



ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

7th Meeting, 2021 (Session 5)

Tuesday 16 February 2021

The Committee will meet at 9.00 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **EU exit and the environment:** The Committee will take evidence from—

Professor Colin Reid, University of Dundee;

Dr Viviane Gravey, Queen's University Belfast;

Professor Campbell Gemmell, Consulting Partner, Canopus Scotland and Visiting Professor, University of Strathclyde;

Lloyd Austin, Convener of Scottish Environment LINK's Governance Group and a board member of the European Environmental Bureau;

and then from—

Jim Martin, Chair, Environmental Standards Scotland;

Lisa McGuinness, Deputy Director Head of Compliance, Marine Scotland;

Robbie Kernahan, Director of Sustainable Growth, NatureScot;

Terry A'Hearn, Chief Executive Officer, SEPA.

2. **Subordinate legislation:** The Committee will take evidence on the Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021 [draft] from—

Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform;

Catriona Graham, Circular Economy Bill Manager, and Gareth Heavisides, Circular Economy Team Leader, Scottish Government.

3. **Subordinate legislation:** Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, to move—S5M-23854—That the Environment, Climate Change and Land Reform Committee recommends that Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021 [draft] be approved.
4. **Subordinate legislation:** The Committee will consider the following negative instrument—

Crofting Community Right to Buy (Procedure, Ballots and Forms)
(Scotland) Amendment Regulations 2021.
5. **EU exit and the environment (in private):** The Committee will consider the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda Item 1

Note by the Clerk ECCLR/S5/21/7/1

Agenda items 2 and 3

Note by the Clerk ECCLR/S5/21/7/2

Agenda item 4

Note by the Clerk ECCLR/S5/21/7/3

Environment, Climate Change and Land Reform Committee

7th Meeting, 2021 (Session 5), Tuesday, 16 February 2021

**EU exit and the environment - EU-UK Trade and Cooperation Agreement –
Stakeholder sessions**

Introduction

1. The Committee will explore the environmental implications of the EU-UK Trade and Co-operation Agreement. The Committee will take evidence from two panels:

Panel 1: Expert Panel

- Professor Colin Reid, University of Dundee;
- Dr Viviane Gravey, Queen's University Belfast
- Professor Campbell Gemmell, Consulting Partner, Canopus Scotland and Visiting Professor, University of Strathclyde;
- Lloyd Austin, Convener of Scottish Environment LINK's Governance Group and a board member of the European Environmental Bureau.

Panel 2: Regulators

- Jim Martin, Chair, Environmental Standards Scotland;
- Lisa McGuinness, Deputy Director Head of Compliance, Marine Scotland;
- Robbie Kernahan, Director of Sustainable Growth, NatureScot;
- Terry A'Hearn, Chief Executive Officer, SEPA.

2. Submissions received from the participants are included in Annexe A.

Background

3. After nine months of negotiations, on 24 December 2020 the UK and the EU reached [agreement on their future relationship](#). The EU-UK Trade and Cooperation Agreement ('the Agreement') came into force on 1 January 2021. [SPICe published a long read on the Agreement](#) on 28 December 2020. The Agreement is based on three pillars:

- A free trade agreement.
- Law enforcement and judicial cooperation in criminal matters.
- Governance arrangements, including dispute settlement.

4. The Committee is aware of the constitutional implications of EU exit, particularly around the extent to which decisions made by the UK Government will constrain the Scottish Government's ability to exercise their functions in those areas of law previously in EU competence. The Committee has explored this in relation to the UK Internal Market Act 2020, especially the principles of mutual recognition and non-discrimination which together seek to avoid internal barriers to trade within the UK, common frameworks and the increasing number of the Scottish Parliament's legislative powers which are 'shared' with UK Ministers. The Committee has

highlighted the need for the devolution settlement to keep pace with the constitutional reality of a post-EU UK.

5. Issues and questions for consideration in the evidence sessions are set out in Annexe B. A key theme overarching these is the extent to which the Agreement may affect Scottish Ministers' ability to effectively exercise devolved powers and Parliament's ability to effectively scrutinise in those areas of law previously in EU competence.

Clerks, Environment, Climate Change and Land Reform Committee

Annexe A

In advance of this meeting, witnesses were invited to provide written comments to inform the Committee's thinking. These are set out in the following pages—

Panel 1

Professor Colin Reid	Page 4
Dr Viviane Gravey	Page 7
Professor Campbell Gemmell	Page 9
Lloyd Austin, SE Link	Page 11

Panel 2

Environmental Standards Scotland	Page 13
Marine Scotland	Page 15
NatureScot	Page 18

Written submission from Professor Colin T Reid, University of Dundee

1. The EU-UK Trade and Cooperation Agreement is a long and complex agreement (still operating on a provisional basis pending formal approval by the European Parliament). It reflects the different perspectives of the two parties, with frequent assertions of the power of each party to set their own policies and rules (reflecting the UK's emphasis on sovereignty) balanced by commitments and retaliatory mechanisms to prevent regulatory divergences creating unfair trade advantages (reflecting the EU's determination that tariff-free access to the market must go hand-in-hand with a "level playing-field").

2. There are numerous environmental provisions in the Agreement. As well as the main provisions in the Environment and Climate chapter which include commitments on environmental principles and non-regression (Chapter 7 of Title XI of Heading 1 of Part 2), commitments to the provision of environmental information appear in Chapter 8 and to the precautionary approach in Chapter 1 of the same Title. The environmental provisions recognise that there must not simply be relevant laws in place but also that they must be effectively enforced and include reference to access to justice (art 7.2 of Title XI, echoing the Aarhus Convention). In other areas such as public procurement (Title VI), environmental considerations are also recognised, whilst there is a commitment to "ensure that trade and investment take place in a manner conducive to sustainable development" (art 1.1 of Title XI).

3. In all of this there is major uncertainty over exactly what the Agreement will mean in practice and when certain provisions will take effect. The parties are obliged not to weaken environmental or climate protection "in a manner affecting trade and investment", but when will an environmental measure be regarded as having such an effect? Moreover, the reference is to "trade and investment *between the parties*" and what will this mean when the effect is not directly on bilateral relations but on how other parties may respond (e.g. in attracting American or Asian investment). When will the impacts be "material" so as to activate the potential for rebalancing measures (arts 7.2 and 9.4 in Title XI of Heading 1 of Part 2)? Views will differ on when the various tests are passed and therefore on whether or not the Agreement is being fulfilled.

4. Any steps towards a response to such questions rest firmly in the political as opposed to the legal sphere. Whereas under EU law individual enterprises who felt that the trade rules were not being properly applied, and that they were suffering as a result, could themselves take legal action, now everything is in the hands of the political bodies. Whether any formal or informal action is taken will depend not on whether a legal threshold has been crossed, nor on the response of those suffering, but wholly on the willingness of the UK Government or EU Commission to make an issue of the situation. Such decisions will be affected by many different considerations – the realpolitik of all such relationships means that at times a blind eye is turned to some significant matters and at others molehills are turned into mountains. The result is that the uncertainty will continue.

