

## Brexit risk tracker May 2018 – July 2018

The period between May and July 2018 was eventful, with consultations published on future environmental governance and fisheries. While gains were made on the government's initial proposals for enforcing environmental laws after Brexit, Defra's plans still fell short of existing protections. We believe that an unprecedented number of public responses were submitted to the department outlining concerns on scope and application, and we wait to see whether the government will act to address them.

The government also published its Brexit white paper in this period, laying out its approach to negotiations with the European Union. This contains a number of positive steps, including a common rulebook for all goods including agri-food and the intention to include a non-regression clause in the future relationship.

Yet the uncertainty surrounding the government's Brexit policy, negotiation strategy and parliamentary support adds a further, anxious dimension to this analysis. There are significant concerns with the increasing possibility of a no deal Brexit, and the potentially disastrous consequences this would have on the environment. Greener UK's paper on 'no deal', published in July, explored these fears in detail.

The prospect of a no deal Brexit should alarm anyone who cares for the UK's environment and countryside. It will have deeply damaging consequences that will be felt for years to come. The Risk Tracker needs to be read in this context: almost all the concerns we raise are considerably amplified by the prospect of crashing out of the EU without a deal.









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




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### Verdicts key:

-  Low risk
-  Medium risk
-  High risk

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## **Air pollution**


The government is still in breach of the Ambient Air Quality Directive. In February, it lost another legal challenge by ClientEarth against its widely criticised 2017 Air Quality Plan and was ordered by the High Court to outline plans for the 33 English local authorities with whom it admitted it had been taking a 'less formal approach'. The plans need to be published by 5 October 2018. Meanwhile, feasibility studies and initial consultations published by local authorities reflect concerns that the government's guidance has lacked detail to meet key legal tests.

In May, the European Commission stepped up its continuing infringement proceedings against the UK, referring the UK to the European Court of Justice (ECJ) over its failure to respect air pollution limit values, and for failing to take appropriate measures to keep exceedance periods as short as possible.

Also in May, Defra published a draft Clean Air Strategy for consultation. This is a precursor to the National Air Pollution Control Programme the UK is obliged to deliver by April 2019, setting out how it will meet binding emission reduction targets for 2020 and 2030 under the EU National Emissions Ceiling (NEC) Directive. The European Environment Agency has recently reported that the UK is not on track to meet the majority of these targets. The Clean Air Strategy sets out high level proposals for reducing air pollution emissions from a range of sources, including farming and domestic heating, but fails to commit to delivering further measures to tackle emissions from road transport, which remain the main source of illegal levels of air pollution in the UK.

The government's failures to date are a concerning indication of its likely approach to air quality after the UK leaves the EU, and highlight the need for the proposed new green watchdog to be independent with the necessary powers, resources, and expertise to hold the government to account. The government's plans currently fall short of the ECJ's powers in being able to initiate court action and extending to the failures of public authorities.

### **1 Principles & strategies**

 The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the environmental principles that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra launched a consultation on this issue. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

In May, Defra published a draft Clean Air Strategy for consultation. This is a precursor to the National Air Pollution Control Programme the UK is obliged to deliver by April 2019, setting out how it will meet binding emission reduction targets for 2020 and 2030 under the EU National Emissions Ceiling (NEC) Directive. The European Environment Agency has recently reported that the UK is not on track to meet the majority of these targets. The Clean Air Strategy sets out high level proposals for reducing air pollution emissions from a range of sources, including farming and domestic heating, but fails to commit to

delivering further measures to tackle emissions from road transport, which remain the main source of illegal levels of air pollution in the UK.

It is important that the UK both demonstrates how it will meet the binding targets and introduces an independent oversight body with the capability to enforce targets after the UK leaves the EU.

## 2 Legislation



The EU (Withdrawal) Act was improved during its passage through parliament, in particular the inclusion of section 16 which requires the secretary of state to bring forward proposals for a new law to enshrine the environmental principles and establish a new independent watchdog. Useful changes were also made to the extensive powers given to ministers to 'correct' retained EU law in preparation for the UK's departure from the EU.

However, we remain concerned about how these statutory instruments will be drafted and scrutinised, given their potential ability to alter the law. 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. Further, given that the 'right to clean air' stems from ECJ case law, the ability of citizens and NGOs to hold government to account against these limits risks being diluted after Brexit, unless addressed in the forthcoming environment bill.

