

Joint Links response to the Government's consultation on its Review of the Balance of Competences: Environment and Climate Change

Wildlife and Countryside Link, Wales Environment
Link and Northern Ireland Environment Link

August 2013



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Wildlife and Countryside Link, Wales Environment Link and Northern Ireland Environment Link are each a coalition of environmental voluntary organisations, united by a common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment. A list of the supporting members of each coalition is provided in the Appendix to this document. This is a Joint Links response, but it is anticipated that each of the Joint Links, as well as some of their individual members, may also provide their own separate responses. Please let us know if you would like further clarification on any of the points raised in this joint response.

Introduction

The Joint Links welcome the opportunity to respond to this Review. EU policy on the environment has been introduced gradually since 1973 to become what is perhaps now the most developed set of measures and principles in any part of the world. It has acquired global influence, reinforced by the increasing size and economic importance of the EU.

As such, EU environmental legislation and policy plays a pivotal role in protecting biodiversity and embedding sustainable practices throughout the territory of the EU and beyond. Many environmental issues are global and trans-boundary in nature, in respect of which EU action is essential to establish common standards through a shared approach.

There are also significant economic, commercial and social benefits to establishing common EU standards for environmental protection and business practice. Moreover, as a result of the *Millennium Ecosystem Assessment*¹, the *UK National Ecosystem Assessment*² and *The Economics of Ecosystems and Biodiversity*³ (TEEB), we now understand better than ever that here, and across the world, a healthy environment provides us with a vast range of essential services which underpin all activities, including the economy. These themes are considered briefly in this response and developed more fully in a report⁴ prepared by the Institute of European Environmental Policy (IEEP) for a number of NGOs as evidence for this Review. Where appropriate, we refer to relevant sections of this report.

At times, EU legislation has led to stronger environmental protection in the UK, including improvements in water quality, reductions in industrial emissions and reduced levels of waste going to landfill. However, the relationship between the UK and the EU is not one-way. The UK has, and continues to play, a central role in shaping the development and establishment of EU legislation, at times providing a leadership role on progressive EU legislation, such as the Habitats Directive, the Water Framework Directive (WFD) and a draft Directive on Marine Spatial Planning. EU and UK legislation and policy are therefore no longer distinct – separating the two now would be difficult.

¹ See <http://www.millenniumassessment.org/en/Condition.html>

² See Defra Archive:

http://archive.defra.gov.uk/environment/natural/documents/UKNEA_SynthesisReport.pdf

³ See <http://www.teebweb.org/publications/>

⁴ Institute of European Environmental Policy (IEEP). 2013. *A report on the influence of EU policies on the environment*. See <http://www.ieep.eu/publications/2013/08/does-the-eu-benefit-the-uk-environment>

Furthermore, the legally binding nature of most EU policy has been at the root of its influence in driving change, delivering conservation outcomes, and achieving common standards in a way which is not possible in other international bodies such as the European Free Trade Association (EFTA) or the Council of Europe.

The Joint Links believe that any decision to undermine the EU's role in developing and enforcing environmental law and policy, or to weaken the effect of the measures themselves, would have serious, long-term and potentially irreversible impacts on not only the UK, but the natural environment of the EU and beyond. Moreover, it is far from clear that the UK would gain any advantages by avoiding the influence of European environmental policy. In order to retain invaluable trade links, EU legislation – or something substantially similar to it – would need to be maintained in any event.

Advantages of EU law and policy

There are numerous benefits associated with developing and enforcing environmental law and policy at a European level. These include:

- the **global nature** of many environmental issues. Where Europe acts as a bloc it is often easier to lever global change than where countries act in isolation or in shifting alliances;
- the adoption of **common standards** in both environmental and economic competition terms in support of the EU's single market;
- the advantages of **sharing resources; benefits and costs** of policy initiatives between co-operating countries (clearly apparent in climate change);
- **consistency across land boundaries**, e.g. in Northern Ireland where EU legislation acts as a leveller in respect of differences in law and market values across the border;
- **economies of scale** which can be captured in some instances;
- the **trans-boundary nature** of many environmental issues and natural resources, including migratory species, air pollution and marine conservation;
- the inclusion of clear **environmental principles and provisions** in the Treaty (TFEU), which have subsequently been enforced by Member States, such as the polluter pays principle, the precautionary principle and the concept of sustainable development;
- the ability to impose **penalties** in respect of non-compliance with EU legislation (including the introduction of fines in recent years), which motivates national authorities to attend to implementation more vigorously than they would have done in relation to a purely national set of legislation (albeit still imperfectly).