5. In governmental terms, a major challenge is created by the UK Government agreeing such a far-reaching Agreement when responsibility for many of the matters covered lies in the hands of the devolved administrations. This has two main dimensions.

6. The first of these is in relation to the involvement of the devolved administrations in the workings of the Agreement, where there are both structural and policy concerns. The Agreement is supervised by the Partnership Council, which has substantial powers (including amending the Agreement), and also requires the establishment of many Specialised Committees, Working Groups and the Civil Society Forum. It is not yet clear how the devolved administrations are going to be involved in the operation of these. Whatever the structural arrangements, there is the wider question of what opportunities the devolved administrations will have to ensure that their views and interests are reflected. The well-established and transparent processes within the EU ensured that whatever the formal position, the devolved administrations could find ways to participate. The Agreement calls for a degree of transparency, but as a bilateral relationship between the UK Government and EU Commission may well be more closed than previous arrangements and there is long-standing criticism of the absence of a guaranteed way for the devolved administrations to be involved in matters of foreign relations.

7. The second main dimension is in terms of responsibility. Aside from the wider issue of the UK Government being legally responsible for ensuring compliance with any international agreement, even on matters where it does not exercise direct control, the Agreement imposes a number of more specific obligations. In particular, the provisions on Good Regulatory Practices (Title X of Heading 1 of Part 2) seem to require the UK Government to be monitoring and supervising policy-making across the whole UK, including on devolved matters, in a way that could be seen as cutting across aspects of the devolution settlements. The current inter-governmental structures are notoriously dysfunctional, yet fulfilling the Agreement's requirements will require a substantial degree of information-sharing and more. For example, art GRP.4 states: "Each Party shall have in place internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authority is preparing" with "regulatory authority" defined as "for the United Kingdom, Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland, and the devolved administrations of the United Kingdom" (art GRP.2; the only mention in the Agreement of the devolved position). How the UK Government is going to ensure that it can meet its obligations is unclear.

8. In relation to both of these, there is the question of where the Scottish Parliament stands in terms of being informed about and able to scrutinise developments that will have an impact on matters within devolved competence. There is no formal role for the devolved parliaments (the Parliamentary Partnership Assembly consists of members of the European and UK Parliaments; INST.5) and with the role of the Scottish Government unclear, the Parliament's powers in relation to Scottish Ministers may offer an uncertain and incomplete route to scrutiny.

9. A further issue that arises is the unknown impact of section 29 of the European Union (Future Relationship) Act 2020 which provides that: "Existing domestic law has effect on and after the relevant day with such modifications as are required for the purposes of implementing in that law the Trade and Cooperation Agreement ... so far as the agreement ... is not otherwise so implemented and so far as such implementation is necessary for the purposes of complying with the international obligations of the United Kingdom under the agreement." Given the uncertainties noted above, it seems very hard to predict when a law will have to be treated as modified in this way, adding a further complexity to the application of the Agreement.

10. These comments have concentrated on the structural issues since present Scottish Government policy of maintaining alignment with EU law means that there seems little immediate prospect of having to worry about the potential for and consequences of Scottish policy not living up to the terms of the Agreement. That may, of course, change in future. If concern is with UK policy not living up to the Agreement then, as noted above, there is no standing for anyone other than the EU Commission to take action, although presumably the Scottish Ministers or Parliament could try to draw matters to the Commission's attention informally (any formal action might be deemed to be trespassing into the reserved matter of foreign affairs).

Written submission from Dr Viviane Gravey, Queen's University Belfast

The following submission is based on earlier evidence submitted to House of Lords EU (Environment) subcommittee co-written with Prof Andrew Jordan (UEA) and Prof Charlotte Burns (University of Sheffield).

Challenges raised by the TCA for environmental action

1. *Policy areas moving at different speeds* – The TCA confirms that climate change (and specifically the drive to achieve net zero) is where the EU and UK interests align; there is a risk that other environmental issues (and notably cooperation in tackling these issues) are relegated.
2. *Whether and how to update retained EU law*. This body of law is now a significant (the most significant?) part of environmental law across the UK. There is a risk of 'gradual zombification of retained EU laws and policies through a lack of timely review and revision'¹, especially as many Brexit SIs adopted in Westminster to 'clean' retained EU law have tended to remove review and revision clauses².
3. *Uncertainty whether the TCA provides a minimum baseline for future FTAs?* Or will the TCA be regarded as an exception in modern UK trade policy – a throwback to when it was an EU Member State? While environmental issues are discussed at length, the mechanisms to prevent an environmental race to the bottom, while innovative, are cumbersome and will be difficult to use precisely.
4. The lack of a broad non-regression principle in TCA means questions of intra-UK regression remain unaddressed. This is unlikely to change with the (yet again delayed) UK Environment Bill. Instead, divergence will be mitigated on a case-by-case basis through the common frameworks process which does not cover environmental issues uniformly, and is far from transparent.

Challenges for devolved voices

5. The TCA largely ignores the devolved nature of policy making in the UK. The term devolved is used only once, in relation to defining the regulatory authority of the UK (article GRP:2). This leads to key challenges for devolved action.
6. *Servicing the TCA*. Ensuring a coherent cross Whitehall / cross Parliament / cross-UK relationship with the EU is important not just to this TCA but also to the negotiation of future FTAs. The TCA comes with multiple new implementation committees – who will sit on them, how will they be appointed – and a Civil Society Forum – who will be represented on it? Crucially, it also raises questions over how the UK will project its influence into the EU and 'speak with one voice' – queries about staffing UK Mission to the EU notably. In light of the challenges raised for devolution by the TCA, it would be astute for the UK government to be as inclusive as possible in deciding who represents the UK in these new bodies. For the devolved administrations, there is a need to ensure representation in the relevant bodies for both practical and democratic reasons.

¹ Jordan, A., Moore, B. (2020) Regression by Default? An Analysis of Review and Revision Clauses in Retained EU Environmental Law, https://www.brexitenvironment.co.uk/wp-content/uploads/dlm_uploads/2020/05/BrexitenvRegressionbyDefault.pdf

² As detailed in Jordan and Moore (2020).

7. *Devolution and the level playing field.* Chapter 7 of the TCA addresses environment and climate matters. Contrary to Title X (see below), it makes no reference to devolution; instead, it talks of ‘the levels of protection provided overall in a Party’s law’. On the EU side, it is further stated ‘For the Union, “environmental levels of protection” means environmental levels of protection that are applicable to and in, and are common to, all Member States.’ As no such qualification is added for the other party, we can thus assume that in case of internal UK divergence, the levels of protection provided in any of the four administrations of the UK are considered here.

8. These provisions imply that in theory, the non-regression and rebalancing clauses could be triggered by the EU in reaction to the action of one (or more) UK administrations. Furthermore, while the UK government would be held liable, the Concordat on International Relations makes it clear the administration in breach of its international obligations will bear the costs.³ In practice, the need to demonstrate substantial impact on trade and investment and the much smaller sizes compared to England of Wales, Northern Ireland (and to a lesser degree, Scotland) means we would expect these provisions to be principally geared against either UK-wide or English-led policy developments. But it could also go the other way i.e. in principle the UK government could potentially find itself triggering the rebalancing clause because for example Wales has become significantly more ambitious than the EU.

