



e-law

Better law for the environment

November/December 2019 | Issue 115



Welcome to the November/December edition of elaw where the focus is on natural capital and the environment.

Natural capital is all around us – in our land, air, water and biodiversity. The government's 25 year environment plan uses a natural capital approach following advice from the Natural Capital Committee, and pushes natural capital thinking into the

mainstream – but how can we quantify the value of our natural capital on health and wellbeing, as well as its impact on our economic growth?

We are most grateful to Tom McKenna for his article, [Scotland's Natural Capital Asset Index](#) which looks at the contribution of Scotland's environment to wellbeing and argues that the use of Gross Domestic Product (GDP) is no longer appropriate as a proxy for general wellbeing. Scotland's Natural Capital Asset Index tool is explained in detail and considered useful if taken as part of a wider set of indicators.

Thanks also goes to Richard Benwell for his piece, [Do Defra's big bills reflect natural capital thinking?](#) which assesses the extent to which the Fisheries Bill, the Agriculture Bill and the Environment Bill use a natural capital approach.

In our final themed piece, [The balance sheet of nature? On making monetary value UK 'natural capital'](#) Sian Sullivan provides an excellent analysis of the movement towards natural capital accounting, in particular the monetary estimates for UK natural capital in 2016 and 2018 reports by the Office for National Statistics. She notes that these values are derived from broader economic contexts and appear to provide little indication of the present and future material state of the natures thus valued.

Finally, don't miss John Bates' engaging article, [In times of war the law falls silent](#) which argues that consideration should be given in the current Environment Bill to environmental protection in times of war or natural disaster and that environmental principles should set out the basis on which the environment will be protected in such times, with the role of the Office for Environmental Protection in such circumstances being specified.

I would like to thank Sefki Bayram for his work as Editorial Assistant for elaw – he has now moved on to concentrate on his Bar Course and we will be appointing a new Editorial Assistant over the coming weeks.

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And finally, I hope you all have a merry Christmas and happy New Year and enjoy a well deserved break.

Best wishes,

Sophie Wilkinson

Sophie Wilkinson
UKELA e-law Editor

E-law editorial team

Sophie Wilkinson, Editor – Sophie is an environmental law specialist at LexisPSL with 13 years' experience, including 11 years' experience in private practice. She moved to LexisNexis from Shoosmiths LLP where she was a Senior Associate. Prior to this Sophie trained at Browne Jacobson LLP and spent 6 years at Eversheds LLP.

Cecily Kingston is a trainee solicitor at R&R Urquhart solicitors based in northern Scotland.

Dr Ben Christman – Senior editorial assistant, is an independent environmental law researcher.

Words from the Chair



Welcome to this your final E-Law for 2019. 'Tis the season to be merry, chestnuts will roast on an open fire, halls will be decked with holly. I find that I prefer the winter solstice to its summer counterpart, providing us with an opportunity to take a moment to reflect on the days, weeks, months

gone by in the year as well as to peer ahead into the unknown mystery of what might lie ahead for us.

At the close of 2018 when we stepped into the glittering possibility of 2019, who amongst us predicted that a civil disobedience group calling themselves Extinction Rebellion would bring the capital to a standstill and put the 'climate and nature emergency' front and centre of our lives; that a young Swedish activist would call on her peers of schoolchildren to go on strike to demand that the 'grown-ups' do a better job of protecting their planet, their futures; that the government would have been the first in the world to legislate for a net-zero commitment; that we would find ourselves in the throes of the first December general election since 1923; and that there would be a 'climate debate' hosted especially for the leaders of the political parties (with the notable exception of the current Prime Minister).

Perhaps, however, some (or indeed many) of you might have predicted that we would not have exited the European Union by the end of the year, your ability to future-gaze being more honed than others.

Either way, it has turned out to be quite a remarkable year for us, especially in the context of environmental issues. Climate change is now a regular news item in the mainstream press, no longer a fringe issues for the 'hippies'. The tales of near extinction of the koala bear in Australia as a consequence of the bush fires is as stark a wake-up call to our impact on nature as ever.

Now more than ever there is a clear and demonstrable shift in the public's perception and opinion of the multifaceted environmental crises we face. There is a stronger appetite from the public for decision makers and actors to do something to avert the crises, and a groundswell of support for the necessary changes to be made to achieve our desired outcomes of a safe climate and healthy and thriving natural world.

Faced with all of this negative press and the starkness of the challenge ahead, it might seem hard to keep upbeat and pragmatically optimistic. But (and of course, you know me, there is *always* a but) we are told that we do have the tools, the capability to do something. And each of you all, as legal professionals

in this area, are equipped with the skills and resources to make a difference.

You will read in this E-Law about the Garner lecture delivered by Baroness Brown of Cambridge sharing the views of the Climate Change Committee on how this country can meet its net zero target. I was supremely reassured by the lecture as she identified that, put frankly, we can do this and at not as much cost as we originally thought. As I stated in my vote of thanks, the lecture was encouraging in demonstrating that, with early investment and getting policies right, the opportunity will not only keep us in line with the scientifically-based target, but will also have many positive by-products for our society overall.

With the theme of this edition being on 'natural capital' you will be able to read more about what Scotland is doing to move towards preserving nature, contributing to the overall efforts to halt the devastating impacts we are having on nature and species. This is not a new idea, per se, but it is instructive to read the range of approaches and perspectives that have developed and evolved on the topic presented.

As environmental law professionals you will all play an incredibly important role in advising on matters relating to how we can achieve the net zero target, and you will read later about the opportunities to respond to the highlighted consultations that are proposing amendments to existing building and energy efficiency legislation that will contribute to evolving and enhancing the current frameworks to support these ambitions.

In news from UKELA's Council – the strategic review process is well underway with Council meeting last month to spend an afternoon going into detail about what we feel UKELA is all about, and how it can do more to support you all and achieve its overall aims. Refreshing our memories of the constituting documents and objects of the charity, we were able to remark on how visionary and progressive the founders were in identifying what the need was, and how to leverage the power of the law to fulfill and meet that need.

We will, as previously noted, be writing to those of you who have expressed an interest already and those who play, for example, a convening role, to canvass your views on the strategic direction of UKELA for the next five years. Lookout for our message in early 2020.

I want to take a moment to thank our retiring Patron, Professor Paul Leinster CBE, for offering so much support and time to UKELA for the duration of his term.

UKELA is so very grateful to Paul, and all our Patrons, for being such brilliant ambassadors for the organisation and lending advice, insights, and general support. I am also delighted to welcome Professor Colin Reid as a Patron. You can read more about Colin's CV later, and no doubt see him around at various events here and there. Welcome Colin and thank you Paul!

So many of you give your time and energy to participating in the UKELA working parties and we are all deeply grateful to your expertise in doing so. You will see that a new working party is being proposed by the convenors, providing a new opportunity for you to get involved in and share your knowledge and experience as well as perhaps learn some more about the finance industry and Environmental and Social Governance (ESG). No longer is this a niche area: ESG is mainstream and something that I am sure many of your clients are already asking about.

As ever, the winter term has been so very busy with events. The wild law conference hosted at Sussex University was a real highlight, and as ever I found it so heartening to attend the careers evening and hear from prospective graduates and inspired young professionals all seeking opportunities in the environmental law world. They, after all, are the next generation of lawyers who will be required more than ever in the coming decades as we aim to meet our climate and nature targets and commitments. What I find so wonderful about our UKELA network is the peer to peer as well as inter-generational learning that passes knowledge and experience on from practitioner to practitioner. Now more than ever we need that combination of experience, know-how, creativity, and vision – as Baroness Brown was indicating in her lecture – to meet the challenges head on.

By 13th December we will have a better idea of this country's position on many laws that hang in the balance currently: the Environment, Fisheries, and Agriculture Bills and a busy Parliament will ensue where there will be ample chance for UKELA members to participate. As the environmental law experts of this country your views, knowledge, and expertise will be widely welcomed and I look forward to learning more as developments unfold.

By the end of the year, however, will we be able to look ahead to 2020, peering into the misty the future to try our best to determine with any semblance of clarity what shape the year might take? An impossible task at the best of times, but one that will I have no doubt draw out the odd prediction here and there as we clink glasses as the bells toll midnight on the last day of the year.

What we can be sure of is that as part of UKELA you all contribute to something bigger than yourselves and own individual practices. You will all offer up your time and energy to support the collective efforts in various guises and you will all in your own way make your mark in what is set to be a critical year. As the climate negotiations in Madrid kick off, the UN Secretary General reminds us that we are uncomfortably close to the 'point of no return', and earlier this week hedge fund CEO, Sir Christopher Hohn called on directors of companies to disclose their carbon emissions or risk losing out, it is all grist to the mill, all hands on deck, all pens at the ready.

We are here to help you in your efforts to leverage the law to make those changes that will all contribute to this country not only meeting its net zero target, not only protecting wildlife and nature, but also fixing the future in the best way we know how: by using the law for a better environment.

So perhaps instead of trying to make predictions about what lies ahead we can all make a commitment to try to create the future that we want. After all, as legal professionals you know just how much the pen really is mightier than the sword.

I wish you all the very best for your winter break and hope for you and your families a very Happy New Year.

Kirsty Schneeberger

Regards,

Kirsty Schneeberger
UKELA Chair

UKELA news

Garner lecture

Delegates around the UK were treated to a wonderful evening at this year's Garner lecture. Our distinguished speaker was Baroness Brown, Vice Chair of the Committee on Climate Change. The theme of her lecture was Delivering Net Zero. With UKELA members joining in the debate from Birmingham, Bristol, Edinburgh, Leeds, London, Manchester, Nottingham and Swansea in the UK and Hayley Tam joining us from Australia, we really reached out across the world this year.

