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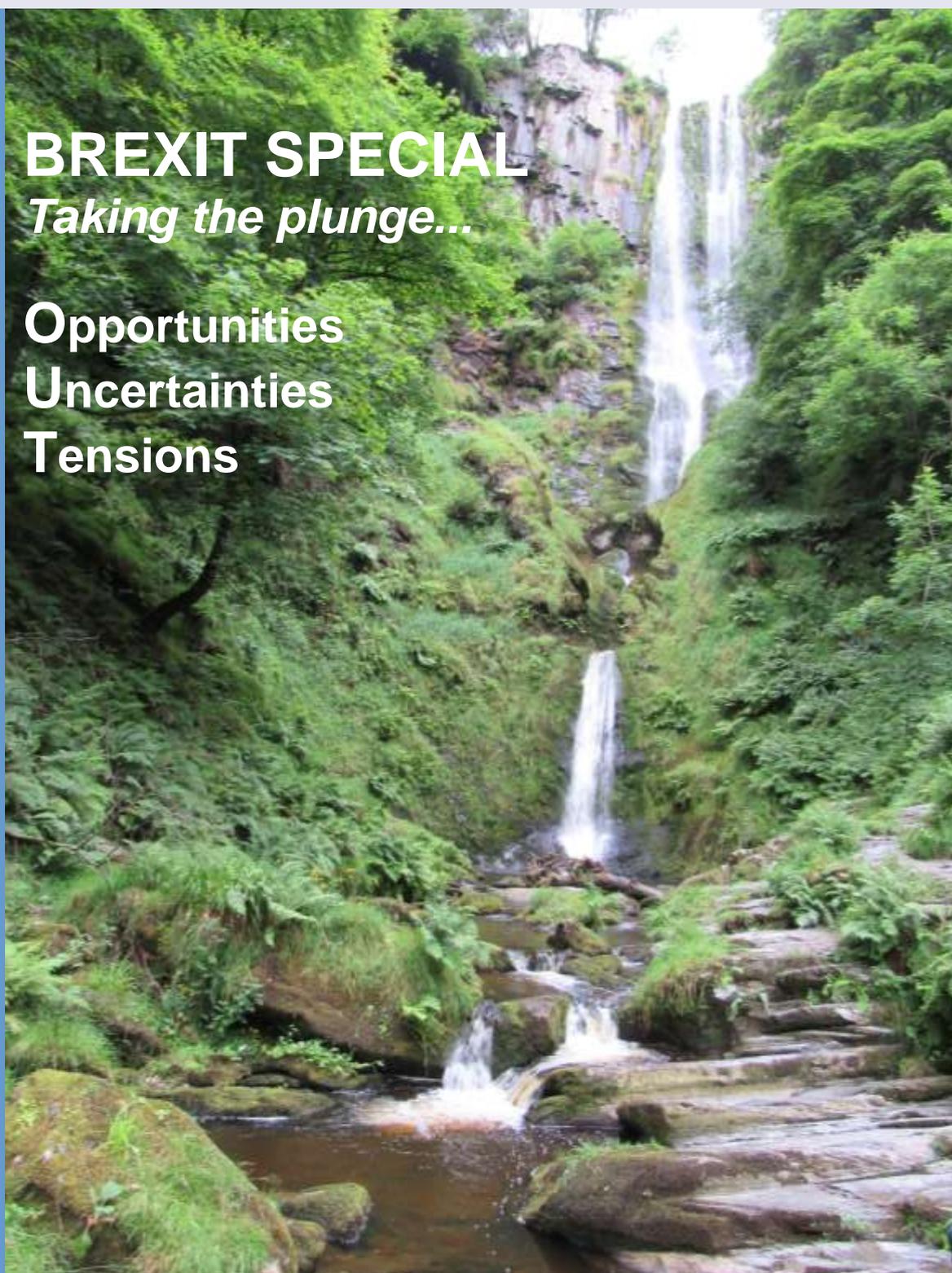
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Natura 2000 post Brexit in the UK – Challenges and Opportunities?

