



Response to the House of Commons Environmental Audit Committee inquiry into the future of the natural environment in the light of the EU referendum

About the UK Environmental Law Association (UKELA)

1. The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of environmental law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors. UKELA prepares advice to Government and submissions to inquiries with the help of its specialist working parties, covering a range of environmental law topics.

UKELA's work on Brexit

2. UKELA has for some years been taking an active interest in the impact on UK environmental regulation of a possible withdrawal from the EU (Brexit). Following the referendum vote to leave the EU, UKELA issued a public position statement which is available in full on our website at <https://www.ukela.org/brexit>. We have also established a Task Force on Brexit, due to meet for the first time on 13th September at King's College London.

Assisting with the next steps on Brexit

3. UKELA's position on Brexit includes a commitment to ensuring that the UK Government, devolved administrations and regulators are aware of the immense body of legal expertise within the association that may be employed to assist with

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the next steps on Brexit. The timing and policy orientation of the Committee's present inquiry has meant we have been unable to provide detailed substantive comments on the questions raised. However, we are keen to assist where we can, for example concerning more detailed legal matters such as the nature of relevant environmental obligations, the legal basis for agri-environment schemes, enforcement and sanctions.

Managing the transition to a post-Brexit future and maintaining ongoing compliance with national, international law and applicable EU law

4. Whatever form Brexit takes, the UK must ensure national and international obligations for air, water, nature and landscape are met.
5. In the present field of inquiry, relevant international obligations include the Convention on the Conservation of European Wildlife and Natural Habitats 1979 (the Bern Convention), the Convention on the Conservation of Migratory Species of Wild Animals 1979 (the Bonn Convention), the Convention on Biological Diversity 1992 (the CBD) and the European Landscape Convention 2000 (the Florence Convention).
6. Any proposals for new schemes or changes to current ones must be developed on the basis of a clear understanding of what the relevant international laws and standards are, and ways that current schemes deliver compliance.
7. The same is true about the need to ensure ongoing compliance with standards and obligations under applicable EU law. It is not yet known what form a post-Brexit relationship with the EU will take, and therefore whether any of the current EU law requirements will continue to apply. However, in developing proposals for new or adapted policies and measures there will need to be a clear understanding of the

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range of relevant EU obligations and standards that could in theory continue to apply, and ways that present initiatives and schemes deliver compliance. This includes, for example, an appreciation of the extent to which various agri-environment schemes serve as measures for achieving environmental objectives under the Water Framework Directive and obligations under the Nitrates Directive.

8. There will also need to be a clear understanding of how initiatives to support biodiversity meet the requirements of the Habitats Directive, the Bern Convention and the CBD. UKELA considers that, due to the fragmented nature of the protected areas network particularly in England and Wales, in order to ensure that sites do not further deteriorate agri-environment prescriptions must be compatible with management measures necessary to maintain and enhance wildlife interests. This will also contribute towards resilience to climate change.
9. As regards meeting the obligations of the CBD, it will be interesting to see how measures being developed to implement the Environment (Wales) Act 2016 – which take forward the CBD’s ‘ecosystem approach’ – work in practice.

Underlying principles for environmental regulation after Brexit

10. UKELA also takes the view:
 - that the level of environmental protection, and the ability of citizens to participate in environmental decisions and take action in the courts where necessary, must not be diminished by any future changes to domestic legislation following Brexit.
 - that development of a post-Brexit framework of environmental legislation presents a unique and critically important opportunity for the UK Government

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and devolved administrations to explore ways of improving and strengthening environmental regulation.

11. These principles apply irrespective of whether or not EU environmental laws continue to apply.
12. The present inquiry appears to concern 'soft' non-binding schemes and initiatives, rather than the 'hard' legislation and regulation mentioned above. However, 'soft' schemes often serve as the means of achieving 'hard', legally binding objectives. They also tend to be underpinned by 'hard' rules, for example concerning enforcement and penalties for non-compliance. Effective provision for enforcement and sanctions will be key to ensuring the effectiveness of future agri-environment schemes and initiatives to support biodiversity.

Future of the marine environment

13. It is UKELA's understanding that the present EAC inquiry concerns land-based agriculture and protection of the terrestrial environment and inland/coastal waters. There will also need to be a similar discussion concerning protection of the marine environment, including future policies and initiatives relating to fisheries, off-shore wind farms and other marine activities. Such a discussion should include consideration of the need to comply with the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (the OSPAR convention).

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