Baroness Brown's lecture was timely and thought-provoking, giving us all the opportunity to reflect on our organisation's efforts to reduce our carbon footprint and, in particular, what we could do better to contribute to the ambition of achieving Net Zero by 2050. Her slides set out starkly the pressures facing not just the UK, but everyone across the world, to change mindsets, habits and assumptions. But her positive message was that we CAN do it by 2050. We don't yet have all the answers, but that should not stop us from keeping going with the progress that has been made. Her final quote came courtesy of Greta Thunberg, who said: 'This needs Cathedral Thinking. We can build the foundations without knowing exactly how we will complete the roof'.

You can watch the lecture on our [website](#) and view the slides (you will need to log in first as this is a members' only area). If you were not able to join us for the event itself, why not gather some colleagues and watch together to stimulate the debate.

UKELA is very grateful to Baroness Brown for agreeing to give this year's Garner lecture and to our Patron, Professor Richard Macrory, who so ably chaired. We are also hugely grateful to Freshfields for their continued support for the Garner lecture. Their excellent facilities and hospitality help to make the evening as enjoyable as it is.

New UKELA website and Customer Relationship Management system (CRM)

The new UKELA website is now live! Member mailings are being sent out detailing clear instructions and screenshots explaining how you login to the new site. Whilst the website remains reassuringly familiar, new benefits include being able to set and manage your username and password, and access to our new integrated events booking system. If you have any questions regarding the new CRM please contact UKELA Senior Administrator, [Elly-Mae Gadsby](#)

UKELA membership renewals for 2020

Renewals will be sent out to all members who need to renew for 2020 from the beginning of December. Please look out for them and contact [Elly-Mae Gadsby](#) if you have any questions.

UKELA Annual Conference

We are looking forward to being in Plymouth for our Annual Conference in 2020, as the city commemorates the 400th anniversary of the sailing of the Mayflower. As well as a wide range of plenary and working party sessions there will also be opportunities to network and relax. To kickstart the weekend, on Friday evening we will be at Plymouth's iconic arts and culture venue, The Box, that showcases the city's major redevelopment scheme and acts as a symbol for the city's current regeneration and future. Our Annual Conference 2020 will culminate in our Gala dinner which will be held at the National Marine Aquarium. It is the largest aquarium in the United Kingdom with charitable aims of research, education and conservation. [Bookings](#) open later in the year but for now please make a diary note for the dates: 26 – 28 June 2020.

Looking ahead to 2021 our Annual Conference will be held in Belfast. More details to follow.

New UKELA Patron

We are delighted to announce that founding UKELA member and convenor of the environmental law section of the Society of Legal Scholars, Professor Colin Reid, has accepted our offer of becoming a UKELA Patron. After graduating from Oxford and Cambridge, Professor Reid worked at the University of Aberdeen before moving to the University of Dundee in 1991, where he is currently Professor of Environmental Law. He has taught and written on various environmental law and public law themes, including a book published in 2016, *'The Privatisation of Biodiversity?'*, which explores the potential of new approaches to nature conservation law using mechanisms such as biodiversity offsetting, conservation covenants and payment for ecosystem services.

Professor Reid's current work includes an Economic and Social Research Council (ESRC)-funded project on who is using the public's right of access to environmental information, what information is being sought and how it is being used. He spoke at one of the first events on Brexit and the environment in November 2015. Since then he has been active in research and in speaking and writing for academic and practitioner audiences on the consequences of Brexit for environmental law, especially the devolution dimension. This has led to participation in research projects, including the Brexit & Environment Network, and in the UKELA Brexit Task Force, as well as giving evidence to committees of both the Westminster and Holyrood Parliaments and being a member of the group reporting on environmental governance in Scotland for the Scottish Government's roundtable on environment and climate change.

We are grateful to Professor Reid for his exceptional contributions to the field of environmental law and look forward to continuing our working relationship with him.

UKELA Patron stepping down

We would like to extend our thanks to Professor Paul Leinster CBE for his valuable contribution in his time as a UKELA Patron. We wish Paul well in all his future endeavours now that he is stepping down, and very much hope that he remains a friend of UKELA.

Christmas opening hours

The UKELA office will be closed from 23 – 31 December, but anything urgent will be dealt with by contacting us at: info@ukela.org. Any other matters will be attended to upon our return to the office.

News from the devolved administrations

Scotland

On 22 March 2019, the Scottish Government published '[Scottish Natural Capital: Ecosystem Service Accounts](#)' analysing data based on ten services being supplied by Scotland's natural capital. Such services include agricultural biomass, timber, oil and gas production, and renewable energy generation, amongst others. The report notes that in 2015, Scotland's natural capital was worth approximately £209 billion, totalling to 37% of the UK's overall value of natural capital. This percentage is a fall against previous apportionments of value in the context of the UK's natural capital value.

The Scottish Government are placing more value on the positive correlation between economic productivity and thriving landscapes and natural climate solutions than ever before. Efforts include reviewing forestry, planning frameworks and numerous consultations on factors such as the plastic tax, fish farming and renewable energy. As noted in a previous edition of e-law, on 5 February 2019 the Scottish Government released '[Scotland's Forestry Strategy 2019-2029](#)', following the introduction of the [Forestry and Land Management \(Scotland\) Act 2018](#). The strategy sets out a 50 year vision for forestry and related land use in Scotland and a 10 year framework to achieve this vision. The report credits the Forest Act 1919 for setting the foundation for the presence of forestry in Scotland, and notes that Scotland currently benefits from an economic contribution of £1 billion and over 25,000 jobs from its forestry, which covers an approximate 19% of Scotland's land mass. The Scottish Government have also invested an additional £11 million this year into peatland regeneration as a natural climate solution to assist in reducing flood risk and to increase water quality and the absorption of air pollution.

In June 2019, the Scottish Government passed the bill to introduce the [Planning \(Scotland\) Act 2019](#), which looks to replace the currently National Planning Framework 3 (NPF3) with National Planning Framework 4 (NPF4). Section 1 of the new Act amends the Town and Country Planning (Scotland) Act 1997 to state that the purpose of planning is to 'manage the development and use of land in the long term public interest', and that any proposed planning that will contribute to sustainable development will be included within that definition. NPF4 is expected to be released by Q3 in 2020.

Northern Ireland

On 23 December 2019 the consultation on the [Northern Ireland Environment Strategy](#) (the Environment Strategy) closes. The consultation opened on 18 September 2019 and is the first consultation of its kind to gain public insight into how Northern Ireland can strengthen its own environmental laws. The consultation recognises the importance of protecting Northern Ireland's 'natural capital' and the benefits that a healthy environment can provide in terms of mental and physical well-being. The Environment Strategy was launched in light of growing demand for a Northern Ireland to create an independent Environmental Protection Agency and with the hope that the results of the consultation will assist policy-makers in Northern Ireland to extend and tailor any new laws deriving from the Environment Bill (currently being reviewed by Westminster) to Northern Ireland. The Department of Agriculture, Environment and Rural Affairs will publish a summary of the public submissions before drafting the strategy in early 2020.

Wales

Since declaring a climate emergency in April 2019, the Welsh Government is now set to integrate carbon emissions targets into law next year to achieve a 95% reduction in greenhouse emission levels from 1990 levels by 2050. Significant challenges will face Wales in meeting this target, as they will in any nation but, especially, where natural solutions affect the extensive upland areas of Wales.

Working party news

New sustainable finance working party – are you interesting in joining an exciting new working party?

Over the last few years, we have witnessed an upsurge in green finance, with a worldwide acceptance now that Environmental, Social and Corporate Governance (ESG) criteria matter to the world of finance (and consequently to all of us, as advisors). Therefore, we believe that responsible investing, corporate social and environmental responsibility, reporting requirements, and green finance is an area of increasing value and interest to UKELA members.

With this in mind, UKELA's Council is proposing that a new sustainable finance working party (SFWP) be set up. The working party could look into increasing regulatory requirements in relation to ESG. There are many other areas of sustainable finance that may be also be relevant e.g. the UN Sustainable Development Goals. The working party could also forge and maintain links, on behalf of UKELA, with other relevant bodies (including, but not limited to UN PRI and the BVCA) as well as coordinating with existing UKELA working parties in relation to matters which cross-over amongst various working parties.

We are therefore seeking expressions of interest from members to participate actively in (including convene) this new initiative. Provided that there is sufficient interest, an initial meeting will be set up to define the terms of reference of the working party. Please send any expressions of interest or related inquiries to [Penny Latorre](#) (Working Party Co-ordinator on UKELA's Council) and/or [Paul Stookes](#) (UKELA's Working Party Advisor):

Planning and sustainable development working party – call for convenors

UKELA is looking for expressions of interest from members in the planning and sustainable development (PSD) working party, in particular from individuals who may be interested in co-convening this important working party.

Land use planning is essential to the delivery of environmental law across the United Kingdom. The working party provides a forum for members to discuss developments in national planning frameworks and how 'sustainable development' may be achieved. It also responds to relevant consultations. It remains as important as ever.

To date, the working party has been active and successful, including recent events on fracking and neighbourhood planning, however it is in need of new leadership. Meetings take place regularly, including at the UKELA Annual Conference in June. Consultation responses are coordinated with the UKELA team and with other working parties. The working party is actively supported and promoted by UKELA including assistance with administration and logistics.

If you would be interested in joining the PSD working party either as a co-convenor or simply as an active member, please contact [Paul Stookes](#) (UKELA's Working Party Advisor) and/or [Ned Westaway](#) (Working Party Co-ordinator on UKELA's Council) (email addresses below). Paul would also be happy to have an informal discussion about this (tel. 07736 911 487).

UK Noise Association presentation: 9 December 2019

Organised by the noise working party

John Stewart of the UK Noise Association will give a short presentation on possible noise problems associated with certain forms of renewable energy at 16.00 on Monday 9th December in the Francis Taylor Building, Inner Temple, London. Non-noise working party members are welcome to attend. Please contact the convenor, [Francis McManus](#), if you would like to attend.

