




## Brexit risk tracker, June – September 2017

This update period included the following events: publication and second reading of the European Union (Withdrawal) Bill; a major speech by environment secretary Michael Gove at the WWF headquarters; publication of several UK government position papers, including one on foreign policy and one on Northern Ireland and Ireland; and the prime minister's third major speech on Brexit in Florence.

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### Verdicts key:

-  Low risk
-  Medium risk
-  High risk

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## ✘ Air pollution

The government is still in breach of the Ambient Air Quality Directive and produced a plan in July 2017 to meet the legal limits set out in that directive. That plan was largely the same as an earlier draft, which had been widely criticised for not doing enough. The plan passes responsibility to 23 local councils in England to find a solution to the air pollution crisis, but offers little detail on how air quality will be improved in the rest of England. Accompanying directions and guidance to local authorities lack detail on how to evaluate the best ways to bring air pollution down as soon as possible, and it is unclear how ministers will ensure that air quality limits are met across England. The government has also failed to clarify how Defra will assess the plans from the 23 authorities, or how quickly it will be able to do this. The government's approach is concerning as an indication of its likely approach to air quality after the UK leaves the EU.

### 1 Principles & strategies

- ✘ The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect”. However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin air quality policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

### 2 Legislation

- ✘ The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect in domestic law”. This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law “wherever practical and sensible”, and it is not yet clear whether this could create gaps in air quality policy. The bill also contains extensive powers for ministers to alter that law during the two years following the UK's exit. We remain concerned about the level of scrutiny given to statutory instruments used in the conversion process, particularly given the short timeframe.

Given that the has been in breach of the nitrogen dioxide limits in large parts of the country since 2010, there is a risk that limits could be weakened after Brexit, to make it easier for the government to meet its legal requirements.

### 3 Capacity & funding

- ✘ Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020, although more civil servants are being drafted into the department. The EU environment, agriculture and fisheries acquis are extensive, and it is unclear whether Defra will be able to cope with any additional workload associated with, first, the transposition of that body of EU

law into domestic law, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far. In its latest Air Quality Plans, Defra has passed responsibility for selection and implementation of measures to local authorities, but there is no indication that local authorities have the capacity or funding to undertake this work.

#### 4 Governance

- ⊗ The EU Withdrawal Bill envisages that existing EU case law will remain applicable by domestic courts. However, the role currently played by the European Court of Justice (ECJ) together with other EU institutions in providing the monitoring, oversight, accountability and enforcement functions required to ensure the effective implementation of air quality legislation will no longer exist. Although the government has proposed several options to replace the ECJ's role in resolving cross-border disputes, its eventual position will depend to some extent on what sort of future relationship is negotiated with the EU. And the options paper does not set out an adequate plan for filling the domestic governance gap. This is a particular challenge in the case of air quality, for which the UK is already undergoing infringement proceedings.

Environment Secretary Michael Gove has declared his ambition for the UK to “design potentially more effective, more rigorous and more responsive institutions, new means of holding individuals and organisations to account for environmental outcomes.” His department must set out soon how it plans to do so.

#### 5 Co-operation

- ⊖ It is unclear whether and how the UK will continue to co-operate with the rest of the EU on transboundary air pollution after Brexit. The Prime Minister's speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards.

#### ⊗ Chemicals

Both the minister responsible for REACH chemicals policy, Thérèse Coffey, and the minister responsible for pesticides regulation, George Eustice, have suggested weakening EU chemicals laws, in particular on the use of generic risk assessment (a “hazard based” approach). Thérèse Coffey has also stated that the UK should not stay within REACH, the main EU regime regulating the use of industrial chemicals, as she believes this would jeopardise parliamentary sovereignty and the supremacy of the UK courts. Only countries within REACH can access REACH data, and without this data the UK will not be able to use the best source of information on chemical safety when assessing whether or not a

chemical is harmful. If a new UK system doesn't move at least as fast at controlling the use of chemicals as the EU system, the UK would be likely to become a 'dumping ground' for products that had been restricted by REACH. In addition, without the EU's authorisation procedure – which controls the use of substances of very high concern – companies would be able to use chemicals in the UK that could not be used in the EU. This would reduce protection in the UK, but would also weaken the EU system, as it would be much easier for a company to move production to a UK plant if it were suggested they would not secure a REACH authorisation.

