

Brexit risk tracker February 2018 – April 2018

This update period included the following events: agreement between UK and EU negotiators on a time bound transition period after 19 March 2019, with discussions on the nature of future agreement now about to get underway; the EU's publication of guidelines for negotiations on the future relationship; committee stage of the European Union (Withdrawal) Bill in the House of Lords; the publication of Defra's farming policy consultation paper; several speeches by ministers including the chancellor and foreign secretary, and a speech by the prime minister at Mansion House, where she laid out her five tests for a final agreement with the EU.

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Verdicts key:

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

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

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.

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.

Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. The new body should be established under a new bill as part of the Brexit package of legislation.

1 Principles & strategies

-  As currently drafted, the EU (Withdrawal) 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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

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

2 Legislation

-  The government's white paper states 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 in the paper 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 that it would be unfeasible to scrutinise properly the 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, 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. At present, the EU is a substantial source of funding for a range of Defra policies, and EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

In its latest Air Quality Plans, required under EU law, 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. Following ClientEarth's victory in court in February, there are a further 33 local authorities that now have to produce feasibility studies with minimal resources.

4 Governance



Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. 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 draft withdrawal agreement released by the UK and EU in March confirms that, in the absence of otherwise agreed solutions, the UK will maintain full alignment with the rules of the single market and customs union as far as is necessary to avoid a hard border in Ireland. This is welcome in that it would avoid any watering down of environmental protections.

The UK government has hardly published any details of its negotiating position for the remainder of phase two, beyond a broad commitment to high environmental standards. In particular, the UK has not indicated whether it agrees with the EU's suggestion of including a non-regression clause in the agreement on the future relationship. 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 significant.

The UK government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas. Air quality can only be effectively protected if the UK and devolved governments co-operate and, where necessary, agree common standards and approaches. The lack of transparency and stakeholder engagement in this process is concerning.

Chemicals

On 2 March, the prime minister announced that the UK intends to explore the terms on which it could remain within the European Chemicals Agency (ECHA), which is responsible for the scientific and administrative aspects of REACH. The intention to consider a possible ‘associate membership’ of the ECHA was welcome news following the repeated insistence by Defra ministers that the UK would leave REACH. The UK government needs to provide assurance on what next steps it is taking to transform its intention into a reality.

1 Principles & strategies

 As currently drafted, the EU (Withdrawal) 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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

2 Legislation

 The government has said that it “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.” But, 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 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 Environmental Audit Committee (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.

3 Capacity & funding

- ⊖ During 2017, Defra's position was to leave REACH and replace it by creating a new UK chemical regime that could cost "several tens of millions of pounds." However, in spite of the cost, any potential new UK system would not be able to replace the expertise and capacity of the EU's current chemical regime.

This is why the prime minister's announcement about the intention to explore the terms on which the UK could remain in the European Chemicals Agency (ECHA) has been very well received. It is very likely that through this potential associate membership of ECHA the UK would be able to maintain many of the benefits that it currently has, such as access to the ECHA database, for example, as well as being able to participate in ECHA discussions. However, as a third party country the UK might be able to influence decisions but not to vote.

4 Governance

- ⊖ On 27 March, a few weeks after the prime minister's announcement regarding the UK's intention of remaining in the European Chemicals Agency (ECHA), Brexit minister Suella Fernandes was questioned by the Lords EU Justice Sub-Committee. She confirmed that: "The prime minister referenced three specific sectors— chemicals, medicines and aviation—and their associate agencies. We would respect the remit of the ECJ in those instances."

The fact that the UK government is accepting the remit of the European Court of Justice (ECJ), to make membership of ECHA possible, represents a milestone in progress. When Switzerland, a 'third country', tried to join REACH a few years ago, accepting ECJ jurisdiction was one of the conditions required by the EU.

It is very likely that once the UK becomes a third party country, those conditions will remain very similar, if not identical. There were two other requirements imposed on Switzerland, which the EU is likely to demand of the UK. First, the need to follow EU decisions on chemicals, meaning that if the UK is looking to take up 'associated membership' the UK rules would have to be identical to EU rules. The second requirement was the need to continue to implement and follow EU decisions on other chemical-related laws, such as the industrial emissions directive and worker health.