9. Title X defines the UK’s regulatory authority as comprised of both ‘Her Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland, and the devolved administrations of the United Kingdom’ (the only mention of devolved or devolution in the agreement). As such it encompasses environmental matters that are both reserved and devolved in the UK, while it excludes member states’ national policies on the EU side (only EU-wide, common policies, with the Commission as the recognised regulatory authority). This raises questions over how this cooperation will work in practice. For example, each party is expected to make ‘publicly available, in accordance with its respective rules and procedures on at least an annual basis, a list of planned major regulatory measures that its regulatory authority reasonably expects to propose or adopt within a year.’ (Article GRP6.1) – and in similar fashion requirements on public participation, impact assessment and retrospective evaluation.

10. We can expect this requirement to bind both the UK government and the devolved administrations. Gathering this information in a comparable manner will be another task for the UK’s intergovernmental relations mechanisms (Joint Ministerial Committee etc.) which are already under severe strains and whose reform has been repeatedly delayed. Under GRP12, where ‘the Parties may engage in regulatory cooperation on a voluntary basis’, and where ‘each party may propose a regulatory cooperation activity to the other party’, it remains to be seen which of the four component parts of the UK’s regulatory authority could trigger such cooperation and how each of the component part will be represented in any future cooperation exercise.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf

Written submission from Professor Campbell Gemmell

The EU-UK TCA makes welcome commitments “to ensuring a robust level playing field by maintaining high levels of protection in areas such as environmental protection, the fight against climate change and carbon pricing...etc.” and identifies several areas of interest with overlap to the remit of the ECCLR Committee.

The consequent priority issues for the Committee are likely to be many and varied (environmental data, condition reports, impact assessments, air water and land quality, offshore and coastal management, waste management and circular economy, radioactive waste, energy, transport, product content and quality, public health, crime management, transport, environmental rights and equality, community wellbeing, etc etc.) and will significantly depend upon the actual implementation and performance of the agreement. Early signs in relation to fisheries and both volume and ease of trade as well as increase in UK rather than Scottish branding for example, suggest that there may be very significant challenges ahead.

The call for evidence sought to localise priorities somewhat to “developing environmental standards, regulation and governance” in the TCA context.

Understanding the implications of exit from the EU and the application of the TCA will to a significant extent depend upon the available data and particularly the quality and detail of monitoring and reporting information. Access to and interpretation of state of the environment and environmental impact information are generally poor and insufficiently objective, independent, strategic and granular to ensure the trajectory of performance and impact can be observed and its significance, cause and remedy assessed and acted upon. Systematic comparison over time and between countries and regions would be necessary to plot and tackle impacts. How then will we know what is happening?

Is it clear what Standards we will be following? Will existing Scottish conditions, products and services continue as before? If we cannot source the same overseas inputs, will compositions be changed and substitutions be allowed and who will determine this? In terms of the application of REACH chemical components and licensing into products and markets or the Scottish elements of BAT and how these relate to permits under IPPC and IED directives, for example, will these be determined at the UK level whether higher or lower than in Scotland; how will compliance be reported, and what public access to data will be permitted or enabled? And so on.

These latter points also then connect with the nature of now extra-EU Regulation. Will UK standards apply and be testable in English courts, subject to the final form of the UK OEP, rather than in Scotland? Also, will co-operation agreement components allow access to peer and synoptic data from the EU topic centres, JRC and the EEA to enable expertise sharing and comparative data analysis as well as networking and cross border policing and operational planning and delivery?

As regards Governance, and the key aspects internal to the UK and Scotland (noting that international agreements and how these relate to trade are likely to continue to be governed at member state (UK) level and by arbitration/decision mechanisms), it is unclear what has actually now been put in place. Thus far there appears to be something of a triumph of rhetoric over substantive delivery.

Whilst the delivery of robust structures is possible within the Scottish and UK context and does not require EU membership or an EU solution, it will be some time before the newly established ESS becomes effective even within its restricted remit. No replacement for the Commission or CJEU is yet apparent or planned.

Ambition in words is not enough and it has already been demonstrated that the fine words and framing of the 1990 and 1995 Acts for example as well as the intent and detail of a long series of EU directives and regulations, were only delivered, in so far as they eventually were, and similarly, maintained, thanks to considerable investment, regulatory effort, significant compliance and policing as well as extensive NGO and public pressure, the professionalism of many, the troublesome leadership and insistence of a few and, in extremis, critically, the overseeing interest of and threat of action by the European Commission and the CJEU.

Observance of the legal and policy framework in product and service standards and the trade that embraced these both within and into the EU also has played a significant part in ensuring environmental standards were effectively applied and in large part advanced and increased at least until the last decade. Offshoring of impacts and carbon remains an area of concern as does the application of peer assessment and review mechanisms such as those relating to former EURATOM nuclear assessments and the transfrontier shipments of wastes and plant and animal species. Much has now changed that is not yet fully understood.

Whilst the UK CCC has done an excellent job tracking policy and emissions plans and performance for the UK and for Scotland, continued tracking of the fit between carbon and economic, environmental and social condition and connections with other policy areas should be of interest to the committee.

In summary therefore, there exists still a very large gap between what is needed and what we have; especially given what we have now lost. This was clearly set out in prior reports, as well as submissions to and proceedings of the Committee.

Scotland has no clear route as yet back into the EU fold and the purview of its institutions and processes. ESS has limited legal and operational capability and we still do not have a dedicated superior environment court. Nor have we undertaken a post Brexit review of existing Scottish environment policy and delivery bodies. It is reasonable, therefore, to say that we have made essentially no progress towards the control framework identified as necessary to ensure adequate protection of the environment and climate, equivalent to the prior EU or extra-EU ideal, despite some rhetorical flourishes. We are not ready to assess never mind tackle any failures of the regulatory or performance system. We are dependent upon goodwill, honourable commitment to deliver to pre-existing legal requirements and strategic goals...and indeed to the “keeping pace” provisions, whatever these turn out to mean in practice. Recent massive reductions in trade and the damaging impact on fisheries and seafood producers, markets and communities, for example, give some indication of the potential for consequential impacts of poorly established trade terms and their implementation. Whilst some of these may well prove beneficial to some environments, in reduced exploitation and enhanced recovery terms, the chaos and broad societal impacts involved seem unlikely to be beneficial overall.