In practice, the EU has also helped crystallise Member State concerns about the environment around a common sense of direction and momentum in a way no single Member State could deliver. The EU Treaty binds Member States to a common set of environmental provisions and gives priority to an agreed concept of sustainable development in a way that has no parallel beyond the EU's borders.

Influence of EU law and policy on the UK

In the 1970s and 1980s, the UK carried the reputation of being the 'Dirty Man of Europe' for its failure to protect its environment and tackle its emissions of atmospheric pollution, water pollution and hazardous waste. The UK's approach was generally pragmatic, responding to domestic political concerns, advancing incrementally and, in many cases, seeking to utilise the capacity of the environment to absorb pollution and other pressures rather than to set binding standards of the kind preferred in certain continental countries. This gave rise to

tensions between different philosophies as EU policy was hammered out, particularly in areas such as air and water pollution in which a shift in policy style and goals were required (e.g. Jordan 2002⁵, Wurzel 2005⁶). The result was, in some cases, a compromise with significant British influence on the evolution of EU policy which has continued over time and been reflected in the formulation of several measures, including the Integrated Pollution Prevention and Control (IPPC) Directive and the WFD. The latter Directive has helped to start transforming once heavily polluted UK rivers into habitats that support a wide range of freshwater fish, mammals and invertebrates, by making functioning ecosystems the criteria for success. The Thames, which was declared biologically dead fifty years ago, now supports more than 100 fish species.

The extension of EU policy into pollution control, policy on waste disposal and recycling, biodiversity, chemicals and dangerous substances, environmental impact and liability and, more recently, into climate, has had a profound effect on all Member States, including the UK. There is evidence of both changes in practice and measurable improvements in the quality of the environment in most of these areas. The IEEP report sets out evidence of these benefits.

Other areas of environmental protection have been strengthened as well. The IEEP report discusses recent measures to improve access to justice on environmental issues and the development of Environmental Impact Assessment (EIA) procedures, which at the time were in their infancy in the UK.

Economic benefits of EU law and policy

In economic terms, the creation of European standards provides a reasonably level playing field for British and other companies which need protection against low standards as a means of creating competitive advantage. There are also many industries working at a European level which are anxious to avoid the need to comply with a myriad of national legislation creating both costs and barriers to trade. EU measures have helped to stimulate innovation, for example in the car industry which has been subject to binding standards on emissions following the demise of a voluntary approach. This has helped the industry to remain competitive at a time when manufacturers in less regulated zones such as the US failed to adapt so rapidly.

The IEEP report evidences some of the employment benefits of EU legislation⁷. The report also asserts that a substantial number of further jobs could be created with more vigorous implementation of environmental legislation. In the UK, a recent study published by Friends of the Earth, found that turnover in the waste management and recycling sector could increase by €42 billion annually, creating over 400,000 new jobs if EU waste legislation was complied with fully⁸.

The UK's natural environment supports almost 750,000 full-time equivalent (FTE) jobs and £27.5 billion economic output⁹. These figures include both direct employment and indirect employment such as jobs in agriculture and forestry, in fisheries, public service jobs and jobs

⁵ Jordan, A. 2002. *The Europeanization of British Environmental Policy*. Basingstoke, Palgrave, Macmillan.

⁶ Wurzel, R. 2005. *Environmental Policy-Making in Britain, Germany and the European Union*. Manchester, Manchester University Press.

⁷ IEEP Report, s. 4.3

⁸ Friends of the Earth 2010. *More jobs less waste – Potential for job creation through higher rates of recycling in the UK and EU*. Available at: http://www.foe.co.uk/resource/reports/jobs_recycling.pdf

⁹ RSPB 2011b. *RSPB reserves and local economies*. RSPB, The Lodge, Sandy

in tourism¹⁰. Environmental policy, much of it established at the EU level, will have contributed significantly to the growth of the environmental sector.

Furthermore, according to a 2010 report for DG Environment, the full implementation and management of the Natura 2000 network can be expected to directly support 122,000 FTE jobs and to generate €3.05 billion of Gross Value Added (GVA) in those regions where Natura 2000 sites are located¹¹. The total impact at the EU level, taking into consideration indirect effects, is estimated to support 207,400 FTE jobs and to generate €5.2 billion of GVA.

Because of the potential sanctions entailed in failure to comply with EU legislation, it has been implemented more rigorously than is always achieved for purely national measures, although there are exceptions to this rule (such as the Air Quality Framework Directive). Within the UK itself, there remains some flexibility for devolved administrations to adopt their own approaches to meeting European requirements. At the same time, they are exposed to the same pressures as national administrations and this has helped to contain a tendency for some administrations, such as Northern Ireland, to fall behind other parts of the UK. The framework of European requirements provides some reassurance that certain high standards (or ambitions) will be retained even as the legislative frameworks in the four UK countries evolve independently in the context of devolution.

