

WHAT ARE THE FORTHCOMING LEGISLATIVE ISSUES OF INTEREST TO ECOLOGISTS AND CONSERVATIONISTS IN 2019?



Our ninth assessment of the forthcoming legislation that we consider is likely to have consequences for ecologists or the environment. We review issues ranging from a global scale, those in the European Union, those in the United Kingdom and constituent countries.

Our purpose is to encourage greater interest and awareness of policy changes so that readers can get involved and be aware of opportunities and challenges. There is a parallel process identifying technological, societal and biological changes that are likely to have impacts on conservation published in *Trends in Ecology and Evolution*.

At the time of writing (February 2019) it is highly uncertain how Brexit will develop, which obviously has massive implications. The need to pass Statutory Instruments (under the EU Withdrawal Act, 2018) means that environmental governance after Brexit is still unclear despite publication of the Environment Bill on 19 December 2018.

The previous legislative scans (Sutherland 2011–17) are available to download for free on the BES website. The issues described in those scans are not repeated here, even if still relevant.



ILLUSTRATIONS: FAUZAN AKBAR / NOUN PROJECT

GLOBAL

Global Pact for the Environment

Following a resolution by the UN General Assembly in 2018, discussions have started on how to address gaps in international environmental law, including codifying all international environmental law principles in one instrument, such as a Global Pact for the Environment. The original proposal for a Global Pact for the Environment recommended a legally binding international treaty, which would include: principles of international environmental law, such as the precautionary principle, non-regression and access to environmental information; and fill gaps in international environmental law. These principles are currently included in a number of legal instruments, such as political declarations (e.g. Rio Declaration) and Multilateral Environmental Agreements (e.g. Convention on Biological Diversity). International environmental law has been described as fragmented due to its large number of sector, or issue specific, legal instruments (climate, biodiversity, waste, pollution, etc.) and discrepancy in spatial scope. Drawing on the work of the UN Special Rapporteur on Human Rights and the Environment, the right to a clean and healthy environment is also discussed as one of the principles to be included in the pact.

Climate change and nature-based solutions

At the 2018 Climate Change Conference in Katowice, Parties to the UN Framework Convention on Climate Change agreed to the Paris agreement “rulebook”. The rulebook is the operating manual needed for when the Paris Agreement enters into force in 2020. It includes guidance for preparing future national climate goals. Countries need to revise their Nationally Determined Contributions to the Paris Agreement by 2020.

In the climate policy sphere, there is increasing emphasis on adaptation, along with heightened awareness of the importance of the natural environment (nature-based solutions) for both mitigation and adaptation. The proposal for declaring 2021–2030 as the UN Decade of Ecosystem Restoration is likely to reinforce that. Renewed emphasis on co-benefits from action under multiple international environmental agreements will also contribute. A key example is the recent adoption of revised guidelines for identifying and designating peatlands as Wetlands of International Importance (Ramsar sites), using their importance for climate change mitigation as an additional argument to support designation.

The next Conference of the Parties to the Climate Change Convention will take place in November 2019. The meeting will be preceded by a 2019 Climate Summit hosted by the UN Secretary General to advance climate action in six areas, including nature-based solutions and resilience.

Biodiversity post-2020

Major outcomes of the 2018 UN Biodiversity Conference in Sharm El-Sheikh included the adoption of a definition of ‘other effective area-based conservation measures’ as a new conservation designation, and agreement on the process for the development of a post-2020 global framework for biodiversity. In order to achieve ‘transformational change’ high emphasis is not only being put on coordinating efforts among global biodiversity-related processes, but also other policy processes to effectively address drivers of biodiversity loss. The chemicals and waste cluster of global environmental conventions is also in the process of developing a framework beyond 2020.

Other outcomes of the Biodiversity Conference relate to synthetic biology and digital sequence information on genetic resources. Regarding synthetic biology, the final decision calls for the application of a precautionary and risk-based approach, especially when considering the introduction of organisms containing engineered gene drives into the environment. Digital sequence information was the most contentious item due to the potential risk of undermining the Nagoya Protocol on access and benefit-sharing. To help tackle diverging views amongst Parties, a science–policy process has been established. Progress on the issue may be required for the adoption of the post-2020 global biodiversity framework.

