Brexit and the environment

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Summary

Current environmental law and policy

The transboundary nature of environmental issues mean that they are often global in scope. As such environmental principles, laws and policies in the UK originate from a mesh of international agreements, EU legislation as well as domestic law. A number of international agreements have been ratified by both the UK and the EU, which in turn are implemented through a mixture of EU Directives and UK legislation. As the environment is a devolved policy competence, the devolved Administrations also have powers to make their own primary and secondary legislation within the environmental sphere and have increasingly taken divergent policy routes in certain areas.

Preparing for Brexit

All EU environmental laws, principles and any relevant enforcement mechanisms will continue to apply to the UK up until exit day. Article 50 negotiations are ongoing and the outcome of the wider negotiations may have an impact on the future of environmental policy and legislation in the UK. The European Council’s Article 50 guidelines for Brexit negotiations include a requirement to ensure a level playing field, including through environmental measures and practices. The Secretary of State has confirmed that environmental standards will not be compromised in pursuit of a trade deal and that the Government will “deliver a Green Brexit”.

The European Union (Withdrawal) Bill is designed to provide legal continuity by copying over all EU law (including all environmental law) into UK law from exit day. However a number of concerns have been raised in relation to how this will work in practice. Members will consider the Bill in a Committee of the whole House starting on 14 November. A number of amendments relating to the environment have been tabled.

Potential impacts of Brexit

The Government has confirmed that it intends to continue EU environmental rights on a UK legal basis and it intends to uphold its obligations under international environmental treaties. In relation to the rollover of EU environmental law, a number of concerns have been raised including: the possible weakening of environmental standards following the rollover; the level of scrutiny or consultation that will be available; how environmental standards will be enforced; how the Government and public bodies will be held to account; how environmental principles will be incorporated and interpreted in UK law; and the impact on funding and resources for environment programmes and policy development in the UK.

Devolution and Brexit

The UK Government has said that it foresees Brexit as being an opportunity for the devolved Administrations in the area of the environment. Both the Scottish and Welsh Governments however, have expressed concern about the European Union (Withdrawal) Bill and how it would intersect with a number of devolved environmental policy areas. In particular about where the devolved governments would have no powers to change EU frameworks (for example on water quality and forestry), incorporated into UK law by the Bill. Both Governments have refused to approve legislative consent motions on the Bill.
The Scottish Government has committed to maintaining “high” ambitions for the environment following Brexit. The Welsh Government has stated that Brexit must not be used to dilute or row back on environmental standards. It has argued for a continued divergence on environmental issues. Northern Ireland has unique environmental issues created by Brexit because of its border with Ireland. The EU is keen to maintain similar environmental standards on both sides of the border to prevent environmental “dumping”.

A tailored UK approach?

The Government has said that it would use Brexit as an opportunity to develop a comprehensive approach to improving the environment “in a way that is fit for our specific needs”. Defra has been developing a 25-year plan for the environment which is expected to be published by Christmas or in early 2018.

On 12 November 2017, the Government announced plans to consult on a new, independent statutory body that would hold Government to account for upholding environmental standards in England; and on the scope and content of a new policy statement to ensure environmental principles underpin policy making. The consultation is expected in early 2018.

This paper does not discuss the implications of Brexit specifically for fisheries and agriculture. For further information on fisheries and agriculture, see the House of Commons Library Brexit pages on farming and fishing.
1. Overview of current environmental law and policy

The transboundary nature of environmental issues mean that they are often global in scope. As such environmental principles, laws and policies in the UK originate from a mesh of international agreements, EU legislation as well as domestic law.

1.1 International agreements

A Convention is an international agreement between a number of countries, dealing with a specific subject of common concern. Once countries are party to such agreements they are often required to transpose their requirements into national law. Conventions relating to nature conservation and the protection of the environment are known as Multi-lateral Environmental Agreements. The UK is a contracting party to a number of such agreements.¹

Box 1: Main International Conventions ratified by the UK on the environment

Some of the main international Conventions with environmental themes to which the UK is a contracting party include:

- The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) was adopted in Bern, Switzerland in 1979, and came into force in 1982. It was ratified by the UK in 1982.
- The Convention on Biological Diversity (CBD), was adopted at the Earth Summit in Rio de Janeiro, Brazil in June 1992, and entered into force in December 1993. It was ratified by the UK in June 1994.
- The Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention or CMS), was adopted in Bonn, Germany in 1979 and came into force in 1985. It was ratified by the UK in 1985.
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), was adopted in Washington DC, United States of America in March 1973 and entered into force in July 1975. It was ratified by the UK in August 1976.
- The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention or Wetlands Convention), was adopted in Ramsar, Iran in February 1971 and came into force in December 1975. It was ratified by the UK in 1976.

A definitive list of all of the UK international environmental agreements has not been published by the Government. An annex to the UK Environmental Law Association (UKELA) September 2017 report, Brexit and Environmental Law: The UK and International Environmental Law after Brexit shows, in table format,

¹ Joint Nature Conservation Committee website, Conventions, June 2013 [accessed on 13 November 2017]
the results of a mapping exercise undertaken by UKELA of international environmental agreements currently in force and how they have been implemented and enforced at EU and domestic level in respect of England.

Implementation of international agreements
Ratification of these international Conventions has, in turn, have given rise to national legislation. Ratification signifies an agreement to be legally bound by the terms of the Convention.

The EU has entered into many of these international environmental agreements on behalf of its Member States (in those areas in which it had exclusive competence, under Article 3 of the Treaty on the Functioning of the European Union) or together with Member States in a mixed agreement (where competence for the subject matter of the treaty was shared, under Article 4).²

Box 2: Example of implementation: Bern Convention
The UK government ratified the Bern Convention, on the Conservation of European Wildlife and Natural Habitats, in 1982. The obligations of the Convention are transposed into national law by means of the Wildlife and Countryside Act 1981, the Nature Conservation (Scotland) Act 2004 (as amended), Wildlife (Northern Ireland) Order 1985, and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. The European Union has also ratified the Bern Convention. It meets its obligations under the Convention by means of Directive 2009/147/EC on the conservation of wild birds (the Birds Directive) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive). Elements of these Directives are also incorporated into additional national legislation. For example, the Conservation of Habitats and Species Regulations 2010 implements (in England and Wales) the Habitats Directive and some aspects of the Wild Birds Directive. In Northern Ireland the Habitats Directive is implemented through the Conservation (Natural Habitats, &c) Regulations (Northern Ireland) 1995 (as amended). As such, the Bern Convention is an example of a mixed environmental agreement (where both the EU and UK have competence and both are signatories). These are discussed further in the context of Brexit in Section 3.1 of this paper.

1.2 EU environmental legal framework
EU environment policy is based on Articles 11 and 191-193 of the Treaty on the Functioning of the European Union (TFEU).³ It provides that Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;

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² UKELA, Brexit and Environmental Law: The UK and International Environmental Law after Brexit, September 2017, p6
³ EU, Treaty on the Functioning of the European Union, 2012/C 326/01
• protecting human health;
• prudent and rational utilisation of natural resources; and
• promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change.4

EU environmental principles
The TFEU states that policy on the environment shall be based on the “precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”5

As to the status and legal effect of these principles, a legal journal article explains as follows:

These principles have, therefore, been given legal effect in EU law, but it is equally clear that they are not free-standing principles which can be invoked independently, but are expressed as the basis of any Community policy, including legislation, that is taken on the environment. But even with that limitation, they have provided significant leverage for the Court of Justice of the European Union in how it interprets EU environmental legislation.6

EU environmental law
EU legislation relates to a wide range of matters which come into the environmental sphere, including; biodiversity, farming and forestry, fisheries, air pollution, water quality, waste and climate change. See Box 3. There is no definitive or official definition of what falls under the term “environment”.

Member States, including the UK Government, provide evidence and expertise to develop policies and are responsible for agreeing and implementing EU legislation.

Box 3: Examples of EU environment legislation

- Directive 92/43/EEC (Habitats Directive) on the conservation of natural habitats and of wild fauna and flora;
- Directive 92/43/EEC (Water Framework Directive), which requires Member States to protect and improve their inland and coastal waters;

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4 EU, Treaty on the Functioning of the European Union, 2012/C 326/01
5 EU, Treaty on the Functioning of the European Union, 2012/C 326/01, article 191
• Directive 2006/7/EC (Bathing Water Directive), concerning the management of bathing water quality;
• Directive 2008/50/EC (Air Quality Directive) on ambient air quality and cleaner air for Europe;
• Directive (EU) 2016/2284 (National Emissions Ceilings Directive) on the reduction of national emissions of certain atmospheric pollutants;
• Directive 2008/98/EC (Waste Framework Directive) on waste, setting the basic definitions, concepts and principles of waste management;
• Directive 2004/35/EC (Environmental Liability Directive) on environmental liability with regard to the prevention and remedying of environmental damage;
• Directive 2011/92/EU (the Environmental Impact Assessment Directive) on the assessment of the effects of certain public and private projects on the environment;
• Regulation (EC) No 1013/2006 on shipments of waste lays down procedures for the transboundary shipments (i.e. transport) of waste.
• Regulation No. 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals

For further information on EU environmental legislation:
• The Library Briefing paper: Legislating for Brexit: directly applicable EU law compiles data from the Eur-Lex Directory of EU legislation in force (as at 4 January 2017), grouping by subject area.
• The Library Briefing Paper: Legislating for Brexit: Statutory Instruments implementing EU law looks at how the majority of EU directives are implemented in the UK and lists EU-related UK Statutory Instruments.
• UKELA’s Report on Brexit, Henry VIII Clauses and Environmental Law sets out core environmental primary legislation in England which reference EU law, policy, obligations etc.

Directly applicable EU law does not need further domestic transposition in order to apply in the Member States. It applies as soon as it enters into force (either on the date stipulated in the act or, failing this, on the twentieth day following its publication in the Official Journal of the European Union, L series). The TFEU states in Article 288 that EU regulations are binding and directly applicable. An example of this in the UK is the registration, evaluation, authorisation and restriction of chemicals Regulation (No. 1907/2006) (known as REACH). See Section 5 for more information on REACH.

In general, EU directives are not directly applicable and as such need to be implemented through domestic legislation of the EU Member States. See Box 4 and Box 6 for examples of UK implementation of EU environmental Directives. For further information see Library briefing paper, Legislating for Brexit: directly applicable EU law.

This means that EU environmental legislation in the UK is a mixture of directly applicable EU law; and EU law that has been implemented by domestic legislation.

