

Brexit risk tracker, October 2017 – mid January 2018

This update period included the following events: committee stage and third reading of the European Union (Withdrawal) Bill; agreement between UK and EU negotiators that “sufficient progress” has been made to move to phase two of the Brexit negotiations; a major speech by Environment Secretary Michael Gove on farming; and a major speech by Prime Minister Theresa May to launch the 25 year environment plan.

Contents:

- ⊗ 1. Air pollution
- ⊗ 2. Chemicals
- ⊖ 3. Climate & energy
- ⊖ 4. Farming & land use
- ⊖ 5. Fisheries
- ⊖ 6. Nature protection
- ⊗ 7. Waste & resources
- ⊖ 8. Water

Verdicts key:

- ✓ Low risk
- ⊖ Medium risk
- ⊗ High risk

Visit the [Greener UK website](#) to find out more.


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, and accompanying directions and guidance to local authorities have lacked detail to meet important legal tests. The government's approach is concerning as an indication of its likely approach to air quality after the UK leaves.

The Environment Secretary Michael Gove has recognised and responded to some of our concerns around the EU (Withdrawal) Bill, announcing a consultation on a new green watchdog and pledging that environmental principles will continue to apply after Brexit. This body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies.

The progress in the UK-EU negotiations is welcome, but the UK government must publish more details about its environmental priorities for the new relationship. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-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 directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The bill also fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove's recognition of the “need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles”, and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

The 25 year environment plan set out existing clean air policy, with nothing new announced.

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.

Furthermore, the National Audit Office has warned that Defra's extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra's control and could affect its ability to deliver a successful exit.

Given that the UK has been in breach of the nitrogen dioxide limits in many 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



The National Audit Office reported in December that Brexit creates substantial additional workload for Defra, which the department must perform with shrinking resources:

- Defra is currently responsible for 43 of the 313 EU related work streams identified across government – the second highest of any department.
- Alongside planning and delivery for EU exit, Defra must also accommodate budget cuts of £147 million during 2017-18 and 2018-19 plus further spending reductions as a result of new policy choices and other budgetary pressures.
- Yet Defra estimated 1,200 new posts need to be filled by March 2018 to support Brexit work, only 650 of which were filled by November 2017, with recruitment expected to become more challenging.
- The EU is a substantial source of funding for a range of Defra policies.
- EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

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 states 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.

Environment Secretary Michael Gove, has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians'

decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on air quality. The joint report from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's speech in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit, including to ensure the effective management of common resources. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office identified "failure to agree overarching UK frameworks with the devolved administrations" as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.



Chemicals

When questioned by the Environmental Audit Committee (EAC) on environmental policy last November, Environment Secretary Michael Gove acknowledged that, at some point in the future, the UK will move away from the EU Chemical Regulation system, REACH, and do things differently. Leaving REACH would mean that the UK no longer has access to the REACH database, the best database of chemical safety in the world. This was confirmed by official guidance from the European Chemicals Agency (ECHA) covering the impacts of the UK's withdrawal from the EU. Without these 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.

Moreover, Michael Gove has implied (PDF, p18) that it would be possible to manufacture chemicals in the UK that are not allowed in the EU but could be sold

to the US market. This risks the health of workers, the public and the wider environment: if chemicals are banned in the EU because of their health or environmental impacts, they should not then be manufactured in the UK. This approach also risks turning the UK into a 'dumping ground' for products that have been restricted by REACH, and could require companies to conduct new animal tests to register on the new UK system. A UK split from REACH could also increase the amount of animal testing in the EU, if EU companies were not able to gain access to test data held by UK companies.

1 Principles & strategies



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The bill also fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove's recognition of the "need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles", and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

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. We welcome the commitment of the 25-year Environmental Plan, published on 11th January, to maintaining high standard of protections for consumers, workers, and the environment in our trade agreements. However, it is very unlikely that this commitment can be materialised outside of REACH, without its capacity, expertise and access to its database.

2 Legislation



Responding to the Environmental Audit Committee's inquiry on the Future of Chemical Regulations, the government points out, "The government will use the Repeal Bill (The European Union (Withdrawal) Bill) to convert EU law into UK law and use powers to amend REACH, as well as other related chemicals regulation to make them work properly in the UK."

