

Environment, Climate Change and Land Reform Committee (ECCLRC), Scottish Parliament – Written evidence (PBC0017)

Thank you for the opportunity to set out the views of the Environment, Climate Change and Land Reform Committee (ECCLRC) of the Scottish Parliament to your inquiry.

By way of background, the Committee has considered the impact of EU exit on devolved environmental policy within its remit since the 2016 referendum, including: all UK SIs to which the Scottish Government has consented the UK Government can include provision in devolved competence in environmental policy, common frameworks within our remit, the environmental impacts of the UK [Agriculture](#), [Environment](#) and [Fisheries](#) Bills, as well as the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Bill](#). Our most recent update on frameworks from the Scottish Government was sent on [3 December 2020](#). **Our scrutiny has given the Committee a broad understanding of the wide-ranging, complex and, still to a large extent, unclear impact of EU exit. We set out below our significant and outstanding concerns about this impact on the operation of the devolution settlement, Scottish Ministers' ability to exercise powers in devolved competence and the Scottish Parliament's ability to scrutinise Scottish Ministers, policy and legislation relating to its legislative competence.**

We are concerned that the **process of EU exit has fundamentally altered the operation of the devolution settlement and it is unclear, at this point, how the constitutional arrangements for Scottish devolution will operate within a post-EU UK.** At our first meeting of 2021, the Committee held an informal meeting with academics and lawyers to discuss the new 'UK governance landscape' with members. We sought to understand the relationship and interaction between the future relationship agreement, UK internal market, other trade agreements and the Scottish Government's 'keeping pace' power.¹ The only emerging clarity from that discussion was around how complex a picture the devolution settlement now is. The constitutional impact of EU exit needs to be thought out and understood. It is beyond our remit, and resources, as a subject committee to do this.

¹ The 'keeping pace' power is set out in s1(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill – passed by the Scottish Parliament on 22 December 2020 and awaiting Royal Assent.

The **interaction between the implementation and operation of frameworks with the future relationship agreement, UK internal market, other trade agreements and the Scottish Government's 'keeping pace' power highlights the wider practical constraints on Scottish Ministers' ability to exercise powers in devolved competence.** For this reason, we consider it is essential that frameworks include effective dispute resolution mechanisms. This, in turn, raises **issues about the Scottish Parliament's ability to scrutinise policy in devolved competence;** where decisions made by the UK Government impact on decisions made by the Scottish Government.

The following examples illustrate the remaining and fundamental questions about the impact on the devolution settlement. The first relates to the Scottish Government's commitment to maintain alignment with EU environmental law, using its 'keeping pace' power. It is unclear to us, however, how it will be able to fulfil this commitment given the new context of, not only common frameworks, but also the future relationship agreement and internal market provisions. The second relates to the proposed framework on an emissions trading scheme, the process of which stalled after the UK Government mooted plans to replace it with a UK carbon tax. As you will be aware, the plans were subsequently dropped but it suggests the fragility of frameworks in instances where the UK Government considers taking an alternative approach.

We are also concerned that the **development of frameworks is almost exclusively an inter-governmental process with limited opportunities for parliamentary engagement,** both in terms of parliamentary scrutiny/ ministerial accountability and parliamentary influence. There was negligible parliamentary engagement in the early stages, and a limited role at the later stages, of policy development. Limited because there has been, and will be, little time to scrutinise frameworks meaningfully, limited information provided by the administrations to legislatures and sparse scope for influencing the final frameworks. The lack of information has been decidedly unhelpful in terms of anticipating and preparing to scrutinise frameworks. Although we understand Scottish Parliament and Scottish Government officials have recently agreed some detail around the five-stage development process for frameworks, especially in the light of the Scottish parliamentary elections in May, the five-stage development process itself was agreed at inter-governmental level without any parliamentary consultation.

We are also concerned that there has been an **extremely limited amount of engagement with stakeholders.** When we took evidence on the UK Withdrawal from the European Union (Continuity) (Scotland) Bill in August, stakeholders reported at that time that they had seen very little consultation on the frameworks.

We note that, according to the 3 December 2020 update from the Scottish Government, the number of frameworks still to complete the stakeholder consultation stage was considerable at that point. Of the seven frameworks in our remit, five had not completed stakeholder engagement. (Of the overall 26 frameworks to be agreed that impact on the Scottish Parliament's competence, only nine had completed the stakeholder consultation stage with four yet to commence.)

The **decision by the administrations to progress all frameworks to provisional framework stage, in order for them to be minimally operable for the end of the transition period – before stakeholder and parliamentary engagement has been undertaken – further suggests a marginal role for both stakeholder and parliamentary engagement in the frameworks process.** The unexpected and considerable impact of the current Covid-19 pandemic on the frameworks process is understandable but it should not be used as an opportunity to bypass the administrations' own five-stage development process. The development of minimally operable frameworks raises a number of significant questions around what scope there is for the agreed provisional frameworks to be revised following stakeholder engagement. More information on how the five-phase delivery process will be amended to take account of this would be helpful.

We have expressed our concern about the **'piecemeal approach' to the development of frameworks** over the course of our scrutiny. In terms of those frameworks dependent on primary legislation, it has been unhelpful that we were not able to consider the framework documents at the same time the legislation was being considered. It is difficult to evaluate the 'overall picture' if you cannot look at all its constituent parts at the same time. Similarly, when we considered the deficiency fixes SIs made by the UK Government under the European Union (Withdrawal) Act 2018, it was not made clear to us that these 'fixes' would provide the legislative basis for most of the frameworks proposed in our remit. Our scrutiny of some SIs may have looked different had we appreciated their longer-term impact.

Finally, we think it is absolutely vital that our legislatures **invest and nurture parliamentary connections and networks across the UK in order to share information and expertise and to co-ordinate scrutiny.** Your committee plays an important role in terms of informing the focus around common frameworks. As our parliamentary session draws to a close, we intend to recommend to our successor committee that it work with yourself, and our counterpart committees in the Welsh Parliament and Northern Ireland Assembly, to inform its scrutiny of frameworks.

I look forward to discussing these issues with you further on 10 February.

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Convener
Environment, Climate Change and Land Reform Committee

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