Students news

Student publication opportunity

Interested in co-authoring a hot topic article with an environmental professional? UKELA provides an opportunity for students to publish their work in e-law, our members' journal which is circulated to over 1400 practitioners. Students are invited to email a short abstract of up to 500 words to [Sophie Tremlin](#) or [Beatrice Petrescu](#), our student advisers. If selected, the Editorial Board will endeavour to pair students with a supervising practitioner in that field. Articles can be on the e-law issue theme or on any topic related to environmental law. The themes for 2020 will be published on the UKELA website shortly.

UKELA events

Young UKELA 'the basics': plastic waste: 5 December 2019

Organised by the Young UKELA team

Our early evening seminar will look at the regulatory framework for controlling pollution from plastic waste, a highly topical theme, with speakers from Herbert Smith Freehills, Anthesis and TerraCycle. [Bookings](#) are now open.

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UKELA diary dates

UKELA London meeting: Waste crime: 12 February 2020

Organised by London meetings team

Join us to hear speakers: Anna Willetts, Senior Associate, Clyde & Co LLP; Samantha Riggs, Barrister, 25 Bedford Row and Simone Aplin, Technical Director, Anthesis Group discuss waste crime; kindly hosted by Herbert Smith Freehills. [Bookings](#) open soon.

UKELA Annual Conference: 26 – 28 June 2020

Diary date! We are delighted to be heading to Plymouth in 2020 where the city will be commemorating the 400th anniversary of the sailing of the Mayflower. [Booking](#) details coming soon!

The e-law 60 second interview



Richard Benwell is chief executive of Wildlife and Countryside Link, England's largest environmental coalition. Previously he was policy advisor to the Secretary of State at Defra, working on the Environment Bill, the Agriculture Bill and the Fisheries Bill. Before joining Defra, Richard worked in policy and advocacy at Wildlife and Wetlands Trust (WWT) and the Royal Society for protection of Birds (RSPB) and was a senior clerk in the House of Commons Commission. His PhD was about the design of carbon emissions trading systems. Richard has also been a director of Westmill Solar Cooperative, a community energy project near his home.

What is your current role?

Chief Executive of Wildlife and Countryside Link.

How did you get into environmental law?

The path from birdwatching in Birmingham to writing on environmental legislation has been a pretty straight one! First I realised I love the natural world, then I realised it was in trouble. Working with an environmentally-minded Peer and as a Commons Clerk taught me how legislation works, then RSPB and WWT gave me the ecological detail. A quick sojourn with Defra later and here I am. Simple.

What are the main challenges in your work?

There are never as many champions for nature in Parliament as we need to drive through the serious reform of environmental law needed to turn around the state of nature.

What environmental issue keeps you awake at night?

Our invisible impacts are the hardest ones to face up to: we may do relatively well at protecting our environment here in the UK, but that's not much use if we're exporting harm to other regions like the Amazon. It's surely time for us to measure our global footprint properly and set government and corporate goals for improving supply chain sustainability.

What's the biggest single thing that would make a difference to environmental protection and well-being?

Turning Her Majesty's Treasury (HMT) green. HMT's power over the law shouldn't be underestimated and, of course, they're key to polluter pays and ensuring paid tax and subsidies.

What's your UKELA working party of choice and why?

My friend William Wilson speaks highly of the Welsh group, so I'll pick them.

What's the biggest benefit to you of UKELA membership?

UKELA is the best hub of knowledge and shared purpose in the environmental law profession. It's excellent to find so many expert and committed people.

Environmental law headlines

A selection of recent environmental law news and updates prepared by the teams at [Lexis®PSL Environment](#) and [Practical Law Environment](#).

Environment Bill

[Lexis®PSL Environment](#)

The Environment Bill was published on 15 October 2019, following Queen's Speech announcements on 14 October 2019 and further to section 16 of the European Union (Withdrawal) Act 2018.

The Environment Bill (the Bill) contains details on governance including provisions relating to the Office for Environmental Protection (OEP) and environmental principles, as published in December 2018 as the Environmental (Principles and Governance) Bill, though updated in light of the pre-legislative scrutiny received. The OEP, a new watchdog body to try to fill the void left by lack of recourse to the European Courts post Brexit, will offer new enforcement mechanisms and is intended to be a way of monitoring implementation of environmental law. In addition, the governance part of the Bill provides for long term targets for improving the natural environment in certain priority areas.

Aside from the provisions on principles and governance, the Bill also includes specific provisions in areas covered in the government's 25 Year Plan. These include waste and resource efficiency (including producer responsibility, deposit return schemes, single use plastic, managing waste and waste enforcement), air quality and environmental recall, water (including water resource planning, regulation of water and sewerage undertakers, abstraction, water quality and land drainage), nature and biodiversity (including local nature recovery strategies and tree felling) and conservation covenants.

As a consequence of the General Election taking place on 12 December 2019, Parliament was dissolved on 6 November 2019, and so bills not yet made fell away. A new government formed following the General Election will have to re-introduce the Bill to Parliament if it wants to enact the provisions in the Bill, following pre-legislative scrutiny.

For more information, see: [The Environment Bill – snapshot](#).

UK antique ivory dealers' judicial challenge against Ivory Act 2018 dismissed

[Practical Law Environment](#)

The UK is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which aims to protect elephants by prohibiting trade in new ivory. African elephant numbers continue to decline significantly, mainly due to poaching. CITES allows parties to adopt stricter domestic measures. When commenced, the Ivory Act 2018 will extend the ban under CITES to prohibit trade in all elephant ivory in the UK (subject to very limited exceptions).

The EU Wildlife Trade Regulation ((EC) 338/97) implements CITES and governs the ivory trade in the EU. It distinguishes between intra-EU ivory trade and commercial export from the EU as it allows pre-1947 worked ivory items to be traded within the EU without an authorisation certificate. The EU is considering whether to impose a complete ban on trading ivory both within and to outside the EU.

In [R \(Friends of Antique Cultural Treasures Ltd\) v Secretary of State for the Environment, Food and Rural Affairs \[2019\] EWHC 2951 \(Admin\)](#), the High Court dismissed a judicial review challenge to the Ivory Act 2018 brought by UK dealers in antique worked ivory. They applied for judicial review on the basis that the Ivory Act 2018 is incompatible with EU law in introducing a total ban on all ivory when the Act is commenced.

The court concluded that:

- The UK had competence to introduce the Ivory Act 2018. Article 193 of the Treaty on the Functioning of the European Union (TFEU) stated that member states could adopt more stringent measures than those adopted by the Council under Article 192, which provided for environmental safeguards and which had led to the (less stringent) EU Wildlife Trade Regulation. The regime was of minimum, not exhaustive, harmonisation. It imposed EU-wide floors, not ceilings.
- The ivory trade ban would not be disproportionate under EU law, the Charter of Fundamental Rights of the European Union, or Protocol 1, Article 1 of the first Protocol to the European Convention on Human Rights (ECHR), which provides the right to peaceful enjoyment of possessions without arbitrary state interference.

For more information, see [Legal update, UK antique ivory dealers' judicial review challenge against Ivory Act 2018 dismissed \(High Court\)](#).

Strict interpretation of derogation from protection for Finnish wolves under Habitats Directive

[Practical Law Environment](#)

Common wolves are a protected species in Finland and critically endangered. In 2015, the Finnish wildlife agency issued derogation permits to hunt seven wolves on the basis that it would help to reduce public fear and avoid illegal poaching, which would ultimately help conserve the wolf population.

A Finnish nature conservation NGO, Luonnonsuojeluyhdistys Tapiola (Tapiola), brought actions against the Finnish wildlife agency seeking to annul the permits.

The Finnish Supreme Administrative Court applied to the Court of Justice (ECJ) for a preliminary ruling on the interpretation of the application of Article 16(1) of the Habitats Directive (92/43/EEC) in relation to the derogations relied upon.

Article 16 of the Habitats Directive allows member states to make limited derogations from the system of strict protection for European protected species in Article 12(1) where there is no satisfactory alternative and it is not detrimental to the maintenance of the population of that protected species.

On 10 October 2019, in [Luonnonsuojeluyhdistys Tapiola \[2019\] EUJECJ C-674/17](#), the ECJ upheld a strict interpretation of Article 16(1), which sets out the requirements and conditions that member states must meet to benefit from the limited derogations where there is no satisfactory alternative and it is not detrimental to the maintenance of the population of that European protected species. It highlights that clear and extensive evidence, monitoring and consideration of alternatives are required.

The court returned the case to the national (Finnish) court to ascertain whether those Article 16(1) requirements had been achieved.

For more information, see [Legal update, Strict interpretation of derogation from protection for Finnish wolves under Habitats Directive \(ECJ\)](#).

The Future Homes Standard

[Lexis®PSL Environment](#)

On 1 October 2019, the Ministry of Housing, Communities & Local Government published its [consultation](#): The Future Homes Standard: changes to Part L and Part F of the Building Regulations for new dwellings. The consultation contains proposals to amend the Building Regulations 2010 in order to improve energy efficiency standards and contribute to the government's 2050 net zero greenhouse gas emissions target.

The consultation sets out plans for the Future Homes Standard (FHS), including proposed options to increase the energy efficiency requirements for new homes in 2020. The FHS will require new build homes to be future-proofed with low carbon heating and world-leading levels of energy efficiency and will see polluting fossil fuel heating systems, such as gas boilers, banned from new homes. It is intended that the requirements will be introduced by 2025.

The consultation will run until 10 January 2020 with further consultation on work to existing buildings, overheating in new dwellings and new non-domestic buildings following soon after.