5 Co-operation

- ⊖ The government's intention to continue co-operating with EU agencies has been mentioned since the very start of the Brexit negotiations. It is welcome news to see that these intentions are now becoming more realistic: when Brexit

minister Suella Fernandes was questioned by the Lords' EU Justice Sub-Committee on 26 March, she highlighted that: "In some areas, the UK government, parliament and negotiating teams will want to take the view that divergence is not desirable and that co-operation and working together is the objective that we want to maintain. If that meant continuing our membership of some agencies, that would be acceptable to our overall programme of Brexit".

However, under the current EU position, maintaining the integrity of the single market is a core priority, and the UK would not be able to 'pick' its involvement in certain areas such as chemicals. The draft text of the EU negotiation guidelines published in March 2017 did not include any mention of associate membership of EU agencies.

Additionally, in April Michel Barnier tweeted "As a consequence of Brexit, UK will no longer participate in work of EU agencies. I welcome European Chemicals Agency's #Brexit preparedness work."

The UK still has a lot of work to do in the months ahead to determine how this potential associate membership of ECHA would operate. There will also need to be an assurance from the government that it has the will to make the required compromises to make this intention a reality. If this does not happen, the progress we have made on keeping the UK public protected from harmful chemicals, as well as the continuing economic success of the chemicals industry, will be at risk.

Climate & energy

The prime minister's Mansion House speech recognised energy as an area where close co-operation will be needed, and highlighted possible options for the UK's continued participation in the internal energy market. It also considered how to protect the Irish single electricity market. In her oral evidence to the Lords' EU energy and environment sub-committee in March, BEIS minister Claire Perry confirmed the UK's desire to remain part of the EU emissions trading scheme, at least until the end of 2020. Commitment to ongoing climate leadership seems strong following Perry's announcement that the UK will review its 2050 emissions target.

However, the UK government has yet to provide any more clarity on the future of the UK's climate and energy relationship with the EU. The extent to which the UK will continue to participate in the EU's effort sharing agenda to meet international climate targets remains unclear. The government's reluctance to back EU-level binding targets for renewable energy and energy efficiency, among other things, is particularly worrying as an indication of its likely approach outside the EU. The Clean Growth Strategy introduced a welcome degree of ambition in these areas, but lacks a clear policy roadmap to ensure these ambitions are met.

1 Principles & strategies

- ⊖ As currently drafted, the EU (Withdrawal) 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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

Overall commitment to ongoing climate leadership seems strong following BEIS minister Claire Perry's announcement that the UK will review its 2050 emissions target, following the special report from the IPCC on 1.5 degrees of global warming, expected in October.

2 Legislation

- ⊖ The government's white paper states that the EU (Withdrawal) Bill will "ensure that the whole body of existing EU environmental law continues to have effect." This broad commitment is reassuring, yet it is stated elsewhere in the paper 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 government addressed a specific Brexit risk with an amendment to the EU ETS legislation (transposed as Greenhouse Gas Emissions Trading Scheme Regulations 2012 in the UK statute). The amendment was a rapid response from the UK to avoid losing up to £400 million in allowances that would go void the day after Brexit. The EU Commission adopted the amendment in February 2018.

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, although 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. BEIS has set up a green finance taskforce, which produced a report detailing how the UK can mobilise green finance. The government is not expected to respond to the recommendations until later this year and is as yet unclear what it means for substituting a drop in EIB finance.

Finally, there are concerns that the UK's domestic climate and energy policy objectives are suffering as the government's attention is focused on Brexit. The Committee on Climate Change claims a significant policy gap still needs to be addressed within the Clean Growth Strategy.

4 Governance

- ① Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. The governance gap could mean, for example, a lack of safeguards to ensure people's health is not adversely affected by new energy infrastructure projects.

We welcome Michael Gove's commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. 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

- ① The draft withdrawal agreement released by the UK and EU in March confirms that, in the absence of otherwise agreed solutions, the UK will maintain full alignment with the rules of the single market and customs union as far as is necessary to avoid a hard border in Ireland. This is welcome in that it would avoid any watering down of environmental protections. The prime minister's Mansion House speech recognised energy as an area where close co-operation will be needed, and highlighted possible options for the UK's continued participation in the internal energy market. It also considered how to protect the Irish single electricity market.