However, due to the centralised nature of EU chemicals law, it is not possible for the UK simply to amend REACH to make it work in the UK. REACH is managed by the European Chemical Agency (ECHA) which is responsible for the technical, scientific and administrative aspects of the implementation of this piece of legislation. The UK would not be able to replicate the shared expertise of 27 member states, and it could not create a database like the one assembled by ECHA, which is the most comprehensive database of chemical uses and properties in the world.

The environment secretary has also acknowledged the possibility of diversion from EU chemicals law by taking alternative decisions. Adopting this approach creates the risk that the UK could become a 'dumping ground' for products that had been restricted by REACH. In fact, one of Michael Gove's responses to the EAC implied that it would be possible to manufacture chemicals in the UK that are not allowed in the EU but could be sold to other markets.

Furthermore, the National Audit Office has warned that Defra's extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra's control and could affect its ability to deliver a successful exit.

3 Capacity & funding



The UN special rapporteur on the implications for human rights of the environmentally sound management of hazardous substances has highlighted concerns about the UK government's capacity to undertake the functions of EU agencies after Brexit: "the Government has not adequately assessed the burden of additional responsibilities to be shouldered by environmental regulators to replace the role of various European Union bodies. For example, the critical functions carried out by the European Chemicals Agency cannot simply be transferred into United Kingdom law."

Early in 2017, Defra said that the cost of replacing the European Chemicals Agency (ECHA) in the UK could be several tens of millions of pounds. Almost ten months later, Environmental Secretary Michael Gove was not able to give any more details.

The creation of a new body to regulate chemicals in the UK would also have to include a large and complex IT project which would take a considerable amount of time to deliver, and could very well be problematic. For example, the European Chemical Industry Council (Cefic) is currently concerned about the incompatibility of REACH's IT systems and Turkey's new REACH-like Regulation, KKDIK. Moreover, creating a new system in the UK, like the Turkish system, would mean companies having to renegotiate contracts and payments for access to chemical safety information.

4 Governance



Environment Secretary Michael Gove told the Environmental Audit Committee last November that he envisioned the creation of a body which would replace the current functions of the European Chemicals Agency (ECHA). However, this body would neither be able to replicate the shared expertise of EU member states nor create a database like the one gathered by ECHA. This database is the most comprehensive database of chemicals uses and properties in the world, covering every single substance placed and used in the EU in quantities over 1 tonne. ECHA's guidance on the UK's withdrawal from the EU highlights that: "A major impact of the UK withdrawal will be the UK authorities' loss of access to this database as well as to the topical databases and IT tools that we provide for regulatory purposes. The UK authorities will also no longer be

involved in using this data as only member states are required to co-operate with us as partners in applying our regulatory processes.”

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. In addition, if the UK did ban a chemical without having access to full safety data, this decision might be impossible for the government to defend in the event of a court challenge.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on chemicals. The [joint report](#) from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister’s [speech](#) in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government’s position of “no running commentary” could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office [identified](#) “failure to agree overarching UK frameworks with the devolved administrations” as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.



Climate & energy

The government has published the [Clean Growth Strategy](#) and the [Industrial Strategy](#), setting a clear direction of travel towards a low carbon energy system, though without succeeding in closing the long standing policy gaps to meeting existing carbon budgets. The government foresees a significant growth in electricity interconnection and trading with continental Europe and also estimates considerable growth in electric vehicles. Delivering this welcome ambition is dependent on the UK’s continued participation in the internal energy market and facilitating a barrier-free environment for trade in environmental goods and services. It is positive that Energy Minister Richard Harrington [has stated](#) that the government’s “top priority is to be as near as possible to the current arrangements” on energy and climate policy.

Meanwhile, the question of the UK's future in the EU Emissions Trading Scheme (ETS) has quickly escalated into a major political issue, potentially adding to the erosion of trust in the negotiations. The government is said to be considering creating a domestic carbon market that subsequently links to the EU market, similar to the Swiss model, but this could take several years to implement.

Concerns remain on the future of European Investment Bank (EIB) finance for low carbon infrastructure projects in the UK. Funding applications to the EIB have been delayed and the UK risks losing access to cheap, patient capital alongside finance from other EU programs like Connecting Europe Facility and the European Fund for Strategic Investment.

Finally, the lack of a position paper from the government on energy and climate is worrying and adds to the uncertainty for businesses. While DExEU officials have stated in private meetings that they have either developed or are developing positions for all possible scenarios, slow progress on the overall negotiations is fostering uncertainty in the energy sector.

