

Brexit risk tracker 7

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Verdicts key

- ✔ Low risk
- ⊖ Medium risk
- ⊗ High risk

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General summary

With fewer than three weeks until Brexit, the latest edition of the tracker shows high risk ratings across the board.

The UK faces the increasingly ominous prospect of a cliff edge no deal exit. Greener UK has been unequivocal in its [analysis](#): leaving without a deal poses potentially dire consequences for the environment, in the short and longer term. From chemicals, where a recent statutory instrument fell short of ensuring the same protections as the EU, to agriculture, where the US has been lobbying for [lower UK food standards](#) after Brexit, the absence of a strong legal and institutional framework is stark.

Meanwhile, the government's plans for environmental governance and principles, as set out in the draft environment bill, would leave environmental protections weaker after Brexit. The bill's proposed environment body lacks the powers and independence of the European Court of Justice and European Commission; the clauses on environmental principles are inadequate; and the bill would not be ready in time for a no-deal exit on 29 March. The government has [stated](#) it will provide a way for parliament to keep pace with the EU on environmental protections, yet its proposals do not guarantee continued improvement or prevent the weakening of standards.

Air pollution

The UK government published its [clean air strategy](#) in January, which is designed to deal with several different forms of air pollution. The government is failing to [comply](#) with the Ambient Air Quality Directive, with 37 UK zones and agglomerations in breach of legal limits for nitrogen dioxide, which should have been met in 2010.

The press focused on the strategy's embrace of World Health Organisation targets, but there was little sign that these would be legally enforceable. There are similar [concerns](#) over whether the plans comply with the necessary legal tests and satisfy the secretary of state's duties under the Ambient Air Quality Directive.

The absence of legal requirements puts more importance on the draft environment bill, published in December. It was hoped that the plans would see the creation of a new strong and independent enforcement body for England post-Brexit, and establish legally binding targets in areas such as air quality.

However, the draft bill fell short of providing the strong legal teeth needed to protect our air quality laws, and there are no legally binding targets or limits locked into the draft legislation. This prompts questions as to how serious the government is about its welcome ambition in the clean air strategy to halve the number of people living in areas with pollution above World Health Organisation guideline levels.

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 (during the 'backstop' period). It is unclear whether these provisions cover all air quality laws or not, though we would expect them to do so, and unclear whether these commitments will be longer term.

The prospect of the UK leaving the EU without a deal raises serious concerns for air quality. There is particular concern that the increase in traffic around UK ports could lead to greater local air pollution.

Chemicals

In January the government published its [draft statutory instrument \(SI\) on REACH](#), which serves to copy the EU REACH regulation into domestic law in the event of a no deal Brexit. After criticism from MPs, peers and civil society, the SI was withdrawn and re-laid in February. Yet the new SI failed to address a multitude of major concerns regarding the government's proposed UK chemical agency.

The SI confirms that the government will delegate responsibility for chemical management to the Health and Safety Executive (HSE). Concerns exist around the capacity of HSE, given its deficiency in environmental and public health expertise. The government estimates a UK REACH will cost [£13 million per year](#), which is one seventh the budget for REACH, and the government only intends to appoint 45-50 extra staff to administer chemical regulation.

The European Chemicals Agency (ECHA) has a management committee and numerous technical committees, with stakeholders from industry, NGOs and trade unions permitted to participate in these meetings (with no vote). But the UK government has deemed these committees to be inoperable in the UK system. The government will only require HSE to obtain external advice, removing layers of expertise and vital mechanisms for stakeholder engagement and public participation.

Additionally, the REACH SI lacks any commitment to mirror future improvements in EU chemicals laws, so UK controls on chemical use could rapidly diverge from those in the EU. If the UK controls were to fall behind those of the EU, the protection of human health and the environment would be jeopardised.

This quarter has illustrated more than any thus far the risks of a no-deal or hard Brexit. It is still of vital importance that the UK seeks to remain within REACH, whatever shape its relationship with the EU takes.

Climate & energy

The draft [Environment \(Principles and Governance\) Bill](#) was published in December 2018, describing a new enforcement body called the Office of Environmental Protection (OEP). The body, in its proposed form, has weak enforcement powers

and does not bear equivalence to the current arrangements with the EU. The bill makes an artificial separation between climate change and environmental law, thereby leaving climate law [outside the remit of the OEP](#). This poses a significant climate governance gap.

The fears around a no deal Brexit have worsened in the past three months. The risks for energy and climate change include rising consumer energy bills, [loss of investments in energy infrastructure](#) and a consequent slowdown in efforts to decarbonise the economy. BEIS has put forward a series of statutory instruments (SIs) intended to remedy any interoperability issues with EU derived law in the UK statute. The SIs are highly technical and are being approved at pace with limited scope for wider debate.

