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FOREWORD

In light of our decision to leave the European Union the Countryside Alliance is asking the question ‘Where next for nature?’.

We have invited contributions from individuals and organisations from a range of backgrounds who have a wealth of experience and knowledge of the countryside and wildlife to help inform and stimulate this important debate.

The Countryside Alliance recognises that our wildlife laws are in need of updating and that leaving the EU is an opportunity for us to shape new laws specifically for the UK. For the past 40 years the framework of our wildlife law has been largely determined by the EU. Although you what you can do, rather than the UK common law position that you are free to do as you like unless the law says otherwise.

There have definitely been significant improvements for the environment and wildlife which should be continued and developed outside the EU, but in developing new wildlife laws perhaps the starting point should no longer be protectionist but about management. The assumption should be that all species should be managed as appropriate, and protection is afforded as and when necessary. We have an important opportunity to review our approach to wildlife protection and develop a sustainable and humane wildlife management policy.

This collection of essays is a start at answering the questions: What principles should underpin our approach; how can this be delivered in practice; and from which perspective should wildlife laws be framed?

During and after the Brexit transition the Countryside Alliance believes it is important that wildlife laws are given due care and attention, and that the opportunity to shape, challenge, and expand existing laws is seized upon. This is an opportunity to get wildlife law on the agenda and to encourage open debate. Hopefully you all agree and will feel able to contribute to this ongoing discussion.

The Baroness Mallalieu QC
President, Countryside Alliance
December 2017
Let’s start with the big picture. Wildlife laws are an important and necessary part of our society. As in many areas of life, the government seeks to find the appropriate balance between public and private interests. Where the actions of individuals could have a negative impact on wildlife or the wider environment—and so on wider society—the government intervenes in various ways to protect the public interest.

It does so by creating laws and regulatory frameworks that prevent environmental bads like pollution or harm to biodiversity and imposes penalties for infringements of those laws. This is entirely appropriate and in the UK we have strong wildlife and environmental legislation which has been bolstered by our membership of the European Union.

Looked at in this way, there are few that would argue that wildlife laws should be removed. Wildlife laws have in some instances been a great success; they are a good thing and should be retained. To be sure, we still face very challenging declines in biodiversity, with regard to which there is an ever increasing need for collective action to halt those declines, but our wildlife laws provide an important backstop for our nation’s wildlife.

Where differences of opinion about wildlife law arise is more around the operation of the law. In Scotland—it is important to remember that wildlife law is devolved—some land managers feel that the structures we have put in place to protect wildlife can feel overly restrictive or rigid and it is because of this rigidity that there are calls for change. Part of this rigidity is ‘structural’. For example, once a species is protected it seems to which there is an ever increasing need for collective action to halt those declines, but our wildlife laws are rarely if ever used because to do so would be highly contentious.
So if wildlife laws are an attempt by the government to find the appropriate balance between public and private interests, from the perspective of some land managers the legislative framework that we have put in place sometimes fails to find that balance. This is because things can change on the ground fairly rapidly while legislative regimes are usually slow to change. The issue is a practical one. Some land managers are keen to see change in wildlife law, not because they want to do away with wildlife law per se, but because their experience of the law leads them to question whether we have the right approach.

It is probably important to be honest here and acknowledge that it is always likely to be the case that those subject to the strictures of the law will feel somewhat aggrieved, and that this situation is no different. But that does not mean that the concerns of land managers should be summarily dismissed or seen as the moans of those that want to harm wildlife. It is not the case that those that want to see change only want change so that they can do what they want at the expense of wildlife. The vast majority of land managers do care for wildlife, and many care passionately. The issue is more about finding the right balance between the public and private interest and the question being raised is whether there is enough flexibility to allow the appropriate balance to be found in a changing world.

Our departure from the EU is clearly a pivotal moment in our nation’s history and as powers, including those relating to wildlife protection, are repatriated from Brussels there could be an opportunity to rethink our wildlife laws. Scottish Land & Estates does not, however, argue for drastic change as powers return. While we do believe that wildlife law could be usefully changed, we are also very aware of the size of the task involved in Brexit and of the need for businesses to have certainty with regard to the legislative frameworks they are operating within. That is why we have supported a phased approach that would see all relevant EU
law brought within domestic law (whilst respecting the devolution settlements) with a subsequent process to think differently about how we deliver the outcomes across all the regulations governing farming, land management and running rural businesses. There is an opportunity to think again about how we protect wildlife but it needs to be done in a measured way and not rushed by the pressures of Brexit.

When we do get to the debate about the future of wildlife law our main issue is likely to be around flexibility. We do not want to see a bonfire of regulation however attractive that might sound to some. Where there are opportunities to streamline regulation without undermining the efficacy of the law, then these should be taken, but it is important to remember that wildlife law has an important function to perform. Our interest is more about how the legislation can be sufficiently flexible so as to allow adaptive management on the ground. The sorts of issues that get raised with us relate to once scarce predators becoming abundant and presenting new challenges for land managers. These once scarce but now abundant species remain protected which makes the principle of adaptive management very difficult. There are mechanisms that would allow adaptive management in this situation under the current law i.e. through the granting of licences by the regulatory body, but that needs a proactive decision by government which can be open to legal challenge and successive governments have been reluctant to venture in that direction.

In practice, the result is an inflexible system that frustrates land managers. Clearly, having frustrated land managers isn’t, in and of itself, reason to change wildlife law, but it does suggest that something may not be working as well as it could. We collectively face difficult species management challenges, but collectively we have the knowledge to deal with them. The problem from the land manager’s perspective is that the system makes that very difficult.

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[Insert Footnote]

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[Insert Footnote]
These days the penalties relating to wildlife crime are somewhat less severe. Yet parts of the Night Poaching Act 1828 are still in force, forming part of the colourful conglomeration of laws that govern the way we manage the British countryside. After a 200 year history, the law is a layered affair of devolved, national, European and international commitments. Such a farrago is often confusing, contradictory or bizarre. One consequence of 2015 attempts to integrate EU invasive species law with the UK’s Wildlife and Countryside Act 1981 was almost to define barn owls and red kites as non-native species. A more serious side-effect is that the law is often out-dated. In some cases, species protection fails to reflect conservation realities and—in contrast to the threat of hard labour—penalties for wildlife crime can be weak and poorly enforced.

The gaps and contradictions are a cradle for conflict. It is the grey areas where different interest groups often find themselves caught up in disagreements. For example, an ad hoc approach to data collection means that species population information is often collected by one set of volunteers, while bag data for numbers of birds shot is collected and collated on a voluntary basis by another group of people. This makes scientific comparison difficult and neither data set is properly linked to licensing for the numbers of birds shot, making the system very unresponsive to conservation concerns and heightening tensions between different interest groups. So, wildlife rules are ready for review. This was recognised by the Law Commission’s analysis of wildlife law, which reported in 2015. However, wildlife law is itself a component of a wider body of environmental law. The Law Commission’s work did not consider habitat protection, for example, or rules relating to

**A NEW ENVIRONMENT ACT**

**Dr Richard Benwell**
Wildfowl & Wetlands Trust

When it was first enacted, the law relating to night time poaching offences included a provision that, after a third offence, a poacher “shall be liable… to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction.”
natural capital accounting and planning.

