



Prepared by Daphne Vlastari, 31 January 2019

SCOTTISH ENVIRONMENT LINK: BREXIT OPTIONS PAPER

Given ongoing uncertainty around Brexit, some key questions emerge that LINK needs to consider addressing. Specifically, LINK needs to develop, in the first instance, an internal strategy about what position to take should political events lead to a People's Vote, a General Election or a No Deal.

The following paper seeks to do that by:

- Outlining what has happened since the referendum, thus offering some insight as to whether we are on a good path towards securing and building on existing EU protections. The general reflection is that this path is fraught with difficulties both in Scotland and across the UK, with other devolved nations in a similar situation. *The chances of getting a 'Green Brexit' with equivalent protections are relatively low.*
- Sketching the politics around Brexit which are impacting on how stakeholders such as ENGOs can engage with governments and parliamentarians. In the UK, the civil service is determined to prepare for any Brexit outcome (deal or no deal) whereas in Scotland the political narrative is one that seeks to stop Brexit. *In Scotland, both Parliament and Government are in favour of a People's Vote, do not support the negotiated deal and are against a No Deal Brexit. There are similar feelings expressed in Westminster which are growing stronger.*
- Outlining the position LINK has occupied in the context of the EU membership referendum and since June 2016. *LINK has never talked about Brexit in terms of an 'opportunity'; it has always highlighted the risks, acknowledged the different outcome in Scotland and sought to put forward constructive solutions to the risks created by Brexit.*

On the basis of the above, the paper provides reflections about what LINK should do under a number of Brexit scenarios. Scenarios have been discussed with the Brexit subgroup.

Board members are invited to reflect on the below.

A. Brexit and the environment: what has happened since June 2016:

- The UK Government passed the UK Withdrawal Act which provides for a process to bring over all existing EU legislation into domestic law. This has created a very heavy SI/SSI legislative programme which will affect the workload of all UK governments and parliaments.
- The UK Government has published a Draft Environment (Principles and Governance) Bill. The Bill as it stands does not meet ENGO ambitions. There is also a Fisheries and Agriculture Bill proposed. While there are concerns with those Bills, both are seen as relatively positive steps in terms of setting the sectors on a more sustainable trajectory.
- The Scottish Government has:
 - Promised not to roll back protections and to retain EU principles:
 - Set up a group to look and determine environmental governance gaps; and
 - Committed to a Scottish Environment Strategy which it consulted on in July/August 2018.

- However, the Government is only committed to a consultation on principles and governance. Presumably this will require some form of legislation to implement outcomes though this is not confirmed as yet partly because of the process in place (consult first, recommend later) but also because Scottish Government wants to see what will happen with Brexit first. The meaningful vote has been agreed as a milestone after which the Government will have to issue its much-awaited consultation.
- Continuous delays in the publication of this consultation are creating unease among ENGOs. In effect, there are no reassurances with respect to the future of the environmental principles or the governance gap.
- In terms of rural policy, only recently have we seen some positive steps from the Scottish Government, and these are not firm commitments that amount to any support of the 'public money for public goods' approach. The ENGO sector has been largely left out of the conversation. In many ways, Gove's views have backfired with Fergus Ewing focused on food production and Scottish Tories unable to support UK Government views. A Scottish Agriculture Bill is expected (timing tbc) to give Government powers to direct payments and set future policy.
- In terms of fisheries, the political debate is usually toxic with parties using the CFP as the scapegoat. As such raising sustainability arguments in a substantive way has been difficult.

B. The politics of Brexit:

- There is a clear impasse in the House of Commons and across the UK with respect to the Withdrawal Agreement negotiated by the UK Government with implications for Brexit and the UK's future in or out of the EU.
- Following the Westminster Meaningful vote (and the unsuccessful No Confidence Motion), the PM made a statement in the House of Commons and motion on the Government's next Brexit steps is expected on 29 January.
- While the potential outcomes of Brexit remain the same (Deal, No Deal, Status Quo/Remain), it is unclear which is more likely to happen and how. Uncertainty remains high with the PM expected to wish to appease the more hard-line Brexiteers in her own party and DUP rather than consider meaningful compromises to get the support of opposition parties.
- In parallel, Conservative backbencher MP and former Attorney General Dominic Grieve, has submitted two bills to kickstart the legislative process for a second referendum (People's Vote). The Bill was supported by other like-minded Conservatives, Labour, LibDems, SNP and Greens.
- The official position of the SNP is now to call for a people's vote. This is also the case for LibDems and Greens. Labour leadership has so far not come in support of a people's vote, the priority and preference was for a General Election. As such Labour leadership will have to quickly address whether they can officially support a people's vote.
- The Scottish Parliament has backed a referendum on the terms on which the UK leaves the European Union¹ and it has also expressed its view that it is against the deal negotiated by the PM and does not wish to see a No Deal scenario.
- It is expected that FM Nicola Sturgeon and the SNP will outline their plans on a second independence referendum 'in the coming weeks'.