### 1 Principles & strategies

- ⊗ Both the minister responsible for REACH chemicals policy, Thérèse Coffey, and the minister responsible for pesticides regulation, George Eustice, have suggested weakening EU chemicals laws, in particular on the use of generic risk assessment (a "hazard based" approach). In addition, the precautionary principle is a key aspect of EU chemicals policy but there is no clarity as to how this will be incorporated into UK law after Brexit. The EU's 7th Environmental Action Programme sets out a long term commitment to a non-toxic environment, but there is, so far, no sign that the UK government plans to make the same commitment.

### 2 Legislation

- ⊗ The EU Withdrawal Bill was published on 13 July with the purpose of transferring all existing EU legislation into domestic UK law to ensure a straightforward transition on the day after Brexit. The EU's REACH system is one of the best examples of how copying and pasting EU legislation into UK legislation is simply not possible, as the UK's chemical regulations are almost entirely determined at EU level.

The minister in charge of chemicals policy, Thérèse Coffey, stated that the UK should not stay within REACH, the main EU regime regulating the use of industrial chemicals, as she believes this would jeopardise parliamentary sovereignty and the supremacy of the UK courts. At the UK Chemical Stakeholder Forum, she argued that the Swiss model of being outside the EEA could be explored. Switzerland does not have access to all REACH safety data, but it adopts the EU's restrictions on chemicals, so indirectly benefits from the EU's safety data. If the UK were to lose that data access, while creating its own chemicals restrictions, this could put the environment and people's health at risk because the government would not be able to assess properly whether or not a chemical was harmful.

Adopting this approach creates the risk that, if a new UK system doesn't move at least as fast at controlling the use of chemicals as the EU system, the UK would be likely to become a 'dumping ground' for products that had been restricted by REACH. In addition, without the EU's authorisation procedure – which controls the use of substances of very high concern –

companies would be able to use chemicals in the UK that could not be used in the EU. This would reduce protection in the UK, but would also weaken the EU system, as it would be much easier for a company to move production to a UK plant if it were suggested they would not secure a REACH authorisation.

### 3 Capacity & funding

- ⊗ Defra ministers are considering creating a new chemicals regulatory system but this would not have the same scale of expertise as the European Chemicals Agency. Even a limited imitation of this agency would require a completely new system for gathering data on chemicals, assessing this data and controlling the use of chemicals. This would include a large and complex IT project which would take considerable time to deliver, and could easily go wrong, as has happened with other, large government IT projects.

The magnitude of the challenge that Defra faces seems to have been vastly underestimated by the new Secretary of State Michael Gove. On 20 July, the chair of the Environment Audit Committee, Mary Creagh, asked him how he would regulate chemicals in the UK in future. The secretary of state simply replied with one word: "Better".

### 4 Governance

- ⊗ The EU Withdrawal Bill was published on 13 July with the purpose of transferring all existing EU legislation into domestic law to ensure a straightforward transition on the day after Brexit. The explanatory notes accompanying the bill state: "important functions carried out at EU level, such as the evaluation and authorisation of chemicals (...) may need to be transferred to appropriate bodies in the UK for them to continue and (have) the power to deal with deficiencies." But it is essentially impossible for the UK to be able to recreate the comprehensiveness of the European Chemical Agency (ECHA) and its database of chemical properties and uses, which is the best in the world. Any UK system would be based on more limited safety and use data and would almost inevitably be less protective, because it would be more difficult for the government to assess whether or not a chemical is harmful.


### 5 Co-operation

- ⊖ The bulk of EU co-operation on chemicals occurs within the formal EU governance structures of REACH, Water Framework Directive etc – see legislation section above. The Prime Minister's speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards.