EUROPE

European elections

The (probable) exit of the UK is an extraordinary event, however there are many other significant events taking place in 2019, which unusually come in one calendar year. The EU will elect a new European Parliament in May, which will be followed by the selection of a new European Commission and new presidents of the European Central Bank and the European Council. The outcomes will shape the direction of the EU for the next five years and beyond with significant implications for environment policy.

Brexit

There remains considerable uncertainty regarding the final outcomes of the Brexit process, with significant implications for the future trajectory of

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environmental policy ambition in the UK and EU. Assuming that an agreement is eventually passed, the European Commission will then be tasked with elaborating a set of draft negotiating directives setting out in detail the proposed EU27 position on what should be included in the future relationship. The European Council has already expressed the need for “particular vigilance...in the field of environment” based on its continued concern that the UK could seek to undercut EU environmental standards and gain an unfair trading advantage as, and when, more ambitious EU legislation is brought into force.

Multiannual Financial Framework

In May 2018 the Commission laid out its €1.14 trillion blueprint for the 2021–2027 Multiannual Financial Framework, Commission President Jean-Claude Juncker wanted a final deal before the European Parliament elections, however agreement will not be reached until autumn 2019, at the earliest. The EU’s next multiannual budget needs the agreement of all member states and the European Parliament and needs to be in place by the end of 2020.

LIFE

LIFE is the only EU subsidy programme set up for environment and nature conservation. The present period runs 2014–2020. The mid-term evaluation of the current programme confirmed its effectiveness and EU added value, but identifying some opportunities for improvements. The European Commission proposed a regulation establishing a new LIFE programme for 2021–2027, which contains two main fields of action, Environment and Climate Action, covering four sub-programmes: Nature and Biodiversity, Circular Economy and Quality of Life, Climate Change Mitigation and Adaptation and Clean Energy Transition. The Romanian Presidency aims to close negotiations on the main parts of the text by the summer.

Common Agriculture Policy

Environmentalists are concerned that replacing EU-wide rules in favour of voluntary incentives will not green the farming sector. The European Court of Auditors, the EU’s financial watchdog released an opinion on the proposals, finding that its environmental protection measures were weak and the overall plans muddled. However, for the first time, the European Parliament Environment Committee has what is known as ‘associated committee’ status with the Agriculture Committee in recognition of the significant environmental elements contained within the policy and new

proposal. The European Parliament and Council will try to reach their respective negotiating positions before the European Elections. The Parliament is struggling to gauge whether it can reach a ‘first-reading’ position at the final Plenary of this mandate in April. This uncertainty is due to the number of amendments that the Agriculture Committee has to process (c.7,500) and differences of position between political groups.

EU Biodiversity Strategy and the UN Convention on Biological Diversity

The European Commission is currently undertaking an evaluation, including public consultation, of the EU Biodiversity Strategy. The report and evaluation of the Strategy will determine whether its actions have been well-implemented and achieves of the stated biodiversity targets. A stakeholder conference will discuss preliminary evidence from the various sources of information (including the 6th National Reports to the United Nations Convention on Biological Diversity (CBD) prepared by the EU and its Member States). The 15th Conference of the Parties to the Convention on Biological Diversity is expected to adopt the follow-up to the global Strategic Plan for Biodiversity 2011–2020 in Beijing in October 2020. The findings of the evaluation of the EU’s Biodiversity Strategy will inform EU thinking on post 2020 biodiversity policy and its negotiating position for Beijing 2020.

Agriculture Bill

The Agriculture Bill is due for report stage in the House of Commons. If passed, it would provide Ministers with powers to amend legislation relating to the Common Agricultural Policy, and to set a new framework for the delivery of ‘public goods’ such, as clean water, air and biodiversity via subsidies for rural landowners, and the phasing out of ‘basic payments’ for farmers. This shift in emphasis towards subsidising the delivery of public goods rather than agricultural production, per se, is in line with the aspirations of the 25 Year Environment Plan and follows the Government’s commitment to provide the same cash total (approx. €4bn) for rural landowners.

