

## Time for an Act?

*Discussion paper to inform alliance meeting, 22<sup>nd</sup> February 2017,  
from: Kath Dalmeny, Sustain: The alliance for better food and farming*

In response to Brexit, our meeting will focus on what legislation is needed to secure a better future for food, farming and fishing. What do we need to fight to protect? And what are the new legal protections our movement should come behind, to secure a healthy, fair, humane and sustainable future?

This discussion paper aims to set the scene – a ‘state of play’; throw out questions; note some existing initiatives by third-sector allies and the direction these seem to be taking; and to remind ourselves of the importance and complexity of the task, when looking across the whole of food, fishing and farming. It has been compiled by Kath Dalmeny of the Sustain: the alliance for better food and farming, informed by many conversations, meetings and publications over recent months.

Inevitably, we all have immediate concerns about the Great Repeal Bill (the need to “bank” existing standards, to secure our foundations). But this is also a rare opportunity to come together to think about what we could achieve through a new legislative framework (to “build” for the future).

It is also worth bearing in mind that achieving our ambitions is likely to take an unprecedented level of effort and unity of voice and purpose, working with allies across our movement and most likely beyond.

The paper is structured simply, around the following themes:

1. ‘Banking’ existing legal foundations
2. ‘Building’ for the future: Time for an Act?

### 1. ‘Banking’ existing legal foundations

Many third-sector organisations are already putting considerable efforts into securing existing legal foundations – understanding where the main threats are, and building up knowledge and momentum needed to protect them. Some already have well worked-up legislative proposals and advocacy plans (e.g. Unison, Unite and others, e.g. with Melanie Onn MP on protecting workers’ rights; Green Alliance, Link and others on environment; RSPCA and Compassion on animal welfare); others are gearing up.

#### a) Great Repeal Bill

- There is a general sense from third-sector and some business voices that keeping EU rules is vital, to prevent a backward slide in standards; enable trade with the EU; give greater certainty;
- A large percentage of e.g. environmental rules will not easily be transposed, or will be weakened by loss of link to EU institutions, around monitoring, enforcement, access to justice and penalties for breaches; complexity also arises from how these are implemented in the UK as domestic rules, either in legislation, with reference to EU processes, or introduced as Statutory Instruments;
- Preambles to EU rules are unlikely to be transposed, losing the link to the purpose of such legislation, which is important for legal interpretation, rulings and building up case law;

- Some are already keen to remove ‘troublesome’ elements (e.g. NFU wants rid of the Precautionary Principle; government may take the deregulatory opportunity to hand over pesticide, chemical, veterinary medicine and farm practice regulation to industry, reinforced by an ‘earned recognition’ approach); there is likely to be increased pressure to do so as new trade deals are sought;
- Likelihood of Great Repeal Bill containing a ‘delete button’ (Henry VIII clause), enabling UK deletion of EU rules in future; not yet clear if this will be with Parliamentary (and Devolved Nation?) scrutiny;
- EU legislation will continue to evolve without UK say or involvement, so ‘equivalence’ will drift;
- In some areas (such as fishing access and quotas) a high level of EU cooperation will be essential, and important principles must still be upheld by both sides (e.g. science-based marine conservation);
- Political will seems to be behind securing ‘EU equivalence’, but warning signs are that UK agencies may be keen, and freed, to ‘flexibly interpret’ EU laws (e.g. Unison warnings on meat inspection); perhaps reverting to ‘substantial equivalence’ (problematic for e.g. antibiotics; growth hormones);
- Hence likelihood over time of the promised Great Repeal Bill protections and standards losing power and being eroded – so the Great Repeal Bill is a safety net of sorts, but already with holes in it;
- Very large number of amendments expected in Great Repeal Bill process – it will be a bun fight – other issues may hog the public limelight; government (with small majority) will no doubt resist anything that smacks of restriction of freedom to operate in EU negotiations and future trade deals.