## 3 Capacity & funding



At least 20 of Defra's 70 Brexit-related work streams have an IT component, four of which would require new IT platforms to be built in the event of a 'no deal' Brexit. In May 2018, a Public Accounts Committee (PAC) report assessing Defra's Brexit preparedness highlighted 'Defra's poor track record in implementing new IT systems'. Defra has accepted that, if these systems are not in place in time, it will have to rely on 'manual workarounds'. This increased workload, alongside introducing three major bills on agriculture, fisheries, and environment, comes at a time when Defra is required to find efficiency savings of £138 million in 2018-19. The PAC does not believe it is possible for Defra to complete all its current work and achieve these efficiency savings.

In its latest Air Quality Plan, required under EU law, the government continued to pass responsibility for the development and implementation of pollution-reduction measures to English local authorities, and directed 28 local authorities to carry out feasibility studies to identify measures to achieve legal air pollution limits in their areas in the shortest time possible. The Air Quality Plan committed funding to support the completion of those studies and the implementation of the measures identified by them. As a result of ClientEarth's victory in court in February, the government directed an additional 33 local authorities suffering from illegal levels of air pollution to carry out their own feasibility studies. However, these additional 33 local authorities are expected to draw from the same funds earmarked for the 28 English local authorities previously mandated to take action. There is concern that funding has been significantly diluted as a result and is far from sufficient to support effective action to address air pollution in these areas.

Despite calls from the super-inquiry of four select committees for more funding and support to be provided to these local authorities, the government failed in its June response to confirm that any additional funding would be provided. This is a concerning indication of how air quality law will be implemented after Brexit.

#### 4 Governance



The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

In May, the European Commission stepped up its continuing infringement proceedings against the UK, by referring the UK to the ECJ over its failure to respect air pollution limit values and take appropriate measures to keep exceedance periods as short as possible. The threat of such proceedings, and the ultimate fines that can result from them, have been recognised as a principal factor in prompting action by the government to remedy its lack of compliance with air quality 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.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

#### 5 Co-operation



The government has published its Brexit white paper, 'The Future Relationship between the United Kingdom and the European Union'. Its inclusion of non-regression on environmental standards is welcome progress, as it was not long ago that the environment secretary described it as 'unnecessary'. It is also welcome that the environment in general is considered important to the future relationship.

While the UK government has spoken positively about the need for common frameworks and environmental governance models to be co-designed with the devolved administrations, it is difficult to see what meaningful action has been

taken to ensure that this process of co-design is actually instigated. Our health and environment can only be protected if the UK and devolved governments co-operate, and the lack of transparency and stakeholder engagement in this process is concerning.


## **Chemicals**

Though the government's [Brexit White Paper](#) features a welcome re-affirmation that the UK will be seeking 'active' participation in the European Chemicals Agency (ECHA), much uncertainty remains over how achievable this will be. The UK government's proposals only address two of the three preconditions likely to be set by the EU for the UK to participate in REACH, falling short of committing to staying within the EU's chemical-related laws.


These linked laws are essential for the protection of human health and the environment, and without movement on either side, the EU will not accept the UK's request to stay in ECHA. In the coming months, there will need to be an assurance from the UK government that it has the will to make this required compromise in order to make its intention of staying in REACH a reality. If the EU27 do permit the UK to remain in ECHA, although it will maintain access to the ECHA database, the UK government has conceded it will forfeit the voting rights it currently enjoys.

If a compromise is not found, the progress made in recent years on keeping the UK public protected from problematical chemicals, as well as the continuing success of the chemicals sector, may be at risk.

### **1 Principles & strategies**

-  The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the [environmental principles](#) that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra launched a consultation on this issue. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

### **2 Legislation**

-  The EU (Withdrawal) Act was improved during its passage through Parliament, in particular the inclusion of section 16 which requires the secretary of state to bring forward proposals for a new law to enshrine the environmental principles and establish a new independent watchdog. Useful changes were also made to the extensive powers given to ministers to 'correct' retained EU law in preparation for the UK's departure from the EU. However, we remain concerned about how these statutory instruments will be drafted and scrutinised, given their potential ability to alter the law.

The government's Brexit white paper reaffirmed that the UK will seek 'active' participation in the European Chemicals Agency (ECHA) and the linked REACH chemicals regulatory system. The UK government's proposals address two of the three preconditions that we believe will be necessary for the UK to stay in REACH: that the UK would forfeit its voting rights on decisions on chemicals in

REACH; and that the UK may continue to respect the remit of the European Court of Justice. However, the government's paper does not meet the third condition of staying within the EU's chemical related laws (e.g. the Industrial Emissions Directive or the Water Framework Directive). The failure of the UK and EU to find agreement, particularly on this last point, could mean the UK leaves REACH, to the significant detriment of chemical regulation in the UK and Europe.

