Written submission from the Royal Society for the Protection of Birds (RSPB)

Brexit: common frameworks for the environment

RSPB Scotland is supported by nearly 90,000 members and campaigns on issues affecting wildlife and the natural environment. We welcome the opportunity to contribute to the ECCLR Committee’s inquiry into the development and implementation of common/shared frameworks for the environment in the event of a UK exit from the European Union (EU).¹

Currently, an estimated 80% of environmental protections in the UK stem from EU laws and institutions. Whilst environmental matters are largely devolved, shared competency of these issues with the EU has, to date, provided a common framework across the UK countries. Nature does not respect borders: species, waterways, habitats and the problems which threaten them such as pollution, invasive non-native species and climate change are inherently transboundary and are therefore a shared concern of all the four UK countries and our European neighbours.

The UK Government and devolved administrations must work constructively together, in a way which respects the devolution settlements, to: (i) maintain common and coordinated frameworks for environmental protection – based on minimum common standards at least as high as those currently in place; and, (ii) jointly address any governance gaps that emerge. This is crucial to effectively address cross-border environmental issues and ensure that the individual actions of any one of the four UK nations does not place our shared natural heritage at risk.

We welcome assurances from the Scottish Government that, regardless of the outcome of Brexit, Scotland will maintain at least the same level of environmental protection as is currently afforded under EU frameworks.² We believe that the development of jointly-owned UK-wide common environmental frameworks will be a key step to delivering on this commitment.

Current arrangements

1. Powers relating to most environmental matters are currently devolved. To date, these powers have been exercised in the context of the UK’s membership of the EU, which has shared competence for such matters.³ In Scotland there are 111 policy areas where EU law intersects with devolved powers, the greatest number of which relate to the environment.⁴

2. These policy areas are currently strongly governed by EU policy and legislation because it is recognised that a co-ordinated approach across the EU Member States, with minimum common standards, is necessary to

¹ The RSPB is a member of Greener UK, a group of 13 major environmental organisations working to restore and enhance the UK’s environment. This submission is based on a position paper adopted by Greener UK and Environment Links UK: http://greeneruk.org/resources/Brexit_and_devolution.pdf
³ Shared competence between the EU and the member states applies in relation to a range of areas, including agriculture, fisheries (with the exception of marine biological resources under the Common Fisheries Policy, which is an exclusive competence of the EU), energy and the environment.
⁴ https://www.instituteforgovernment.org.uk/explainers/brexit-devolution-and-common-frameworks
achieve effective protection of the shared environment, address transboundary issues, and to prevent unfair regulatory competition.

3. These common frameworks have successfully helped to address shared environmental ambitions such as the conservation of species and to ensure a more level playing field for economic operators.\(^5\)

4. For instance, EU common frameworks have helped to:

   - ensure more coherent, consistent, and complementary approaches to environmental protection across the four nations, such as the establishment of a common set of standards for the designation and management of protected Natura 2000 sites and the conservation of key habitats and species;

   - support the integrity of the UK’s internal market and prevent unfair regulatory competition; for example, by requiring minimum standards to be met across all of the UK’s jurisdictions, it has reduced the risk of any one jurisdiction seeking to gain a short term competitive advantage by unilaterally lowering its own environmental standards;

   - facilitate cross-border trade and cross-border environmental co-operation on the island of Ireland; and,

   - underpin compliance with the UK’s international environmental commitments and obligations.

The continued need for common frameworks

5. The importance of common standards for the effective protection of the environment will not diminish post-Brexit. Indeed, the principles justifying EU-level cooperation and regulatory alignment on environmental matters apply equally if not more strongly to intra-UK cooperation and regulatory alignment. The loss of common frameworks would risk significant regulatory divergence and a less co-ordinated approach to environmental governance, to the detriment of the UK’s shared natural heritage.

6. RSPB Scotland was therefore pleased to note the Scottish Government’s commitment to ‘collaborate where appropriate to develop UK-wide approaches for relevant issues’.\(^6\) We were also pleased to note the agreement reached by the Joint Ministerial Committee (JMC) in October 2017 in which the role of common frameworks in ensuring the effective management of “common resources” was explicitly recognised.\(^7\)

---


\(^6\) A Nation with Ambition: The Government’s Programme for Scotland 2017 – 18.

7. Common frameworks are frameworks designed to guide policy alignment, not a set of definitive rules to exactly replicate regulation across different jurisdictions. Under the current EU common frameworks Scotland has had the flexibility to develop different environmental legislation, regulations and policy. This flexibility is crucial to ensure that law and policy is tailored to each country’s distinct cultural, political and judicial contexts and would need to continue under any UK common framework.

