

Greener UK Risk Tracker 10

October 2019 - June 2020

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Verdicts key

-  Low risk
-  Medium risk
-  High risk

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General summary

Since the last Risk Tracker update in September 2019, the Environment Bill has been improved, with strengthened plans for the Office for Environmental Protection (OEP), an extension of the OEP's remit to climate policy, and a framework for legally binding targets. These are significant and welcome steps.

At the same time, concerns remain with both the OEP and the bill more widely. Despite [repeated government assurances](#) over maintaining high standards, the bill does not include a legal commitment to 'non-regression'. [New measures](#) for ministers to review worldwide developments in environmental legislation and to report to parliament on the impact of new legislation do not cut the mustard. The OEP's budget and board appointments will still be decided by ministers, which raises questions over its independence. The OEP is expected to cover Northern Ireland, but plans in Scotland are on pause and the Welsh government is yet to come forward with proposals for how it will enforce environmental laws after December 2020. This is no longer just a risk but something these governments must address as soon as possible.

While legislation has been delayed due to coronavirus, bills have now started to return. The Agriculture Bill remains a generally strong piece of legislation, plotting reforms that will see farmers rewarded for providing public goods rather than for owning or tending to a certain amount of land. There are, nevertheless, [concerns over import standards and the level of funding for farmers](#). The government recently [hinted](#) that guarantees over standards would be better suited to the Trade Bill, but in that bill's second reading debate ministers [made no reference to standards](#) at all.

Significant environmental risks [continue to apply](#) to the Fisheries Bill. There is still no legal duty on authorities to fish sustainably or to set fishing limits under or at scientifically recommended levels, and a number of legal loopholes remain. Ministers have recognised the importance of climate change in the bill's objectives, but long-mooted plans to put cameras on boats to monitor catch and improve data collection remain an ambition rather than reality.

The UK has started trade discussions with the United States. UK Trade Secretary Liz Truss seeks a comprehensive trade deal with the US, arguing that enhanced trade – including in [food and chemicals](#) – will benefit UK consumers and farmers. UK [farming unions, consumer groups and environmental organisations](#) – as well as [the general public](#) – are opposed to allowing imports of lower standard food.

In the UK-EU negotiations, the UK government has made it very clear that it seeks the [right to diverge](#) from EU rules and regulations. While this does not necessarily mean that standards will be lowered, there are no commitments to non-regression in either domestic legislation or the UK's [draft comprehensive free trade agreement](#). This is a particular concern for chemical safety: the UK is leaving the best regulatory system in the world and ministers are talking of [other approaches](#) to regulation.

EU negotiators also appear keener to agree future co-operation on climate, with the UK [apparently resisting](#) attempts to include references to climate change in the main trade deal rather than supplementary agreements. In fishing, UK ministers are keen to '[take back control](#)', but (unlike the EU) have thus far displayed little appetite to include legal commitments to sustainability in the agreement.

Overall it is difficult to see a particularly positive outcome for the environment should the current pattern of negotiations continue. According to [reports](#), UK ministers have moved many civil servants back to no deal planning, and while tackling the pandemic has applied time pressure the UK government is steadfastly opposed to an extension of the transition period. As one minister put it recently, '[we cannot keep negotiating forever](#)'.

There are considerable environmental risks if an agreement is not reached at all, including overfishing and more 'mackerel wars', and high tariffs placed on UK food exports that provoke domestic deregulation. There are also significant risks with finalising a poor deal that does not include non-regression of standards and close co-operation on chemicals and climate change.

We have to conclude that the environmental risks remain high, and in many areas are intensifying.

Air pollution

Rating: High risk, increasing

With the Environment Bill delayed due to coronavirus, it remains unclear what level of ambition the government will commit to when setting a new target for [PM2.5 pollution](#). Although the government has conceded that air pollution poses the largest environmental threat to [public health](#), there has been a reluctance to commit to a target and deadline in line with [World Health Organization \(WHO\) recommendations](#). This is despite the government's own evidence, [published in 2019](#), that showed it is technically feasible to achieve the WHO guideline level for PM2.5 by 2030.