### 3 Capacity & funding



The prospect of the UK leaving the EU in March 2019 without a deal has increased in recent months, raising serious concerns regarding the government's plans for the chemical sector in the case of a 'no deal' Brexit. Since 2017, Defra's position has been to leave REACH and replace it by creating a new UK chemical regime that could cost 'several tens of millions of pounds'. During a House of Lords EU Energy and Environment Committee session in late July, environment minister Thérèse Coffey stated that Britain should be able to 'copy and paste' data from the REACH database before Brexit. This approach is unlikely to yield the success anticipated by the minister, due to the complex concerns around intellectual property rights of the data which is owned by chemical companies.

Further, 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. If the government plans to copy REACH processes using the EU (Withdrawal) Act, then this provides no guarantee that the UK process will draw the same conclusions as the EU regarding which chemicals to control. This creates a real risk that the public, workers and the environment will be exposed to chemicals that have been partially or fully banned in the EU.

If the UK is permitted by the EU27 to remain in ECHA then the UK would be able to maintain many of the benefits that it currently enjoys, such as access to the ECHA database, though without voting rights.

### 4 Governance



The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

In its Brexit white paper published this month, the government accepts that: 'Where the UK participates in an EU agency, the UK will respect the remit of the

Court of Justice of the European Union (CJEU)'. As one of the three conditions likely to be set by the EU27 for associate membership of ECHA, this acknowledgement is warmly welcomed. However, there is no mention of the laws on chemical pollution and health and safety in the white paper. The government's commitment to the 'non-regression of environmental standards' offers no assurance that the UK will continue to update its chemicals regulations as new problems are identified, as the EU does.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

## 5 Co-operation

⊖ The government has published its Brexit white paper, 'The Future Relationship between the United Kingdom and the European Union'. Its inclusion of non-regression on environmental standards is welcome progress, as it was not long ago that the environment secretary described it as 'unnecessary'. It is also welcome that the environment in general is considered important to the future relationship.

Under the current EU position, the government's white paper proposals do not meet the expected conditions for associate membership of ECHA. The third precondition, staying within the EU's chemical-related laws covering water pollution, factory emissions and health and safety, is missing. Without movement on either side, the EU will refuse the UK's request to stay in ECHA.

Even if the UK does fulfil all three requirements, there is a risk the EU27 could view staying in REACH as 'cherry picking'. The EU's Article 50 Taskforce has taken a strong line against the UK participating in EU agencies like ECHA, noting that 'the UK's decision to leave the Single Market automatically implies leaving the European Agencies, this is a consequence of a UK sovereign decision'.

Meanwhile, the risk of the UK leaving with no deal remains significant. In the case of chemicals, if the UK fails to secure access to the ECHA, and the new UK equivalent system for registering chemicals moves more slowly than REACH, the UK could become a dumping ground for harmful substances banned in the EU.

## ⊖ Climate & energy

The government's Brexit white paper briefly elaborates on the UK's position on matters of energy and climate, but does not go significantly further than the prime minister's Mansion House speech in March, which recognised that energy requires close co-operation. Both the speech and white paper express interest in exploring possible options for the UK's continued participation in the internal energy market with a strong emphasis on ensuring no disruption to the Irish single electricity market. The inclusion of the non-regression principle alongside a commitment to harmonised energy product standards with the EU, in the white paper, is a further positive commitment from the UK.



However, the extent to which the UK will continue to participate in the EU's effort sharing agenda to meet international climate targets remains unclear and so does the UK's participation in the EU's emissions trading scheme from 2020. The white paper suggests that the UK government views its participation in the internal energy market as not incumbent on it adopting the wider energy and climate acquis, so there is little clarity on how regulation will evolve post Brexit.

Additionally, the government's environmental principles and governance consultation has a significant flaw as climate change is excluded from the proposed watchdog's remit. This creates an artificial divide between the enforcement of climate policy and the rest of environmental policy, and could lead to potential unintended consequences.