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The government's Clean Growth Strategy offers very few insights into how leaving the European Union could impact on achieving the objectives of the strategy. Considering 55 per cent of the UK's 2030 emissions savings are expected to come from EU policies, it is worrying to see this lack of necessary detail on how the strategy will be implemented post-Brexit.

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 Conservative manifesto stated that the government remains committed to the UK's Climate Change Act, reiterated its support for the Paris climate agreement and pledged to lead international action on climate change. However, more domestic policy commitments are needed because, under current plans, the UK is set to overshoot the legally binding fourth and fifth carbon budgets.

3 Capacity & funding



There has been little 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. It is positive that the UK has stated its wish to explore continuing arrangements between the UK and the EIB in the second phase of negotiations, though it remains to be seen how both parties will negotiate this critical aspect of the future relationship. The EIB has not made any public statements on the future relationship with the UK, but 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.

Furthermore, 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.

4 Governance



The EU (Withdrawal) Bill states 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 climate and energy legislation will no longer exist.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians' decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



The UK government has, in the past, indicated its interest in retaining access to the EU's internal energy market, but it 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.

A major parliamentary concern has been the debate on making public the impact assessment documents that DExEU have produced. We are yet to see any specific position paper on energy and climate policy post Brexit. The government's recent position paper on 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.

But the recent case of the UK's future in the EU-ETS (Emissions Trading System) has created friction between both sides. The EU's effort to devalue or potentially to void all the UK's emission permits and the UK's failed attempt to veto the EU's ETS reform law has exposed the nature of tactics that both sides are willing to take to shore up their interests. Additionally, the UK, it was revealed, was attempting to dilute elements of the Renewable Energy Directive, making it tougher for households and community energy projects to benefit from generating renewable energy. This again undermines the Clean Growth Strategy, setting the government up for greater public opposition.



Farming and land use

A new Agriculture Bill was announced in the Queen's Speech, with one of its primary aims being to protect the natural environment. 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. However, there have been broadly positive statements from Environment Secretary Michael Gove, particularly in his latest speech on farming, where he stated that agriculture subsidies will be refocused on public goods, with the principal public good being environmental enhancement. These ambitions were also set out in the 25 year environment plan. It remains to be seen whether, after the transition to the new farming payments system, the government will keep the current level of public investment at around £3 billion a year. Nor is it clear whether the government plans to raise regulatory standards to cover the risks created by the loss of cross compliance.

The secretary of state has also outlined plans to set up a new independent environmental watchdog to ensure environmental standards and principles are maintained post-Brexit, set out his support for a ban on neonicotinoid pesticides and made verbal commitments to supporting sustainable soil management. While these are all welcome interventions, there still needs to be greater clarity about the shape of future policy and how environmental benefits from farming and land use will be ensured. It is also vital that a better process is established between

the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-Brexit.

1 Principles & strategies

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The bill also fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove’s recognition of the “need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles”, and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

2 Legislation

- ⊖ A new Agriculture Bill was announced in the Queen’s Speech, with one of its primary aims being to protect the natural environment. 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. However, there have been broadly positive statements from Environment Secretary Michael Gove, particularly in his early January speech on farming, where he stated that agriculture subsidies will be refocused on public goods, with the principal public good being environmental enhancement. These ambitions were also set out in the 25 year environment plan. It is essential to ensure clear and ambitious environmental objectives are included in the upcoming Agriculture Bill and associated command paper, so that the scope of the legislation matches the secretary of state’s early ambition.

Gove has set out his support for a ban on neonicotinoid pesticides across the EU, but it is not clear how the UK will assess pesticides outside the EU. This is concerning because the UK has a poor track record on pesticide reduction. In terms of the wider regulatory landscape, it is not clear whether the government plans to raise standards to cover the risks created by the loss of cross compliance in the transition to the new farming payments system.

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 sustainable land use 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.

Furthermore, the National Audit Office has warned that Defra's extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra's control and could affect its ability to deliver a successful exit.

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



The National Audit Office reported in December that Brexit creates substantial additional workload for Defra, which the department must perform with shrinking resources:

- Defra is currently responsible for 43 of the 313 EU related work streams identified across government – the second highest of any department.
- Alongside planning and delivery for EU Exit, Defra must also accommodate budget cuts of £147 million during 2017-18 and 2018-19 plus further spending reductions as a result of new policy choices and other budgetary pressures.
- Yet Defra estimated 1,200 new posts need to be filled by March 2018 to support Brexit work, only 650 of which were filled by November 2017, with recruitment is expected to become more challenging.
- The EU is a substantial source of funding for a range of Defra policies.
- EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

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) similar to other departments, has had to make overall resource savings. DCLG is the principal department in respect of EU-derived planning legislation including Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). Resourcing may be 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 around 35 regulations pertaining to EIA, administered by a range of different government departments and agencies.

