

Parliamentary briefing ahead of the “meaningful vote”: analysis based on green benchmarks for Brexit (updated Jan 2019)

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What is needed for a greener UK

Brexit is a pivotal moment for the environment. An estimated 80 per cent of current environmental law stems from the EU, including policies that will deliver 55% of emissions reductions required in the UK by 2030.¹ The EU has provided an effective forum for tackling many of the environmental challenges we face, with robust mechanisms to ensure effective implementation and enforcement of environmental law. So we must make sure that no gaps in these vital protections open up as the Brexit process unfolds. Yet, even with the EU’s environmental protections, we also know that wildlife populations are collapsing, ecosystems degrading and the planet heating up at an alarming rate. The UK and devolved governments must therefore do better to reverse these trends, whatever the Brexit outcome.

In October 2018, Greener UK published a framework for judging the environmental outcomes of Brexit proposals, taking the process as a whole including new domestic legislation across the four countries of the UK, the future EU-UK relationship, and the prospect of future trade deals with new countries.²

The four green benchmarks for Brexit are as follows.

1. **Higher environmental standards** in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for backsliding.
2. **Effective systems of enforcement** of environmental law, fulfilling people’s rights to environmental information, public participation, access to justice and substantive remedies.
3. **Mechanisms for effective co-operation** on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.
4. **Trade policy that promotes high environmental standards**, minimises the UK’s global environmental footprint and is responsive to engagement by civil society.

In this paper we assess how the proposed deal measures up against our green benchmarks, and we set out key questions that we encourage MPs and peers to raise during the parliamentary debate on the deal. We recognise that MPs will cast their vote on the Withdrawal Agreement taking into consideration a wide range of factors. At this stage, it is unclear whether approving or rejecting the deal would lead to better environmental outcomes. We encourage parliamentarians to use the debate to interrogate how these four benchmarks will be met.

2. Context: the current arrangements

The EU provides strong environmental protection, but even with these laws and institutions we are not doing enough to address the severe environmental problems we face.

Standards

As a member of the EU, the UK is required to follow all existing EU law, including environmental principles, though it has the freedom to go further in many areas. Within the EU there is potential for significant fisheries reform. For example, the UK could reallocate quota on a more environmentally sound basis. The same is true for agriculture. We could spend more on environmental improvements and sustainable land management if we chose to. However, fundamental change depends on reform of the Common Agricultural Policy (CAP) and discussions are currently underway. Guaranteed long-term financing for land management and environmental projects is provided through the CAP and funding streams such as LIFE and BEST.

Enforcement

The European Commission and European Court of Justice (ECJ) play an important role in ensuring the implementation of EU environmental law by member states, with the power to take enforcement action against governments if necessary and the threat of significant fines. Citizens can raise complaints via a free process. There are various mechanisms for the public to participate in the creation of environmental law.

Co-operation

The UK participates in EU agencies and programmes with full voting rights and requirements for stakeholder engagement, and is able to leverage its influence within the EU on the global stage on issues such as climate change.

Trade

The EU is responsible for trade policy, which the UK can influence as a member state. EU trade policy needs improvement, for example, new trade deals should incorporate enforceable non-regression clauses, requirements to implement existing international environmental agreements, and provisions promoting improved market access for environmental goods and services. The Transatlantic Trade and Investment Partnership has been abandoned, but a new US-EU trade deal could one day be back on the table with the same potential problems, including a watered down precautionary principle and powers for firms to sue governments which could have a chilling effect on future environmental legislation.³

3. The draft Withdrawal Agreement and political declaration

Taken together, the Withdrawal Agreement (WA) and political declaration on the future relationship contain some promising commitments for the environment and

it is positive that the UK and EU have signalled a desire to work closely together. If approved and properly enforced, these would help to avoid some of the risks posed by Brexit to the environment. However, the UK has since published its plans for environmental enforcement in England, and these fall short of the requirements in the WA. Significant uncertainty remains on future governance arrangements in Northern Ireland, Wales and Scotland. The UK and devolved governments must come forward with more ambitious laws to ensure the environment is left in a better state, and ensure that exiting the EU does not diminish the UK's ability to project that ambition internationally.