Meanwhile, illegal and harmful levels of nitrogen dioxide continue to persist across the country, despite the government being required to comply with air quality laws on nitrogen dioxide over 10 years ago. This ongoing non-compliance looks set to continue, with a number of local authorities, including the 10 Greater Manchester councils, [announcing delays](#) to the introduction of their Clean Air Zones.

With the Environment Bill threatening to weaken our existing air quality laws, and with the likelihood of a no deal Brexit again increasing, fears remain that the new Office for Environmental Protection will not be fully ready to enforce current and future air quality laws and limits in England and Northern Ireland, once the transition period has concluded and the European Commission no longer has jurisdiction. Concerns also persist for enforcing air quality laws in Wales and Scotland, where plans for green governance remain in their early stages.



Chemicals

Rating: High risk, increasing

In February, the government confirmed it [would not be seeking associate membership](#) of the European Chemicals Agency (ECHA) or to participate in the EU REACH regulatory framework for chemicals. The government wishes to maintain the ability to diverge from EU chemicals regulation, believing that the [‘benefits of having control of our own laws outweigh the costs’](#).

On the basis of current plans, a future independent UK regime (which has already been laid out in the event of no deal) will be [weaker than the high level of protection the UK currently enjoys within the EU’s international gold-standard system](#) for regulating chemicals. While the UK’s draft negotiating text [hints](#) that the UK could be interested in access to ECHA’s chemicals database, the EU is unlikely to grant this unless the UK agrees to be aligned with the EU’s chemicals-related laws including REACH.

Without access to the EU database, the UK will have to depend on much more limited information. This includes a database that will be [essentially empty for two years](#) until companies have delivered the required safety data on their chemicals. The lack of data could render the UK unable to implement, or defend in court, crucial controls on hazardous chemicals. This could mean the UK becomes a dumping ground for hazardous chemicals banned or restricted in the EU.

Finally, there are risks in the UK wishing to [consider the approaches taken by other chemical regulatory systems across the world](#), which are inevitably weaker than REACH. There is also a risk that trade deals with countries with weaker regulatory systems, like the US, might [oblige the UK to allow in chemicals](#) approved in the US but banned in the EU.



Climate & energy

Rating: High risk, the same

It is welcome that the prime minister has [promised](#) a green economic recovery from coronavirus. Environmentalists will be looking for the government’s fiscal [announcement](#) expected in early July to match the ambition of the EU’s stimulus [package](#), announced in May and centred around the European Green Deal.

The UK’s decision to put climate into a separate agreement to the main EU-UK free trade agreement risks [making climate look like a second order concern](#) at a crucial stage in the negotiations. It is hoped that climate is not being used as a negotiating tool and that such tactics do not create diplomatic friction ahead of COP26 next year.

In not cooperating with the EU on wider Paris Agreement emissions goals for 2030 the UK government is missing the chance to support a more ambitious EU-wide short term

commitment. This could be crucial to a successful COP, the preparation for which have seen a [disappointingly slow start](#) and understandable coronavirus-related delays.

In negotiations, the EU and UK still agree on the need to cooperate on cross-border energy trading and are committed to trying to link the UK into the EU Emissions Trading System (ETS). An agreed deal would help keep wholesale energy prices down and ensure consistent carbon pricing across the Channel. Recently released plans for [the UK's standalone ETS](#) suggest it could have a tighter emissions cap, albeit not as tight as the Committee on Climate Change would [recommend](#).

There are no guarantees, however, that the UK government will continue to keep step with the EU across other climate-related policies, such as tightening restrictions on car tail pipe standards or energy efficiency rules for fridges and freezers. And crucially there may still be no final agreement with the EU, which would cause significant disruption to supply chains for low-carbon manufacturing.



Farming & land use

Rating: High risk, the same

The Agriculture Bill has returned to parliament, with the principle of 'public money for public goods' at its core. This will see farmers paid for providing goods the market cannot, such as healthier habitats and cleaner water. Owing to the onset of coronavirus, there has been some debate over whether the seven-year transition to the new scheme should be delayed, but the government is thus far determined to proceed as planned.