4 Governance



The EU (Withdrawal) Bill states 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 land use and farming legislation will no longer exist.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians' decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on land use and farming. The joint report from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's speech in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit, including to ensure the effective management of common resources. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office identified "failure to agree overarching UK frameworks with the devolved administrations" as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.



Fisheries

A fisheries white paper should be closely followed by the publication of a new Fisheries Bill in early 2018. Greener UK has set out the essential elements for ensuring sustainable UK fisheries management, but indications are that the scope

of the Fisheries Bill will be limited and that day one operability is the government's priority.

Environment Secretary Michael Gove has recognised and responded to some of our concerns with the EU (Withdrawal) Bill, announcing a consultation on a new green watchdog and pledging that environmental principles will continue to apply after Brexit. This body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies.

The progress in the UK-EU negotiations is welcome, but the UK government must publish more details about its environmental priorities for the new relationship. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-Brexit.

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Furthermore, the National Audit Office has warned that Defra's extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra's control and could affect its ability to deliver a successful exit.

The UK government has announced plans to publish a white paper detailing its vision for the future of UK fisheries management. This should be closely followed by the publication of a new UK Fisheries Bill. The 25 year environment plan included welcome language around future fisheries policy, but it can only be successful if it builds on a firm foundation of existing EU fisheries policy, and, furthermore, if the ambitions are cemented in law with the Fisheries Bill. Greener UK has set out the essential elements for ensuring sustainable UK fisheries management. However, indications are that the scope of the Fisheries Bill will be limited and that day one operability is the government's priority.

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- The EU is a substantial source of funding for a range of Defra policies.
- EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

There remain concerns over the extent to which environment and fisheries are being viewed in separate silos within Defra.

4 Governance



The EU (Withdrawal) Bill states 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 fisheries legislation will no longer exist.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians' decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on fisheries. The joint report from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's speech in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit, including to ensure the effective management of common resources. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office identified "failure to agree overarching UK frameworks with the devolved administrations" as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.



Nature protection

Publication of the 25 year environment plan, with ambitious language on restoring nature, is very welcome. Particularly helpful are the targets to restore 75% of terrestrial and freshwater protected sites to favourable condition, and to create or restore 500,000 hectares of wildlife-rich habitat outside the protected site network. Also welcome is the reconfirmation that all EU environment law will be retained. The plan's ambitions can only be successful, however, if the plan builds on the firm foundation of the existing nature conservation framework established through the EU Birds and Habitats Directives and if the ambitions are cemented in law with an environment act.

Environment Secretary Michael Gove has recognised and responded to some of our concerns with the EU (Withdrawal) Bill, announcing a consultation on a new green watchdog and pledging that environmental principles will continue to apply after Brexit. This body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies.

The progress in the UK-EU negotiations is welcome, but the UK government must publish more details about its environmental priorities for the new relationship. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-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 directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The bill also fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove’s recognition of the “need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles”, and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

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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.

Furthermore, the National Audit Office has warned that Defra’s extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra’s control and could affect its ability to deliver a successful exit.

3 Capacity & funding



The National Audit Office reported in December that Brexit creates substantial additional workload for Defra, which the department must perform with shrinking resources:

- Defra is currently responsible for 43 of the 313 EU related work streams identified across government – the second highest of any department.
- Alongside planning and delivery for EU exit, Defra must also accommodate budget cuts of £147 million during 2017-18 and 2018-19 plus further spending reductions as a result of new policy choices and other budgetary pressures.
- Yet Defra estimated 1,200 new posts need to be filled by March 2018 to support Brexit work, only 650 of which were filled by November 2017, with recruitment is expected to become more challenging.
- The EU is a substantial source of funding for a range of Defra policies.
- EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

Publication of the 25 year environment plan is very welcome, together with the commitment to consult on new independent statutory watchdog, but additional resources will be needed for this body and existing nature conservation agencies if the plan's ambitions are to be realised. In his evidence to the House of Lord's Natural Environment and Rural Communities Act Committee, Secretary of State Michael Gove stated a number of times that if Andrew Sells (Chairman of Natural England) let him know that additional resources were needed Defra would be happy to help.