### 1 Principles & strategies

- ⊖ The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the environmental principles that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra launched a consultation on this issue. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

### 2 Legislation

- ⊖ The EU (Withdrawal) Act was improved during its passage through Parliament, in particular the inclusion of section 16 which requires the secretary of state to bring forward proposals for a new law to enshrine the environmental principles and establish a new independent watchdog. Useful changes were also made to the extensive powers given to ministers to 'correct' retained EU law in preparation for the UK's departure from the EU. However, we remain concerned about how these statutory instruments will be drafted and scrutinised, given their potential ability to alter the law.

### 3 Capacity & funding

- ⊗ There has been no major progress on clarifying future funding for low carbon energy infrastructure in the UK after we leave the European Investment Bank (EIB) and other European investment bodies such as the Connecting Europe Facility (CEF) and Horizon 2020. This comes as green investing in the UK falls to the lowest levels in a decade.

The Treasury has stated that its UK guarantee scheme for infrastructure projects will significantly contribute towards low carbon infrastructure requirements. However, the National Infrastructure Commission has called for the setting up of a UK infrastructure finance institution if the UK loses access to the EIB. In March, the green finance task force made similar recommendations to the government on accelerating green finance in Britain.

HMT and the EIB are in regular conversation but neither has made any public statements on the future relationship. Unless the terms of the European treaties are amended, Brexit will result in the UK leaving its shareholder position

in the EIB, losing a significant source of investment in the infrastructure required to decarbonise the UK's economy.

#### 4 Governance



The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

The current proposals also ignore climate change and suggest it should not be within the remit of the proposed environmental body. This poses a significant gap in climate governance that needs to be addressed. Fifty-five per cent of the UK's emission reductions up to 2030 are expected to come from EU-derived regulation that is designed and governed by EU institutions; leaving the EU therefore creates a climate governance gap. It is artificial to see climate and environment as two distinct areas as there is significant overlap between environmental regulation and climate change.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

#### 5 Co-operation



The government's Brexit white paper briefly elaborates on the UK's position on matters of energy and climate, but does not go significantly further than the prime minister's Mansion House speech in March, which recognised that energy requires close co-operation. Both the speech and white paper express interest in exploring possible options for the UK's continued participation in the internal energy market with a strong emphasis on ensuring no disruption to the Irish single electricity market. The inclusion of the non-regression principle alongside a commitment to harmonised energy product standards with the EU, in the white paper, is a further positive commitment from the UK.

However, the extent to which the UK will continue to participate in the EU's effort sharing agenda to meet international climate targets remains unclear and so does the UK's participation in the EU's emissions trading scheme from 2020. The white paper suggests that the UK government views its participation in the internal energy market as not incumbent on it adopting the wider energy and climate acquis, so there is little clarity on how regulation will evolve post Brexit.

In the context of a Europe-wide net-zero goal that is currently being mooted, closer co-operation between the UK and the EU will be critical in meeting these ambitious targets in a cost-effective way. However, there is an acknowledgement within DExEU that energy and climate regulation post Brexit remains a matter for negotiation and therefore open to trade-offs, which could make co-operation more difficult.

Meanwhile, the risk of the UK leaving with no deal remains significant. Leaving the EU without a deal would make it harder for the UK to meet its emissions reduction targets in the long term, increase energy bills for consumers and undermine investment in critical energy infrastructure.

## ⊖ Farming and land use

After the secretary of state initially suggested that the agriculture bill may be tabled before the summer recess, it is now expected that this will be tabled in September, alongside a detailed document setting out Defra's response to the public consultation on the future of 'food, farming and the environment in a Green Brexit'. Government policy has therefore not advanced significantly in the period between April and July, at least with regard to publicly available statements and information. In appearances in front of the EFRA committee on 13 June and the Environmental Audit Committee (EAC) on 11 July, the secretary of state reiterated much of the content of the consultation paper.

Co-operation across the UK remains a major point of concern, as does the extent to which the agriculture bill will reflect the welcome ambition shown by the Westminster government to date.

### 1 Principles & strategies

⊖ The government remains committed to the principle of public money for public goods as the principle that will underpin a future farming and land management policy in England. Although the government's preferred definition of 'public goods' remains unclear, this continued commitment is welcome.

In its consultation on post-Brexit agriculture and land management policy, the Government signalled a welcome intention to move to a better application of the polluter pays principle. Meanwhile, the EU (Withdrawal) Act 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.

### 2 Legislation

⊖ The agriculture bill, initially expected before the summer recess, has now been delayed until at least September 2018, and potentially October. Although not a significant concern at this stage, further delays beyond this would begin to create significant uncertainty about the government's legislative programme for agriculture.