A no deal Brexit could also jeopardise the Irish energy market, putting £6 billion of trade at risk. Severing ties on emissions trading and cross border interconnection could, in the worst case scenario, cause a loss in value of [£2.2 billion](#) to the UK economy and raise energy bills for consumers. The UK will lose access to European finance that has provided over £9 billion to domestic energy infrastructure since 2012. Ultimately, a disorderly exit could slow down the much needed progress on rapid decarbonisation of the UK's economy.

The automotive industry, a significant contributor to the UK's economy, has suffered considerable setbacks with major manufacturers deciding to either shift operations elsewhere or pause investments. The lack of strong industry incentives to make the [shift to electric vehicles](#) is cited as another reason for the ongoing turmoil. With the transport sector contributing the most to carbon emissions, the lack of clarity around Brexit threatens to put the brakes on decarbonising UK's vehicles.

Farming & land use

There is deep concern at the prospect of hastily agreed trade deals. In recent weeks the [United States trade department](#) and the [US ambassador to the UK](#) have made it clear that the US expects the UK to accept its agri-food produce as part of any future trade deal. Importing foodstuffs such as chlorinated chicken would not only lower our food quality, but support agricultural practices that harm the environment and animal welfare.

Fears around damaging trade deals have become even more pressing as the threat of a [no deal](#) Brexit looms on the horizon. It is quite clear that no deal would be a terrible outcome for agriculture, with the prospect of: tariff removal enabling cheap imports to undercut domestic farmers who are producing food to higher standards; concerns for animal welfare due to delays at borders; and the potential derailment of the agricultural reform, [currently underway](#), that could provide so much for the natural environment.

Even with an EU deal, there is a risk of regulatory gaps opening up. There is currently no provision in the [agriculture bill](#) for a strong regulatory framework for farming and land management, while the proposed loss of cross-compliance would scrap some soil and hedgerow protections that all subsidy recipients are currently required to deliver. Without properly enforced regulatory standards, any public investment would be undermined.

The agriculture bill's passage through parliament is currently on pause. A long delay would prolong the period of uncertainty for farmers and could mean they move away from environmental stewardship programmes. This could lead to long-lasting damage, for example if wildflower meadows are ploughed up.

Fisheries

The fisheries bill's progress through parliament has halted, while the wider Brexit negotiations play out. As it stands the bill [does not match](#) the protections currently provided by EU law.

There has been one amendment to the bill relating to the environment – transparency in quota allocation decisions – and, before his resignation, fisheries minister George Eustice agreed to return to certain issues during report stage. The new minister's approach to this legislation is not yet known.

However, the two main weaknesses of the bill remain: there is no legal duty on all relevant public authorities to achieve the sustainability objectives set out in the bill; and there is no commitment to ensure that fishing limits are set at scientifically defined sustainable levels at or below maximum sustainable yield (MSY). This is a clear regression on current environmental standards under the Common Fisheries Policy (Article 2).

Without further improvements to the bill, UK fisheries will be in a weaker environmental state than before Brexit, and the government's promises on enhancing environmental protections for world-leading UK fisheries will be unfulfilled.

Indications are that Defra would like to have the fisheries bill in place for day one post-Brexit. There is a risk that, in the event of no deal, there will be little to no scrutiny of the fisheries legislation as the UK government rushes the bill through – in order to have the new UK legislation in place to control access to UK waters, which is not covered by the EU Withdrawal Act.

Nature protection

The draft [Environment \(Principles and Governance\) Bill](#) was published in December 2018, with details on future environmental governance and principles. The government's ambition is welcome, but [significant concerns remain](#). For example, the enforcement powers of the Office for Environmental Protection (OEP) do not

match those of the European Court and Commission; the OEP will not be fully independent, as its finances and board members will be appointed and controlled by the secretary of state; and the clauses on environmental principles require a stronger duty and widened applicability.

The government have signalled intent to include cross cutting targets to restore and enhance nature, alongside other additional elements to “set a new trajectory for environmental improvement” and underpin the government’s ambitions in the 25-year environment plan. Clarity and engagement with stakeholders on these elements of the bill are urgently needed to ensure they can spur nature’s recovery.

The conservation of habitats and species that cross political borders requires a co-ordinated international approach in the future relationship between the UK and the EU, and it is [not yet clear](#) whether or how this will be established. In the event of no deal, there would be no framework for environmental co-operation with our near neighbours, including on the island of Ireland, which would reduce our ability to work together on transboundary environmental issues. It is also likely that there would be further pressure to weaken domestic environmental standards due to a sudden change in the UK’s trade arrangements.

