scottish Government. For most international agreements, the European Commission has led negotiations EU members states collectively. With the UK’s exit from the EU, it would therefore be reasonable to review how a UK common position is reached for the negotiation of international environmental agreements and how those commitments are then taken up by the relevant governments across the UK. This point also emphasises the clear need for a stronger inter-governmental framework within the UK.

4. Funding of obligations and commitments arising from frameworks:

LINK members would like to note provide some context to this specific point by noting that despite its great natural wealth, there is less funding available via grants in Scotland compared to the rest of the UK. This was revealed in a recent report “Where the Green Grants Went” commissioned by the Environmental Funders Network. The report revealed that:

- From 2012 to 2015, private foundation funding for environmental causes in England and Wales amounted to 20 times as much as that available in Scotland: £768 per square kilometre in England and Wales versus £70 per square kilometre of Scotland.
- 41 foundations gave environmental grants in Scotland between 2012 and 2016. In contrast, 141 foundations supported environmental work in the UK as a whole over that period. Of those 41 foundations, only 6 are based in Scotland or focus their giving there.
- Though Scotland's accounts for 56 per cent of the UK's coastline, coastal and marine ecosystems receive just 3 per cent of grant funding from foundation, Lottery and LCF sources. Climate and atmosphere-related work receives even less – a tiny 0.4 per cent of all grants by value. This suggests very little available funding for campaigning work on climate change or air quality, though the latter is a particular problem in Scotland's cities.

As such, public sources of funding are particularly important for environmental organisations that very often carry out projects on the ground which are integral to meeting Scottish and international policy aims, e.g. climate targets or biodiversity protection. As showcased by the recent SNH report on the Aichi targets, public funding for biodiversity is in sharp decline. Out of 20 targets which tracked Scotland's progress towards meeting its 2020 biodiversity commitments, the one on funding is actually regressing. SNH noted that “total funding figures for most of the Scottish organisations that have some biodiversity remit have also declined in the last 5 years”¹⁰.

It is therefore critical to ensure that sources of EU funding are maintained after the UK has left the EU, but also that any frameworks are supported by adequate amounts of funding in a way that provides long-term certainty given the nature of environmental projects which often run over several years and require expertise. We therefore welcome the statements most recently outlined in the discussion document for an Environment Strategy in Scotland, that “post-exit funding for environmental outcomes must be at least maintained at current levels”. However, we are concerned at the lack of concrete discussions and forward plans across the UK.

Due to the status of current discussions on frameworks, it is not possible to provide a detailed view on funding implications. However, in the below we outline our views with respect to some key funding mechanisms from which Scotland has benefited:

LIFE: this EU funding mechanism is dedicated to environmental projects and Scotland has - benefited enormously. The LIFE Nature fund has funded more than 25 projects, bringing in well over £25 million for conservation delivery – 21% of the UK total. Among the beneficiaries are - Atlantic salmon; the freshwater pearl mussel; the corncrake; the Flow Country peatlands; Caledonian pinewoods; upland invertebrates; the red squirrel; machair grasslands; seabirds on Canna and the Shiantis; the Celtic rainforest; the porpoise; and the hen harrier¹¹.

CAP funding: LINK members have considered options about the future of farm payments and rural land management extensively. As LINK we have held multiple roundtables, external and internal workshops as well as commissioned a public survey which concluded that 77% of Scots want

¹⁰ <http://www.scotlink.org/public-documents/scotland-must-step-up-efforts-or-risk-missing-global-biodiversity-targets-say-environmental-charities/>

¹¹ <https://www.scotsman.com/news/opinion/anne-mccall-brexit-could-have-a-massive-impact-on-cash-to-preserve-our-wildlife-1-4685773>

farming to deliver for the environment and climate¹². Under the CAP, £600 million of public money is spent annually in Scotland to support farmers. Around 70% of this is spent on Pillar 1 type payments while the remaining 30% of CAP spending falls under Pillar Two. LINK members believe that CAP funds need to be retained but we need to urgently reshape how they are spent so we can revitalise our rural economies. LINK views are captured in our position paper¹³ which argues that to meet our own Scottish ambitions in terms of land use, climate, biodiversity, health and nutrition, we need to set up an agricultural support system that empowers land managers and rewards them for providing public goods, such as clean air and water.

European Maritime and Fisheries Fund: EMFF supports the development and implementation of the European Integrated Maritime policy (IMP) and the Common Fisheries policy (CFP). It has provided invaluable support to promoting a healthy marine environment and sustainable fisheries. Most recently EMFF funding was given to launch, for the first time in Europe, the Scottish Entanglement Alliance (SEA) which brings together fishing industry representatives, researchers and conservation and welfare charities to assess the scale and impact of the problem of marine animal entanglements in Scottish waters. SEA members include LINK members Whale and Dolphin Conservation (WDC) and the Hebridean Whale and Dolphin Trust (HWDT).

LINK members also note of the UK Government pledge to create a Shared Prosperity Fund but note that there is limited information about it, how it would operate in a devolved context, what would be its precise scope etc.

¹² <http://www.scotlink.org/public-documents/77-of-scots-want-farming-to-deliver-for-our-environment-and-climate-poll-suggests/>

¹³ http://www.scotlink.org/wp/files/LINK-Future-of-Farming-and-Rural-Land-Management_March2017.pdf