The publication of the new Part L (conservation of fuel and power), Part F (ventilation) and overheating regulations, including associated guidance and the supporting analysed consultation response document is expected by early to mid-2020. Updated Part L, Part F and overheating regulations will come into force by mid-to-late 2020.

A FHS industry task force will be established in 2021 to carry out further research and there will be a case study on homes built to 2020 standards and early adopters of FHS. The research will continue into 2023. From 2022, the Government will begin to develop an evidence base with the intention of consulting on the implementation of the FHS in 2024. Further consultation on the exact technical detail, guidance and impact assessment for the introduction of FHS will take place in the near future.

For more information on the FHS, see: [The Future Homes Standard – meeting net zero emissions](#).

Consultation on Minimum Energy Efficiency Standards (MEES)

[Lexis®PSL Environment](#)

On 15 October 2019 the Department for Business, Energy and Industrial Strategy (BEIS) published its [consultation](#) on the future trajectory of MEES for commercial properties under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. In the consultation, the Government seeks views on increasing the energy efficiency standard for commercial property from E to B, or alternatively, from E to C, by 1 April 2030. The Government is also considering whether the increase in the minimum standard should be introduced incrementally rather than by a single implementation date. The consultation closes on 7 January 2020.

For more information, see: [LNB News 16/10/2019 81](#).

Scotland legislates for net zero emissions by 2045

[Lexis®PSL Environment](#)

The [Climate Change \(Emissions Reduction Targets\) \(Scotland\) Act 2019](#) was passed on 1 November 2019 following the passage of the Climate Change (Emissions Reduction Targets) (Scotland) Bill on 26 September 2019 and in the wake of the Committee on Climate Change's advice in the report: [Net zero – the UK's contribution to stopping global warming](#).

It amends the Climate Change (Scotland) Act 2009 (CC(S)A 2009) to:

- Specify 2045 as the net zero emissions target year.
- Increase the emissions reduction target for 2020 from 42% to 56%, and set new emissions reduction targets for 2030 and 2040 (of 70% and 90% respectively).
- Make provision setting annual targets for every other year between 2020 and 2044. In addition, for reporting purposes only, it establishes new annual targets for 2018 and 2019.
- Make provision in relation to emissions accounting. In particular, new restrictions are imposed on carbon units surrendered as a result of the operation of an emissions trading scheme and carbon units purchased by the Scottish Ministers that may be credited to a net Scottish emissions account.
- Adjust the way in which international carbon reporting practice is applied for the purposes of assessing and reporting under a new [section 33](#) of the CC(S)A 2009.
- Make provision in relation to reporting and planning duties. In particular, it replaces the previous annual reporting requirements in relation to emissions with new reporting requirements. It also replaces requirements in relation to reports on

proposals and policies with a new requirement to lay before the Scottish Parliament a 'climate change plan' every five years and to also lay reports, each relevant year, assessing the progress towards implementing the proposals and policies contained in each substantive chapter of the most recent plan.

Natural capital and the environment

Scotland's Natural Capital Asset Index

Tom McKenna, economist for Scottish Natural Heritage

At a glance

- The use of Gross Domestic Product (GDP) is no longer appropriate as a proxy for general wellbeing.
- A new indicator was required to track the contribution of nature to human wellbeing.
- Scotland's environment's contribution to wellbeing is improving but is still some way off historical levels.
- The Natural Capital Asset Index (NCAI) is a useful tool but should be taken as part of a wider set of indicators.

Bobby Kennedy described GDP by saying 'it measures everything in short, except that which makes life worthwhile.' The NCAI was developed by Scottish Natural Heritage (SNH) to provide an additional measure of Scotland's performance and one that reflects a broader understanding of human wellbeing, particularly our dependence on nature.

Natural capital is our 'stock' of land, air, water and biodiversity. This stock underpins the economy by producing value for people, both directly and indirectly. Value is attached to benefits deriving from *ecosystem services* which flow from natural capital, including clean air, water, food, energy, wildlife, recreation and protection from natural hazards. These benefits, or ecosystem services, are broken into three broad categories:

- Provisioning services are extractive benefits such as food, water or timber.
- Regulating and supporting services are those processes that keep our environment in a habitable state for humans to live in and include water filtration, air purification and water retention (to reduce flooding) amongst others.
- Cultural services are benefits we derive from the environment experientially and are often intangible. These include spiritual, inspirational, religious and aesthetic values. They also include benefits from tourism and recreation.

Most of the benefits provided by nature can't be traded on traditional markets because they are non-rival (the cost of marginal production is zero) and non-excludable (they can't be excluded from use by others). In essence, this means that these benefits aren't normally accounted for in economic decision making. They aren't captured in GDP, the traditional

metric for understanding human wellbeing, despite the large, obvious and direct contribution of the environment to human wellbeing.

Since the Second World War a country's success has usually been measured by its GDP. The logic is that as a nation's citizens become better-off, they are able to meet more of their basic human needs and ultimately this improves their wellbeing. However, as nations have developed and basic needs are more commonly being met, there has been a general decoupling between GDP and wellbeing. GDP also struggles to account for benefits that can't be traded on markets – community values, social values and environmental benefits. These benefits often fall under the umbrella of *Social Capital* and *Natural Capital*. GDP also doesn't account for unpaid work, such as social care and housework.

An indicator was required to more directly track the contribution of Scotland's natural habitats to the wellbeing of Scotland's citizens. Following a first pilot developed in 2011, in 2015, SNH published the NCAI as an indicator for Scotland's National Performance Framework¹ which focused on sustainable and inclusive growth. The NCAI is a change indicator and measures changes since the year 2000. Unlike other national natural capital accounts, the NCAI does not use monetary figures.

The NCAI works on the premise that we know the type and extent of habitats in Scotland, what benefits these habitats can provide and how people value these benefits. The NCAI model also assumes that habitats in better condition are able to function better and therefore provide more and better quality benefits. Figure 1 shows the data used in the NCAI and the weighting processes that are undertaken to provide a final index.

The index combines data about the habitats in Scotland (A) and the ecosystem services these habitats would typically deliver (B). These are combined with data assessing the preferences of Scotland's citizens for different ecosystem services (C). Finally, the ability of habitats to provide benefits to people is assessed. The underlying theory is that healthy, well-functioning habitats are able to provide high quality and quantities of ecosystem services. 38 environmental quality indicators are used to assess the health and quality of these habitats and how this changes over time (D).

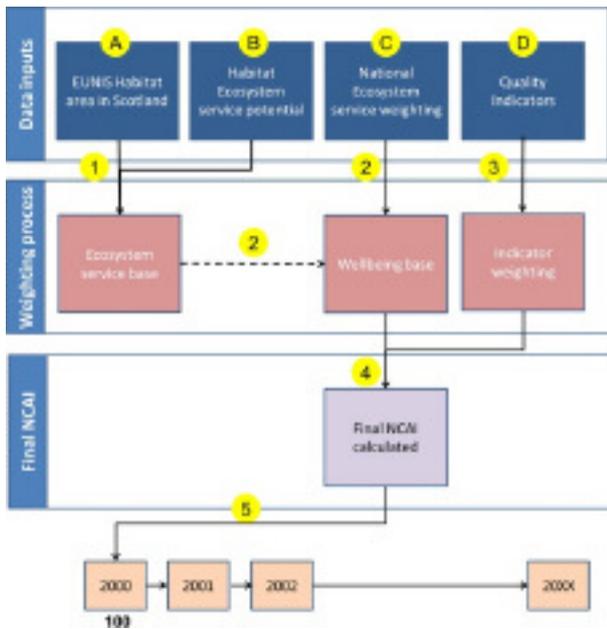


Figure 1: Flowchart of inputs and weighting processes behind the NCAI

Habitat data (Input A) uses the European Nature Information System (EUNIS). Extents are taken from the EUNIS Land Cover of Scotland maps (ELCS). Unfortunately, ELCS is not updated annually but some of these figures are adjusted using agricultural and forestry statistics.

Habitat ecosystem services potential (Input B) is based on work undertaken by Burkhard et. al. (2014),² adapted to reflect Scottish habitats. It looks at a typical Scottish habitat and assesses the potential of that habitat to provide ecosystem services on a scale of 1-5 where 5 is maximum potential and 1 represents very little potential. If no potential is present 0 is scored.

Inputs A and B are combined (Figure 1, process 1) to give an 'ecosystem service base', i.e. the maximum potential benefits that Scotland's environment can provide in a perfect state. However, we know that not all benefits derived from the environment are enjoyed equally and certain benefits, such as clean air, food and water, are likely to be more important than others, for example mechanical energy from animals or aesthetics.

National ecosystem services weighting (Input C) is used to attribute weight across ecosystem services based on how Scotland's citizens prioritise their importance. It is based on international peer reviewed studies from Finland and Australia, as well as Scotland specific data including a public questionnaire, market data and expert opinion. It was found that Scotland's citizens favoured regulating and supporting ecosystem services. Provisioning and cultural services were also found to be important.

| | Ecosystem Service 1 | Ecosystem Service 2 | Ecosystem Service 3 | Ecosystem Service 4 | Ecosystem Service n |
|-----------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Habitat 1 | 1 | 1 | 1 | 0 | 0 |
| Habitat 2 | 1 | 1 | 1 | 2 | 0 |
| Habitat 3 | 0 | 1 | 0 | 0 | 0 |
| Habitat 4 | 0 | 0 | 4 | 5 | 5 |
| Habitat n | 0 | 1 | 3 | 0 | 0 |

Figure 2: An example habitat-ecosystem service matrix

Information about ecosystem service weightings were combined with the ecosystem service base (which were calculated using inputs A and B) to create a 'wellbeing base' (Figure 1, process 2), the maximum potential contribution to human wellbeing from Scotland's habitats.

