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Examples of UK environmental legislation which pre-date EU legislation.

Introduction

During a RaISe briefing to the Agriculture, Environment and Rural Affairs Committee on *Northern Ireland's environment – background and potential 'Brexit' considerations (NIAR 262-16)* long established UK environmental requirements pre-dating EU legislation were discussed. Members asked for further examples, and while not exhaustive, the following briefing note attempts to identify a number of these.

Background

The vast majority of environmental policy and legislation in NI, and the UK as a whole, is governed by legal frameworks and regulations set at the European Union level and covers policy areas such as water and air pollution, waste and recycling, flora, fauna and habitats protection and climate change, to name a few.

The EU began to legislate for the environment following the Single European Act 1986, which added environment to the EU's competence. However, according to the UK

Department for Environment, Food and Rural Affairs (DEFRA) and the Department of Energy and Climate Change (DECC), the EU adopted many environmental measures before there was any specific legal base so as to accommodate the Common Market.¹

During the formulation of policy and legislation, the EU has both internal and external influences. External influences may include requirements to be written into EU legislation that complement global multi-lateral agreements signed up to by the EU on behalf of Member States. These may include agreements drawn up by the Council of Europe (CoE), or the United Nations (UN) under its various bodies such as: the United Nations Organization for Education, Science and Culture (UNESCO), United Nations Environment Programme (UNEP). There are also others, including the International Union for Conservation of Nature (IUCN), for example. Table 1 gives a number of examples of these agreements.

Table 1: Examples of international/global agreements/treaties/conventions

Treaty Body	Examples of treaties/agreements
CoE ²	<ul style="list-style-type: none"> • Convention on the Conservation of European Wildlife and Natural Habitats (Bern).³ • European landscape Convention⁴
UNECE ⁵	<ul style="list-style-type: none"> • Convention on Long-Range Trans-Boundary Air Pollution⁶ • Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters⁷
UNESCO ⁸	Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971
UNEP ⁹	<ul style="list-style-type: none"> • Convention on International Trade in Endangered Species (CITES)¹⁰ • Convention on Biodiversity¹¹ • Basel Convention on Trans-Boundary Movement of hazardous Waste¹²
IUCN ¹³	The Ramsar Convention on Wetlands. ¹⁴

¹ DEFRA and DECC, Review of Balance of Competences on Environment and Climate Change, February 2014

<https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

² The Council of Europe is a separate body to the EU and its European Council (EC). It comprises of 47 member states. See Council of the European Union website: https://europa.eu/european-union/about-eu/institutions-bodies/council-eu_en.

³ Convention on the Conservation of European Wildlife and Natural Habitats <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/104>

⁴ <http://www.coe.int/en/web/landscape/home>

⁵ The United Nations Economic Commission for Europe (UNECE) was set up in 1947 with the aim is to promote pan-European economic integration. See Mission', UNECE website: <http://www.unece.org/mission.html>

⁶ <http://www.unece.org/environmental-policy/conventions/envlrapwelcome/the-air-convention-and-its-protocols/the-convention-and-its-achievements.html>

⁷ <http://www.unece.org/env/pp/welcome.html>

⁸ UNESCO is a UN organisation founded in 1945, currently comprising 195 members. See 'Introducing UNESCO', UNESCO website: <http://en.unesco.org/about-us/introducing-unesco>

⁹ The United Nations Environment Programme (UNEP) is the global environmental authority that promotes the implementation of the environmental dimension of sustainable development within the United Nations system. See About UNEP', UNEP website: <http://www.unep.org/about/>

¹⁰ CITES website: <https://cites.org/>.

¹¹ Convention on Biodiversity website: <https://www.cbd.int/>.

¹² <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>

¹³ IUCN is a membership union composed of both government and civil society organisations. See About', IUCN website: <https://www.iucn.org/secretariat/about>.

