

# Agenda – Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

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Lleoliad:	I gael rhagor o wybodaeth cysylltwch a:
Ystafell Bwyllgora 2 – y Senedd	Alun Davidson
Dyddiad: Dydd Llun, 31 Hydref 2016	Clerc y Pwyllgor
Amser: 13.30	0300 200 6565
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## Yr amgylchedd a'r môr

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- 1 Cyflwyniadau, ymddiheuriadau, dirprwyon a datgan buddiannau  
(13.30)
- 2 Gadael yr Undeb Ewropeaidd: y goblygiadau i Gymru – yr  
amgylchedd a'r môr  
(13.30 – 14.15) (Tudalennau 1 – 44)

Yr Athro Bob Lee, Prifysgol Birmingham  
Dr Victoria Jenkins, Prifysgol Abertawe  
Kerry Lewis, Prifysgol Aberystwyth

### Egwyl (14.15 – 14.20)

- 3 Gadael yr Undeb Ewropeaidd: y goblygiadau i Gymru – yr  
amgylchedd a'r môr  
(14.20 – 15.05)

Dr Charlotte Jennie Burns, Prifysgol Caerefrog  
Dr Richard Cowell, Prifysgol Caerdydd



**Egwyl (15.05 – 15.10)**

**4 Gadael yr Undeb Ewropeaidd: y goblygiadau i Gymru – yr amgylchedd a'r môr**

(15.10 – 16.00)

(Tudalennau 45 – 49)

Yr Athro Dickon Howell, Prifysgol Newcastle

Stephen Hull, Associated British Ports Marine Environmental Research

Yr Athro Volker Roeben, Prifysgol Abertawe

Dr Margherita Pieraccini, Prifysgol Bryste

**5 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod**

(16.00)

**6 Gadael yr Undeb Ewropeaidd: y goblygiadau i Gymru – ystyried y dystiolaeth**

(16.00 – 16.15)

**7 Gadael yr Undeb Ewropeaidd: y goblygiadau i Gymru – ystyried y flaenraglen waith**

(16.15 – 16.35)

(Tudalennau 50 – 52)

Mae cyfyngiadau ar y ddogfen hon

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon

## External Affairs and Additional Legislation Committee: Environment and Marine

31 October 2016

Evidence prepared by Dr Stephen Hull FIMarEST [shull@abpmer.co.uk](mailto:shull@abpmer.co.uk)

### Implications of Brexit for the Marine Environment

The decision by the UK to leave the EU has important implications for the future management of the UK's marine environment.

Two reports<sup>1,2</sup> from the Institute for European Environmental Policy (IEEP) explore the possible implications for UK environmental policy and regulation following Brexit. IEEP notes that the implications would vary depending on the nature of the future relationship between the UK and the EU. In particular there is a key distinction in the UK's obligations depending on whether the UK finds itself inside or outside of the Single Market, which is currently uncertain. It is also important to note that the timing of any changes is uncertain and could take a number of years to complete. For example, HM Government<sup>3</sup> suggests the process could take a decade or more to complete.

If the UK negotiates membership of the European Economic Area (EEA) and thus remains part of the Single Market (Inside Single Market option), such membership is likely to require that the UK continues to comply with the great majority of environmental legislation as set out in Annex XX to the EEA Agreement<sup>4</sup>. Two important exceptions to this would be the Bathing Waters Directive and Birds and Habitats Directives. Nor would the Common Fisheries Policy (CFP) continue to apply.

Under circumstances where there was no special bilateral agreement with the EU and no preferential access to the Single Market (Outside Single Market option), EU environmental laws would no longer apply. However, UK companies wishing to export into the EU would continue to need to comply with requirements of that market (including environmental requirements)<sup>5</sup>.

Should it be decided that the Birds and Habitats Directive provisions were to be repealed in the UK, it is possible that the designation and management of SPAs and SACs and the management of Ramsar sites overlapping with the marine environment could be maintained under the Marine & Coastal Access Act (MCAA) (and equivalent devolved administration) MPA provisions. This could also extend to the designation and management of terrestrial portions of such sites in accordance with s118(4) of MCAA.