#### b) Institutions, conventions and international treaties

- It is not yet clear how the Devolved Administrations will relate to the terms of the Great Repeal Bill.
- Uncertainty over UK relationship with important treaties/conventions and underlying principles, e.g.:
  - Lisbon Treaty recognises animals as sentient (later legally enforceable by Amsterdam Treaty), and commits signatory nations to protect animal welfare;
  - Aarhus Convention secures access to information, public participation in decision-making and access to justice in environmental issues.
- Uncertainty over UK’s relationship with important EU institutions – science, research, product approval, data, monitoring and enforcement, and cross-boundary issues, e.g. (among many):
  - European Agency for Health and Safety at Work;
  - European Chemicals Agency;
  - European Environment Agency;
  - European Centre for Disease Prevention and Control.
- Leaving the Common Agricultural Policy and EU farm subsidy/rural development system is understandably preoccupying many organisations, with much discussion about how to achieve ‘public money for public goods’ and how such a new system might be paid for and governed.
- Global-level international conventions mean that some important foundations and principles are presumably secure, e.g. CITES – the Convention on the International Trade of Endangered Species.
- Important existing domestic-level legislation – relating to international commitments – is also presumably secure, such as the Climate Change Act (also committed to in the Brexit White Paper).

#### c) Comments and questions relating to the Great Repeal Bill

Groups across the third-sector are already moving, or gearing up for action on the Great Repeal Bill. Some are coordinating with close thematic allies on issues, such as ‘natural environment’, ‘marine conservation’, ‘animal welfare’ and ‘workers’ rights’. These efforts will continue, and there is a case for more organisations, across a wider range of constituencies and interest groups, throwing their weight behind such important thematic initiatives. There will be many mutual benefits.

And if we are going to secure robust foundations on which to build for the future, through work on the Great Repeal Bill, is there an argument for also pooling cross-sector efforts? Especially where there are common or ‘top level’ principles to be won, where we all share an interest? For example (illustrative examples drawn from options being explored by various groups across our movement and beyond):

- Focusing on ‘EU equivalence’ – a political commitment already made by the PM – seeking wording to secure explicitly in UK law principles of e.g. the Lisbon Treaty, Aarhus Convention, and others;
- Requiring changes to have democratic mandate and engagement, such as set out in Party Manifestos and the Queen’s Speech, subject to Parliamentary scrutiny, and not just eroded ‘behind the scenes’;
- Making provision for Parliamentarians in both houses to be resourced to take on enhanced scrutiny;
- Requiring explicit prioritisation of important principles of e.g. health, safety, consumer protection, social justice, workers’ rights, climate change, biodiversity, environment and animal welfare;
- Securing continued cooperation with key EU science, data, approval and monitoring institutions;
- Making it clear future trade negotiations can only be made with due consideration for such principles.

## 2. ‘Building’ for the future: Time for an Act?

There has long been an ambition for a more joined-up approach to health, ethics and sustainability in our food, farming and fishing systems. The idea of a new Act of Parliament to provide the legal basis for achieving this ambition is back on the table due to Brexit, and was identified as a priority area for exploration by alliance members and others at our Sustain Brexit Forum in November 2016. Professor Tim Lang of the Centre for Food Policy and Food Research Collaboration at City University London is a leading champion of such an approach, and will share insights at our meeting on 22 February.

### a) What legislative activities are already happening?

Groups across the third-sector are already moving, or gearing up for action to support new legislation on specific themes. Illustratively, and with apologies for any significant omissions:

- Green Alliance / Link planning advocacy for a new framework Environment Act. Helpfully for our discussion, characterised as a ‘coat rack’ under which other more detailed legislation could be hung. It may be that a similar model could be appropriate for legislative work on food, farming and fishing. Richard Benwell of the Wildfowl & Wetlands Trust (part of Link) will share insights at our meeting.
- Campaign for Real Farming / APPG on Agroecology have been championing a new Agroecology Act, covering farming practices, environment, land use and farm livelihoods/opportunities. Ruth West from the Campaign and APPG can share insights at our meeting.
- Marine conservation groups (e.g. WWF, ClientEarth) are examining how best to secure legally robust commitments on marine conservation, dealing with issues such as Marine Protection Areas, data deficiency, science-based fishery and ecosystem management, and sustainable consumption.
- Unite, the union is developing campaign and policy activities on the theme ‘Brexit on our terms’, looking at anti-slavery legislation and workers’ rights.
- Any day now, Defra will issue a 25-Year Food and Farming (and Fishing?) Plan. The previous draft was mainly about increasing food production, processing and exports – nothing of note about health, environment, sustainability. There are some indications that this time, it might, but commitments will be thin at best. Any month now, Defra will issue a 25-Year Environment Plan. 2017 may possibly also see a draft of a new Agriculture Act and Marine Act – this is not yet clear.
- There are numerous activities gearing up – campaigns and policy work with a legislative element, on issues such as public health, consumer protection, pesticide regulation, food standards, and more.

