

Brexit risk tracker 6

August - November 2018

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Verdicts key

-  Low risk
-  Medium risk
-  High risk

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

General summary

This update covers perhaps the most contentious stage yet of the Brexit process. As debate increased over what kind of future the UK should seek, Greener UK launched a set of ['Brexit benchmarks'](#) to measure how far environmental standards will be protected and enhanced in the event of different Brexit outcomes.

These were particularly useful when the UK government published the [Withdrawal Agreement](#) and accompanying [political statement](#) on the future relationship in November. [Our analysis](#) found several welcome elements of the agreement, including its commitment not to backslide on standards and its requirement for an independent and robust green body or bodies that far exceed Defra's current proposals.

Yet concerns and questions persist. The political statement says little about future co-operation and ambition, in areas such as nature protection. If the new governance body or bodies are weaker than current EU institutions, standards are likely to slip.

Risks remain, particularly that of a ['no deal' Brexit](#). Leaving without a deal would have a hugely detrimental impact on the environment and must be challenged on that basis.

Air pollution

In September, the UK government submitted its [report](#) on compliance with the Ambient Air Quality Directive for 2017 to the European Commission. This confirmed that 37 UK zones and agglomerations were still in breach of legal limits for nitrogen dioxide that should have been met in 2010. Effective enforcement of environmental laws post-Brexit will depend on the proposed new body's independence and powers.

There are [concerns](#) as to whether the government's final air quality plans will comply with the necessary legal tests and satisfy the secretary of state's duties under the Ambient Air Quality Directive. In addition, there seems to have been [slow to zero progress](#) by the UK government in developing supporting measures. The Prime Minister has [stated](#) that the forthcoming environment bill will address air quality, with the draft bill to be published imminently.

The proposed [Withdrawal Agreement](#) between the UK and the EU contains provisions that may give some safeguards to air quality laws by preventing any reduction in existing standards. It is unclear whether these provisions cover all air quality laws or not, though we would expect them to do so.

Chemicals

The publication of the [draft Political Declaration](#), which will guide negotiations following the UK's departure from the EU, includes a commitment to 'explore the

possibility of co-operation of the UK with the European Chemicals Agency (ECHA)' and states that the UK 'will consider aligning with Union rules in relevant areas'. This is a welcome commitment, as UK participation in the EU's chemical regime, REACH, even as a non-voting member, would benefit both the UK and the EU.

There are concerns, however, with the [draft Withdrawal Agreement](#). Under the 'backstop' provisions, there could be a temporary customs union once the transition period ends if there is no extension or a trade agreement has not been reached. From the text, it is clear that if Great Britain entered the temporary customs union then it would not be in REACH, as there is no commitment for continued alignment with EU chemical-related laws – just a weaker commitment to 'non-regression'. In contrast, Northern Ireland would remain fully subject to REACH.

More positively, the text of the draft Political Declaration shows that there is a willingness on both sides to negotiate a free trade agreement that includes ECHA. Nevertheless, this does not mean that these negotiations will be successful, and there is more work to be done to develop the vague language into solid commitments.

In September, the UK government [published papers](#) on how the UK plans to transfer EU chemicals law REACH into UK law in the event of a no-deal exit from the EU. Defra has suggested that all existing chemical controls and a simplified decision-making process would be copied across from the EU but has made no commitment to follow future EU controls. The Health and Safety Executive (HSE) would act as the lead UK regulatory authority, deleting REACH's processes for stakeholder participation.

Combined with the government's failure to commit to following future EU standards on chemicals, this creates a significant risk for the protection of human health and the environment.

Climate & energy

The government has published the [Withdrawal Agreement](#), which contains commitments to non-regression on environment standards under the 'backstop' and a commitment to future co-operation on climate change in the political statement. A careful reading of the agreement would also suggest that the scope for the independent green body or bodies would include climate policies and public authorities within its remit, going beyond what has thus far been proposed publicly by the UK government.

However, the publication of the draft agreement has resulted in strong political push back, further raising the prospect of a 'no-deal' Brexit. Under such a scenario, the energy sector faces significant risks, with [consequences](#) of higher energy bills and a slowdown in progress to tackle climate change. The government has published technical notices on responding to a no-deal outcome but [several](#)

[questions remain](#) on the preparedness to maintain business as usual. The issue of the Irish border remains relevant to the single energy market on the island of Ireland, which can be [rendered inefficient and without any legal basis](#) if the UK exits without a deal.

