

## Brexit risk tracker, June 2016 – June 2017

This update period, which covers the 12 months beginning with the EU referendum in June 2016, included the following events: the publication of a white paper on Brexit, outlining the UK government's negotiating priorities in February 2017; the triggering of Article 50 in March 2017; the Great Repeal Bill White Paper published in March 2017; and the 2017 general election.

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### Verdicts key:



Low risk



Medium risk




High risk

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## **Air pollution**

The government is currently in breach of the Ambient Air Quality Directive. It produced a plan in May 2017 to meet the legal limits set out in that directive, but that plan has been widely criticised for not doing enough. The government's reluctance is concerning as an indication of its likely approach to implementing air quality standards after the UK leaves the EU.

### **1 Principles & strategies**


-  The Great Repeal Bill White Paper fails to give a clear commitment to carrying across the general principles in the EU treaties that underpin air quality policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle.

### **2 Legislation**


-  The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in environmental protections.

Given that the UK is currently in breach of the nitrogen dioxide limits in large parts of the country, there is a risk that limits could be weakened after Brexit, to make it easier for the government to meet its legal requirements.


### **3 Capacity & funding**

-  Defra is due to see a 15 per cent reduction in its resource spending between 2015 and 2020. It is unclear whether it will be able to cope with any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

### **4 Governance**

-  The Great Repeal Bill White Paper does not make clear what (if any) domestic governance arrangements will be put in place to replace the European Court of Justice and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to ensure the effective implementation of air quality legislation. This is a particular challenge in the case of air quality, for which the UK government is already undergoing infringement proceedings.

### **5 Co-operation**

-  It is unclear whether and how the UK will continue to co-operate with the rest of the EU on transboundary air pollution after Brexit.



## Chemicals

The EU REACH system for chemical regulation is the most advanced system in the world, but the government has not committed to staying within it. The minister responsible has said that the UK should not follow the EU in banning chemicals, while the minister responsible for pesticides has called for weaker controls. The February 2017 Brexit White Paper mentioned chemicals as an area for negotiations, but makes no specific commitments.

### 1 Principles & strategies



Both the minister responsible for chemicals policy (REACH), Thérèse Coffey, and the minister responsible for pesticides regulation, George Eustice, have suggested weakening EU laws. Coffey's evidence to the Environmental Audit Committee was clear on her wish not to follow fully EU restrictions on chemicals, and also argued for a more 'risk based' approach. George Eustice also called for an end to hazard-based action on pesticides, including at the Conservative Party Conference in October 2016, within a week of the prime minister's speech calling for EU standards to be maintained. In addition, there is no clarity as to how the precautionary principle, a key aspect of EU chemicals policy, will be incorporated into UK law after Brexit.

### 2 Legislation



It is not clear if the government is planning to try to remain part of REACH or if it is planning to attempt to set up a replacement system in the UK. Because of the centralised nature of the REACH system, it is not possible for the UK simply to copy the database. This means that any attempt to create a replacement UK system will almost inevitably be less protective. The simplest and most reliable method of retaining an equivalent level of protection is for the UK to remain in REACH, avoiding creating a very expensive replacement. However, the UK has not yet made this commitment.

### 3 Capacity & funding



Because of the centralised nature of the REACH system, with a single database of chemical safety, the fact that this database is not fully available to countries that are outside REACH, and the expense and legal complexity that has gone into creating this database, it is not possible for the UK to copy this database. The UK is very unlikely to have the capacity to create a domestic equivalent of REACH because of the centralisation of the REACH process and the lack of any sensible method of creating a new database of similar quality. Any UK system would be based on more limited safety and use data and would almost inevitably be less protective.

### 4 Governance



The White Paper on "The United Kingdom's exit from and new partnership with the European Union" in February 2017 included the European Chemicals Agency on the list of agencies where "the government will discuss with the EU and member states our future status and arrangements". However, there is

currently no clarity on what this will mean in practice, and, if the statements from government ministers suggesting that REACH rules will not be followed are adopted in the future, this will probably limit collaboration. In particular, it is likely that the EU27 will operate a policy of 'no cherry picking', so it will not be possible for the UK to share the REACH data without subscribing to the rest of REACH.

## 5 Co-operation

- ⊖ The bulk of EU co-operation on chemicals occurs within the formal EU governance structures of REACH, Water Framework Directive etc – see above.

## ✔ Climate & energy

The government has indicated the UK's interest in staying within the internal energy market, maintaining co-operation on various technical standards that govern electricity trading, but has stated that all positions are up for negotiation, thereby leaving room for uncertainty. The government has reiterated that the UK's Climate Change Act will be the guiding force for policy, but as yet no strategy has been published for managing Brexit's implications for meeting carbon budgets.

