

## **Paper to the UKELA Brexit task force**

### **From the Nature conservation working party**

**11<sup>th</sup> December 2016**

## **Review of nature conservation legislation**

### **1. Introduction**

- 1.1 The Prime Minister's statement to the Conservative Conference on 2nd October 2016 included:

*"The final thing I want to say about the process of withdrawal is the most important. And that is that we will soon put before Parliament a Great Repeal Bill, which will remove from the statute book – once and for all – the European Communities Act. This historic Bill – which will be included in the next Queen's Speech – will mean that the 1972 Act, the legislation that gives direct effect to all EU law in Britain, will no longer apply from the date upon which we formally leave the European Union. And its effect will be clear. Our laws will be made not in Brussels but in Westminster. The judges interpreting those laws will sit not in Luxembourg but in courts in this country. The authority of EU law in Britain will end. As we repeal the European Communities Act, we will convert the 'acquis' – that is, the body of existing EU law – into British law. When the Great Repeal Bill is given Royal Assent, Parliament will be free – subject to international agreements and treaties with other countries and the EU on matters such as trade – to amend, repeal and improve any law it chooses. But by converting the acquis into British law, we will give businesses and workers maximum certainty as we leave the European Union. The same rules and laws will apply to them after Brexit as they did before. Any changes in the law will have to be subject to full scrutiny and proper Parliamentary debate."*

- 1.2 Secretary of State for Environment, Food and Rural Affairs, Andrea Leadsome said the following at the House of Commons Environmental Audit Committee held on 25 October 2016:

*"Our ambition is that we are the first generation to leave our environment in a better place than we found it." She went on to propose that in leaving the EU we should be better able to meet our environmental objectives. She also*

*committed that the Great Repeal Bill will bring “into UK law the entire body of EU environmental legislation”.*

- 1.3 **It is essential that there is a clear government position that existing EU nature conservation law remains fully in force throughout the period to Brexit and unless subsequently changed by Parliament will continue to remain in force and be enforced as such.**
- 1.4 UKELA looks forward to the Great Repeal Bill achieving these clear requirements to maintain precisely the EU nature conservation law which exists currently, following Brexit.
- 1.5 EU nature conservation law is understood, and can only be interpreted, by reference to past decisions of the Court of Justice of the European Union (and those of the Courts in the UK) and this existing body of case law should be retained by the Great Repeal Bill so as to ensure ongoing understanding of the transferred EU nature conservation law following Brexit (accepting that following Brexit further enforcement and interpretation of that law will be a matter for the courts of the UK).

## 2. Strategy

- 2.1 As a priority UKELA should adopt a very basic statement of the requirements for preserving the existing body of nature conservation (environmental) law following Brexit, which will hold good whatever form Brexit eventually takes; preferably encapsulated in a set of key words supported by an acronym or mnemonic. As an imperfect example:

**SAVE** the full body of EU dependent nature conservation (environmental) law which might otherwise be lost

**MAINTAIN** the law in full working order, including mechanisms by which it can be applied

**PROTECT** the law from casual erosion or repeal

**REVIEW** steadily and after full consultation

The resultant acronym **SeMPeR** (always or ever in Latin as in *semper fidelis*) reflects the temporal influences and impacts that this exercise could have for wildlife in the UK.

- 2.2 **EU law:** In respect of nature conservation law UKELA looks to secure the ongoing application of the EU law as in the form of EU Directives

and Regulations (see Appendix A). This is likely to be a minimum in order to meet the UK's international obligations under various Multilateral Environmental Agreements, including those of Bonn, Berne, Ramsar and Biodiversity conventions (see Appendix B). The underpinning national legislation is listed in Appendix C.

### 2.3 **Assisting Governments:**

- Recognising the challenges posed by the task, the UKELA nature conservation working party would welcome the opportunity of meeting Defra, Scottish, Welsh and Northern Ireland Government department legal teams in order to assist in the saving and adaptation of the EU body of law (legislation and case law).
- Following the period of saving and adaptation, the UKELA nature conservation working party is ready to assist Defra and the devolved administrations in the review and consolidation of their respective nature conservation legislation and policy.

2.4 **Working with others.** It is important that there is good communication and where possible collaboration with other groups with the same interests. Contact with CIEEM and wildlife NGOs has been made.

## 3. **Opportunities**

3.1 Government in considering the measures to save and adapt EU law to national law as a part of the Great Reform Bill ought surely to consult UKELA.

3.2 The majority of EU legislation relating to nature conservation has been driven by the need to comply with Europe's international obligations under treaties and conventions, together with a universal and global recognition of the importance of sustaining biodiversity, ecosystems, ecosystem services and natural green space. Recognising the importance of economic development, cultural and recreational expectations, nature conservation law has striven to integrate these requirements with the need to protect vulnerable species and habitats and the habitats of species, by way of such measures as: protected areas, promotion of 'links and stepping stones in the natural environment, control of the exploitation and harm to species and their habitats, and the assessment of the potential effects of plans and projects.