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<sup>1</sup> [http://www.ieep.eu/assets/2000/IEEP\\_Brexit\\_2016.pdf](http://www.ieep.eu/assets/2000/IEEP_Brexit_2016.pdf)

<sup>2</sup> [http://www.ieep.eu/assets/2016/IEEP\\_2016\\_Brexit\\_-\\_Implications\\_for\\_UK\\_Environmental\\_Policy\\_and\\_Regulations.pdf](http://www.ieep.eu/assets/2016/IEEP_2016_Brexit_-_Implications_for_UK_Environmental_Policy_and_Regulations.pdf)

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/504604/Alternatives\\_to\\_membership\\_-\\_possible\\_models\\_for\\_the\\_UK\\_outside\\_the\\_EU.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf)

<sup>4</sup> <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex20.pdf>

<sup>5</sup> <http://www.abpmer.co.uk/media/1491/white-paper-brexit-implications-for-marine-environment.pdf>

## Wider Marine Context

Brexit is occurring against a backdrop of ongoing change affecting the marine environment. This includes implementing EU directives such as the Water Framework Directive, Marine Strategy Framework Directive and the reformed Common Fisheries Policy as well as implementing the marine planning and marine protected area provisions of the MCAA 2009. However, notwithstanding the plethora of EU environmental directives and the MCAA, progress in achieving the government's vision of clean, healthy, safe, productive and biologically diverse oceans and seas<sup>6</sup> is mixed. Significant progress has been made in achieving reductions in marine pollution from point source discharges but diffuse pollution still adversely affects some parts of Welsh coastal waters<sup>7</sup>. Limited progress has been made in recovering fish stocks<sup>8</sup> and there are many examples of continuing decline in marine biodiversity<sup>9</sup>.

The Natural Capital Committee's (NCC) third report<sup>10</sup> sets out recommendations to achieve the UK government's vision, expressed in the 2011 White Paper 'The Natural Choice'<sup>11</sup> to be '*the first generation to leave the natural environment in a better state than it inherited*'. In particular, the NCC's report called for a 25 year plan to enhance natural capital. The Government's response to the NCC report<sup>12</sup> accepted the need for a 25 year plan, the production of which is being led by Defra. However, while the importance of the concept of natural capital is widely recognised, it currently has little weight in marine decision-making, in large part because the specific requirements of environmental directives take precedence in decision-making processes. For example, in its first report the NCC called for greater consideration of the ecosystem approach in decision-making under the Wild Birds and Habitats Directives but this has not progressed because current (prescriptive) interpretations of those directives do not allow such consideration.

There are different perspectives on the benefits of EU environmental directives, with UK Environment Minister George Eustice MP suggesting that Brexit would free the UK from '*spirit-crushing*' green directives<sup>13</sup>. In contrast conservation bodies and environmental NGOs have regularly expressed concerns about the potential consequences of any relaxation of environmental directives, for example during the UK review of the implementation of the Birds and Habitats Directives<sup>14</sup> and the EU Fitness Check<sup>15</sup>.

Boyes & Elliott (2014)<sup>16</sup> note that there are over 200 pieces of EU legislation that have direct repercussions for marine environmental policy and management. Their paper presents a 'horrendogram' representing the relationships between national, UK, EU and international legislation

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<sup>6</sup> <https://www.gov.uk/government/news/uk-marine-policy-statement-published>

<sup>7</sup> <https://naturalresources.wales/water/quality/river-basin-management-plans-published/?lang=en>

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69632/pb13860-marine-strategy-part1-20121220.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69632/pb13860-marine-strategy-part1-20121220.pdf)

<sup>9</sup> <http://www.eea.europa.eu/soer>

<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/516725/ncc-state-natural-capital-third-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516725/ncc-state-natural-capital-third-report.pdf)

<sup>11</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228842/8082.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228842/8082.pdf)

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/462472/ncc-natural-capital-gov-response-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462472/ncc-natural-capital-gov-response-2015.pdf)

<sup>13</sup> <http://www.theguardian.com/politics/2016/may/30/brexit-spirit-crushing-green-directives-minister-george-eustice>