Written submission from SE Link⁴

Summary

- Environmental challenges cross borders and joint working to tackle the nature and climate emergency will be increasingly necessary. In that regard it is welcome that the UK and EU have stated their intention to continue to 'maintain and improve their respective high standards.' **However, the EU-UK Trade and Cooperation Agreement is light on detail and proposed mechanisms to promote shared ambition or joint environmental action.**
- Through the Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Scottish Ministers have a new power to 'keep pace' with EU law and are required to use this power for the purpose of 'advancing or maintaining' environmental standards. **As a consequence, Scotland is in a position to continue to improve environmental standards and regulations into the future.**
- With the EU moving forward in developing its Biodiversity Strategy and implementing a European Green Deal, there are several areas where the Scottish Government should keep pace to restore nature and deliver a green recovery from the effects of the Covid-19 pandemic.

Trade deals influence the day-to-day decisions taken on environmental issues. The EU-UK Trade and Cooperation Agreement ('the Agreement') marks the formal end of the EU transition period and is welcome inasmuch that nature is protected from the disastrous consequences of a no-deal exit. However, the Agreement does not provide answers to all of the environmental gaps arising from the UK's departure from the EU, and governments across the UK continue to have work ahead to ensure robust environmental protections and governance remain in place.

In Scotland, the Agreement must be seen in the context of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021 ('Continuity Act 2021'). This new legislation granted Scottish Ministers the power to 'keep pace' with EU law and requires that the power be for specific purposes, including to 'maintain and advance' environmental standards. LINK members greatly welcome this Act and the opportunity it presents to remain dynamically aligned with EU environmental standards.

Non-regression

To address the nature and climate crises, LINK members agree with Greener UK's assessment that 'an enforceable non-regression mechanism that is broad in scope and applies irrespective of its possible impacts on trade or investment should be a basic prerequisite for all trade agreements.'⁵ As part of level playing field provisions in the Agreement both the UK and EU have agreed not to weaken or reduce levels of environmental or climate protection from where they stood at the close of 2020. This is a safeguard against either side lowering environmental standards, however it is limited to regression of standards only when they would affect trade or investment.

⁴ This response represents the collective view of LINK's Governance Group. Members may also respond individually in order to raise more detailed issues that are important to their particular organisation.

⁵ Greener UK, 2020. [Initial environmental analysis of the EU-UK Trade and Cooperation Agreement](#).

LINK members are concerned that the Agreement seeks only to uphold non-regression to limited situations where a weakening of standards would impact trade or investment between the UK and the EU.

However, the provisions in the Continuity Act 2021 and introduction of the keeping pace powers give Scotland a route to continue to maintain, or indeed exceed, environmental standards. This ensures there is ample opportunity for the Scottish Government to move forward in a number of areas. For example the EU is moving forward in developing its Biodiversity Strategy to 2030 and is currently consulting on legally-binding nature restoration targets. This is a key area where the Scottish Government should seek to keep pace as a matter of urgency and can take a leadership role ahead of COP15. In light of the recent conclusions of the Dasgupta Review that “our unsustainable engagement with Nature is endangering the prosperity of current and future generations”⁶ Scotland should seek to keep pace with EU developments to place nature’s recovery at the heart of Scotland’s national recovery from Covid-19. This must be a key part of the work programme of the successor committee of the ECCLR committee.

Enforcement and access to justice

Effective governance mechanisms are required across the UK nations to ensure there are no unintended rollbacks of environmental standards. The provisions in the Continuity Act 2021 are a strong starting point for Scotland, notably through the creation of the new Environmental Standards Scotland (ESS) watchdog. It is essential that ESS is well-resourced to fulfil its crucial role in upholding Scotland’s environmental standards.

However, LINK members believe that ESS must be given greater enforcement powers to ensure standards are upheld, most notably in response to individual cases of a failure to comply with environmental law.⁷

Improvements must also be made to ensure Scotland fulfils the public’s right to access to environmental justice, right to information and right to public participation in environmental matters, as granted by the Aarhus Convention. Despite the Scottish Government’s assertions of compliance with the Convention, barriers to public interest litigation are significant, and the Aarhus Convention’s decision-making bodies have consistently found the Scottish legal system to be in breach of the Convention on the third category on access to justice. There is scope for ESS to monitor Scotland’s compliance with such international environmental law. The ECCLR Committee (and its successor committee in the next parliamentary session) should seek confirmation that Scotland is continuing to meet its existing obligations.

In conclusion, Scotland must continue to keep pace and indeed aim to exceed EU environmental standards. The Continuity Act 2021 allows the Scottish Government and Parliament to continue to be ambitious in implementing policies and legislation to robustly address the nature and climate crises.

⁶ UK Government, 2021. [The Economics of Biodiversity: The Dasgupta Review - Headline Messages](#).

⁷ Scottish Environment LINK, 2020. [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill Stage 3 briefing](#)

Written submission from Environmental Standards Scotland

Introduction

1. Following the departure of the UK from the European Union, Environmental Standards Scotland (ESS) is being created to ensure that Scotland's high standards of environmental governance are maintained. The UK withdrawal from the European Union (Continuity) (Scotland) Act (the Continuity Act) has now received Royal Assent and section 19 of the Continuity Act establishes ESS as an independent body (a non-Ministerial Department), whilst section 20 confirms its functions – including to monitor public authorities' compliance with, and the effectiveness of, environmental law.

2. ESS is currently operating on a non-statutory basis, but it is expected that it will gain the full statutory powers set out in the Continuity Act later in 2021. ESS currently has a governing Board of 5 members, including myself as Chair. The Scottish Parliament approved the appointment of the initial ESS Board members in December 2020.

3. The Board are being supported in the establishment of ESS by a small transition team, with further recruitment to be undertaken over the coming months to ensure that by the time it is fully operational the organisation is adequately resourced to deliver on the Scottish Parliament's intention that it provides robust, independent scrutiny of the delivery of effective environmental law by public authorities.

4. The Board, myself and the transition team are currently focused on putting in place the necessary systems and resources to ensure that ESS can respond to concerns raised by anyone about compliance with, and the effectiveness of, environmental law in Scotland, and can hold public authorities to account. I intend that ESS will publish an interim strategy later in 2021, in advance of the development of, and consultation on, a final strategy – to be submitted (as required by the Continuity Act) to the Parliament for consideration within 12 months of our full establishment.

Working with others to ensure the maintenance of high environmental standards

5. ESS will be fully independent from the Scottish Government and will report annually on its activities, sending a copy of this report to Ministers and laying a copy before the Scottish Parliament. It is intended that ESS will work closely with a range of other bodies charged with scrutinising and regulating aspects of environmental law in Scotland and the rest of the UK. Early contact has been established with, for example, SEPA, NatureScot, Marine Scotland and others in Scotland, as well as the Office for Environmental Protection (OEP) in England.

6. In addition, Article 7.6 of the TCA commits the EU and the UK to cooperation on the effective monitoring and enforcement of the law with regard to environment and climate and to regular meetings between the EU and the relevant supervisory bodies in the UK. We will be seeking early dialogue with the European Commission and relevant European and UK bodies to understand the nature of arrangements that will be required at UK level and with the EU to fulfil this commitment.