## **Climate & energy**


There have been encouraging signs on maintaining co-operation on energy and climate with the EU in comments from Greg Clarke, secretary of state for BEIS, and in the government's position paper on Northern Ireland and Ireland. But significant concerns remain on the future of European Investment Bank (EIB) finance for low carbon infrastructure projects in the UK, participation in the Internal Energy Market and the future of EURATOM. Worryingly, news stories have emerged recently that infrastructure applications to the EIB have been delayed owing to uncertainties surrounding Brexit, contradicting the chancellor's assurances that EIB loans will not be affected while the UK remains within the EU. Furthermore, the government's partnership paper on foreign policy failed to mention climate change, despite calling for co-operation on defence and security, including energy security. And, despite encouraging progress on offshore wind, an overall lack of progress on domestic energy policy, partly owing to the complexity arising from Brexit, has hampered the investment visibility required to build the energy infrastructure needed to meet carbon budgets.

### **1 Principles & strategies**

 The government intends that the EU Withdrawal Bill will "ensure that the whole body of existing EU environmental law continues to have effect". However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin environment and climate policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

However, the Conservative manifesto stated that the government remains committed to the UK's Climate Change Act, it also reiterated support for the Paris climate agreement and pledged to lead international action on climate change.

### **2 Legislation**

 The government intends that the EU Withdrawal Bill will "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in climate and energy policy. The bill also contains extensive powers for ministers to alter that law during the two years following the UK's exit. We remain concerned about the level of scrutiny given to statutory instruments used in the conversion process, particularly given the short timeframe.

The UK's recent efforts to dilute energy efficiency legislation as part of the EU's clean energy package discussions indicate a worryingly lax approach to energy efficiency. The UK's Climate Change Act, however, is an achievement that all parties should be proud of. Moving forward the government's Clean Growth Plan, expected soon, must set out how the UK will meet its legally binding carbon budgets under this Act.

### 3 Capacity & funding

- ⊗ There has been no news on the future of financing for low carbon energy infrastructure in the UK from the European Investment Bank (EIB) and other European investment bodies like the Connecting Europe Facility (CEF) and Horizon 2020. The EIB does invest in countries that are not EU member states, but the UK's share of investment is expected to be significantly reduced after it leaves the EU. The chancellor in his recent Mansion House speech helpfully stated that "to endure that finance continues to be available after Brexit, alongside discussions with the EIB I can also announce I am expanding the support available to capital funding in the UK".

But, in the wake of the Green Investment Bank's sale to the Macquarie Group, it remains unclear whether domestic funding sources can match the levels that the EIB has historically provided. The EIB has not made any public statements on the future relationship with the UK, but it appears it would be difficult to retain the UK as a major stakeholder of the bank, as the terms of the European treaties would need to be amended. Worryingly, news stories have emerged recently that infrastructure applications to the EIB have been delayed owing to uncertainties surrounding Brexit, contradicting the chancellor's assurances that EIB loans will not be affected while the UK remains within the EU.

### 4 Governance

- ⊗ The EU Withdrawal Bill envisages that existing EU case law will remain applicable by domestic courts. However, the role currently played by the European Court of Justice (ECJ) together with other EU institutions in providing the monitoring, oversight, accountability and enforcement functions required to ensure the effective implementation of EU-derived energy policies will no longer exist. Although the government has proposed several options to replace the ECJ's role in resolving cross-border disputes, its eventual position will depend to some extent on what sort of future relationship is negotiated with the EU. And the options paper does not set out an adequate plan for filling the domestic governance gap.

Environment Secretary Michael Gove has declared his ambition for the UK to "design potentially more effective, more rigorous and more responsive institutions, new means of holding individuals and organisations to account for environmental outcomes." His department, working with BEIS as the

department leading on climate policy, must set out soon how it plans to do so.

## 5 Co-operation



The UK government has, in the past, indicated its interest in retaining access to the EU's internal energy market, but is clear that this is up for negotiation, so the outcome still remains uncertain. Plans for an 'association agreement' on EURATOM surfaced briefly but, as yet, remain unconfirmed by the government.

The government's recent position paper on Northern Ireland and Ireland explicitly highlights the importance of continuing the Integrated-Single Energy Market (I-SEM) and making sure energy trade within the island of Ireland and the wider UK continues without significant barriers. This is good news and potentially provides a template for wider co-operation between the UK and the EU on energy and climate issues. The prime minister's speech in Florence identified climate change as an area for co-operation with the EU, but, in contrast, the government's partnership paper on foreign policy failed to mention climate change, despite calling for co-operation on defence and security, including energy security.

