

Brexit

Implications of the UK leaving the European Union – Nature Conservation

Article by UKELA's Nature Conservation Working Party

Introduction

Members of the UKELA nature conservation working party have considered this issue for some time. However, we still do not have a clear picture of how, should the UK leave the European Union, the process would be undertaken and the time frame for such a process. The potential impacts on legislation for and affecting wildlife are considerable. Given the uncertainties, all that is possible is to list the potential issues. The following is far from complete but provides an indication of the range of issues and complexities to be addressed.

Legislation Affecting Wildlife

The key wildlife directives are the Birds Directive (79/409/EEC) (codified 2009/147/EC) and the Habitats Directive (92/43/EEC). The former is transposed by means of the Habitats Regulations and Part I Wildlife Countryside Act 1981 as amended, the Nature Conservation (Scotland) Act 2004 and the Wildlife (Northern Ireland) Order 1985 as amended. The latter is transposed by means of Habitats Regulations.

Other critical directives are the Environmental Impact Directive (2011/92/EU as amended by 2014/52/EU), the Strategic Environmental Directive (2001/42/EC) and the Environmental Information Directive (2003/4/EC) which are transposed into national legislation by means of Regulations.

Overlapping complementary directives are the Water Framework Directive (92/43/EEC), the Marine Strategy Framework Directive (2008/56/EC) and the Environmental Liability Directive (2004/35/EC).

Some Issues and Questions

a. European Sites

Most terrestrial sites have been notified as Sites of Special Scientific Interest (SSSI) (Areas of Special Scientific Interest in Northern Ireland (ASSI)) and will be afforded a measure of protection but not as robust as that provided by the precautionary principle set out in the Habitats Directive. The description of such sites as 'European' may need to be changed to a term such as 'International' but the level of protection should continue. The implications for land transfer and registration of any substantive changes need to be addressed.

b. Management Agreements

The implications for management agreements

between the statutory nature conservation bodies and the relevant owners and occupiers to secure and maintain European sites will need to be considered. The European interest features will be of national importance and therefore the agreement could be re-assigned to section 15 of the Countryside Act 1968 to protect and manage SSSIs. Such an arrangement would need to be formalised through appropriate legislation.

c. Notice and Consents

Consents with or without conditions, given by the statutory nature conservation bodies under the Regulations to owners and occupiers who have given notice to undertake operations likely to damage European interest features could be revoked or re-assigned to the underpinning SSSI/ASSI legislation where possible.

d. Special Nature Conservation Orders

Orders made by the Secretary of State to provide protection where a European site is under threat would ultimately need to be renamed, as would any measures made in association with individual orders. All relevant owners and occupiers would need to be given notice of the changes.

e. Byelaws

I am not aware of byelaws being made by means of the Regulations but if any are in force they would need to be renamed and appropriate notices etc. made to publicise changes.

f. European Marine Sites

European marine sites (SPAs and SACs) are not necessarily underpinned by national legislation provided by their declaration as Marine Nature Reserves at Lundy, Skomer and Strangford Lough and/or designation as Marine Conservation Zones (MCZs) under the Marine and Coastal Access Act 2009. However, those European sites that are not already MCZs could be designated with minimum administrative burden.

g. Protection of European Species

European protected species listed in the Schedules to the Regulations are also listed in the relevant Schedules of the Wildlife and Countryside Act 1981 as amended. In Northern Ireland and Scotland, European protected species are only listed in the Regulations. This anomaly would need to be addressed.

The protection afforded by the Wildlife and Countryside Act (Part 1) in the main mirrors the directives (intentional/reckless v deliberate). The one major difference is the strict liability offence under Article 12(1)(d) of the Habitats Directive which could be incorporated into domestic law.

Protection would be substantially weakened if there were a loss of the tests of no alternatives and action not detrimental to the maintenance of the population(s) of species at favourable conservation status (Article 16).

The power under the Regulations to issue licences for preserving public health and safety or other imperative reasons of overriding public interest including those of a social or economic nature is not available under national legislation.

h. Assessment of Plans and Projects

In the case of plans and projects where it cannot be ascertained that they would have no adverse effect on a European site, it would be important to ensure that where these have been approved that the compensation secured for the impact identified in the assessment and the relevant agreements underpinning these measures are retained.

It is important to ensure that where plans and projects have been reviewed under Regulations and amended or revoked, the reviews and consequent changes are not nullified. A large exercise was carried out by the nature conservation bodies and the then Environment Agency/SEPA to review consents.

Conclusions

We have to accept that Brexit may occur and suggest measures to minimise harm in such an event.

All domestic secondary transposing measures will remain in force unless and until specifically repealed. The need for owners' and occupiers' consent for reclassification of conditions and agreements under domestic legislation should be avoided. All the above are likely to place a considerable administrative burden on governments and their agencies, and will have practical implications as to the management and protection of natural habitats and wild fauna and flora.

To quote Donald Rumsfeld:

There are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns – the ones we don't know we don't know.

We are at the 'known unknowns' stage, gathering information and listing issues to be addressed. We

have no idea of the consequences and of the unknown unknowns. It will be a perilous and uncertain time for nature conservation in the UK.

Wyn Jones is the Convenor of UKELA's Nature Conservation Working Party. Wyn retired from the Joint Nature Conservation Committee after nearly 30 years working for the statutory nature conservation agencies, where he headed the Habitats advice team and was the lead on the implementation of the EC wildlife Directives in the UK. For more information on the Nature Conservation Working Party, visit their [website](#).