7. Further work will be undertaken to establish working relationships between ESS and a range of bodies, including (as specified by Schedule 2 of the Act) the Scottish

Public Services Ombudsman, the Commissioner for Ethical Standards in Public Life in Scotland, the Scottish Information Commissioner, Audit Scotland and the UK Committee on Climate Change. Where appropriate, ESS will agree a Memorandum of Understanding with key bodies.

Key Issues Arising from the Trade and Cooperation Agreement (TCA)

8. There will be a number of key areas relating to the implementation of the TCA and its interaction with the UK Government's Internal Market Act that we anticipate will be of interest to both ESS and to the ECCLR committee and its successor. In essence these relate to how the Scottish and UK Governments are delivering on their obligations to non-regression in levels of environmental protection, maintaining high environmental standards in Scotland, and contributing to the achievement of other international obligations. Section 44 of the Continuity Act confirms that the duty on ESS to monitor the effectiveness of environmental law includes consideration of its effectiveness in contributing to the implementation of any international obligation of the United Kingdom relating to environmental protection.

9. We will be undertaking further analysis of the TCA and its likely impact on environmental regulation in Scotland – in particular, how it might interact with the stated intention of the Scottish Government to ensure that environmental standards and environmental law in Scotland 'keep pace' with those in the European Union. We would propose to work closely with the ECCLR Committee (or its successor) in the future and would welcome further discussion about where ESS can best add value to the committee's deliberations. For example, one area for future consideration and clarification is the role that ESS can play in helping the Scottish Parliament ensure that there is no regression of effect following changes to environmental law in Scotland, and that it remains effective in delivering the intended levels of protection and/or improvement in environmental outcomes.

Conclusion

10. I am grateful for this opportunity to provide evidence to the Committee on the implications of the TCA in terms of developing and regulating the application of environmental law in Scotland. We are currently working hard to establish ESS as a body that will provide robust and independent scrutiny of the application and effectiveness of environmental law and standards in Scotland and I welcome the opportunity to explore with the Committee where and how we can work closely with you in the future.

Written submission from Marine Scotland

The end of the transition period has resulted in a significant increase in Marine Scotland's statutory powers obligations, as well as non-statutory roles which are, nonetheless, important for the delivery of Scottish Government priorities.

That includes over 80 powers in relation to marine policy, and around 500 obligations that were previously undertaken by the European Commission or Member States but which have been transferred to Scottish ministers.

These range in complexity and, while many will be functions that were already being undertaken in whole or in part, others will be substantially new.

Marine Scotland is continuing to evaluate the content of the Trade and Co-operation Agreement (TCA) and understand its expected implications for our regulatory activities. Given the complexities of the TCA and ongoing uncertainties regarding the relevant arrangements between UK Government and the EU, this process of evaluation to understand medium to long term impacts remains ongoing.

Priority areas for Marine Scotland

The TCA has immediate implications for a number of priority areas within Marine Scotland. These have been identified as follows:

Compliance activities

The TCA, as far as Scotland is concerned, has removed the access for specified EU member states to specified areas within Scottish territorial waters. All foreign vessels working in Scottish waters now require to be licenced by Scottish Ministers. We have worked closely with all other fisheries administrations (FAs) in the UK and have brought together the Single Issuing Authority (SIA) that is housed within Marine Management Organisation. A good system of work and co-operation has been put in place both with UK FA's and the EU and we have successfully managed to issue licences to EU vessels to fish in Scottish Waters.

All Scottish vessels working in EU waters now require a separate licence for this purpose. Working closely with the SIA and EU colleagues, we have managed to get these vessels permitted to fish in EU Waters. Regular dialogue is taking place between EU and licencing authorities to ensure vessels have access to relevant Waters.

On an operational basis, Marine Scotland maintains good working relationships with EU / Norway / Faroe Isles and we look forward to sitting as a Coastal State in technical working groups going forward.

Aquaculture and fish health

Significant issues have arisen in relation to the export of un-depurated live bivalve molluscs (LBMs - i.e. those which require purification prior to human consumption) at the end of the post-implementation period. This is essentially a food safety issue. Animal health certificates were identified as a certificate which could be used to facilitate trade for animals from aquaculture sites, but recent communications from the EU clarifies its position to prevent all LBMs from entry to the union from Class B and

C waters. The EU intends to amend certificates in accordance to avoid ambiguity and the UKG is challenging this position.

While export of LBMs was identified as a post-implementation issue, it can be argued that failure to negotiate a position with regards to this trade and the lack of certainty of the arrangement in terms of what can and can't be exported and under what terms is related to the TCA. At this time, the impact on the Scottish shellfish industry is predicted to be limited given classification of Scottish waters, but a small number of individual businesses could be impacted.

Dialogue is ongoing with Defra at both a Ministerial and official level to understand and mitigate this issue.

Fisheries

The UK has reached agreement allowing EU vessels access to UK waters for a transition period of 5½ years of access to, and transferring what the UK Government has stated to be around 25% of the fish quota which the EU wanted to retain but which the UK claimed according to the zonal attachment approach.

If after that period the UK denies the EU access to UK waters, the EU can as 'compensation' impose tariffs on UK fishery products including aquaculture products. If either side breaches the fisheries agreement then, subject to proportionality and independent arbitration, the other side can impose tariffs on any goods and could even suspend the whole trade heading of the EU-UK agreement. Either side can terminate the Fisheries agreement at any time, which automatically also terminates other parts of the agreement on trade more widely.

A range of new non-tariff barriers and certification requirements will increase costs and damage the competitiveness of Scottish seafood. In terms of examples of further regulatory issues that have been identified as arising as a result of the TCA, this includes:

- Liaising with other coastal states on the management of shared stocks (negotiations, development of multi-annual plans).
- Significant technical areas where we have retained provisions from the EU (such as declaration requirements, technical specifications on vessel monitoring equipment or minimum standards for fish) While there is no immediate need for change, this situation may develop.
- Significant policy areas where we have retained provisions from EU where we may wish to amend (such as provisions for landings obligation).
- Regulation of fisheries species for which we had no fishing opportunities previously (such as Blue Fin Tuna).
- Allocation of fish stocks for which the UK has gained 'additional' quota.
- The determination of fish opportunities for UK fishing vessels (such as quota for particular species or fishing effort).

Marine licensing

We are not aware of any changes to intergovernmental / international enforcement in relation to Marine Scotland's marine licensing and consenting responsibilities. Despite arising in some instances from European environmental obligations, the licensing rules are embedded in from domestic (Scottish and UK) legislation, especially in terms of enforcement. Going forward, the Continuity Act enshrines the environmental principles which govern EU legislation.

Written submission from NatureScot

The UK-EU Trade and Cooperation Agreement identifies environmental standards and climate change policy as integral to the how the UK and EU will do business and work together in the future.

The agreement states that neither side will weaken or reduce its environmental levels of protection or its climate level of protection in a way that impacts trade and investment.

It remains to be seen whether both sides will be able to uphold these promises in the future, but environmental standards should not slip below what was in place on 31st December 2020.

It is also difficult to say exactly what the medium/long term effects of the TCA are for the environment in Scotland. NatureScot will be monitoring and assessing a number of priority areas on an ongoing basis.

