

## **Ancient Woodlands: Challenges Associated with Brexit and the Need for a Renewed Engagement with International Environmental Law<sup>1</sup>**

Institutional and substantial gaps as well as a high probability of regression in environmental regulations have resulted from Brexit. These problems are exacerbated by delays in setting up a new post-Brexit framework as a result of the pandemic and the associated lockdown. Yet, it is time to act, and if Scotland wants to present itself as a world-leader in environmental protection and climate action, it must take Brexit as a starting point for the development of more efficient environmental regulations, including for its ancient woodlands.

The EU has already taken steps in this direction, its network of protected areas comprising several old-growth forests. Authorities, landowners, and managers are encouraged to actively protect these areas by focusing on their non-wood benefits and making full use of existing financial incentives for site protection where needed. Going forward, the relevant standards of stewardship are expected to become even more stringent. The EU Biodiversity Strategy for 2030 provides for the **strict protection of at least a third of the Union's protected areas, including all remaining primary and old-growth forests.**<sup>2</sup> More recently, a resolution of the European Parliament on deforestation recognised that **"ancient and primary forests should be considered and protected as global commons, and that their ecosystems should be granted a legal status"**.<sup>3</sup>

These and future developments can serve as an inspiration for Scotland, which has expressed its eagerness to stay aligned with EU law. This is notably the role of the Continuity Bill (Scotland) (2020), which aims "to enable provision to be made that corresponds to provision in EU law" (Preamble). The Bill transposes some of the **core principles of EU environmental law**: precautionary principle, prevention principle, polluter pays principle, and principle of rectification at source (Section 9). These principles must continue to guide Scotland's action towards the effective protection of its ancient woodlands.

Post-Brexit, this action will be directed by pertinent international legal instruments to which the UK is a signatory. One such instrument is the **European Landscape Convention (ELC)**, which deals with the protection, management and planning of European landscapes.<sup>4</sup> The Convention requires Parties to take action towards conserving and maintaining "significant characteristic features" of landscapes (Art (1)(d)). This obligation carries particular import in the present context since **the character and biodiversity of landscapes are closely linked**. Indeed, many of the features that contribute most to our

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<sup>1</sup> This brief was drafted by Meet Kaur and Annaig Nicol.

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590574123338&uri=CELEX:52020DC0380#footnoteref26>

<sup>3</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.pdf)

<sup>4</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680080621>

appreciation of landscapes – trees and hedges, ancient woodlands, the flowers of old meadows, pastures and heaths – are an essential part of the natural environment. Parties must, therefore, give due regard to these elements when discharging their duties under the ELC (Art 6). These include the duty to identify the landscapes forming part of their territory, analyse their characteristics and the forces and pressures transforming them, and take note of any changes. Also included is the duty to assess the landscapes thus identified, taking into account the particular values assigned to them by the interested parties and the population concerned. Finally, Parties must carry out a participatory process for the definition of landscape quality objectives, which must then be implemented through appropriate instruments.

This emphasis on public participation highlights the relevance of another instrument to which the UK is a signatory: the **Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**.<sup>5</sup> The Convention recognises that every person has the right to live in an environment adequate to his/her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations (Preamble). It further acknowledges that, to be able to assert this right and observe this duty, citizens must have **access to information, be entitled to participate in decision-making, and have access to justice in environmental matters** (Preamble and throughout). The Convention applies in full and with equal force during the COVID-19 pandemic and in the subsequent economic recovery phase, and the binding rights set out therein cannot be reduced or curtailed for the sake of convenience.<sup>6</sup>

Against this background, we believe that there is scope to strengthen the statutory framework pertaining to ancient woodlands. Crucially, any attempt at reform must pursue complementarities and synergies with the ongoing work of the **National Taskforce for Human Rights Leadership**. The latter seeks to establish a statutory framework for human rights that can bring internationally recognised human rights – including the right to a healthy environment – into domestic law.

**With COP 26 and the statutory recognition of a right to a healthy environment looming on the horizon, it becomes clear and necessary for Scotland to push forward its policies to ensure the robust protection of its ancient woodlands.**

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<sup>5</sup> <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>6</sup> <https://www.unece.org/info/media/presscurrent-press-h/environment/2020/aarhus-convention-compliance-committee-makes-clear-that-the-covid-19-pandemic-cannot-justify-any-restriction-of-the-publics-rights-to-information-participation-and-justice-in-environmental-matters/doc.html>