Kirsty Kirkham & Peter Shepherd

1.0 Introduction

In May 2017 it will be 25 years since the governments of the European Community adopted the Habitats Directive¹ to provide protection to the most threatened habitats and species across Europe and thus created the basis for the Natura 2000 network. This article contemplates what the future might hold for this network and the habitats and species it supports in light of the decision by the UK on the 23rd of June 2016 to leave the European Union. It considers what the obligations and challenges are that need to be met to sustain a protected network of international sites and also what opportunities there may be to expand the network and improve how we support, manage and integrate these sites and the habitats and species they support as an integral part of the landscape. Brexit brings real challenges and potential threats, but also an opportunity to comprehensively review and plan how the UK meets its international obligations in the future.

2.0 A network of protected sites and international obligations

The UK has designated and classified a network of international sites of nature conservation importance as a result of its commitment to a number of international conventions and agreements that require the protection of particular habitats and species. It is a requirement to maintain and where necessary restore the network components in addition to the protection of the habitat network and the species it supports. This commitment has been primarily delivered through UK domestic legislation, supported by procedural, policy and planning requirements and tested and developed through court decisions. The most significant international biodiversity agreements are the Habitats Directive, Birds Directive, Bern Convention, the Ramsar Convention, the Bonn Convention and the Biodiversity Convention.

2.1 Habitats and Birds Directive

The Habitats Directive requires the identification and designation of Special Areas of Conservation (SAC) for species other than birds and for listed habitat types (e.g. particular types of forest, grasslands, wetlands, etc.). Sites of European importance for birds are classified as Special Protection Areas (SPA) under the Birds Directive² which together with SACs make up the Natura 2000 network of protected areas. This network covers approximately 18% of

the land area of the European Union territory and almost 6% of its marine territory making it the largest coordinated network of protected areas in the world.

Natura 2000 does not comprise a network of strictly protected, state owned and managed nature reserves. It does include such sites, but the majority of land within the network remains in private ownership and many of the sites also remain in productive land uses. Many sites are in traditional agricultural land management, others are managed forests. Some occur in urban areas, whilst others are found in wild landscapes. The Natura 2000 network stretches over a significant extent of the European continent representing the full range of habitats within the nine biogeographic regions within the European Union territories. The UK sits entirely within the Atlantic biogeographic region which also includes the island of Ireland and the western seaboard of the continent from northern Spain and Portugal, the whole of Holland and the Atlantic coast of France, Germany, Denmark and Belgium. Within this biogeographic region the UK supports significant proportions of characteristic and unique habitats of Europe's Atlantic seaboard and thus makes an important contribution to the diversity of habitats and species populations within Europe as a whole.

The Habitats Directive not only requires the designation of sites as a means of protecting listed habitats, but also among other things the protection of species populations (Articles 4, 12, 13, 14 and 15), maintenance of habitats and species in Favourable Conservation Status (Article 2), management and restoration of habitats and species populations to ensure the integrity of sites are maintained (Article 6.1 and 6.2) and measures to improve the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora (Article 3.3 and Article 10). So the Directive is not just about the designation of a network of internationally important sites but also requires their protection, management, restoration, enhancement and improved connectivity as a component of the wider landscape.

2.2 Bern Convention³

The Natura 2000 network represents the European Union's contribution to the "Emerald Network" of Areas of Special Conservation Interest (ASCIs) set up under the Bern Convention. Signatories

to this convention encompass a wide range of nations including states in central and eastern Europe, in and outside the European Union, Turkey and a number of north African countries. The convention has similar requirements as the Habitats Directive for the protection of sites of endangered habitats and species through legislative and administrative measures (Article 4.1), and the development of policies that have regard to the conservation requirements of protected sites (Article 4.2). The Convention also allows under Article 9 for derogation from the protection required by Article 4. It requires three tests to be passed that are very similar to the tests set out in Article 6.4 of the Habitats Directive. The similarity between the Convention and the Habitats Directive is not surprising given that the Directive is intended to deliver the European Union's commitments as a signatory to the Bern Convention.