The UK continues to participate in and provide inputs to the ongoing EU negotiations on the Clean Energy Package, but recent inputs from the UK government to dilute proposed targets and legislation on energy efficiency and the governance of the Energy Union are cause for concern. The EU needs to be more ambitious in its 2030 targets, and any efforts by the UK to undermine them will tarnish its position as a climate leader.



## Farming and land use

Environment Secretary Michael Gove's speech at WWF headquarters was encouraging, particularly the intention to put the "environment first" in future farming and land use policy, and his recognition of the importance of restoring, not just protecting, the natural environment. A new Agriculture Bill was announced in the Queen's Speech, with one of its primary aims being to protect the natural environment. However, as yet there is little clarity on the overall environmental focus of the bill, how it will relate to environmental legislation and strategies across the UK, and its geographic extent.

The secretary of state also noted an opportunity, outside the EU, for designing more effective, rigorous and responsive institutions and new means of holding individuals and organisations to account for environmental outcomes. While this ambition is welcome, there remains uncertainty as to how it would be achieved in practice.



## 1 Principles & strategies

- ✘ The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect”. However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin environmental policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The extent to which the 25 year environment plan will frame and inform future farming and land use policy is not yet clear. Given the importance of agriculture to the environment, integration between the aims and milestones of the environmental plan and the Agriculture Bill will be a key test. The Agriculture Bill could provide the opportunity to include clear principles and strategies for delivering sustainable land management.

## 2 Legislation

- ✘ The announcement of the Agriculture Bill in the Queen’s Speech was a milestone in providing some clarity on future legislative timelines and direction. Although it is positive that protecting the natural environment was identified as a major aim of the bill, an aim to restore the natural environment would be more appropriate. Addressing this, and making sure clear and ambitious environmental objectives are included in the upcoming Agriculture Bill and associated white paper, will be essential in matching the scope of the legislation to the secretary of state’s early ambition.

A series of statutory instruments were laid in May 2017 to transpose the requirements of the EU’s 2014 Amending EIA Directive. It remains uncertain how the changes will be fully implemented after the UK leaves the EU.

## 3 Capacity & funding

- ⊖ Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020, although more civil servants are being drafted into the department. The EU environment, agriculture and fisheries acquis are extensive, and it is unclear whether Defra will be able to cope with any additional workload associated with, first, the transposition of that body of EU law into domestic law, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

It is not clear whether additional resources have been identified for Defra agencies. Although the Conservative manifesto committed to increasing the resources available to Natural England to provide advice to farmers, there has been no indication from Defra as to when, or if this, will be honoured.

The Department for Communities and Local Government (DCLG) has been

instructed to make overall resource savings of 29 per cent by 2019-20, compared to 2015 levels, through better financial management and further efficiencies. DCLG is the principal department in respect of EU-derived planning legislation including Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), and resourcing is expected to remain challenging in terms of converting that body of EU law into domestic law and effectively implementing changes arising from the EU 2014 Amending EIA Directive. For example, in England there are 35 regulations pertaining to EIA, administered by a range of different government departments and agencies.

#### 4 Governance



Devolution remains a major sticking point, and an area of uncertainty in terms of how an Agriculture Bill will be progressed. The geographic extent of the Bill is unclear, and there are significant concerns that the politics of this issue could derail what should be a once in a generation opportunity to reform agriculture policy.

The EU Withdrawal Bill envisages that existing EU case law will remain applicable by domestic courts. However, the role currently played by the European Court of Justice (ECJ) together with other EU institutions in providing the monitoring, oversight, accountability and enforcement functions required to ensure the effective implementation of agriculture and land use legislation will no longer exist. Although the government has proposed several options to replace the ECJ's role in resolving cross-border disputes, its eventual position will depend to some extent on what sort of future relationship is negotiated with the EU. And the options paper does not set out an adequate plan for filling the domestic governance gap. Environment Secretary Michael Gove has declared his ambition for the UK to "design potentially more effective, more rigorous and more responsive institutions, new means of holding individuals and organisations to account for environmental outcomes." His department must set out soon how it plans to do so.