The IEEP report includes a number of case studies to illustrate the more specific and local impacts of EU measures. In several cases, these set out institutional changes which it seems unlikely that any future government will wish to reverse. EU objectives, procedures, reporting systems and modes of thinking are now deeply embedded in British practice and to separate them would be difficult as well as unwelcome.

Many environmental issues require progressive and sustained action over a long period of time. Some depend on relatively large investments with medium to long term paybacks, such as the construction of new power stations. The stability of EU policy can be particularly valuable in this context. Whereas it sometimes can be difficult to amend in the short term, equally it is relatively resistant to political fashion and can offer sufficiently stable conditions to consolidate environmental progress.

Since it has developed in a politicised international framework based on compromise, EU policy will not always precisely suit the conditions in the UK or elsewhere, and in some cases legislation is not well drafted or can even be ill-advised. These drawbacks should not be glossed over - but we believe that they are very substantially outweighed by the benefits of a set of EU policies which is still in the process of adapting to new conditions. Climate policy is a good example of where the UK would benefit from a more vigorous and ambitious approach at EU level and argues for such, recognising that it does not have exactly the same priority in every other Member State.

The wildlife dimension

The broad principles set out in the IEEP report as a whole apply to a considerable degree to wildlife and protection of natural resources, particularly water, as well. However, several points are worth noting:

- The UK played a significant role in the drafting of the Birds Directive, which as a result reflects the UK's approach to wildlife issues at the time. Nevertheless the UK has lagged

¹⁰ RSPB 2011a. *Natural Foundations: Conservation and local employment in the UK*. RSPB, The Lodge, Sandy

¹¹ *Ibid*

behind many other Member States in implementing the Directive, particularly in the marine environment.

- Nonetheless, both the Birds Directive and subsequently the Habitats Directive, amongst other measures, have had a significant impact on UK law and practice. Several Joint Links members have contributed case studies to the IEEP report illustrating this point in both the terrestrial and marine environments. The Natura 2000 network has been instrumental in delivering improvements in the status of several UK priority species, including the Bittern, while at the same time ensuring that economic development is delivered in a truly environmentally sustainable way. The UK's approach to the Natura 2000 network has not always supported this approach, and on several occasions, NGOs in the UK have appealed directly to the European Commission in relation to the protection of specific sites as well as in pursuit of general principles.
- The Nature Directives not only provide invaluable protection for Europe's rarest and most threatened habitats and species - they play an important role in securing vital ecosystem services benefiting human well-being. This includes providing clean water, regulating climate through carbon storage, flood prevention and recreation. In the UK, our mountains, moorlands and heathlands (which comprise 18% of the UK) hold 40% of soil carbon (5 billion tonnes) and are the source of 70% of our drinking water¹². Furthermore, a recent report published by the European Commission estimates that the economic value (i.e. the flow of ecosystem services from the terrestrial Natura 2000 network alone) is between €200 and €300 billion per year¹³.
- Any suggestion that EU rules on habitats impose disproportionate costs on business contradicts independent analysis of the economic impacts of EU legislation in the UK. The 2012 Government Review of the Habitats and Birds Directives¹⁴ found that in the vast majority of development cases major problems do not arise as a result of objections on Habitats Regulations grounds. Of the 26,500 land use consultations Natural England receives annually, less than 0.5% are objected to on Habitats Regulations grounds, and most of these are successfully dealt with at the planning stage. It is only in a relatively small number of cases that problems have arisen, leading to unwelcome delays and additional costs for developers, as well as uncertainty for local communities and the environment. These well publicised individual cases risk clouding the reputation of the Directive.
- Whilst the implementation of the Directives is far from perfect, and is often slow (as in the case of the marine environment) the nature conservation successes that have been delivered through the Natura 2000 network are the result of its binding nature - in contrast to other international agreements, including the Bern and Ramsar Conventions.
- Some EU measures protecting wildlife also have a trade dimension. Most prominent is CITES, which needs to be established at the EU level because the EU has exclusive

¹² UK National Ecosystem Assessment Technical Report (Chapter 5: Broad Habitats) available at: <http://uknea.unep-wcmc.org/LinkClick.aspx?fileticket=CZHaB2%2FJKlo%3D&tabid=82>

¹³ See "Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network" (2013) available at <http://ec.europa.eu/environment/nature/natura2000/financing/> and 'Assessing Socio-economic Benefits of Natura 2000 – a Toolkit for Practitioners' (September 2009 Edition) available at http://ec.europa.eu/environment/nature/natura2000/financing/docs/benefits_toolkit.pdf
HM Government (2012) Report of the Habitats and Wild Birds Directives Implementation Review. Department for Environment, Food & Rural Affairs. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf

competence over trade affairs. A new measure is being developed to control invasive alien species, which also needs to be set out at a European level, for similar reasons.