The possibility of Brexit offers the possibility of reviewing the detail of wildlife law, but also for setting it within a new framework of environmental protection and improvement.

The first component of an effective framework would be legally-binding objectives to set a trajectory for improvement. Today, we have many environmental targets in place, but they are often “soft” targets, with no consequences for failure and no link to policy or funding. A new Environment Act should set substantive targets for air, water and wildlife, and should chart a course toward a greener future. They should combine an intuitive set of headline goals—is the air we breathe safer? are our waters healthier?—with a more detailed suite of objectives that build on the many targets we have inherited from the EU, like the Water Framework Directive’s goal of good ecological condition.

Crucially, the headline objectives should be linked to sector-based objectives for cleaning up key industries. This will help to drive demand for private sector investment and contribute to the second key component of a new legal framework: financial mechanisms.

Natural capital investment in the UK is chronically under-funded, with natural assets like floodplains or carbon sinks depreciating every year. A future framework Act should combine large-scale public funding for nature with new markets for private innovation and investment. At the very least, the Treasury should match the £3bn of investment in the UK’s farmed environment that we receive through the Common Agricultural Policy (CAP), redirecting funding toward the most ecologically efficient choices. The oft-promised contribution of green finance can be stimulated by a new commitment to polluter-pays obligations (such as net-gain requirements for developers), combined with new catchment-level responsibilities for spatial planning for nature, which can inform long-term contracts in better land management.

This will help farmers to diversify their income base and to increase the resilience of their natural asset base, such as soils. So, for example, in a catchment where there is potential for farmers to invest in riparian wetlands to reduce soil run-off and improve water quality, today the options are limited by a poorly-targeted menu of CAP options and by payments limited to cost-recovery. An Environment Act should put in place the financial structures to direct long-term public contracts, reinforced by private investment, to make ecological enhancement a rewarding part of a productive farm business.

Of course, post-Brexit we may lose the independent prosecutorial role of the European Commission and Courts and the guiding hand of the principles of environmental law set out in the Lisbon Treaty, like the precautionary and polluter pays principles. A future framework will require primary legislation to create new UK institutions and empower existing institutions to fulfil those functions with the appropriate expertise, independence and powers to give expert advice and hold government, businesses and individuals to account.

Together, these framework provisions—objectives, investment, and governance—should guide a future improvements to particular areas of law and policy (including wildlife) along a more integrated, rational path.

So, for example, we may be able to revisit the question of the more sustainable management of hunted species, adjusting species protection and quarry lists in the light of more rigorous methods of data collection and analysis. To illustrate with one species, Common Pochard numbers are in serious decline, yet we have no accurate information on how many are shot in the UK. Surely we can agree new ways to fill knowledge gaps and update permissions

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accompanying. At the same time, though, financial incentives could encourage better water and wetland management to reduce the proliferation of algae and weeds that prevent the ducks from feeding, while measures to prevent the spread of invasive species like American mink could help guard against predation. Aligning policy action behind common goals can help find the most effective ways to solve a problem.

In this way, real benefits will emerge if a new Environment Act can drive action across government.

To take another example, EU targets to improve the ecological condition of our rivers and streams are not strong or integrated enough with key policy levers like planning, transport and fiscal policy. As a result, contributing factors like toxic run-off from impermeable surfaces remain outside Defra’s influence, and key tools to help change behaviour (like taxes and subsidies) are not aligned to green goals. A powerful Environment Act could help to line up a thousand smaller decisions, obliging all government departments to work together toward water quality improvements, such as increasing the use of sustainable drainage in the forthcoming planning review, or structuring new farm payments to support new water treatment wetlands. Together, these individual actions across government could add up to a big environmental improvement.

No doubt, in another 200 years’ time, the laws we write to fill the Brexit gap will also look bizarre. How—the people of the future may ask—could we abide a system that did not pay moorland managers handsomely for carbon storage and water quality? How could we get by on species protection and housing development without proper tools for mapping and spatial planning for ecosystems, rather than single-species measures? How could we get by with a public health system with no influence over causes of chronic disease, such as filthy air or lack of access to nature?

However, by legislating in this Parliament—introducing an Environment Bill in 2018—the government can establish a new framework for improvement. With the right milestones, money and monitoring guaranteed in law we may not be able to tell which particular policies will survive the test of time, but we can have a better idea of what that future will look like: a greener UK.
A REAL OPPORTUNITY FOR CONSERVATION

Teresa Dent CBE
Game & Wildlife Conservation Trust

The nation’s approach to conservation isn’t working well enough. For generations the approach has been based on protection and prescription. Legislation is protective and conservation programmes are prescriptive. A species in worrying decline is typically given legal protection – even though the real threat may come from something legislation cannot address. Conservation programmes pay landowners and farmers for following habitat management prescriptions, but these fail if they are poorly applied or not backed by other measures.

Overall, protection and prescription have largely failed to arrest a continuing decline in biodiversity. Government targets, such as the Farmland Bird Index, continue to fall short, yet Game & Wildlife Conservation Trust (GWCT) research has clearly demonstrated what needs to be done.

Modernising the nation’s approach to conservation could transform the prospects for many declining species and leaving the European Union gives us the increased flexibility to concentrate on conserving populations, rather than protecting individual animals. Special protection, where it is needed, might vary regionally and could change with time or be conditional on circumstances. Environmental stewardship, as well as supporting habitats through prescriptions, should also reward real improvements in biodiversity that can be measured locally.

Under current legislation, designed as a “one size fits all” across the EU, wildlife protection measures have been a blunt instrument. For example, special protection of red squirrels and water voles failed to stop their disappearance because the true cause of their demise has been the spread of American grey squirrels and mink.

A better approach would have been effective control strategies...
against mink and grey squirrels in the first place – something the nation did when it eradicated the South American coypu in the 1980s. In some cases, special schemes, it is assumed that the conservation of a species depends on the provision of its habitat. Research shows that this is not always the case. Animals usually need a mosaic of habitats and their life cycles can be compromised by other factors such as intensive farming or predation. Successful conservation addresses these other factors too. Now is an opportunity to shape conservation policy to recognise this.

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We should pay for what works. Farmers and landowners should be given clear incentives to increase the wildlife on their land. In many protection can have unintended consequences. The Badgers Act, for example, has achieved what it was designed to do, but the result may be detrimental to other species such as hedgehogs and bumble bees.

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We should pay for what works. Farmers and landowners should be given clear incentives to increase the wildlife on their land. In many
On the first of September
One Sunday morn
I shot a hen pheasant in standing corn
Without a licence.
Contrive who can
Such a cluster of crimes against God and Man!