#### 5 Co-operation



Co-operation between the UK and the EU, and the UK and devolved administrations in the development of future farming policy is vital to avoid a race to the bottom with regard to standards and regulation. To date, there has been little or no clarity on how this will be achieved, or whether the UK government is engaging meaningfully on this issue. Whilst there is some existing differentiation in Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), for example, in how the legislation is implemented, there is a need for the co-ordination as Brexit progresses to avoid significant divergence.

Co-operation on projects' transboundary environmental impacts is likely to continue as the UK has ratified the Espoo Convention, which lays down the general obligation of states to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries. The Prime Minister's [speech](#) in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards. There will need to be co-operation between Westminster and the other devolved administrations and between the UK and the Republic of Ireland on transboundary matters.



## Fisheries

A Fisheries Bill has been announced, although its scope is unclear so far. The bill should include clear principles and strategies for delivering sustainable fisheries management, within the framework of a wider marine policy that aims for healthy and biodiverse seas. Michael Gove's appointment as environment secretary has helped to raise the profile of fisheries. It is positive that he has made clear that UK fisheries must be sustainably managed outside the EU.

The government withdrew from the London Convention in July, which means that, after the two year withdrawal period, foreign vessels will not be able to fish in the area six to 12 nautical miles out to sea. This indicates the UK government's intention to restrict access to UK waters, or at least to establish fisheries as a subject for negotiation during the exit process. Any change in access must be accompanied by clear mechanisms for co-ordination with neighbouring countries to ensure sustainable management of shared resources.

### 1 Principles & strategies



The government [intends](#) that the EU Withdrawal Bill will "ensure that the whole body of existing EU environmental law continues to have effect". However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin fisheries and marine policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The announcement of a Fisheries Bill could provide the opportunity to include clear principles and strategies for delivering sustainable fisheries management, within a framework of wider marine policy that aims for healthy and biodiverse seas. However, the scope of the bill is unclear, with some indications that it may only contain access rights and quota allocation processes.

## 2 Legislation

- ⊖ The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect in domestic law”. This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law “wherever practical and sensible”, and it is not yet clear whether this could create gaps in fisheries policy. The bill also contains extensive powers for ministers to alter that law during the two years following the UK’s exit. We remain concerned about the level of scrutiny given to statutory instruments used in the conversion process, particularly given the short timeframe.

The Fisheries Bill could establish the UK as a world leader in sustainable fisheries management, within a framework of wider marine policy that aims for healthy and biodiverse seas. However, the scope of the bill is so far unclear, with some indications that it may only contain access rights and quota allocation processes.

## 3 Capacity & funding

- ⊖ Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020, although more civil servants are being drafted into the department. The EU environment, agriculture and fisheries acquis are extensive, and it is unclear whether Defra will be able to cope with any additional workload associated with, first, the transposition of that body of EU law into domestic law, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

## 4 Governance

- ⊗ The EU Withdrawal Bill envisages that existing EU case law will remain applicable by domestic courts. However, the role currently played by the European Court of Justice (ECJ) together with other EU institutions in providing the monitoring, oversight, accountability and enforcement functions required to ensure the effective implementation of sustainable fisheries legislation will no longer exist. Although the government has proposed several options to replace the ECJ’s role in resolving cross-border disputes, its eventual position will depend to some extent on what sort of future relationship is negotiated with the EU. And the options paper does not set out an adequate plan for filling the domestic governance gap.

Environment Secretary Michael Gove has declared his ambition for the UK to “design potentially more effective, more rigorous and more responsive institutions, new means of holding individuals and organisations to account for environmental outcomes.” His department must set out soon how it plans to do so.

## 5 Co-operation

- ⊖ The government withdrew from the London Convention in July, which means that, after the two year withdrawal period, foreign vessels will not be able to fish in the area six to 12 nautical miles out to sea. There is some debate as to whether the Common Fisheries Policy (CFP) had already superseded this legislation, but, either way, it gives an indication of the UK government's intention to restrict access to UK waters, or at least to establish fisheries as a subject for negotiation during the exit process. Any change in access must be accompanied by clear mechanisms for co-ordination with neighbouring countries to ensure sustainable management of shared resources.