2.3 Ramsar Convention⁴

As well as our commitments to the Bern Convention the UK is a signatory to The Ramsar Convention on Wetlands, which was established by UNESCO in 1971. Under this convention the UK designates wetlands of international importance not only in and around the British Isles but also within the UK overseas territories across the world. In the UK Ramsar sites are also designated SSSIs and/or SACs or SPAs and the statutory protection afforded to SSSIs and the Natura 2000 sites confers protection to Ramsar sites.

2.4 Bonn Convention⁵

The signatories to this Convention are required to co-operate to conserve migratory species and their habitats. Under the auspices of the convention there are also legally binding Agreements covering the conservation of European bats (EUROBATS), African-Eurasian migratory water birds (AEWA), small cetaceans in the Baltic, North-East Atlantic, Irish and North Seas (ASCOBANS) and albatrosses and petrels (ACAP).



2.5 Biodiversity Convention⁶

This Convention arose from the first Earth Summit and requires signatory states to prepare national biodiversity strategies and action plans. In the UK we have prepared Biodiversity Action Plans and, more recently, country based strategies for the different countries within the UK, and national and local action plans for habitats and species. There is also a general duty on all public authorities to have regard to the purpose of conservation of biodiversity in the exercise of their functions.⁷

The role and importance of a network of international sites throughout central Europe and beyond is clearly established and supported by successive UK governments through the UK's ratification of the aforementioned international agreements and conventions. The potential demise of the Habitats Directive in the UK (the primary delivery mechanism) is therefore a significant challenge to how the UK will continue to meet its obligations under the various international commitments.

3.0 What will not change as a result of Brexit?

The vote on the 23rd of June has generated a great deal of concern about what this means for the future of nature conservation in the UK. There remains much uncertainty and as time goes on, although more bits and pieces of information leak out of government, it is likely to remain difficult to predict the likely outcome for nature for some time.

Rather than trying to second guess the outcome of Brexit it is perhaps better to remind ourselves what has not changed and what this could mean for UK nature conservation policy, legislation and protection of the habitats and species.

3.1 The UK's international obligations

Whatever happens to the Habitats Directive, it can be seen that the UK will still have international obligations to protect wetlands and associated species, migratory species and a network of habitats and species of European importance. It is perhaps the Bern Convention that is of greatest importance here in terms of a network of international sites and measures to protect particular species because of the strong similarities to the requirements of the Habitats Directive. Without the Habitats Directive in place, the UK government will still need to demonstrate how it will continue to meet its international obligations on the conservation of nature, sites, habitats and species that reflects the particular and unique contribution the UK makes to the ecology of Europe.

3.2 The UK's place in the Ecology of Europe

It is evident that post Brexit, the UK will continue to occupy a significant place in the Atlantic biogeographic region of Europe providing a unique component of the spectrum of European habitats and species populations. For some habitats and species populations the conservation contribution made by the UK is highly significant. For example, 90% of Machair habitat and 100% of Caledonian pine forest occurs in the UK and of course the UK supports a significant population of great crested newt.

As such, the UK cannot rely on other countries in Europe to provide effective protection for these habitats and species as the majority of their natural range lies within UK territory and comprehensive coverage of European habitats and species protection cannot be delivered without the UK playing its full part as their key custodian.

3.3 "It's the Network stupid"

It is also clear that the UK is not cut off and isolated from Europe when it comes to migratory species. A number of species from a range of biotic groups move between the UK and other European states in large numbers seasonally and the UK has particular responsibilities to these species under the Bonn and the Bern Conventions. The UK alone cannot

conserve the populations of migratory species without complementary action in neighbouring countries that support these species during those times of the year they are not in the UK. Migratory species require coordinated action across their natural range for conservation measures to be effective.

3.4 A changing environment

The relative importance of the UK contribution to the European network of sites and populations of rare and threatened species is likely to change over the coming years. It is predicted that many species will extend or move their natural distribution as a result of climate change⁸. Dartford Warbler (*Sylvia undata*) for example is predicted to move further north increasing the importance of the UK in the conservation of this species within a European context. Other species, particularly invertebrates are already exhibiting significant shifts in their natural range and the list of species that could reasonably be expected to colonise the UK in the future is large and it is not restricted to small inconspicuous animals. For example, how long will it be before an established breeding population of Geoffroy's bat (*Myotis emarginatus*) is confirmed in the UK?