Habitats that are in better condition are able to provide higher quality and more abundant ecosystem services. Ideal indicators have full Scottish coverage, are updated annually and there is a strong correlation between the indicator and the habitat or ecosystem service it represents. However, ideal indicators are difficult to find, so some variation from these terms is allowed. All indicators have been separately assessed through a review by the James Hutton Institute. Indicators may represent a specific ecosystem service flow across several habitats, for example the upland bird index demonstrates changes across all the habitats that upland birds may rely on – for example bog, grassland and heathland. Other indicators will provide information about specific habitats: Woodland site condition monitoring is an example here.

After the indicators have been standardised by indexing to the year 2000 (Process 3, figure 1) they are combined with the 'wellbeing base' from inputs A, B and C. The final figure is then indexed against the final figure obtained in the year 2000 and shows proportional changes. Figures have now been calculated from 2000 to 2017. Habitat ecosystem service potential (Input B) and national ecosystem service weightings (Input C) values have not been altered since the NCAI was created, therefore all changes reflected by the NCAI are driven by changes in habitat type, extent and quality.

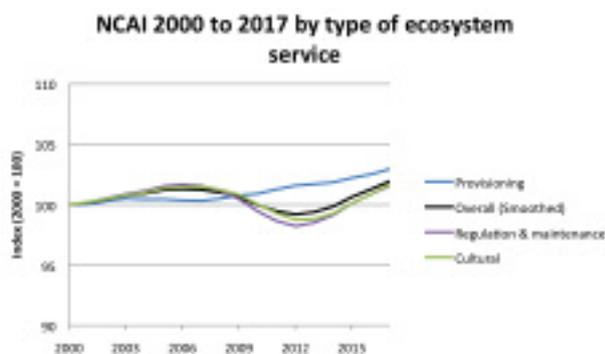


Figure 3: Results of the NCAI by ecosystem service type and overall trend between 2000 and 2017.

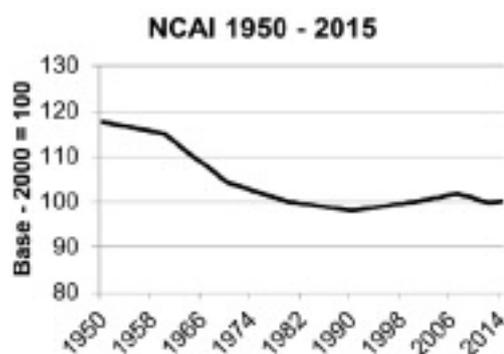


Figure 4: A backdated NCAI to the year 1950. This version uses less quality indicators at coarser temporal scales.

This data is combined through a series of weighting processes and the final output value is tracked in relation to the year 2000 benchmark. Annual changes are reflected as a percentage change relative to the 2000 value (100).

Results

Results for the NCAI are illustrated in Figure 3 below. Natural capital in Scotland is now at its highest level since 2000, despite a decline for a short period resulting in a low in 2012. Cultural and regulation and maintenance services both follow this trend. Provisioning services have increased consistently over this time period.

The NCAI can be further split down into trends across different habitat types which provides more of an indication of the state of these particular habitats. Inland surface waters (lochs, rivers and reservoirs) for example, have improved by around 9% since 2000 whereas heathland habitats and bog habitats have both decreased by around 3%, despite recent improvements. Understanding these more nuanced trends may allow a more detailed understanding about Scotland's natural environment and may even be used to highlight issues that should be addressed as a high priority.

A more rudimentary version of the NCAI was backcast to 1950 (Figure 4) and illustrates a long trend of decline in Scotland's natural habitats. It also shows that despite natural capital having improved since 2000 there is still lots of potential for improvement back to previous levels.

Further information

We are mindful of the limitations in the methodology and in the data availability for the index. In order to test whether these weaknesses would be problematic we ran a series of statistical tests to test the internal weightings, assumptions of services provided by specific habitats and the weight given to the 38 indicators used to calculate the index.

We found the NCAI to be robust, legitimate, credible and useful for policy making, meeting all four of the overarching aims of the index. Nevertheless, we'll continue to work with others to find ways to improve the index and fill gaps in the indicators where possible.

As the first index of its type in the world, the NCAI has received a lot of interest beyond Scotland, particularly from governments who want to reflect natural capital in their performance measures

A journal article with the full methodology has recently been published by Ecological Indicators as is available [online](#). The journal article adds to existing communications outputs around the NCAI – a [technical summary](#), an [update summary](#) and a visual [StoryMap](#) which are all available on SNH's website www.nature.scot. The [full model](#) is also available online.

Tom McKenna is an ecological economist and natural capital expert. He works as an economist for Scottish Natural Heritage. See also T McKenna and others, 'Scotland's Natural Capital Asset Index: Tracking Nature's Contribution To National Wellbeing' (2019) 107 Ecological Indicators.

Endnotes

- 1 'National Performance Framework' (nationalperformance.gov.scot, 2019) <<https://nationalperformance.gov.scot/>> accessed 13 November 2019.
- 2 Burkhard B and others, 'Landscapes' Capacities to Provide Ecosystem Services – A Concept For Land-Cover Based Assessments' (2009) 15 Landscape Online.

Do Defra's big bills reflect natural capital thinking?



Richard Benwell, Chief Executive of Wildlife and Countryside Link

At a glance

- 'Natural capital' is an economic term used to describe elements of the natural environment that provide benefits for people.
- It is increasingly referenced in Government policy as a way of incorporating the value of nature in decision-making.
- A fully fledged 'natural capital' approach in law is a long way away: it might include new rules for the investment, management and maintenance of environmental assets alongside more traditional regulatory approaches. These kinds of economic approaches should be used alongside more orthodox regulatory approaches that protect the intrinsic value of nature for its own sake.
- If the Environment Bill, Agriculture Bill and Fisheries Bill return to Parliament, they would need to be amended considerably to contribute to an effective natural capital approach.
- Clearer targets, more money, and better measurement of the state of nature are all preconditions for an effective natural capital approach.

The Government first promised its 25 year environment plan in 2015. That year, all three main parties proposed long-term environmental plans in their General Election manifestos.

For many of us in the environmental movement, that was a moment of real hope. Finally, the rush for economy growth at all costs could be tempered with environmental realism. When the plan came, it was full of bold words. It promised that a new natural capital lens would fix the old economic myopia of Government, finally allowing nature's needs to be valued properly.

But, that same year, look to the law and you find a very different story.

2015 was the year when the Infrastructure Act received Royal Assent. Look to Section 41 – maximising economic recovery of UK petroleum – and we find a duty on the Secretary of State to collaborate with the oil and gas industry to maximise the economic recovery of UK petroleum.

2015 was also the year when the Deregulation Act received Royal Assent. Look to Section 108 – Exercise of regulatory functions: economic growth – here you find a duty on public bodies to exercise their functions in such a way as to maximise economic output.

2015 was also the year when deregulation reached its peak. The red tape challenge had started off with a one-in-one-out rule. With little regard for the non-monetary benefits of regulations for environmental protection, the Government was obliged to find several pounds of savings for business for every £1 of cost incurred because of new regulation. This is illustrative of how much the world view of the Treasury is still shaped by old fashioned notions of growth, despite some improvements in the Green Book.

So, even as we were promised change on the one hand, the statute book was being reinforced with old ways of thinking. Since then, of course, Brexit has brought new pressures for our body of environmental law.

Although section 3 of the EU Withdrawal Act means that the body of EU regulations will be lifted across into UK law and section 2 means that the body of EU-derived regulations in UK law will be retained, the Government has now made it clear that divergence from EU law is not just a possibility, but an expectation if the Conservatives are re-elected.

There is already pressure from prospective trade partners to agree to deals that could weaken UK environmental standards, in a world of international trade where environmental arguments have proven notoriously difficult to win.

So, we have an old-fashioned statute book, we have new pressures on environmental regulation, and we have an outmoded world view in an evermore powerful Treasury.

The environmental bills of 2019: fisheries

Thanks to the campaigning efforts of the environment sector, 2019 offered the chance for change with three Defra bills in Parliament.

As it stands, the Fisheries Bill could not be further from a natural capital bill.

Fisheries are a classic case of a renewable natural capital resource. If they are managed well, then the future economic value of sustainable fisheries is essentially infinite, a resource that will keep giving, year-after-year. According to the Natural Capital Committee, the annual value of fish stocks could be increased by £1.4 billion by restoring stocks to 20th century levels.

However, if a renewable resource is pushed beyond its limits, breaching the threshold where it is able to replenish itself, then the value of the natural capital plummets. Catch too many fish and the population can no longer sustain itself. The economic value derived from nature is destroyed.

Under the EU Common Fisheries Policy, there is a legal obligation on the EU Commission to set annual 'Total Allowable Catch' in line with the economic concept of 'Maximum Sustainable Yield'. In other words, the level that balances exploitation today with the needs of the future.

In the Fisheries Bill, however, the concept of 'Maximum Sustainable Yield' is relegated to a policy statement, with no direct duty on Ministers to set catch limits in line with sustainability.

While there is a duty on the Secretary of State in clause 6 to exercise his or her functions in line with the policy statement, this is caveated with 'unless relevant considerations indicate otherwise'. Relevant considerations are not defined. So they could include, for example, short-term economic considerations, or simply that the Secretary of State has agreed to a deal with an international partner.

If the Fisheries Bill is to even resemble a natural capital bill, this enormous loophole must be closed.

If it is to live up to the rhetoric of a green bill, then it should go further and recognise that fishing to maximum sustainable yield is a very partial consideration of the natural capital systems in our oceans.

Fish stocks are complex, interdependent systems that rely on the wider health of ocean ecosystems, as well as the number of fish taken out of the sea. A Fisheries Bill in line with natural capital thinking would include obligations to restore marine ecosystems, fishing at precautionary natural thresholds rather than narrow economic or politically-motivated limits.