8. We believe that the common set of environmental standards, currently in place as part of the UK’s membership of the EU, should be retained in domestic law and policy post-Brexit – including the set of EU environmental principles currently excluded from the EU (Withdrawal) Bill. The UK and devolved governments should work collaboratively to achieve this in a way which respects the devolution settlements. We were pleased to note the Scottish Government’s commitment to keeping EU environmental principles at the heart of Scotland’s environmental policies, we reiterate the importance of embedding these principles in primary legislation, not just in policy.8

9. It is also important to note that what form continued coordination and regulation of environmental matters will take will largely be circumscribed by the Withdrawal Agreement and the content of any future trade deal between the UK and EU. Any continued regulatory alignment with the EU will represent de facto ‘common frameworks’ and will limit the extent to which the UK countries are able, or need, to develop new common frameworks in certain policy areas.

Joint governance arrangements

10. Environmental laws must be underpinned by strong institutions to monitor and enforce them – at present EU institutions play a key role in securing compliance with common standards across the four nations. It is therefore crucial that the four governments work individually and collaboratively to tackle any post-Brexit governance gaps.9

11. We would urge the Scottish Government to work in partnership with the UK Government in relation to its proposed consultation on a National Policy Statement and new regulatory body. Our current understanding is that the consultation planned in early 2018 will only cover England and environmental areas that are not devolved, but that the UK Government will seek to “explore” with the devolved administrations whether they might wish to take a similar approach/make use of any new governance body.10

---
12. Our early thinking is that there could be considerable advantages to establishing a single UK-wide body to address part of the post-Brexit governance gap across the four nations, provided that it is genuinely co-designed and co-owned. For example, a single body could be better able to ensure consistency in implementation as well as being better able to pool resources, evidence, and expertise. As such, the proposed consultation should ideally be launched as a joint endeavour with the devolved governments, following inter-governmental discussions on how best to take the process forwards in partnership.

Guiding principles for the development of common frameworks

13. Any new common frameworks created in the event of a UK exit from the EU must be jointly developed and agreed by all four nations and be subject to an appropriate level of scrutiny by each of the relevant legislatures. This joint ownership of frameworks by all four nations will lead to more effective implementation than frameworks which are imposed on any of the devolved nations.

14. It is also critical that each nation should retain the freedom to develop more ambitious approaches as is currently the case under EU law. This has allowed Scotland to demonstrate leadership on environmental matters, so long as it has not contravened EU law, for instance through introducing a charge on plastic carrier bags in 2014, which reduced carrier bag usage in Scotland by 80% in only one year.

15. The development of any new common framework must be underpinned by a clear and agreed framework of guiding principles and seek to secure the best possible environmental outcomes across the four nations. In particular, any new common framework should:

- be based on a robust and transparent assessment of environmental impacts under a range of plausible scenarios;

- maintain ambitious common standards that are at least as high as those set out in existing EU law, at the same time retaining an appropriate degree of flexibility to allow implementation tailored to the specific environmental context in each nation;

- prevent competitive deregulation within the UK by setting a minimum common baseline but not prevent any nation from introducing higher standards;

---

11 Article 193 of the Treaty on the Functioning of the EU states that protective environmental measures adopted by the EU "shall not prevent any Member State from maintaining or introducing more stringent protective measures" subject to compatibility with the EU Treaties.
be developed alongside a new set of fair and transparent environmental funding arrangements, based on objective environmental criteria and the delivery of public benefit, to replace the loss of EU funding streams and enable effective implementation;

include shared governance arrangements (as set out above) to replace the current set of processes by which EU institutions ensure that all the UK’s jurisdictions are acting in accordance with their obligations under EU law;

take into account the need to preserve cross-border environmental cooperation on the island of Ireland; and,

include shared environmental ambition to help meet the UK’s national and international commitments and obligations.

Intergovernmental working arrangements

16. In order to develop, agree and implement common environmental frameworks, new and/or significantly improved mechanisms for intergovernmental working, at both ministerial and official levels, must be established. The existing arrangements – most notably the JMC – have been widely regarded as inadequate for effective, transparent and representative joint working between the UK countries.12

17. New and/or improved arrangements must include enhanced transparency, wider stakeholder involvement and consultation and robust scrutiny by the legislatures in each of the four nations, something that was notably absent from the October 2017 JMC communiqué on common frameworks.

18. For example, we were concerned by the UK Government’s announcement following the JMC meeting in December 2017 that agreement in principle had been reached on the “minority” of areas where common legislative frameworks would be maintained. This announcement made no mention of whether this minority would include any environmental issues or how they could be affected.13 Based on the information that has been made publicly available to date, it remains unclear on what basis this agreement has been reached or what, if any, assessment has been made of the potential environmental implications.

19. As such, we believe it is vital that a much better process for determining what happens to these frameworks post-Brexit is urgently established. In particular, we believe that any changes should be informed by a robust and transparent assessment of the environmental implications and should be open to input

---


from a wide range of stakeholders, including civil society organisations such as our own.

Isobel Mercer,
Policy Officer, Planning and Development