EU environmental legislation is complemented by a variety of other non-binding policy instruments such as strategies, programmes and action plans to address the wider use of terrestrial and marine resources.
Box 4: Example of UK implementation: Air Quality Directive

The EU Air Quality Directive (2008/50/EC) seeks to minimise the harmful effects of air pollution by setting standards for ambient air quality and by requiring Member States to actively assess and manage air quality in different zones. It is implemented in the UK by the following domestic legislation:

- Air Quality Standards Regulations 2010 (as amended)
- Air Quality Standards (Wales) Regulations 2010 (as amended)
- Air Quality Standards (Scotland) Regulations 2010 (as amended)
- Air Quality Standards Regulations (Northern Ireland) 2010 (as amended)

Environmental legislation stemming from the EU normally requires Member States to provide the EU Commission with regular reports on their implementation of it. These obligations are set in the EU directives but are not usually transposed into national legislation.

EU law is monitored and enforced by the European Commission under Article 258 TFEU, as the “Guardian of the Treaties”. It is overseen by the Court of Justice of the European Union (CJEU), which can levy fines on Member States that are found to be in breach of EU law. A briefing from the UK Environmental Law Association sets out that these powers are available in all areas of EU law, “but the majority of infringement proceedings have been brought in the environmental field.”

1.3 Trade and the environment

The European Economic Area (EEA) and the European Free Trade Association (EFTA)

The EU Internal (Single) Market is extended beyond just EU Member States by the EEA Agreement, to cover Norway, Iceland and Lichtenstein. Combined, this creates the European Economic Area (EEA) of 31 EEA States. It provides for the inclusion of EU legislation covering the four freedoms — the free movement of goods, services, persons and capital — throughout the EEA States. In addition, the Agreement covers cooperation in other areas, including on the environment. This normally requires that relevant EU laws and standards to be adopted into the domestic law of EEA members.

The European Free Trade Association (EFTA) is the intergovernmental organisation of Iceland, Liechtenstein, Norway and Switzerland, set up for the promotion of free trade and economic cooperation between its members, within Europe and globally.

In January 2017, the Prime Minister Theresa May ruled out the possibility that the UK would remain a member of the Single Market, meaning all EU legislation would cease to have effect after the UK formally leaves

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7 UK Environmental Law Association, Brexit and Environmental Law Enforcement and Political Accountability Issues, July 2017, p3
the EU. This paper therefore does not discuss the possibility of the UK seeking membership of EFTA or the EEA nor the impact that this would have on environmental issues. Prior to this, an EEA-style membership and its possible impact on environmental standards had been examined by a number of stakeholders. See Box 5 for further explanation.

In a speech in Florence in September 2017 the Prime Minister set out further her view of how future EEA membership would “not work” for the UK:

European Economic Area membership would mean the UK having to adopt at home - automatically and in their entirety - new EU rules. Rules over which, in future, we will have little influence and no vote.

Such a loss of democratic control could not work for the British people. I fear it would inevitably lead to friction and then a damaging re-opening of the nature of our relationship in the near future: the very last thing that anyone on either side of the Channel wants.

(…)

As I said at Lancaster House, let us not seek merely to adopt a model already enjoyed by other countries. Instead let us be creative as well as practical in designing an ambitious economic partnership which respects the freedoms and principles of the EU, and the wishes of the British people.

In the speech the Prime Minister also indicated that there could be an “implementation period” of “around two years”, whereby access to EU and UK markets would continue on “current terms”.

Box 5: The European Economic Area

Why is it relevant for environmental policy?

If the UK negotiated membership of the EEA or an EEA-style membership, it would be required to comply with core elements of EU environmental law in order to access the single market. In this scenario, most EU environmental requirements and protections would remain in place, but the UK would have less influence over the determination of such standards.

Does it still matter?

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8 Gov.uk Prime Minister’s Office, The government’s negotiating objectives for exiting the EU: PM speech, 17 January 2017

9 Gov.uk website, PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

10 Gov.uk website, PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU, 22 September 2017

11 For more information on this topic see Institute for European Environmental Policy, Brexit – the implications for UK Environmental Policy and Regulation, March 2016 [accessed 27 March 2017]
In January 2017, the Prime Minister Theresa May ruled out the possibility that the UK would remain a member of the Single Market, meaning all EU legislation would cease to have effect after the UK formally leaves the EU.\textsuperscript{12}

In a Commons debate on 6 November 2017, some Members argued in favour of staying in the EEA, including for the “protection offered to our natural environment through being part of the single market\textsuperscript{13}” but the Government restated that the UK will not seek to become a signatory to the EEA when it leaves the UK.\textsuperscript{14}

**Water protection and nature**

Annex 20 to the EEA Agreement sets out the EU environmental legislation that is covered as part of the EEA agreement. Certain EU Directives relating to nature and water protection, including the Bathing Water Directive 2006, the Birds Directive 2009 and the Habitats Directive 1992, are excluded from the EEA agreement. This means that they would no longer automatically apply under an EEA scenario. Prior to this scenario being ruled out by the Government, concerns were raised that an EEA-style membership could lead to a weakening of relevant standards in the UK after exit day.\textsuperscript{15}

For more information on this topic see Institute for European Environmental Policy, *Brexit – the implications for UK Environmental Policy and Regulation*, March 2016

For more information on Brexit and bathing waters, please refer to the Commons Library blog: *What does Brexit mean for the UK’s beaches?*

The EU requires surveillance and dispute resolution mechanisms in exchange for granting access to the Internal Market. In monitoring and enforcing the obligations under the EEA Agreement, the European Free Trade Agreement (EFTA)\textsuperscript{16} Surveillance Authority, based in Brussels, has powers that correspond to those of the European Commission. The two institutions oversee the application of the same laws in different parts of the EEA, depending on whether the country in question is an EU Member State or a member of EFTA.\textsuperscript{17}

**WTO environmental requirements**

On 9 October 2017 the Government published a policy paper, *Preparing for our future UK trade policy*. In relation to possible future trade agreements, the policy paper set out a commitment to maintenance of

\textsuperscript{12} Gov.uk Prime Minister’s Office, *The government’s negotiating objectives for exiting the EU. PM speech*, 17 January 2017

\textsuperscript{13} HC Deb 6 November 2017, Col 1238

\textsuperscript{14} HC Deb 6 November 2017, Col 1262


\textsuperscript{16} The European Free Trade Association (EFTA) is the intergovernmental organisation of Iceland, Liechtenstein, Norway and Switzerland, set up for the promotion of free trade and economic cooperation between its members, within Europe and globally. [EFTA website](https://www.efta.int) [downloaded on 9 October 2017]

\textsuperscript{17} EFTA, *The two-pillar structure of the EEA – Surveillance and judicial control*, Ref. 16-531
environmental protection. A later paragraph linked environmental protection with WTO commitments:

As we leave the EU, in line with our WTO commitments, the Government will continue to maintain our high level of protections of intellectual property, consumers, the environment, and employees.

On future trading agreements the paper stated:

We want to ensure economic growth, development and environmental protection go hand in hand, and it is in everyone’s interest to avoid any ‘race to the bottom’. We will have the opportunity to promote our values around the globe in the areas that are of greatest importance to us as a United Kingdom.

The World Trade Organisation (WTO’s) objectives of sustainable development and seeking to protect and preserve the environment are enshrined in the Preamble of the 1994 Marrakesh Agreement Establishing the World Trade Organization.

The WTO requirements seek to balance the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, on the one hand, and acting for the protection of the environment and the promotion of sustainable development, on the other.

The WTO webpage on WTO rules and environmental policies sets out how trade-related measures aimed at protecting the environment can be adopted under WTO rules:

Measures aimed at protecting the environment come in various shapes and forms. Under WTO rules, as confirmed by WTO jurisprudence, members can adopt trade-related measures aimed at protecting the environment, subject to certain specified conditions.

(...) WTO members can adopt trade-related measures to protect the environment and human health and life as long as such measures comply with GATT [General Agreement on Tariffs and Trade] rules, or fall under the exceptions to these rules.

(...) Article XX on General Exceptions lays out a number of specific instances in which WTO members may be exempted from GATT rules. Two exceptions are of particular relevance to environmental and human health protection: Articles XX(b) and (g) allow WTO

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18 HM Government, Preparing for our future UK trade policy, 9 October 2017, p29
19 HM Government, Preparing for our future UK trade policy, 9 October 2017, p30
20 HM Government, Preparing for our future UK trade policy, 9 October 2017, p30
21 WTO website, An introduction to trade and environment in the WTO [accessed on 13 November 2017]
members to justify GATT-inconsistent measures if these are either necessary to protect human, animal or plant life or health, or if the measures relate to the conservation of exhaustible natural resources, respectively.  

In addition, the introductory paragraph of Article XX (its “chapeau”) has been designed to prevent the misuse of trade-related measures. Pursuant to the chapeau, an environmental measure may not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.” These additional safeguards seek mainly to ensure that, by allowing a measure to be inconsistent with GATT rules through the use of exceptions, protectionism is not introduced through the back door.  

The relationship between trade and the environment and in particular how it sits with multilateral environmental agreements is a source of ongoing dialogue and engagement:

The WTO also supports sustainable development and the environment through its specialized committees and bodies. One unique institutional venue is the Committee on Trade and Environment (CTE). As a forum for dialogue on trade and the environment, the Committee is an incubator for ideas on how to move the discussion forward. Already, this is bearing fruit. Some issues first raised in the CTE have become fully-fledged negotiations — for instance, on fisheries subsidies and on the relationship between the WTO and multilateral environmental agreements (MEAs). Other WTO bodies are also important. For example, the committee administering the Technical Barriers to Trade Agreement (which deals with regulations, standards, testing and certification procedures) is where governments share information on actions they are taking and discuss how some environmental regulations may affect trade.

For further information on trade and the WTO see House of Commons Library briefing paper, Brexit: trade aspects.

1.4 Environmental law in the devolved nations
EU law environmental laws and policies are equally applicable in all of the devolved nations, as are many of the international agreements. As the environment is largely a devolved competence however, there has

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22 WTO website, WTO rules and environmental policies: introduction [accessed on 13 November 2017]
23 WTO website, WTO rules and environmental policies: introduction [accessed on 13 November 2017]
24 WTO website, An introduction to trade and environment in the WTO accessed on 13 November 2017
been a divergence of both policy and primary legislation between the different parts of the UK.