Richard Monckton Milnes,
First Lord Houghton

Oh dear! Pheasants are protected by law until October, the gamekeeper will be upset because a hen pheasant may still have poults in September, the parson is offended because of shooting on the Lord’s Day, the gentry are annoyed because the Game Laws were designed to prevent working classes killing game on their only day off (but killing ‘vermin’ is OK), the farmer is not happy with you running around in his corn looking for it, and the State is not happy because you have not paid for a licence (now abandoned as not worth the admin cost). And all this fuss over a common introduced species!

British wildlife law dates from medieval times. Since the 1830 Game Act it has had thousands of add-ons and amendments. We have local Councils, NGOs such as the RSPB and RSPCA (dressed up as officials), devolved regional governments, Westminster, Brussels and of course international treaties such as CITES, all vying to control wildlife management. We wallow in a miasma of controls that are negative, unenforceable, incomprehensible and which don’t work. Our environment is now a disaster zone and we are facing the final mass extinctions on this planet.

We only have this one planet. We cannot expect other countries to carry us. We must bear our own share of the global responsibility. How can we preach to other nations about hosting elephants when we agonise over a simple thing like restoring our beavers? We are ourselves ‘wildlife’, and everything we do impacts the environment. Our current
wildlife management entails polluting water with hormones that feminise fish, amphibians and humans, disrupting whole aquatic ecosystem with nitrates and slurry, and screwing marine life with plastic. On land we have lost 75% of insect biomass, destroyed habitats and soil structure over huge areas and fragmented habitats with impassable motorways so that isolated populations are no longer connected or viable.

Please, no more sticking plaster legislation! No more unenforceable, misdirected, negative sieving of midges while swallowing camels. Clear it all away and start again with legislation based on principles, not political point scoring and pressure groups.

We need objectives that will guide us through the next hundred years of human exploitation of this planet. We are unable to control our own overpopulation demographic crisis. Thanks to the tragedy of the ‘commons’, no government is going to tackle this issue. None have set a target ceiling for its human population, or envisaged what standard of living its citizens would have at that density. As we overpopulate the planet we destroy whole areas of habitat, entire ecosystems, and thousands of species. Evolution is too slow to adapt to such high speed global warming and exploitation.

In this scenario, we need objectives to guide us into the future. We cannot recreate a Garden of Eden. We cannot use history as our guide. We need habitats that are genetically diverse, representative and versatile enough to face whatever contingency comes along. Concepts such as ‘indigenous’ have little relevance in a fast-changing future.

Our objectives need to be prioritised in descending order:

1. Planet Earth and sustainable global systems.
2. Shared regional resources, such as water, and fisheries; the ‘commons’.
3. Habitats with full biodiversity for at least minimal viable populations of all species.
5. Individual animal welfare.

Far too often, individuals are prioritised, often on an emotional basis, to the detriment of the larger good. Once the objective criteria are prioritised, one can evaluate past and future decisions. Looked at in this way, one can easily see how most of our wildlife legislation, in its broadest sense, is a failure and has led us into the mess we are in.

These objectives are key to the decision-making tree. For example, the concept of individual animal welfare hinges on #5. This has its place, but only within the context of higher priority objectives. Where it conflicts with those higher priorities, such as the welfare of a species as a whole, or even of habitats, then it is clear to see that the higher priorities should take precedence. Rather than battling it out in trial by media and online voting campaigns, the guiding principles of our objectives make decisions obvious and lead to an effective outcome. Provided of course that we have politicians prepared to make such decisions, rather than curry votes.

Most of our wildlife legislation is a catalogue of negatives. Most is unenforceable, over-detailed, ineffective and under-targeted; that is to say that it is aimed at too low a level on our priority tree. Unenforceable? Look at the Hunting Act. Over-detailed? You need a licence to look inside a dormouse box! Ineffective? Look at the depressing stats on almost any species or habitat you like. Under-targeted? We protect starlings while multi-spraying crops with chemicals. Our farm business model, based on subsidies, is a disaster and yet we expect farmers to be more and more ‘efficient’ which in reality entails chemically bludgeoning the ecosystems.

Subject all legislation to a cost-
benefit analysis. Is it achieving the benefits for the priority level it is aimed at, and are the administrative and social costs actually worth it? Does the legislation actually work? Does it achieve what it was intended to achieve? Most licensing

systems are a waste of time; they are heavy on admin, expensive for all, largely unenforceable and easily avoided by those wishing to avoid them. Dog micro-chipping? No central database, no updating of the database, no police checks, easily evaded, and no change in human or livestock injury statistics. But politicians think that they have ‘done something’.

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About 80% of us live in single species urban environments, often with little comprehension of our reliance on natural resources and our unintended impacts on them. Land itself needs to be prioritised towards our objectives. Grades 1 and 2 agricultural land should be prioritised for food production. Grades 4 and 5 for housing, trees and wildlife habitats. The concept of ‘utilitarianism’ needs to be re-evaluated from what is of immediate benefit to human pressure groups to what benefits our objectives in the priority tree.

By removing most of the over-detailed and ineffective legislation we have become bogged down in, we can simplify and reduce admin costs. Recently 90% of Defra prosecutions on raptor keeping did not involve wild birds at all; they were all failures to comply with paperwork requirements. Get rid of the law and you get rid of the crime. We need to empower people in a positive way and encourage a better appreciation of how our own actions impact the world and our future. Treating for woodworm, killing cockroaches and mice, gardening; this is wildlife management at home. Motorway design and street lighting is wildlife management. Practically all farming decisions are wildlife management. ‘Leave it alone’ is not an option. People have their own priorities for what wildlife they want or don’t want and these utilitarian approaches often conflict. The media thrive on fomenting conflict between groups concerning wildlife issues, while politicians prevaricate. Badgers and bovine Tb, fox hunting, grouse moors, predator control, nitrate vulnerable zones; one group wants one thing, the other something else, and all feel that they should be able to force their own priorities onto others without justifying those priorities against any broader objectives. Most of our wildlife law derives from these one-sided viewpoints; it is time to review them against a new frame of reference and priorities. With Brexit we have the opportunity to do a clean sweep of ineffective, admin-heavy legislation and create new, simple legislation that people can understand and empathise with. And use positive incentives, such as a replacement of CAP, towards measures that target higher up the priority tree, with benefits that cascade right down to the individual level.

In this essay I have deliberately taken a broad approach. Of course I could go into all sorts of detail and case studies, and suggest remedies, but not in the space available. We are fiddling while Rome burns.
Ever since I can remember I’ve had an overwhelming fascination with the natural world that surrounds us. As children my brother and I crept out at dawn and concealed ourselves in the bracken to watch young badgers and foxes making their first forays into the world. We put up nest boxes for birds and bats. We dug out a new pond and populated it with weed, sticklebacks, frogs, toads and newts painstakingly captured from the nearest of the Richmond park ponds.