4 Governance



The EU (Withdrawal) Bill states 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.

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The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on nature protection. The [joint report](#) from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's [speech](#) in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit, including to ensure the effective management of common resources. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office [identified](#) "failure to agree overarching UK frameworks with the devolved administrations" as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.



Waste and resources

Government interest in waste and resources policy has increased drastically in recent months, with an in-depth consultation on introducing a deposit return scheme for beverage containers, and a promised resources and waste strategy for England. It remains unclear when this will be published and how far the UK will diverge from European practices.

The Clean Growth Strategy announced the government's ambition to "work towards being a zero avoidable waste economy by 2050" as well as sending no food waste to landfill by 2030, though concerns remain over indications that incineration might be increased and the ambiguity around the definition of 'avoidable' waste. The Industrial Strategy white paper included a new target for doubling resource productivity by 2050, which is both ambitious and welcome, and the Budget included plans to investigate a tax on single use plastics. The [25 year plan for the environment](#) included promises to increase resource efficiency and reduce pollution and waste, including a new target to eliminate "avoidable plastic waste by the end of 2042."

Greener UK is concerned that, despite recent positive announcements, Defra lacks the capacity to deliver on the ambitions, especially as a key delivery body in this area, the Waste and Resources Action Programme (WRAP), will be losing a tenth of its staff due to budget cuts.

Environment Secretary Michael Gove has recognised and responded to some of our concerns with the EU (Withdrawal) Bill, announcing a consultation on a new green watchdog and pledging that environmental principles will continue to apply after Brexit. This body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies.

The progress in the UK-EU negotiations is welcome, but the UK government must publish more details about its environmental priorities for the new relationship. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-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 directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

While the waste hierarchy, a fundamental principle, is enshrined in the Waste (England and Wales) Regulations 2011, the EU (Withdrawal) Bill, as it stands, fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove’s recognition of the “need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles”, and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

Progress on developing a domestic resources and waste strategy for England, meanwhile, is picking up pace. The Clean Growth Strategy, published in October, confirmed that the new strategy would be released, and included several aspirational goals, including that “the UK will work towards being a zero avoidable waste economy by 2050.” The Industrial Strategy white paper released in November committed to moving the country towards a ‘regenerative circular economy’, in part by doubling resource productivity by 2050, an ambitious and welcome goal. Chancellor Philip Hammond’s Budget in November also included a promise to consider implementing a tax on single use plastic items. January’s 25 year plan for the environment included promises to increase resource efficiency and reduce pollution and waste, including a pledge to meet “all existing waste targets – including those on landfill, reuse and recycling – and developing ambitious new future targets and milestones” as well as a new target to eliminate “avoidable plastic waste by end of 2042.” Beyond extending the 5p carrier bag charge, however, concrete policies to achieve these aims are not expected until the resources and waste strategy later in the year at the earliest.

There has been no clear indication yet of the timeline for the new resources and waste strategy, and there are concerns that it could see the country diverge from European policy and standards, given the government's previous assessment that the forthcoming European Circular Economy Package targets are not achievable here.

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 waste 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.

Furthermore, the National Audit Office has warned that Defra's extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra's control and could affect its ability to deliver a successful exit.

At an EU level, the Estonian presidency made the Circular Economy Package a priority. A provisional agreement, which will need to be ratified by the incoming Bulgarian presidency, was reached between the EU's Council, Commission and Parliament, for a lower than expected headline 2030 recycling target of 60 per cent. Defra maintains it negotiated “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.

3 Capacity & funding

- ⊗ The National Audit Office reported in December that Brexit creates substantial additional workload for Defra, which the department must perform with shrinking resources:
- Defra is currently responsible for 43 of the 313 EU related work streams identified across government – the second highest of any department.
 - Alongside planning and delivery for EU exit, Defra must also accommodate budget cuts of £147 million during 2017-18 and 2018-19 plus further spending reductions as a result of new policy choices and other budgetary pressures.
 - Yet Defra estimated 1,200 new posts need to be filled by March 2018 to support Brexit work, only 650 of which were filled by November 2017, with recruitment is expected to become more challenging.
 - The EU is a substantial source of funding for a range of Defra policies.
 - EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

It is unclear if there will be new posts in the waste and resources field, and recent appointments have done little to bring the department up to historical levels of staffing. However, the Budget in November also included a commitment to give the Environment Agency an additional £30 million over the next four years to help tackle waste crime, which is welcome.