The government deserves congratulations for its consistently strong vision for farming reform, though there are still questions over [the future level of funding](#) and the baseline from which future regulations will be set. The new framework for legally binding targets in the Environment Bill will be useful here, provided the consequent targets are strong, adequately enforced and supported in delivery. Funding and capacity for enforcing environmental targets and laws [has dropped markedly](#) in recent years.

Two issues, however, continue to dominate wider discussions over the future of agriculture: import standards for food products, and the impasse in UK-EU negotiations.

Despite promising '[no compromise](#)' on environmental, animal welfare and food standards, ministers are still to put such commitments in legislation. Neil Parish MP introduced an amendment to the Agriculture Bill on behalf of the EFRA committee that would prevent imports of food and agricultural products produced to lower standards, but it was defeated. 'Ministers' [reportedly told the BBC](#) that legal guarantees were more suited to the Trade Bill – but the next reading of that bill was opened and closed without even the mention of standards.

In the weeks since, ministers have [mooted a dual tariff plan](#) that would place high import duties on products that fall short of UK standards. This would work for governments committed to high standards, but [leave the door open](#) for future governments to change

their minds. With the Trade Bill providing little to no [public or parliamentary scrutiny](#) of trade agreements, it is difficult to support the tariff plan in principle. Stories of [cabinet disagreement](#) over the issue continue, and a [joint ministerial letter](#) has been sent to MPs to reassert the manifesto commitment to uphold high standards. This rather public battle suggests that there is significant support within government for maintaining high standards in law – but also that the argument has not yet been conclusively won.

This right to diverge, to be exercised now or in the future, appears to be at the core of government decision making. But the assertion of the sovereign right of some future UK government to lower standards should be accompanied by firm, legal commitments by this one not to lower current standards. The government's refusal to commit to non-regression sows doubt about its intentions.

It currently appears that the UK and EU are some way from reaching an agreement. With the UK – for now – completely opposed to extending the transition period, the prospect of no deal has re-emerged as a distinct possibility. [In some circles](#) it is now thought to be the UK's preferred outcome, despite the pressure of coronavirus on government departments.

Aside from immediate animal welfare concerns at borders, the [potential effects of no deal](#) would include high export tariffs into the EU market for agrifoods and an increase of lower quality food imports under quickly-signed trade agreements. This raises significant concerns around deregulation in the UK as farmers are forced to compete with food produced to lower standards.



Fisheries

Rating: High risk, the same

The [Fisheries Bill](#) concluded its committee stage in the House of Lords in March, and will return to return to the Lords for report stage in June.

The bill includes a number of new provisions since the October 2018 iteration, including a 'climate change objective' and the improved 'ecosystem-based approach', which acknowledges the link between fishing and the health of the marine ecosystem. These changes show that the government is starting to embrace holistic fisheries management. The bill also introduces a 'national benefit objective' and the concept of fisheries management plans, which will specify how stock can be fished at sustainable levels.

A number of legal loopholes remain, however, and there is still no legal duty on authorities to achieve the objectives. It is a [serious concern](#) that the bill regresses from the current environmental standard under the Common Fisheries Policy (CFP), by which catch limits are set at or below scientifically recommended levels (maximum sustainable yield). Although ministers gave some assurances on this during the bill's [committee stage](#), the loopholes remain in the bill and too much weight is placed on the Joint Fisheries Statement and fisheries management plans – which are yet to be drafted.

UK ministers have repeatedly emphasised the opportunities of '[taking back control](#)', but UK negotiators have thus far [shown little appetite](#) to enshrine legal commitments to sustainability into the future relationship agreement with the EU. Domestically, [ministers have recognised](#) opportunities to show environmental leadership in the area of monitoring, but the Fisheries Bill currently falls short. Were the government to mandate the adoption of 'Remote Electronic Monitoring' with cameras on vessels, authorities could underpin the sustainability of fishing by verifying what is being caught and compiling sufficient data to inform scientific assessments and management.

Without such changes, overfishing will continue to undermine the health of our seas and the wider marine environment.