C. What this means for LINK advocacy:

¹ Two Labour MSPs – Daniel Johnson and former leader Kezia Dugdale – voted with Lib Dem, SNP and Green MSPs to back the idea, while the Conservatives were joined by the SNP's Kenneth Gibson and independent Mark McDonald in voting against.

- In this context, LINK members have had to operate in an environment where the Scottish Government and a majority of MSPs support a Remain option/People's vote while also not alienating other parties that do not support that in Scotland or at the UK level. Particularly from a UK perspective it has been important to make sure that our position makes sense in terms of UK/English discussions where there has been a greater acceptance of Brexit and efforts have focused on making it a 'Green' one.
- This has been a difficult position for LINK particularly as the Defra Secretary of State has made overtures to ENGOs. In Scottish politics, Mr Gove is not a trusted figure; his commitments are not seen as credible and his ENGO-friendly position has not been helpful for Scottish environmental charities.
- In addition to differences over Brexit, LINK members have had to navigate a politically tense debate on 'the power grab'. While an agreed wording has emerged across UK ENGOs the issue is still a sensitive one. The Scottish Government does not always recognise the need for 'frameworks'.

D. What has LINK done so far:

- Before the referendum on EU membership, LINK issued a challenge to both campaigns receiving a response from Remain only, which was published and publicised. Some LINK members were openly in support of Remain while others developed more nuanced approaches indicating that on the basis of environmental criteria, Remain was the safest option. Some of these views were only made public late during the campaign period.
- Since the referendum result, LINK has given evidence to Committees in Scottish Parliament with views around the risks of Brexit and proposals to remedy those. Overall, this has been successful.
- In more recent months, LINK has encouraged Scottish Government to issue the much-awaited consultation on principles and governance, but this has been postponed and is now expected in early February.
- In line with the views of GUK, LINK has indicated that a No Deal scenario would compromise environmental protections in Scotland because there are no provisions for ensuring that the EU environmental principles and governance gap are addressed and the number of Scottish Statutory Instruments required will not have gone through the Parliamentary process by end of March.
- While Greener UK members have commented publicly on the Withdrawal Agreement, LINK has not done so. An internal analysis was developed and shared which concluded that the Agreement itself and Political Declaration contain general commitments but nothing substantive. The important exception here are provisions around the backstop which introduce important safeguards regarding the governance gap.
- LINK has also launched a campaign 'Fight for Scotland's Nature' (FFSN). Again, here the Scottish political situation has meant that ENGOs had to pursue a more nuanced message with respect to the need for a Scottish Environment Act to address the potential risks of Brexit but also respond to the wider ecological crisis which would have required further efforts in and of itself.

E. Brexit scenario options:

It is therefore clear that: (a) ENGOs are unlikely to be able to secure all their asks emanating from Brexit risks. The chances are slim and would require immense efforts which would naturally take

away time and resources from other critical policy priorities (climate, biodiversity) and (b) the political environment is unclear and shifting with a lot of MPs acting now to avert a No Deal Brexit and provide opportunities for a People's Vote.

LINK's narrative, policy and campaign work needs to be aware of this. Below are reflections on possible Brexit scenario options and implications for LINK advocacy:

Scenario 1: PM's deal or a slightly amended deal goes through (likelihood: low)

The EU has indicated that unless the UK changes its red lines, a renegotiation of the deal is not possible ('the backstop is non-negotiable'). This is the best deal the EU can give the UK given its position.

However, it could be that by appeasing hard core Brexiteers the PM could get her deal through. In addition, among the PM's commitments in re-pitching her deal was a commitment to do more about environmental protections. This could potentially see an enhancement of the UK Environment Bill.

If there is a Deal with the EU including a deal on a future relationship, this would likely include / can include environmental aspects which would create a UK-wide commitment which devolved administrations would have to respect.

If that is the case, LINK's position can continue as is, also in terms of the Fight for Scotland's Nature campaign.

Scenario 2: No Deal (likelihood: increased)

While MPs and MSPs are not in favour of a No Deal scenario, this is the default position on 29 March. Recently there have been some efforts from MPs to put together legislation to ensure that we don't arrive to a No Deal by extending article 50. This is the case of the work being done by Labour MP Yvette Cooper. Her proposal allows for MPs to vote to extend article 50 if there is no deal by 26 February and provides for a 9-month extension.

As mentioned earlier, LINK has indicated in parliamentary evidence that a No Deal scenario would damage our environment. This view should be more broadly communicated also via media, (actions ongoing) also as a means of highlighting urgency for Scottish Government action.