Budget cuts at Defra are also affecting the Waste & Resources Action Programme (WRAP) the charity charged with delivering many of the government's programmes to do with resources, including the new initiative to tackle plastic waste. Defra's budget to WRAP has fallen from £56 million in 2009/10 to £15.5 million in 2015/16, a decrease of 72 per cent, while the current 2017/18 budget is below £10 million. It announced in January that the continued cuts with force it to make around 25 people, a tenth of its staff, redundant.

4 Governance



The EU (Withdrawal) Bill states 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 waste and resources legislation will no longer exist.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians' decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

The future of transnational environmental governance remains uncertain. 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.

5 Co-operation



It is reassuring that the EU-UK negotiations are moving to phase two, because this phase will cover future environmental co-operation, including on waste and resources. The joint report from UK and EU negotiators includes the agreement that the default arrangement for the Irish border will be full alignment with EU rules, in the absence of agreed solutions. This is welcome in that it would avoid any watering down of environmental protections.

However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's speech in Florence, which stated that the UK and EU share a commitment to high environmental

standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

In a sign of welcome progress for intra-UK co-operation, agreement was reached in October via the Joint Ministerial Committee (JMC) that common frameworks would continue to be required in at least some areas post-Brexit, including to ensure the effective management of common resources. However, following the subsequent JMC meeting in December, it was announced that common legislative frameworks would only be maintained in a minority of areas, with no mention of whether any environmental issues would be included in this minority or how they could be affected. The National Audit Office identified "failure to agree overarching UK frameworks with the devolved administrations" as a key risk to Defra. It is vital that a better process for determining what happens to common environmental frameworks post-Brexit is established very soon.


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 this is concerning as an indication of its likely approach to water quality after the UK leaves the EU. Environment Secretary Michael Gove has highlighted the urgency of tackling water management problems, but it remains to be seen whether his words result in action as there is ongoing government engagement with water companies around their 2019 business plans.

Michael Gove has recognised and responded to some of our concerns with the EU (Withdrawal) Bill, announcing a consultation on a new green watchdog and pledging that environmental principles will continue to apply after Brexit. This body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies.

The progress in the UK-EU negotiations is welcome, but the UK government must publish more details about its environmental priorities for the new relationship. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common environmental frameworks across the UK post-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 directives that set the policy frameworks, and the strategies that set out trajectories for achieving policy goals.

The bill also fails to carry across the general principles in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. We, therefore, welcome the Environment Secretary Michael Gove's recognition of the "need to ensure that environmental

enforcement and policy-making is underpinned by a clear set of principles”, and his commitment to creating a new policy statement setting out environmental principles. The policy statement must be anchored in primary legislation, with the principles themselves set out in a new bill as part of the Brexit package of legislation.

The 25 year environment plan was ambitious in its language around future water policy, which is very welcome. However, the targets set out in the plan are relatively unambitious. In particular, the target for reaching good ecological status for water bodies did not have a completion date, despite the current 2027 objective under the Water Framework Directive. Nor are there targets for per capita consumption.

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 officials have, in meetings, said reassuringly that there will be full public consultation and that it sees no issues with bringing over all the water-related directives.

The National Audit Office has warned that Defra’s extensive legislative programme to prepare for Brexit is vulnerable to risks, such as delays to the negotiations and competing demands across government that are outside Defra’s control and could affect its ability to deliver a successful exit.

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- The EU is a substantial source of funding for a range of Defra policies.
- EU institutions carry out a range of regulatory functions in a number of Defra’s areas of responsibility.

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

4 Governance



The EU (Withdrawal) Bill states 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 water legislation will no longer exist. 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.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU and the importance of a means to hold governments and other public bodies to account. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit; this body must be independent, evidence-led and adequately funded, with rigorous accountability and enforcement mechanisms, including effective sanctions and remedies. It is vital that the consultation is published very soon, so that it can inform parliamentarians' decisions on the EU (Withdrawal) Bill. The new body should be established under a new bill as part of the Brexit package of legislation.

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5 Co-operation



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However, the UK government has hardly published any details of its negotiating position for phase two, beyond the prime minister's speech in Florence, which stated that the UK and EU share a commitment to high environmental standards. There is a concern that the government's position of "no running commentary" could hamper transparency and stakeholder engagement. The risk of no deal is a significant concern.

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For more information, please contact Amy Mount, head of Greener UK Unit, Green Alliance

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

GREENER UK