Negotiations on the future relationship are yet to get underway but both the UK and the EU have expressed their commitment to a strong climate and energy partnership through the [political declaration](#). The declaration also suggests the UK will consider pursuing a domestic emissions trading scheme that will be linked to the EU Emissions Trading Scheme. The delivery of such a plan remains challenging given the [difficult history](#) of a similar effort to link the Swiss trading scheme with the EU's, with negotiations ongoing since 2011.

The role of the European Investment Bank in the future funding of UK energy infrastructure remains unclear, and clean energy [funding is already diminishing](#).

Farming & land use

The [agriculture bill](#) and accompanying [policy statement](#) were published in September. The latter builds on many of the themes in the Health and Harmony [consultation](#), with a commitment to reforming agriculture policy so that it enables farmers to better care for the natural environment, as well as improving animal welfare and public access to the countryside.

The agriculture bill itself enables the delivery of this vision up to a point, and there is a clear, time limited transition that the bill prescribes for the implementation of this new policy and phase out of the CAP, starting in 2021 and lasting for seven years. Although longer than ideal, this sets a clear timeframe.

The bill has [big gaps](#), however. The bill says nothing on whether funding will meet the scale of environmental need, while the government has only guaranteed funding up to the end of this parliament. The bill lacks a range of duties for ministers to use the powers it bestows, and omits the powers necessary for ministers to introduce new regulatory standards. It would be strengthened with firmer commitments not to undermine UK farmers with imports of food produced to lower standards, and a commitment that this or future legislation will introduce clear and binding targets to drive forward nature's recovery. Further indications of how the UK will co-operate with the devolved administrations would also plug a major gap in the bill.

The spectre of [no deal](#) still hangs over the sector, and risks derailing any positive outcomes that reform of agriculture policy could provide for the natural environment. So, while the agriculture bill and policy statement are potentially a major step forward, chickens are not being counted just yet.

Fisheries

The [fisheries bill](#) entered the House of Commons in October. The scope of the bill is wider than previously indicated, covering quotas and access as well as environmental protection.

While it is a piece of framework legislation, providing tools for fisheries management rather than setting out detailed policies, its broad direction is welcome. A number of fisheries objectives are on the face of the bill, including a commitment to sustainability.

However, there is significant [lack of legal safeguards](#), which could leave environmental protection weaker than it is now. There is no duty on authorities to deliver the sustainability objectives, and no legal commitment to ensure fishing limits cannot be set above scientifically recommended levels. The bill repeals an article of the Common Fisheries Policy (CFP) that has the specific target of limiting catches to sustainable levels – and does not replace it. Despite the [positive rhetoric](#), there are no legal requirements on restoring fish stocks to a healthy biomass, full documentation of catches, or robust monitoring and enforcement mechanisms. There is also no clear objective in the bill that fisheries management should be consistent with UK, devolved and international environmental legislation.

The [Withdrawal Agreement](#) published in November includes a non-regression clause that covers the protection and preservation of the aquatic and marine environment. This is welcome. It also sets out a requirement for an independent body or UK bodies going further than any proposals thus far published. However, a new agreement on access to waters and fishing opportunities must be reached by 1 July 2020 to come into force at the end of the transition period in January 2021. If no agreement can be reached, sustainable fishing limits may be threatened.

Nature protection

Details on the government's proposals for a new independent environment body are still to emerge.

More [detail](#) has emerged on the process for enacting the many hundreds of statutory instruments that will be needed to 'correct' retained EU law, and there is now some limited stakeholder consultation, which is welcome given their potential ability to alter crucial nature conservation laws. However, there are no apparent plans to address long-standing gaps in the transposition of EU nature conservation laws into UK laws. It is therefore difficult to see how the UK government will be able to keep its promises that the laws in force on exit day will be the same as those before, and that environmental protection will not be weakened.

There are also concerns over the government's plans to replace EU funding streams, including the [LIFE](#) fund and [BEST](#) initiative that have supported nature conservation in the UK and in the UK's Overseas Territories. These funding sources

have been vital for the kinds of targeted species recovery and habitat restoration work that other funding streams are not set up to deliver.