The main body of the Bill applies to England, but extends similar powers to Welsh Ministers and the Department for Agriculture, Environment and Rural Affairs in Northern Ireland, so that they can start preparing replacement schemes. However, the Scottish Government has not currently taken up the offer of powers in the Bill as it is in disagreement with the UK Government about its overall approach to repatriating EU powers in devolved areas.

UNITED KINGDOM

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ENGLAND

Immigration and Social Security Co-ordination (EU Withdrawal) Bill

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill is due for Committee Stage in the Commons. The Bill sets out provisions with potential implications for non-UK/ Irish ecologists currently working in the UK or hoping to work in the UK. If passed, it will confirm the rights of Irish citizens but will repeal freedom of movement and other associated rights for other EU citizens. It would not, however, set out details for the future UK immigration system, which will be made by Home Office Ministers at a later date under the powers of the Immigration Act 1971. According to the Government’s ‘future skills-based immigration system white paper’, this will likely be a single, unified immigration system that applies to all non-UK/ Irish citizens, based on the current immigration rules for non-EU nationals, with many changes.

If the Withdrawal Agreement is ratified, the Government would likely repeal free movement at the end of the transition period. The Bill would make no changes to the proposed settled status scheme, which the Government has said will be available to EU citizens living in the UK prior to 29 March 2019 in the event of a no-deal scenario. UK nationals who have exercised free movement rights and are residing in their host state prior to the end of the transition period will have the right to remain under the same conditions set out under EU law and the Free Movement Directive, regardless of whether they have acquired permanent residence. It is, however, unclear if this will hold in the event of no-deal.

Trade Bill

The Trade Bill is due for Report Stage in the House of Lords. Through the bill, the government hopes to copy the terms of trade between the EU and third countries and enter into new deals with these third countries on the exact same terms. One of the aims of the bill is to enable the government to amend domestic legislation to facilitate the implementation of such ‘rolled-over’ trade deals. However, the current draft would allow this to happen without Parliamentary and public scrutiny. This is a concern for many, who would like the Trade Bill to reflect the ambition in the 25 Year Environment Plan to “leave a lighter footprint on the global environment by enhancing sustainability and supporting zero deforestation supply chains.” As such, there have been calls for amendments that would require sustainability assessments of trade deals, and limit Ministers powers to create or amend trade deals without Parliamentary scrutiny.

The Draft Environment (Principles & Governance) Bill

The Draft Bill was published in 2018 with the full Bill due soon. The published clauses are limited to those required under the EU (Withdrawal) Act 2018, covering the nine environmental principles that will be set out in a policy statement, putting the requirement for an Environmental Improvement Plan (i.e. the 25 Year Environment Plan) on a statutory footing and the arrangements for a new governance body: the Office for Environmental Protection.

The papers make clear the intention to introduce further measures on policy areas broadly parallel to the 25 Year Environment Plan goals including air quality, restoring and enhancing nature, waste management and water.

The Office for Environmental Protection

Plans for a new body, the proposed Office for Environmental Protection, are being developed to replace the European environmental sanction on the UK Government. It is likely to be a Non-Departmental Public Body within Defra, although the extent of its independence is contentious. Current proposals include continuing certain environmental principles, such as the precautionary principle and polluter pays, and ensuring the body’s ability to take effective enforcement action. The underlying principle of non-regression of EU environmental standards is the subject of scrutiny.

The 25 Year Environment Plan

A Green Future: our 25 year plan to improve the environment was published by the Government in 2018. It has been welcomed as ambitious, though there remains caution awaiting details. The main new nature conservation mechanisms are the New Environmental Land Management Scheme (see below), the Nature Recovery Network and Net Gain. Defra has issued a consultation on Net Gain and its potential to help protect the environment through an improved planning system. It is proposed that there is comprehensive mandatory net gain, operated through the mitigation hierarchy that exempts statutory sites and irreplaceable habitats. There is likely to be a metric to consistently measure biodiversity net gain. The principle may be extended to cover other ecosystem services through wider environmental net gain.