However, the government has yet to provide any more clarity on the future of the UK's climate and energy relationship with the EU. In her oral evidence to the Lords' EU energy and environment sub-committee in March, BEIS minister Claire Perry confirmed the UK's desire to remain part of the EU emissions trading scheme at least until the end of 2020, but the extent to which the UK

will continue to participate in the EU's effort sharing agenda to meet international climate targets remains unclear.

The EU parliament has asked the Commission to develop analysis on revising its 2050 emissions pathway, seeking a net zero target in line with the Paris agreement. This is very positive but it also highlights that closer co-operation between the UK and the EU will be critical in meeting these ambitious targets in a cost-effective way.

The UK government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas. Our climate can only be effectively protected if the UK and devolved governments co-operate and, where necessary, agree common standards and approaches. The lack of transparency and stakeholder engagement in this process is concerning.

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. This has been followed by broadly positive statements from Environment Secretary Michael Gove, particularly in his speech at the Oxford Farming Conference, where he stated that agriculture subsidies will be refocused on public goods, with the principal public good being environmental enhancement. These ambitions were subsequently set out in the 25 year environment plan and consultation paper on the future of farming and land management policy. The latter included a particularly welcome emphasis on environmental protection enhancement as the 'principal public good' that Defra would seek to reward, and environmental land management as the 'cornerstone' of a future farming policy.

However, 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. Other major uncertainties remain, including the future of regulatory protections and their relationship with payments, and the length of any transition to a new policy in England. The proposed scope of the Agriculture Bill is also out of step with the ambition of the consultation paper, with a relatively narrow and technical focus.

The secretary of state has outlined plans to set up a new independent environmental watchdog to ensure environmental standards and principles are maintained post-Brexit 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, including any links to a potential Environment Act. It is also vital that a better process is established between the UK and devolved governments for determining what happens to common

frameworks across the UK post-Brexit, including the degree of shared environmental ambition in the context of frameworks for agriculture policies.

1 Principles & strategies

- ⊖ The strategy outlined in the government's agriculture consultation paper, published on 27 February, is a positive development. Particularly welcome is the commitment to fundamental reform of agriculture policy, enabled by the UK's exit from the EU, and underpinned by the payment of public money for the provision of public goods, with the 'principal public good' being environmental protection and enhancement. As the paper recognises, such a focus will be essential in realising the objectives of the recent 25 year environment plan in England. If the government delivers on the broad thrust of its strategy, it will represent a potentially game changing development for the environment and sustainable development.

Flies in the ointment remain, however. Although the paper indicates more effective implementation of the polluter pays principle, there is a significant lack of clarity on the future of regulatory protections after Brexit, and how they will be enforced.

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, such as the Environmental Impact Assessment Directive, 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.

2 Legislation

- ⊖ It is essential that the welcome level of ambition set out in the recently published consultation paper is now reflected in the upcoming Agriculture Bill. Unfortunately, the section on the bill in the paper does not, at present, do this, with a narrow focus on the powers needed to develop policy. To secure long term, enduring reform, the bill should include clear and ambitious environmental objectives, a requirement for ministers to assess regularly the funding requirements, and a broad purpose that reflects the public goods focus included in the consultation paper. At present, there is a significant risk that the Agriculture Bill, as proposed, will fail to reflect the ambition for long term restoration of the natural environment set out in the consultation paper. With the Agriculture Bill now likely to be tabled in the autumn, as opposed to before the summer recess as initially expected, there is time to address this discrepancy.

Environment Secretary Michael 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 a new farming payments system.

We remain concerned that the EU (Withdrawal) Bill, as currently drafted, could create gaps in protections. 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. Publication of the 25 year environment plan and the reconfirmation that all EU environment law will be retained is very welcome, but the plan's ambitions can only be successful if it builds on the firm foundation of the existing nature conservation framework established through the EU Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives.