The Agriculture Bill

The second bill in line is the Agriculture Bill. Here, there is more promise, thanks to the prominence of the concept of public money for public goods, championed by the National Trust, the RSPB and others. The Government has promised to shift that

money to pay for public benefits like climate change mitigation, enhancement of biodiversity and flood relief. Again, there are several weaknesses.

The most glaring is that, while there is a power for Government to bring in a new environmental land management system, there is no obligation to do so. Nor is any provision made for how much money should be spent in the new environmental land management system beyond the next year or two. Economic assessments by environmental NGOs and statutory agencies suggest that the amount of money needed to restore the farmed environment is in the order of £3 billion.

That means that farmers are looking at the land they have under environmental management already, with no confidence that they will continue to be paid for their hedgerows, wildflower verges and skylark plots. Far from incentivising thousands of hectares of new green farming, we face losing what we already have.

So, to make the Agriculture Bill a natural capital bill, the power to create an environmental land management system should be amended and made a duty. This should be underpinned by a commitment to multi-year assessments of the investment needed to maintain the natural capital stocks in the farmed environment. This would require the kind of asset register and condition assessment that the Government expects for other key economic assets and bring our natural assets in line with other economic value.

On the other hand, there is one area where agricultural reform risks going too far too quickly on natural capital.

It is, of course, an important aspiration of natural capital thinking that monetary value should be assigned to natural capital assets and services to target investment and improve value for money. This should help policymakers to decide how to divide a finite pot of environmental investment between different policy goals.

However, early attempts to model where environmental subsidies should be spent using natural capital research lead to some very bad conclusions. Early models for farm spending to deliver natural capital value disproportionately favour those natural capital assets and services that are easiest to measure and value: flood risk mitigation and amenity.

Taking the natural capital modelling literally to target environmental land management payments would lead to doughnuts of tree-planting around the major conurbations, Manchester, Birmingham and London, safeguarding homes and giving people woodlands to enjoy on their doorsteps, but this risks neglecting

wildlife and habitats in the wider farmed environment, which are much harder to measure and much easier to ignore.

While natural capital valuations are helpful as a rule of thumb for identifying where to invest, taking the approach too far could lead to some very bad environmental outcomes.

The Environment Bill

A strong Environment Bill is necessary to deliver systemic change. The current proposals require strengthening across the board.

Natural capital thinking is about much more than attaching numerical values to particular assets or services. First and foremost, natural capital is about visibility. For thousands of years, mankind has treated nature as if it were an infinite resource, free and everlasting. To change things, we need to make the risks to nature apparent to people and Parliament.

So, the first big opportunity in the Environment Bill is to set the 25 year plan on a statutory footing and to require Government to publish a fulsome set of metrics to report on progress. With the theatre of annual reports in Parliament – a ‘budget’ for nature – this can give the kind of accountability needed to bring environmental considerations to the fore.

Strong accountability needs to be matched with a clear trajectory. Reporting on the state of nature should be accompanied by clear targets for how we want to change things. Legally-binding targets give a focus for better policy making and provide certainty for businesses to invest.

Clause 1 of the Environment Bill would set a framework for setting legally-binding targets, but the legal duty would be satisfied by setting just a single goal in each priority area (air, water, waste and wildlife).

At the core of natural capital thinking is the recognition of the interdependence of complex systems of natural capital assets. Applying these insights to the Environment Bill would require a duty to set sufficient, scientifically-informed targets in each area to achieve an ‘apex goal’ of turning round the state of nature for the next generation (a reasonable interpretation of the significant environmental improvement test set out in clause 6, which should be extended to the first round of target-setting).

The second aspect of the Environment Bill that must be strengthened is local planning for nature. Truly enhancing natural capital requires a decent level of understanding of complex ecosystems at the local level: what habitats, species and resources we have and what steps are required to enhance and connect them.

The Wildlife Trusts have campaigned hard for a new system of environmental spatial planning: nature recovery networks. Clause 91 of the Environment Bill introduces a new requirement for ‘nature recovery strategies’ to be in place across England. This has the potential to provide practical application of natural capital thinking at the local level, identifying environmental assets and the services they provide, and targeting investment to maintain and enhance them. But unless those plans are accompanied by clear legal hooks to the planning system and spending decisions, these will end up being dusty documents sitting worthily on a shelf somewhere.

At the moment, clause 89 simply requires local authorities to have regard to Nature Recovery Strategies in making their environmental plans. This is a very weak link between plan and policy. Instead, any new system of local environmental planning must dock carefully into the Town and Country Planning Act and into new spending and subsidy regimes like environmental land management and the growth deals, ensuring that natural capital is identified at the local level can actually hold sway in planning and spending decisions.

The wider context

It is important that we set the very local mosaic of environmental needs within the global context. 2020 is going to be a big year for our environment and with luck:

- We will set global targets for nature in the Convention on Biological Diversity.
- We will bring forward nationally determined contributions for averting dangerous climate change at COP26 in Glasgow.
- We will agree a new Global Oceans Treaty to protect 30% of our seas by 2030.

In that context, it is vital that national natural capital action does not simply offshore our environmental impact. So, when the Environment Bill is reintroduced, it should include new provisions for corporate disclosure of supply chain impacts of key commodities and goals for reducing our international environmental footprint.

With our international academic excellence in natural capital thinking, and with the vigour of our national ecological campaign movement, we are at a rare moment in time when real, systemic change is possible.

When Parliament returns, the three Defra bills should be revived and strengthened. In the future, we can genuinely make the polluter pay, measure and invest in our environmental assets, and reward people and businesses who enrich our natural world.

Dr Richard Benwell is Chief Executive of a major coalition of environmental and animal welfare charities.

The balance sheet of nature? On making monetary value of UK 'natural capital'



Sian Sullivan, Professor of Environment and Culture at Bath Spa University

- Highlights increasing use of ecological accounting methods to create 'natural capital accounts' aiming to make nature values visible as stocks of 'natural capital' and associated flows of priced 'ecosystem and/or environmental services'.
- Reviews monetary estimates for UK 'natural capital' published as a balance sheet of natural capital assets by the Office of National Statistics in 2016 and 2018.
- Asks where value comes from in these estimates, highlighting resource rents and external market dynamics as sources for calculated natural capital value.
- Expresses concern about the unvalued 'externalities' overflowing these calculated values, as well as constant 'asset life assumptions' in the face of multiple potential future sources of variability.
- Concludes that caution is called for in celebrating the environmental care potential of 'valuing nature' in natural capital accounts.

... capitalism cannot be fully attained or practiced [sic] until... we have an accurate balance sheet [that places] natural capital on the balance sheets of companies, countries, ... [and] the world.¹

A global consolidation of ecological accounting, and particularly natural capital accounting, aims to make nature values visible both as stocks of 'natural capital' and associated flows of priced 'ecosystem and/or environmental services'.² These innovations extend older 'full cost accounting' methodologies to cover social and now environmental costs conventionally considered external to financial transactions.³ Through mutually supportive discourses, institutional assemblages and calculative devices, this multiscalar movement towards natural capital accounting is creating conditions in which dimensions of 'the natural world' – or, at least, numbers considered to represent these – are further enrolled into a monetised 'balance sheet of nature'.

In this article⁴ I primarily consider the presentation of monetary estimates for UK 'natural capital' in a November 2016 'statistical bulletin' published by the UK's Office for National Statistics (ONS),⁵ to which all page numbers below refer, complemented by information in the 2018 publication of 'Ecosystem Service Accounts' from 1997-2015.⁶ These reports use accounting and valuation methods developed by the Department for Environment, Food and Rural Affairs (DEFRA), as advised by the UK's Natural Capital Committee,⁷ to highlight the value of 'environmental/ecosystem services' provided by the UK's 'natural assets'.

The resulting balance sheet constitutes a national natural capital account that highlights 'the *relative importance* of services provided by the UK's natural assets' (p.1, emphasis added). This accounting approach is set within a global context of an invigorated United Nations System of Environmental-Economic Accounting (SEEA)⁸. Bolstered by the World Bank's Wealth Accounting and Valuation of Ecosystem Services (WAVES) programme⁹ and the EU and UN's Economics of Ecosystems and Biodiversity (TEEB) programme,¹⁰ SEEA provides technical accounting methods for including national environmental assets in national accounts.

'Natural capital accounts' allow nature's values to be presented and compared as statements of assets, liabilities and capital at specific moments in time. This is framed as 'a consistent way of looking at the significance of nature [contributing non-produced forms of wealth]' which 'can help identify drivers of change' (p.4).

Towards the close of the 2016 bulletin, a balance sheet of monetary estimates for UK natural capital is presented (p.21). This balance sheet appears as a table of two columns of figures providing monetised values for the 'operating stock' of disaggregated 'natural capital asset categories' at 'year end' in 2007 (mostly) and 2014. The 2018 ONS report adds a third column of values for 'natural assets' for 2018. The table below combines these three years of natural asset accounts.