Future Farming and the Stacey Review

The New Environmental Land Management Scheme is set to start in 2021 when the Basic Payment Scheme will begin to be reduced with options being

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researched. Last year Defra published the Dame Glenys Stacey Review of regulation within the farming sector, recommending a more supportive, flexible and incentives-led approach to farming regulation. A consultation is expected.

Environmental Regulation

Progress includes: amending the Special Area of Conservation designation process to remove the European Commission's role in confirming site selection; moving the step of seeking the European Commission's opinion on the Imperative Reasons for Overriding Public Interest test to the Joint Nature Conservation Committee; retaining reporting obligations set out in the Directive; creating powers to amend the Annexes and the schedules in the Regulations in light of new evidence; and re-setting the definition of an EU network of protected sites to a UK-level alternative. The terms European Protected Species, Special Protection Area and Special Area for Conservation remain unchanged.

Marine Fisheries

The Fisheries Bill recently received its second reading. A series of evidence projects will be used to inform sustainable fisheries management decisions once we have left the EU. The Secretary of State has pledged the UK will set the gold standard in terms of sustainability. Draft principles considered include adopting an ecosystem approach to fishing, implemented via the Fisheries Statements set out in the Fisheries Bill. Work is also underway to examine how the power described in the Fisheries Bill to manage commercial fishing for nature conservation reasons could be used to improve the state of our marine environment. As the financial support currently provided to the industry via the European Maritime and Fisheries Fund is phased out, there is work to consider what role a replacement fund could play, emphasising the need for fishers to be rewarded for reducing environmental impact.

Landscapes Review: National Parks and Areas of Outstanding Natural Beauty

There is currently a Defra review to consider whether the protections of National Parks and Areas of Outstanding Natural Beauty are still fit for purpose. The review, being led by Julian Glover, is expected to report in 2019.

SCOTLAND

The Scottish Government's annual Programme for Government 2018–19, 'Delivering for Today, Investing for Tomorrow,' reconfirmed the central position of natural capital.

The Programme reiterates the Government's position that environmental protection standards must be maintained following EU Exit. This will be supported by an Environment Strategy to co-ordinate action and guide future activity across Scotland's existing environment policies, addressing biodiversity, land use, water, air, seas, climate change, the circular economy and our connection with nature.

2020 is designated the Year of Coasts and Waters, with Scotland taking action on cotton buds, straws, microbeads and plastic packaging; this is the first part of the UK commitment to a deposit return scheme, currently being designed by Zero Waste Scotland.

Proposals to create four new Marine Protected Areas for basking shark, minke whale and Risso's dolphin, including seabed habitats, will be subject to consultation – these will be among the first sites in the world created to protect these species. Coral gardens and the leafscale gulper shark will be included in a national deep sea marine reserve by the end of 2019. A national Seabird Strategy is also being developed.

Aichi reporting

Under the CBD, Scotland along with the other countries is drafting a progress report for the 20 Aichi targets. As this work progresses, there may well be legislative implications. A Biodiversity Challenge Fund has been established to help meet key habitat and wildlife targets.

Climate Change Adaptation

During 2019, the Scottish Government will publish a new five-year Climate Change Adaptation Programme (a requirement of the Climate Change (Scotland) Act 2009), building resilience for communities, economy and natural environment.

A Bill to establish a Scottish National Investment Bank, focusing on 'patient finance' (over the next 10–15 years), will come forward in early 2019. The Bank will be operational in 2020 and will support ambitious companies and nationally important infrastructure, with a commitment for investment to build £2bn capitalisation over 10 years.

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WALES

Crofting and forestry

A croft is a small unit of land traditionally situated in the former crofting counties in the Highlands and Islands of Scotland. A crofter is normally the tenant of a croft, and pays rent to the landlord of the croft. Rent is paid for the land only as any house or structure is provided by, and owned by, the crofter. On-going work on by the Crofting Bill Group is devising new, proposed legislation, and a national development plan for crofting will be published.

The National Forestry Strategy 2019–29, published in April 2019, sets out the long-term vision and objectives for forestry and woodlands, building on the new arrangements in place for forestry in Scotland.