¹⁴ Ramsar Convention on Wetlands of International Importance. <http://www.ramsar.org/>

Others	OSPAR (derived from the Oslo and Paris commissions) is a mechanism by which governments and the EU combine for the protection of the North-East Atlantic ¹⁵

Internal influences may come from EU Member States and stakeholders. The ordinary legislative procedure provides Member States with the opportunity to influence policy development through their Ministers and MEPs sitting on the European Council, where both the European Parliament and Council must agree on legislation before it becomes law.¹⁶ The Commission stated to the House of Commons Environmental Audit Committee (EAC) that:

*The UK either leads or is a partner with others in a wide range of entities with whom the Commission consults while formulating policy. By being an important part of the policy-making process in this way, the UK is able to shape EU-wide policy.*¹⁷

In fact, the EAC stated further that:

*We were told this process had given the UK the ability to push for key environmental directives and policy approaches which suit its national interest.*¹⁸

With this in mind, the following section of the paper considers examples where long standing domestic legislation and requirements from the UK has preceded, and therefore may have influenced, the development of EU legislation.

UK legislation influencing the EU

Many environmental requirements pre-date EU legislative arrangements and have been an important influence on a number of EU environment policies. According to the UK Government's Balance of Competence Review

*a number of pieces of EU legislation have been based, partly or in full on preceding UK policy and legislation.*¹⁹

The following section provides a number of examples where UK legislation and requirements may have influenced EU legislation and policies:

¹⁵ About OSPAR, OSPAR website: <http://www.ospar.org/about>

¹⁶ EAC (2016) *EU and Environmental Policy*. P.12 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2015/assessment-of-eu-uk-environmental-policy/>

¹⁷ EAC (2016) *EU and Environmental Policy*. P.13 <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2015/assessment-of-eu-uk-environmental-policy/>

¹⁸ *ibid*

¹⁹ DEFRA and DECC, Review of Balance of Competences on Environment and Climate Change, February 2014. P.23 <https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

Habitats and nature conservation

According to the European Commission, the Birds Directive is in fact the oldest piece of EU legislation in the area of environment²⁰. The EU's Birds and Habitats Directives introduced requirements in 1979 and 1992 respectively. According to the House of Commons Library, the UK already had a legislative history for designation and protection which pre-dated the EU Directives, and in fact influenced their development.²¹ This includes the UK's systems of Sites for Special Scientific Interest (SSSIs) introduced under the Wildlife and Countryside Act 1981 (as amended) and Town and Country Planning legislation from the 1940s which restricted development on protected sites.²²

Air Pollution

The EU's integrated pollution prevention and control regime introduced under the IPPC Directive 2008²³, now under the Industrial Emissions Directive 2010²⁴, was influenced by the UK's system of integrated pollution control under the Environmental Protection Act in 1990.²⁵

The concept of Exposure Reduction Commitments for particulate matter was first introduced in the UK's Air Quality Strategy 2007, while new EU obligations were under negotiation.²⁶ According to the UK, this was then incorporated into the EU's revised Air Quality Directive 2008.²⁷

Emissions

The UK Emissions Trading Scheme (UK ETS), launched in 2002, was a fore-runner of the EU's Emissions Trading Scheme (EU ETS) which launched in 2005. The UK ETS ran on a voluntary basis for public and private businesses, with an objective to:

give UK companies early experience of emissions trading, with a particular view to being ready for the European Union Emissions Trading Scheme²⁸

²⁰ http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

²¹ HoC Library (February 2016) Exiting the EU: impact in key UK policy areas p.69 as updated by *Brexit: impact across policy areas* (August 2016) <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7213#fullreport>

²² *ibid*

²³ <http://ec.europa.eu/environment/archives/air/stationary/ippc/summary.htm>

²⁴ <http://ec.europa.eu/environment/industry/stationary/ied/legislation.htm>

²⁵ DEFRA and DECC, Review of Balance of Competences on Environment and Climate Change, February 2014 <https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

²⁶ DEFRA (2007) Air Quality Strategy for England, Wales, Scotland and Northern Ireland Volume1. Table 2 p.20 <https://www.gov.uk/government/publications/the-air-quality-strategy-for-england-scotland-wales-and-northern-ireland-volume-1>

²⁷ DEFRA and DECC, Review of Balance of Competences on Environment and Climate Change, February 2014. P.23 <https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review>

²⁸ DEFRA (2006) Appraisal of Year 1-4 of the UK Emissions Trading Scheme. Available at the National Archives <http://webarchive.nationalarchives.gov.uk/20090908171815/http://www.defra.gov.uk/environment/climatechange/trading/uk/documents.htm#evaluations>