

THE ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE:
UK WITHDRAWAL FROM THE EUROPEAN UNION (CONTINUITY) (SCOTLAND) BILL
SUBMISSION FROM ROYAL SOCIETY OF EDINBURGH

Background

1 The Royal Society of Edinburgh (RSE), Scotland's National Academy, welcomes the opportunity to contribute to the Committee's scrutiny of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill 2020. Our comments focus on the environmental aspects of the Bill, and we have drawn upon our response to the Scottish Government on Environmental Principles and Governance in Scotland.¹ We would be pleased to discuss our comments further with the Committee.

Part 1: Alignment with EU Law

2 Scotland's environment has benefited considerably from the expansive protections that have arisen from EU membership, such as the designation of protected sites for key species under the Habitats and Birds Directives and improvements in water quality resulting from the implementation of the Water Framework Directive.² On this basis, the RSE supports keeping pace with EU environmental law to ensure the continued protection and further improvement of Scotland's natural assets.

3 It is important to remember that the environment is not constrained by territorial boundaries. The development and agreement of **common frameworks on the environment** between the UK and Scottish Governments will therefore be crucial. A common environmental framework will ensure measures enacted in Scotland are not undermined by incompatible actions taken in other UK nations by establishing a mutually acceptable baseline of environmental protection. Recognising that the current arrangements for intergovernmental relations in the UK are not fit

for purpose,³ the RSE has proposed that an **independent secretariat**, comprising input from all governments in the UK, should be created to oversee the development and operation of common frameworks.⁴

Part 2: Environment: Chapter 1 – Environmental principles

4 A narrow focus on the four environmental principles contained within the Bill fails to take account of the wider range of environmental principles that currently influence environmental policy at the EU and Scottish levels. It is not clear to us **why other environmental principles derived from EU law and international agreements are not included**.

5 We consider that two additional environmental principles should be included: no **regression** (i.e. the continuous upholding and strengthening of environmental protections, with no relaxing of standards) and **integration** (i.e. embedding environmental considerations throughout all policy making). The no regression principle will help safeguard against environmental deterioration, such as in relation to biodiversity loss and deterioration in air quality. The integration principle would make environmental considerations an inherent element of all policy and decision making in Scotland, reinforcing the cross-sectoral reach and aims of the National Performance Framework (NPF). It would also uphold the inclusion of this principle as part of the Sustainable Development Goals, of which Scotland was an early adopter. It is worth stating the UK Environment Bill 2020 includes the integration principle.

1 RSE Advice Paper to Scottish Government on Environmental Principles and Governance; May 2019: https://www.rse.org.uk/wp-content/uploads/2019/05/AP19_06.pdf

2 RSE Advice paper on the Implications of Brexit on Scotland's Natural Assets; November 2018: <https://www.rse.org.uk/wp-content/uploads/2018/11/Brexit-Environment-Paper.pdf>

3 Devolution and Exiting the EU: reconciling differences and building strong relationships; House of Commons Public Administration and Constitutional Affairs Committee; July 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmpublicadm/1485/148502.htm>

4 RSE Advice Paper to Scottish Parliament Finance and Constitution Committee on the development of Common Frameworks; August 2018 <https://www.rse.org.uk/wp-content/uploads/2018/10/AP18-15.pdf>

- 6 We disagree with the inclusion of “*a duty to have regard to the principles*”, as the evidence suggests the “have regard to” duty is not always stringent enough to encourage adherence in practice. Revising this wording to “*a duty to ensure respect for*” or “*to act in accordance with*” the principles would introduce a more rigorous and explicit expectation of public authorities to abide by the principles whilst still allowing for the need to balance multiple outcomes.
- 7 We strongly believe that **all public bodies as well as Scottish Ministers should be bound by the duty** to respect environmental principles. However, it is proposed that the duty will apply to public bodies only as defined by the Environmental Assessment (Scotland) Act 2005 and only when doing anything in respect of which the duty under section 1 of that Act applies. While this encompasses a broad range of bodies and scenarios, we consider that it is still too limited a definition. All decisions made by public bodies have the potential to affect the environment, whether directly or indirectly, and so having a duty that is universally applicable to all public bodies would offer a correspondingly comprehensive degree of environmental protection.

Part 2: Environment:

Chapter 1 – Environmental governance

- 8 We **support the creation of a new independent public body**, Environmental Standards Scotland (ESS), to address many of the governance issues arising from EU exit and to hold Scottish Ministers and all public authorities to account in making decisions that affect the environment. This includes the power to investigate compliance with environmental law, either of its own accord or on the basis of complaints received. In order to carry out its duties, ESS will need to be sufficiently resourced, both in terms of the recruitment of skilled personnel and access to finance. As an independent body, we agree that ESS should report to the Scottish Parliament.
- 9 We also welcome the provision for ESS to carry out, commission, or support research, as well as seek out independent and expert advice. We also welcome subsection (2)(g) which provides for ESS to collaborate with other environmental governance bodies in the UK (including the Office for Environmental Protection) and other bodies as appropriate. The latter should include **key European environmental organisations and networks**, which provide Scotland with an invaluable international context in which to assess its own environmental performance and facilitate the exchange of knowledge, helping to address shortfalls in domestic research and monitoring capacity. Such bodies and networks include the European **Environment Agency (EEA)** and the **seven thematic topic centres**. We support mention of an horizon scanning function to ensure that Scotland can keep abreast of international developments in environmental legislation.

Additional Information

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Responses are published on the RSE website (<https://www.rse.org.uk/>)

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