Local Governance review

More 'power' is being devolved to more local levels to ensure communities have more say about how public services in their area are run, and for local councils and their public sector partners to have the powers needed to grow their local economies and increase the wellbeing of their communities. The Scottish Government launched the Local Governance Review, jointly with local government, and the 'Democracy Matters' conversation with communities across Scotland is ongoing. That will give rise to proposals to be put in place, and where legislation is needed this will be taken forward through a Local Democracy Bill.

Planning has a vital role to play in shaping Scotland. A review of Scotland's National Planning Framework will develop a 'spatial vision' for Scotland until 2050, supported by a delivery programme that consolidates infrastructure investment, health and climate change objectives into a single plan.

Grouse moors and deer management

Two ministerial groups are due to report in spring 2019, and both reports may have major implications for rural environmental and wildlife management, possibly requiring further legislation. The Grouse Moor Management Group is examining the environmental impact of grouse moor management practices such as muirburn, the use of medicated grit, and mountain hare culls, and will advise the Scottish Government on the option of licensing grouse shooting businesses. The Deer Working Group will make recommendations on effective deer management that safeguards public interests and promotes the sustainable management of wild deer, covered mainly by the Deer (Scotland) Act 1996.

The Welsh Government will be launching a consultation in 2019 on environmental principles and governance post-EU exit to gain stakeholders' views on addressing governance gaps as they apply in Wales, which are different to those in other UK administrations.

Well-being of Futures Generations (Wales) Act (2015)

The Welsh Government recently published their first update to the Well-being of Wales report. All Public Services Boards are now agreeing their delivery actions for their Well-being Plans, published May 2018, and their first Annual Reports are due by December 2019.

All local and national public bodies across Wales covered by the Act were required to publish their well-being objectives and steps, showing how they will improve the social, environmental, economic and cultural well-being of Wales and contribute to the seven national well-being goals. Opportunities will occur throughout 2019 to engage with the work of the Future Generations Commissioner, who must monitor and assess the extent to which such objectives are being met and encourage more innovative approaches.

Planning (Wales) Act 2015

The Act introduced the legal basis for the preparation of a National Development Framework and Strategic Development Plans. Following the 2018 consultation on the options to set out a 20-year land use framework for Wales, and replace the current Wales Spatial Plan, the Welsh Government is now preparing the draft National Development Framework, which will set out where nationally important growth and infrastructure is needed and how the planning system can deliver it. It will provide direction for Strategic and Local Development Plans and support the determination of Developments of National Significance, sit alongside Planning Policy Wales, and will continue to provide the context for land use planning. The draft framework consultation should be held from July to September 2019.

Environment (Wales) Act 2016

In late 2018, the Welsh Government issued two important pieces of guidance on the Environment (Wales). The first, 'Essentials Guide for the sustainable management of natural resources and our Well-being,' describes how biodiversity and ecosystem resilience underpins Wales' wellbeing and delivers across all of the Well-being goals in Wales. The second, 'Guidance for Natural Resources Wales general purpose,' sets out on how Natural Resources

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Wales (NRW) should pursue the sustainable management of natural resources in the exercise of its functions. The guidance stipulates the annual reporting duties that NRW has on how the purpose has been embedded, as well as the work ongoing for the development and delivery of Area Statements.

2019 is an important year in the development of Area Statements as NRW increases efforts to engage and collaborate with other stakeholders in their preparation. NRW is establishing an independent “critical friends” group to help scrutinise the ongoing developmental process and to help advise whether it is meeting its obligations under the Act to apply the principles of SMNR. The NRW website sets out what area statements are and what information they will contain and how to engage. Public authorities in Wales will be expected to set out how they have applied their biodiversity duty under section 6 of the Environment (Wales) Act. A report on what the public authority has done to comply with the duty must be published by the end of 2019.

Marine Management

The Wales Act (2017) resulted in several changes to the management of the marine area, giving Welsh Ministers new powers in relation to nature conservation, marine licensing and enforcement in the offshore area.

The Welsh Government are expected to adopt the first Welsh National Marine Plan during 2019. The plan covers inshore and offshore marine plan areas for which Welsh Ministers are the marine planning authority. It introduces a framework to support sustainable decision-making for Welsh seas, sets out the Welsh Government vision and strategic objectives, presents general policies (economic, environmental and social), and includes sector-specific policies.