There is continued uncertainty surrounding any co-operation or co-ordination between Westminster and the devolved administrations. New fisheries legislation needs to be agreed jointly by the four administrations to deliver coherent and co-ordinated management across the UK. With regard to regional engagement (eg on the North Sea) and commitments to current legislation, there is evidence of the UK government giving up on current CFP commitments, particularly the discard ban, in anticipation of new arrangements coming into force. However, the Prime Minister's speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards.

## ⊖ Nature protection

Environment Secretary Michael Gove has publicly pledged that the UK will not weaken environmental standards after Brexit but will, rather, be a world leader. This process could provide an opportunity to deal with gaps in existing nature policy, for example, by creating a goal to restore nature. Michael Gove has also acknowledged the governance gaps that Brexit will create although, so far, no remedies have been proposed. Publication of the Withdrawal Bill has confirmed that the government does not plan to incorporate the environmental principles enshrined in the EU treaties into domestic law, despite these principles being a fundamental part of the environmental acquis, underpinning nature protections. Furthermore, the government's recent position paper on Northern Ireland and Ireland failed to appreciate fully the broad range of cross-border environmental matters, such as cross-border protected nature sites, that could be affected by Brexit.

### 1 Principles & strategies

- ⊗ The government intends that the EU Withdrawal Bill will "ensure that the whole body of existing EU environmental law continues to have effect". However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin nature protection, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies

that set out trajectories for achieving policy goals.

The UK government is working on a 25 year plan for the environment that is expected to set out the direction for future nature conservation policy after the UK leaves the EU. This process could provide an opportunity to deal with gaps in existing policy, if given a statutory underpinning, for example, by creating a goal to restore nature. However, the plan's publication has been beset with delays for more than a year and there is still no confirmed date for its publication.

## 2 Legislation

- ⊖ The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect in domestic law”. This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law “wherever practical and sensible”, and it is not yet clear whether this could create gaps in nature policy. The bill also contains extensive powers for ministers to alter that law during the two years following the UK's exit. We remain concerned about the level of scrutiny given to statutory instruments used in the conversion process, particularly given the short timeframe.

## 3 Capacity & funding

- ⊖ Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020, although more civil servants are being drafted into the department. The EU environment, agriculture and fisheries acquis are extensive, and it is unclear whether the department will be able to cope with, first, any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

## 4 Governance

- ⊗ The EU Withdrawal Bill envisages that existing EU case law will remain applicable by domestic courts. However, the role currently played by the European Court of Justice (ECJ) together with other EU institutions in providing the monitoring, oversight, accountability and enforcement functions required to ensure the effective implementation of nature legislation will no longer exist. Although the government has proposed several options to replace the ECJ's role in resolving cross-border disputes, its eventual position will depend to some extent on what sort of future relationship is negotiated with the EU. And the options paper does not set out an adequate plan for filling the domestic governance gap.

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for environmental outcomes.” His department must set out soon how it plans to do so.

## 5 Co-operation



The Prime Minister’s speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards. However, the UK’s recent position paper on Northern Ireland and Ireland made only one mention of the environment, simply referencing it as one of the six areas of co-operation agreed by the North South Ministerial Council as established under the Good Friday Agreement. As such, it failed to fully appreciate the broad range of cross-border environmental matters, such as cross-border protected nature sites, that could be affected by Brexit. Although the latest round of Brexit negotiations apparently saw a recognition on the UK side that cross-border co-operation between Northern Ireland and Ireland is built on the EU legal framework, the details of the UK’s position on how such co-operation can be maintained post-Brexit remains unclear.

The UK continues to participate in and provide inputs to EU discussions on a proposed action plan for nature and biodiversity. However, there is continued uncertainty surrounding any co-operation or co-ordination between Westminster and the devolved administrations. A promised 25 year plan for the environment is long overdue, and it remains unclear whether this would address England and Wales only, or the UK as a whole.