<sup>14</sup> [http://www.rspb.org.uk/forprofessionals/policy/planning/habitats\\_regulations.aspx](http://www.rspb.org.uk/forprofessionals/policy/planning/habitats_regulations.aspx)

<sup>15</sup>

[http://ec.europa.eu/environment/nature/legislation/fitness\\_check/docs/consultation/public%20consultation\\_FINAL.pdf](http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/public%20consultation_FINAL.pdf)

<sup>16</sup> Boyes, S.J. & Elliott, M., 2014. Marine legislation – The ultimate 'horrendogram': International law, European directives & national implementation. Volume 86, Issues 1–2, Pages 39–47.

relevant to the marine environment and notes the complexity and amount of legislation. If we were starting again, we would not start here.

## Brexit as an opportunity?

While many commentators consider that the environmental directives have served us well in driving environmental improvement, it is also clear that environmental objectives for the marine environment are not being consistently met.

Depending on the form that Brexit takes, it could provide an opportunity for fresh thinking about how the current legal and policy framework could be adapted to better support achievement of environmental objectives.

In particular, a radical option might be to place maintenance and enhancement of natural capital at the centre of any system of the marine environmental legal and policy framework to ensure that all marine environmental decision-making contributed to this objective. Such a system could work on the basis of marine developers and activities contributing to a regional fund that would then be used to deliver projects to enhance natural capital within a regional sea area. The fund could be used to deliver strategic scale projects that make a demonstrable contribution to natural capital rather than the current piecemeal approach.

Such a system would still need environmental standards (such as WFD standards) and continued monitoring of the health of our seas but the current issues associated with '*death by a thousand cuts*' could be addressed, with exciting potential to make a significant positive contribution to enhancing natural capital.

## Brexit and the marine environment

Prof. Dickon Howell 25/10/2105

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Much has been written about the impact of leaving the EU on our legislative and regulatory landscape. When considering how this may be affected, one must remain aware of the part it plays in the machinery of government, as in the main, policy drives legislation, not the other way round.

From a governmental point of view, a policy outcome is determined and then the regulatory and legislative framework is examined to see whether government has the tools required to deliver on that outcome. When the framework is lacking a new piece of legislation is required, for example the Marine Bill White Paper<sup>1</sup> set out the policy argument for the Marine and Coastal Access Act 2009, which gave Natural Resources Wales legislative powers to deliver government's marine policies.

Similarly, all EU regulations and directives have started life as an EU policy objective that the UK has negotiated and agreed at a particular point in time. These policy objectives were set out in directives that each member state has transposed into their own national regulations. Whilst it is relatively straightforward to understand where national legislation derives from the EU, this does not of itself give an indication of what is at risk.

To fully understand the impact of Brexit on marine policy, theoretically you would need to go back across every EU policy objective and not just review the legislation which derives from it, but also to reconfirm that the policy objective is still the one that we as the UK want to ascribe to. Government will need to ask itself some difficult questions such as do we want to be more or less flexible? Do we want to have more or less protection? Do we still agree with our initial negotiating position? What does this mean for the devolved administrations?

The first place to start when preparing to extricate oneself from the sizeable EU policy and legislative framework, is to undertake a review of policy outcomes. The challenge with not getting this process right is that a large amount of uncertainty could be created by not being clear on policy before starting to review and update the legislation. This lack of clarity could come about due to the need to be secretive around exit negotiations, or simply because the policy landscape is very complex. It is clear that within every Whitehall department they are reviewing those bits of their policy framework that have been negotiated through Europe to confirm whether, from a UK government point of view, they are still content with the policy positions as they currently stand.

Although environment is a devolved matter, European environment policy was negotiated and agreed to by the UK government centrally, and then became an obligation to the devolved administrations. So although environment may be a devolved matter in delivery, that estimated 80% of environment policy which derives from the European Commission has been negotiated and set on a UK basis, albeit with input from the devolved administrations through established mechanisms.