In evidence to the EFRA committee in June, the secretary of state suggested that the legislation would be a 'framework bill', focused on the powers needed

for ministers to bring forward policy through secondary legislation. This gives rise to concerns that the Government's welcome ambition for environmental protection and enhancement to be the 'principal public good' may not stand the test of time. The agriculture bill should include a broad purpose on the face of the bill that reflects the aim to secure public goods not provided by the market, and drive forward environmental enhancement in line with the outcomes of the 25 year environment plan. Without this, England could potentially see more of the same structures for subsidy, and the environmental decline that it has helped precipitate, even if the EU addresses these in the next round of reform.

A series of statutory instruments were laid in May 2017 to transpose the requirements of the EU's 2014 Amending EIA Directive. It remains unclear 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 built 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



Concerns remain about whether Defra has the capacity to develop, trial and implement a new environmental land management system and wider agriculture policy from 2020, at the same time as meeting the challenges associated with Brexit and the need to continue improving existing policies, particularly the current Countryside Stewardship agri-environment scheme.

Similar to other departments, the Ministry of Housing, Communities & Local Government (MHCLG) has had to make overall resource savings. MHCLG is the principal department in respect of EU-derived planning legislation including the 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.

The Dame Glenys Stacey review into farm inspections and regulation published its interim report for government in July 2018. It states that a farm in England has a one in 200 chance of a visit from one of the Environment Agency's small team of 40 inspectors. This chronic lack of capacity to enforce existing regulations gives rise to significant questions about the government's ability to enforce environmental protections adequately post-Brexit, and move toward a more effective implementation of the polluter pays principle (indicated as a priority in a recent consultation on future farming policy).

### 4 Governance



The new governance body being consulted on as part of the environmental principles and governance bill should have a key role to play in scrutinising the performance of farming and land management policies in future. As the key delivery mechanism for the 25 year environment plan outcomes, and now

presumably for any targets associated with the recently announced environment bill, it will be essential that the new watchdog has this function.

At present, it is not clear whether the Westminster government intends the watchdog to have this role explicitly. However, if it did, it would represent a marked step forward compared to the EU's Common Agricultural Policy (CAP), which was largely outside the auspices of the Directorate-General for the Environment (DG ENVI), and subject to its own audit and performance metrics separate from the environmental acquis.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

## 5 Co-operation



The extent to which the UK Government and devolved administrations will cooperate on future farming and land management policies is unclear. At present, the indication is that any UK frameworks will be minimal, limited to maintaining the integrity of the UK internal market and meeting the UK's obligations under the World Trade Organisation.

The Cabinet Office's analysis of areas that will need common frameworks across the four nations of the UK 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.

Compared to the CAP, which at least had common environmental objectives and mechanisms, such minimal co-operation would be a major step backwards. Without checks and balances on policies such as coupled payments (payments per head of livestock or unit of production), there is a very real possibility of a competitive 'race to the bottom'. This could undermine any rhetoric of a 'green Brexit', and risks repeating the environmental degradation driven by agricultural policies in the 1960s, 1970s and 1980s.

The UK government and devolved administrations should work together in order to develop common frameworks for future agricultural policies with environmental ambition at their core.



## Fisheries

The consultation on the UK government's fisheries white paper covers a number of areas related to future fisheries policy including future access to UK waters, allocation of quotas and fishing opportunities, and future working relationships with the devolved administrations. There is a welcome focus on ecosystem-based management throughout the document, but the white paper is generally

unambitious with regards to ensuring sustainability of stocks and environmental protection, and falls short on issues such as efforts to eliminate bycatch. The fisheries bill is expected later in the year.

### 1 Principles & strategies

- ⊖ The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the environmental principles that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra's consultation on environmental principles and governance was launched in May. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

The fisheries white paper sets out that the forthcoming fisheries bill will include a provision requiring the secretary of state to develop a policy statement with ministers from the devolved administrations on how to apply specified sustainability principles and objectives in fisheries management. However, in order to be sufficiently powerful, sustainability commitments must be listed on the face of the bill and should be attached to an overarching duty on every public authority with any function relating to fisheries activity or management.

Meanwhile, the consideration in the white paper of a 'days-at-sea' or 'effort control' model would undermine efforts to create and implement a sustainable fishing policy. Effort control is a largely discredited policy with multiple cases from around the world indicating damage to fish stocks and incompatibility with sustainable fishing. If this trial goes ahead, and effort control is thereafter adopted, there will be a significant risk that stocks will be overfished leading to reduced sustainability. There are also proposals for tackling bycatch that fall short of current EU ambitions.