In Scotland, the Scotland Act 1998, as amended, created a Scottish Parliament with powers to make laws on a range of issues. Schedule 5 of the Scotland Act 1998 lists what is reserved to the UK Parliament. If a matter is not mentioned as being reserved in this part of the Act, it is devolved to the Scottish Parliament. The environment, including environmental protection policy, climate change, pollution matters, waste management, water supplies and sewerage, national parks, flood and coastal protection is a devolved matter in Scotland.25

In Wales, schedule 7 to the Government of Wales Act 2006, as amended, defines the scope of the Assembly’s legislative competence to make Assembly Acts. Schedule 7 categorises the existing areas of policy responsibility devolved to the Welsh Government into 20 broad areas. These areas, known as “subjects” includes the environment, as follows:


This situation is due to change following the enactment of the Wales Act 2017. Instead of the conferred powers model as above, a reserve powers model is due to come into force. This means that instead of giving the Welsh Assembly power to make law only on the matters specified in Schedule 7, the 2017 Act amends the 2006 Act so as to give the Welsh Assembly power to make law on any matter not expressly reserved to the UK Parliament. The Act provides that the Secretary of State for Wales must appoint, through regulations, a “principal appointed day” on which the new reserved powers model will come into force, following consultation with Welsh Ministers and the Assembly’s Presiding Officer. The Secretary of State has set out in a letter his intention to appoint 6 April 2018 as the principal appointed day.26

The devolved institutions in Northern Ireland are constituted under the Northern Ireland Act 1998, with several institutional reforms having taken place since then. The Northern Ireland devolution settlement

25 The Scottish Parliament, Devolved powers, updated 16 August 2017
26 Letter from Rt Hon Alun Cairns MP, Secretary of State for Wales, Implementation of the Wales Act 2017, dated 10 July 2017
gives legislative control over certain matters (known as ‘transferred matters’) to the Assembly. Anything that is not explicitly reserved or excepted in Schedules 2 or 3 in the Northern Ireland Act 1998 is deemed to be devolved and the Assembly has full legislative competence. The Northern Ireland Assembly has full legislative powers on the environment.27 This was reinforced by the Belfast Agreement, also known as the Good Friday Agreement, which was reached in multi-party negotiations and signed on 10 April 1998. The Agreement lists “Environment - environmental protection, pollution, water quality, and waste management” in the annex as an area for “North-South co-operation and implementation”.

Each devolved nation therefore has competence to make its own primary and secondary legislation in relation to environmental issues and to make its own policy. If any of the provisions needed to transpose the requirements of an EU Directive fall within the legislative competence of the devolved Governments, it is for these Governments to consider how best to transpose this EU obligation in their countries. An example of this in respect of waste policy and in particular, recycling targets, is shown in the box below.

**Box 6: Waste – a diverging policy area among the devolved nations**

The EU Waste Framework Directive (2008/98/EC) (“WFD”) requires the establishment of waste management strategies and plans and sets out the elements that must be contained within them. It also introduces statutory targets for preparing for re-use and recycling of waste from households as well as preparing for re-use, recycling and other material recovery of construction and demolition waste. The UK is required to recycle at least 50% of household waste (by weight) by 2020.

In Northern Ireland the requirements of the revised WFD have been transposed into NI legislation through the Waste Regulations (Northern Ireland) 2011 (as amended). The waste management strategy requirement is fulfilled through the April 2015 Delivering Resource Efficiency - Northern Ireland Waste Management Strategy prepared by the Department of Agriculture, Environment and Rural Affairs and through the regional waste management plans prepared by the three district council waste management groups. Although not a statutory target, the NI Executive’s Programme for Government 2011-2015 contained a specific commitment to achieve a household recycling or composting rate of 45% by the end of March 2015.

In Wales, the requirements of the WFD are implemented primarily through the Waste (England and Wales) Regulations 2011 (as amended) and the Waste (Wales) Measure 2010 (as amended). The Welsh Government is the only administration in the UK to have introduced statutory recovery targets for waste recycling for local authorities specifically. The 2010 measure sets this as a minimum of 70% of waste being reused, recycled or composted by 2024/25. The June 2010 Towards Zero Waste (TZW), is the overarching waste strategy document for Wales. The Welsh Government has stated that it will consult on a refresh of the TZW strategy in July 2018 to ensure it complements the aims set out in the Well-being of Future Generations Act (Wales) 2015 and the Environment (Wales) Act 2016.28

27 Gov.uk Devolution settlement: Northern Ireland [accessed on 13 November 2017]
28 Welsh Government website, Towards Zero Waste [accessed on 13 November 2017]
The National Waste Management Plan for Scotland Regulations 2007 gave the responsibility for preparing the National Waste Management Plan to the Scottish Ministers. Scotland's waste strategy, Zero Waste Plan was published in June 2010. The plan set out a number of new measures including introducing a 70% recycling target for all waste (regardless of its source) by 2025. The Zero Waste Plan also includes interim targets for 'waste from households' at 50% by 2013; and 60% by 2020. As part of the Zero Waste Plan, the Waste (Scotland) Regulations 2012 (as amended) came into effect in January 2014 which provide waste reduction measures, such as compelling local authorities to provide separate food waste collections in all non-rural areas by 2016.


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29 PQ 9229 [on Domestic Waste: Recycling] 7 September 2015
2. Preparing for Brexit

The UK will remain a full member of the EU until it completes the process of withdrawal under Article 50 of the Treaty on the Functioning of the European Union. This means that all EU environmental laws, principles, and any relevant enforcement mechanisms will continue to apply up until exit day. 31

An overview of the key challenges, risks and opportunities arising from Brexit is available on the House of Commons Library Key Issues blog on Brexit and the Environment.

2.1 Article 50 negotiations

The previous Government triggered Article 50 starting the formal exit process on 29 March 2017. 32 We do not yet know precisely what kind of relationship the UK will have with the EU after exit day as discussions are ongoing. However, the outcome of the wider negotiations may have an impact on the future of environmental legislation and policy in the UK.

Green Alliance, an environmental thinktank and charity, expressed their concern that the environment did not feature in the Prime Minister’s Lancaster House speech when the Government’s negotiating objectives for exiting the EU were first outlined. 33 34 However, in order to trade with the EU bloc, the UK may still need to show equivalence with EU legislation and associated standards, including environmental obligations.

The European Parliament’s April 2017 non-binding resolution on Brexit negotiations called on EU negotiators to ensure that any future trade agreement is subject to continued UK adherence to international environmental obligations and EU environment policies:

...any future agreement between the European Union and the United Kingdom is conditional on the United Kingdom’s continued adherence to the standards provided by international obligations, including human rights, and the Union’s legislation and policies, in, among others, the fields of the environment, climate change, the fight against tax evasion and avoidance, fair

31 ENDS Report, Compliance as usual’ in a post-referendum world [subscription required] 27 June 2016
32 HC Deb 29 Mar 2017 cc251-255
33 Gov.uk Prime Minister’s Office, The government’s negotiating objectives for exiting the EU: PM speech, 17 January 2017
34 Inside Track (Green Alliance blog), Why is the environment missing from the Brexit plan?, 19 January 2017 [accessed 31 October 2017]
competition, trade and social rights, especially safeguards against social dumping.35

Following this, the European Council’s Article 50 guidelines for Brexit negotiations include a requirement to ensure a level playing field, including through environmental measures and practices:

20. Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field, notably in terms of competition and state aid, and in this regard encompass safeguards against unfair competitive advantages through, inter alia, tax, social, environmental and regulatory measures and practices.36

The Secretary of State confirmed that environmental standards will not be compromised in pursuit of a trade deal:

One thing that the Cabinet has agreed—and we have discussed it—is that we cannot compromise high environmental or animal welfare standards in pursuit of a trade deal. In a way it would be harmful for us to do so, not just in environmental terms.37

He also confirmed that the Government will "deliver a Green Brexit". 38

No deal?
A PQ response on 24 October 2017 confirmed that the Government is also preparing for a no deal scenario, but no details on individual or policy areas departments was provided:

The Government has worked up plans for a range of scenarios, including leaving the EU without a deal. The Treasury has already committed over £250 million of additional spending in 2017-18 to enable departments to prepare effectively for all eventualities.39

The House of Lords EU Select Committee launched an inquiry on Brexit: deal or no deal on 26 September 2017, which is currently open and taking evidence.

A House of Commons Library blog on Brexit: an overview discusses a no deal scenario in general terms.

35 European Parliament, European Parliament resolution of 5 April 2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union (2017/2593(RSP))
36 Europa, European Council guidelines for Brexit negotiations, 29 April 2017
37 Environment, Food and Rural Affairs Committee, oral evidence: the work of Defra, HC 321, 13 September 2017, Q40
38 Gov.uk, New environmental protections to deliver a Green Brexit, 12 November 2017
39 PQ 901379 [on Brexit]
2.2 The European Union (Withdrawal) Bill

On 10 October 2016, the Secretary of State for the Department for Exiting the European Union (David Davis MP) explained to the House of Commons that the Government would bring forward a Great Repeal Bill which would repeal the *European Communities Act 1972* and convert existing EU law into domestic law, wherever practical.\(^{40}\)

On 30 March 2017, a day after the Prime Minister formally triggered Article 50, David Davis made a statement to the House\(^{41}\) accompanying the publication of a White Paper on the Great Repeal Bill. The White Paper stated that the Bill would “ensure that the whole body of existing EU environmental law continues to have effect in UK law.”\(^{42}\)

The ‘Great Repeal Bill’ was published on 13 July 2017 as the *European Union (Withdrawal) Bill* (the Bill). Published alongside the Bill was a number of factsheets, including Factsheet 8: environmental protections which sets out the Government responses to frequently asked questions in this area. The introduction to Factsheet 8 states:

> The UK has a long history of environmental protection and we are committed to safeguarding and improving this. This Government is committed to build on this and be the first generation to leave the natural environment in a better state than we inherited it.

> As a part of this work, we will produce a comprehensive 25 Year Environment Plan that will chart how we will improve our environment as we leave the European Union and take control of our environmental legislation again.

> We will also uphold all our obligations under international environmental treaties.\(^{43}\)

Detailed information and analysis on the Bill is set out in the Library Briefing Paper on the European Union (Withdrawal) Bill.

**Stakeholder commentary on the Bill**

Following publication of the Bill, the Environmental Policy Forum (a network of around 70,000 UK environmental professional bodies) wrote letters to the Secretaries of State for Exiting the EU and for the Environment setting out the following views:

> we warned that the Bill fails to adequately provide for parliamentary scrutiny of the raft of changes required to make environmental laws function, ensure the fundamental principles which underpin decades of environmental improvement are protected, or provide a meaningful framework for independent

\(^{40}\) HC Deb 10 Oct 2016 cc40-41

\(^{41}\) HC Deb 30 March 2017 v624 cc427-430

\(^{42}\) Gov.uk, Department for Exiting the EU, *Legislating for the United Kingdom’s withdrawal from the European Union*, March 2017, p. 17

\(^{43}\) Department for Exiting the European Union, The Repeal Bill, Factsheet 8: environmental protections
scrutiny of future Government performance on the environment. We also warned that devolved administrations should not be constrained from pursuing ambitious environmental policies and targets of their own as a result of the powers the Bill creates.\textsuperscript{44}

Greener UK, a coalition of 13 environmental organisations which came together in the wake of Brexit, set out three priorities for the Bill, which can be summarised as follows:

- bringing over the whole body of EU environmental law, including preambles, principles and jurisdiction and ensuing all domestic secondary legislation implementing EU obligations are saved;
- allowing no opportunity for gaps in domestic environmental protections to open up without full parliamentary scrutiny; and
- ensuring law is properly implemented and enforced.\textsuperscript{45}

Greener UK published a report on the Bill: \textit{Ensuring the Withdrawal Bill leads to a Greener UK} and set out recommendations for amendments to the Bill at Committee stage, including those tabled amendments which it prefers.\textsuperscript{46}

Environmental lawyers Client Earth made the following comments on the Bill:

\begin{quote}
It fails to convert EU Directives in full, it fails to guarantee environmental laws will not be weakened by ministers during and after the Brexit process, and it fails to retain key environmental principles. This means the UK will lose important safeguards, which could threaten people’s health and the environment.\textsuperscript{47}
\end{quote}


\textbf{Second Reading debates} \\
The Bill passed Second Reading in the House of Commons on 11 September 2017. During Second Reading debates in the House of Commons, a number of MPs across parties raised concerns relating to the environment, including:

- the possible weakening of environmental standards in the future;

\begin{footnotesize}
\textsuperscript{44} Society for Environment, \textit{EU (Withdrawal) Bill} [accessed 24 October 2017]  \\
\textsuperscript{45} Greener UK, \textit{Great Repeal Bill Briefing} June 2017 [accessed 31 October 2017]  \\
\textsuperscript{46} Greener UK, \textit{Ensuring the Withdrawal Bill leads to a Greener UK, Parliamentary Briefing} [accessed 13 November 2017] and Greener UK, \textit{Briefing for MPs on the committee stage of the European Union (Withdrawal) Bill} November 2017 [accessed 13 November 2017]  \\
\textsuperscript{47} ClientEarth press release, \textit{Report: Ministers are misleading the public over Brexit Bill}, 7 September 2017 [accessed 31 October 2017]
\end{footnotesize}
how environmental standards will be enforced, with calls for a “proper body with the ability to audit the Government” to be put in place;\textsuperscript{48} and

how EU environmental principles will be incorporated and interpreted in UK law.\textsuperscript{49}

These concerns are discussed further in Section 3 below.

The Lord Chancellor and Secretary of State for Justice (Mr David Lidington) responded to these concerns on behalf of the Government, stating that the Bill intended to continue EU environmental rights on a UK legal basis:

employment, environmental and other rights, conferred as a result of EU regulations or judgments of the European Court, are continued by this Bill on a United Kingdom legal basis as part of [...] the wholesale adoption of European law. I have to say to the official Opposition that to vote against the Bill, as they propose to do, is therefore to vote against continuing those rights on a United Kingdom legal basis. It is to put those rights at risk, and open up the risk of a chaotic departure from the European Union, which is not going to be in the interests of either individuals or businesses in this country.\textsuperscript{50}

Committee of the whole House

Members will consider the Bill in a Committee of the whole House starting on 14 November 2017. A number of Committee stage amendments relating to the environment have been tabled. Some of these are discussed in Section 3 below.\textsuperscript{51} No amendments have yet been selected for debate.

A full list of the notices of amendments given is available on the Bill documents—European Union (Withdrawal) Bill 2017-19 page.

\textsuperscript{48} HC Deb 7 September 2017, Vol 628, Col 412 [Richard Benyon]

\textsuperscript{49} HC Deb 7 September 2017, Vol 628

\textsuperscript{50} HC Deb 7 September 2017, Vol 628, Col 583 [Mr David Lidington]

\textsuperscript{51} A number of MP briefings have been published by stakeholders which provide detailed discussion of environmental amendments. For example: Greener UK, \textit{Briefing for MPs on the committee stage of the European Union (Withdrawal) Bill}, November 2017 [accessed 13 November 2017]
3. Potential implications of Brexit for environmental policy and law

Environmental principles, laws and policies in the UK originate from a mesh of international agreements, EU legislation as well as domestic law, as detailed in Section 1 of this paper. Moreover, each area of environmental law is likely to be affected differently by Brexit, depending on a number of factors including: the outcome of the Brexit negotiations; the approach of the UK Government and the devolved Administrations post-Brexit; the historical approach of the UK to the relevant area (e.g. whether the UK’s policy predated EU or international legislation in the area); the historical compliance record of the UK with EU requirements; and whether it is an area that integrates with wider policy or legislative areas (for example, product regulation and trade).

Many of the influencing factors are unknowns or uncertain so the exact implications of Brexit remain unclear. However, some of the key areas of concern are discussed below, in a general context.

A detailed discussion on how each factor might be affected by different exit scenarios is provided by an article on Brexit implications for environmental law published by law firm Reed Smith.52

3.1 International agreements

The UK is party to a number of international Conventions relating to the environment (see Box 1). The EU, in areas where it has exclusive competence has entered into international agreements on behalf of its Member States (under Article 3 of the Treaty on the Functioning of the European Union). Where it does not have exclusive competence the agreement is a mixed agreement shared between the European Union and its Member States (under Article 4).

The Government factsheet on environmental protections accompanying the European Union (Withdrawal) Bill set out the Government’s intention to uphold international obligations as follows:

Will the UK continue to meet its international environmental commitments?

The UK will continue to play an active role internationally as demonstrated by the UK ratifying the Paris Agreement on Climate Change. We will continue to uphold our obligations under

52 See: Reed Smith Client Alerts, Brexit: Implications for Environmental Law, 6 October 2016 [accessed 31 October 2017]
international environmental treaties such as the Montreal and Gothenburg Protocols, the Stockholm Convention, the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species (CITES).\textsuperscript{53}

The House of Lords European Union Committee Report on Brexit: environment and climate change (February 2017) noted views that following Brexit, international law would become the “backstop” for environmental standards:

Prof Lee noted that after Brexit “international law will become politically more significant” because “that will be the backstop beyond which we cannot fall in terms of environmental standards.” The Minister, Dr Coffey, reiterated the Government’s commitment to international environment Conventions: “You will be aware that we are already members of many multinational agreements, and we will continue to honour those and indeed play a leading part where we have specific expertise”.\textsuperscript{54}

One area of uncertainty that has been highlighted in relation to Brexit is around so-called mixed environmental agreements (MEAs)—treaties and conventions where both the EU and UK have competence (and both are signatories) and the ratification document does not define the division of competences.\textsuperscript{55} For further information and views on whether such agreements will remain in force from Brexit day, see House of Commons Library Briefing Paper, Legislating for Brexit: EU external agreements (CBP 7850), 5 January 2017.

In response to a PQ in September 2017 Dr Thérèse Coffey, Parliamentary Under-Secretary for Defra stated that the Government would:

\begin{quote}
give due consideration to the ratification of MEAs in the future to which the UK is not currently party in its own right, (recognising that some risks have no relevance to the UK).\textsuperscript{56}
\end{quote}

\textbf{3.2 EU environmental law}

\textbf{Legal continuity}

The European Union (Withdrawal) Bill is designed to provide legal continuity by copying over the entire body of EU law onto the UK’s post-exit statute book. In broad terms, this means that all EU environmental law will be converted into domestic law from exit day.

\textsuperscript{53} Department for Exiting the European Union, The Repeal Bill: Factsheet \textit{Environmental Protections}, 8 September 2017
\textsuperscript{54} The House of Lords European Union Committee, Brexit: environment and climate change, 14 February 2017, HL Paper 109, para 52
\textsuperscript{55} ENDS Report, Brexit unlikely to give UK free rein over green laws, \textit{[subscription needed]}, vol.499, 17 August 2016
\textsuperscript{56} PQ 9691 \{on Environment: Treaties\} 18 September 2017
The Government has not published a definitive list of all EU environmental law but it has confirmed that “all Government departments are reviewing the EU laws that apply in their policy areas and how our withdrawal from the EU will affect the operation of those laws”. For further information on EU environmental legislation, see Box 3.

However, in evidence to the House of Commons Environmental Audit Select Committee (EAC) in October 2016, the then Defra Secretary of State (Andrea Leadsom MP) explained that the department thought that up to one third of EU environment-related laws could not simply be transposed into UK law. Many commentators have also raised concerns that a direct conversion of some environmental legislation would prove challenging, for example where existing regimes (such as emissions trading and chemical legislation) are intertwined with EU institutions and reliant on Member State co-operation, mutual obligations and relationships. See further discussion in the case study on REACH in Section 5 below.

Using the correcting power for environmental legislation

In its report on the *Future of the Natural Environment after the EU Referendum*, the Environmental Audit Committee warned that environmental legislation simply transposed onto the UK statute risks becoming ‘zombie legislation’—either no longer enforced or not updated to reflect the latest scientific understanding. The previous Government responded to these concerns with the assurance that, following exit, Parliament will have the power to “amend, repeal and improve any law it chooses”.

The power for such amendments is provided by the Bill which includes a clause granting a ‘correcting’ power to Ministers to make statutory instruments to prevent, remedy or mitigate any “failure of” or “deficiency in” retained EU law. Concerns have been raised that these powers may be used to downgrade environmental protections in the UK, although legal experts have commented that these powers are not

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57  PQ 7910 [on Brexit]
59  See: Environmental Audit Committee, *The Future of Chemicals Regulation after the EU Referendum*, Eleventh report of Session 2016-17, HC 912, 29 April 2017
60  Environmental Audit Committee, *The Future of the Natural Environment after the EU Referendum*, Sixth Report of Session 2016-17, 4 January 2017, HC 599
61  Environmental Audit Committee, *Government Response to The Future of the Natural Environment after the EU Referendum*, Sixth Special Report of Session 2016-17, HC257, para 5, 2 May 2017
62  Clause 7 of the Bill. See further discussion and explanation in the *Library Briefing Paper on the European Union (Withdrawal) Bill*. 
a concern as long as there is sufficient consultation and oversight of the process.63

A September 2017 letter from the Secretary of State for Defra (Michael Gove MP) to the House of Commons Environment, Food and Rural Affairs Select Committee (EFRA) confirms that Defra has identified a need to correct around 850 pieces of Defra-owned legislation as a result of EU exit and “based on current assumptions” needing to make around 100 Statutory Instruments (excluding any SIs required under the fisheries and agriculture Bills).

It is not clear what “current assumptions” the letter refers to, but it breaks the SIs down as follows:

- Animal and plant health: 32
- Environment: 27
- Fisheries: 2
- Food and farming: 3464

The letter also confirmed that Defra is considering how best to engage and consult with stakeholders on the secondary legislation programme by setting up a consultation group to provide external advice and challenge on the proposed methodology. The stakeholder consultation group has been welcomed, with calls for it to be well-organised, have a clear membership and explicit terms of reference.65 However, some stakeholders (such as the Greener UK coalition) are calling for further safeguards on the face of the Bill, including that SIs are only used for technical amendments, and that an appropriate ‘sift and scrutinise’ approach is taken.66

**EU (Withdrawal) Bill: Committee stage amendments**

A number of opposition and cross-party amendments have been tabled for Committee stages of the Bill which aim to address these concerns, including amendments which would ensure that any EU-derived environmental standards or protection could only be amended by primary legislation, or subordinate legislation under the Act under an enhanced scrutiny procedure; and preventing the Government using

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63 See: ENDS Report, [Should we be afraid of Henry VIII powers?] 17 October 2017 [subscription needed] [accessed 7 November 2017]
64 Environment, Food and Rural Affairs Committee, [SOS to EFRACom follow up], 29 September 2017
65 See: ENDS Report, [Gove to consult on Brexit changes to environmental law], 18 October 2017 [subscription needed]
66 See: Greener UK, [Great Repeal Bill Briefing], June 2017 [accessed 31 October 2017]
powers under the Act (including the ‘correcting’ powers) to reduce rights or protections relating to the environment.67

Amendments for debate have not yet been selected.

3.3 Accountability and enforcement

On 12 November 2017, the Government announced plans to consult on a new, independent statutory body that would hold Government to account for upholding environmental standards in England. A consultation is expected in early 2018.68 This announcement followed a number of calls that have been made that EU mechanisms relating to enforcement and accountability of the Government and other public bodies are sufficiently replaced. These are discussed further below.

In its February 2017 report examining the future of environment and climate change policy following Brexit, the House of Lords EU Energy and Environment Sub-Committee heard that a range of accountability mechanisms were potentially at risk:

The European Commission and the Court of Justice of the European Union have had a strong impact in ensuring the UK’s compliance with EU legislation that affects environmental protection. The evidence we have heard suggests the effectiveness of the EU regulatory regime is thanks in part to the deterrent effect of the power of EU institutions to hold Member States to account and to levy fines upon them for non-compliance.69

Greener UK called on the Government to create “a powerful independent statutory committee to monitor progress” and “establish an effective new approach to environmental regulation.”70 UK Environmental Law Association (UKELA) highlights the unique opportunity available to improve UK mechanisms and provides a number of examples of environmental supervisory bodies in other jurisdictions:

The loss of the European Commission’s role as guardian of the treaty following Brexit presents a unique opportunity to innovate and improve on our domestic mechanisms for ensuring environmental law is properly implemented and enforced.71

The Government factsheet on environmental protections accompanying the European Union (Withdrawal) Bill referred to existing provisions for

67 House of Commons, Notices of Amendments given up to and including 27 October 2017, Committee of the Whole House, European Union (Withdrawal) Bill. See examples at: NC 25, NC 55, NC58, NC12, 25, 96, 109, 138
68 Gov.uk, New environmental protections to deliver a Green Brexit, 12 November 2017
70 Greener UK, Securing a healthier environment and nature’s recovery: A briefing for policy makers following the EU referendum, February 2017 [accessed February 2017]
regulators to enforce environmental laws, the judicial review process and the role of Parliament as ways of maintaining enforcement and accountability:

**How will the government be held responsible for making sure it complies with its own environmental regulations?**

The UK has always had a strong legal framework for enforcing environmental protections and this will continue. This includes provisions for regulators to enforce our existing environmental regulations, and our system of judicial review and its body of public law that enables decisions and actions of public authorities to be challenged through the UK courts.

It is, and it will remain, the role of Parliament (and where appropriate, the devolved legislatures) to hold the executive to account, and Parliament (and the relevant devolved legislature) is ultimately accountable to the electorate. That will not change on our departure from the EU.72

However, the UKELA has argued that judicial review alone is “ill-suited” to replacing the supervisory role of the Commission, pointing to the costs involved as well as the loss of the less formal mechanisms such as discussion and negotiation (see Box 7 below).73

**Box 7: Citizen action to enforce environmental law**

In addition to domestic rights of action for citizens to enforce their rights, the European Commission has a standard complaints form which any EU citizen can use free of charge (either online or by post) to submit a complaint against a breach of EU law by a Member State. The Commission assesses all complaints and, where appropriate, transfers it to a suitable problem-solving mechanism. This often involves discussion and negotiation rather than a formal infringement procedure.

This option is available for all EU law, but the majority of infringement proceedings have been brought in the environmental field. This is explained by UKELA as being due to the often “unowned” and “diffusively spread” nature of the environment and environmental harms compared to other areas of EU law (such as employment rights) where specific individuals or bodies have clear interests to protect.74

In November 2017, the Secretary of State for Defra made reference to a “commission-like body” which could oversee all environmental law and said he thought a consultation on what type of body would be appropriate to replace the role of the European Commission and the ECJ was needed.75 He stated that one of the reasons for needing a new body was that, although the judicial review process is a good thing “on

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72 Department for Exiting the European Union, *The Repeal Bill: Factsheet 8 Environmental Protections*, 8 September 2017


74 UKELA, *Brexit and Environmental Law, Enforcement and political accountability issues July 2017* [accessed 14 August 2017]

75 Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, *HC 544*, 1 November 2017, Q1 and Q4 [accessed 7 November 2017]
its own I suspect will probably not be enough”. A Government press
release on 12 November 2017 confirmed a consultation on a possible
new statutory body is planned for early 2018.

Further discussion of the role of the European Commission and the
European Court of Justice is available in the UKELA Report on Brexit and

For a more detailed discussion on how the new category of law created
by the EU (Withdrawal) Bill will operate, including a discussion of
Francovich damages, please refer to the Library Briefing Paper on the
European Union (Withdrawal) Bill.

EU (Withdrawal) Bill: Committee stage
amendments
A number of amendments relating to the enforcement of
environmental law have been tabled for Committee stages of the Bill.
These include amendments which aim to establish new domestic
governance arrangements to replace all relevant EU powers, functions
and bodies; to establish a new UK statutory body called the
Environmental Protection Agency.

Amendments for debate have not yet been selected.

3.4 Environmental principles
EU environmental principles, including the ‘precautionary principle’ (see
Box 8) and ‘polluter pays’ are contained in Article 191 of the Treaty on
the Functioning of the EU (TFEU). The European Union (Withdrawal) Bill
does not roll over environmental principles into national law. Schedule 1
of the Bill rules out any general principles of EU law as a basis for
challenge in UK courts following exit day.

Box 8: The ‘precautionary principle’
The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the EU. It aims
at ensuring a higher level of environmental protection through preventative decision-taking in the case
of risk. The EC Treaty however does not define it. In 2000, the European Commission adopted a
Communication on the use of the Precautionary Principle. This explained that the precautionary
principle may only be invoked when the three preliminary conditions that must be met:

- identification of potentially adverse effects;

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76 Environmental Audit Committee Oral evidence: The Government’s Environmental
Policy, HC 544, 1 November 2017, Q3 [accessed 7 November 2017]
77 Gov.uk, New environmental protections to deliver a Green Brexit, 12 November 2017
78 House of Commons, Notices of Amendments given up to and including 27 October
2017, Committee of the Whole House, European Union (Withdrawal) Bill. See
examples at: NC27, NC 62, NC 63, 333
79 EUR-Lex, Communication (COM(2000) 1final) on the precautionary principle, 2
February 2000
• evaluation of the scientific data available;
• the extent of scientific uncertainty.

The Precautionary Principle is one of the key elements for policy decisions concerning environmental protection and management.

Stakeholders including ClientEarth and Greener UK have called for the Bill to convert all EU environmental law including environmental principles into UK law.80

In evidence to EAC on 1 November 2017, the Secretary of State for Defra (Michael Gove) stated that environmental principles would not be transferred into UK law, but would instead be embodied in policy guidance. He explained that they are “interpretative principles...to govern how policy is designed and devised” and should not be put on a statutory basis.81 Following this, the Government announced proposals for a consultation in early 2018 which would explore “the scope and content of a new policy statement to ensure environmental principles underpin policy making”.82

**EU (Withdrawal) Bill: Committee stage amendments**

A number of Committee stage amendments to the Bill have been tabled which aim to retain EU environmental principles in UK law and to ensure that public authorities carrying out their duties arising by virtue of the Act must have regard to environmental principles currently enshrined in EU law.83

Amendments for debate have not yet been selected.

### 3.5 Funding and resources

The UK receives EU funding for environment and climate change programmes from two main sources: the EU budget and the European Investment Bank. Potential impacts on funding were examined by the House of Lords European Union Energy and Environment sub-Committee on Brexit in its report on Environment and Climate Change:

> The UK receives significant funding from the EU, which contributes to both environmental research and infrastructure


83 House of Commons, [Notices of Amendments given up to and including 27 October 2017](https://publications.parliament.uk/p的日子s?session=2016-17&date=2017-10-27), Committee of the Whole House, European Union (Withdrawal) Bill. For examples see: NC 28, NC 60, NC 67, 101
projects with an environmental outcome, as well as to the routine management of the countryside. We invite the Government to clarify whether this funding will continue in some form or be replaced domestically post-Brexit, and, if so, for how long. If it will not be replaced by domestic funds, we call on the Government to explain by what alternative means it proposes to reach environmental goals.\textsuperscript{84}

The Committee also identified a need for a “very substantial increase in resources” in particular for Defra in order to manage the Brexit workload:

The Government faces a considerable challenge in maintaining environmental legislation through the Great Repeal Bill, while at the same time developing domestic agriculture and fisheries policies.

Defra and BEIS will also need to ensure that UK and EU policy developments that continue to occur outside and alongside the Brexit process receive the necessary attention from both staff and Ministers. The Government, and Defra in particular, will need a very substantial increase in resources in order to tackle these challenges, both during and after the Brexit process.\textsuperscript{85}

The EFRA Committee also raised concerns about whether Defra has the resources to cope with increased demand of Brexit. In response, a September 2017 letter from the Secretary of State for Defra to the Committee stated that over 80% of Defra’s agenda is affected by Brexit and, in order to supplement existing capability and capacity, Defra has recruited over 400 additional staff. The letter confirms that the department continues to keep resourcing plans under review.\textsuperscript{86}

3.6 Devolution

In general terms, the environment is a devolved matter and as such, devolution has led to distinct environment regimes in each of the nations of the UK. However, many environmental issues are cross-border in nature (for example, air and water quality), so while the governance may be devolved, a co-ordinated UK approach for some areas could be considered. This may also be an issue if common environmental standards are required as a result of any future trading agreement which includes the devolved nations.

As set out in section 1.5 above, EU regulations have provided a common framework of environmental requirements under which each

\textsuperscript{84} House of Lords European Union Committee, Brexit: environment and climate change, 12\textsuperscript{th} Report of Session 2016-17, HL Paper 109, 14 February 2017, Chapter 8

\textsuperscript{85} House of Lords European Union Committee, Brexit: environment and climate change, 12\textsuperscript{th} Report of Session 2016-17, HL Paper 109, 14 February 2017, Chapter 8

\textsuperscript{86} Environment, Food and Rural Affairs Committee, \textit{SOS to EFRACom follow up}, 29 September 2017
Brexit and the environment

devolved administration has developed its own specific policies, approaches and regulations.

The House of Lords European Union Committee Report on Brexit: environment and climate change from February 2017 summarised some of the areas where the devolved Administrations’ environmental policies had diverged from that of the UK Government:

In fact, several witnesses asserted that in some respects the Devolved Administrations’ environment and climate change ambitions were higher than those of the UK as a whole. Mr Hutchings, for example, said that the Scottish Government had probably “moved further ahead” in terms of its designations for marine protected areas, and noted that the Well-being of Future Generations (Wales) Act was “showcased at UN level as an exemplar of how to go about managing the environment in recognition of the social and economic benefits that come from looking at sustainable development in the round.” In respect of recycling, Mr Hayler told us that the UK was “currently struggling to meet the 2020 target which is set at 50% household recycling levels. We are around the mid-40s per cent but there is quite a lot of regional variation. In Wales they are already comfortably meeting that 50%.” Ms Cunningham told us that the Scottish Government’s “work to decarbonise electricity generation has already made a sizeable contribution to the UK’s climate change goals, and only one other European nation has achieved a greater cut in greenhouse gas emissions.” Dr Coffey also acknowledged that “It is fair to say that all the four nations are rather ambitious in their plans for the environment”. 87

Leading up to Brexit, the devolved Administrations will be involved in the negotiations through the Joint Ministerial Committee (JMC)—chaired (in plenary) by the Prime Minister and attended by the First Ministers of Scotland and Wales and the First and deputy First Ministers of Northern Ireland.88

Views on a future framework with devolved administrations

In oral evidence to the Environmental Audit Committee on 1 November 2017 the Secretary of State for Environment, Food and Rural Affairs set out his view of a future framework for the devolved administrations (DAs):

I foresee Britain leaving the European Union as providing even more opportunities for the DAs to do more in this area. Also, I have to be honest, there are things that both the Scottish and Welsh Administrations have done that have been admirable and in advance of what we have done in England, so they have set the standard in the UK. For example, the leadership that both Administrations showed on the Deposit Return Scheme is one

87 The House of Lords European Union Committee, Brexit: environment and climate change, 14 February 2017, HL Paper 109, para 177
88 HM Government, The United Kingdom’s exit from and new partnership with the European Union, February 2017, Cm 9417, p.11
where we have been playing catch up; I happily acknowledge that.

However, it is important we have a UK framework that properly allows the DAs to do what they consider to be appropriate in their own space but at the same time preserves UK-wide rules. We are very keen to get down to the nitty gritty of discussion on what should be in those frameworks with the DAs.89

A Government announcement on 13 November 2017 set out plans to consult on a new, independent body for environmental standards and to set out a series of environmental principles in a new national policy statement. It clarified that there would be wide engagement and work with the devolved administrations on these issues.90

Following Brexit, and without a UK-wide framework, there could be a further divergence in approaches across the UK. For example, Dr Jo Hunt (a Senior Fellow at Cardiff University on the UK in a Changing Europe initiative) suggests that post-Brexit:

Wales, Scotland and Northern Ireland could decide to regulate in line with EU measures, in preference to new UK laws.91

On 25 January 2017, Defra Minister George Eustice said:

We want to deliver a Brexit that works for the whole of the UK. We will work very carefully to ensure the right powers are returned to Westminster and the right powers are passed to the devolved administrations. No decisions currently taken by the devolved administrations will be removed from them.92

In his statement to the House introducing the Great Repeal Bill White Paper, David Davis said that EU frameworks have had the effect of providing a common UK framework in many areas, and that:

As powers return from the EU, we have an opportunity to determine the level best placed to take decisions on those issues, ensuring that power sits closer to the people of the United Kingdom than ever before. It is the expectation of the Government that the outcome of that process will be a significant increase in the decision-making power of each devolved Administration. However, we must also ensure that, as we leave the EU, no new barriers to living and doing business within our own Union are created. In some areas, that will require common UK frameworks. Decisions will be required about where a common framework is needed and, if it is, how it might be established. The devolved Administrations also acknowledge the

89  Rt Hon Michael Gove MP, oral evidence to the Environmental Audit Committee on the Government’s Environmental Policy, HC 544, 1 November 2017, Q28
90  HM Government, Environment Secretary sets out plans to enhance environmental standards, 13 November 2017
91  Jo Hunt, Bringing powers back from Brussels - but to where?, The EU referendum and the UK Environment: An Expert Review (Blogspot), 10 February 2017
92  PQ 60652 [fisheries] 25 January 2017
importance of common UK frameworks. We will work closely with the devolved Administrations to deliver an approach that works for the whole of the United Kingdom and reflects the needs and individual circumstances of Scotland, Wales and Northern Ireland.93

Legislative consent motions on the European Union (Withdrawal) Bill

The European Union (Withdrawal) Bill amends the three main devolution Acts to reflect the UK’s withdrawal from the UK. The Bill creates fewer rights for devolved legislatures and executives to modify retained EU law than apply to their UK counterparts. This change is justified by the UK Government as a way of continuing existing restriction while decisions are taken on where common policy approaches are needed.94

The First Ministers of Scotland and Wales have written a joint letter to the Prime Minster to state that the Bill as first introduced cannot be recommended for consent.95 The Scottish and Welsh Governments have each set out our reasons for that, in detail, in legislative consent memorandums laid before each of the Scottish Parliament and the National Assembly for Wales.96 Further detail and explanation is provided in the Library Briefing Paper on the European Union (Withdrawal) Bill.

Scotland’s Brexit environment position

The Scottish Government published Scotland’s Place in Europe on 20 December 2016. This paper presents the Scottish Government’s “proposals for mitigating the impact on Scotland of the UK’s exit from the EU”.97 The paper makes clear that membership of the Single Market is the Scottish Government’s priority for Brexit. It also calls for the existing powers of the Scottish Parliament to be safeguarded and significantly expanded, including powers to legislate on most areas of environmental protection.98 In addition, the paper explains that the Scottish Government remains committed to “maintaining, protecting and enhancing [the] environment.”99 This paper builds on earlier statements made by the Scottish Environment Secretary Roseanna Cunningham, who in October 2016 stated:

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93 HC Deb 30 March 2017 v624 c430
94 House of Commons Library Briefing Paper, The European Union (Withdrawal) Bill, 1 September 2017, p100
95 Letter from Nicola Sturgeon and Carwyn Jones to Theresa May, dated 19 September 2017
96 See Welsh Government, Legislative Consent Memorandum European Union (Withdrawal) Bill, September 2017 and Scottish Government, Legislative consent memorandum European Union (Withdrawal) Bill, September 2017
97 Scottish Government, Scotland’s Place in Europe, 2016
98 Scottish Government, Scotland’s Place in Europe, 2016, p. 4
99 Scottish Government, Scotland’s Place in Europe, 2016, para. 93
The European Union has been a significant driver of environmental policy and legislation for the last 40 years. Scotland trades internationally on our dynamic economy underpinned by our reputation as a clean, green country with wholesome food and drink. The quality of our natural environment is vital to our attractiveness as a tourist destination.

We must continue to do our utmost to protect our position as climate change leaders, to continue to play the role that we have been playing in contributing to EU-wide environmental policies, and to make sure that we maintain, protect and advance our own environment.\(^{100}\)

### The European Union (Withdrawal) Bill

On 19 September 2017, the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell, wrote to the Convener of the Finance and Constitution Committee at the Scottish Parliament outlining which powers would be affected by the current drafting of clause 11 of the European Union (Withdrawal) Bill (concerning the legislative competence of the devolved legislatures).\(^{101}\)

The letter provided a copy of a list produced by the UK Government of the 111 powers (including environment related areas) returning from the EU that intersect with the devolution settlement in Scotland. The letter expressed concern that the Scottish Parliament would have “no say over what is done with these important policy areas after EU withdrawal.”\(^{102}\)

On 11 October 2017, in oral evidence to the House of Commons Scottish Affairs select committee inquiry on the European Union (Withdrawal) Bill, Implications for devolution, Mr Russell elaborated further on some of these areas and some of the uncertainties surrounding them:

Looking down the list again, on number 43, environmental quality—water quality—there is a difference in water quality and water quality regulation north and south of the border. There is a European framework but there are some important differences. That is one area where one would want to have a discussion about how we can move forward on that. When we get to number 56—forestry (domestic)—I do not know what that means and I have been an Environment Minister with responsibility for forestry. I don’t know what they want to do in that area.

There is an existing Forestry Commission. It is based in Edinburgh, but it is operated separately north and south of the border and the Scottish Parliament is about to pass a Forestry Bill that takes this a further stage on in terms of separate legal entities. There are some shared responsibilities, the Forest Research Institute for example, is one; very positive, we could work very closely on that. So that has to be unpacked, but I go back to these two crucial

\(^{100}\) Scottish Government, “Europe and the environment”, 3 October 2016

\(^{101}\) Letter from Michael Russell to Finance and Constitution Committee, 19 September 2017

\(^{102}\) Letter from Michael Russell to Finance and Constitution Committee, 19 September 2017
points. First of all, how do we decide what there are frameworks for, what are formal legislative frameworks, what are concordats, what are other things. We need to decide that, go through this group list, and do that. The second thing is we need to say, “What do they look like? How do they operate? How do we get codecision-making?” Those are the crucial issues. I say to Mr Thomson again, if we resolve those issues there will be a deal. If we cannot resolve those issues, there will not be a legislative consent motion.103

Scottish environment and Brexit negotiations
In a speech on 27 October 2017, Securing the interests of Scotland’s environment and progress on climate change following the EU Referendum, the Scottish Environment Secretary Roseanna Cunningham set out the Scottish Government’s intentions to have “meaningful discussions” with the UK Government on environment and climate change and to “continue to seek to protect the environment” regardless of the outcome of the Brexit negotiations:

Given how much we will be affected by leaving the EU, it is essential that Scotland has meaningful discussions with the UK Government in developing the UK position for the negotiations ahead.

The environment has been a key competence of the EU for good reason. Progress in environmental and social goals have developed hand in hand with a single trading market.

A level playing field allows higher standards for all. We have also been able to work together to tackle global problems, including climate change.

However, if we do end up in a hard Brexit, our ambitions for Scotland’s environment will remain high. We continue to be committed to maintaining, protecting and enhancing our environment. It is crucial that the environment and climate change are part of the consideration of future trade arrangements.

The Scottish Government will maintain efforts to secure Scotland’s place in the EU, not least to protect our environment.

But we will continue to seek to protect the environment regardless of what the outcome may be.104

Wales’ Brexit environment position
The Welsh Government published Securing Wales’ Future, its White Paper setting out priorities for the transition to a new relationship with

103  Oral evidence to the Scottish Affairs select committee, European Union (Withdrawal) Bill: Implications for devolution, 11 October 2017, Q72

104  Speech by Environment Secretary Roseanna Cunningham, Securing the interests of Scotland’s environment and progress on climate change following the EU Referendum, 27 October 2017
Europe after Brexit, on 23 January 2017. This position paper is also supported by Plaid Cymru. This paper “is not just a shopping list of demands from Wales, but a pragmatic starting point for negotiations that can deliver for all parts of the United Kingdom.”

The paper identifies six key areas for negotiation, one of which is “maintaining the social and environmental protections and values that we prize in Wales.” For this, the White Paper explains that the Welsh Government “strongly believes” that leaving the EU must not be an excuse “for diluting or rowing back on standards which have improved the lives of our citizens.” It adds that the Government is committed to the principle of using ‘green growth’ as a means of fostering economic growth and development, which is socially equitable and ensures that natural resources are sustainably used and managed.

**Future cooperation with the UK Government**

In June 2017 the Welsh Government published *Brexit and Devolution: securing Wales’ future*. It states that:

Withdrawal from the EU must not be a licence for slackening environmental and other protections or allowing exploitation of workers. If we cannot be confident that the UK Government will work fairly with us, and in good faith, to secure these outcomes, then we must pursue other avenues.

The publication sets out the Welsh Government’s view of how new cooperation arrangements between the Welsh and UK Governments might work. It suggests a future continued divergence on environmental issues:

It is worth noting, by way of illustration, that environmental standards under EU Directives currently allow for divergence between administrations, so there should be no assumption of convergence under future UK frameworks, except where this is necessary to secure an agreed common policy outcome.

(...)

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Some existing EU frameworks, for example, those created by the Birds Directive or the Bathing Waters Directive, are not primarily motivated by internal market considerations, and there may be no need to retain a UK-wide regime for these. This does not mean that the protections achieved by such Directives should be withdrawn; the point is rather that it should be for the responsible governments in each part of the UK to have the freedom to decide.\(^{111}\)

An October 2017 UKELA report, Brexit and Environmental Law Wales, Brexit and Environmental Law, highlighted the current complex legal landscape of Welsh law and its various sources of both Welsh and UK primary and secondary legislation. The report speculated that a Welsh environment code could follow Brexit:

> It is the ambition of Welsh Government to pursue a major programme of codification of Welsh law following Brexit; and there is a clear implication that we could see a Welsh Environment Code emerging. Whilst this is an important ambition the enormity of this task should not stand in the way of more incremental change.\(^{112}\)

**The European Union (Withdrawal) Bill**

In a Written Statement on the European Union (Withdrawal) Bill on 13 July 2017, First Minister of Wales Carwyn Jones set out his concern that clause 11 of European Union (Withdrawal) Bill would allow the UK Government to “take back control” over environmental policies:

> Despite the very clear and repeated warnings that any attempt by Westminster and Whitehall to take the powers currently vested in the EU to themselves would be wholly unacceptable, this is precisely what Clause 11 of the EU (Withdrawal) Bill seeks to do.

> This part of the bill would amend the devolution legislation to put in place – with no limitations or qualifications - new constraints on the Assembly’s ability to legislate effectively on matters where we currently operate within legislative frameworks developed by the EU, even after we leave the EU. Existing EU law would be frozen, and only the UK Parliament would, it appears, be allowed to unfreeze it.

> In practice, this would provide a window for the UK government to seek Parliamentary approval to impose new UK-wide frameworks for such policies. It is an attempt to take back control over devolved policies such as the environment, agriculture and fisheries not just from Brussels, but from Cardiff, Edinburgh and Belfast.\(^{113}\)
Northern Ireland’s Brexit environment position

The Northern Ireland Executive has not published a White Paper on EU exit. However, the former First and deputy First Ministers wrote to the Prime Minister setting out the key priorities for Northern Ireland in August 2016.114

In this letter, the former First and deputy First Ministers identified five issues of particular concern to Northern Ireland. Environmental protections were not explicitly mentioned, but could be a significant factor in the animal health and agri-food priorities as part of the cross border issues discussed in the letter.

In September 2016 the Northern Ireland Minister for Agriculture, Environment and Rural Affairs, Michelle McIlveen stated that:

...we, as a region, must be closely and directly involved in the domestic agricultural, environmental and fisheries policy and trade agendas as they unfold in order to maximise the opportunities that will come with leaving the European Union.115

In a Brexit update published on 26 June 2017, Graeme Wilkinson, Head of Brexit Division, Department of Agriculture, Environment and Rural Affairs, set out how the department had approached its work on Brexit issues:

In working within our own government in Northern Ireland, we have been determined to ensure agriculture and environment are at the heart of the process.

While Northern Ireland may be a small region, our unique position must be understood. This is why we remain in constant contact with our colleagues in Whitehall, the other Devolved Administrations and the Republic. We also have staff based in Brussels that keep us visible and informed.

In parallel with putting structures in place and strengthening key relationships, we have identified six key policy areas where the impact of leaving would be most significant. These areas are; trade; food and farming; fisheries and marine; animal and plant health; environment; and rural society. Furthermore, we are considering three cross-cutting issues which will impact other departments beyond DAERA: legislation; funding and border controls.

The work that we carry out in these areas in conjunction with our counterparts across the UK is central to the agenda at the monthly meetings of agriculture and environment ministers. Looking south, we have forged a strong relationship with the Republic’s Department of Agriculture, Food and the Marine where

114 Letter to the Prime Minister Rt. Hon. Theresa May from First Minister Rt Hon Arlene Foster and Deputy Minister Martin McGuinness, 10 August 2016, [accessed: 13 November 2017]

115 Department of Agriculture, Environment and Rural Affairs, McIlveen discusses EU exit with Cabinet Ministers, 1 September 2017
our focus has been on areas such as trade, movement of live animals, fisheries and animal and plant health.

Engagement has been central to our approach at all levels. The work done in conjunction with the BCC and other stakeholders has provided an invaluable source of expertise and opinion which has helped inform our policy positions and guide our engagement externally. When you set this engagement beside the work we have undertaken to identify sensitive areas, agree desired outcomes and gather evidence of the potential impacts of EU exit, a picture of our comprehensive preparation emerges.116

Border concerns

A press release following a conference on Brexit and environmental issues in Northern Ireland summarised some of the areas of concern to do with the Northern Ireland/Ireland border and the environment:

Delegates at the conference particularly emphasised the importance of ensuring equivalency in environmental standards north and south of the Border.

The severity of this issue has been recognised at a European level, with the EU’s Brexit negotiator, Michel Barnier, recently highlighting the risk of environmental “dumping” if there is a divergence of standards between the UK and member states.

(…)

“Brexit poses many challenges but the threat to environmental progress, which the EU has championed, is one of the most significant,” added the MEP for the Midlands–North-West.

“For Ireland, it is important to have the same high standards north and south of the border and a divergence of standards would be bad for citizens and for business.”

Environmental Pillar Co-ordinator, Michael Ewing, added that it was of paramount importance to avoid a hard ‘environmental border’ which would undermine decades of progress in addressing a range of environmental issues.

In the potential absence in the North of any oversight from the European Commission and the European Court of Justice, he emphasised that effective compliance mechanisms will be critical to resolve and manage cross border environmental issues post-Brexit.

He also called for the island of Ireland to be recognised as a “single bio-geographic unit” and for the cross-border dimension of many environmental issues such as water quality, habitat and

116 Graeme Wilkinson, Head of Brexit Division, Department of Agriculture, Environment and Rural Affairs, Update on Brexit, 26 June 2017
species loss to be addressed in the context of the upcoming Brexit negotiations.\textsuperscript{117}

\textsuperscript{117} Northern Ireland Environmental Link, “Crucial cross-border cooperation to protect the environment across the island of Ireland must not be “diluted” by Brexit, warned MEPs, NGOs and leading legal experts at a conference today.” 16 June 2017
4. A tailored UK approach for the future?

In the Brexit White Paper, published in February 2017, the Government said that it would use Brexit as an opportunity to develop a comprehensive approach to improving the environment:

We will use the Great Repeal Bill to bring the current framework of environmental regulation into UK and devolved law ... We want to take this opportunity to develop over time a comprehensive approach to improving our environment in a way that is fit for our specific needs.\(^{118}\)

The Government’s factsheet on environmental protections identifies the unique opportunity to tailor the approach to the needs of the UK:

Leaving the EU means we now have a unique opportunity to design a set of policies to drive environmental improvement with a powerful and permanent impact, tailored to the needs of our country.\(^{119}\)

The Queen’s Speech 2017 did not include plans for a separate environment Bill. However, the factsheet explained that following the transposition of environmental laws into domestic legislation, it will have the opportunity, over time, to:

[...] ensure our legislative framework is outcome-driven and delivers on our overall commitment of improving the environment within a generation.\(^{120}\)

4.1 A 25 year environment plan

Defra has been developing a comprehensive 25-year plan for the environment: to ensure that the environment is maintained and improved as well as becoming systematically valued and integrated into wider decisions across different sectors. This plan has took on greater significance since the Brexit vote, with commentators such as Client Earth calling for it to “set out the direction of the government’s environmental policy once the UK is no longer a part of the EU.”\(^{121}\)

The plan was originally expected to be published in the summer of 2016, but it was delayed. On 22 February 2017, Defra said that it was

\(^{118}\) HM Government, The United Kingdom’s exit from and new partnership with the European Union, February 2017, Cm 9417

\(^{119}\) Department for Exiting the European Union, The Repeal Bill, Factsheet 8: environmental protections

\(^{120}\) Department for Exiting the European Union, The Repeal Bill, Factsheet 8: environmental protections

\(^{121}\) Client Earth What is the 25 Year Plan for the Environment? 6 January 2017 [accessed: 1 March 2017]
aiming to publish a green paper consulting on their ambitions for the 25 year environment plan “in due course”. In evidence to EAC on 1 November 2017, the Secretary of State for Defra (Michael Gove) stated that the plan would be published “before Christmas” or it may fall into January. He went onto say that he would like to legislate in the future in some areas related to the plan but could not commit to it.

The Natural Capital Committee (an independent advisory committee to the Government) published advice and recommendations on what the Government should consider in developing the plan on 28 September 2017. The advice broadly covered five areas: goals, investments, milestones, governance and the special dimensions of agricultural subsidies in the context of Brexit.

To illustrate the broad range of policy areas that the 25 year plan may cover, the Natural Capital Committee’s advice included twelve proposed goals in relation to: air quality, flood risk protection, water quality, reducing greenhouse gas emissions, access to local green space and recreation, better connection with the environment (especially children), restoring and enhancing wild species and habitats, clean, productive and biologically diverse seas, healthy soils, making a net positive contribution to the global environment, preventing or managing discharges and emissions of pollutants, managing development and the use of resources in a way that results in an overall net increase in natural capital.

4.2 Queen’s Speech 2017: fisheries and agriculture

The Queen’s Speech in June 2017 announced that the Government would bring forward a fisheries Bill and an agriculture Bill in order to implement the policy changes necessary for a successful Brexit. This paper does not discuss the implications of Brexit for fisheries and agriculture. However, these Bills are likely to have wider implications for the environment. In particular, one of the stated aims of the agriculture Bill is to “protect our precious natural environment for future generations.”

122 PQ 64079 [on environment] 22 Feb 2017
123 Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, HC 544, 1 November 2017, Q74 [accessed 7 November 2017]
124 Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, HC 544, 1 November 2017, Q77 [accessed 7 November 2017]
125 Gov.uk, Natural Capital Committee advice on government’s 25 year environment plan, 28 September 2017 [accessed 7 November 2017]
126 Gov.uk, Natural Capital Committee advice on government’s 25 year environment plan, 28 September 2017 [accessed 7 November 2017]
127 Gov.uk, Queen’s Speech 2017 background notes, 21 June 2017, p12 [accessed 8 November 2017]
Giving evidence to the EAC in November 2017, the Secretary of State for Defra (Michael Gove) indicated that farmers would be “preparing for a new system of support that is driven primarily by public money for public goods” including environmental protection and enhancement. Mr Gove said that a command paper which will proceed the agriculture Bill will outline others and how they might be delivered e.g. public access to the countryside and the maintenance of landscape beauty.

For further information on fisheries and agriculture, see the House of Commons Library Brexit pages on farming and fishing.

128 Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, HC 544, 1 November 2017, Q83 and Q88 [accessed 7 November 2017]
5. Case studies

Below is an example of specific area of environmental policy which is being discussed as part of the wider Brexit and environment debates.

5.1 REACH

What is REACH?
The registration, evaluation, authorisation and restriction of chemicals Regulation (No 1907/2006) (known as REACH) came into force in June 2006. It is an example of directly applicable EU legislation currently enforced in the UK. REACH aims to improve the protection of human health and the environment from the risks that can be posed by chemicals, while enhancing the competitiveness of the EU chemicals industry.129

REACH is managed by the European Chemicals Agency (ECHA), based in Helsinki. The Health and Safety Executive is the enforcing authority in the UK, and Defra is the lead government department with overall policy responsibility.

Why is it important?
The chemicals industry is the second largest exporter to the EU after the automotive industry and the second biggest manufacturing industry overall.130 REACH applies to all chemical substances manufactured in or imported into the EU in quantities of 1 tonne or more per year.131 It is estimated that over 30,000 substances are registered and subject to REACH,132 including not only substances used in industrial process, but also substances used in household products, such as cleaning fluids and paints. REACH therefore affects many industries and companies across the EU.

How does it work?
Companies are required to register substances that they manufacture or import into the EU and provide information about the properties, hazards and risk management measures associated with the use of that substance.133

Downstream users (anyone who uses a substance in the course of industrial or professional activities) also have a responsibility to apply

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129 European Commission, Environment: REACH, [accessed 7 November 2017].
131 Health and Safety Executive, What is REACH?, [accessed 7 November 2017]
132 Health and Safety Executive, REACH: Registration Process, [accessed 7 November 2017]
133 European Chemicals Agency, Understanding REACH, [accessed 7 November 2017]
risk management measures and report back new hazards and uses up the supply chain. A key part of REACH therefore is knowledge sharing of information about the properties and safety of chemicals on the market.

REACH applies to all EEA Member States but does not apply outside the EEA. The ECHA has “cooperation agreements” with regulatory agencies in Australia, Canada, Japan and the USA, which focus on exchanging information and knowledge regarding the management of chemicals. In addition, Switzerland and Turkey (where REACH does not apply) have enacted legislation that mirrors REACH, but is developed and implemented in an autonomous manner.

Companies in non-EEA member states that wish to trade chemicals with the EU have the option to nominate an ‘only representative’ agent registered in an EU member state to take over the responsibility of complying with REACH. Alternatively, the obligation for compliance will fall to the importer.

Potential impact of Brexit

In its Report on the Future of Chemicals Regulation after the EU Referendum, the House of Commons Environmental Audit Committee (EAC) found that the chemicals regulation framework established through REACH “would be difficult to transpose directly into UK law”. The Committee explained that one of the reasons for this was that much of REACH relates to “Member State co-operation and mutual obligations, oversight and controls, and freedom of movement of products”.

EAC has noted that cost of setting up a new regulatory system in the UK separate to REACH would be significant financially as well as from the perspective of administrative burdens and knowledge capacity. Additionally, many industry stakeholders do not want the cost and burden of having to comply with two regulatory systems. On the

134 European Chemicals Agency, Understanding REACH, [accessed 7 November 2017]
135 European Chemicals Agency, Cooperation with peer regulatory agencies, [accessed 7 November 2017].
136 Swiss Common Notification Authority for Chemicals Website, Chemicals Legislation and Guidelines, [accessed 7 November 2017].
137 Chemical Watch, Turkey publishes law modelled on REACH, 29 June 2017.
138 European Chemicals Agency, Only Representative, [accessed 7 November 2017].
139 Environmental Audit Committee, Future of Chemicals Regulation after the EU Referendum, HC 912, 2016-17, para 4, 29 April 2017.
140 Environmental Audit Committee, Future of Chemicals Regulation after the EU Referendum, HC 912, 2016-17, para 5, 29 April 2017.
141 Environmental Audit Committee, Future of Chemicals Regulation after the EU Referendum, HC 912, 2016-17, para 11, 29 April 2017.
142 Written evidence submitted to the EAC by the UK Environmental Law Association, ECR0062, January 2017.
143 Written evidence submitted to the EAC by the Chemical Business Association, ECR0003, October 2017.
other hand, a separate UK regulatory system may be advantageous to some small companies, for whom compliance with REACH may be burdensome.144,145

Industry stakeholders have raised concerns around the uncertainty surrounding the status of existing REACH registrations after the UK leaves the EU.146 The ECHA has stated that REACH registration decisions will only apply up until the point that the UK leaves the EU, although this is ultimately subject to the withdrawal negotiations.147 EAC estimated that UK companies have already spent £250 million on REACH registrations.148

EAC recommended that the Government should seek to remain involved in the registration of chemicals aspect of REACH at a minimum, and called for urgent clarification from the Government on this point. The Chair of EAC commented:

The industry is clear that they will still need to meet EU regulations after leaving in order to export into the EU. However, the Government position remains vague. This uncertainty could cost the taxpayer millions of pounds and leave our second largest export sector in disarray.

The Government should act quickly to provide clarity about the UK’s chemical industry and European regulation after we leave the EU149

The Government has acknowledged that in certain scenarios, a UK body may need to start evaluating and authorising chemicals in the UK and take over functions currently performed by the ECHA at an EU level.150 The Government has stated that it will use the powers in the European Union (Withdrawal) Bill to amend REACH as well as other chemicals regulation to make it work in the UK.151 The Secretary of State for Defra (Michael Gove) stated in oral evidence to EAC in November 2017, that the Government recognised the benefits of aligning UK regulation with REACH, but did not rule out having divergent regulatory standards in

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144 Chemical Watch, ‘Will Brexit mean avoiding the burden of REACH?’ May 2016.
145 Written evidence submitted to the EAC by the Minor Metals Trade Association, ECR0006, October 2017.
146 Ibid, para 8. Also see for example, written evidence of the Chemical Industries Association (ECR0025, para 5); Chemical Business Association (ECR0016, para 15); Association of the British Pharmaceutical Industry (ECR0063, page 3).
147 European Chemicals Agency, UKs withdrawal from the EU, [accessed 7 November 2017].
148 Environmental Audit Committee, Future of Chemicals Regulation after the EU Referendum, HC 912, 2016-17, para 7, 29 April 2017.
the UK in the future.\textsuperscript{152} He went onto confirm that the Government was working with the Health and Safety Executive to develop an approach to create an alternative to the ECHA.\textsuperscript{153}

**European Union (Withdrawal) Bill: Committee stage amendments**

Amendments for Committee stages of the *European Union (Withdrawal) Bill* have been tabled which aim to ensure that the Government produce a strategy or take steps towards ensuring the UK’s continued participation in REACH (amongst other EU agencies and programs).\textsuperscript{154} Amendments for debate have not yet been selected.

\textsuperscript{152} Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, HC 544, 1 November 2017, Q38.

\textsuperscript{153} Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, HC 544, 1 November 2017, Q43.

\textsuperscript{154} House of Commons, *Notices of Amendments given up to and including 27 October 2017*, Committee of the Whole House, European Union (Withdrawal) Bill. See for example: NC61, 305.
6. Further reading and resources

6.1 Parliamentary resources
House of Commons Library Brexit pages and briefings
House of Commons Library Second Reading blogs on Brexit:
   • What does Brexit mean for the UK’s beaches?
   • Troubled waters? negotiating fish quotas post-Brexit
   • Brexit and the environment
House of Lords Library Briefing on Brexit and climate change
Environmental Audit Committee Report on the Future of the Natural Environment after the EU referendum and corresponding Government Response.
Environmental Audit Committee Report on the Future of chemical regulation after the EU referendum and corresponding Government Response.

6.2 Stakeholder comment and resources
Greener UK coalition risk tracker: http://greeneruk.org/RiskTracker.php
Greener UK latest briefings: http://greeneruk.org/index.php
UKELA Brexit pages: https://www.ukela.org/brexit
Environmental Policy Forum pages: https://socenv.sit-yym.com/page/EUWithdrawalBill
Brexit & Environment network of academics pages on Brexit: https://www.brexitenvironment.co.uk/
IEMA article, Brexit and beyond: Environmental Principles to Guide a Sustainable Future (3 October 2017)
Client Earth: Withdrawal Bill Report (September 2017)
Bird & Bird, Brexit environmental law implications (June 2017)
Reed Smith client briefing, Brexit: implications for environmental law (October 2016)
Allen & Overy, Environmental and climate change laws – divergence or more of the same? (July 2016)
6.3 Devolved nations
Scottish Parliament Information Centre, SPICe briefing, Implications of Leaving the EU – Environment, 5 December 2016;

Scottish Universities Legal Network on Europe (SULNE), The implications of Brexit for environmental law in Scotland, December 2016;

UKELA Brexit and Environmental Law Wales, Brexit and Environmental Law, October 2017


Northern Ireland Assembly Research and Information Service, Research Matters Blog, How much change can we expect to current environmental requirements post Brexit? 24 March 2017

6.4 REACH
European Chemicals Agency, The UK’s withdrawal from the EU

Eversheds Sutherland, Brexit and UK Chemical Compliance law, (October 2016)


Chemical Watch, Will Brexit mean avoiding the burden of REACH? (May 2016).

Chemical Watch, Brexit could mean more risk-based chemicals regulation, CIA says (26 October 2017)

Chemical Watch, The future of chemicals policy - what can we learn from the past? (September 2017)

Burges Salmon, REACH, chemicals regulation and the referendum vote, (23 August 2016)
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