Priority areas for NatureScot

NatureScot has identified a number of policy areas that need to be monitored as the TCA beds in and policies are developed across the four nations of the UK, to ensure that our environmental standards are maintained and enhanced in the future.

Keeping pace

As set out in the UK Withdrawal from the European Union (Continuity) (Scotland) Act, there is a need to keep pace with EU environmental legislation including on areas relating to biodiversity and climate change.

Biodiversity - The EU Launched its Biodiversity Strategy for 2020 to 2030 in May last year. The Strategy commits to actions on establishing a network of protected areas on land and sea, launching an EU nature restoration plan, introducing measures for transformative change and measures to tackle the global biodiversity challenge.

Climate Change - Close cooperation is required with the rest of the UK and EU on climate change adaptation and targets. Climate change is featured throughout the TCA and is an area where strong commitments have been made by both sides. The UK and EU will want to work closely on climate change issues in the lead up to COP26.

Reporting duties

NatureScot is working with the Joint Nature Conservation Committee (JNCC) and the other UK country agency partners to develop a future approach to reporting requirements for our European sites under the Bern Convention.

Future rural policy

Work is ongoing to develop a future rural policy system for Scotland. NatureScot has been working with Scottish Government to develop the transitional arrangements for 2021-2024 and is leading a pilot project to test innovative approaches to delivering environmental outcomes on farms and crofts in Scotland, as an alternative mechanism for managing future support. It is critical that future agri-environment schemes reflect

the need to consider nature-based solutions for climate change along with measures to enhance biodiversity. NatureScot is also following developments in the EU Farm to Fork Strategy, the EU's strategy for a fair, healthy and environmentally-friendly food system.

Land management changes

While there are no tariffs being applied to UK goods being exported to the EU, there are new regulatory and health and safety checks as a result of the TCA. As a result of these increased burdens and subsequent delays, some products may become unviable to export. This in turn could lead to a change in production of goods and a change in land use over time. This is an issue for the medium/long term which could have positive and negative impacts for nature in Scotland, but is one that we will need to monitor.

Fisheries policy

There are no immediate impacts on fishery/natural heritage interactions as a result of the TCA, but this is an area that NatureScot will be monitoring closely. Marine Scotland published its Scottish Fisheries Management Strategy for 2020 to 2030 in December which lays out the intended approach and aspirations for the future fishery management regime in Scotland. NatureScot will focus on the delivery of the environmental outcomes; implementation of the ecosystem-based approach; and developing co-management (through our input to the inshore management process). A Joint UK Fisheries Statement will be developed into which NatureScot along with Marine Scotland will provide input.

EU Programme participation

The TCA contains the arrangements for the UK's participation in EU funding programmes. In particular, NatureScot welcomes the UK's participation in the Horizon Europe programme. Access to this large research and innovation programme will allow collaboration, shared experience and innovation opportunities for Scotland across the various missions. The missions include climate change adaptation and healthy oceans, seas and internal waters, healthy soils and food, and regions resilient to climate changes. **European partnerships** will encourage wide participation from public and private sectors, in critical areas such as energy, transport, biodiversity, health, food and circularity.

Collaboration across the UK

Communication and collaboration across the UK with the devolved administrations, the environmental agencies in the four countries and the JNCC will be very important. Through these networks we can monitor and assess any divergence in policy across the UK. NatureScot is part of many UK working groups on topics such as biodiversity, fisheries, marine, invasive non-native species, climate change, protected areas and the Strategic Policy Issues Group, which is a post EU exit monitoring group. NatureScot will also work closely with Environmental Standards Scotland, the new governance body in Scotland to provide information, expertise and data to support their work.



Environment, Climate Change and Land Reform Committee

7th Meeting, 2021 (Session 5), Tuesday, 16 February 2021

EU-UK Trade and Cooperation Agreement – Stakeholder sessions

Introduction

The EU-UK Trade and Cooperation Agreement ('the TCA' or 'the Agreement') came into force on 1 January 2021. [SPICe has published a long read on the Agreement](#) and [a blog on environmental aspects of the Agreement](#).

Suggested areas for discussion with each panel are set out below.

Panel One: Expert witnesses

1. Key environmental implications of the EU-UK Trade and Cooperation Agreement - including Level Playing Field and rebalancing provisions

These aspects of the Agreement are [outlined in a SPICe blog](#). Written evidence provided to the Committee highlights some uncertainty about what environmental provisions in the TCA will mean in practice and what level of regulatory divergence would be regarded as unacceptable by the EU or the UK for any dispute to be triggered.

1. Key environmental implications of the EU-UK Trade and Cooperation Agreement - including Level Playing Field and rebalancing provisions

For discussion:

- To what extent provisions in the TCA impact on the ability of the Scottish Government to exercise devolved competence in environmental policy.
- Implications of LPF and rebalancing provisions for environmental standards in Scotland and across the UK, considering:
 - To what extent they constrain either the reduction or enhancement of environmental standards and;
 - To what extent they encourage future alignment with EU law;
- If there are continuing concerns about regression of standards, to what extent concerns relate to specific areas, and to what extent future divergence might take place through a gradual 'regulatory drift' versus more explicit changes.

2. Governance of the EU-UK Trade and Cooperation Agreement

Written evidence to the Committee raises some uncertainty around how governance arrangements in relation to the TCA will operate in practice, including whether devolved administrations will have opportunities to participate and have their interests represented.

2. Governance of the EU-UK Trade and Cooperation Agreement

For discussion:

- Views on the governance/supervision arrangements in the Agreement, including dispute resolution, and how effectively they might support the environmental aspects of the TCA.
- What scope there is for participation of devolved administrations in governance arrangements, including in relation to the Partnership Council and specialised committees such as the Level Playing Field Committee.

3. Priority areas for collaboration with the EU

In the Agreement, the UK and the EU affirm the right of the other to determine the environmental protections each deems appropriate and agree to “continue to strive to increase their respective environmental levels of protection”. Commitments or aspirations to collaborate are set out in various areas e.g. to strengthen cooperation on trade-related aspects of climate change policies and cooperate on offshore renewable energy.

3. Priority areas for collaboration with the EU

For discussion:

- Whether the Agreement will assist with UK-EU collaboration on:
 - Addressing the climate emergency including collaboration on COP26;
 - Tackling the ecological crisis and enabling nature recovery;
 - A green recovery.
- What role there is for the Scottish Government and Scottish Parliament in any future collaboration in key strategic areas on climate and the environment.

4. Replacement of EU funds

As a non-EU Member State, the UK is no longer entitled to automatically participate in EU funding programmes, including the Common Agricultural Policy, LIFE funding or Structural Funds. However, the Agreement makes provision for UK participation in Horizon Europe for the 2021-2027 period, a €100 billion research programme.

4. Replacement of EU funds

For discussion:

- Implications of the Agreement for the formulation of replacement funding programmes, including any rules on subsidies/state aid.
- Priorities for the development of replacement funding schemes.