For people who love the natural world, each new season brings new excitements – most of all spring, with the return of countless migrating birds, swallows, house martins, gangs of noisy starlings, the odd cuckoo, and the appearance of nests everywhere. I hunted high and low, and knew exactly where to find them. I was obsessed, I still am. And I’m not alone. One in ten British adults supports at least one conservation organisation. We are a nation of nature lovers. We feed the birds in our garden and we revere David Attenborough. Which makes it surprising that – until now – governments have not cottoned on to how much of a vote-winner concerted action to restore and protect nature can be.

As I grew up the steady decline of the nature became ever clearer to me. Year in year out the abundance of life around us diminishes. Most adults can remember car windscreens splattered with dead insects after even the shortest of summer journeys. No longer. Insect populations are crashing almost everywhere, and with them everything else. Starlings, which were once so numerous that their vast flocks, known as ‘murmurations’, became a single creature, a huge genie in the sky performing acrobatics in one of nature’s most remarkable sights, have declined by 66% since the 1970s, according to the British Trust for Ornithology. The humble house sparrow has halved in abundance during the same period. 65% fewer cuckoos, whose iconic call heralds the arrival of spring, arrive back in Britain each year than when I was born in 1980. Everywhere you look, the great tapestry of life is becoming ever more threadbare.

The farming industry must take a significant share of the
blame for this. Nearly 70% of our land surface area is farmed, and the decline of the species that live on farmland has been especially stark. There are plenty of farmers who long to be the careful stewards of the land that farmers should be. But a radical industrialisation of farming has taken place largely as a result of EU Common Agricultural Policy (known as the CAP) subsidies which first dished out vast sums of taxpayers’ cash to farmers according to how much food they were able to produce, irrespective of the cost to the natural world, and more recently on the basis simply of how much farmland they own. These cash handouts from the state, combined with the increasingly centralised buying power of powerful supermarkets and an expectation of ever cheaper food by us consumers, have driven most farmers to grub out ancient hedgerows, remove trees, ponds, rough margins and any other natural features in order to maximise space for harvesting both crops and subsidies. On these industrial farms a relentless chemical warfare is waged on nature – with land repeatedly soaked in cocktails of herbicides, fungicides and pesticides, many of which were originally designed for human warfare. The soil is stuffed with artificial fertilizers, much of which is swiftly washed by rainfall into water courses, causing eutrophication which smothers the life out of our streams, rivers and estuaries. And the soil – on which our civilisation depends utterly – is literally being washed away from our fields before our eyes. Just look at a Google Earth image of our island from above to see the brown smudge of sea that perpetually surrounds us.

As people have grown steadily more vocal about what’s happening in our countryside EU policymakers have responded with the creation of a second ‘pillar’ of agricultural subsidy, known as Pillar 2, which allows 12% (currently) of the total budget to be used to reward those farmers who are fixing some of this damage inflicted on the natural world – by restoring hedgerows and trees and wildflower-rich rough margins and ponds. But the remaining 88% of the subsidy budget pays virtually no attention to any of these issues – as anyone who has travelled anywhere in the British landscape can attest. No matter how much destruction you wreak on the environment, no matter how great your contribution to soil erosion and flooding, no matter how few birds and other wildlife find a home on your farm, the cash keeps on flowing. In this way, the CAP has brought about an annihilation of nature in Britain’s productive, farmed lowlands.

The impact of the CAP has been even worse in our colder, wetter, windier uplands, where farming is uneconomic to an absurd degree. Have you ever wondered why Britain has none of the great, genuinely wild spaces that you find in other countries, in America, across mainland Europe and even Japan? With around 12% woodland cover, Britain is one of the least wooded countries in Europe – principally because our uplands, once a great mosaic of open woodland, and, in the west, temperate rainforest, have been cleared for sheep. It’s hard to think of an industry anywhere in the world that causes greater destruction for so little production than British upland sheep farming. For an output that is statistically irrelevant to our total food production, by an industry whose participants earn next to nothing even including the subsidies heaped upon them, our uplands are kept in a state of miserable,

It’s hard to think of an industry anywhere in the world that causes greater destruction for so little production than British upland sheep farming.

overgrazed denudation. EU farming subsidies for upland sheep farming are conditional upon the land being kept in this appalling state, and the result is that you’ll see more wildlife in London’s Berkeley Square than you’ll ever see in one of our upland deserts. If you doubt this, take note of the fact that the emblem of the so-called Yorkshire Dales National Park is a sheep. We have no national parks – not in the sense that anyone from any
other country would recognise. Our naked hills have the added disadvantage of being unable to trap and store rainfall, so whilst wooded hills act like sponges, holding and gradually releasing rainfall throughout the year, ours are the source of deluges which periodically flood our lowland towns.

Leaving the EU and its appalling CAP allows us to end this madness. It is so obvious that public money should receive public benefit by return. Farmers who, as well as fulfilling the crucial role of food production, take seriously their responsibility to be stewards of our landscape, who manage their land in a way that helps to prevent flooding, who work to restore and protect the soil, and who make space for nature and the landscapes that are valued by so many of us, should be rewarded for doing so. Those who are not willing to do these things, and in the absence of proper regulation forcing them to do so, should certainly not receive public funding. This needs to be the guiding principle of a post Brexit British agricultural policy. And in those places where farming just makes no sense at all – principally the British uplands – taxpayers’ money should be used to support its replacement with activities that pay, that create jobs worth doing, and that restore these landscapes to their former abundance and beauty. North Western Spain, Asturia’s Cantabrian Mountains, once one of the most ecologically and economically deprived places in Europe, provides a model of how ecological regeneration can deliver real and rapid economic regeneration. The descendants of impoverished sheep farmers who left the unforgiving land in droves a generation ago are returning to open small hotels and restaurants and to work as guides to the nature tourists who flock to the area in ever growing numbers each year. Fortunately it is hard to find anyone who disagrees with this vision.

Aside from the National Farmers’ Union, which really speaks only for the largest subsidy-junky farms, organisations from across the spectrum of concerns are lining up to support our current Environment Minister, Michael Gove, who has described Brexit as “a once-in-a-lifetime opportunity to reform how we care for our land, our rivers and our seas, how we recast our ambition for our country’s environment, and the planet”. Gove has already made it clear that farm subsidies will have to be earned rather than just handed out in future, and that farmers will only get payouts if they agree to protect the environment and enhance rural life. It is critical that as many people as possible make their voices heard on this, in support of Michael Gove. This is happening, and it’s exciting – so stay tuned!
Post-Brexit Britain has the chance to redefine her wildlife policy away from state control and market commodification towards new forms of custodianship for the common good.

During the forty-year period of membership in the EEC and later the EU, the dominant approach to wildlife has combined ever-greater bureaucratic regulation aimed at protection with the progressive introduction of market mechanisms into hitherto untouched areas. This approach reflects the fusion of state and market forces that underpins the European project since the creation of the Single Market in 1986. It is important to recognise that EU wildlife policy privileges top-down protection over self-management, which has helped to conserve biodiversity but also added a regulatory burden and costs. For example, the EU Habitats Directive increases the costs of housing building that is so desperately needed across the country.