b) What institutions and approaches are being looked at?

Some groups are also highlighting the benefits of some existing laws and institutions that might provide the 'coat rack' or 'framework' structures on which to hang broad ambitions, and which could be adopted, adapted or learnt from. Some notable and oft-mentioned examples include:

- Work in Scotland towards a Good Food Nation Act – committed to by the Scottish Executive; and emerging work on a Right to Food in Scotland to address hunger, food poverty and health inequalities and enact in law key principles and responsibilities of UN Sustainable Development Goals. Pete Ritchie from Nourish Scotland will share insights at our meeting.
- The Wellbeing of Future Generations Act in Wales, and the Future Generations Commissioner.
- A proposal for a People's Food Policy, being coordinated by The Landworkers' Alliance.
- The UK Climate Change Act and the Climate Change Committee. Martyn Williams, formerly lead Parliamentary campaigner from Friends of the Earth, will share insights at our meeting.
- The work of the Natural Capital Committee (whilst noting many people's reservations regarding the 'natural capital' approach to valuing nature).
- The model of the Health & Safety Executive, which makes health and safety everybody's responsibility – something businesses and government can be held to account for. There may be parallels for achieving environmental, food safety, nutritional standards and other ambitions.

c) Considerations for a food, farming and fishing act

Across the food, farming and fishing sectors, legal protections on a very wide range of issues are likely to be undermined by Brexit. And are also likely to need to feature in new legal frameworks, if we are to achieve a healthy, fair, humane and sustainable future. The diagram on the next page is an attempt to sketch out the wide range of issues involved – each with technical considerations and supporting organisations. There are other initiatives not yet included – the conversations are continuing.