5. Environmental Governance

The Agreement provides that in relation to environmental law covered by the LPF provisions, each Party shall ensure that domestic enforcement authorities give due consideration to alleged violations of the law, with effective remedies available, and that national administrative or judicial proceedings are available to persons with a sufficient interest.

Parties also agree that EC and UK supervisory bodies will regularly meet and co-operate on “the effective monitoring and enforcement of the law with regard to environment and climate” covered by LPF provisions. Provisions on ‘Good Regulatory Practices’ set out that each Party shall have in place internal coordination or review processes with a view to, amongst other things, ensuring compliance with international obligations.

The [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) includes a requirement on Ministers to consult (following the establishment of Environmental Standards Scotland) on whether the law in Scotland on access to justice on environmental matters is effective and sufficient.

5. Environmental Governance

For discussion:

- What are the priorities or requirements for further development of environmental governance in Scotland, taking into account requirements in the Agreement.
- What intra-UK governance is required to meet aspects of the Agreement on Good Regulatory Practice and cooperation on effective enforcement.

6. Environmental considerations in future trade deals

The devolution settlement gives the Scottish Parliament a role only in relation to the implementation and observance of international agreements including trade deal, not their negotiation. Environmental considerations, however, can be key components of international trade deals. This was examined in a recent [SPICe Briefing](#).

6. Environmental considerations in future trade deals

For discussion:

- How future trade agreements could interact with environmental aspects of the TCA, and with the Scottish Parliament's ability to legislate in environmental areas.
- Are there any lessons for the UK Government regarding the negotiation and agreement of future trade agreements, and implications on devolved administrations, based on experiences with the TCA?

7. Common frameworks and the UK internal market

The four UK administrations have agreed to develop legislative and non-legislative Common Frameworks in a number of policy areas, which could set out common approaches but could also set out scope for policy divergence. The TCA contains provisions which may be relevant to the agreement of specific Common Frameworks, for example, rules on subsidies or aspirations to collaborate in areas such as chemicals regulation or emissions trading.

The UK Government's [Internal Market Act 2020](#) allows devolved governments in Scotland and Wales to continue to regulate environmental policy as they wish. However, stakeholders and the Scottish Government have raised concerns that the market access principles in the Act will lead to deregulatory pressure and impact on the ability of devolved administrations to exercise devolved competence in areas including the environment and animal welfare.

7. Common frameworks and the UK internal market

For discussion:

- Any implications of the TCA for specific Common Frameworks or the operation of the UK internal market.

Panel Two: Regulatory bodies

1. The EU-UK Trade and Cooperation Agreement

1. The EU-UK Trade and Cooperation Agreement

For discussion:

- What analysis has been undertaken or advice received in relation to the TCA.

2. Level playing field and rebalancing provisions and implications for keeping pace

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For discussion:

- Implications of LPF and rebalancing provisions for environmental standards in Scotland and across the UK, considering:
 - To what extent they constrain either the reduction or enhancement of environmental standards and;
 - To what extent they encourage future alignment with EU law;
- Views on the governance/supervision arrangements in the Agreement, including how devolved interests should be represented.
- What role regulators expect to play in monitoring developments in EU law in future.

3. Transition to new regulatory and other systems including mechanisms for ensuring compliance with international obligations

The end of the transition period meant that new regulatory systems came into force on 01 January 2021, such as the new GB-wide system for chemicals regulation and new UK Emissions Trading System. The Committee has previously heard concerns about the implications of leaving centralised EU systems, including whether new systems will be ready, regulatory capacity, and how a transition would be managed.

Written evidence also highlighted that new arrangements might be required to monitor Scotland's compliance with international environmental law (as part of the UK which bears overall responsibility), with a potential role for ESS. It was suggested that successor Committees should seek confirmation that Scotland is continuing to meet its international obligations.

3. Transition to new regulatory and other systems including mechanisms for ensuring compliance with international obligations

For discussion:

- What regulatory roles or processes have started or changed since 01 January 2021, including any significant implications for resourcing and operational priorities, and how the effectiveness of transitions are being monitored.
- Views about the effectiveness of UK-wide transitions to new replacement regulatory systems relevant to this Committee's portfolio e.g. in relation to chemicals regulation or emissions trading.
- Whether new arrangements are required for reporting and monitoring compliance with international agreements previously handled through EU structures, including any relationships outside the EU.

4. Priority areas for collaboration with the EU

4. Priority areas for collaboration with the EU

For discussion:

- What are the priorities for future UK-EU collaboration in relation to environmental standards and tackling the twin climate and ecological crises.
- How regulatory bodies expect to collaborate with EU organisations going forward, and whether/how that is impacted by the Agreement.

5. Common frameworks and the UK internal market

5. Common frameworks and the UK internal market

For discussion:

- The status of regulatory bodies involvement in the development of Common Frameworks including whether regulators are involved in any work to assess implications of the UK Internal Market Act.

6. Replacement of EU funds

6. Replacement of EU funds

For discussion:

- Implications of the Agreement for the formulation of replacement funding programmes, including any rules on subsidies/state aid.
- What involvement regulators have had or expect to have in discussions about replacement funding and any anticipated role for agencies in disbursing funding, including in light of recent budget announcements.

7. Environmental Governance

Written evidence highlights the importance of good communication and collaboration across the UK including between government, environmental agencies and via structures such as the Joint Nature Conservation Committee.

7. Environmental Governance

For discussion:

- What are the priorities or requirements for further development of environmental governance in Scotland, taking into account requirements in the Agreement.
- What intra-UK governance is required to meet aspects of the Agreement on Good Regulatory Practice and cooperation on effective enforcement.

8. Environmental considerations in future trade deals

8. Environmental considerations in future trade deals

For discussion:

- Are there any lessons for the UK Government regarding the negotiation and agreement of future trade agreements, and implications on devolved administrations, based on experiences with the TCA?

Environment, Climate Change and Land Reform Committee**7th Meeting, 2021 (Session 5), Tuesday 16 February 2021****SSI cover note for:** [Single Use Carrier Bags Charge \(Scotland\) Amendment Regulations 2021](#)**SSI 2021/Draft**

Title of Instrument:	Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021
Type of Instrument:	Affirmative
Laid Date:	12 January 2021
Circulated to Members:	14 January 2021
Meeting Date:	16 February 2021
Coming into force:	1 April 2021
Cab Sec to attend meeting:	Yes
Motion to approve:	<u>S5M-23854</u>
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?	No
Reporting deadline:	20 February 2021

Background

1. The 5 pence minimum charge on carrier bags was introduced in the Single Use Carrier Bag Charge (Scotland) Regulations 2014. The original policy intent was to reduce litter, which was in line with Scotland's Zero Waste Plan and Safeguarding Scotland's Resources.

Carrier bags also have a disproportionate impact on wildlife, notably in the marine environment, where they can be mistaken for food and cause death after ingestion. As they are light and easily windblown, they can spread widely and be difficult and expensive to remove from the wider environment.