However, it is equally important to realise that the alternative to state regulation is not more market freedom. One danger with opening up wildlife to the forces of capital is that they consider the natural world to be a commodity, just like the state views it as an administrative unit. This denies the intrinsic value of nature, its beauty and the good it embodies and represents for people.

Another danger is that a market-driven approach seeks to maximise either individual liberty or aggregate utility (such as economic growth) at the expense of the common good. Far from being utopian and therefore hopelessly vague, the common good is about blending individual fulfilment with mutual flourishing – the good of all as they are in their families, communities and workplaces.
A third danger with a market-driven approach to wildlife is that it promotes vice over virtue – greed, selfishness, distrust of others and a tendency brutally to exploit the environment.

Virtue, by contrast, is about common benefit, generosity, a measure of trust and prudent action. To invoke virtue is not some pious demand for more morality in public life. Rather, it is to go with the grain of our humanity – our capacity to discover and pursue the goods that are intrinsic to human activities – being a good parent, friend or farmer. As the eighteenth-century Neapolitan thinker Antonio Genovesi wrote in his lectures on civil economy, “virtue is not an invention of philosophers but instead a consequence of the nature of the world”.

Connected with the principles of virtue and the common good are cognate concepts of reciprocity, relationships and self-rule. Reciprocity is about the balancing of interests and power in pursuit of shared prosperity. Relationships are more fundamental than economic transactions or bureaucratic regulation; they also give meaning to people as social beings who are constituted by an inheritance of institutions and relationships and who have the capacity to honour old ones and forge new ones. Self-rule is the ability to relate one’s needs and interests to those of others and to pursue mutual benefit based on coordination and cooperation.

Reciprocity, relationships and self-rule operate best through decentralised civic institutions that uphold particular goods in the sense of preserving them by applying inherited knowledge and providing restraints on vice through internal institutional incentives and rewards – not external prohibitions (as with EU regulations).

How does this relate to the future of Britain’s wildlife post-Brexit? Based on these principles, we need to remember that it is the countryside and the organic relationship of the city to the countryside, which most guarantees our humanity. The countryside is basic in terms of food provision, ecology and our sense of beauty. It remains, therefore, the focus of prime concern as to how we maintain our human creativity and sustainable economic innovation alongside our sense of wonder and purposive place within reality.

A failure to comprehend the primacy of the land threatens the integrity of cities most of all, because a false primacy of urban space has encouraged an over-concentration of population and the rise of the sprawling megacity (symbolised in London by the dwarfing of the sublime spires of the people’s churches by the monstrously vulgar temples to mammon), which inevitably destroys its real function as the fulcrum of trade, craft and artistic flourishing as well as democratic debate. Instead, the mega-city has often become a site for debased modes of mass production, monopolistic and self-serving financial services, middle-brow culture often masquerading as the avant-garde, and media diversion of our attention from the real issues of human existence towards a trivial politicisation of personal life.

The intellectual failure to understand our place within nature also has a physical equivalent. The more that land is enclosed, the more local ecologies are destroyed. But in the end, the global ecology itself depends upon the various local ecologies, and their decline threatens the very conditions for human and animal life. Britain, like other advanced economies, needs to develop new lighter and green technologies that can bring
to life remote, rural areas – while cities can recover their functions as centres of human meeting and concentrations of technological innovation.

The pursuit of human flourishing suggests that being put to good uses of all kinds that benefit the community. The intention is not to expropriate land from existing landowners but rather to make sure that those who control large estates do not treat them as commodities but rather reinforce intensive small-scale farming requiring crop rotation, common grazing, a much greater number of agricultural workers and many practices of mutual assistance.

Fourth, there is a case for locally owned and organised energy companies, geared whenever possible towards renewables, in order to undercut giant private companies, which would be either mutualised or, if necessary, broken up. Such local economies are more stable and resilient and more productive of excellence and social solidarity. At the same time, their existence can drastically reduce global transport costs, which are only ‘efficient’ in terms of an economic search to reduce the price of labour.

These things would increase the appeal of staying on the land in order to achieve a more stable agriculture and to sustain that rural beauty which is ultimately our cultural lifeblood. All in all, this beneficial circulation would allow the emergence of a good natural and social ecology: a fine balance of interaction between person and person and between person and nature.

Today it is possible to restore the primacy of land and craft in an extended ecological sense of a primacy of nature as a whole, and of humanity taken as a part of nature, albeit as custodians who have a duty to conserve the common home of our shared natural world. The aim is to guard against further bureaucratic control and market commodification that lead to a loss of meaning and purpose.

Britain needs to renew the best of its common law traditions by strengthening corporate bodies that can act as custodians of our shared natural habit such as meadows, wetlands and forests.

technology should be used to extend rather than to displace individual human creativity, which is inextricably intertwined with our common home in nature. For example, Britain needs to renew the best of its common law traditions by strengthening corporate bodies that can act as custodians of our shared natural habit such as meadows, wetlands and forests. Rather than national state control or private management, the common land should be entrusted even more than it is already to democratic, self-governing, intermediary institutions that bring together farmers, residents, local government and businesses.

Second, Britain would benefit from a new approach to land ownership with a better balance between rights and duties. Land owned for pure prestige or mere private enjoyment should be heavily taxed, compared to land as a relational good entrusted to them for the benefit of others. The framing of any such measures would attempt to discriminate between genuinely rooted, responsible and ecologically and socially beneficial owners on the one hand, and distant, irresponsible and highly wealthy owners, on the other.

The third example is the need to blend craft with automatic processes in order to achieve outcomes that are economically and ecologically more viable – better quality and a more careful use of resources. This is most abundantly true with respect to wildlife management and agriculture, where food quality and environmental sustainability benefit from a more labour-intensive approach that resorts less to drastic and rapid ‘solutions’ such as crop-spraying. On the basis of a wider distribution of property, Britain needs to reinforce intensive small-scale farming requiring crop rotation, common grazing, a much greater number of agricultural workers and many practices of mutual assistance.
As we consider the implications of Brexit it is interesting to question, were it not for our membership of the EU over the last forty years, would we have developed similar environmental regulations, research programmes and grant payments, for wildlife and habitat protection? The list is considerable and includes the Habitats Directive, Special Areas of Conservation, Nitrates Directive and Common Agriculture Policy (CAP) to name but a few. I would venture that although far from perfect, the best of our current environmental legislation comes from the EU.

