Environment, Climate Change and Land Reform Committee

EU Environmental and Animal Welfare Principles

Written submission from Royal Society for the Protection of Birds

Introduction

The RSPB in Scotland is supported by nearly 90,000 members and campaigns on issues affecting wildlife and the natural environment. Given that 80% of environmental protections in the UK currently stem from EU laws and institutions, Brexit has huge implications for Scotland’s natural environment. RSPB Scotland has been working in partnership with Scottish Environment LINK, Environment Links UK and Greener UK to ensure that: no gaps arise in our environmental protections as EU law is brought over into domestic law; laws are properly safeguarded from insufficiently scrutinised changes in the future; and that environmental laws continue to be properly governed and enforced.

We welcome the opportunity to respond to the Committee’s inquiry into EU Environmental and Animal Welfare Principles. As set out in our evidence to the Finance and Constitution Committee’s inquiry into the European Union (Withdrawal) Bill (hereafter the Withdrawal Bill) the International Principles of Environmental Law, including those set out in the EU, are of fundamental importance to the development and interpretation of environmental law. The future legal status of these principles, in the event of a UK exit from the EU, therefore has direct and far-reaching implications for the protection and management of Scotland’s natural heritage.

RSPB Scotland strongly supports the recent progress made on this issue through amendments to the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill (hereafter the Continuity Bill), which ensure that the current status of the environmental principles is maintained and that they will become the basis of all environmental law-making in Scotland. The commitment to consult on options to address the ‘governance gap’ that will arise with the loss of EU enforcement and oversight functions is also of vital importance, and applauded.

We greatly welcome the collaborative approach to tackling this issue that was taken by the Scottish Government, MSPs and eNGOs. The unanimous passing of these amendments demonstrated unequivocal cross-party support for preserving these vital environmental principles in law.

Given this recent context, we have not sought to answer each of the Committee’s questions extensively, but have used this opportunity to reiterate the necessity of enshrining these principles in law, and to urge the Scottish Government and the Scottish Parliament to ensure their commitment to retaining the principles is realised, regardless of the future of the Continuity Bill.

Importance of the EU principles and impact on environmental policy in Scotland

EU environmental principles have formed the cornerstone of EU environmental law, set out Article 191(2) of the Treaty of Functioning of the European Union (TFEU).
These include the principles specified in this Committee’s inquiry: the precautionary principle; the preventative principle; the polluter pays principle; and the principle that environmental damage should be rectified at source.

As set out in a Scottish Environment LINK briefing on the Continuity Bill, these principles are not unique to EU law, but are instead overarching principles of international environmental law, and are found in a number of international environmental agreements that the UK is party to. However, given that most international environmental agreements lack hard enforcement mechanisms and powers, the existence of these principles within the EU treaties has played a key role in their implementation across all EU Member States, including the UK.

The environmental principles play three crucial roles: in interpreting the law, in guiding future decision making and as a basis for legal challenge in court. It is vital that these principles continue to be applied by courts, businesses and governments in their decision making.

In Scotland, there are a number of examples where the environmental principles have been critical in upholding environmental protections, such as the application of the polluter pays principle in the Court of Session 2013 open cast coal ruling and the Scottish Government’s ‘Code of Practice on Non-Native Species’ which adopts an approach based on the preventative principle. These examples are examined in more detail in a joint eNGO submission to the Finance and Constitution Committee.

**The need to enshrine environmental principles in law**

There has been quite extensive debate about the appropriateness of enshrining the principles in law versus setting them out in policy. It is critical that the principles are enshrined in statute, to ensure that the Scottish Government will remain legally obliged to apply and enforce the environmental principles in the future. Failure to preserve these principles in statute would represent a backtracking of current arrangements and would contradict Scotland’s commitments to maintaining its place as a world leader in environmental standards.

As discussed, we therefore strongly support and welcome the approach that the Scottish Government and Scottish Parliament have taken in enshrining the EU environmental principles in law through the Scottish Continuity Bill.

However, the future status of the Continuity Bill remains uncertain. It is still possible that the UK Government and devolved administrations will reach agreement over the Withdrawal Bill, and the Scottish Parliament will grant Legislative Consent to the UK Bill - at this point the Continuity Bill would be withdrawn. Additionally, the UK Government or, potentially, any party may seek to challenge the competency or necessity of the Continuity Bill, putting at risk the positive environmental amendments made.

It is therefore vital that, regardless of the outcome for the Continuity Bill, the Scottish Government’s commitment to retain EU environmental principles in law and to consult on options for addressing the ‘governance gap’ in Scotland are upheld.
Additionally, the UK Government has committed to including the principles within a National Policy Statement, however Greener UK has set out why this approach is not sufficient, and that the UK Government must also amend its Withdrawal Bill to preserve the principles in domestic law. We therefore urge the Scottish Government and the Scottish Parliament to continue the leadership that they have already demonstrated on this issue, and press for the UK Government’s Bill to be amended to address this issue.

This would not only ensure that the progress made in Scotland to date is not lost, in the event that the Continuity Bill is withdrawn, but also that the other nations of the UK will continue to fully apply and enforce the environmental principles, thereby ensuring that our shared natural heritage and resources continue to be properly protected, that a level playing field on environmental protections across the UK is maintained and that Scotland’s position as a world leader on the environment is not compromised by any of the other UK countries.