### 1 Principles & strategies

- ✔ The UK government has indicated its interest in staying in the EU's internal energy market, but is clear that this is up for negotiation, so the result is uncertain. The UK government has confirmed plans to exit Euratom, as it believes it is not open to countries that are not EU member states, but will seek to renegotiate entry. If the UK ends up leaving Euratom for good, this would increase the complexity and cost of negotiations for several bilateral agreements necessary for nuclear fuel supply, safeguards and other co-operation arrangements.

### 2 Legislation

- ⊖ The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in energy and climate policy.

The UK's recent vote to strengthen the EU rules governing pollution from large combustion plants indicates a commitment to strong policy on greenhouse gas emissions going forwards. On the other hand, *The Daily Telegraph* reported government sources saying that renewable energy targets would be scrapped after the UK leaves the EU.

### 3 Capacity & funding

- ⊖ There has been no news on the future of financing for low carbon energy infrastructure in the UK from the European Investment Bank (EIB). The EIB does invest in countries that are not EU member states, but the UK's share of investment is expected to be significantly reduced after it leaves the EU. Historically the UK has been one of the EIB's largest loan recipients.

### 4 Governance

- ⊖ The Great Repeal Bill White Paper does not make clear what (if any) domestic governance arrangements will be put in place to replace the European Court of Justice and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to ensure the effective implementation of EU-derived energy policies.

### 5 Co-operation

- ⊖ The UK continues to participate in and provide inputs to the ongoing EU negotiations on the Clean Energy Package, but recent inputs from the UK government to dilute proposed targets and legislation on energy efficiency and the governance of the Energy Union have provided cause for concern. The EU needs to be more ambitious in its 2030 targets, and any efforts by the UK government to undermine them will tarnish its position as a climate leader.

## ⊖ Farming and land use

The government has guaranteed continued funding for farmers at current levels until the end of 2019, and continued funding for agri-environment agreements signed before Brexit. However, the government has failed to outline plans for future policy, and has not opened up public debate on the matter. The lack of clarity around devolution arrangements for agriculture policy also continues to hamper progress. On land use planning, the broad commitment to transpose EU law into domestic law via the Repeal Bill is positive, as this will include the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives, but future governance arrangements are unclear.

### 1 Principles & strategies

- ⊖ The Great Repeal Bill White Paper fails to give a clear commitment to carrying across the general principles in the EU treaties that underpin land use policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle.

The UK government is working on a 25 year plan for the environment, which is expected to sit alongside a 25 year food and farming plan. Together, these are expected to set out the direction for future land use policy after the UK leaves the EU. However, the publication of both plans has been beset with delays for more than a year and there is still no confirmed date. It remains

unclear whether the plans would apply to England only, or across the whole of the UK.

The government has stated its intention to reshape agricultural support to deliver multiple benefits, including sustainable land management. However, it has not yet committed to core principles for delivery, such as a principle of payments for public goods, rather than historical or area-based payments.

## 2 Legislation



The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in environmental protections. There is currently little clarity on how the government plans to address the challenge of devolution of agricultural policy during the process of transposition under the Repeal Bill.

The EIA and SEA Directives are transposed into UK law through secondary legislation. New statutory instruments were laid in May 2017 to transpose the requirements of the 2014 Amending EIA Directive. This is encouraging, however, it is not clear who will check effective transposition nor how the changes will be effectively implemented after the UK leaves the EU.

## 3 Capacity & funding



The government has confirmed that it will honour agri-environment agreements that are signed before the UK leaves the EU for the duration of the agreement, and that it will continue to support farmers at the current levels until the end of 2022. This short-term security is welcome as it allows time to plan the transition to a future policy. However, looking further forward, there is still no clarity around the scale or direction of future funding for agriculture or the environment. Furthermore, Defra is due to see a 15% reduction in its resource spending between 2015 and 2020. It is unclear whether it will be able to cope with any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

Funding cuts have also impacted on resources within statutory agencies and planning authorities. Measures to address this, for example, as set out in the Housing White Paper in England in May 2017, may help somewhat. However, resourcing is expected to remain an issue for Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA), in terms of transposition of all EU rules to UK and effectively implementing changes arising from the 2014 Amending EIA Directive.

#### 4 Governance

- ⊖ To date, the government has offered no real clarity in their thinking on whether future policy should be wholly devolved or not, and nor have they opened the debate for wider engagement. However, Defra minister George Eustice has said that “no powers currently in the hands of devolved governments will be taken away”. In the absence of clarity on the UK/devolved framework for future policy, and on the related issue of funding, more detailed policy development will be challenging.

The Great Repeal Bill White Paper does not make clear what, if any, domestic governance arrangements will be put in place to replace the European Court of Justice and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to support the effective implementation of Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) legislation.

#### 5 Co-operation

- ⊖ There is little clarity about the shape of the UK’s future relationship with the EU on many issues that are pertinent to farming, land use and the environment. The most significant of these is the future trading relationship, and its implications for UK regulation and minimum standards. The UK’s future ability to contribute to and benefit from collaborations with EU partners focused on research, innovation or knowledge exchange is still uncertain. Co-operation on transboundary environmental impacts is expected to continue, as the UK has ratified the Espoo Convention.