3 Capacity & funding



The National Audit Office reported in December that, 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. At present, the EU is a substantial source of funding for a range of Defra policies, and 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 recent consultation paper on future farming policy commits to introducing a new environmental land management system in 2022. This is welcome, and reflects the urgency needed to progress toward environmental restoration. However, there are significant concerns that Defra, and particularly its agencies, may not have the capacity necessary to develop, pilot and implement new policies in such a compressed timescale, particularly when set against the overall legislative challenge that Brexit represents, and the need to continue improving existing Common Agricultural Policy (CAP) schemes in the interim, such as Countryside Stewardship. Clarity on how Defra will resource delivery within this compressed timescale is needed.

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, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. The new body should be established under a new bill as part of the Brexit package of legislation, and should be given a statutory remit to scrutinise the environmental performance of agriculture policies and, where necessary, recommend improvements. Such a role would represent a significant advance compared to the functions currently fulfilled by the European Commission desk officers, who have relatively little ability to scrutinise whether the CAP is contributing toward EU environmental objectives.

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



Following the publication of the Cabinet Office's provisional analysis of areas that will need common frameworks across the four nations of the UK, there is a worrying sign of incoherence between the perceived need for frameworks for environmental policies compared with agriculture policies. Although this document suggests a legislative framework will be needed for future farming payments, it seems increasingly apparent that the UK government and devolved administrations do not see the environment as an essential component of this framework. Nor is there clarity on how this will be agreed with the devolved administrations.

If the UK government and devolved administrations cannot agree on a continued environmental focus on the context of UK agriculture policies, this would represent a major backward step compared to the CAP, which includes clear and prominent common environmental objectives. It would also fail to recognise the need for UK agriculture policies to contribute toward international environmental obligations, and the sustainable management of common resources. Both are identified as reasons for common frameworks in the principles agreed by the four governments in October last year.

Furthermore, the Cabinet Office's provisional assessment proposes no further action in respect of EIA, except in the case of certain regimes such as EIA of energy planning consents where non-legislative common frameworks are proposed. SEA is identified as an area where non-legislative common frameworks may be required. It is not clear what methodology has been used to reach these conclusions or what the proposals would mean in practice. Greener UK would welcome further discussion on the method used to inform these judgements and to ensure proposals do not result in a weakening of environmental protection.

One point of certainty emerged with the implementation period agreement between the EU and UK. The agreement states that the Direct Payments Regulation (the Common Agricultural Policy regulation that governs Pillar I direct payments to farmers) will not apply from the beginning of 2020. This allows Defra to move away from direct payments from 2020, so it is possible for policy reform to begin before the end of the implementation period.



Fisheries

Both the fisheries white paper and Fisheries Bill have been delayed, now expected in May and June respectively. Defra has said that the scope of the Fisheries Bill will be limited to quotas and access to UK waters, and will not address fisheries management.

Environment Secretary Michael Gove confirmed in March 2018 that the UK would remain in the Common Fisheries Policy until the end of the transition period. While this disappointed sections of the industry, which envisaged a quicker exit from intra-continental quota negotiations, a longer period for consultation and co-operation could reduce the risk of rash quota setting and increase the opportunities for sustainable fisheries.

In policy, there have been strong and concerning hints from fisheries minister George Eustice that the government is looking at including a 'days-at-sea' or 'effort control' fishing regime, most likely as a trial, in the fisheries white paper. Days-at-sea systems are favoured by certain sections of the industry, but such systems have been shown around the world to undermine efforts to create sustainable fisheries and fish under or at MSY (maximum sustainable yield).

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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

Suggestions from the fisheries minister, George Eustice, that the government is considering a 'days-at-sea' or effort control model would appear to undermine efforts to create and implement a sustainable fishing policy. In a Westminster Hall debate Mr Eustice said that the government was "looking closely" at effort control, and that it would be "something that we would want to introduce carefully". Effort control is a largely discredited policy with multiple cases from around the world indicating damage to fish stocks and incompatibility with sustainable fishing.

2 Legislation



Both the fisheries white paper and Fisheries Bill have been delayed, now expected in May and June respectively. Defra has said that the scope of the Fisheries Bill will be limited to quotas and access to UK waters, and will not address fisheries management.

The EU and UK recently agreed a 21 month transitional trade period from March 2019 to December 2021, during which time the UK will remain bound by the terms of the Common Fisheries Policy (CFP) and will be consulted by the EU on quotas. While many in the industry and in the devolved governments were unhappy with this agreement, the increased time available provides a greater opportunity for the UK government to develop world leading, ecosystem-based sustainable fisheries legislation.