4.0 Challenges

Whilst the UK has voted to extricate itself from the European Union it is clear that we cannot separate the habitats and species of the UK and their contribution to the biodiversity of Europe if we are to give proper regard to a coordinated approach to the conservation of European habitats and species and thereby meet our international obligations. As such whatever form Brexit takes there is a clear need for a continuation of a network of sites in the UK to ensure the range of habitats and species populations across Europe is fully represented. There is also a need to provide a coordinated network of sites and levels of habitat and species protection to support and allow species movement seasonally and increasingly over time as climate change exerts its influence.

The challenge therefore is how the UK will meet this need and its obligations without the Habitats Directive at least in its current form? A new system of protection or a modified existing one is likely to be required at some stage and the fear is that during the process to establish such a system the protection of habitats, sites and species will be watered down. Whatever the vehicle, the challenge to the nature conservation movement is to ensure that this does not occur and that the UK continues to actively contribute to an international network of sites and system of protection. That however is not to say that the UK led international sites system that is established cannot be different from that deployed through the Habitats Directive.

Whilst a strong case for maintaining a network of sites supported by legislative measures, procedure and policy can be made and it could be argued that a weakening of the protection afforded to species, habitats and sites of international importance would not be compliant with our international obligations⁹ there will be challenges that are likely to influence any new system.

Despite the apparent outcome of the EC Fitness Check of the Birds and Habitats Directives¹⁰ which began in 2014 and is yet to be concluded (see David Tyldesley's article on page 20), there is likely to be a demand for less red tape and regulation as this is one of the perceived benefits of Brexit. The procedures set out in the Habitats Directive are likely to be seen in some quarters as overly precautionary and represent 'gold-plating'. However, as has been shown by cases over the last 25 years there can be good reason for such a precautionary approach. It could be argued that this approach has driven up standards of assessment, mitigation and compensation and tested and refined key concepts such as site integrity and favourable conservation status. Equally though some mitigation and compensation measures driven by this approach have

on-occasion been shown subsequently to have been overly precautionary and in hind-sight expensive over-mitigation. At times the interpretation of the requirements of the Directive has been seen as overly precautionary by the development sector which has led to a strong desire to reach a conclusion of 'no likely significant effect' at an early stage in the assessment process. Arguments may be made for a lighter touch regulatory regime and it will be important to demonstrate how the current system deployed through the Habitats Directive has worked well to date and how a similar system of assessment procedure for international sites that reflects the process of Habitat Regulations Assessment is vital to ensure that the international network is not diminished over time by a move away from the application of the precautionary principle or a shift in the burden of proof onto the organisations concerned about potential impacts. One of the challenges will be how to achieve an appropriate balance in any system of protection and assessment the UK adopts.

International sites are the best examples of habitat types or support the most important parts of the population of a species within the country. However, for a number of animal species for which international sites are designated the vast majority of the population in the UK is located in the wider landscape beyond formal site boundaries e.g. great crested newt and otter. The conservation of these species rely less heavily on designated sites and more on habitat and population connectivity. It is these species, however, classically the great crested newt, that result in the most frequent interactions between development, landowners and private individuals and the requirements of the Habitats Directive. There are numerous cases, often given a high profile in the media, where this has led to frustration and significant cost – often expressed as a cost per individual animal¹¹. In some sectors, this has given rise to a strong adverse view taken to the protection afforded to this species. Whilst related to species rather than sites this has in turn generated antagonism towards the Directive as a whole. This negative perception should not be allowed to undermine the arguments for a network of sites or even the protection of species outside designated sites. However, in making the case for a network of sites and associated species protection the challenge will be to recognise that we have perhaps not implemented the intentions of the Habitats Directive in the most pragmatic way that would have delivered good outcomes for the species and reduced disruption and cost for those parts of society most affected. The impact of European Species



Court cases in respect of Sherwood Forest have highlighted the potential significance of sites which 'deserve' protection. (Photo by David Tyldesley)

Licensing on the perception of the Habitats Directive has been significant. In England, progress has been made in this regard in the last few years with Natural England leading a new approach to protected species policies and a more outcome focussed approach, but this process needs to be supported further as part of the development of a new system of protection.