### 2 Legislation

- ⊖ The fisheries bill is now expected later in the year. Defra has confirmed that the scope of the fisheries bill will be limited to quotas and access to UK waters, and will not address fisheries management. Due to the limited scope of the bill there is a chance that ecosystem-based sustainable management principles will not be included on the face of the bill, which would weaken the UK's environmental protection after Brexit.

### 3 Capacity & funding

- ⊖ At least 20 of Defra's 70 Brexit-related work streams have an IT component, four of which would require new IT platforms to be built in the event of a 'no deal' Brexit. In May 2018, a Public Accounts Committee (PAC) report assessing Defra's Brexit preparedness highlighted 'Defra's poor track record in implementing new IT systems.' Defra has accepted that, if these systems are not in place in time, it will have to rely on 'manual workarounds'.

This increased workload, as well as introducing three major bills on agriculture, fisheries, and environment, comes at a time when Defra is required to find efficiency savings of £138 million in 2018-19. The PAC does not believe it is

possible for Defra to complete all its current work and achieve these efficiency savings.

The EU fisheries acquis is extensive. It is unclear whether Defra will be able to cope with any additional workload associated with 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 has happened at EU level thus far. There also remain concerns over the extent to which environment and fisheries are being viewed in separate silos within Defra.

#### 4 Governance



The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

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.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

#### 5 Co-operation



The EU and UK have provisionally agreed a 21-month transitional trade period from March 2019 to December 2020, 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. This has been viewed negatively by the fishing industry, which would like the government to continue to negotiate quotas on their behalf. However, both the EU and UK have agreed to work co-operatively and fairly during this transition period, which will allow more time to arrange a suitable trade deal post-transition.

The government's fisheries white paper does recognise that co-operation between the UK government and the devolved administrations is necessary on a number of issues to ensure the UK as a whole meets its international obligations – for example, the negotiation and distribution of quotas, the implementation and management of the landing obligation, and on Illegal, Unreported and Unregulated (IUU) fishing.

Continued co-operation would help to ensure the ability to trade both within the UK and externally. On the other hand, a lack of co-operation could lead to over-fishing and the collapse of stocks. The lack of transparency and stakeholder engagement in this process is concerning.

## **Nature protection**


Defra's publication of the consultation on environmental principles and a new environmental watchdog is welcome, but the proposals are inadequate in a number of areas, such as confirmed independence and application of principles.

While the EU (Withdrawal) Act was improved during its passage through Parliament, there are still uncertainties over the drafting and scrutiny of statutory instruments enacted to 'correct' retained EU law, and concerns that long-standing gaps in transposition will not be addressed. Government rhetoric is yet to be matched by conservation action on the ground.


A lack of capacity continues to adversely affect the ability of Defra and statutory conservation agencies to carry out existing functions, and replace those roles and responsibility currently performed by EU institutions.

How ongoing co-operation will be ensured between the UK and its neighbouring countries, in particular the Republic of Ireland, remains unclear, and the risk to this co-operation from the UK leaving with no deal is significant.

### **1 Principles & strategies**

-  The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the environmental principles that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra launched a consultation on this issue. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

### **2 Legislation**

-  The EU (Withdrawal) Act was improved during its passage through Parliament, in particular the inclusion of section 16 which requires the secretary of state to bring forward proposals for a new law to enshrine the environmental principles and establish a new independent watchdog. Useful changes were also made to the extensive powers given to ministers to 'correct' retained EU law in preparation for the UK's departure from the EU.

However, we remain concerned about how these statutory instruments will be drafted and scrutinised, given their potential ability to alter the law. To ensure equivalence between UK and EU law, long-standing gaps in the transposition of EU nature conservation laws into UK laws must be corrected before the UK's departure.



### 3 Capacity & funding

- ⊖ At least 20 of Defra's 70 Brexit-related work streams have an IT component, four of which would require new IT platforms to be built in the event of a 'no deal' Brexit. In May 2018, a Public Accounts Committee (PAC) report assessing Defra's Brexit preparedness highlighted 'Defra's poor track record in implementing new IT systems.' Defra has accepted that, if these systems are not in place in time, it will have to rely on 'manual workarounds'. This increased workload, as well as introducing three major bills on agriculture, fisheries, and environment, comes at a time when Defra is required to find efficiency savings of £138 million in 2018-19. The PAC does not believe it is possible for Defra to complete all its current work and achieve these efficiency savings.