Balance sheet of UK natural assets (R = renewable, non-R = non-renewable) by category of environmental service type showing values for three years of accounts. Values calculated in £ billion at 2014 prices.

| Environmental service type | Natural Capital asset category | Opening stock, end 2007 | Opening stock, end 2014 | Asset value 2018 | Overall direction of change |
|----------------------------|---|-------------------------|-------------------------|------------------|-----------------------------|
| Provisioning: | Agricultural biomass (R) | 14.9 | 32.4 | 88.7 | ↑ |
| | Fish (R) | 7.9 | 9.1 | 11.2 | ↑ |
| | Timber (R) | 3.3 | 4.2 | 6 | ↑ |
| | Water (R) | 31.9 | 29.2 | 35.4 | ↑ |
| | Minerals (non-R) | 1.6 | 3.7 | 9.7 | ↑ |
| | Oil, gas and coal (non-R) | 190.2 | 22.6 | 140.1 | ↓ |
| | Wind energy (R) | (end 2010) 11.0 | 45.3 | 21.2 | ↓ |
| | Hydropower (R) | (end 2010) 10.2 | 9.2 | | |
| Regulating: | Carbon sequestration (R) | 51.1 | 60.7 | 103.2 | ↑ |
| | Air pollution removal (by vegetation) (R) | (end 2006) 129.0 | 114.2 | 32.7 | ↓ |
| Cultural: | Recreation (R) | 213.5 | 166.3 | 302.1 | ↑ |
| TOTAL | | 663.6 | 499.3 | 750.1 | |

In this balance sheet a series of dimensions constituting 'nature' – water, fish, wind captured in wind energy installations, carbon sequestered in trees, and so on – are represented as single figures in billions of pounds from which losses and gains in economic value between three points in time can be assessed. 'Natural assets' are thereby known in terms of arithmetical numbers, their monetised numerical values are counted, their relative importance is clarified, and their quantitative change between three temporal moments is calculated.

These calculated certainties notwithstanding, it seems important to look behind the balance sheet to see how the entered values are derived, whose values they may represent, and what they exclude and may thereby devalue.

Where does 'value' comes from?

For the majority of natural capital asset categories, the monetised values entered on this balance sheet are based on resource rents to industry owners of 'natural capital'. These resource rents are calculated as the net income to the owners of a natural capital resource after deduction of production costs, fixed capital maintenance and relevant taxes and subsidies (p.6). Natural capital values are thus computed as income to natural capital owners, i.e. to those able to accumulate surplus value from their ownership of productive 'natural capital assets'. Value is defined in terms of contribution to income under conditions of private ownership, echoing a situation in which exchange values that can be traded require circumstances of private property.¹¹ Such value is thus directed towards the maintenance of a particular system of political

economy that rewards the owners of land and natural resources as income-generating assets. In doing so, 'the forward-driving force of capital' is replenished, so as to feed 'the conditions of its own continuing'.¹²

To put this another way, the value of nature-as-natural-capital is being signalled in these accounts, but only in terms of the value of 'non-produced assets' to industry, measured ultimately in terms of 'rent' to the owners of productive natural capital assets (combined with a discounting of the future values of flows from these assets) (pp.6, 20). The new information these 'natural capital accounts' add to more conventional national accounts seems simply to be a disaggregation of the amount of income that can be attributed solely to elements of 'environmental service'-producing 'natural capital'.

In other words, the accounts in the table above demonstrate the market value of 'natural capital' to industry, not the value of nature's materiality in itself, or the non-industrialised or non-commercial values of nature held by people less directly connected with the profit-generating value of 'natural capital'. The latter point is indicated clearly for the figures reported for environmental services for recreation. The natural capital accounts for 'opening stock' values for 2007 and 2014 report a decline in value for 'recreational services' based on the monetary value of admission fees, parking and transport tickets, an observation that would suggest a decline in the relative value of these 'services' (p.18). In the same period, however, both the number of visits and the amount of time spent 'in the natural environment' reportedly *increased*, suggesting that in actuality the non-

economic value of simply being in the natural environment remained highly valued (p.19). The use here of travel-cost valuations to generate proxy values for the 'recreation services' provided by the natural environment thus misses the point regarding peoples' valuing of access to such spaces.¹³ In the 2018 accounts, the value recorded for 'recreation' is markedly higher, apparently because of the later decision to simply double the 'asset life assumption' of 'renewable services' from 50 to 100 years.¹⁴

Value derives from broader market contexts rather than materiality of natural capital stocks

Also of interest are the reasons provided in the ONS reports for changes in natural capital asset values. These reasons seem rarely to have anything to do with the 'stock levels', i.e. the materiality of the 'natural capital stocks' themselves. Changes in the value of oil and gas, for example, is explained by high volatility in broader market prices for these resources (pp.7-8).¹⁵ A 'downward trend in ecosystem service values' for public water supply early in the accounting period is explained as related to higher built capital (physical infrastructure) depreciation costs as well as industry-wide adjustments in taxes and subsidies; a later rise in value was associated with industry-wide price increases (p.11). Similarly, with regard to trees valued in terms of timber, the only source of accounted value is the market price paid for produced timber (i.e. stumpage price) (p.10).

Overall, then, the figures in this balance sheet for UK natural capital say almost nothing about the condition of the natures from which the calculated values are derived. Indeed, the figures seem strangely disconnected from the interconnected materialities of the 'stocks' themselves. They are connected instead with the broader volatility of prices on global commodity markets, changing industry costs of production (as, for example, for the service category of 'fish'), and occasionally with political pressures (as in the case of peat – classed in the accounts as a mined mineral – for which environmental concerns over extraction 'mean that no new planning permissions for peat are granted') (p.8). The causes for change in asset values summarised in the balance sheet, then, indicate the significance of broader (market) contexts that care little for the materiality of 'stocks' themselves. As such, these 'natural capital asset values' appear to provide little indication of the present and future material state of the natures thus valued.

New 'externalities', discounting the future and dynamics

The 2016 ONS report explicitly excludes more 'environmental service' categories (n=17) than it includes (n=13) in its list of calculated asset values. Excluded environmental services range from 'wild animals' to 'flood, erosion and landslide protection' to

'value placed on nature simply existing' (p.5). Currently these identified service categories are unvalued, i.e. they remain external to, UK natural capital accounts. The broader point here is that attempts to cost in, i.e. to define and 'territorialise', un-costed externalities always create new boundaries beyond which lie unvalued externalities or 'overflows'.¹⁶ This is in the nature of the partitioning, numbering and calculative technologies that accompany economisation practices. It means that new 'disvalues' are created, even as previously un-economised natures are brought into the economic fold of value via natural capital accounts.

One aspect of natures-beyond-the-human (captured as 'natural capital') which appears consistently undervalued is the dynamism of their future trajectories. As with projections of counterfactual scenarios in carbon offset additionality calculations,¹⁷ future flows of environmental services from natural capital stocks are unknowable since they are unobserved. Natural capital accounts are built on the assumption 'that the current [service] flow... is constant over the asset life', leading to a 'default assumption... that the value of the services is constant over time' (p.26). Following 'extensive review' the ONS 'ecosystem service accounts' published in 2018 doubled the 'asset life assumption' for renewable services from 50 to 100,¹⁸ contributing somewhat arbitrarily to the rise in the 2018 natural capital asset values for those assets providing renewable ecosystem service categories.

This assumption of future constancy seems to disregard multiple sources of potential variability in service flow. Ecosystems giving rise to 'environmental services' are complex and metastable: they 'can undergo rapid transitions' that may be unpredictable.¹⁹ Renewable 'environmental service categories' are not closed biotic systems, as indeed is indicated by some of the explanations for changes in category values in the above balance sheet. Air pollution removal by vegetation, for example, is explained as due to 'dry' and 'wet' day conditions (p.16), themselves associated with broader weather conditions and presumably shaped by anthropogenic climate change. This observation becomes critical if we take seriously the present context in which broader climate change may make a fiction of the assumed future constancy of 'environmental service flow'.

Natural capital fictions?

The published UK natural capital accounts considered here suggest that the 'value' of environmental service flows from natural capital assets is derived from broader economic contexts, rather than the material state and visibility of the natures constituting these assets. To return to the opening quote, they constitute a method for enrolling new nature 'externalities' into a

'balance sheet' coherent to capital(ism), but perhaps obstructive to the system change arguably required for the sustenance of future environmental health and diversity. Given deepening inequalities associated with the late capitalist era²⁰, connections at different scales between deepening societal inequality and environmental damage²¹, and empirical research demonstrating limited conservation effectiveness of monetary valuation in environmental management,²² caution is called for in celebrating the environmental care potential of 'valuing nature' in natural capital accounts.