Nature

Rating: High risk, increasing

Despite the commitments to maintain protections at least as strong as those which apply to EU member states, the UK government has launched a number of deregulation initiatives that could see vital protections for nature lost or undermined, including the [Freeports](#) and [Reforming Regulation Initiative](#) consultations. The government's [apparent reluctance](#) to agree a deal with the EU based on non-regression on environmental standards is a significant cause for concern.

The re-introduced [Environment Bill](#) remains weak in key areas, including a sufficiently robust Office for Environment Protection. While Northern Ireland will be covered by some key elements of the Environment Bill, the Scottish and Welsh governments have to date failed to bring forward equivalent legislation, a fundamental prerequisite for the continued protection of nature.

The Covid-19 pandemic has had contrasting impacts on nature. While some species and habitats have appeared to benefit from lockdown, we have seen in England a massive reduction in conservation action for vulnerable wildlife and an increase in damage caused by [illegal and anti-social activities](#). This includes a marked increase in the levels of reported bird of prey persecution, and a number of [major fires on important wildlife sites](#).

Such incidents reinforce the need for statutory agencies to have the capacity to support high standards in the future. The government needs to make sure agencies have the budget and resources to fulfil a more rigorous level of monitoring and enforcement requirements [than in recent years](#).



Waste and Resources

Rating: High risk, increasing

The government has made the vital promise to [match or exceed what the EU does on resources](#), but is at risk of falling behind. This was evident before the coronavirus pandemic, but is being exacerbated by it.

Several sets of key consultations were due in England in 2019 and early 2020, and it is now unclear when – or if – they will go ahead. Although the previous administration [reversed its opposition](#) to the [EU's Circular Economy Package](#), it does not appear that the headline targets – including reaching 65 per cent municipal waste recycling and limiting landfill to 10 per cent of waste – will be transposed into UK law by the EU's July deadline. The revision of the [2013 waste prevention plan](#) – due in 2019 – has not been consulted on yet, and consultations on some of the policies in England's resources and waste strategy, which aim to address the longstanding problems of the recycling system, have also been delayed. In April, the government also [postponed for six months the ban on plastic straws, stirrers, and cotton buds](#), despite the fact that the secondary legislation had already been introduced to Parliament.

The EU, meanwhile, has signalled increased ambition to end the throwaway society through both its Single Use Plastics Directive, which it has [resisted calls to delay](#), and its [Circular Economy Action Plan](#), which it released in March and the UK hasn't committed to following. That document is a high level strategy, but includes more ambitious measures than those promised or legislated for in the UK, including moves to ban in-built obsolescence, restrict single use products and packaging, eliminate greenwashing and legislate to ensure people have a 'right to repair' faulty products.



Water

Rating: High risk, slightly improving

The [Environment Bill](#) remains a key vehicle for securing improvements to water and wetland habitats. Although the water clauses are largely positive, the adoption of currently-proposed amendments would significantly strengthen the measures contained in the bill, particularly around the timetable for dealing with environmentally damaging abstractions, and around targets for water quality.

It will be important to make sure the environment and agriculture bills continue to complement one another. One such opportunity is ensuring that the new Environmental Land Management Scheme aids the creation and restoration of freshwater and wetland habitats, and the delivery of nature-based solutions such as natural flood management.

The impact of coronavirus on the water environment is currently unknown, but a key area of concern is around pollution events going undetected owing to decreased monitoring and inspections. Concerns remain over [the ability of government agencies to uphold and enforce regulations](#) in these areas.

The pandemic has also delayed a major Environment Agency consultation that forms part of the [River Basin Management Planning](#) cycle. The knock-on implications are estimated to be something like a nine-month delay to the publication of Cycle 3 plans, raising questions over how investment in actions to improve the water environment will be administered in the interim and whether ambitions for the truncated delivery period to 2027 would need to be downscaled.

The Water Framework Directive, transposed into UK law from the EU, sets a final achievement date of 2027. However, compliance was highly unlikely to be achieved even before these delays, and it is currently unclear how the UK will approach delivery post-2027, and whether this will align with or deviate from any EU approach.

For more information, please contact:

Benjamin Halfpenny, media and communications manager, Greener UK

e: bhalfpenny@greener-alliance.org.uk

t: 020 7630 4513

GREENER UK