The Water Framework Directive (WFD), for example, may not have the most-catchy title but speaking as a passionate angler it’s the most innovative, far thinking and erudite piece of legislation you could wish for. The fact that successive governments have not pressed forward with its implementation is no failing of its inherent design or intent. The WFD is based on raising the “ecological status” of waterbodies that include rivers, lakes, groundwaters and coastal waters. Unusually, it operates at a natural (rather than political) scale, that being a river catchment or basin and as such it crosses countries, counties and borders. Thus it successfully unites EU member states around a common plan for the joint protection and improvement of the mighty Rhine or Danube and equally in the UK serves the Rivers Tweed or Wye, crossing England’s national borders. The WFD places the ecosystem and its function at its core and measures success through monitoring fish, invertebrates, diatoms, macrophytes (aquatic plants) and chemical contaminants as well as taking into account the geomorphology. Finally, as the Directive recognises catchment restoration and improvement will take time, it sets a timetable based on 6 yearly cycles 2015, 2021 and 2027. It also demands (under Article 14) that member states engage with local stakeholders in the design and implementation of the River Basin Management Plans.

The government’s EU Withdrawal Bill sees any outstanding EU legislation not already transposed, incorporated into UK law through a “lift and shift” approach. This provides a “level playing field” for future negotiations on trade while leaving the option to tweak or develop laws as we go forward.

We face many pressures, not least a population density in England of over 1000 people per square mile, with UK population...
growth estimated by the ONS to rise to 70 million within a decade. The resulting industrial and domestic demands, puts considerable strain on our environment. Even though we may have generous rainfall throughout the year, population density means that in England we actually have less available water per head than any other EU country. The South East being particularly stressed resulting in unsustainable abstraction, depleted groundwaters and rivers literally drying up.

Our soils are eroding at an estimated 2.9 million tons a year in the UK and many insects, birds, fish and other indicators are in serious decline. The UK has a poor record on soils. The government has not conducted regular soil monitoring since the last Countryside Survey in 2007, and in 2012 UK ministers helped block a EU soil health directive. On top of this we have the impacts of climate change to consider. As a society we seem to be obsessed with short-term growth, and ignore the importance of the environment on which we depend for a wide range of ecosystem services that underpin our health, wellbeing and the economy.

As has been described many times, we pay three times for our food, the purchase price, the subsidy payment to support its production and then again for the damage and clean up costs left behind. These may include, energy costs, chemical residues, greenhouse gas emissions, pollution of drinking water supplies, damage to soils and loss of biodiversity. This is not the fault of our farmers who are driven by the CAP and consumer demand; we must all share the blame when a bottle of milk costs less on the supermarket shelf than a bottle of water!

I am not convinced that our home-grown wildlife laws have served us at all well with regard to the problems outlined above and although Brexit would seem a once in a lifetime opportunity to develop new laws, best suited to the UK, I would need to be convinced that in reality we will do any better this time around.

The Convention on Biological Diversity (CBD) adopted at the Rio Earth Summit in 1992 has proven a powerful driver and has been rightly championed by NGO’s, seeking to hold successive governments as signatories, to account. However, the Ecosystem Approach, the delivery tool of the CBD to which the UK is also a signatory, which features 12 principles for ecosystem managers, has received little attention. In the UK we have tended to ignore ecosystem function in favour of selected species or habitats and fortress conservation, in the form of small reserves. These do not provide sufficient area or connectivity for many species that require a range of habitats to complete their lifecycle, a problem highlighted by Professor Sir John Lawton in his report, “Making Space for Nature”.

We seem to celebrate icon or totem species like badgers, which in reality may, or may not, be particularly threatened, yet ignore others, which may be endangered and far more critical to our ecosystems like pollinators and soil organisms.
WHERE NEXT FOR NATURE?

The presence of TB in our wildlife. Interest in reintroductions is a new and developing area that is beginning to attract attention. Beavers, now present on an increasing number of rivers, may well prove a management problem in the future if their numbers increase in line with predictions. With an incomplete ecosystem, heavily modified rivers and waterways and no top predators how will beavers fare? At some time in the future if numbers become excessive, as in Germany after reintroductions, will we be prepared to modify their operations and cull them as the Germans do?

Many of our European neighbours place considerable value on communities, culture and heritage where country sports are often seen as an important contributor. Unlike the UK, many areas used for hunting and fishing are under the direct control of national or regional government. This means that these activities are often seen as a common right to be defended. By comparison the UK has most of its land and rivers under private ownership and government is very centralised. These and other inherent differences have meant that not all EU laws fit well, with those reliant on licensing systems particularly open to abuse, where the restriction of licences can in effect be used to close down an activity without redress.

There are many types of licensing systems, and one that is deemed to work well in England and Wales and favoured by participants is around angling. Here it is necessary to buy a licence for coarse and game fishing before casting a line. The licensing system is presently operated by the Environment Agency, the Defra Agency responsible for regulating the sector. When you purchase a licence it demands adherence to a series of bylaws, which protect the fish species and their welfare. It includes close seasons, controls on method and how fish are captured, “bag limits” and catch and release. However, you will still need to get permission from the fisheries owner, buy a day ticket or join a club to have access to fishing. The licence raises around £20m a year, which unusually is hypothecated and spent by the Agency on fisheries management and improvement. Anglers in England and Wales are broadly supportive and feel they have a stronger voice as contributors. However, similar moves have been resisted in Scotland and Ireland where other systems prevail. In the Netherlands the angling licensing system has been passed from the state to the national angling body, which has reduced transaction costs and given anglers more direct control of their sport.

If Brexit is really to bring the advantages to the UK that have been promised, we must seriously invest in the protection of our ecosystems and natural capital and get away from introducing laws as a matter of political expediency. Instead we must look at an integrated package that combines, education, guidance and incentives to do the right thing, underpinned by fair and equitable laws, fit for purpose and that are properly enforced. If they fail this test they bring the law into disrepute. Good law needs to be intuitive, winning hearts and minds and creating a positive culture of compliance. Such an equitable and integrated programme may be built around a uniting concept such as, “the polluter pays”.

If we are not to suffer economically from floods, droughts, poor water quality, reduced soil productivity, declining wildlife and fisheries, and we wish to enjoy and see the expansion of green spaces and the opportunity for young people to participate in angling and other country sports, we must protect and invest in our natural environment. The National Ecosystem Assessment (2011) estimated the benefits of UK inland wetlands to water quality of up to £1.5 bn per year and amenity benefits of living close to rivers, coasts and other wetlands of up to £1.3 bn per year. There is a lot more than just angling and wildfowling at stake, important as that is!

In conclusion when considering the future of wildlife law, we should remember that democracy is about defending the rights and freedoms of minorities and that our countryside is not natural, and at best semi-natural. Many of our most important wildlife features like hedges or coppiced woodlands are man-made and require on-going management effort. For the last 40 years we have grown accustomed to relying on the EU to hold successive governments to account when it comes to meeting environmental and wildlife commitments, with powers of infraction if necessary. Who will hold government to account in the future?
As a general rule, in British common law it has been the tradition that if something is not forbidden it is allowed; European civil law generally assumes that if something is not specifically permitted it must be illegal. To take a wildlife example: Britain enacted laws specifically to protect badgers and birds of prey. Recently, however, we have imposed regulations specifically to exempt invasive parakeets from protection: but when were they specifically protected in the first place?