Despite the publication of the [Withdrawal Agreement](#), there remains a risk that the UK will leave the EU without a deal or with a future deal that fails to protect the environment. Whatever the future relationship between the UK and the EU27, any divergence in environmental laws carries significant risk for nature. The conservation of habitats and species that cross political borders requires a coordinated international approach, which is lacking from the Withdrawal Agreement.

Further, in the case of a [no deal](#) Brexit, the proposed new governance body would not be ready in time to ensure effective implementation of environmental laws. A no deal exit could also pose serious problems for co-operation between the four countries of the UK.

Waste and Resources

There has been little change since the last update period, as much will depend on Defra's resources and waste strategy for England, which is due imminently. Concerns remain that Defra lacks the capacity to deliver ambitious recycling targets. Already, the country looks [set to miss the EU's 2020 50 per cent recycling target](#), and it remains unclear how it will meet more ambitious goals beyond 2020 set out in the EU's Circular Economy Package (CEP) - which the UK has [promised to adopt](#). This will necessitate, amongst other moves, an overhaul of the [UK's packaging regulations](#), which is expected in the resources and waste strategy.

The recent [Budget](#) proposed bringing in a tax by 2022 on plastic packaging that uses less than 30 per cent recycled content. While this is a welcome move towards creating demand for recycled material, the UK is unlikely to meet recycling targets, let alone engender a more sustainable approach to resource use, without an overhaul in strategy. The new environment body will also play a significant role in enforcing these targets, and it is therefore important that the government comes forward with strong proposals.

At an EU level, there have been developments on legislation for single-use plastics, with a [new directive](#) expected to be agreed by December or January. The EU is also pushing ahead with plans to extend the Ecodesign Directive to improve resource efficiency, with the European Parliament in particular advocating standards for composition, durability, disassembly, repairability and recyclability for energy using products, though the ambition of the initial proposal appears to [be at risk](#) ahead of a series of votes in December and January. It is unclear whether the UK is supportive of more stringent targets, with the European Environment Bureau [suggesting the UK government will reject the proposals](#). A vote against the measures would be a worrying indication that the UK will not maintain ambition after Brexit.

The risk of the UK leaving with no deal has increased in recent months. This is problematic, not least for the trade in refuse derived fuel, which the UK currently sends to European countries for treatment, and for the trade in hazardous waste, which the Republic of Ireland currently sends to the UK for treatment. There are also concerns that the UK could become a dumping ground for low-quality goods if the UK does not apply the same high design standards as the EU after Brexit.

Water

The Withdrawal Agreement commits the UK to 'not reduc[ing] environmental protection below' the EU level at the end of the transition period, including the protection and preservation of the aquatic environment. Yet this is the only mention of either the aquatic environment or freshwater more generally in the agreement, so details remain scarce.

This allows for any changes in the current review of the Water Framework Directive (WFD) and Urban Waste Water Treatment Directive (UWWTD) to be reflected in the UK. We are concerned at the [direction taken](#) by some member states around the current review of the WFD being consulted on in Europe. It is important that the forthcoming environment bill ensures ambitious objectives and targets for water beyond the WFD.

It is understood that the Floods and Water Statutory Instrument will go through the negative process. This will give very little opportunity for influence unless we believe there is a good case for the sifting panel to call for it to go through a positive procedure.

There remain concerns that the main water-based Directives (WFD, UWWTD) have not been properly transposed into UK law, leading to [ongoing infraction cases](#). These transposition gaps would persist after Brexit under the government's current plans.

Diffuse pollution from agriculture is [one of the largest issues](#) affecting the quality of aquatic habitats, and it is therefore essential that a sustainable agriculture policy that works to benefit the environment is put in place. The fundamental aim of the [agriculture bill](#), to introduce a public money for public goods system, is important, but due to the diffuse nature of agricultural pollution it is critical that the regulatory baseline will be set at the appropriate level and is both effective and enforced. The [current](#) regulatory baseline does not meet these objectives with respect to diffuse pollution to water bodies.

Effective monitoring and investment in the environment, and subsequent creation and restoration of our freshwater ecosystems, is down to the ability and resources available to public bodies, especially the Environment Agency, which is being put under increasing pressure through [funding cuts and reductions in staff numbers](#).

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Greener UK is a group of fourteen 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.

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