2. The proposed increase is to reinforce the benefits set out above, to reduce further the number of single use carrier bags that are sold in Scotland, and to encourage consumers to use sustainable alternatives to single use carrier bags.

3. The draft SSI is being laid before the Scottish Parliament under [section 96\(4\) of the Climate Change \(Scotland\) Act 2009](#). The affirmative instrument is subject to approval by resolution.

4. A copy of the Regulations is available [here](#).

5. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

6. The purpose of this instrument is to increase the charge for a single use carrier bag from not less than 5 pence per bag to not less than 10 pence per bag.

Process

7. The Cabinet Secretary will attend the meeting to explain the purpose and policy objective of the instrument and to answer any questions from members. The Cabinet Secretary will then (under a subsequent agenda item) be invited to speak to and move the motion seeking approval.

Delegated Powers and Law Reform Committee consideration

8. At its meeting on [20 January 2021](#), the Delegated Powers and Law Reform Committee considered the above instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Affirmative instruments

9. The draft regulations were laid on 12 January 2021 and referred to the Environment, Climate Change and Land Reform Committee. The regulations are subject to affirmative procedure (Rule 10.6). It is for the Environment, Climate Change and Land Reform Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Environment, Climate Change and Land Reform has, by motion [S5M-23854](#) (set out in the agenda), proposed that the Committee recommends the approval of the regulations.

For decision

10. The Committee is invited to—

- **take evidence from the Cabinet Secretary and Scottish Government officials on the instrument;**
- **ask the Cabinet Secretary to move and then, if necessary, debate the motion on the instrument; and**
- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument**

Clerks, Environment, Climate Change and Land Reform Committee

Annexe A

POLICY NOTE
THE SINGLE USE CARRIER BAGS CHARGE (SCOTLAND)
AMENDMENT REGULATIONS 2021
SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by section 88 of the Climate Change (Scotland) Act 2009. The instrument is subject to affirmative procedure.

Purpose of the instrument.

The purpose of the instrument is to increase the charge for a single use carrier bag from not less than 5 pence per bag to not less than 10 pence per bag.

Policy Objectives

The 5 pence minimum charge on carrier bags was introduced in the Single Use Carrier Bag Charge (Scotland) Regulations 2014. The original policy intent was to reduce litter, which was in line with Scotland's Zero Waste Plan and Safeguarding Scotland's Resources.

Carrier bags also have a disproportionate impact on wildlife, notably in the marine environment, where they can be mistaken for food and cause death after ingestion. As they are light and easily windblown, they can spread widely and be difficult and expensive to remove from the wider environment.

The policy intent of the proposed increase is to reinforce the benefits set out above, to reduce further the number of single use carrier bags that are sold in Scotland, and to encourage consumers to use sustainable alternatives to single use carrier bags.

The proposed increase delivers a Scottish Government commitment in the 2020/21 Programme for Government. It is also in line with plans being considered in the rest of the UK: Defra committed in August 2020 to increase the minimum charge to 10 pence from [April 2021](#).

Consultation

A formal six-week consultation Developing Scotland's Circular Economy; Proposals for Legislation was undertaken in November 2019. The consultation paper included two specific questions on the charge for single use carrier bags. Independent analysis of the responses was [published](#), the results of which were used to inform the framing of this policy.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

Impact Assessments

An [Equalities impact assessment](#), a [Children's Rights and Wellbeing impact assessment](#) and a Fairer Scotland Duty assessment have been completed on the draft SSI. There are no significant impact issues. The need for an Islands

Communities impact assessment and a Strategic Environmental Assessment has been screened out.

Financial Effects

A [Business and Regulatory Impact Assessment](#) (BRIA) has been completed and is attached. The impact of this policy on business is that costs of the proposed increase to the charge will be placed on retailers, consumers and carrier bag manufacturers/distributors. However, as many businesses have already switched from single use carrier bags to Bags for Life, additional cost to business is expected to be very low.

As set out in the current [Single Use Carrier Bag \(Scotland\) Regulations 2014](#), retailers may reclaim reasonable administrative, monitoring and reporting costs from the charge and will therefore not experience a net impact.

Scottish Government
Directorate for Environment and Forestry
January 2021

Scottish Government Explanatory Note

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Single Use Carrier Bags Charge (Scotland) Regulations 2014.

Regulation 2 makes provision for the minimum amount that a supplier must charge for a single use carrier bag to be increased from 5 pence to 10 pence.

A Business Regulatory Impact Assessment has been prepared and is available [here](#) and an Equality Impact Assessment is available [here](#).

Environment, Climate Change and Land Reform Committee

7th Meeting, 2021 (Session 5), Tuesday 16 February 2021

SSI cover note for: Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Amendment Regulations 2021

[SSI 2021/27](#)

Title of Instrument: Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Amendment Regulations 2021

Type of Instrument: Negative

Laid Date: 20 January 2021

Circulated to Members: 21 January 2021

Meeting Date: 16 February 2021

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 22 February 2021

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Background

2. These Regulations are made in exercise of the powers in sections 73(5) and (11), 75(2), (4), (6), and (7), 82(1) and (2), 90(6) and 98(3) of the [Land Reform \(Scotland\) Act 2003](#).

3. A copy of the Regulations can be found [here](#).

4. A copy of the Scottish Government's Explanatory and Policy notes are included in **Annexe A**.

Purpose

5. The instrument amends dates contained in saving and transitional provisions in the Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland)

Regulations 2020, to align those dates with the coming into force date for those regulations.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on [2 February 2021](#), the Delegated Powers and Law Reform Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure for Negative Instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

8. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Clerks

Environment, Climate Change and Land Reform Committee

Scottish Government Explanatory Note**EXPLANATORY NOTE**

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in sections 73(5) and (11), 75(2), (4), (6), and (7), 82(1) and (2), 90(6) and 98(3) of the Land Reform (Scotland) Act 2003. Regulation 2 amends dates contained in saving and transitional provisions in the Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Regulations 2020, to align those dates with the coming into force date for those Regulations.

Policy Note: SSI 2021/27**The Crofting Community Right to Buy (Procedure, Ballots and Forms)
(Scotland) Amendment Regulations 2021**

The above instrument was made in exercise of the powers conferred by sections 73(5) and (11), 75(2), (4), (6), and (7), 82(1) and (2), 90(6) and 98(3) of the Land Reform (Scotland) Act 2003() and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument.

To amend dates contained in saving and transitional provisions in the Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Regulations 2020, to align those dates with the coming into force date for those regulations.

Policy Objectives

To provide clarity and to correct an error in a previous SSI which was identified in correspondence with the DPLRC on 11 January 2021. This will ensure that the dates align with the coming into force date for those regulations, giving effect to what was agreed with the DPLRC.

Consultation

There was no consultation undertaken as this is simply a correction of a date prior to the legislation coming into force.

Impact Assessments

Due to the nature of the instrument (i.e. a minor date correction), there was no impact assessment carried out.

Financial Effects

The Cabinet Secretary for the Environment, Climate Change and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
January 2021