## Waste and resources

Environment Secretary Michael Gove has made a welcome announcement that England will have a renewed strategy on waste and resources after a decade without a domestic strategy paper, but it remains unclear when this will be published, how far it will see us diverge from European practices, and whether or not we will adopt the measures in the European Circular Economy Package (CEP) and other waste and resource legislation. Most worryingly, Defra has already indicated it does not expect England to meet the CEP’s 2030 headline recycling target (which will be between 60 and 70 per cent): the department says the current targets are “too high to be achievable”, despite Wales already achieving a level of 64 per cent, and multiple reports and Defra analysis showing both the economic and environmental benefits of higher recycling. The UK is already on course to miss the existing target of 50 per cent by 2020.

### 1 Principles & strategies



While the waste hierarchy, a fundamental principle, is enshrined in the Waste (England and Wales) Regulations 2011, the EU Withdrawal Bill fails to give a clear commitment to extending beyond exit day the other general principles in the EU treaties that underpin waste and resources policy. These include the goals of sustainable development and a high level of environmental

protection, the precautionary principle, the proximity principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

In his first speech as environment minister, Michael Gove highlighted the problem of marine plastics and indicated a desire “to improve incentives for reducing waste and litter, and review the penalties available to deal with polluters – all part of a renewed strategy on waste and resources that looks ahead to opportunities outside the EU”. The announcement is welcome insofar as, although there was a Waste Strategy Review in 2011 and a waste prevention plan, *Prevention is better than cure*, as mandated by the EU Waste Framework Directive in 2013, England’s last dedicated strategy for waste and resources was published a decade ago in 2007. There has been no indication yet of the timeline for the new strategy, however, and there are concerns that it could see the country diverge from European policy and standards. The new strategy should sit alongside the government’s wider environmental ambitions as set out in the upcoming (and delayed) 25 year plan for the environment.

## 2 Legislation



At an EU level, the Estonian presidency has made the Circular Economy Package a priority. It is still expected to be agreed by the end of the presidency’s term in December. The package is currently in trialogues between the EU’s Council, Commission and Parliament, and will have headline 2030 recycling targets between 60 and 70 per cent. Defra maintains it is negotiating “in good faith”, but, worryingly, has indicated it does not expect England to meet the CEP’s 2030 headline recycling target: the department says the targets are “too high to be achievable”, despite Wales already achieving a level of 64 per cent, and multiple reports and Defra analysis showing both the economic and environmental benefits of doing so. The UK is already on course to miss the existing target of 50 per cent by 2020.

## 3 Capacity & funding



Although Defra has recently announced a recruitment drive for 72 new policy advisers, none of the advertised posts are in the waste and resources field, and this does little to bring the department up to historical levels of staffing. Moreover, the department is still due to see a 15 per cent reduction in its resource spending between 2015 and 2020, and it remains unclear whether it (and the Environment Agency, which it funds) will be able to cope with the transposition of the environmental acquis into domestic law, and then the monitoring of existing policy and creation of new policy.

## 4 Governance



Although Michael Gove has recognised the need to “create new institutions to demonstrate environmental leadership and even greater ambition”, the EU



Withdrawal Bill does not make clear what, if any, domestic governance arrangements will be put in place to replace the European Commission and European Court of Justice (ECJ) and the systematic oversight they provide in the monitoring, accountability and enforcement functions, ensuring the effective implementation of waste and resources legislation. The UK government has not yet set out an adequate plan for filling the domestic governance gap.

The government's continued insistence it will end the direct jurisdiction of the ECJ in the UK is very significant for resource policy: there is a large body of case law that sets the rules for waste treatment, and compliance on waste targets and product standards is ultimately subject to ECJ decisions. While the government's position paper on the ECJ indicates that it may take account of EU decisions after we leave the union, considerable room for divergence remains, with the paper noting: "The extent to which this approach may be valuable depends on the extent to which there is agreement that divergence should be avoided in specific areas." As EU decisions continue to be made, therefore, the UK may end up with conflicting rules on product standards, which would hinder trade, and on waste rules, which could strand investments in UK waste treatment facilities.