One especially harmful example of a wildlife law imposed by the European Union is the protection of great crested newts. These delightful, yellow-bellied beasts are common throughout this country. You find them in every part of England, and in much of much of Wales and Scotland. They are scarcer on the continent, however, which accounts for their special status as a “European protected species”, since 1994, meaning that you can go to prison for six months for harming them. Because they are widespread, developers have to go to great lengths to ensure that any newt living on or near their development is excluded or rescued before the bulldozers move in.

As I have reported elsewhere, there are about 1,200 licences issued each year to fence newts out of development sites and then trap those inside and remove them to safety, though they hate being moved and often don’t survive. Such fencing and trapping directly costs business about £60 million a year. The actual cost is much higher if you add in the delays that newts regularly cause, because a developer must trap newts on a development site for at least 30 days after the newt-exclusion fence goes in and then for five clear days of zero catches, which might take weeks or months to achieve.

Green pressure groups therefore see newts, precisely because they are so common, as a useful weapon to stop people building things. Some even smuggle them on to sites. The government is often taken to court both domestically and in Europe by people in the green movement who have too much money and not enough to do, for not being zealous enough in enforcing the law on newts. There’s a thriving industry selling developers fences lined with heavy plastic sheets partly buried in the ground to prevent newts entering sites. The fences can be miles in length and are often cruel barriers to the movement of wildlife.

Fortunately, common sense is starting to prevail and Natural...
England, the newt regulator, has now switched to a simpler system in which developers create newt habitat elsewhere as compensation for destroying a pond that was going to be destroyed anyway. This will produce far better results for newts, and people. But it has had to tread carefully for fear of falling foul of the European directive. Similar nonsense disfigures our relationship with bats, whose automatically protected status has given rise to a thriving industry of bat surveyors very unwilling to give up their lucrative livelihood by accepting reform in which bat roosts are specially built so that churches can be protected against the effect of bat urine on brasses, and home owners can add extensions without severe bat-induced delays.

Britain’s laws protecting wildlife were first invented to help landowners prosecute poachers and maintain their sport, rather than to help wildlife. That is why there are closed seasons for grouse, deer and partridges. Later, protection was extended to some species for reasons of welfare (badgers) or conservation (birds of prey). Others remained completely unprotected at all times as “vermin” in order to protect game (crows, stoats), livestock (foxes), or crops (pigeons, rabbits). Recently it became possible to get a licence to kill certain species in limited numbers (cormorants, gulls) to help other wildlife.

Frankly, the system is a bit of a mess and badly out of date in certain respects. For example, why should it be completely legal for a farmer to kill a fox at any time of year and completely illegal to kill a badger? Why should it be legal for him to kill a carrion crow to protect his lambs, but not a raven? A stoat but not a pine marten? A salmon but not a seal? A pigeon but not a gull?

Foxes, badgers, crows, ravens and gulls are all thriving as never before today, not because of legal protection but because they benefit from human interference in ecology. We keep them alive by providing abundant food especially in the winter when their numbers would normally collapse: road-kill, land-fill, agricultural crops, cow-pats and more. In the case of foxes and badgers, we have also killed off their natural enemies, such as wolves and lynx, a phenomenon known as the “mesopredator release effect”, whereby middle-sized, general-purpose predators thrive to the detriment of some of their prey.

This means that conservationists need to be in the business of managing mesopredator populations.
You cannot have hedgehogs if badger numbers are high: this has been proven by a huge range of evidence: experimental, historical, geographical, observational. That’s why hedgehogs have largely retreated to suburbia, where badgers have not (yet) followed them.

Likewise, you cannot have breeding curlews if foxes are abundant; the foxes get the nests or chicks every time. You cannot have song thrushes if magpies are abundant; you cannot have puffins if herring and lesser black-back gulls are unchecked; you cannot have water voles if mink are present; you cannot have fish if cormorants are numerous; you cannot have partridges if buzzards are abundant, and you cannot have red or black grouse if hen harriers are common. Our laws were mostly drawn up at a time when predators were rare because of the attentions of Victorian gamekeepers followed by the effect of DDT in the 1950s. Now we live in a world of rebounding predator numbers and the species we are losing – such as curlews – are the prey species.

A specific example might help to make this issue clear. About 20 years ago, desert tortoises in the Mojave Desert in southern California suddenly began to decline alarmingly. Conservationists realised that ravens were the cause: they were eating young tortoises and there were far more ravens than there used to be. The reason? A landfill site had opened near the desert, fuelling a raven population boom. The spread of housing developments, with attendant trash, had not helped. Everywhere you go in the world you find that conservationists are realising that they need to control the “wrong” species to help the “right” ones, just as gamekeepers and farmers have argued for decades.

Pragmatism, not dogmatism, is what is needed. The trouble is, dogmatism is very lucrative for some organisations. The Royal Society for the Protection of Birds makes a big fuss about wildlife crime, raising money on the back of accusations against landowners about the killing of birds of prey, but itself uses predator control on most of its reserves, killing foxes, crows, gulls and other species if necessary. This is hypocrisy.

After Brexit, the law should be changed to find pragmatic and effective solutions to wildlife problems so as to achieve balanced biodiversity, rather than just rewarding green pressure groups. After all, crows, pigeons and foxes are wholly unprotected at all times, and they are all thriving as never before, so it is entirely possible to have less protection without extinction. Many landowners would gladly provide sanctuaries for rare species, especially if they knew that they could reduce their numbers if they became a problem, and especially if they were rewarded for it. One of the reasons so many landowners hate the idea of reintroduced beavers and lynx is that they know that such species will be fully protected, so if they do damage there is nothing they can do about it.

When I was young, Northumberland - where I live - had no ospreys, very few buzzards, almost no otters, and far fewer peregrine falcons, herons, goosanders, deer, badgers and seals. The recovery of such species is not a result of legal protection nearly as much as it is the result of the removal of DDT from farming, plus the migration of people out of the countryside so they do not bother the wildlife as much. But by far the richest habitats for wildlife in this county are the ones that are managed: the offshore islands managed for seabirds, and the grouse moors managed for red grouse, but acting as vital breeding sanctuaries for curlews, golden plover, lapwings and black grouse as well.

Wildlife laws should be reformed to allow for the management of any and all species in the interests of biodiversity.
WHERE NEXT FOR NATURE?

PROTECTING WILDLIFE

Professor Sir Roger Scruton
Writer and Philosopher

Parliament has passed many laws to protect wildlife populations from both natural depletion and human abuse. But these laws have not prevented the decline of native species or the rise of the colonisers and predators that are driving some of our wild species to extinction. The complex symbiosis of our countryside requires sensitive and targeted legislation if we are to offer help to the species that need it, while curbing or culling those that threaten the existing equilibrium.