There have been no discussions about interim measures that would be needed to address the governance gap that would inevitably surface between the adoption/implementation of new legislation and exit day. It is understood that the Scottish Government have been considering potential interim measures that may be needed. However, no ENGO involvement has been requested or is likely to be solicited. This should be something ENGOS reflect on, seeking also input from GUK on discussions with Defra. The Roundtable report on governance concluded that: 'we foresee that there may be a need for interim measures should a policy decision be taken to establish a new body given the likely lead in time to establishment. An interim position based on an expanded role for existing bodies perhaps supported by an independent supervisory panel would seem the most pragmatic'.

Under a No Deal scenario, the responsible position would be to say that from an environmental point of view, the Scottish Government will have failed to meet its stated objective which is to 'not turn back the clock on European standards'. In the case of a No Deal and with no published interim measures or future plans, leaving the EU on 29 March will harm our environment.

Under a No Deal scenario and even under the prospect of a No Deal, LINK should significantly raise the profile of the risks. There are actions already ongoing to address this and increase pressure on Scottish Government. It would be easy to ensure that actions under the FFSN campaign are aligned with this.

If we are headed for a No Deal, LINK members should ask for the introduction of a Bill to address the principles and governance gap as a matter of emergency. This is the recommendation of the Brexit subgroup.

Given that it is clear to ENGOs across the UK that the legislative schedule of Sis/SSIs will not have been completed and that new measures for environmental governance won't be in place before March 2019, it stands to reason that from an environmental point of view an extension of article 50 would make sense. It would be the only practical way of allowing more time for SI/SSIs to be discussed in greater detail with further stakeholder input and deliberate on governance mechanisms etc. LINK is liaising with GUK on whether this is something they are considering supporting.

Scenario 3: Postpone or Revoke article 50 (likelihood: increased)

As mentioned above, this is now being actively discussed in Westminster with a variety of MPs and political parties supporting this. However, it is understood that the EU-27 would only accept a postponement of article 50 for a real reason – e.g. elections, people's vote, rather than for a continuation of squabbles within the Conservative party. As the European Commission's spokesperson said, 'the UK need to tell us what they want, what they really, really want'. A revocation of article 50 is possible on a unilateral basis but this might be a harder sell to Brexit supporting MPs.

Whether it is postponing or revoking article 50, it is expected that this would be done with a view to do something that would break the impasse in Westminster. There are two key options, with a possible third one:

Scenario 3a: Hold a General Election

This is Labour's number one preference and one which they will continue to pursue despite the failed vote of confidence. Labour's official position is that they want to explore all options to get a better deal and avoid a No Deal, including a people's vote on the deal with the EU.

While the chances of a General Election are much slimmer now, **if there was a General Election, LINK would have to develop a manifesto. We would have to draw from existing materials in terms of our key asks for the environment in the context of Brexit. This would be coordinated with ELUK/GUK. FFSN could be used as the vehicle for publicising and raising awareness about the campaign.**

Scenario 3b: Hold a People's Vote

This would be a second referendum and a potential LINK position has been discussed in some detail among members of the Brexit subgroup. While the question that would be asked in such a referendum or combination of questions is unclear, it is likely that 'Remain' would be an option.

If that was the case, the subgroup has recommended that if there was to be a second referendum, LINK should not issue a 'challenge' but rather provide an evidence-based view on why remaining in the EU would be safer for the environment. This could draw on existing pre-June 2016 material

as well as provide an overview of the commitments that the UK and Scottish Governments have given ENGOs over the last two years.

Discussions with the Brexit subgroup have determined that on balance, given the protections at risk, wider ecological crisis and lack of concrete or up to par proposals at both the UK and Scottish government level, this approach would be in line with our duty to protect and enhance our environment.

What would need to be clarified in such an event is what precisely LINK may be able to do or advocate for based on charity rules.

Given the positioning of the main parties, only a People's Vote with a 'Remain' vote could lead to the status quo (ie EU membership) retained.

Should that come to pass, the Brexit subgroup and Brexit campaign subgroup has developed a plan to adapt our FFSN campaign asks. Already messaging around the campaign is built on the need for action because of the increasing evidence of ecological crisis; in this context, Brexit threatens to unravel existing protections which would set us back at a time when we know that we should be doing more.

Scenario 3c: Revisit the UK Government's red lines

There is a group of MPs who are seeking to review the UK Government's red lines to ensure a smoother Brexit outcome. Led by Nick Boles, Conservative MP, and Stephen Kinnock MP, this camp is advocating for the UK to join EFTA/EEA under a 'Norway plus' / 'Common Market 2.0' arrangement.

This would be more in line with the original Scottish Government compromise proposal. In a previous discussion papers, it has been determined that from a LINK point of view this would ensure greater alignment with EU standards, however, it would not in and of itself capture all ENGO concerns.

Therefore, even under such a scenario, additional campaign work would be needed.

F. Next steps

The above analysis aims to provide a forward plan for LINK which would ensure that we are ready to respond to political developments.

Following a discussion with the Board, actions emanating from this paper will be further developed and implemented by the Brexit subgroup.