
The Implications of Brexit for Planning Law and Policy

Habitats and protected species

Hannah Gibbs

North Norfolk Coast (Blakeney Point):
an example of successful and intense habitat conservation





A brief overview of habitats law at present

- In UK and European legislation, habitat conservation primarily achieved through designation of sites which are considered to **merit special consideration or protection**.
- UK is signatory to a number of European and international instruments relating to conservation of habitats (such as Bern Convention, Bonn Convention)
- UK as EU member state (for now....) is bound by obligations under [Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora](#), known as the Habitats Directive. Was adopted in 1992.
- Obligations regarding wild birds under [Directive 2009/147/EC](#) (Birds Directive)
- Also provides protection through domestic law - in particular The [Conservation of Habitats and Species Regulations 2017](#) - transpose Habitats Directive (NB 2017 regs came into force end of last year).



The Habitats Directive

The provisions of the Habitats Directive require Member States to introduce a range of measures, including:

- Maintain or restore European protected habitats and species listed in the Annexes at a [favourable conservation status](#) as defined in Articles 1 and 2;
- Contribute to a coherent European ecological network of protected sites by designating [Special Areas of Conservation](#) (SACs) for habitats listed on Annex I and for species listed on Annex II. These measures are also to be applied to [Special Protection Areas](#) (SPAs) classified under Article 4 of the Birds Directive. Together [SACs](#) and [SPAs](#) make up the Natura 2000 network (Article 3);



The Habitats Directive Cont.

- Ensure conservation measures are in place to appropriately manage SACs and ensure appropriate assessment of plans and projects likely to have a significant effect on the integrity of an SAC. Projects may still be permitted if there are no alternatives, and there are imperative reasons of overriding public interest. In such cases compensatory measures are necessary to ensure the overall coherence of the Natura 2000 network (Article 6);
- Member States shall also endeavour to encourage the management of features of the landscape that support the Natura 2000 network (Articles 3 and 10);
- Undertake surveillance of habitats and species (Article 11),
- Ensure strict protection of species listed on Annex IV (Article 12 for animals and Article 13 for plants).
- [Report](#) on the implementation of the Directive every six years (Article 17), including assessment of the conservation status of species and habitats listed in the Annexes to the Directive.

The new regulations and Brexit – The Conservation of Habitats and Species Regulations 2017



- Came into force on **30 November 2017**
- What do they tell us about domestic protection of habitats post Brexit?
- Explanatory memorandum:
 - *“It should be noted that there have been two reviews of the implementation of the Habitats Regulations 2010 which have concluded that they remain fit for purpose. This included a fitness check of the Nature Directives conducted by the EU and in June 2017 the EU launched an Action Plan to address the shortcomings in implementation .A further review of the Regulations would be a complex and time consuming exercise which could only be undertaken when resources are available and would be best considered following our exit from the European Union.”*

The new regulations and Brexit – The Conservation of Habitats and Species Regulations 2017



- Again, explanatory memorandum suggests that the 2017 regs will stay in place for some time post Brexit:
 - *“They are likely to remain in place for some time after the UK exits the EU, and the power to consolidate them will no longer be available once we exit. In the light of this, we think it’s the right time to consolidate the Regulations, aiding usability and clarity.”*

Statements from Government: “Green Brexit”



- Government’s 25 year plan for the environment announced in early 2018
- 25 year goals:

“By adopting this Plan we will achieve:

1. *Clean air.*
2. *Clean and plentiful water.*
3. *Thriving plants and wildlife.*
4. *A reduced risk of harm from environmental hazards such as flooding and drought.*
5. *Using resources from nature more sustainably and efficiently.*
6. *Enhanced beauty, heritage and engagement with the natural environment.*

In addition, we will manage pressures on the environment by:

7. *Mitigating and adapting to climate change.*
8. *Minimising waste.*
9. *Managing exposure to chemicals.*
10. *Enhancing biosecurity.”*



Statements from Government: “Green Brexit”

- Further, Michael Gove, Secretary of State for Environment, Food and Rural Affairs, Article in Politico, February 2018:
 - *“We believe there is a better way. If Brexit is our chance to take back control of our laws and our money, **Green Brexit is our chance to give the environment a voice in this time of national renewal.** Once the U.K. regains control over environmental policy we will draw upon our record of conservation, home and abroad, to take full advantage.*
 - *Future financial support for farming will see public money paying for public goods, incentivizing more sustainable land use and the creation of new wildlife habitats. We will support farmers to plant more wildflowers and trees, restore habitats for endangered species and improve soil fertility. As an island nation, we will develop a fishing policy that ensures the seas teem with life, tackles the scandal of marine pollution and extends protected areas to preserve our precious maritime heritage.”*

Statements from Government: whole body of environmental law to continue to have effect



- *“The first step is to make **sure the whole body of existing European environmental law continues to have effect in U.K. law.** Thanks to our EU (Withdrawal) Bill, stringent targets and standards will continue to be in place from Day One.”*
- *“We also want to ensure that environmental principles continue to be set out in a single place — at present, this is in the EU treaties — after we leave. The principles cover issues such as sustainable development, for example, and the important “polluter pays” understanding which holds that those responsible for damage must pay to put it right. **We will be consulting on a new policy statement setting out the environmental principles which will guide us.**”*

Statements from Government: a new regulator



- “That consultation will also cover the key areas of governance and accountability. It’s important to us and to future generations that environmental oversight is strong. Currently the role is played, albeit imperfectly, by European institutions and we will look to replace it. For while the U.K. enjoys vibrant democracies and robust laws, it is still the case that nature lacks a voice: it cannot sign petitions or lobby MPs. **Our response is to consult on setting up a new, world-leading, independent statutory body to hold the government to account on the environment.** We envisage that the new body will speak up and take action when the environment is under threat.”*
- “Throughout, we will work closely with the devolved administrations of Scotland, Wales and Northern Ireland on our respective environmental policies as we decide upon our future stewardship of the natural world.”*

It ain't over 'til it's over for the great crested newt (and other protected species) or is “Green Brexit” a myth...?



Will Green Brexit be achieved?

Risks and uncertainties



- Risk: savings provisions in the Withdrawal Bill may render large parts of EU environmental legislation ineffectual where relates to existing institutional structures and enforcement mechanisms.
 - Risk: UK courts not obliged to consider or follow European jurisprudence, leading to a divergence in standards and interpretation of legislation, even if it will all be implemented in UK law via the Withdrawal Bill, as confirmed by Michael Gove.
 - Uncertainty: how will this play out for retained elements of EU law?
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Will Green Brexit be achieved?

Risks and uncertainties



- Risk: majority of environmental legislation monitored and enforced by EU bodies. Requirements for Member States to assess, report and explain to the Commission/Council their progress in implementing the requirements of environmental law. Leading to a concern that there will be a “governance gap”.
 - Uncertainty: what will this new regulator look like and what will its powers/mechanisms of enforcement be, including against Government?. To be consulted on.
 - Uncertainty: a fragmented body of UK law given different ambitions of devolved administrations. In principle the environment is a devolved matter.
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Will Green Brexit be achieved?

Risks and uncertainties



- Finally, Brexit is a “moving target”.
- The future for current EU environmental legislation will depend heavily on the eventual arrangements made for the UK’s relationship with the EU post Brexit.
- May be the closer the trade relationship the greater the role of EU environmental law in any final agreement?
- Also uncertainty about the exact scope of any “Green Brexit” plans, including the role of a British regulator. Watch out for further statements and consultation.



Thank you for your attention.

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