3 Capacity & funding



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

The National Audit Office reported in December that, 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. At present, the EU is a substantial source of funding for a range of Defra policies, and EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

4 Governance

- ⊖ Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. 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 EU and UK recently agreed a 21 month transitional trade period from March 2019 to December 2021, during which time the UK will remain bound by the terms of the Common Fisheries Policy (CFP) and will be consulted by the EU on quotas. The UK will be ineligible to negotiate over this period. While many in the industry and in the devolved governments were unhappy with this agreement, the increased time available should enable the UK government to agree sustainable quota shares with the EU.

The government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas. The UK and devolved governments will need to co-operate on a number of issues, not least the negotiation and distribution of quotas as well as the implementation and management of the landing obligation. A lack of co-operation could lead to over-fishing and potential collapse of stocks. The lack of transparency and stakeholder engagement in this process is concerning.



Nature protection

Ongoing delays with the consultation on a new environmental watchdog, opposition from key government ministers to such a watchdog, and the lack of any detail on the government's analysis of the common frameworks needed for intra-UK co-operation, represent significant risks.

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, and the UK has not indicated whether it agrees with the EU's suggestion of including a non-regression clause in the agreement on the future 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.

However, the plan can only be successful if it builds on the existing nature conservation framework established by the EU Birds and Habitats Directives.

1 Principles & strategies



As currently drafted, the EU (Withdrawal) 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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

2 Legislation



The government's white paper states 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 in the paper 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.

Publication of the 25 year environment plan and the reconfirmation that all EU environment law will be retained is very welcome. 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.

3 Capacity & funding

- ⊖ Environment Secretary Michael Gove has informed the Environmental Audit Committee that preparation for a no deal scenario, as well as "longer term work triggered by EU exit", will require an increase in the number of Defra's Brexit work streams from 43 to approximately 70. These are solely for "March 2019 readiness" and would give Defra the highest Brexit-related workload of any government department, which it would have to deliver with shrinking resources.

The National Audit Office reported in December that, 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. At present, the EU is a substantial source of funding for a range of Defra policies, and EU institutions carry out a range of regulatory functions in a number of Defra's areas of responsibility.

4 Governance

- ⊖ Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this consultation has yet again been delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements need to be in place, at least on an interim basis, before exit day. 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 draft withdrawal agreement released by the UK and EU in March confirms that, in the absence of otherwise agreed solutions, the UK will maintain full alignment with the rules of the single market and customs union as far as is necessary to avoid a hard border in Ireland. This is welcome in that it would avoid any watering down of environmental protections. However, the UK has not indicated whether it agrees with the EU's suggestion of including a non-regression clause in the agreement on the future relationship.

The UK government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed

for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas. Our health and environment can only effectively be protected if the UK and devolved governments co-operate and, where necessary, agree common standards and approaches. The lack of transparency and stakeholder engagement in this process is concerning. Shared frameworks and associated governance structures also need to play a central role in supporting environmental cooperation on the island of Ireland, which comprises a single biogeographic entity, with the vast majority of environmental issues on the island currently governed under these frameworks.

In February 2018, the European Commission published a draft protocol on Ireland/Northern Ireland intended to translate the backstop commitment to full alignment with all relevant EU rules into a clear legal text. However, the draft protocol only refers explicitly to EU laws concerning the movement of plants and animals. As such, it fails to provide sufficient reassurances regarding the UK's alignment in respect of Northern Ireland with all relevant EU rules, such as Water Framework Directive rules concerning shared river basins, thereby failing to guarantee continuation of the "necessary conditions" for north-south environmental co-operation post-Brexit.

Waste and resources

The government has continued to be highly engaged in waste and resources policy over the past quarter, partly in preparation for the launch of the new resources and waste strategy due later this year. Of most significance during this update period was a reversal of behind the scenes opposition to the ambitious recycling targets in the EU's forthcoming Circular Economy Package. Although government previously maintained the targets were "too high to be achievable", resources minister Therese Coffey confirmed in March that the government would be backing the package.

Greener UK remains concerned that, despite positive announcements on resources and waste issues in this and previous quarters, Defra lacks the capacity to deliver on these ambitions due to the significant workload created by Brexit.