- Of course, there are negative aspects of the EU for wildlife in the countryside, such as the damaging aspects of the Common Agriculture Policy and Common Fisheries Policy. These must be acknowledged, although not necessarily in this response, as they are addressed in the next semester of the Competences Review. Also it must be borne in mind that EU funding channelled through agri-environment schemes, LIFE projects, etc offers benefits too, which a budget conscious government may choose to cut.

The implications of changing the relationship between the EU and the UK

If the UK decided to exit the EU, but remain part of the European Economic Area (EEA), it would continue to be bound by EU legislation included in the EEA agreement, including Framework Directives on Water, Air and Waste, the REACH Regulation and Directives on Urban Waste Water Treatment, Nitrates and Groundwater. The UK would also still have to implement all single market legislation into law (including any future laws that are agreed among EU Member States - such as a future Framework Directive on Soil, for example) - but with little or no ability to shape it. The Wild Birds, Habitats and Bathing Water Directives would no longer apply, with the attendant risk that in the absence of external pressure and auditing from EU actors (and in the current economic climate) progress made in improving the UK environment could be seriously undermined.

A total withdrawal threatens a much wider erosion of environmental policy and one which risks significant environmental damage to the UK – unless, as in the case of Switzerland, the UK were to adopt a policy of “voluntary adaptation” (whereby national legislation is aligned with EU legislation to a large degree). Such a process would require the UK to maintain present (or near present) levels of environmental protection yet risk considerable economic uncertainties. Given that many areas of environmental policy are legislatively devolved (to differing extents) to the three devolved administrations, there must be a question mark over whether this could be guaranteed in the longer term.

Conclusion

Many of the UK’s most important environmental policies – those that keep tourist destinations clean and attractive, those that maintain air and water quality, and those that provide business opportunity – come from membership of the EU, and associated EU power to act in these areas. Link believes that only through engagement and cooperation at EU level can we rise to the environmental and economic challenges that we face.

Environmental law and policy should not be misrepresented as a source of constraint on economic activity. Our members’ individual submissions and the IEEP report demonstrate that it leads to new technology and the increased sustainability of production systems and has ensured economic and commercial benefits by establishing common EU standards for companies, which operate in an increasingly pan-European market (e.g. EU standards for CO₂ emissions from vehicles. Our response and the IEEP report also evidence the multiple employment and economic benefits arising from tourism and protected areas.

Many of the issues relevant to this Review require progressive action over a long time period. Some also depend on relatively large investments with medium to long term paybacks. In such areas, policy stability has particular value. The EU can provide this in a different way to national governments since it is less subject to shorter term political perturbation and the impacts of national electoral cycles.

There is solid evidence of increases in environmental quality arising directly from a number of the EU policies in place and there are opportunities to raise standards to a higher level

within the current framework without significant changes in existing national legislation, if UK authorities wish to do this. Equally, there is room for administrations in the different countries making up the UK to pursue distinctive policies of their own within the European framework and, increasingly, they are doing so.

If the UK were to leave the EU - but wished to yield the trade benefits of remaining within the European Economic Area (EEA) - it would still be bound by numerous environmental regulations and directives, yet it would have no control over them, or any new legislation that may be imposed upon it. It is unclear how the UK Government could guarantee standards in this regard, given that many of the policy areas concerned are devolved. The Swiss experience suggests that in the event of a total withdrawal from the EU (and a bilateral agreement with it), the UK would have to retain a proportion of EU-based legislation in order to ensure that its economy retains compatibility with the EU.

Appendix

Coalition members supporting this response:

This response is supported by the following 20 members of **Wildlife and Countryside Link**:

- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- ClientEarth
- Campaign for National Parks
- Friends of the Earth
- International Fund for Animal Welfare
- The Mammal Society
- Marine Conservation Society
- National Trust
- Plantlife
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds
- Salmon & Trout Association
- Whale and Dolphin Conservation
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- Woodland Trust
- WWF – UK

This response is supported by the following 10 members of **Wales Environment Link**:

- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation Wales
- Campaign for National Parks
- Keep Wales Tidy
- Llais y Goedwig
- Plantlife
- RSPB Cymru
- Wildlife Trusts Wales
- WWF Cymru

This response is also supported by **Northern Ireland Environment Link** which has 62 member organisations.



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