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Endnotes

- 1 Paul Hawken, "Foreword", in Prugh, T., with Costanza, R., Cumberland, J.H., Daly, H.E., Goodland, R. and Norgaard, R.B. (eds) *Natural Capital and Human Survival*, 2nd Edition (Lewis, 1999), p. xiii.
- 2 Sian Sullivan "[Making nature investable](#): from legibility to leverageability in fabricating 'nature' as 'natural capital'" (2018) *Science and Technology Studies* 31(3): 47-76, and references therein.
- 3 See discussion in Markus J. Milne, "Downsizing Reg (me and you)! Addressing the 'real' sustainability agenda at work and home", in Gray, R.H. and Guthrie, J. (eds) *Social Accounting, Mega Accounting and Beyond: Festschrift in Honour of Martin (Reg) Matthews* (CESAR 2007); also Rob Gray and J. Bebbington (2001), *Accounting for the Environment*, 2nd Edition, Sage, London.
- 4 I have drawn here on elements of Sian Sullivan and Michael Hannis "'Mathematics maybe, but not money': on balance sheets, numbers and nature in ecological accounting" (2017) *Accounting, Auditing and Accountability Journal* 30(7): 1459-1480. Thank you to Mike Hannis for also commenting on an earlier draft.
- 5 ONS, *UK Natural Capital: Monetary Estimates, 2016*, Office of National Statistics, <https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/uknaturalcapital/monetaryestimates2016/pdf> (all websites last accessed 19 November 2019, unless otherwise stated)
- 6 ONS, *UK Natural Capital: Ecosystem Service Accounts, 1997-2015*, Office of National Statistics, <https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/uknaturalcapital/ecosystemserviceaccounts1997to2015>
- 7 <https://www.gov.uk/government/groups/natural-capital-committee>
- 8 <https://seea.un.org/>
- 9 <https://www.wavespartnership.org/>
- 10 <http://www.teebweb.org/>
- 11 S.C. Farber, R. Costanza and M.A. Wilson "Economic and ecological concepts for valuing ecosystem services" (2002) *Ecological Economics* 41(3): 375-392, 388; Colin T. Reid "Between priceless and worthless: challenges in using market mechanisms for conserving biodiversity" (2012) *Transnational Environmental Law* 2(2): 217-233.
- 12 Brian Massumi (2015) *Ontopower: War, Powers, and the State of Perception*. Duke University Press, London, 72.
- 13 To be fair, this point is discussed to some extent in ONS, 2016 op. cit. 18-19.
- 14 ONS, 2018, op. cit., 17.
- 15 Also Ibid., 8.
- 16 For fuller discussion of this point see Sarah Bracking, Aurora Fredriksen, Sian Sullivan and Philip Woodhouse, "Value(s) and valuation in development, conservation and environment", in Sarah Bracking, Aurora Fredriksen, Sian Sullivan and Philip Woodhouse (eds) *Valuing Development, Environment and Conservation: Creating Values that Matter* (Routledge, 2018).
- 17 V. Ehrenstein and Fabian Muniesa "The conditional sink: counterfactual display in the valuation of a carbon offsetting restoration project" (2013) *Valuation Studies* 1(2): 161-188.
- 18 ONS, 2018 op. cit., 17.
- 19 K.E. Limburg, R.V. O'Neill, R. Costanza and S. Farber, "Complex systems and valuation" (2002) *Ecological Economics* 41(3): 409-420, 411.
- 20 Thomas Piketty (2014) *Capital in the Twenty-First Century*. Cambridge, MA: Harvard University Press.
- 21 For example, T.G. Holland, G.D. Peterson and A. Gonzalez, "A cross-national analysis of how economic inequality predicts biodiversity loss" (2009) *Conservation Biology* 23(5): 1304-1313.
- 22 For example, J. Temel, Aled Jones, N. Jones, et al., "Limits of monetization in protecting ecosystem services" (2018) *Conservation Biology* 32: 1048-1062.

Matters in practice

In times of war the law falls silent¹

John Bates, Old Square Chambers

At a glance

- Consideration should be given in the current Environment Bill to environmental protection in times of war or natural disaster.
- Environmental principles should set out the basis on which the environment will be protected in such times.
- The role of the Office for Environmental Protection (OEP) in such circumstances should be specified.

Introduction

Imagine the Daily Express is right. One of the huge asteroids it constantly threatens its readers with actually hits. Alternatively imagine that sometime in the future we become involved in a war that directly threatens the United Kingdom with invasion. In such times Lord Pearce's observation in *Conway v Rimmer*² has force:

In theory any general legal definition of the balance between individual justice in one scale and the safety and well-being of the state in the other scale, should be unaffected by the dangerous times in which it is uttered. But in practice the flame of individual right and justice must burn more palely when it is ringed by the more dramatic light of bombed buildingsIn the debate on the Civil Contingencies Act 2004 Parliament sought to balance the necessities of dealing with emergencies – which include war³ – with human rights. Section 23(5) of the Act provides that emergency regulations may not amend the Human Rights Act 1998. However, even if, in a new Defence of the Realm Act hastily enacted after the crisis arises, that provision is not repealed, it provides little protection for the environment.

Generally, when an emergency occurs the instinct of government is repressive. As the late US Supreme Court Justice, William J Brennan, Jr said:

...each crisis has manifested the same set of problems. The sudden national fervor causes people to exaggerate the security risks posed by allowing individuals to exercise their civil liberties and to become willing "temporarily" to sacrifice liberties as part of the war effort. The peacetime jurisprudence of civil liberties leaves the nation without a tradition of, or detailed theoretical basis for, sustaining civil liberties against particularized security concerns. The nation's procedures prove too slow to resolve any issue before the time of calamity has passed....⁴

If that is the case for civil liberties it is even more likely to apply to environmental protection regimes. The current version of the Environment Bill (the Bill)⁵ provides in clause 18 (3) (a) that the proposed duty to have regard to the policy statement on environmental principles 'does not apply to policy.. relating to the armed forces, defence or national security'. In a crisis pretty much everything could relate to defence or national security. As the armed forces and national security are also excluded matters in the definition of 'environmental law'⁶ no complaint could be made in respect of any breach of such law made in the interests of national security.

To paraphrase the words of Brennan J in a crisis we may well become willing 'temporarily' to sacrifice environmental protection as part of the war effort. For example, there becomes an urgent need to manufacture more munitions. Emergency regulations, made under section 22 of the Civil Contingencies Act 2004, provide for the requisitioning of buildings.⁷ A large building is requisitioned for this purpose and work is started to convert it to a munitions factory. No environmental impact assessment is required as the Secretary of State has issued a direction to this effect.⁸ Indeed, the emergency regulations may disapply planning legislation to specified projects such as the development of armaments factories.⁹

The factory when in operation will emit substances to the air and discharge effluent to a river which flows through a nearby special protection area. It will operate 24 hours a day, seven days a week; generating considerable noise and traffic. Will environmental regulation also be disapplied to aid the war effort? The arguments for doing so would include the need to get the factory up and running as soon as possible, that the harm to the environment will only last for the duration of the crisis and can be remediated afterwards and that in any event the strongest protection for the environment is for our country to win the war. Protestors against such a move will be dismissed as unpatriotic and branded in some sections of the media as 'enemies of the people.'

Nevertheless, there is the opportunity in the Bill to take steps to minimize environmental damage as a result of war, disasters or emergencies. It is probably unrealistic to assume that the full range of environmental regulation would apply to the munitions factory in the example above. However, principles can be adopted to ensure respect for the natural environment, consideration given to the role of the OEP in such circumstances and also access to environmental information.

Principles

The International Law Commission is developing proposals on the protection of the environment in relation to armed conflicts. One of the draft principles is:

Draft principle 8.

General protection of the natural environment during armed conflict

- The natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
- Care shall be taken to protect the natural environment against widespread, long-term and severe damage.
- No part of the natural environment may be attacked, unless it has become a military objective.¹⁰

Draft principle 8.3 is probably not suitable for inclusion in the Bill. It would need a definition of 'military objective' and opinions differ on that. However, two new principles could be inserted in clause 16 (5) of the Bill:

- (f) the principle that during a war or disaster, emergency regulations made under the Civil Contingencies Act 2004 or other enactments shall protect the natural environment in accordance with applicable international environmental law.
- (g) the principle that during a war or disaster care shall be taken to protect the natural environment against widespread, long-term and severe damage and to preserve sensitive areas.

For these purposes, in the definition section, 'war' would be defined in the same way as in the Civil Contingencies Act 2004 to include armed conflict¹¹. 'Disaster' would be defined as in the Model Act for the Facilitation and Regulation of International Disaster Relief and International Recovery Assistance namely 'a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature, or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.'¹² 'Sensitive areas' would be as defined in regulation 2 (1) of the Environmental Impact Assessment Regulations 2017.¹³

There would also have to be amendments to clauses 18(3)(a) and 40(3)(b) of the Bill to state that 'Save as provided in clauses 16(5)(f) and 16(5)(g), the armed forces, defence or national security' as relevant.

The Office for Environmental Protection

The OEP would have a crucial role to play in such circumstances. Access to environmental information is likely to be limited in respect of facilities like the munitions factory. Even information about its location could cost the lives of all who work there. Thus, public registers such as those under Part 5 of the Environmental Permitting Regulations 2016¹⁴ are likely to have relevant information excluded from them. However, the Bill should provide for information excluded on grounds of national security or confidentiality to be sent to the OEP.

The munitions factory discharges effluent that discolours the river. A complaint is made to the OEP. Complaints can only be made about a 'public authority.' The public authority could be the ministry overseeing the factory or the regulator. The enforcement provisions of the Bill could apply in such a situation, the only amendment being needed is in clause 38 as a new clause 38 (8) 'The OEP may not disclose information that would adversely affect the armed forces, defence or national security.'

The factory wants to abstract water. More water is likely to be needed for agriculture as we struggle to become food sufficient. Competition for new supplies will be fierce. Under section 33A of the Water Resources Act 1991 the Secretary of State can make regulations to provide new exemptions to the abstraction licensing regime. It may be useful if the OEP has to be consulted before such regulations are made, even in times of national emergency. Similar amendments would be needed to other environmental regulatory regimes to ensure that the OEP has a role in decision making in times of crisis.

Conclusion

We tend not to think about war or disaster; even though the Daily Express constantly reminds us of their approach. However, it could happen. If disaster comes on us, suddenly much environmental protection is likely to be withdrawn in the urgency of the situation. We do have an opportunity in the Bill to reflect on the possibility and to ensure that the environment will still be protected in the light of Lord Pearce's bombed buildings.

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Endnotes

- 1 Cicero *Pro Milone* “*Silent enim lēgēs inter arma.*”
- 2 [1968] AC 910
- 3 Civil Contingencies Act 2004, s.19(1)(c)
- 4 *The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crisis*, Address to the Law School of Hebrew University, Jerusalem (Dec. 22, 1987), – <http://www.capaa.wa.gov/pdf/brennan/pdf>.
- 5 As published 15 October 2019
- 6 Draft Environment (Principles and Governance) Bill clause 40 (3) (b)
- 7 Civil Contingencies Act 2004, s. 22 (3) (b).
- 8 T&CP (Environmental Impact Assessment) Regulations 2017, reg. 63(1)
- 9 Civil Contingencies Act 2004, s. 22 (3) (j).
- 10 UN Doc A/CN.4/L.870/Rev.1 (26 July 2016)
- 11 Civil Contingencies Act 2004 s. 31(1)
- 12 <https://www.ifrc.org/docs/IDRL/MODEL%20ACT%20ENGLISH.pdf>
- 13 SI 2017/571
- 14 SI 2016/1154

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