Standards

The WA contains a welcome mutual commitment to non-regression in most areas of environmental law, including air emissions, nature and biodiversity, the recovery of the marine environment, and climate change. This is in the “backstop” section, intended to avoid a hard border in Northern Ireland if no subsequent deal is reached on the future relationship. While this part of the deal may never come into effect, it is relevant because the political statement says the future relationship will build on the WA. However, there is not yet any guarantee that these provisions would be included in any future deal. In addition, a few areas of environmental law, such as forests and noise, appear to have been omitted because they are not seen as relevant to competitiveness concerns, which leaves them without any protection against backsliding in future.

As the WA and political statement leave the door open for both sides to adopt higher standards, we would urge the UK government to commit now to a set of strong targets via the promised Westminster Environment Bill. There are similar possibilities with devolved legislation. The UK would be outside the EU's Common Agricultural Policy (CAP), so could press ahead with current plans to put environmental enhancement at the heart of land management, though substantive proposals so far only cover England and Wales. The UK government should also commit to replacing important EU funding streams for nature conservation, low carbon infrastructure and environmental research and innovation.

Enforcement

The non-regression commitment outlined above is specifically excluded from enforcement under the EU-UK mechanisms created in the WA. However, the WA does require the UK to establish effective oversight and enforcement of environmental law. Enforcement of the environmental provisions of the WA therefore relies on having an “independent and adequately resourced body or bodies” to hold public authorities to account in all four countries of the UK. The WA includes some further helpful specifications on the body or bodies' independence and powers, and the need for effective remedies and sanctions.

The UK government has since published the draft bill that would establish the new environment body, the Office for Environmental Protection. This fails to meet the requirements of the WA in several ways. The proposed body would not be

independent of government, because the Secretary of State would control its funding and appoint the chair and board members, with little parliamentary or public oversight and transparency. The proposed powers to enforce breaches of environmental law do not match those currently enjoyed by the EU Commission and ECJ, and in particular there is no power to issue fines, a significant deterrent. The scope of the body would not include climate change, leaving a gap on the enforcement of climate laws. Finally, these plans only cover England, and there is no firm timescale on when plans will be published for Scotland, Wales or Northern Ireland, or detail on what these will entail.

Co-operation

The WA says the UK has to have in place a carbon pricing system of at least the same effectiveness and scope as the EU emissions trading system (ETS), a helpful baseline requirement. Broader future co-operation on global environmental issues, especially climate change, is also signalled in the political agreement, and the economic partnership will recognise that “sustainable development is an overarching objective of the Parties”, as it is in the EU. However, the nature of this co-operation after the end of the transition is not mentioned. Nor is there any mention of the UK joining the European Environment Agency, an important vehicle for scientific collaboration and assessing environmental performance. There is only non-committal language about the European Chemicals Agency, and fisheries provisions leave all the major issues to be discussed after the UK has left the EU. The backstop provides for much closer co-operation on the island of Ireland, but the mechanisms for inter-governmental co-operation within the UK are still to be resolved by the UK and devolved governments.

Trade

There is no sign yet of a UK trade policy, so it is very hard to come to an overall judgement about whether future trade deals will promote high standards and minimise the UK’s environmental footprint.

4. No deal would derail a greener UK

A no-deal Brexit would bring many significant environmental risks, as we have set out in an earlier briefing.⁴

Standards

A crash exit would be likely immediately to have environmentally harmful impacts, such as increased air pollution and congestion as traffic queues at ports.⁵ Contingency measures taken by the government to deal with a cliff-edge exit could also have negative effects, such as a boom in diesel generators in Northern Ireland as the single electricity market splits.⁶ Political momentum for new ambitious environmental policy would probably diminish rapidly if no deal were to lead to food and medicine shortages and economic recession.⁷ Pressure for deregulation could increase in a misguided attempt to secure short term economic gain.⁸

Enforcement

Under the current timetable, the promised new environmental body for England will not be ready in time for March 2019 and there has been no indication of interim arrangements by either the UK or devolved governments. Until the new body or bodies are established, the public would lack any effective means of requiring the government to enforce environmental law. In this governance hiatus, a range of harmful activities could become established practice, costly and difficult to undo at a later date.⁹