It stands to reason therefore that any change following withdrawal from the European policy framework could apply to all devolved administrations equally, and as such it would be in the devolved administration's interests to undergo a similar policy review as is taking place in Whitehall to ascertain what their current and future stance is on EU policy outcomes and engage effectively with the Department for Exiting the European Union (DExEU). There is a possibility that environment policy and delivery could be further fragmented by setting up distinct policy and delivery frameworks in each UK administration, which would be detrimental to the delivery of a coherent environment policy in the UK as a whole.

One should temper any anticipation of wholesale change in the policy framework with two important points. The first is that during the UK membership of the EU, we have been a wholehearted participant in policy negotiation and more often than not have led the policy debate from the front. The result is that it is likely that much of the policy framework will be retained either wholly or with minor adjustments, the challenge will be in ensuring that the delivery framework remains robust. There may well be select flagship policy areas that will be focused on (including the



Common Fisheries Policy), whilst a solution is found for alternative delivery or legislative mechanisms for the rest.

The second point is that whilst some pro-Brexit ministers within Whitehall may have publically denounced EU environmental policy<sup>2</sup> during the campaigning for the referendum, the political reality is that it would be very difficult, and publically unacceptable to wholly unpick the environmental policy framework that has overseen a fundamental change in the UK's natural environment since the 1970s. Indeed, in a recent appearance in front of the Environmental Audit Committee, Robin Walker MP, Parliamentary Under Secretary of State in stated that in his view it was "hugely important that the UK continues on its course as being an environmental leader and leading in strong environmental policy". This is slightly belied by the fact that DExEU<sup>3</sup> currently has teams for Economy, Infrastructure, Tax, Customs, Home Affairs, Public Services, Justice, Security, Data, Migration, Trade, International Partnerships and Devolved Administrations but no Environment. The reason given for this is that environment was cross cutting although it is still not clear what this actually means.

It also remains to be seen how DExEU will coordinate across government to pull together a complete negotiation package. It is unlikely that specific policy areas will be negotiated in isolation, particularly those policy areas like marine and maritime, where outcomes are not only politically but geographically intertwined with the UK's European neighbours, and so much goodwill over the years has gone into developing outcomes, systems and processes that have joint ambition with our European neighbours.

Marine policy doesn't just address our natural marine environment and the protection that EU derived legislation affords it. We have a marine policy statement, which sets out the UK government's vision for our marine space, five objectives to achieve this vision, and eleven sectors that UK marine policy can be broadly divided into as set out below

- Marine Protected Areas
- Defence and National Security
- Energy production and infrastructure development
- Ports and shipping
- Marine aggregates
- Surface water management and waste water treatment and disposal
- Marine dredging and disposal
- Telecommunications cabling
- Fisheries
- Aquaculture
- Tourism and recreation

The challenge for marine management therefore is not just focused on our natural environment, but also how each of these policy areas may need to be revisited and revised. This could include reformulating the policy need, revisiting the evidence base behind it, re-engaging with public consultation, the list goes on and on.

As a session of the EAC on the 7<sup>th</sup> September<sup>4</sup> Therese Coffey MP, Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities in Defra broadly stated that the Conservatives have committed in their manifesto statement to leaving the natural environment in a better state than that in which we found it so the EAC shouldn't worry that that they were going to repeal EU environmental protection. She also stated that the department wanted to focus on outcomes rather than prescriptive inputs and processes.

In reality, outcomes cannot be delivered without process that is consistent and in line with the principles of better regulation, i.e. it is proportionate, accountable, consistent, transparent and targeted. The delivery framework that built up to support the implementation of the Habitats Directive may at times be complex, but Defra's own review<sup>5</sup> reported that the implementation on the whole was good. To unpick this framework to create more flexibility could have the downside of increasing uncertainty for developers, NGOs, regulators and government itself.

<sup>2</sup> <http://www.theguardian.com/politics/2016/may/30/brexit-spirit-crushing-green-directives-minister-george-eustice>

<sup>3</sup> <https://goo.gl/0dRhS4>

<sup>4</sup> <https://goo.gl/MgcVOG>

<sup>5</sup> <https://www.gov.uk/government/publications/progress-of-the-habitats-directive-implementation-review>

# Eitem 7

Yn rhinwedd paragraff(au) ix o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon