



BRIEFING PAPER

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Brexit and the environment

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3 Commons Library Briefing, 8 August 2018

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Summary

Current environmental law and policy

Environmental issues are often transboundary in scope. As such environmental principles, laws and policies in the UK originate from a mesh of international agreements, EU legislation and 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 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 legislative and policy routes in many areas.

Brexit negotiations

All EU environmental laws, principles and relevant enforcement mechanisms will continue to apply to the UK up until exit day (29 March 2019) and throughout the provisional implementation period to 31 December 2020 if the Withdrawal Agreement is agreed and ratified.

Article 50 withdrawal negotiations are ongoing so the exact nature of future environmental policy and legislation in the UK is not yet known. The EU has consistently called for a level playing field, including through environmental measures and practices. The Government's July 2018 [White Paper on the future relationship between the UK and the EU](#) committed to maintaining high environmental standards and proposed the agreement of non-regression of environmental standards between the EU and the UK.

No deal?

Both the EU and the UK Government are also preparing for a no deal scenario. Environmental commentators have raised concerns regarding this outcome, including in relation to losing mechanisms for co-operating with the EU on transboundary environmental issues; and a potential gap in governance between exit day and the date any replacement UK-based governance arrangements are established. The [Prime Minister has stated](#) that the UK would not reduce its environmental standards in the event of a no deal scenario.

Potential impacts of Brexit

Each area of environmental law is likely to be affected differently by Brexit – this paper does not examine individual subjects in detail. Overall, the Government has committed to continuing uphold its international environmental obligations and, in accordance with the [European Union \(Withdrawal\) Act 2018](#), to copy over all environmental EU law into domestic law from exit day.

Questions remain about how these Government commitments will be discharged in practice. In relation to the rollover of EU law, [Defra has estimated](#) that 95 items of secondary legislation would be needed to complete the conversion of "Defra-owned" EU law into UK law. However, commentators have identified some areas of environmental legislation which pose challenges for a direct conversion. For example, where existing regimes (such as emissions trading or chemicals regulation) are intertwined with EU institutions and reliant on member state co-operation, mutual obligations and relationships. As such, the future of the UK's participation in the EU's emission trading system and REACH chemicals regulation remains unclear.

UK post-Brexit

The Government's [25-year plan for the environment](#) (11 January 2018) set out longer-term plans for the environment, framed in the context of Brexit.

There has been considerable debate over the future of EU environmental principles and the loss of the role of EU institutions in monitoring and enforcing environmental law following Brexit. In response to concerns raised, the Government held a consultation on environmental principles and governance from May-August 2018. It proposed the creation of a new statutory independent environmental watchdog to hold government to account on its environmental obligations; and options for establishing environmental principles in the UK. The consultation applied to England only. Scotland and Wales are both considering governance arrangements, with further announcements from Ministers expected in coming months.

Late-stage amendments to the *European Union (Withdrawal) Act 2018* put a number of the consultation proposals on a statutory basis, including: the establishment of a statutory environmental watchdog with enforcement powers (including legal proceedings if necessary) against Government ministers; a list of environmental principles; and putting a duty on Government ministers to have regard to a policy statement relating to the application and interpretation of the listed environmental principles. The Act requires the Government to publish a draft Bill on this by 26 December 2018.

In addition, the Prime Minister announced in July 2018 that the Government would introduce the “first Environment Bill in over 20 years” which would include clean air provisions. This claim was challenged by the Chair of the Environmental Audit Committee, citing more recent environmental legislation such as the Marine and Coastal Access Act 2009. No further details on the content or scope of this Bill are available at the time of publication of this paper.

Devolution and Brexit

While the environment is a largely devolved subject, it operates within an EU-based framework of legislation. The prospect of an EU exit has highlighted tensions between the UK Government’s ambition to maintain a coordinated approach to transboundary environmental issues and the desire by the devolved nations to maintain autonomy. This was apparent in debates on the then *European Union (Withdrawal) Bill*. The Scottish Parliament refused to approve a legislative consent motion for it, in relation to both environmental policy and other commons framework areas. In April 2018, the UK and Welsh governments entered into an [Intergovernmental Agreement on the European Union \(Withdrawal\) Bill and the Establishment of Common Frameworks](#) which identified a number of environmental areas where a common framework would be needed with legislative underpinning.

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. Northern Ireland has unique environmental challenges created by Brexit because of its border with the Republic of Ireland, which will change from being an internal to an external EU border. Concerns have been raised about whether different regulatory regimes and standards would apply across the border. The draft Withdrawal Agreement makes provision for environmental protection, under the Protocol for Northern Ireland, but the text is yet to be agreed.

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. 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 for the Protection of the Marine Environment of the North-East Atlantic](#) (The OSPAR Convention), was adopted in Paris, France in September 1992 and entered into force in March 1998. It was ratified by the UK in 1998, and Annex V and Appendix 3 in June 2000.
- 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, 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.

¹ Joint Nature Conservation Committee website, [Conventions](#), June 2013 [accessed on 13 November 2017]

Implementation of international agreements

Ratification of these international Conventions has, in turn, 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, either:

- 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).

1.2 EU environmental legal framework

EU environment policy is based on Articles 11 and 191-193 of the 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;
- 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

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

⁴ EU, [Treaty on the Functioning of the European Union](#), 2012/C 326/01

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 (see Box 3).

Client Earth’s page on [What are environmental principles?](#) provides further information and explains the breadth of their application:

They act as guidance for judges and decision-makers, giving laws shape and meaning. They are used in a whole host of government and public authority decisions, including planning applications, management of marine protected areas and dealing with contaminated land.⁶

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.⁷

Box 3: 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](#).⁸ This explained that the precautionary principle may only be invoked when the three preliminary conditions are met:

- identification of potentially negative effects;
- evaluation of the scientific data available relevant to the risks;
- the extent of scientific uncertainty.

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

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 4).

There is no definitive or official definition of what falls under the term “environment”.

⁵ EU, [Treaty on the Functioning of the European Union](#), 2012/C 326/01, article 191

⁶ Client Earth, [What are environmental principles?](#) 27 June 2018 [accessed 7 August 2018]

⁷ Journal of Planning & Environment Law, [Environmental Principles: Will They Have a Legal Role After Brexit](#), Richard Macrory, Justine Thornton QC [2017] Issue 9

⁸ EUR-Lex, [Communication \(COM\(2000\) 1final\) on the precautionary principle](#), 2 February 2000

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

Box 4: Examples of EU environment legislation

- Directive 2009/147/EC on the conservation of wild birds (the codified version of Council Directive 79/409/EEC as amended) ([Birds Directive](#));
- 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;
- Directive 2008/56/EC ([Marine Strategy Framework Directive](#)) which requires Member States to achieve good environmental status in their marine environment by 2020;
- 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). Article 288 of the TFEU states 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).

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 5 and Box 12 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 5: 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 environmental governance

EU Commission

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.”⁹

The Commission uses information from a variety of sources to carry out its enforcement role, including reports from Member States, reports from the European Environment Agency and a free-of-charge citizen’s complaint procedure (see Box 7). An example of the Commission taking the UK to court is set out in Box 6. However, the vast majority of infringement proceedings are settled in discussion and negotiation without leading to court action.

⁹ UK Environmental Law Association, [Brexit and Environmental Law Enforcement and Political Accountability Issues](#), July 2017, p3

Box 6: Air Quality: an example of EU Commission enforcement

The Commission stated in 2013 that it would like to “to achieve full compliance with [its] existing air quality standards by 2020 at the latest”.¹⁰ In February 2014 the EU Commission began [infraction proceedings](#) against the UK for its failure to meet Air Quality Directive targets for NO₂ in 16 of its air quality zones.¹¹ On 17 May 2018 the EU Commission referred the UK (along with France, Germany, Hungary, Italy and Romania) to the Court of Justice of the EU (CJEU) for “for failure to respect limit values for nitrogen dioxide (NO₂), and for failing to take appropriate measures to keep exceedance periods as short as possible.”¹² Further information is available from the EU Commission press release, “[Air quality: Commission takes action to protect citizens from air pollution](#)” 17 May 2018.

If a Member State is found to be at fault, it must put things right in accordance with the decision of the CJEU, or risk a second case being brought, which may result in a fine. There are two types of fines: lump sums and periodic penalty payments. This process can take a number of years to complete.¹³

Further discussion of the role of the European Commission and the European Court of Justice is available in the UK Environmental Law Association (UKELA) Report on [Brexit and Environmental Law: Enforcement and Political Accountability Issues](#), July 2017.

European Parliament

EU citizens can petition the European Parliament over concerns about the application of EU law which affect them directly (see Box 7). The European Parliament cannot refer perceived infringements to the CJEU, but it can ask the Commission to investigate petitions on its behalf.

Box 7: Citizen action to enforce environmental law

European Commission

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.¹⁴

European Parliament

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Clean Air Programme for Europe /*, [COM/2013/0918 final */](#)

¹¹ European Commission, Press release, [Environment: Commission takes action against UK for persistent air pollution problems](#), Brussels, 20 February 2014

¹² European Commission press release, “[Air quality: Commission takes action to protect citizens from air pollution](#)” 17 May 2018

¹³ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, p42

¹⁴ UKELA, [Brexit and Environmental Law, Enforcement and political accountability issues July 2017](#) [accessed 14 August 2017]

EU citizens and organisations can petition the EU Parliament over concerns about the application of EU law which affect them directly. There is a [European Parliament website](#) where petitions can be submitted free of charge.

1.3 Trade and the environment

The European Economic Area (EEA)

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. Box 8 provides explanation of why the EEA has been discussed in the context of Brexit and the environment.

Box 8: 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.¹⁵

Does it still matter?

In January 2017, the Prime Minister Theresa May ruled out the possibility that the UK would remain a member of the Single Market.¹⁶ Similarly in Florence in September 2017 the Prime Minister set out further her view of how future EEA membership would “not work” for the UK.¹⁷

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”¹⁸ but the Government restated that the UK will not seek to become a signatory to the EEA when it leaves the UK.¹⁹

Membership of the EEA was revisited during the passage of the EU (Withdrawal) Bill with a non-Government Lords amendment requiring that provisions of the Act would not come into force until was a negotiating objective for the Government to ensure an international agreement was made which enabled the UK to continue to participate in the EEA after exit day.²⁰ The amendment is not in the final Act. The [Government’s explanatory notes](#) to the Act state: “Withdrawing from the EU means the UK will also cease to participate in the European Economic Area (EEA) Agreement as the UK will fall outside the geographic scope of the Agreement and will therefore no longer be a member of the EEA”.

Water protection and nature

¹⁵ 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]

¹⁶ Gov.uk Prime Minister’s Office, [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017

¹⁷ Gov.uk website, [PM's Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017

¹⁸ HC Deb 6 November 2017, [Col 1238](#)

¹⁹ HC Deb 6 November 2017, [Col 1262](#)

²⁰ For more detail see: [Library Briefing on the European Union \(Withdrawal\) Bill 2017-19: Commons consideration of Lords amendments](#) (5 June 2018)

[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.²¹

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?](#)

WTO environmental requirements

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.²²

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 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.²³

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

²¹ See: ENDS Report, [Brexit an 'opportunity' to improve water quality](#), [subscription required] 6 July 2016.

²² WTO website, [An introduction to trade and environment in the WTO](#) [accessed on 13 November 2017]

²³ WTO website, [WTO rules and environmental policies: introduction](#) [accessed on 13 November 2017]

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.²⁴

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.²⁵

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

²⁴ WTO website, [WTO rules and environmental policies: introduction](#) [accessed on 13 November 2017]

²⁵ WTO website, [An introduction to trade and environment in the WTO](#) accessed on 13 November 2017]

2. Brexit negotiations and preparations

2.1 Exit day

The previous Government triggered Article 50 starting the formal exit process on 29 March 2017.²⁶ Exit day will be on 29 March 2019.²⁷

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.

2.2 Transition / implementation period and withdrawal agreement

The UK and EU have also provisionally agreed there will be a transition or implementation period which will last from 30 March 2019 to 31 December 2020, during which the UK and EU have broadly agreed that the UK will continue to be bound by EU law as if it were still a member state.²⁸

Ratification of this agreement is dependent on the wider Withdrawal Agreement, but would mean that all EU environmental laws would apply until the end of 2020.

It is currently planned that the Withdrawal Agreement will be agreed between the EU and the UK in October 2018, accompanied by a political declaration on the future relationship. The progress on the [draft Withdrawal Agreement](#) was reported on 19 March 2018.²⁹

If the Withdrawal Agreement is not agreed and ratified before 30 March 2019 then there will be no transition/implementation period and all EU law will cease to apply in the UK as of 30 March 2019. See section 2.4 on No Deal below.

2.3 Future EU-UK relationship: negotiations

We do not yet know precisely what kind of relationship the UK will have with the EU after exit day as discussions are ongoing, but both the EU and UK Government have made statements around upholding environmental standards.

In January 2017, Green Alliance, an environmental thinktank and charity, expressed their concern that the environment did not feature in the [Prime](#)

²⁶ [HC Deb 29 Mar 2017 cc251-255](#)

²⁷ Defined in the [EU \(Withdrawal\) Act 2018](#) as 29 March 2019 at 11pm

²⁸ European Commission, [Draft Withdrawal Agreement](#), 19 March 2018, Part 4, Articles 121 and 122

²⁹ European Commission, [Draft Withdrawal Agreement](#), 19 March 2018

[Minister's Lancaster House speech](#) when the Government's negotiating objectives for exiting the EU were first outlined.^{30 31}

The [European Parliament's April 2017 non-binding resolution on Brexit negotiations](#) called on EU negotiators to ensure that any future trade agreement was 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 competition, trade and social rights, especially safeguards against social dumping.³²

Following this, the [European Council's first Article 50 guidelines for Brexit negotiations](#) (29 April 2017) included 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.³³

The Prime Minister's [Mansion House speech](#) on 2 March 2018 expressed her expectation that the UK would maintain environmental standards "at least as high as the EU's":

The UK has among the highest environmental and animal welfare standards of any nation on earth. As we leave the EU we will uphold environmental standards and go further to protect our shared natural heritage. And I fully expect that our standards will remain at least as high as the EU's.³⁴

The UK Government has consistently committed to continuing to uphold obligations under international law³⁵ and promised to deliver a "Green Brexit" several times, including in the 25-year environment plan.³⁶

The European Parliament's (EP) resolution of 14 March 2018 on the framework of the future EU-UK relationship repeated the EP's view that the best option for the environment, climate change, public health and food

³⁰ Gov.uk Prime Minister's Office, [The government's negotiating objectives for exiting the EU: PM speech](#), 17 January 2017

³¹ Inside Track (Green Alliance blog), [Why is the environment missing from the Brexit plan?](#), 19 January 2017 [accessed 31 October 2017]

³² 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))

³³ Europa, [European Council guidelines for Brexit negotiations](#), 29 April 2017

³⁴ Gov.uk, [PM speech on our future economic partnership with the European Union](#), 2 March 2018 [accessed 8 August 2018]

³⁵ See: [Government factsheet on environmental protections](#) accompanying the *European Union (Withdrawal) Bill*

³⁶ Gov.uk, [New environmental protections to deliver a Green Brexit](#), 12 November 2017

safety would be full alignment, but if that were not the case the EP called for “arrangements between the EU and the UK to ensure close cooperation and high standards”. The EP:

Believes that the best option for the environment, for action against climate change, and for public health and food safety would be for the UK to remain fully aligned with current and future EU legislation, including adherence to commitments and targets for 2030 already agreed under the EU’s Clean Air package and Clean Energy package; should this not, however, be the case, calls for arrangements between the EU and the UK to ensure close cooperation and high standards on those issues and to deal with trans-boundary environmental issues; stresses that any cooperation with the EU agencies in those areas must be based on bilateral agreements.³⁷

The European Council adopted a third set [guidelines on the framework for future EU-UK relations](#) on 23 March 2018.³⁸ These new guidelines added a new Article requiring continued “close cooperation” in relation to global challenges, “in particular in the areas of climate change and sustainable development, as well as cross-border pollution”.³⁹ The [Library Briefing on Brexit: new guidelines on the framework for future EU-UK relations](#) sets out further discussion and commentary on this new Article.

In April 2018, the EU’s Brexit negotiator, Michel Barnier, re-emphasised the need for a “level playing field” post-Brexit, including no reduction in environmental standards. He suggested that this could be achieved through a “non-regression” clause, preventing the UK from reversing environmental standards in order to gain a competitive advantage.⁴⁰ When questioned by the House of Commons Environmental Audit Committee on this issue in April 2018, the Secretary of State was unsympathetic towards a non-regression clause in the agreement on the future relationship.⁴¹

Government White Paper on the future relationship between the UK and the EU (July 2018)

The [Government Statement on the UK’s vision for the future EU-UK relationship](#) (Chequers: 6 July 2018) committed to upholding high regulatory standards for the environment:

In keeping with our commitments to uphold international standards, the UK and the EU would also agree to maintain high regulatory standards for the environment, climate change, social and employment, and consumer protection – meaning we would not let standards fall below their current levels.⁴²

The Government White Paper on the Future Relationship between the UK and the EU (12 July 2018)⁴³ set out the Government’s proposals on

³⁷ EP resolution 14 March 2018 on framework of the future EU-UK relationship (2018/2573(RSP))

³⁸ European Council, [Article 50 Guidelines](#), 23 March 2018

³⁹ European Council, [Article 50 Guidelines](#), 23 March 2018

⁴⁰ “Michel Barnier: Post-Brexit trade deal should bind UK to EU standards”, Politico, 10 April 2018. [Speech by Michel Barnier](#) at Hannover Messe, 23 April 2018.

⁴¹ Environmental Audit Committee, [Oral evidence](#), 18 April 2018, Qs 148-9

⁴² HM Government, [Statement following Chequers away day](#), 6 July 2018

⁴³ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593

environmental standards including “agreeing to maintain high standards through non-regression provisions”. The White Paper set out the following Government proposals on environment:

The UK and its constituent parts have long-standing commitments to protecting the environment. The Government has been clear that the UK will maintain high environmental standards once it has left the EU, and has published a 25 Year Environment Plan for England to set out the scale of its future ambitions. Scotland, Wales and Northern Ireland have made clear that they have equally high ambitions. The UK has also fulfilled the commitment to consult on a new, independent, statutory body to hold the government to account on environmental protections. The UK is party to numerous Multilateral Environmental Agreements, and the UK is committed to upholding its international obligations under these agreements after it leaves the EU.

In the context of a deep economic partnership, the UK proposes reflecting its domestic choice to maintain high regulatory standards for the environment. To that effect, the UK and the EU should commit to the non-regression of environmental standards. There should also be a reciprocal commitment to ongoing environmental cooperation, including in international fora, to solve shared global environmental challenges.⁴⁴

Examples of non-regression clauses on the environment can be found in existing trade agreements (for example, the EU-Canada trade deal). However, neither the Commission nor the UK Government have provided any detail of the extent of any UK-EU non-regression clause and it is subject to negotiation between parties.

In the context of the future goods trading relationship, the White Paper proposed a common rulebook for “those rules necessary to provide for frictionless trade at the border”. This does not include environmental standards in general, but the paper explained that this would encompass environmental requirements to the extent relevant for manufactured products:

In the case of manufactured goods, this encompasses all rules that could be checked at the border, as they set the requirements for placing manufactured goods on the market, and includes those which set environmental requirements for products, such as their energy consumption.

However, in the context of the internal energy market (IEM), the Government ruled out the need for a common rule book on wider environmental and climate change rules:

the UK does not believe that participation in the IEM should require a common rulebook on wider environmental and climate change rules.⁴⁵

⁴⁴ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, Paras 117 and 118

⁴⁵ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, Para 140

The Government also reiterated its commitment to meeting international obligations in the areas of environment and climate change (amongst others).⁴⁶

The White Paper was reported to be generally well received by environmental groups, in particular the proposals for non-regression clauses on the environment. However, a Greener UK spokesperson noted concerns about the absence of any mention of the Natura 2000 programme, or any continued relationship with the European Environment Agency. An E3G spokesperson had reservations about the UK Government's position that a common rulebook on wider climate and environmental issues was not needed.⁴⁷

2.4 No deal?

In the absence of a withdrawal agreement (or ratification of the agreement by both parties) there will be no transition/implementation period and EU law will cease to apply in the UK (although domestic arrangements for converting EU law are likely to remain unaffected). This is referred to as a no deal scenario and both the UK and EU are preparing for this possible outcome. The European Commission published a [Communication on Preparing for the withdrawal of the UK from the EU on 30 March 2019](#) which discusses a no deal scenario.⁴⁸

The Prime Minister was questioned on a no-deal scenario by the Liaison Committee on 18 July 2018. She confirmed that of the £3 billion that the Treasury has set aside over a period of two years for preparing for a no deal outcome, Defra was allocated £310 million for 2018-19.⁴⁹ The Prime Minister went on to confirm that the UK would not reduce its environmental standards in the event of a no-deal scenario.⁵⁰

The Secretary of State confirmed to the European Scrutiny Committee in July 2018 that “although no one wants it” Defra was stepping up its preparation for the possibility that the UK would leave the EU in March 2019 and then have to trade on WTO terms⁵¹ (see section 1.3 above).

A March 2018 risk analysis report [UK environmental policy post-Brexit](#) by the Tyndall Centre, University of East Anglia, and commissioned by Friends of the Earth⁵² examined a number of scenarios including a “chaotic” no deal (also referred to as a cliff-edge Brexit) and a “planned” no deal (also

⁴⁶ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, Para 107

⁴⁷ ENDS Report, [Brexit white paper: more work needed, say green groups](#), Simon Pickstone, 13 July 2018 [subs only] [accessed 26 July 2018]

⁴⁸ European Commission [Communication on Preparing for the withdrawal of the UK from the EU on 30 March 2019](#) 19 July 2018 [accessed 2 August 2018]

⁴⁹ House of Commons Liaison Committee, Oral evidence: the Prime Minister, [HC 1393](#), 18 July 2018, Q3

⁵⁰ House of Commons Liaison Committee, Oral evidence: the Prime Minister, [HC 1393](#), 18 July 2018, Q116

⁵¹ House of Commons European Scrutiny Committee, Oral evidence: EU Withdrawal, [HC 763](#), 18 July 2018, Q718

⁵² Burns, C., Gravey, V., and Jordan, A., 2018. [UK Environmental Policy Post-Brexit: A Risk Analysis](#), a report for Friends of the Earth, Brexit and Environment, March 2018.

referred to as the WTO option) and the impact they could have on specific environmental policy areas. Waste, chemicals, habitats and birds and climate change were all identified as policy areas at moderate to very high risk under a no deal scenario. Waste is discussed further in Box 9 below.

Greener UK (a coalition of environmental bodies) published a report [What would a no deal Brexit mean for the environment?](#) (July 2018) highlighting a number of concerns relating to a no deal scenario, including losing mechanisms for co-operating with the EU on transboundary environmental issues (of particular importance for the island of Ireland); and a potential gap in governance between exit day and the date that any new UK environmental watchdog is established.⁵³ During an Environmental Audit Committee (EAC) evidence session, similar concerns over the impact of a no deal scenario on the environment were raised by MPs, including Green Party MP Caroline Lucas who stated:

It is massively urgent. An air gap sounds like quite a benign thing, but if we fall off a cliff after March 2019 and we do not have all of the infrastructure of environment protection and the enforcement mechanisms and all of that, that can have serious implications in terms of the state of our environment in this country.⁵⁴

The Secretary of State confirmed in reply that the Government was “stepping up preparations in the event of there not being that [withdrawal] agreement”. He confirmed:

[...] work that is going on at the moment with my team looking at all of the statutory, legislative and other underpinnings that require to be put in place.⁵⁵

Box 9: Brexit no deal: A problem for waste?

During discussions on Brexit, concern has been raised about the implications for the movement of waste in both deal and no deal scenarios of an EU Exit. The UK is both an exporter of waste to EU and non-EU countries as well as an importer of waste from other EU countries. In particular, it is estimated that Ireland ships 40 per cent of its hazardous waste to the UK for treatment.⁵⁶

Movement of waste

Articles 34 and 3(5) of the Regulation (EC) No 1013/2006 on shipments of waste prohibit the export of waste for disposal and mixed municipal waste for recovery operations from the EU to a third country, unless it is a member of the European Free Trade Association (EFTA) and a party to the Basel Convention. As a notice to stakeholders from the European Commission sets out, once the UK become a third country, it will no longer be possible for EU Countries to export hazardous waste to the UK.⁵⁷ The House of Lords’ Select Committee on the European Union Energy and Environment Sub-Committee wrote to Defra Ministers to clarify the impact of this on UK businesses if they were no longer able to receive imports of hazardous waste from the

⁵³ Greener UK, [What would a no deal Brexit mean for the environment?](#) July 2018 [accessed 20 July 2018]

⁵⁴ Environmental Audit Committee, Oral evidence: Environmental principles and governance consultation, [HC 1062](#), 11 July 2018, Q164

⁵⁵ Environmental Audit Committee, Oral evidence: Environmental principles and governance consultation, [HC 1062](#), 11 July 2018, Q164

⁵⁶ [Letter](#) from the House of Lords European Union Committee to Dr Thérèse Coffey MP, 17 January 2018

⁵⁷ European Commission on [The Withdrawal of the United Kingdom and EU Waste Law](#), February 2018

EU.⁵⁸ The Defra Parliamentary Under-Secretary, Dr Thérèse Coffey, replied to say that “we have estimated the impact to be very small.”

On the export of waste shipment from the UK to other countries, the EU Commission notice states that “Imports of waste into the EU-27 will be governed, as of the withdrawal date, by Title V of Regulation (EC) No 1013/2006, whereby imports of waste from a third country party to the Basel Convention remains allowed, subject to the requirements set out in that Regulation.”⁵⁹

Trade and tariffs

Further concern about a no deal scenario in relation to waste relates to whether it will take a long time to export the waste out of the country and if there will be a form of “frictionless” trade with EU after Brexit.⁶⁰ Dr Therese Coffey was asked about this by the Energy and Environment Sub-Committee:

Lord Krebs: (...) the Environmental Services Association told us that a hard Brexit, if that were the outcome, could disrupt some of the trade in waste and drive up costs of waste management. Do you think that it is unnecessarily worried?

Dr Thérèse Coffey MP: I think it is. It might come back to the concept of frictionless trade and its checks and mechanics, rather than to the regulations. I see no reason why it is in the interests of different countries to make those changes. We are not anticipating particular problems, even if it did happen.⁶¹

Dr Coffey also replied to questions about the possibility of tariffs being imposed on the export of UK waste in the situation where there was a reversion to WTO trading rules. She expressed confidence that because the EU was an importer of waste, “the tariff would end up on them for importing our waste, which would not be in their interest” and that “If tariffs ended up being the outcome, it would increase the costs of materials for EU companies. I expect that we will want to work together to make sure that that is not the outcome.”⁶²

⁵⁸ [Letter](#) from Dr Therese Coffey MP to the House of Lords European Union Committee to, 31 January 2018

⁵⁹ European Commission on [The Withdrawal of the United Kingdom and EU Waste Law](#), February 2018

⁶⁰ See for example, concern in the Greener UK briefing paper, [What would a no deal Brexit mean for the environment?](#) July 2018

⁶¹ House of Lords’ Select Committee on the European Union Energy and Environment Sub-Committee, Corrected oral evidence: Impact of Brexit on the UK’s trade in waste Wednesday 10 January 2018, [Q16](#)

⁶² House of Lords’ Select Committee on the European Union Energy and Environment Sub-Committee, Corrected oral evidence: Impact of Brexit on the UK’s trade in waste Wednesday 10 January 2018, [Q17](#)

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 during negotiations and 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). This paper does not examine individual environmental subject areas in detail.

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.⁶³

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

3.1 International environmental obligations

The UK is party to several international Conventions relating to the environment (see section 1.1 and Box 1).

The Government has consistently committed to continuing to uphold obligations under international law.⁶⁴ ⁶⁵ The Government reiterated its commitment to meeting international obligations in the areas of environment and climate change (amongst others) in the July 2018 White Paper.⁶⁶

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:

⁶³ See: Reed Smith Client Alerts, [Brexit: Implications for Environmental Law](#), 6 October 2016 [accessed 31 October 2017]

⁶⁴ See: [Government factsheet on environmental protections](#) accompanying the *European Union (Withdrawal) Bill*

⁶⁵ See: HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018, p129

⁶⁶ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, Para 107

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”.⁶⁷

One area of uncertainty that has been highlighted in relation to Brexit is around mixed environmental agreements (MEAs)⁶⁸ (see Box 2) and whether the UK will remain a party to MEAs or cease to be bound by the ‘EU-only’ aspects. UKELA called for a clear statement from the Government on the legal status of these agreements after Brexit and whether it understands the UK to be automatically bound by the whole agreement.⁶⁹ In response to a PQ in September 2017 Dr Thérèse Coffey, Parliamentary Under-Secretary for Defra stated that the Government would:

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).⁷⁰

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 and [UK adoption of EU external agreements after Brexit](#) (CBP 8370), 24 July 2018.

Further discussion of the challenges of mixed environmental agreements is set out in the [UKELA Brexit Report: The UK and International Environmental Law after Brexit](#) (September 2017).

3.2 EU environmental law

Legal continuity

The *European Union (Withdrawal) Act 2018* was designed to provide legal continuity by providing the framework to copy 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 would be converted into domestic law from exit day. A National Audit Office Report (20 December 2017) reported that Defra estimated that 95 items of secondary legislation would be needed to complete the conversion of EU law into UK law.⁷¹ The [UK Parliament SI tracker](#) provides a list of all published SIs to date.

⁶⁷ The House of Lords European Union Committee, [Brexit: environment and climate change](#), 14 February 2017, HL Paper 109, para 52

⁶⁸ ENDS Report, [Brexit unlikely to give UK free rein over green laws](#), [subscription needed], vol.499, 17 August 2016

⁶⁹ UKELA, [Brexit Report: The UK and International Environmental Law after Brexit](#), September 2017 [accessed 30 July 2017]

⁷⁰ PQ [9691](#) [on Environment: Treaties] 18 September 2017; and PQ [9693](#) [on EU External relations] 18 September 2017

⁷¹ NAO, *Implementing the UK’s exit from the European Union*, the Department for Environment, Food and Rural Affairs, [HC 647](#), 20 December 2017

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.⁷² Many commentators also raised concerns that a direct conversion of some environmental legislation would prove challenging, for example where existing regimes (such as emissions trading and chemicals legislation) are intertwined with EU institutions and reliant on Member State co-operation, mutual obligations and relationships.⁷³

Taking the examples above, the future of the UK's participation EU's emissions trading system (EU ETS) and REACH⁷⁴ chemicals regulation remains unclear:

- The July 2018 White Paper does not contain any proposals on emissions trading beyond noting that remaining in the EU's emissions trading system (EU ETS) could be one way of ensuring a consistent approach to carbon pricing which would be necessary if the UK stayed in the Internal Energy Market.⁷⁵ A discussion of the different options for the UK is provided in a Sandbag article: [In or Out does Brexit mean the UK should leave the EU ETS?](#)⁷⁶
- On chemicals, the White Paper proposes continued participation by the UK in the European Chemicals Agency, accepting the rules of the agency and contributing to its costs under new arrangements that recognise the UK will not be a Member State. The background to this issue is discussed in the EAC [Report on the Future of Chemicals Regulation after the EU Referendum](#).⁷⁷

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 risked becoming 'zombie legislation'—either no longer enforced or not updated to reflect the latest scientific understanding.⁷⁸ The previous Government responded to these concerns with the assurance that, following exit,

⁷² Environmental Audit Committee, *The Future of the Natural Environment after the EU Referendum*, oral evidence, [HC 599](#), 25 October 2016

⁷³ See: Environmental Audit Committee, [The Future of Chemicals Regulation after the EU Referendum](#), Eleventh report of Session 2016-17, HC 912, 29 April 2017

⁷⁴ REACH is a European Regulation concerning the Registration, Evaluation, Authorisation and restriction of Chemicals. See more here: <http://www.hse.gov.uk/reach/>

⁷⁵ HM Government, [The Future Relationship between the United Kingdom and the European Union](#), 12 July 2018, Cm 9593, para 140

⁷⁶ Sandbag, [In or Out: does Brexit mean the UK should leave the EU ETS?](#) Debbie Stockwell, 16 March 2018

⁷⁷ EAC, *The Future of Chemicals Regulation after the EU Referendum*, Eleventh report of Session 2016-17, [HC 912](#), 29 April 2017

⁷⁸ Environmental Audit Committee, [The Future of the Natural Environment after the EU Referendum](#), Sixth Report of Session 2016-17, 4 January 2017, HC 599

Parliament will have the power to “amend, repeal and improve any law it chooses”.⁷⁹

The power for such amendments is provided by the *European Union (Withdrawal) Act 2018* which grants a ‘correcting’ power to Ministers to make statutory instruments to prevent, remedy or mitigate any “failure of” or “deficiency in” retained EU law.⁸⁰ Schedule 7 of the Act sets out the Parliamentary scrutiny procedures for the exercising of this power. During the passage of the Bill, concerns were raised that these powers may be used to downgrade environmental protections in the UK,⁸¹ although legal experts commented that these powers were not a concern as long as there is sufficient consultation and oversight of the process.⁸² An amendment to the Bill to provide greater protection to environmental law was included by the Lords, but not accepted by the Commons (see further in Section 4.3 below).

A September 2017 [letter from the Secretary of State for Defra](#) (Michael Gove) to the House of Commons Environment, Food and Rural Affairs Select Committee (EFRA) confirmed that Defra had identified a need to ‘correct’ around 850 pieces of Defra-owned legislation as a result of EU exit and “based on current assumptions” a need to make around 100 Statutory Instruments (excluding any SIs required under the fisheries and agriculture Bills). The letter also confirmed that Defra was 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.⁸³

3.3 Accountability and enforcement

During 2017 several concerns and proposals were raised in relation to accountability of the Government for upholding environmental standards in the UK following Brexit.

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

⁷⁹ 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

⁸⁰ Section 8 of the Act. See further discussion and explanation in the [Library Briefing Paper on the European Union \(Withdrawal\) Bill and Commons Library Briefing Paper, The European Union \(Withdrawal\) Bill: clause 7 “the correcting power”](#). See also [Explanatory Memorandum](#) to the Act.

⁸¹ See: Greener UK, [Great Repeal Bill Briefing](#), June 2017 [accessed 31 October 2017]

⁸² See: ENDS Report, [Should we be afraid of Henry VIII powers?](#) 17 October 2017 [subs needed] [accessed 7 November 2017]

⁸³ See: ENDS Report, [Gove to consult on Brexit changes to environmental law](#), 18 October 2017 [subscription needed]

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.⁸⁴

In February 2017, [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.”⁸⁵ In July 2017, the UK Environmental Law Association (UKELA) highlighted the unique opportunity available to improve UK mechanisms and provided 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.⁸⁶

Initially, in response to concerns, the Government pointed to existing provisions for 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.⁸⁷

In response to Government assurances, UKELA argued that judicial review alone was “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 above).⁸⁸

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

⁸⁴ Lords EU Energy and Environment Sub-Committee, [Brexit: environment and climate change](#), 12th Report of Session 2016–17, 14 February 2017, HL Paper 109

⁸⁵ Greener UK, [Securing a healthier environment and nature’s recovery: A briefing for policy makers following the EU referendum](#), February 2017 [accessed February 2017]

⁸⁶ UKELA, [Report on Brexit and Environmental Law: Enforcement and Political Accountability Issues](#), July 2017 [accessed October 2017]

⁸⁷ Department for Exiting the European Union, [The Repeal Bill: Factsheet 8 Environmental Protections](#), 8 September 2017

⁸⁸ UKELA, [Report on Brexit and Environmental Law: Enforcement and Political Accountability Issues](#), July 2017 [accessed October 2017]

replace the role of the European Commission and the ECJ was needed.⁸⁹ He stated that one of the reasons for needing a new body was that, although the judicial review process is a good thing “on its own I suspect will probably not be enough”.⁹⁰ 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.

The consultation was published on 10 May 2018. Annex C of the Government’s consultation on [Environmental Principles and Governance after EU Exit](#) sets out the existing national environmental accountability mechanisms. See section 4.4 below for further information and commentary on the Government’s proposals.

3.4 Environmental principles

The *European Union (Withdrawal) Act 2018* does not roll over EU environmental principles into national law. Schedule 1 of the Act rules out any general principles of EU law as a basis for challenge in UK courts following exit day. The potential loss of these principles has been identified as significant for the future of environmental decision-making in the UK.

As detailed in section 4.3 of this paper, a number of MPs and stakeholders (including ClientEarth and Greener UK) called for the European Union (Withdrawal) Act 2018 to convert *all* EU environmental law including environmental principles into UK law.⁹¹ Client Earth has explained the importance of retaining environmental principles in UK law as follows:

The potential loss of these principles from UK law is significant. EU environmental principles have been used in the European courts and in the UK as interpretive aids for statutes and policies, have provided a basis for scrutiny and challenge of Government actions in court, and have guided administrative decision-making and policy. They have therefore operated in a number of ways to shape the UK environment and environmental decision-making [...]

Ensuring that these principles continue to operate in the UK after Brexit is important so that they carry on shaping the UK’s approach both domestically and internationally to environmental issues and challenges.⁹²

In evidence to EAC on 1 November 2017, the Secretary of State for Defra stated that environmental principles would not be transferred into UK law, but would instead be embodied in policy guidance. He explained that they

⁸⁹ Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, [HC 544](#), 1 November 2017, Q1 and Q4 [accessed 7 November 2017]

⁹⁰ Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, [HC 544](#), 1 November 2017, Q3 [accessed 7 November 2017]

⁹¹ Greener UK, [Great Repeal Bill Briefing](#), June 2017 [accessed 31 October 2017]; Client Earth, [Withdrawal Bill Report: Destination and Journey](#), September 2017 [accessed 31 October 2017]

⁹² ClientEarth, [Environmental principles in UK law after Brexit](#), 26 June 2018 [accessed 7 August 2018]

are “interpretative principles...to govern how policy is designed and devised” and should not be put on a statutory basis.⁹³

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”.⁹⁴ The consultation was published on 10 May 2018.

Client Earth published [a Report: Environmental principles in UK law after Brexit](#) (26 June 2018) which provided detailed discussion of the principles and recommended ways that environmental principles should be incorporated into UK law post-Brexit. It argued for a hybrid approach between primary legislation and a policy statement with corresponding legal duties attached to public bodies:

There are several possible ways that the principles could be enshrined. They could be incorporated into primary legislation (either as a bare list or with added detail) with corresponding duties attaching to public authorities. They could also be contained within a policy statement. This report recommends a hybrid approach whereby the principles are listed in statute and then elaborated in a policy statement, with two corresponding legal duties attached to public bodies.⁹⁵

Following publication of the Government consultation, the Government added a new provision to the *EU (Withdrawal) Bill* with an aim of addressing concerns raised, requiring the Secretary of State to publish (within six months of the passage of the Bill) a new draft Bill which includes a set of specified environmental principles and a duty on the Secretary of State to publish a policy statement in relation to the application and interpretation of those principles.⁹⁶

See section 4.4 below for further information and commentary on the Government’s proposals.

3.5 Future trade relations and environmental protections

In addition to working on transitioning existing EU trade agreements, the UK Government is working with a number of other countries to explore and develop international trade and investment relationships.⁹⁷

MPs have highlighted concerns that the UK may agree to (or be required to) lower its environmental standards in order to enter into new free trade agreements after Brexit.⁹⁸ In September 2017, the Defra Secretary of State (Michael Gove) confirmed that environmental standards would not be

⁹³ Environmental Audit Committee Oral evidence: The Government’s Environmental Policy, [HC 544](#), 1 November 2017, Q15 [accessed 7 November 2017]

⁹⁴ Gov.uk, [New environmental protections to deliver a Green Brexit](#), 12 November 2017

⁹⁵ ClientEarth, [Environmental principles in UK law after Brexit](#), 26 June 2018 [accessed 7 August 2018]

⁹⁶ Section 16 of the EU (Withdrawal) Act 2018

⁹⁷ See more on Gov.uk [Trade Bill collection pages](#)

⁹⁸ Environment, Food and Rural Affairs Committee, oral evidence: the work of Defra, [HC 321](#), 13 September 2017, Q40

compromised in pursuit of a trade deal with countries such as the United States:

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.⁹⁹

On 9 October 2017 the Government published a white paper, [Preparing for our future UK trade policy](#) setting out the Government’s emerging approach to establishing an independent international trade policy. In relation to possible future trade agreements, the policy paper set out a commitment to maintenance of environmental protection.¹⁰⁰ The paper asked for views on the approach and the Government subsequently published its response to such views on 5 January 2018.¹⁰¹

The Government’s response noted that submissions generally welcomed the commitments on environment (amongst other areas such as sustainability and security) and reiterated its commitment to upholding high levels of environmental standards:

Any new trade deal must be right for UK consumers, producers (including agriculture) and businesses. We have always been clear that any trade deal must also uphold high levels of standards, including labour, health, safety, animal welfare and environmental standards.¹⁰²

The Secretary of State for International Trade made a statement to the House of Commons on [Trade Policy](#) (16 July 2018) in which he stated:

the Government are committed to providing Parliament with the ability to inform and scrutinise new trade agreements in a timely and appropriate manner.¹⁰³

He subsequently referenced the Canada-EU trade agreement (CETA) and the provisions restricting any watering down of environmental laws:

On the issue of future agreements, I ask the hon. Gentleman to look at what this House has already agreed on CETA: chapters 23 and 24 specifically place restrictions on Governments from watering down in any way their labour or environmental laws for the promotion of trade. We have already agreed that that will be the basis of our future trade agreement with Canada, and I ask the hon. Gentleman to judge the Government on what we do, not on what is said.¹⁰⁴

The [Trade Bill 2017-19](#) makes provision for the implementation of international trade agreements.¹⁰⁵ During [Report Stage](#) in the Commons (17 July) Opposition MPs tabled amendments that sought to protect

⁹⁹ Environment, Food and Rural Affairs Committee, oral evidence: the work of Defra, [HC 321](#), 13 September 2017, Q40

¹⁰⁰ HM Government, [Preparing for our future UK trade policy](#), 9 October 2017, p29

¹⁰¹ Gov.uk, [Trade White Paper: preparing for our future UK trade policy – government response](#), 5 January 2018

¹⁰² Gov.uk, [Trade White Paper: preparing for our future UK trade policy – government response](#), 5 January 2018

¹⁰³ HC Deb 16 July 2018, [c 41](#)

¹⁰⁴ HC Deb 16 July 2018, [c47](#)

¹⁰⁵ See more in [Commons Library Briefing on the Trade Bill](#), 2 July 2018

environmental standards in future international trade deals. No environmental amendments were agreed.¹⁰⁶ Further information is set out in the [Commons Library Briefing on the Trade Bill](#), 2 July 2018.

¹⁰⁶ HC Deb 17 July 2018, [c258](#)

4. UK developments: domestic approach for the environment

Since the announcement of the referendum result, the UK Government has made a number of announcements and taken a number of actions in relation to environmental protections in preparation for the UK leaving the EU. Key actions and announcements are included below.

4.1 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.¹⁰⁷ In particular, one of the stated aims of the agriculture Bill is to “protect our precious natural environment for future generations.”¹⁰⁸

For further information on fisheries and agriculture, see the [House of Commons Library Brexit pages on farming and fishing](#) and the related sections in the [Library Briefing Paper on the 25 year environment plan](#)

4.2 A 25-year environment plan

Box 10: Library Briefing on the 25-year environment plan

An overview and background to the Plan, detailing its key themes and commitments and a summary of stakeholder reaction is set out in the [Library Briefing paper on the 25-year environment plan](#).

The Government published the 25-year plan for the environment on 11 January 2018. The executive summary elaborates the broad aims of the Plan and refers to Brexit as a “once-in-a-lifetime chance”

...to deliver cleaner air and water in our cities and rural landscapes, protect threatened species and provide richer wildlife habitats. It calls for an approach to agriculture, forestry, land use and fishing that puts the environment first. The Plan looks forward to delivering a Green Brexit – seizing this once-in-a lifetime chance to reform our agriculture and fisheries management, how we restore nature, and how we care for our land, our rivers and our seas.¹⁰⁹

The Plan is framed in the context of Brexit and the Government's previous commitments to continue EU environmental rights on a UK legal basis and its intention to uphold its obligations under international environmental treaties. The Plan confirmed the Government would consult on any changes to environmental regulation it may identify. The Plan explained that the

¹⁰⁷ See, for example, [PQ 121775](#) [on Nature Conservation: Marine Environment] 16 January 2018

¹⁰⁸ Gov.uk, [Queen's Speech 2017 background notes](#), 21 June 2017, p12 [accessed 8 November 2017]

¹⁰⁹ HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018

Government was not pre-empting discussions with the devolved nations regarding the shape of common frameworks after Brexit, but confirmed the Government would continue to work with the devolved Administrations on these aspects.

4.3 The European Union (Withdrawal) Act 2018

The [*European Union \(Withdrawal\) Act 2018*](#) received Royal Assent on 26 June 2018. The Act contains the following provision committing the Secretary of State to publish a draft Bill within 6 months of Royal Assent, setting out environmental principles and including provisions for the establishment of a new environmental watchdog:

16 Maintenance of environmental principles etc.

(1) The Secretary of State must, within the period of six months beginning with the day on which this Act is passed, publish a draft Bill consisting of—

- (a) a set of environmental principles,
- (b) a duty on the Secretary of State to publish a statement of policy in relation to the application and interpretation of those principles in connection with the making and development of policies by Ministers of the Crown,
- (c) a duty which ensures that Ministers of the Crown must have regard, in circumstances provided for by or under the Bill, to the statement mentioned in paragraph (b),
- (d) provisions for the establishment of a public authority with functions for taking, in circumstances provided for by or under the Bill, proportionate enforcement action (including legal proceedings if necessary) where the authority considers that a Minister of the Crown is not complying with environmental law (as it is defined in the Bill), and
- (e) such other provisions as the Secretary of State considers appropriate.

(2) The set of environmental principles mentioned in subsection (1)(a) must (however worded) consist of—

- (a) the precautionary principle so far as relating to the environment,
- (b) the principle of preventative action to avert environmental damage,
- (c) the principle that environmental damage should as a priority be rectified at source,
- (d) the polluter pays principle,
- (e) the principle of sustainable development,
- (f) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
- (g) public access to environmental information,
- (h) public participation in environmental decision-making, and
- (i) access to justice in relation to environmental matters.

The duty on the Secretary of State to publish a draft Bill applies in relation to England, and to reserved matters across the rest of the UK.

The European Union (Withdrawal) Bill: background

This section provides background on the Bill, including an overview of the many environmental issues debated and addressed throughout the passage of the Bill. Excluding the provision set out above (section 16), no further environmental amendments made it into the final Act.

Box 11: Library briefings on the Bill

Detailed information and analysis of the Bill, including further resources, is set out in:

- the [Library Briefing Paper on the European Union \(Withdrawal\) Bill](#) (1 September 2017)
- the [Library Briefing Paper on the European Union \(Withdrawal\) Bill: summary of Commons Committee Stage](#) (9 January 2018)
- [the Library Briefing Paper on the European Union \(Withdrawal\) Bill 2017-19: Commons consideration of Lords amendments](#) (5 June 2018)

The March 2017 White Paper: Legislating for the UK's withdrawal from the EU stated that the Bill would "ensure that the whole body of existing EU environmental law continues to have effect in UK law."¹¹⁰ The [European Union \(Withdrawal\) Bill](#) was published on 13 July 2017, alongside a number of factsheets, including [Factsheet 8: environmental protections](#) which set out the Government responses to frequently asked questions in this area.¹¹¹

Stakeholder commentary on publication of 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 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.¹¹²

[Greener UK](#), set out three priorities for the Bill, which can be summarised as follows:

¹¹⁰ Gov.uk, Department for Exiting the EU, [Legislating for the United Kingdom's withdrawal from the European Union](#), March 2017, p. 17

¹¹¹ Department for Exiting the European Union, The Repeal Bill, [Factsheet 8: environmental protections](#)

¹¹² Society for Environment, [EU \(Withdrawal\) Bill](#) [accessed 24 October 2017]

- bringing over the whole body of EU environmental law, including preambles, principles and jurisdiction and ensuring 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.¹¹³

Greener UK published a report on the Bill: [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 preferred.¹¹⁴

Environmental lawyers [Client Earth](#) made the following comments on the Bill:

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.¹¹⁵

Client Earth made 15 recommendations to Government and Parliament on the Bill, set out in full in its report [The Withdrawal Bill: Destination and Journey](#) (4 September 2017).

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;
- how environmental standards would be enforced, with calls for a “proper body with the ability to audit the Government” to be put in place,¹¹⁶ and
- how EU environmental principles would be incorporated and interpreted in UK law.¹¹⁷

The then 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

¹¹³ Greener UK, [Great Repeal Bill Briefing](#), June 2017 [accessed 31 October 2017]

¹¹⁴ Greener UK, [Ensuring the Withdrawal Bill leads to a Greener UK, Parliamentary Briefing](#) [accessed 13 November 2017] and Greener UK, [Briefing for MPs on the committee stage of the European Union \(Withdrawal\) Bill](#), November 2017 [accessed 13 November 2017]

¹¹⁵ ClientEarth press release, [Report: Ministers are misleading the public over Brexit Bill](#), 7 September 2017 [accessed 31 October 2017]

¹¹⁶ HC Deb 7 September 2017, [Vol 628, Col 412](#) [Richard Benyon]

¹¹⁷ HC Deb 7 September 2017, [Vol 628](#)

this Bill on a United Kingdom legal basis as part of [...] the wholesale adoption of European law.¹¹⁸

Committee of the whole House

Members considered the Bill in a Committee of the whole House starting on 14 November 2017.¹¹⁹ A number of Committee stage amendments relating to the environment were debated but none were agreed to.

In broad terms, amendments were debated on the following areas:

- **Upholding environmental standards:** amendments which would have ensured 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 would have prevented the Government using powers under the Act to reduce rights or protections relating to the environment.¹²⁰
- **Enforcement and accountability:** amendments which aimed to establish new domestic governance arrangements to replace all relevant EU powers, functions and bodies; and to establish a new UK statutory body called the Environmental Protection Agency.¹²¹
- **EU environmental principles:** amendments to retain 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.¹²²

An overall summary of this stage is available in the [Library Briefing Paper on the European Union \(Withdrawal\) Bill: summary of Commons Committee Stage](#).

Report stage and third reading

Members considered the Bill at Report Stage and Third Reading on 16 and 17 January 2018. Several amendments relating to the environment were debated, but none were agreed to. Similar themes from earlier stages of the Bill were debated. For example:

- the Opposition leader (Jeremy Corbyn) tabled New Clause 1 which once again sought to protect rights in five key areas, including the

¹¹⁸ HC Deb 7 September 2017, [Vol 628, Col 583](#) [Mr David Liddington]

¹¹⁹ A number of MP briefings were published by stakeholders which provide detailed discussion of environmental amendments. For example: Greener UK, [Briefing for MPs on the committee stage of the European Union \(Withdrawal\) Bill](#), November 2017 [accessed 13 November 2017]

¹²⁰ 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

¹²¹ 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

¹²² House of Commons, [Notices of Amendments given up to and including 27 October 2017](#), Committee of the Whole House, European Union (Withdrawal) Bill. For examples see: NC 28, NC 60, NC 67, 101

environment. The House divided on the New Clause with 305 in favour and 318 against.¹²³

- Caroline Lucas (Green Party) sought to provide a statutory basis for the Government’s commitments relating to environmental principles and a new independent environmental regulator, and set out minimum standards for consultation with New Clause 18. It was not put to a vote and did not pass.¹²⁴

Lords stages

Environmental topics were discussed during Lords stages, and some non-Government amendments relating to the environment were agreed.

On day one of Lords Report Stages, an amendment providing for enhanced protection of specific areas of retained EU law, including environmental standards, was agreed.¹²⁵

At Third Reading, the Government suffered one defeat. An amendment, tabled by Lord Krebs was added to the Bill on 16 May 2018, with the title of “Maintenance of EU environmental principles and standards.”¹²⁶ This new Clause was added to the Bill following a division (Content: 294 Not Content: 244).¹²⁷ Speaking in support of his new Clause, Lord Krebs explained that he was not satisfied with the Government’s consultation proposals on environmental principles and governance (see section 4.4 below) and that he want to ensure that the protection of the environment after Brexit would “remain the same as it is now”.¹²⁸ The new clause included a requirement to enshrine environmental principles into law, and to strengthen enforcement powers from advisory notices suggested in the consultation to allowing the Government and other public bodies to be taken to court by the new environmental body.

Commons consideration of Lords amendments

The House of Commons considered Lords amendments on 12 and 13 June 2018.¹²⁹ The House divided over several amendments, including those relating to the maintenance of all EU environmental standards and principles after exit day, and requiring that retained EU environmental law (as well as other areas) could only be changed by primary legislation. Both these Lords amendments were rejected.

On the maintenance of environmental standards, speaking for the Government, the Solicitor General (Robert Buckland) explained that the Government would not support Lord Krebs’s new Clause (amendment 3) because it would “create legal uncertainty”, particularly in respect of the devolved nations, and that it would go further than existing EU Commission powers by allowing public bodies to be taken to court.¹³⁰

¹²³ HC Deb 17 January 2018 [Division 96](#)

¹²⁴ HC Deb 17 January 2018, [Col 899](#)

¹²⁵ HL Deb 18 April 2018 [c1226-1228](#)

¹²⁶ HL Deb 16 May 2018, [cc681](#)

¹²⁷ HL Deb 16 May 2018, [c702-705](#)

¹²⁸ HL Deb 16 May 2018, [c682](#)

¹²⁹ HC Deb 13 June 2018 [c1040-1043](#)

¹³⁰ HC Deb 13 June 2018 [c934-5](#)

The House of Commons, instead, accepted an amendment in lieu tabled by Rt Hon Sir Oliver Letwin (Government amendments (c) and (d) made in lieu of Lords amendment 3).¹³¹ The amendment in lieu provided that the draft Environmental Principles and Governance Bill must provide the new environmental body with powers to take the Government (but not all public bodies) to court, “where the authority considers that a Minister of the Crown is not complying with environmental law.”¹³² It would also require that the Government lists specified environmental principles in the forthcoming Environmental Principles and Governance Bill. The Solicitor General explained Sir Oliver’s amendment in lieu further:

This amendment will deliver robust protections. In particular, it acknowledges that there may be circumstances where the new environmental body should be able to take the Government to court; this is the important enforceability point. That power will be proportionate and appropriate, and used only as a provision of last resort, supplementing established processes including parliamentary scrutiny.

The amendment also requires that the Government list the environmental principles, such as the “polluter pays” principle and the precautionary principle, in the proposed draft Bill. The draft Bill and forthcoming policy statement will provide further details of how these principles will be interpreted and how they will apply. It will also set out that the principles should have an effect in the UK after we leave the EU that is equivalent to that before we leave. It will ensure that their primary focus will be on the formation of policy at a national level. In addition, the statutory policy statement will set out how, as at EU level now, the environmental principles will be considered in the context of the Government’s wider policy objectives. That includes the applicability of the principle of proportionality.

A policy statement will be presented here in Parliament for scrutiny before it comes into effect. As at EU level, the principles will also be considered in the context of wider objectives to ensure balanced decision making, meaning that Ministers of the Crown will also be required to give proper consideration to other important policy objectives, such as delivering a thriving economy and building the homes that people need, when making decisions. I thank my right hon. Friend the Member for West Dorset for tabling his amendment, and I urge hon. Members to support it.¹³³

4.4 Environmental principles and governance: consultation and future environment Bill

UK Government consultation proposals

On 10 May 2018 Defra published a consultation, [Environmental Principles and Governance after EU Exit](#). It proposed the creation, of a new, statutory, independent environmental watchdog to hold government to account on

¹³¹ HC Deb 13 June 2018 [c1040-1043](#), Sir Oliver’s amendment in lieu was supported by 320 votes to 296. HL Deb 18 June 2018 [cc1852](#), the amendment in lieu was nodded through and not pushed to division.

¹³² See [Consideration of Lords Amendments: 13 June 2018](#) paper, p5

¹³³ HC Deb 13 June 2018 [c937](#)

its environmental obligations following exit from the EU. The proposal was that this new body would work alongside a new policy statement setting out the environmental principles that would guide future policy-making. As things stand, the new body would apply to England only.

The consultation closed on 2 August 2018. In accordance with section 16 of the *European Union (Withdrawal) Act 2018*, the Government must publish a draft *Environmental Principles and Governance Bill* by 26 December 2018. It aims to introduce a Bill early in the second session of this Parliament. As set out below, some of the initial Consultation proposals have been revised following amendments made to the *EU (Withdrawal) Act 2018*.

Environmental principles: initial proposals

On environmental principles, the Consultation stated that there is “no single agreed definition of environmental principles.” Examples of environmental principles are given in Annex A of the Consultation. The Consultation set out the Government’s commitment to creating a new, “comprehensive policy statement” to provide the environmental principles which will “guide our environmental policy-making and legislation, in a similar way to existing EU principles.”¹³⁴ It sought initial views on which principles to include in the resulting Bill and/or policy statement.

The Consultation initially put forward two options for how the new statement of principles would work. The first would be to set out the principles in primary legislation. The second would be for the Bill to require the government to come forward with a policy statement on environmental principles and how they should be interpreted and applied, without the Bill itself listing the principles.¹³⁵

The Consultation summarised the pros and cons of each option as follows:

Including the principles in primary legislation (Option 1) would show that the UK is strongly committed to leaving the environment in a better state than that in which we inherited it. It would also make sure that future governments do not change this commitment to well-established environmental principles without reference to Parliament. On the other hand, not listing the principles (Option 2) would offer greater flexibility for Ministers to adopt different principles in their policy statement as scientific knowledge and understanding of the nature of the environmental challenges facing this country and the wider world evolves.¹³⁶

Environmental groups such as the Green Alliance expressed concern over the possibility that post-Brexit environmental principles could be set out in a policy statement rather than enshrined in legislation. They called for the

¹³⁴ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, para 28

¹³⁵ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, paras 29-30

¹³⁶ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, para 39

principles to be binding on the Government.¹³⁷ Similar concerns were pressed by MPs and peers during the passage of the *EU (Withdrawal) Bill*, (as set out in section 4.3 of this paper). This led to the Government adding a new provision to the Bill (now section 16 of the final Act), which requires the Government to set out the principles in primary legislation. Section 16 lists specific principles which must be included as a minimum.

Environmental governance: initial proposals

On the new environmental watchdog, the Consultation stated that “This consultation explores the functions of a new, independent, statutory environmental body to hold government to account on the environment and support our longer term objective for this, to be the first generation to leave the environment in a better state than that in which we inherited it.”¹³⁸ The consultation initially proposed that the “main form of enforcement” would be through the new body issuing advisory notices to “inform government of its opinion that government is failing to deliver its responsibility to implement environmental law, and to identify the corrective action which the new body considers is needed.”¹³⁹

Campaign groups, including Greener UK and Client Earth, criticised the proposals for a new environmental watchdog because it would not replicate the existing EU powers to take the Government to court or issue fines over environmental breaches.¹⁴⁰ Again, following similar concerns pressed by MPs and peers during the passage of the *EU (Withdrawal) Bill*, (as set out in section 4.3 of this paper), the Government subsequently added a new provision (now encompassed in section 16 of the Act). Section 16 provides that the Government must give the new body powers to take the Government to court.

What happens next?

Consultation

The [Environmental Principles and Governance after EU Exit](#) consultation closed on 2 August 2018. In response to a PQ on 18 June 2018 the Government said that:

In accepting the amendment to the EU (Withdrawal) Bill tabled by the Rt Hon Member for West Dorset, the government has confirmed the new body will have the ability to take the government to court. Consultees are encouraged to submit views on any other enforcement measures which may be necessary through our ongoing consultation.¹⁴¹

¹³⁷ “Concerns mount over future status of green principles” [ENDS Report](#), 31 May 2018 [subscription required]

¹³⁸ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, p2

¹³⁹ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, paras 103-104

¹⁴⁰ “Anger that new environment watchdog lacks power to prosecute government” [Financial Times](#), 10 May 2018 [subscription required]

¹⁴¹ [Environment Protection: Written question - HL8279](#), answered 18 June 2018

Environmental Audit Committee report

On 24 July 2018, the House of Commons Environmental Audit Committee published its report, [The Government's 25 Year Plan for the Environment](#), which also examined the Government's Principles and Governance consultation proposals.

The Committee recommended the establishment of an Environmental Enforcement and Audit Office with the power to fine the Government and its agencies for failure to comply and that "As a minimum, the proposed watchdog must replicate or build on the role the EU institutions play in protecting our environment. The Government's proposals as yet do not do that."¹⁴²

On environmental principles the Committee argued that the wording from the Consultation and the EU Withdrawal Act that Government should 'have regard to' the principles and that their application was limited to central Government, rather than including all public bodies, was "too weak".¹⁴³ It also expressed concern that the interpretation of the principles "may be fiercely contested". The Committee recommended that the forthcoming Environmental Principles and Governance Bill must include provisions for "all public bodies to act in accordance with the principles" and should "consider micro-duties aimed at specific public bodies that reflect their individual remits."¹⁴⁴

A Government response has not yet been published. It is normally expected within two months of publication of the Committee's report.

Draft Environmental Principles and Governance Bill

Section 16 of the *European Union (Withdrawal) Act 2018*, "Maintenance of environmental principles etc", requires that the Government must publish its draft *Environmental Principles and Governance Bill*, within six months of the day on it was passed; therefore by 26 December 2018.

Speaking about what is now section 16 in the House of Lords, Lord Krebs indicated that he may return to environmental protection issues once forthcoming draft *Environmental Principles and Governance Bill* is published:

I think that the Government's commitment to replace the environmental protection that we have now as members of the European Union is close but not quite there, and I hope that when the new environment Bill comes before this House later in the year, as we are promised, there will be a further chance to debate these matters. At that point, we can push the Government further.¹⁴⁵

An article from the specialist publication, ENDS Report, speculated on potential areas for debate remaining for when the draft Environmental

¹⁴² House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, paras 69-74

¹⁴³ House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, paras 109

¹⁴⁴ House of Commons Environmental Audit Committee, [The Government's 25 Year Plan for the Environment](#), 24 July 2018, paras 109-111

¹⁴⁵ HL Deb June 2018 [c1862](#)

Principles and Governance Bill is published. These included how the new watchdog would be assured its independence, what its remit would be and how it would be funded. There were also calls for clarification about how it would be able to use its legal powers.¹⁴⁶ Some commentators have also recommended that the Bill be used to enshrine specific environmental targets.¹⁴⁷

In its response to the Government's [Environmental Principles and Governance after EU Exit](#) consultation, the Environment Agency suggested that the forthcoming Bill could be used to place the Government's 25 Year Environment Plan (25 YEP) on a statutory footing:

Publication of the 25 YEP has raised public expectations for future environmental protection and improvement. One way of fulfilling these expectations would be to place the 25 YEP on a statutory footing. For example, the forthcoming Bill could set out a duty for the Secretary of State to publish, review and report on the 25 YEP on a regular basis. It could also place a duty on the new body to provide advice to the Secretary of State on the 25 YEP and make regular progress reports to Parliament, to which the Secretary of State is obliged to respond. This would be similar to the architecture for carbon budgets and the National Adaptation Programme under the Climate Change Act.¹⁴⁸

ClientEarth published a report setting out their recommendations on how environmental principles should be incorporated into UK law post-Brexit. Specifically, it recommended that EU environmental principles should be retained in UK law, and "additional principles relating to non-regression and management of the environment at an appropriate scale should be adopted."¹⁴⁹

Devolved nations

The Government's May 2018 Consultation sets out its starting point that as many environmental matters are devolved subjects, the statement of principles and the new environmental body would apply to England only:

12. Our starting point is that the statutory statement of environmental principles and the environmental body should cover England and environmental matters that are not devolved. This consultation therefore relates only to areas for which the UK government is responsible.

13. The statutory statement of environmental principles and the new body could, subject to the ongoing framework discussions with the devolved administrations, apply more widely across the UK. The environment does not respect boundaries, and we believe a joined up approach would be beneficial. If the devolved administrations would like to address the issues in this consultation jointly, we would welcome the opportunity to co-design the proposals for the new

¹⁴⁶ "What the passage of the Brexit bill means for the green watchdog's future" [ENDS Report](#), 22 June 2018 [subscription only]

¹⁴⁷ "The post-Brexit environmental governance battles that lie ahead" [ENDS Report](#), 28 June 2018

¹⁴⁸ Environment Agency, [Response to Defra Consultation: Environmental Principles and Governance after the United Kingdom leaves the European Union](#), 1 August 2018, p6

¹⁴⁹ ClientEarth, [Environmental principles in UK law after Brexit](#), 26 June 2018

environmental body and principles with them to ensure they work more widely across the UK, taking account of the different government and legal systems in the home nations.¹⁵⁰

For further information about the devolved administrations' stances on environmental principles and governance see section 5 of this paper.

4.5 New Environment Bill

In evidence to the Liaison Committee on 18 July 2018, the Prime Minister confirmed that the Government “would introduce an environment Bill, and clean air will be part of that Bill”.¹⁵¹

This was later confirmed by [No. 10 Downing Street on twitter](#):

Today I announced that the Government will bring forward the first Environment Bill in over 20 years. This builds on our 25 Year Environment Plan, setting out what we are doing to improve the environment for the next generation¹⁵²

The Defra Secretary of State followed up on the announcement stating that the “Bill is another key step towards achieving a Green Brexit”.¹⁵³

It is not clear whether or not the environment Bill referred to by the Prime Minister is the same as the Environmental Governance and Principles Bill discussed in the section above. In relation to it being the first Environment Bill in over 20 years, this was challenged by the Chair of the Environmental Audit Committee (Mary Creagh), citing more recent environmental legislation including the Marine and Coastal Access Act 2009, the Climate Change Act 2008 and the Countryside and Rights of Way Act 2000.¹⁵⁴

¹⁵⁰ Defra, [Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment](#), 10 May 2018, paras 12-13

¹⁵¹ House of Commons Liaison Committee, Oral evidence: The Prime Minister, [HC1393](#), 18 July 2018, Q 101

¹⁵² See: <https://twitter.com/10DowningStreet/status/1019601737064251393>

¹⁵³ Gov.uk, Blog [Defra in the media, Prime Minister announces Environment Bill](#), 19 July 2018 [accessed 30 July 2018]

¹⁵⁴ House of Commons Liaison Committee, Oral evidence: The Prime Minister, [HC1393](#), 18 July 2018, Q107

5. 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 been a divergence of both policy and 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.¹⁵⁵

In **Wales**, the *Wales Act 2017* amended the *Government of Wales Act 2006* by providing for a new devolution settlement for Wales. The Reserved Powers Model established by the 2017 Act allows the Assembly to legislate on matters that are not reserved to the UK Parliament.¹⁵⁶

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 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.¹⁵⁷ 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. Currently, 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 Box 12 below.

¹⁵⁵ The Scottish Parliament, [Devolved powers](#), updated 16 August 2017

¹⁵⁶ Gov.UK [New powers model for Wales comes into force on 1 April 2018](#), 1 April 2018

¹⁵⁷ Gov.uk [Devolution settlement: Northern Ireland](#) [accessed on 13 November 2017]

5.1 Devolution and environment: diverging policy

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.

As set out in section 1.5 above, EU regulations have provided a common framework of environmental requirements under which each devolved administration has developed its own specific policies, approaches and regulations.

Box 12: 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*.¹⁵⁸

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.

In **England**, the Directive is implemented through the *Waste (England and Wales) Regulations 2011 (as amended)* and the Government's approach to waste policy is set out in the [Government Review of Waste Policy in England 2011](#), published by Defra. A subsequent 2013 [Waste Management Plan for England](#) provided an analysis of the waste management situation in England. Defra has since confirmed that it does not plan to set local authority targets for recycling household waste at local authority level in England.¹⁵⁹ The October 2017 Clean Growth Strategy set out the Government's intention to publish a new Resources and Waste Strategy.¹⁶⁰

¹⁵⁸ Welsh Government website, [Towards Zero Waste](#) [accessed on 13 November 2017]

¹⁵⁹ PQ [9229](#) [on Domestic Waste: Recycling] 7 September 2015

¹⁶⁰ HM Government, [The Clean Growth Strategy](#), October 2017, p16

For information on specific areas of waste policy in the devolved nations, please see the Library Briefing Paper on [Food Waste](#) and the Library Briefing Paper on [Household Recycling in the UK](#).

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, including on marine protection and sustainable development:

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".¹⁶¹

5.2 A future framework with devolved administrations

Given that many environmental issues are cross-border in nature, while the governance may be devolved, the Government has made clear that a co-ordinated UK approach for some areas may need to 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.

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 where we have been playing catch up; I happily acknowledge that.

¹⁶¹ The House of Lords European Union Committee, [Brexit: environment and climate change](#), 14 February 2017, HL Paper 109, para 177

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.¹⁶²

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.¹⁶³

The Government's view of how it "plans to ensure that the four countries of the UK have a coherent approach to cross border environmental issues after the UK leaves the EU" was set out in response to a PQ as follows:

Across England, Scotland, Wales and Northern Ireland we have a shared interest in protecting our environment and delivering a Green Brexit.

The Government wants to make sure decisions that should be taken in devolved areas are taken in devolved areas. But in some areas there will need to be a UK approach in respect of powers returning from the EU. The Joint Ministerial Committee (EU Negotiations) has agreed a set of common principles that will apply to common frameworks in areas where EU law currently intersects with devolved competence. These are outlined in the Joint Ministerial Communique: 16 October 2017

<https://www.gov.uk/government/publications/joint-ministerial-committee-communique-16-october-2017>.

Ministers and officials are in regular discussion with counterparts in the Devolved Administrations on environmental policy matters. This includes considering the need for common frameworks and ensuring appropriate operational arrangements are in place after the UK leaves the EU.¹⁶⁴

Following Brexit, and without a UK-wide framework, commentators have speculated that 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."¹⁶⁵

Common Frameworks

On 9 March 2018 the Government published its provisional [Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland](#). This was then followed on 25 April 2018 by the [Intergovernmental Agreement on the European Union \(Withdrawal\) Bill and the Establishment of Common Frameworks](#) (the "IGA"), to which the UK

¹⁶² Rt Hon Michael Gove MP, oral evidence to the Environmental Audit Committee on the [Government's Environmental Policy](#), HC 544, 1 November 2017, Q28

¹⁶³ [PQ 60652](#) [fisheries] 25 January 2017

¹⁶⁴ Environment Protection: [Written question – 139424](#) answered on 8 May 2018

¹⁶⁵ Jo Hunt, [Bringing powers back from Brussels - but to where?](#), The EU referendum and the UK Environment: An Expert Review (Blogspot), 10 February 2017

Government and Welsh Government are parties to. The IGA sets out the 24 areas that the Government has identified as needing a future common framework with legislative underpinning. Many of these areas, identified as being where legislation could be required in whole or in part, have an environmental element. The list in full is as follows:

1. Agricultural support
2. Agriculture - fertiliser regulations
3. Agriculture - GMO marketing and cultivation
4. Agriculture - organic farming
5. Agriculture - zootech
6. Animal health and traceability
7. Animal welfare
8. Chemicals regulation (including pesticides)
9. Elements of reciprocal healthcare
10. Environmental quality - chemicals
11. Environmental quality - ozone depleting substances and F-gases
12. Environmental quality - pesticides
13. Environmental quality - waste packaging and product regulations
14. Fisheries management & support
15. Food and feed safety and hygiene law (food and feed safety and hygiene law, and the controls that verify compliance with food and feed law (official controls)
16. Food compositional standards
17. Food labelling
18. Hazardous substances planning
19. Implementation of EU Emissions Trading System
20. Mutual recognition of professional qualifications (MRPQ)
21. Nutrition health claims, composition and labelling
22. Plant health, seeds and propagating material
23. Public procurement
24. Services Directive

The identification of these areas relates in turn to provisions on devolution in the [European Union \(Withdrawal\) Act 2018](#). The 2018 Act amends each of the devolution Acts so as to remove the requirements that the devolved legislatures and the devolved administrations can only legislate or otherwise act in ways that are compatible with EU law. It then inserts powers into each of those Acts to apply, by regulations, a temporary ‘freeze’ on devolved legislative or executive competence in specified areas, so that in those areas “the current parameters of devolved competence are maintained.”¹⁶⁶ The use of the ‘freezing’ powers is a transitional

¹⁶⁶ [Explanatory Notes](#) to the European Union (Withdrawal) Act 2018, p11-12

arrangement. The powers to create a specific policy “freeze” will expire after two years, and the freeze itself will expire after five years.¹⁶⁷

The Explanatory Notes to the *European Union (Withdrawal) Act 2018* set out that the “political commitments” made by the UK Government to the Welsh Government in the IGA also “apply to the Scottish Government and to the Northern Ireland Executive, although they were not parties to the Agreement at the time this Act received Royal Assent.”¹⁶⁸ The Explanatory Notes also highlight that work on designing and implementing common frameworks is ongoing work, which is led by the Chancellor of the Duchy of Lancaster and supported by the relevant territorial Secretary of State.¹⁶⁹

For further information, including on views of the Devolved Nations, see:

- National Assembly for Wales Research Service, [Research Briefing: Brexit Monitoring Report: Environment](#), 18 May 2018;
- Scottish Parliament Information Centre (SPICe), [Common UK Frameworks after Brexit](#), 2 February 2018; and
- House of Commons Library, [Brexit: Devolution and legislative consent](#), 29 March 2018.

5.3 Scotland’s Brexit environment position

The Scottish Government published [Scotland’s Place in Europe](#) on 20 December 2016. This paper presented the Scottish Government’s “proposals for mitigating the impact on Scotland of the UK’s exit from the EU”.¹⁷⁰ The paper called for the existing powers of the Scottish Parliament to be safeguarded and significantly expanded, including powers to legislate on most areas of environmental protection.¹⁷¹ In addition, the paper explains that the Scottish Government remains committed to “maintaining, protecting and enhancing [the] environment.”¹⁷² This paper builds on earlier statements made by the Scottish Environment Secretary Roseanna Cunningham, who in October 2016 stated:

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.¹⁷³

¹⁶⁷ Department for Exiting the European Union, *European Union (Withdrawal) Bill* [Factsheet 5: Devolution](#), May 2018

¹⁶⁸ [Explanatory Notes](#) to the *European Union (Withdrawal) Act 2018*, p12

¹⁶⁹ [Explanatory Notes](#) to the *European Union (Withdrawal) Act 2018*, p12

¹⁷⁰ Scottish Government, [Scotland’s Place in Europe](#), 2016

¹⁷¹ Scottish Government, [Scotland’s Place in Europe](#), 2016, p. 4

¹⁷² Scottish Government, [Scotland’s Place in Europe](#), 2016, para. 93

¹⁷³ Scottish Government, [“Europe and the environment”](#), 3 October 2016

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 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.¹⁷⁴

Environmental principles

The Scottish Government introduced a [UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill](#) by the Deputy First Minister and Cabinet Secretary for Education and Skills, John Swinney MSP, on 27 February 2018. This was because the consent had been withheld by the Scottish Parliament for what is now the *European Union (Withdrawal) Act 2018*. This Bill was intended to make arrangements in Scottish devolved areas for the legal continuity of EU law. The EU Government has referred the Bill to the Supreme Court, arguing that the Bill is not within the competence of the Scottish Parliament.¹⁷⁵ For background information about the Bill, why it was introduced, what it would do, and legal challenge to it, see section 3.7 of Library Debate Pack, [Implications for Scotland of leaving the EU](#), 29 June 2018.

Environmental organisations, including members of Scottish Environment LINK, had raised concerns that in bringing across EU legislation into domestic law, the Continuity Bill had failed to preserve environmental principles that are currently provided for in the EU treaties.¹⁷⁶ The Scottish Government accepted amendments tabled to this Bill which aimed to address these concerns. The Minister for UK Negotiations on Scotland's Place in Europe (Michael Russell), summarised these new provisions as follows:

Amendment 39 seeks to ensure that ministers will have regard to the guiding principles on the environment and animal welfare when they use the regulation-making powers under sections 11(1), 12 and 13(1) of the bill. Although all EU legislation that is rolled over through the bill will already have been informed by the principles, as part of the EU's policy development and decision making, amendment 39 will ensure that we consider the principles when we make regulations to correct deficiencies or to keep pace with EU law, including when ministers exercise the powers to rectify or alter duties or powers of public authorities.

Amendment 56 supports the Scottish ministers' clear commitment to carry through not just the letter of EU environmental law, but its spirit. Rightly, the scope of that discussion goes much wider than the bill. Amendment 56 will ensure that we consult on how the environmental principles can continue to guide future policy and legislation, and on how we can continue to have effective and

¹⁷⁴ 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

¹⁷⁵ "Supreme Court hears defence of Scottish Brexit Bill" [BBC News](#), 25 July 2018

¹⁷⁶ Scottish Environment LINK, "[Environmental organisations welcome UK-leading environmental commitments in Scottish Continuity Bill](#)" 21 March 2018

appropriate environmental governance following the UK's withdrawal from the EU.¹⁷⁷

The Scottish Environment Secretary gave oral evidence to the Environment, Climate Change and Land Reform Committee on 8 May 2018. In relation to environment principles, she set out her commitment to “find a way of legislating those set and agreed fundamental principles into Scots law.”¹⁷⁸

Environmental Governance

On 1 June 2018 the Scottish Government published a [Report by the Roundtable on Environment and Climate Change on Environmental Governance in Scotland on the UK's withdrawal from the EU](#). The Report is the result of a short preliminary study by a sub-group of the Roundtable.¹⁷⁹

The Minister, Roseanna Cunningham, welcomed the report in a blog [Next steps on environmental governance](#). The blog sets out that she has not yet reached conclusion on the best approach for Scotland on environmental governance, but said that in deciding this, there were “certain essential requirements”:

I have not yet concluded what the best approach in Scotland would be, but have not ruled out the creation of a new function for an existing body or a new statutory body to deliver the required level of independent scrutiny

It is unfortunate that the Scottish Government, and a number of Scottish stakeholders, were not fully engaged by the UK Government in the development of the proposals set out in their recently published consultation so I will take care not to repeat this mistake. We are ready to co-operate with the UK Government and other devolved administrations, both to ensure continuity of EU law and to seek to agree common approaches across the four administrations in the UK where this is in the best interests of Scotland's environment and people.

In deciding what is best for Scottish circumstances, there are certain essential requirements. Any solution must fit Scottish circumstances. That means recognising and respecting that the environment is a devolved matter and must fit with established methods of accountability, including the separate Scottish legal system and the role of the Scottish Parliament as the body that holds Ministers to account. It must be a system that helps us to maintain, protect and enhance environmental standards, to comply with international obligations, and it must be fair, open and transparent, built on evidence, hard fact and results not rhetoric.

Scotland's distinct approach and our unique interests mean that it is essential that the UK Government fully involves the Scottish Government, and other devolved administrations, in developing an approach to negotiations with the EU. The future EU-UK relationship

¹⁷⁷ Scottish Parliament, Official Report, 21 March 2018, [c103-104](#)

¹⁷⁸ Scottish Parliament, [oral evidence](#) by the Scottish Environment Secretary to the Environment, Climate Change and Land Reform Committee on 8 May

¹⁷⁹ Members of the Round Table who form the subgroup are Lloyd Austin, Dr. Antonio Cardesa-Salzmann, Prof. Campbell Gemmell (Ch.), Jonny Hughes and Dr. Annalisa Savaresi. The subgroup co-opted Professor Colin Reid as a member. Additional support was provided by Bridget Marshall (SEPA), and Dr. Ian Jardine, Kate Thomson-McDermott and Keith Evans from Scottish Government as well as Isobel Mercer from RSPB and Professor Elisa Morgera.

will be an important framework in which we all need to continue to operate, and which should preserve our ability in Scotland to adopt higher environmental standards appropriate to our ambition.

Importantly, it must respect the devolution settlement and I welcome and fully endorse the statement in the Roundtable report that *'systems of accountability should also follow the agreed allocation of responsibility and therefore where authority is devolved the devolved procedures for accountability, including in Scotland's case the Scottish Parliament and separate Scottish legal system are the appropriate basis to pursue issues of compliance and performance'*.

The Scottish Government will now consider this advice carefully, alongside our current work to develop our strategic approach to the environment. This process will allow us to develop proposals for consultation later this year.¹⁸⁰

5.4 Wales' Brexit environment position

The Welsh Government published [Securing Wales' Future](#), a White Paper setting out priorities for the transition to a new relationship with Europe after Brexit, on 23 January 2017.¹⁸¹ This position paper was 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."¹⁸²

The paper identified six key areas for negotiation, one of which was "maintaining the social and environmental protections and values that we prize in Wales."¹⁸³ For this, the White Paper explained 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."¹⁸⁴

Future cooperation with the UK Government

In June 2017 the Welsh Government published [Brexit and Devolution: securing Wales' future](#). It stated 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.¹⁸⁵

The publication set 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:

¹⁸⁰ Scottish Government, [Next steps on environmental governance](#), 1 June 2018

¹⁸¹ Welsh Government/Plaid Cymru, [Securing Wales' Future: Transition from the European Union to a new relationship with Europe](#), 23 January 2017

¹⁸² [Securing Wales' Future: First Minister Carwyn Jones and leader of Plaid Cymru Leanne Wood set out Wales' post-referendum plan](#), gov.wales, 23 January 2017

¹⁸³ [Securing Wales' Future: First Minister Carwyn Jones and leader of Plaid Cymru Leanne Wood set out Wales' post-referendum plan](#), gov.wales, 23 January 2017

¹⁸⁴ Welsh Government/Plaid Cymru, [Securing Wales' Future: Transition from the European Union to a new relationship with Europe](#), 23 January 2017, p. 29

¹⁸⁵ Welsh Government, [Brexit and Devolution: securing Wales' future](#), June 2017 p12

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.

(...)

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.¹⁸⁶

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.¹⁸⁷

The National Assembly for Wales' Climate Change, Environment and Rural Affairs Committee is carrying out an inquiry into "UK common frameworks on agriculture and environment." Further information is available from the [Committee's webpage](#).

Environmental Governance and Principles

In response to the UK Government announcing its May 2018 [Consultation on environmental principles and accountability for the environment](#), Lesley Griffiths, Cabinet Secretary for Energy, Planning and Rural Affairs, [tweeted](#) that the Welsh Government had "not been fully engaged" prior to the announcement, but "stands ready to work in collaboration."¹⁸⁸

The Assembly's [Climate Change, Environment and Rural Affairs \(CCERA\) Committee](#) considered these issues in its recent inquiry and June 2018 report, [Environmental governance arrangements and environmental principles post- Brexit](#). In a letter to the Committee, the Cabinet Secretary confirmed that she would respond¹⁸⁹ to the Committee's report by 8 August 2018. She also set out that:

As a Government we have already committed to addressing the environmental governance gap at the first proper legislative opportunity. It is important to take the time to engage with stakeholders and we have already begun engaging with through my Brexit Roundtable. It is important that as well as engaging with

¹⁸⁶ Welsh Government, [Brexit and Devolution: securing Wales' future](#), June 2017 p15

¹⁸⁷ UKELA [Brexit and Environmental Law Wales, Brexit and Environmental Law](#), October 2017, p10

¹⁸⁸ [Tweet](#) from Lesley Griffiths, 10 May 2018

¹⁸⁹ Response when published will be available from the [Committee's website](#).

environmental bodies that we do so on a cross-sectoral basis as many sectors have a direct interest in this area.¹⁹⁰

For further information see:

- National Assembly for Wales Research Service [In Brief](#) article, “Environmental governance post-Brexit: closing the ‘governance gap’”, 27 June 2018; and
- National Assembly for Wales Research Service, [Research Briefing: Brexit Monitoring Report: Environment](#), 18 May 2018.

5.5 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 2016.¹⁹¹

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.¹⁹²

Further information about Brexit considerations for Northern Ireland is set out in a Northern Ireland Assembly Research and Information Service Briefing Paper, [Northern Ireland’s environment- background and potential ‘Brexit’ considerations](#), 22 September 2016.

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 and identified the environment as one of six key policy areas where the impact of leaving would be “most significant”:

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

¹⁹⁰ [Letter](#) from Lesley Griffiths, Cabinet Secretary for Energy, Planning and Rural Affairs to Chair of the Climate Change, Environment and Rural Affairs (CCERA) Committee, 8 July 2018

¹⁹¹ [Letter to the Prime Minister Rt. Hon. Theresa May from First Minister Rt Hon Arlene Foster and Deputy Minister Martin McGuinness](#), 10 August 2016

¹⁹² Department of Agriculture, [Environment and Rural Affairs, McIlveen discusses EU exit with Cabinet Ministers](#), 1 September 2017

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 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.¹⁹³

Border concerns

Northern Ireland, as the only part of the UK to share a land border with the EU, faces a unique set of challenges resulting from Brexit. Once the UK leaves the EU, the land border in Northern Ireland will change from an internal to an external EU border. The UK Government and the European Union have both acknowledged these unique circumstances.¹⁹⁴ The border between Northern Ireland and the Republic of Ireland and how it will operate is one of areas of the key areas still to be agreed as part of the ongoing Brexit negotiations. For background information on this issue see House of Commons Library briefing paper, [Brexit Negotiations: The Irish border question](#), 17 July 2017.

A press release following a conference on Brexit and environmental issues in Northern Ireland in June 2017 summarised some of the areas of concern from a number of commentators to do with the border, specifically in relation to 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.

¹⁹³ Graeme Wilkinson, Head of Brexit Division, Department of Agriculture, Environment and Rural Affairs, [Update on Brexit](#), 26 June 2017

¹⁹⁴ Northern Ireland Affairs Committee, [The land border between Northern Ireland and Ireland](#), HC 329 session 2017-19, 18 March 2018, p6

(...)

"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 species loss to be addressed in the context of the upcoming Brexit negotiations.¹⁹⁵

In its March 2018 report on [The land border between Northern Ireland and Ireland](#), the House of Commons Northern Ireland Affairs Committee highlighted concerns about whether different regulatory regimes would apply to cross-border environmental sites:

133. Northern Ireland Environment Link told us that the UK's departure from the EU's common standards could lead to inconsistencies in the management of shared resources. In future, different regulatory regimes may apply to cross-border environmental sites. Northern Ireland does not have an independent environmental regulator which means:

It is not clear what governance arrangements will be put in place to replace the loss of the necessary oversight, accountability, and enforcement functions currently carried out by the EU institutions.

134. Northern Ireland Environment Link argued that Northern Ireland will need to balance alignment with EU environmental regulation over its shared land and sea borders whilst also maintaining alignment with UK-wide regulatory practice. They recommended that all-island forums, such as the North-South Ministerial Council, are required to "maximise the opportunities and minimise the threats to our natural environment."¹⁹⁶

Draft Withdrawal Agreement: environmental protection

The [draft Withdrawal Agreement](#) (19 March 2018) makes the following provision for environmental protection in Northern Ireland:

¹⁹⁵ [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

¹⁹⁶ Northern Ireland Affairs Committee, [The land border between Northern Ireland and Ireland](#), HC 329 session 2017-19, 18 March 2018, p47

The provisions of Union law for environmental protection concerning the control of the import into, export out of, release into, or transport within the Union of substances or material, or plant or animal species, listed in Annex 2.8 to this Protocol shall apply to and in the United Kingdom in respect of Northern Ireland.¹⁹⁷

This text has not yet been agreed.

¹⁹⁷ Draft Agreement on the withdrawal of the UK from the EU and European Atomic Energy Community, 19 March 2018, Protocol for Northern Ireland, Article 7

6. Further reading and resources

6.1 EU resources

European Commission, [Brexit Preparedness Notices](#)

European Commission [pages on Brexit negotiations](#)

European Commission [pages on Environment](#)

6.2 Parliamentary resources

Parliament Brexit pages on [Science, Environment and Transport](#)

House of Commons Library [Brexit pages and briefings](#)

- House of Commons Library, [Brexit and Air Quality Briefing Paper](#), 13 June 2018
- House of Commons Library [Brexit: new guidelines on the framework for future EU-UK relations](#) (19 April 2018)
- [What does Brexit mean for the UK's beaches?](#)
- [Troubled waters? negotiating fish quotas post-Brexit](#)
- [Brexit and the environment blog](#)
- [Water quality](#)

House of Lords Library Briefing on [Natural Environment and Animal Welfare](#)

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](#).

House of Lords European Union [Report on Brexit: environment and climate change](#) and corresponding [Government Response](#).

Exiting the EU Committee, [Report on the progress of the UK's negotiations on EU withdrawal](#), HC 372, 1 December 2017

Exiting the EU Committee. [Report on European Union \(Withdrawal\) Bill](#), HC 373, 17 November 2017

Exiting the EU Committee, [Written evidence: sectoral reports](#), 21 December 2017

6.3 Stakeholder comment and resources

Greener UK coalition [risk tracker](#)

Greener UK coalition [latest briefings](#)

UKELA [Brexit pages](#)

Environmental Policy Forum [pages](#)

Brexit & Environment network of academics [pages on Brexit](#)

E3G [Brexit briefings](#)

Client Earth [EU referendum resources](#)

IEMA article, [Brexit and beyond: Environmental Principles to Guide a Sustainable Future](#) (3 October 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)

Friends of the Earth, [UK Environmental Policy Post-Brexit: A Risk Analysis](#), March 2018

Royal Town Planning Institute & Institute for European Environmental Policy, [The impacts of Brexit on UK implementation of key EU legislation affecting land use](#), July 2018

6.4 Devolved nations

Institute for Government, [Brexit and the Sewel \(legislative consent\) Convention](#), updated 16 January 2018

Institute for Government blog, [A Welsh or Scottish 'EU Continuity Bill' could be challenged in the Supreme Court](#), 6 December 2017

Scotland

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

Scottish Parliament Information Centre, [Common UK Frameworks after Brexit](#), 2 February 2018

Scottish Parliament Information Centre [Brexit hub](#), including pages on [Environment](#), [Climate Change](#), [Agriculture](#), [Fisheries](#) and [Energy](#).

Northern Ireland

Northern Ireland Assembly Research and Information Service, [Northern Ireland's environment- background and potential 'Brexit' considerations](#), 22 September 2016.

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

Northern Ireland Research and Information Service, [Brexit and Northern Ireland a reading list](#), 20 December 2017

Northern Ireland Research and Information Service blog, [How much change can we expect to current environmental requirements post Brexit?](#) 24 March 2017

Wales

UKELA [Brexit and Environmental Law Wales, Brexit and Environmental Law](#), October 2017

National Assembly for Wales Research Service, [Brexit in Wales](#)

National Assembly for Wales Research Service [blogs on Brexit](#) including:

- [Brexit and the environment: A look how the UK legislatures' Committees are preparing](#) (Parts 1–4)
- [“Environmental governance post-Brexit: closing the ‘governance gap’”](#), 27 June 2018

National Assembly for Wales Research Service, [Research Briefing: Brexit Monitoring Report: Environment](#), 18 May 2018

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