## 5 Co-operation

⊖ The Prime Minister's speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards. While it is still an EU member, the UK is continuing to engage in the Circular Economy Package negotiations, but the degree of future collaboration remains uncertain, making it difficult to judge the risk involved.

## ⊖ Water

The government is failing to act in a number of EU policy areas relating to water, particularly around land management, phosphorus and abstraction, and its reluctance is concerning as an indication of its likely approach to water quality after the UK leaves the EU. Michael Gove's speech at WWF headquarters was encouraging, as he highlighted the urgency of tackling water management problems, but it remains to be seen whether his words result in action.

## 1 Principles & strategies

⊗ The government intends that the EU Withdrawal Bill will "ensure that the whole body of existing EU environmental law continues to have effect". However, as currently drafted, the bill fails to carry across the general principles in the EU treaties that underpin water policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. The bill also fails to carry across the directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The UK government is working on a 25 year plan for the environment that is expected to set out the direction for future water policy after the UK leaves the EU, and which could provide an opportunity to deal with gaps in existing policy, if given a statutory underpinning. However, the plan's publication has been beset with delays for more than a year and there is still no confirmed date for its publication.

## 2 Legislation



The government intends that the EU Withdrawal Bill will “ensure that the whole body of existing EU environmental law continues to have effect in domestic law”. This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law “wherever practical and sensible”, and it is not yet clear whether this could create gaps in water policy. The bill also contains extensive powers for ministers to alter that law during the two years following the UK's exit. We remain concerned about the level of scrutiny given to statutory instruments used in the conversion process, particularly given the short timeframe. However, Defra has, in meetings, said that there will be full public consultation and that it sees no issues with bringing over all the water-related directives.

## 3 Capacity & funding



Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020, although more civil servants are being drafted into the department. The EU environment, agriculture and fisheries acquis are extensive, and it is unclear whether Defra will be able to cope with any additional workload associated with, first, the transposition of that body of EU law into domestic law, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

We remain concerned at proposals to cut long term monitoring to save money. Without EU requirements for monitoring delivery of the directives we fear national comprehensive monitoring could be reduced further.

## 4 Governance



There are currently a number of infringement cases being undertaken by the European Court of Justice (ECJ) relating to water quality and in the past it has been invaluable in delivering change in the UK. The EU Withdrawal Bill envisages that existing EU case law will apply up to exit day, but that decisions of the ECJ made after exit day will not be binding on domestic courts. In addition, the role currently played by the ECJ together with other EU institutions in providing monitoring, oversight, accountability and enforcement will no longer apply. The UK government has not yet set out an adequate plan for filling this governance gap.

We are concerned about Ofwat's proposals for environmental investment to deliver the policies under the EU Water Framework Directive (WFD). Ofwat's options will either require a secretary of state to act in a way that explicitly raises bills, or it will require a rate of change in the last few years of the investment period, which would make it almost impossible (and very costly) for companies to scale up the delivery of water quality improvements. This suggests that Ofwat is predicting a reduction in government ambition to deliver its EU-derived water policy objectives in the lead up to Brexit.

## 5 Co-operation



The Prime Minister's speech in Florence stated that the UK and EU share a commitment to high environmental standards, and outlined her preference for a new economic relationship that is underpinned by those standards. However, the UK's recent position paper on Northern Ireland and Ireland made only one mention of the environment, simply referencing it as one of the six areas of co-operation agreed by the North South Ministerial Council as established under the Good Friday Agreement. As such, it failed to fully appreciate the broad range of cross-border environmental matters, such as cross-border river basins, that could be affected by Brexit. Although the latest round of Brexit negotiations apparently saw a recognition on the UK side that cross-border co-operation between Northern Ireland and Ireland is built on the EU legal framework, the details of the UK's position on how such co-operation can be maintained post-Brexit remains unclear.

Land management is vital to the health of the aquatic ecosystem, so any new land management policy needs to work across all UK countries for people and the environment, and co-operation regarding cross border water bodies needs to continue.

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Greener UK is a group of 13 major environmental organisations, with a combined public membership of 7.9 million, united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment.

## GREENER UK

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