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### 4 Governance

- ⊖ The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

### 5 Co-operation

- ⊗ The government has published its Brexit white paper, 'The Future Relationship between the United Kingdom and the European Union'. Its inclusion of non-regression on environmental standards is welcome progress, as it was not long ago that the environment secretary described it as 'unnecessary'. It is also welcome that the environment in general is considered important to the future relationship.

At the same time, how we co-operate, and in what areas, remains largely ambiguous. For example, it remains unclear how the current river basin management approach established through the Water Framework Directive, and key to co-operation between the Republic of Ireland and Northern Ireland for conserving shared freshwater habitats, will be affected. Similarly there is

little clarity on how the UK will ensure its marine protected areas network is ecologically coherent in its own right, separately from EU networks of marine protected areas.

Meanwhile, the risk of the UK leaving with no deal remains significant. This could have significant implications for co-operation in relation to transboundary wildlife and habitats in the terrestrial environment between Northern Ireland and the Republic of Ireland, and in the marine environment between the UK and all those EU and non-EU countries with which it shares a marine border.


While the UK government has spoken positively about the need for common frameworks and environmental governance models to be co-designed with the devolved administrations, it appears no meaningful action has been taken to ensure that this process of co-design is actually instigated. Our health and environment can only be protected if the UK and devolved governments co-operate, and the lack of transparency and stakeholder engagement in this process is concerning.

## Waste and resources

There has been little change in direction since the last update period. Concerns remain that Defra lacks the capacity to meet ambitious recycling targets, while Defra's civil servants continue to prepare a new resources and waste strategy for England, which is now due before the end of the year.

The EU's Circular Economy Package, amending six key directives on waste, was finally introduced in July. This means member states have until 5 July 2020 to transpose the legislation into domestic law. Although this will be after exit day, it is welcome that the UK has promised to adopt the package after reversing behind the scenes opposition to the recycling targets earlier in the year.

### 1 Principles & strategies

 The EU (Withdrawal) Act places an obligation on the secretary of state to bring forward legislation to retain the environmental principles that appear in the EU Treaties, such as the precautionary principle and the polluter pays principle, which underpin all environmental law and policy. Defra launched a consultation on this issue. However, the government's proposals are inadequate in a number of areas. In particular, they propose very weak duties that only apply to ministers of the crown and not to public authorities.

The government has now confirmed that it will also be backing targets in 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 2035) were 'too high to be achievable' in the UK. This is a welcome development.

The National Infrastructure Commission has also assessed that the UK ought to be more ambitious by setting a target for recycling 65 per cent of municipal waste by 2030 and establishing separate food waste collections for

households and businesses by 2025. We await further details from the domestic strategy promised for the autumn that should outline how the country will at least meet, if not exceed, the minimum standards set by the EU.

The European Commission, meanwhile, has published its own plastics strategy, which is not legally binding but sets a framework for future EU action. It also released a new proposal for a directive on single-use plastic and fishing gear at the end of May, which proposes bans and curbs on many of the most commonly littered plastic items found in the marine environment. The UK Treasury has also been consulting on single-use plastic taxes, with a consultation that closed in March. Brexit means it is unclear whether the UK will aim to meet the goals of this EU strategy or go in a separate direction, especially as the current timeline for the EU directive will not see the final proposal agreed until April 2019, after exit day.

## 2 Legislation



The EU (Withdrawal) Act was improved during its passage through Parliament, in particular the inclusion of section 16 which requires the secretary of state to bring forward proposals for a new law to enshrine the environmental principles and establish a new independent watchdog. Useful changes were also made to the extensive powers given to ministers to 'correct' retained EU law in preparation for the UK's departure from the EU. However, we remain concerned about how these statutory instruments will be drafted and scrutinised, given their potential ability to alter the law.

The EU's Circular Economy Package entered into force on 4 July, meaning member states have until 5 July 2020 to transpose the package into domestic law. Although this date is after exit day, the UK government has confirmed it will be adopting the package, which is a welcome development, but care must be taken that the package is implemented in its entirety.

## 3 Capacity & funding



At least 20 of Defra's 70 Brexit-related work streams have an IT component, four of which would require new IT platforms to be built in the event of a 'no deal' Brexit. In May 2018, a Public Accounts Committee (PAC) report assessing Defra's Brexit preparedness highlighted 'Defra's poor track record in implementing new IT systems'. Defra has accepted that, if these systems are not in place in time, it will have to rely on 'manual workarounds'. This increased workload, as well as introducing three major bills on agriculture, fisheries, and environment, comes at a time when Defra is required to find efficiency savings of £138 million in 2018-19. The PAC does not believe it is possible for Defra to complete all its current work and achieve these efficiency savings.