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. For example, LIFE funding has helped support the recovery of bittern and the restoration of blanket bogs in the UK, and BEST has funded work to protect sea turtles and seabirds, including the magnificent frigatebird and laughing gull in the UK’s Overseas Territories.

The government continues to draft and lay the hundreds of statutory instruments required to roll over EU laws into domestic legislation, with limited opportunities for scrutiny or debate. Shortcomings were recently identified in the statutory instrument intended to roll over the EU Birds and Habitats Directives into UK law. While these have been addressed, concerns remain that existing transposition gaps in UK laws will not be addressed, and that further errors may be introduced due to the rapidity of the conversion process.

Waste and Resources

Since the last update period, the government has launched a renewed strategy on [resources and waste](#), the first domestic strategy in England for more than a decade. The high level strategy recognises that all stages of the material cycle need to be addressed and promises to embed the concepts of “polluter pays” and “extended producer responsibility”, which should ensure that producers bear the full costs of dealing with the material they place on the market when it becomes waste. It is positive that this builds on fundamental EU environmental principles. However, the strategy does not yet have any legal underpinning.

Concerns remain that Defra lacks the capacity to deliver ambitious recycling targets. The country looks [set to miss the EU's 2020 50 per cent recycling target](#), and it remains unclear if it will be able to meet the more ambitious goals in its own strategy and in the EU's Circular Economy Package (CEP), which the UK has [promised to adopt](#). The new environment body, the Office for Environmental Protection (OEP), will play a significant role in enforcing these targets, and it is therefore important that the government comes forward with strong proposals.

At EU level, a [new directive](#) on single use plastics was agreed in December. The directive, covering both conventional and bio-based plastics, bans items including cutlery and plates, straws and oxodegradable plastics. It also creates consumption reduction measures for other materials and new design and labelling requirements for balloons, tobacco, wet wipes and sanitary products. Although it has implemented similar policies for some of these products, the status of this EU directive remains unclear. Significantly, there is a risk that the UK could take a divergent approach to bio-based plastics and oxodegradables, which the scientific community and many businesses have highlighted as potentially [environmentally damaging](#).

The EU held a series of votes in December and January to extend the Ecodesign Directive to improve resource efficiency. Member states, including the UK, voted in favour of new standards for products including fridges, televisions and washing machines. These products will have to meet certain standards for repair and disassembly, for instance, to be placed on the EU market from 2021. While the current government has promised to “match or where economically practicable exceed the ambition of the EU's Ecodesign standards”, legislation to ensure this will happen has yet to be enacted.

A no deal situation would likely have a large impact on the waste industry, with concerns about shortages of labour and difficulty exporting waste, given the likely backups at UK ports (the UK currently exports 3.6 million tonnes of [refused derived fuel](#) – mainly to northern Europe – as well as many times that amount of material for recycling). There are particular concerns about what will happen with Ireland's waste, as the country is reliant on the UK to treat its hazardous waste. On exit day, it will become illegal for Ireland to export waste to the UK, as the UK will be a non-EU country. This is particularly concerning given the history of [problems with waste crime along the Irish border](#).



Water

The draft [Environment \(Principles and Governance\) Bill](#) was published in December 2018. The ambition in this bill is welcome, but [significant concerns remain](#). For example, the enforcement powers of the Office for Environmental Protection (OEP) do not match those of the European Court and Commission; the OEP will not be fully independent, as its finances and board members will be appointed and controlled by the secretary of state; and the clauses on environmental principles require a stronger duty and widened applicability.

The government continues to draft and lay the hundreds of statutory instruments (SIs) required to roll over EU laws into domestic legislation, with limited opportunities for scrutiny or debate. An SI of particular concern is the [Floods and Water \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), covering 22 regulations, including transposed regulation regarding the Water Framework Directive and the Urban Waste Water Treatment Directive. The SI failed to offer an acceptable replacement mechanism for the provision of scientific, technical and other expertise. Some parts of the directives to which compliance is demanded have been removed without explanation. Reporting requirements, while to be made public, do not have to be reviewed and failures are not required to be identified and addressed, as is currently required by the European Commission.

Overall, the lack of stakeholder engagement has been disappointing, stunting the opportunities for contributions from civil society and rushing through what is a very important process.

In a no deal scenario, the big concern is loss of a 'stick' in the shape of the ECJ, without equivalence or better in new domestic law. As currently proposed the OEP does not provide this 'stick'; in a no deal, the OEP would not be ready to provide even a weakened deterrent. Without the threat of huge fines, the UK would not have seen big investment in cleaning up rivers like the Thames, where Thames Water has invested billions in the Thames Tideway 'super sewer'.

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Greener UK is a group of 14 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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