5.0 Opportunities

Whilst many in the environmental world are understandably concerned about the potential impact of Brexit it does also provide an opportunity to take stock of what we have been doing to date, what our obligations are and what perhaps needs to change to make a network of international sites and associated policies more robust and responsive to future change. Whilst there will be voices promoting the removal of red tape, gold plating and precautionary approaches there is also an opportunity to argue for improvements to how the UK protects, maintains and enhances a network of international sites building on the system we have been working within for the last 25 years.

5.1 Review of the network and develop a more flexible system

It is important when considering a new or revised system of operating, to ask whether the UK network of international sites is complete, and is it entirely fit for purpose now and for the future?

Since the UK finalised its list of SACs our understanding of some species populations and distributions has changed significantly such that the current suite of SACs for some species do not properly reflect the best sites within the UK. In these cases there is good scientific reason to add further sites to the international network and as a consequence remove existing ones if they no longer represent the best examples.

Whilst there are mechanisms under Article 4.1 to add, and Article 9 to remove sites from the Natura 2000

network, there seems to be a reluctance to do this, certainly not on a regular basis, either due to political or procedural difficulties. However, as the recent decision at Inch Cape¹² and the situation in Sherwood Forest¹³ has shown the Courts and inspectors determining applications may choose to treat sites that are, or even potentially of international significance, as though they are designated or classified in any case. Greater clarity and certainty would be achieved through a regular review against a set of criteria and guidance. It is often a lack of clarity that causes the greatest confusion and problems in planning terms, which in turn generates frustration with the system of protection.

Greater clarification and stronger direction on when a site must be added to the international network and a regular review of the fitness of the network would be a positive addition to any new system of protection.

A process of regular review that looks at the representation of sites in light of new information on species distribution and population sizes would also enable a more flexible approach to be developed that can respond to change keeping the network up to date and fit for purpose.

5.2 Improved management and connectivity

International sites represent the best examples of the habitats and species populations in the UK, but for some where the features of interest travel beyond the boundary of the international site daily, or seasonally, more positive management of surrounding land and habitats would benefit some sites. This is recognised in the Habitats Directive which seeks management and restoration of sites and the improvement of the coherence of the network. Where outreach programmes have provided incentives and advice to landowners significant benefits to the feature of special interest have been shown to occur e.g. advice to land owners and managers within close proximity to Greater Horseshoe bat SACs¹⁴. There is the opportunity with a new or adjusted system to raise the importance and profile of measures to improve the coherence of the network and to support this more strongly with SAC specific incentives.

It has also been recognised for a long time that protecting a cohort of sites on their own is not always going to provide a robust enough network of supporting habitats to buffer against the dual impacts of habitat fragmentation and climate change. This is clearly recognised in the Lawton Review¹⁵ which concluded there was a great need for bigger, better and better connected

habitat networks to sustain the wildlife sites of England. A new system of protection for a network of international sites provides an opportunity to embed this thinking into the system of international sites and how they are supported and promoted.

There are existing examples of consultation zones around SACs that are delivered through policy mechanisms e.g. South Hams SAC¹⁶, but a new system provides the opportunity to require the identification of buffer zones and to deliver improved land management within this that benefits the special interest of the site. This may involve particular land management or the creation and maintenance of supporting habitat. This will require long term incentives to encourage or drive land management and habitat creation. There is an opportunity to not only create a network but establish the principles, policies and expectations from government for the wider supporting landscapes in line with the Lawton principles in close proximity to the most valued sites within the UK.

If a buffer zone approach can be established in support of international sites then this will drive the need to find new mechanisms, or to re-direct existing ones, to deliver the sort of landscapes and management around international sites that will increase their robustness and develop a sustainable ecological network within which there can be free movement of species in response to climate change.

A range of mechanisms may need to be considered including placing additional specific duties on public authorities to foster and encourage positive management within the buffer zone, prioritisation of funding and increased payment rates as incentives from agri-environment payments or whatever system the UK ends up with once outside the European Union. Incentives could also be provided to the development sector whereby certain types of development provide the mechanism to deliver habitat creation options, e.g. post mineral operations. Developments that can deliver major land-use change for the benefit of an

international network of sites could be viewed favourably in planning terms, which could be supported by government policy positions.