It is unfortunate that Defra is so stretched as it is preparing its first major resources and waste strategy in more than a decade. Capacity constraints mean that it is unlikely to be able to deliver the breadth of policy proposals made possible with greater resources.

#### 4 Governance

- ⊖ The government has pledged repeatedly to address the environmental governance gap that will arise upon the UK's exit from the EU. The EU (Withdrawal) Act 2018 requires the secretary of state to publish proposals for legislation to set up a new environmental body to hold the government to account, and for this body to have enforcement functions, including through legal proceedings.

However, Defra's proposals on governance fail to replicate the current role of EU bodies. For example, the consultation on the new body does not strongly back a complaints process for citizens, ignoring the vital role civil society has played in upholding environmental law. And far more clarity is needed on how the government intends to ensure that the new body will be independent, robust and equipped with the necessary expertise and resources to do the job well.

Given the likelihood that the UK will fail to meet the obligations under previous EU directives on waste, including the 2020 target to recycle 50 per cent of municipal waste, the potential lack of a robust governance mechanism is worrying. It will be vital that the government can be held to account in future, should the UK miss existing targets in 2020 and targets it has promised to adopt from the EU's Circular Economy Package.

In the event of no deal with the EU, the new governance arrangements would not be in place in time for exit day, and it is not clear how the governance gap would be filled in the short term.

#### 5 Co-operation

- ⊖ The government has published its Brexit white paper, 'The Future Relationship between the United Kingdom and the European Union'. Its inclusion of non-regression on environmental standards is welcome progress, as it was not long ago that the environment secretary described it as 'unnecessary'. It is also welcome that the environment in general is considered important to the future relationship.

In the government's provisional analysis of the policy areas where common legislative or non-legislative frameworks may be needed, waste and resources legislation is listed as an area where non-legislative common frameworks may be required. This contrasts confusingly with some waste packaging and product regulations where the analysis says legislative common framework arrangements may be needed.

While the UK government has spoken positively about the need for common frameworks and environmental governance models to be co-designed with the devolved administrations, it appears no meaningful action has been taken to ensure that this process of co-design is actually instigated. Our health and environment can only be protected and resources properly managed if the UK and devolved governments co-operate, and the lack of transparency and stakeholder engagement in this process is concerning.


Meanwhile, the risk of the UK leaving with no deal remains significant. This is problematic, not least for the trade in electronics, as the country could become dumping ground for low-quality goods if the UK does not apply the same high design standards.

## Water

The government is failing to act in a number of EU policy areas relating to water, particularly around land management, phosphorus and abstraction. This is concerning as an indication of its approach to water quality after the UK leaves the EU. Environment Secretary Michael Gove has urged water companies to act in the public interest, but whether this exhortation will result in any meaningful change in corporate practice remains to be seen.


Progress on environmental issues in the Brexit white paper, including the commitment to non-regression, is welcome, but the UK government must publish more details about its environmental priorities for the future relationship with the EU. Many factors regarding trade, for example, affect the quality, hydrology and ecology of our aquatic habitats: from agriculture to manufacturing, water is needed and waste water is discharged.

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In addition to the polluter pays principle another key principle in water legislation is 'no deterioration', which is brought into legal effect through Article 4 of the Water Framework Directive. Compliance at both a project and plan level with 'no deterioration' is reasonable in the regulated water industry and in the town and country planning sector; however, it is not being properly and proactively applied in other sectors such as agriculture, where land management changes that either risk or cause deterioration are not being prevented.

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There are also concerns around levels of ambition post-Brexit. In a [letter](#) to Mary Creagh MP following an Environmental Audit Committee meeting in April, Environment Secretary Michael Gove highlighted challenges with implementing the Water Framework Directive (WFD) in the UK and across Europe. However, rather than calling for better, faster and fairer implementation, Mr Gove pointed towards further extensions to deadlines beyond 2027 and a further weakening of objectives and ambition. This is concerning as an indication of the possible approach after Brexit.

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Water companies currently invest significant sums of money in order for the UK to comply with EU regulations. We have [significant concerns](#) over the impacts of Brexit on both the governance of the sector and the capacity and preparedness of regulators.

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August 2018