- 3.3 EU law provides a higher level of protection and management of habitats and species of European importance than required by domestic legislation because the compliance with EU law has rendered unnecessary the addition of these measures to legislation in the UK. Nature conservation law must necessarily respect the fact that nature does not have regard to administrative boundaries and the World has long recognised the need for international cooperation on ecology. The UK's series of Natura 2000 sites, Biosphere reserves and Ramsar sites are an essential contribution to an international and transboundary approach to nature conservation that must be sustained beyond Brexit.
- 3.4 In due course, and after careful review and full consultation, UKELA believes there is a positive opportunity to build on the work already done including:
- the Law Commission's report and draft Bill following its review of the framework for protecting and managing wildlife (species provisions only) in England and Wales (November 2015);
  - the Defra commissioned review on protected areas in England led by Professor Sir John Lawton whose report 'Making Space for Nature' was published in 2010;
  - the ecosystem driven approach as promoted by the Environment (Wales) Act 2016;
  - the JNCC report 'Protected areas now and into the future' (draft published 2015) and;
  - the proposals for a Nature and Wellbeing Bill  
<http://www.wildlifetrusts.org/naturewellbeingact>

**For each of the UK administrations and for the UK as a whole, there is an opportunity in the review to develop legislation and policies into a coherent and consolidated form that will be capable of adapting to future changes in the natural environment and reflecting the differing needs of England, Scotland, Wales and Northern respectively<sup>1</sup>.**

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<sup>1</sup> Gibraltar is a UK Overseas Territory and a physical part of Europe. Under the Treaty of Rome and the UK Act of Accession 1973 the Gibraltar OT became a part of the European Community, later to become the European Union. Gibraltar has its own Parliament and has made laws to implement European Directives. EC wildlife Directives are implemented by means of the Nature Protection Act 1991 and the following Orders:

- (i) the designation of Special Areas of Conservation (Southern Waters of Gibraltar) Order 2002; and
- (ii) the designation of Special Protection Areas Order 2011.

Thought will also need to be given to the position of the Cyprus Sovereign Base Areas.

## **Appendix A.**

### **Key EU nature conservation legislation**

Council Regulation ( EEC ) No 3907/91 of 19 December 1991 on action by the Community relating to nature conservation ( ACNAT )

Council Regulation on the protection of species of wild fauna and flora by regulating trade therein (338/97) as amended;

Council Regulation 865/06 as amended; and Council Regulation 792/12;  
Commission Recommendation No 2007/425/EC 'EU Enforcement Action Plan')

Council Regulation on invasive alien (non-native) species (1143/2014)

Council Directive on the conservation of wild birds (codified 2009/147/EC)

Council Directive on the conservation of natural habitats and of wild fauna and flora (92/43)

Council Directive on the assessment of effects of certain public and private projects on the environment (codified 2011/92/EU) as amended; and Council Directive 2014/52/EU (to be implemented by 16 May 2017)

Council Directive on the assessment of certain plans and programmes on the environment (2001/42)

Council Directive establishing a framework for Community action in the field of water policy (2000/60)

Council Directive establishing a framework for Community action in the field of marine environmental policy (2008/56)

Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment

Council Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage

Council Directives. 2003/4/EC (public access to environmental information) and 2003/35/EC (public participation) Aarhus Convention

Council Directive 92/65/EEC (Balai Directive – importing / exporting live animals – highly relevant to zoos)

Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos

Council Directive 2008/61/EC of 17 June 2008 establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections (Codified version)

Council Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

Council Regulation 812/2004 on measures concerning the incidental catches of cetaceans

## **Appendix B**

### **Applicable international law (Multilateral Environmental Agreements)**

Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention; Wetlands Convention) 1971.

Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) 1972

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; Washington Convention) 1973

Convention on the Conservation of European Wildlife and Natural Habitats 1979(Bern Convention).

Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) 1979

Including agreements under the Bonn Convention to which the UK is a signatory:

Agreement on the Conservation of Populations of European Bats (EUROBATS) 1991;

Agreement on the Conservation of Small Cetaceans of the Baltic, North-East Atlantic, Irish and North Seas (ASCOBANS) 1992

Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA) 1995

Agreement on the Conservation of Albatrosses and Petrels (ACAP) 2001.

The Convention on Biological Diversity (CBD) (Biodiversity Convention; CBD) 1992

Convention for the Protection of the North East Atlantic (OSPAR) 1992

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)1998

## **Appendix C**

### **Key UK legislation, including any divergence across Devolved Administrations**

#### **UK**

Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001

Merchant Shipping (Ship to Ship Transfers) Regulations 2010

Marine and Coastal Access Act 2009 Fisheries Act 1981 (ban on the hunting of cetaceans)

#### **England and Wales**

Wildlife and Countryside Act 1981 as amended supplemented by provisions in the Countryside and Rights of Way Act 2000, and amended by Infrastructure Act 2015

Natural Environment and Rural Communities Act 2006 (England and Wales)

Conservation of Habitats and Species Regulations 2010

The Environmental Impact Assessment (Agriculture) (England) (No2) Regulations 2006

Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007

Environmental Damage (Prevention and Remediation) (England) Regulations 2015

Endangered Species (Import and Export) Act 1976

Control of Trade in Endangered Species (Enforcement) Regulations 1997

Conservation of Seals Act 1970

Badgers Act 1973

#### **Wales**

The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007+

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

## **Scotland**

Nature Conservation (Scotland) Act 2004.

Conservation (Natural Habitats & c.) Regulations 1994\*

Conservation of Habitats and Species Regulations 2010\*

\*Transposition of the Habitats Directive in Scotland is by means of a combination of both Regulations

Environmental Liability (Scotland) Regulations 2009

Endangered Species (Import and Export) Act 1976

Control of Trade in Endangered Species (Enforcement) Regulations 1997

Marine (Scotland) Act 2010

## **Northern Ireland**

Wildlife (Northern Ireland) Order 1985 as amended

Nature Conservation and Amenity Lands (Northern Ireland) Order 1995

Environment (Northern Ireland) Order 2002

Conservation (Natural Habitats & c.) Regulations (Northern Ireland) 1985 as amended

Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007

+ Contain provisions implementing Article 6 of the Habitats Directive

Endangered Species (Import and Export) Act 1976

Control of Trade in Endangered Species (Enforcement) Regulations 1997

Marine (Northern Ireland) Act 2013