Brexit presents an opportunity to take forward new mechanisms or approaches that are currently available but are not yet being taken forward and delivered consistently. For example, if Biodiversity Offsetting or net positive thinking becomes embedded in government policy then this would generate a new revenue stream that could be directed in part to supporting international sites or the strategic creation of new supporting habitat as part of a UK emerald network. However, this would require clear direction from government in terms of its policy on Offsetting and a set of national strategic priorities to ensure funding is directed to support international sites and appropriate landscape coherence enhancements. Competing against this of course will be a desire to see Offsetting revenues spent locally, which is why a strategic approach reflecting the importance of an international network of sites and coherent ecological networks would be required.

Brexit may well result in a whole scale review of how agricultural subsidies are paid to landowners and why. This is likely to be a very hot topic politically but presents a significant opportunity to direct payments as a priority to landowners managing land within buffer zones of international sites and to even increase the rates of payment to reflect the importance of developing coherent networks of habitat in proximity to the international sites network. This would not only help support the international sites per se, but would generate a perceived benefit to having an international site in the local landscape.

As well as new revenue streams from initiatives such as Biodiversity Offsetting and the prioritisation of existing payment schemes there is also the new thinking on re-wilding, which may result in significant changes in land-use and management and how the 'countryside'

is perceived and managed in future. Many international sites are within the wilder, less inhabited parts of the UK and it may be that they could become encompassed within future re-wilded landscapes. However, this may require different approaches to how international sites are seen or managed as many of our upland international sites are dependent upon traditional management that may be lost or radically altered in a re-wilding process potentially having a significant effect on the interest of the international site. As such is rewilding a challenge or an opportunity? Much depends on how thinking develops and of course the particular circumstances of each separate location. However, it raises the question as to whether a more flexible approach to change within or around international sites might be beneficial and acceptable where an overall benefit to biodiversity is achieved? Currently this would seem contrary to the need for protection per se as required by the Habitats Directive, but we are in changing times, politically, financially and in the environment and it seems an appropriate time to seek to direct the change in a positive direction.

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Kirsty Kirkham is a partner at BSG Ecology, based in Derbyshire. Kirsty has worked as a professional ecologist since 1993 and has experience in development control, minerals and strategic policy planning in relation to ecology. Her key areas of interest are Ecological Impact Assessment, the appropriate application of wildlife legislation and policy as part of the planning process and advising on the distinction between the European Protected Species (EPS) requirements for planning and licensing. Kirsty has appeared as an expert witness at public inquiry and is frequently involved in negotiation with statutory and non-statutory consultees from the pre-application stage onwards.

Footnotes

¹ Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora

² Council Directive 2009/147/EC on the conservation of wild birds

³ The Bern Convention on the Conservation of European Wildlife and Natural Habitats

⁴ The Ramsar Convention on Wetlands

⁵ The Convention on the Conservation of Migratory Species of Wild Animals

⁶ The Convention on Biological Diversity

⁷ Nature Conservation (Scotland) Act 2004, NERC Act 2006

⁸ The Nature of Climate Change Europe's Nature at Risk. RSPB (2015)

⁹ Refer Penny Simpson's article on page 6

¹⁰ http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm.

¹¹ <http://www.dailymail.co.uk/news/article-2595662/Builder-forced-spend-1m-relocate-150-newts-Developers-pay-6-700-creature-protected-species.html>

¹² RSPB v Scottish Ministers and Inch Cape Offshore Wind Farm [2016] CSOH 103

¹³ Prospective Special Protection Area at Sherwood Forest. Risk-based Assessment Guidance. <http://www.mansfield.gov.uk/CHttpHandler.ashx?id=7529&p=0>

¹⁴ Longley, M (2003) Greater Horseshoe bat Project 1998-2003. English Nature Research Report 532

¹⁵ Lawton J et al (2010) Making Space for Nature: a review of England's wildlife sites and ecological networks

¹⁶ Natural England (2010). South Hams SAC — Greater Horseshoe bat consultation zone planning guidance