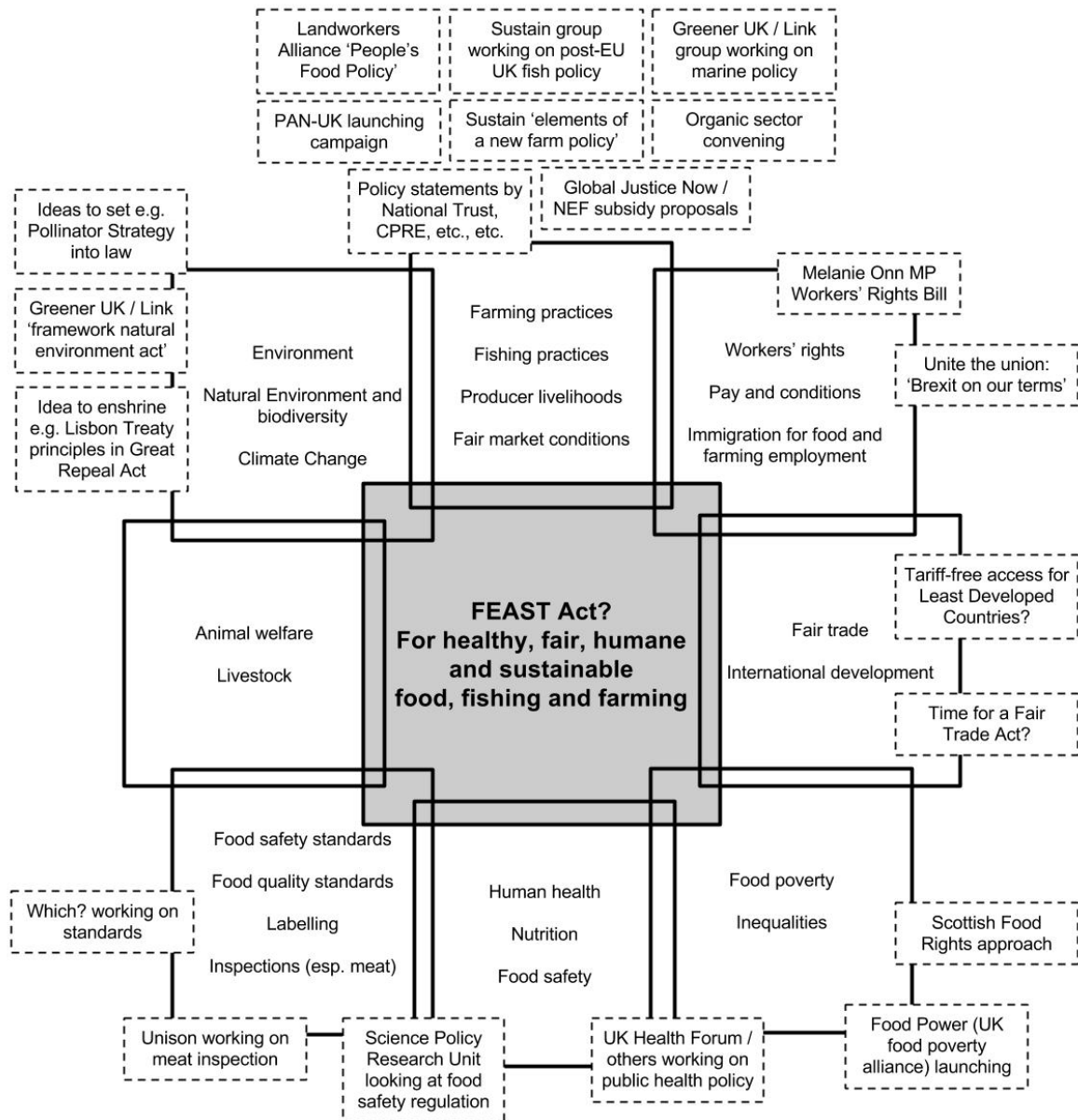
So if it is indeed 'Time for an Act', then how shall we navigate the best way to approach this? Questions we should explore, which also provide a structure of our meeting agenda, include;

- If the Great Repeal Act successfully protected legal standards (a very big 'if'), is that enough?
- If no, what could an initiative for a new Act (or Acts) achieve – legally and to rally a movement?
- What could an Act include – scope and detail?
- What form could an Act take? Thoughts on principles, duties, targets; are there institutional approaches (e.g. Climate Change Committee) that are attractive and from which we can learn?
- How could an Act relate to other initiatives and ideas already in train by Government and third sector, as set out above? How can we be mutually reinforcing?
- Is there a case for coming behind a 'big idea' that would serve us all – a suitable 'coat rack' from which we could hang new rules to govern our various specific areas of interest? Is there a set of principles, or an institutional regulatory approach, that is sufficiently broad, and yet sufficiently specific and robust, that is worth playing for?
- If we were to proceed, what is the scope for coalition campaigning, advocacy opportunities, and how does this relate to the emerging Brexit timetable?
- Can we start to map out some of the stages and milestones we could be working towards?

Comments and responses welcome: [kath@sustainweb.org](mailto:kath@sustainweb.org)

*Let us know if you would like to be put on Sustain's Brexit Forum mailing list for news and updates, or have items that may be of interest to this growing group.*

## Appendix: Sketch of current third-sector legal initiatives for better food, farming and fishing



### Key



'Time for an Act?' bold, but not yet defined, ambition - perhaps framework or detailed legislation to set the foundations for achieving a new vision for food, farming and fishing. The 'FEAST' title is merely a placeholder - **F**ishing **E**ating **A**griculture **S**ustainable **T**ransformation



Big themes - issues under threat from Brexit, and which might be encompassed by a FEAST Act (for each, an organisation or grouping has already expressed an ambition that it should)



Illustrative activities already underway in the third-sector that are relevant - either legislative activities, or policy recommendations that include legislative options

Note: Diagram updated since meeting, 27/02/17