1 Principles & strategies

-  As currently drafted, the EU (Withdrawal) 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 of sustainable waste management) is enshrined in the Waste (England and Wales) Regulations 2011, the EU (Withdrawal) Bill, as it stands, fails to carry across other general principles included in the EU treaties that underpin all environmental policy, such as the precautionary principle and the polluter pays principle. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in

primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day.

A new domestic strategy on resources and waste is expected in the autumn and the government has now confirmed that it will also be backing the EU's Circular Economy Package (CEP). This reverses previous behind the scenes opposition that was based on the misplaced concern that its targets (including 65 per cent recycling by 2030) were "too high to be achievable" in the UK. Greener UK welcomes this development, and awaits further details from the domestic strategy that should outline how the country will at least meet, if not exceed, the minimum standards set by the EU.

The EU, meanwhile, has also announced plans to institute taxes on plastics and is developing its own plastics strategy, with legislation expected to follow later in the year. As well as encouraging microbead bans and deposit return schemes, areas where the UK has already acted, the strategy includes more ambitious goals to make all plastic packaging on the EU market recyclable by 2030, and reduce the consumption of single-use plastics. Brexit means it is unclear whether the UK will aim to meet the goals of this EU strategy.

2 Legislation

- ⊖ The government's white paper states that the EU (Withdrawal) Bill will "ensure that the whole body of existing EU environmental law continues to have effect." This broad commitment is reassuring, yet it is stated elsewhere in the paper 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.

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 EU's Circular Economy Package (CEP) is expected to be adopted this summer, with official entry into force 20 days later. However, member states will then have two years to transpose the package into domestic law, meaning measures will not have to be on UK statute books by exit day. As such, the status of the CEP in the UK remains in doubt, although ministers have recently reversed their opposition to it.

3 Capacity & funding

- ⊗ Environment Secretary Michael Gove has informed the Environmental Audit Committee that preparation for a no deal scenario, as well as "longer-term work triggered by EU exit", will require an increase in the number of Defra's Brexit

work streams from 43 to approximately 70. These are solely for “March 2019 readiness” and would give Defra the highest Brexit-related workload of any government department, which it would have to deliver with shrinking resources.

The National Audit Office reported in December that, 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. At present, the EU is a substantial source of funding for a range of Defra policies, and EU institutions carry out a range of regulatory functions in a number of Defra’s areas of responsibility.

Budget cuts at Defra are also affecting the Waste and Resources Action Programme (WRAP), the charity charged with delivering many of the government’s programmes to do with resources. 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. The continued cuts forced WRAP to make around 25 people, a tenth of its staff, redundant by the end of March, which could hinder the government’s ability to implement the needed policies to achieve the objectives of EU and domestic legislation.

4 Governance

- ⊖ Environment Secretary Michael Gove has recognised the domestic ‘governance gap’ that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government’s ‘green Brexit’ promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. The new body should be established under a new bill as part of the Brexit package of legislation.

Without a new body in place, it will be impossible to hold the government to account, should the UK adopt the EU’s Circular Economy Package, as expected, but miss its targets.

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 draft withdrawal agreement released by the UK and EU in March confirms that, in the absence of otherwise agreed solutions, the UK will maintain full alignment with the rules of the single market and customs union as far as is necessary to avoid a hard border in Ireland. This is welcome in that it would avoid any watering down of environmental protections.

The UK government has hardly published any details of its negotiating position for the remainder of phase two, beyond a broad commitment to high environmental standards. In particular, the UK has not indicated whether it agrees with the EU's suggestion of including a non-regression clause in the agreement on the future relationship. 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 significant.

The UK government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas, and waste and resources legislation is confusingly listed as an area where non-legislative common frameworks may be required. This contrasts with some waste packaging and product regulations where it says legislative common framework arrangements may be needed.

Greener UK is unclear as to why these policies have been divided in this way, especially as currently EU legislation, which these categorisations split, was designed for the regimes to work together. For example, the Restriction of Hazardous Substances Directive (considered by the UK government to need a legislative common framework) was explicitly designed to work with the Waste Electrical and Electronic Equipment Directive (considered to need a non-legislative common framework). We also have questions as to why producer responsibility legislation has been split across both categories and why the shipment of waste is included in needing non-legislative common frameworks as opposed to legislative ones.