Our leaving the European Union offers an opportunity to return to indigenous ways of doing things. While the EU and the European Court of Justice (ECJ) have been shaped by Roman-law (civilian) conceptions of legal order, we in the United Kingdom have been governed largely on common-law principles. The civilian approach to organised activities is to control them by a set of top-down regulations, and otherwise to forbid them. The Common Law is therefore friendly to local customs and traditional ways of managing our many interests. Unlike the top-down jurisdiction of the ECJ it will not assume that legislation should be centralised or uniform over the entire jurisdiction, and it will see no harm in delegating regulation to voluntary bodies like the Game & Wildlife Conservation Trust (GWCT) and the Masters of Foxhounds Association (MFHA).

The Common Law is therefore governing the culling of deer in the Scottish Highlands, the hunting of foxes in the Welsh hills and the control of rabbit populations in fenland farms is alien to common-law thinking.

There are many interests that converge in the management of wildlife. We should give priority to three of them: the general interest in encouraging biodiversity and protecting endangered species, the interest of farmers in controlling pests, and the interest of sportsmen and animal lovers in maintaining habitats. In all three cases we should be aware that sentimentality, favouritism and hostility towards some of the...
human interests involved, may colour our judgment, without conferring any benefits on the species that we wish to favour and indeed often penalising those who have the greatest interest in protecting their habitats. What is needed is a clear, objective and comprehensive legal package, designed to secure the welfare of the animals and the renewal of their habitat, while outlawing human cruelty. Such a package should allow for flexible regulations, adaptable to local interests and knowledge, preferably administered by independent bodies directly answerable to the interests of the people involved.

We are a dominant species, but we depend, in both known and unknown ways, on a far-reaching equilibrium with the wildlife of our countryside. We rely on bees and other insects to pollinate our plants, without which we could never feed ourselves. We have a general need for biodiversity, so that the expected patterns of plant and animal life be reproduced from year to year. And we have a deep spiritual connection to a natural order in which birds and insects fill the air, mammals roam the copses and the rivers teem with fish.

But this equilibrium between humans and other species is no longer guaranteed. Species that exploit the human habitat – rats, corvids, foxes – have expanded well beyond their ecological niche, while invasive species that have been brought in by humans – grey squirrels, American crayfish, mink – have driven their native rivals to near extinction. Both human necessity and biodiversity now require an interventionist policy, though it must be one that is sensitive to local conditions and the perceived needs of all involved, both humans and animals. Legislation to protect the red squirrel makes sense in Britain, but not in Poland where most squirrels are red, and most of them a nuisance. And legislation to protect the Greater Crested Newt from invasive construction work makes sense in

The enemy of fish is not the angler but the one who seeks to forbid his sport.
France where the Greater Crested Newt is endangered, but not in Britain where it is comparatively abundant. So on what principles should our interventions be founded?

Whether wild or domestic, whether mammals, insects, fish or birds, animals are not persons in the full sense of the word. They do not live in a network of personal relationships and obligations as we live; they have no moral duties, and obey the laws of species life, without heroism or tragedy, and with no sense of being judged. While we negotiate our conflicts through the language of rights and duties, no such negotiations are available to the animals. If we treat them as having rights nevertheless, we will be treating them in a way that they can neither understand nor meaningfully respond to. They can neither claim their rights nor be held to blame when they violate the rights of others. In short, they live in an amoral universe, outside the bounds of moral judgement. Which does not mean that we can treat them as we will, for, even if they have no rights against us, we have duties towards them. Gratuitous cruelty towards an animal is condemned by morality as well as by law.

Because animals are not persons, we should consider them from the legal point of view not as individuals but as species. Of course, for its owner a dog, a cat or a horse is an honorary person. But when it comes to wild animals we have no other way of dealing with them except as instances of their kind. Hence our duties involve looking after habitat, specifying methods and times of cull, protecting mammals during the time of nursing their young. All this is familiar to sportsmen, who have from the beginning of recorded history established closed seasons for the protection of their quarry, while managing habitats and food supplies.

The advocates of animal rights turn a blind eye to the points I have been making, campaigning for legislation that amounts not only to treating animals as persons, but also to curtailing or even forbidding all attempts to intervene in the natural order, whether for a human purpose or to protect some threatened species. If animals have rights, then the right to life must surely be one of them. To respect that right we will have to refrain from killing not only the fox who steals the chickens but also the rats that bring diseases to the household, the magpies that destroy the song birds, and the rabbits that devastate the crops. Only if we move away from the concept of individual rights to that of general welfare will we develop a code of conduct that will respect both the animals and the legitimate human interests that are put at risk by them. If the advocates of animal rights had their way there would be no such sport as angling, even though it is thanks to the anglers that our rivers were saved from pollution and that fish still swim in them. The enemy of fish is not the angler but the one who seeks to forbid his sport.

Since selective culls are a necessity, we need a legally enforceable distinction between the cruel and the humane ways of carrying them out. Current legislation defines cruelty as ‘causing unnecessary suffering’, but leaves open the definition of ‘unnecessary’. From the moral point of view there is
all the difference in the world between suffering that arises as the unwanted by-product of a legitimate activity, and suffering that is relished for its own sake, as in the more sadistic blood sports of the past, such as bear-baiting.

And we regard as legitimate not only activities that form part of husbandry and profitable work, but also many established recreational pursuits such as horseracing and certain kinds of hunting. Rules for the minimising of suffering should be specified for such legitimate activities and made subject to some kind of regulative oversight, such as that maintained by the MFHA in the case of fox hunting.

But this raises the question of how we are to understand animal suffering. Animals can suffer in many ways apart from bodily injury: depletion of habitat, disease, fear and anxiety. In assessing the suffering inflicted by a mode of cull we need to be circumspect and scientific and not led by uninformed emotion. Animals that are injured by gunshot wounds and then crawl away to die suffer intolerable pain; those shot in full flight like game birds, or overtaken by hounds as in traditional hunting may suffer more fear, but their pain is incomparably less, on account of the near instantaneous death, and also of the endorphins which is the principal cause of the labour spent on protecting the habitat of the hen harrier).

If there were to be a comprehensive law governing wildlife management, therefore, it should include the following:

1. A definition of welfare, and when welfare is compromised, whether by fear or pain, taking into account injury, incapacity and the counter-effect of endorphins.

2. A definition of cruelty, as the intentional causing of unnecessary suffering, where ‘unnecessary’ means unnecessary to a legitimate human goal.

3. A definition of legitimate human goals: agriculture and general husbandry, culling of pests, management of habitats, recreational interests where suffering is not the goal but an unwanted and where possible minimised by-product, as in fishing with a line.

4. A definition of protected species, that enables us to extend it rapidly to newly endangered species, like the water vole, and to withdraw it equally rapidly from protected species that have successfully multiplied to the point of threatening the biological equilibrium, such as Canada geese and kites.

5. A definition of invasive species, pests and other potential targets, where culling is to be encouraged.
“The Countryside Alliance recognises that our wildlife laws are in need of updating and that leaving the EU is an opportunity for us to shape new laws specifically for the UK.”