Co-operation

Co-operative mechanisms with the EU would be lost immediately, for example the UK's participation in the European Environment Agency. The UK would lose access to safety information for tens of thousands of chemicals;¹⁰ barriers to electricity trade would force up the cost of decarbonisation;¹¹ and shared fisheries could slide into unsustainability without joint management.¹² The loss of co-operation would be deeply felt on the island of Ireland, putting in question the management of cross-border nature sites such as Lough Foyle, while border checks could harm animal welfare.¹³

Trade

There would likely be pressure to agree emergency trade deals without due process and in haste, which could involve environmentally harmful concessions such as lifting tariffs on deforestation products, or watering down the precautionary principle – a particular risk because, under the current timetable, the legislation incorporating EU environmental principles into domestic law would not yet have been introduced.¹⁴ There is a risk the UK would increase imports from countries with lower production standards, exposing consumers to poor quality food and other products, and undermining British farming which would hold back investment into more sustainable practices.¹⁵

5. Questions about the UK government's proposed approach

The way that the Brexit process unfolds will have major implications for our environment. The government has said that standards will not be weakened and has committed to leave the environment in a better state, but plans for delivering these pledges are so far inadequate. Therefore, during the parliamentary debate on the deal, we encourage MPs and peers to ask the following questions.

On the EU relationship:

- What mechanisms will be put in place to enable continued co-operation with the EU on all environmental issues, from biodiversity to climate change?
- Will the UK continue to participate in European agencies such as the European Environment Agency and the European Chemicals Agency?
- How will the government replace EU funding streams for nature conservation, low carbon infrastructure and environmental research and innovation?

On domestic environmental ambition:

- Will ministers improve the draft Environment Bill so that the new body is accountable to parliament rather than government with independent funding and appointments processes; able to enforce environmental law including climate change; and equipped with the necessary powers, resourcing, expertise, and access to effective remedies and sanctions?
- Given that the government's plans for the Office for Environmental Protection omit the power to enforce non-regression as set out in the Withdrawal Agreement, how will the non-regression commitment be enshrined in law and operationalised?
- How will the final Environment Bill, to be introduced early in the next parliamentary session, deliver the government's commitment to leave the environment in a better state? Will the Bill require legally binding, ambitious and measurable goals and spatial plans for nature's recovery, clean air and a healthy environment?
- How will the UK and devolved governments work together to ensure high standards across the four countries of the UK and to enable every citizen to have full access to environmental justice?

On agriculture and fisheries:

- How will the funding for land management be guaranteed to meet the scale of environmental need?
- How will the marine environment be managed to promote healthy seas, including via fisheries policy in the Fisheries Bill and in future EU-UK negotiations?

On international impacts:

- How will the UK's trade policy promote high environmental standards, minimise the UK's global footprint, and facilitate democratic oversight of trade deals?
- How will the UK maximise the potential for international leadership ahead of a series of crucial global summits in 2020 (including on biodiversity, climate, oceans, and the sustainable development goals)?

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Endnotes

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⁷ 'Revealed: plans for Domsday Brexit', *The Times*, 3 Jun 2018

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⁸ T Kelsey, *ibid.*

⁹ 'No-deal Brexit risks opening "green governance gap"', ENDS Report, 9 Nov 2018

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¹⁰ House of Lords European Union Committee, *Brexit: chemical regulation*, 7 Nov 2018

<https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-energy-environment-subcommittee/news-parliament-2017/brexit-chemical-regulations-report/>

¹¹ A report commissioned by National Grid estimates that exclusion from the EU's internal energy market could cost the UK £500 million by the early 2020s. See Vivid Economics, 2016, *The impact of Brexit on the UK energy sector*, p 6.

¹² The House of Lords European Union Committee has noted, "From the day of withdrawal from the EU the UK will need to have in place arrangements with the EU and third countries with which the EU has fisheries agreements, so that shared stocks can be managed". *Brexit: Fisheries*, Dec 2016

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¹³ T Kelsey, *ibid.*

¹⁴ <https://www.gov.uk/government/news/new-environment-law-to-deliver-a-green-brexit>

¹⁵ T Kelsey, *ibid.*

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