Resources and waste can only be effectively managed if the UK and devolved governments co-operate and, where necessary, agree common standards and approaches. The lack of transparency and stakeholder engagement in this process is concerning.

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.

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. However, the consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. 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.

Many factors regarding trade affect the quality, hydrology and ecology of our aquatic habitats: from agriculture to manufacturing, water is needed and waste water is discharged.

1 Principles & strategies

- ⊖ As currently drafted, the EU (Withdrawal) 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. Environment Secretary Michael Gove has committed to create a new policy statement setting out environmental principles, but this must be anchored in primary legislation, with the principles themselves set out on the face of a new bill. The government must swiftly publish the consultation on environmental principles, as it has been repeatedly delayed, yet new arrangements must be in place before exit day. Without these principles, serious damage could be done before action is taken, which is likely to affect water quality in the UK significantly. The lack of the polluter pays principle could undermine the Environment Agency's ability to fund any clean-up.

2 Legislation

- ⊖ The government's white paper states that the EU (Withdrawal) Bill will "ensure that the whole body of existing EU environmental law continues to have effect." This broad commitment is reassuring, yet it is stated elsewhere in the paper 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.

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

- ⊖ Environment Secretary Michael Gove has informed the Environmental Audit Committee that preparation for a no deal scenario, as well as "longer term work triggered by EU exit", will require an increase in the number of Defra's Brexit work streams from 43 to approximately 70. These are solely for "March 2019 readiness" and would give Defra the highest Brexit-related workload of any government department, which it would have to deliver with shrinking resources.

The National Audit Office reported in December that, 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. At present, the EU is a

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

Greener UK remains 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



Environment Secretary Michael Gove has recognised the domestic 'governance gap' that will open up as the UK exits the EU. We welcome his commitment to consult on a new body to enforce and uphold environment laws after Brexit, but this needs to happen very soon. The consultation has been repeatedly delayed, and there are concerns that the Cabinet is not fully behind the government's 'green Brexit' promises. Yet new arrangements must be in place, at least on an interim basis, before exit day. 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. The government has published a set of farming rules for water, which set out basic measures to limit diffuse agricultural pollution to water courses.

However, although a step in the right direction, it is only expected to reduce phosphorous loads by about 2.4 per cent. This compares with requirements to reduce phosphorous diffuse pollution from agriculture by about 25 per cent to achieve Good Ecological Status. In addition, they are to be enforced through current Environment Agency farm inspections. It is understood (from a Freedom of Information request sourced by WWF in autumn 2017) that the agency's current resources only allow for visits to 0.5 per cent of farms each year. If this is an indication of government commitment to delivering 75 per cent of water bodies to good status under the 25 year environment plan, it does not bode well for ambition post-Brexit. Commitments are needed that inspections will pick up when rules are not met, and there should be help available for farms to improve, alongside serious consequences if there is failure to do so.

5 Co-operation



The draft withdrawal agreement released by the UK and EU in March confirms that, in the absence of otherwise agreed solutions, the UK will maintain full alignment with the rules of the single market and customs union as far as is necessary to avoid a hard border in Ireland. This is welcome in that it would avoid any watering down of environmental protections.

The UK government has hardly published any details of its negotiating position for the remainder of phase two, beyond a broad commitment to high environmental standards. In particular, the UK has not indicated whether it agrees with the EU's suggestion of including a non-regression clause in the

agreement on the future relationship. 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 significant. Many factors regarding trade affect the quality, hydrology and ecology of our aquatic habitats: water is needed and waste water is discharged from agriculture to manufacturing.

The UK government has published its provisional analysis of the policy areas where the common legislative or non-legislative frameworks may be needed for intra-UK co-ordination post-Brexit, to replace the existing set of common EU frameworks in place across the four nations. However, the lack of detailed commentary and an underpinning methodology makes it very difficult to interpret the rationale behind the categorisation of policy areas. Aquatic habitats cross borders and can only be effectively protected if the UK and devolved governments co-operate, and the lack of transparency and stakeholder engagement in this process is concerning. One country's actions can impact water quality and the ability to use water sustainably in neighbouring countries.

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