The Welsh Government works as part of a Marine Protected Area (MPA) Management Steering Group with organisations who are also managing authorities for MPAs. The first Annual Report on the 2018 MPA Network Management Framework and Action Plan for Wales should be published in June 2019.

In spring 2019 the Welsh Government will start work with stakeholders to tackle the gaps in the Welsh contribution to the wider UK waters MPA network, informed by the findings of the 2016 Welsh MPA network assessment.

The Environment (Wales) Act 2016 covers Wales’ terrestrial and marine inshore area, and as such, a Marine Area Statement is being prepared to facilitate the implementation of the Natural Resources Policy.

NORTHERN IRELAND

The Northern Ireland Assembly remains in hiatus since 9 January 2017 when The Assembly collapsed as a result of a botched green energy scheme, estimated to cost the Northern Ireland tax payer £480m. This has an immediate impact on decision making for the Northern Ireland departments responsible for delivering environmental outcomes. In October, legislation was passed at Westminster in a bid to give government officials greater legal clarity on decision-making without local ministers. It followed a major court ruling earlier in 2018 when a judge ruled that civil servants did not have the legal power to approve a waste incinerator planning application without ministerial approval.

Since the Westminster legislation, The Department for Agriculture Environment and Rural Affairs has devised a decision making process which officials must follow during ‘the period of executive formation’, which culminates in referrals to the ‘Senior Decision Making Forum’. The Senior Decision Making Forum must continue to act within statutory powers and will take into account both the previous direction of ministers and the public interest.

Agriculture

As the UK continues to negotiate with the EU, policy and legislative development domestically continues at pace. The Westminster Agriculture Bill has already begun its legislative passage and it will seek to replace the Common Agriculture Policy by incentivising farmers and land managers for the delivery of environmental public goods, such as clean water, air quality, healthy soils, habitat management and adaptation/mitigation to climate change. Clause 4 of this bill refers to Northern Ireland, which, if the NI Assembly return, allows legislators to “keep-pace” with developments elsewhere.

In October 2018, the Department conducted a ‘stakeholder engagement exercise’ focussing on productivity, resilience, environment, and supply chains, which set out some options in early 2019. There is acknowledgement however that the status quo cannot continue, and an opportunity exists to ensure the agriculture policy in Northern Ireland delivers for farmers, the rural economy and the environment.

Ammonia remains a pressing concern of both policy makers and primary producers in Northern Ireland. It is estimated that European protected habitats such as Special Areas of Conservation and Special Protected Areas and domestically designated Areas of Special Scientific Interest are over 90% above their threshold. Although the science is disputed by

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farming unions, the department has enough cause for concern to work in partnership with the industry to develop measures which will reduce emissions. It is likely that this will come in the form of voluntary measures, however a more rigorous regulatory approach has not been ruled out, and the industry would expect to see this come forward in 2019/2020.

Marine

The Fisheries Bill was introduced to the House of Commons in November 2018. Similarly to the Agriculture Bill, the Fisheries Bill is seeking powers for ‘the Northern Ireland department’ in anticipation that the NI Assembly will not have returned before the bill has passed royal ascent. Environmental NGOs have welcomed the introduction of the Fisheries Bill, “especially powers to safeguard species and habitats including Marine Protected Areas. However, omissions such as a duty on relevant public bodies to achieve fisheries objectives and catch limits set at levels to ensure sustainable fishing, risk undermining the government ambition of world leading fisheries management” (Greener UK, ‘Fisheries Bill: Greener UK evidence submitted to the EFRA committee,’ November 2018) It is expected that the Fisheries Bill will gain royal ascent in April 2019.

A marine plan has been developed for Northern Ireland, and is due to be implemented in 2020 in line with the ambitions set out in the European Union’s Marine Strategy Framework Directive. Marine spatial planning is a way of distributing human activities to achieve ecological, economic, and social objectives that usually have been specified through a political process. Full adoption of the plan however will rely on a functioning NI Assembly or a decision taken by senior civil servants in the public interest. Other marine related decisions awaiting signoff include the seaward extension of marine Special Protected Areas off the east coast of NI, with a total area of 92 thousand hectares. *

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