#### ⊖ Fisheries

The key EU policy is the reformed Common Fisheries Policy (2013), which sets out the management framework across Europe. There is therefore currently no UK fisheries legislation for offshore fisheries. It remains unclear what will replace the EU policy framework once the UK leaves the EU, or how action to conserve shared marine resources will be co-ordinated. Initial indications suggest a desire to maintain elements of the CFP.

#### 1 Principles & strategies

- ⊖ Given fisheries policy is currently an EU competence, new domestic legislation will be needed and it is currently unclear whether the Repeal Bill can cover every aspect of the Common Fisheries Policy. Legislation must set out the principles and strategy for managing UK fisheries. Ministers have indicated that principles of sustainability and the ending of discarding will be continued, but it has yet to be seen what these provisions will look like in detail.

## 2 Legislation

- ⊖ The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in environmental protections.

There is currently no information on whether new fisheries legislation is needed to replace the Common Fisheries Policy, or whether the Repeal Bill will be enough. In whatever format the legislation comes forward, it is important that key principles are included in the emerging legislation and that there are effective processes in place to facilitate shared management both within and beyond the UK.

## 3 Capacity & funding

- ⊖ Civil service capacity is limited, with Defra due to see a 15% reduction in its resource spending between 2015 and 2020, although Defra has drafted in several new members of staff to assist the Brexit negotiations and domestic reform teams. There remains a concern that fisheries is being treated separately from marine protection and conservation (led by different ministers) which could lead to a lack of coherence between these intrinsically linked areas, but there is some evidence of trying to join up the two areas, with a representative of the Defra marine team joining the April fisheries sectoral meeting.

## 4 Governance

- ✓ It is important that there are clear opportunities for transparent and effective stakeholder engagement at UK level as the government negotiates departure from the EU. After the UK has exited the EU, there need to be appropriate processes in place that allow for effective stakeholder engagement and the co-ordination of management across the UK. Advisory group meetings have been set up by Defra and held monthly alongside sector meetings to help inform the development of future fisheries policy. Defra is also planning on rolling out a coastal tour to canvass opinions from those affected by changes.

## 5 Co-operation


- ⊖ There is continued engagement in current Common Fisheries Policy (CFP) regional structures such as Advisory Councils, as the CFP continues to apply to the UK until it leaves the EU. Beyond that, effective engagement in appropriate regional structures should be in place with transparent stakeholder engagement, but there is currently no indication as to how this will be delivered. There is little evidence of the UK and devolved administrations working together on final outcomes.



## **Nature protection**


The key EU policy instruments relevant to nature conservation are the Birds Directive and Habitats Directive, and the EU Biodiversity Strategy to 2020. Although there is a commitment to retaining existing standards of protection in the short term via the proposed Repeal Bill, their long term future remains uncertain and the key governance gaps that are expected to open up post-Brexit have yet to be acknowledged by the UK government.

### **1 Principles & strategies**

-  The Great Repeal Bill White Paper fails to give a clear commitment to carrying across the general principles in the EU treaties that underpin nature policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle.


The UK government is working on a 25 year plan for the environment that may set out the direction for future nature conservation policy after the UK leaves the EU. However, this plan has been beset with delays for over a year and there is still no confirmed date for its publication. It remains unclear whether the plan would apply to England only, 'or across the whole of the UK.

### **2 Legislation**

-  The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in nature protections.

In September and October new marine protected areas were announced by the UK government, alongside the designation of the West Pennine Moors as a SSSI under UK nature laws; both are steps that the UK is required to do by the EU Nature Directives. They were already overdue. The implementation of EU environmental laws remained incomplete at UK level, which raises concerns about the government's likely approach to nature conservation after the UK leaves the EU.

### **3 Capacity & funding**

-  Defra is due to see a 15% reduction in its resource spending between 2015 and 2020. It is unclear whether it (and Natural England, which receives funding from Defra) will be able to cope with any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

There are signs that Defra may progress action on better implementation of

EU nature policy begun under previous Environment Minister Rory Stewart, but so far there is nothing concrete to announce, and funding remains severely limited. The government announced in October 2016 that access to EU funding sources will be replaced by UK funding in the short term, but has provided no guarantees about the longer term, meaning this funding could be lost entirely.

#### 4 Governance

- ⊖ The Great Repeal Bill White Paper does not make clear what, if any, domestic governance arrangements will be put in place to replace the European Court of Justice and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to ensure the effective implementation of nature conservation legislation.

The EU continues to advance infraction proceedings against the UK concerning breaches of EU nature laws, but so far this has not resulted in any concrete improvements during this reporting period. Infraction proceedings were a key driver behind the designation of new marine protected areas in 2016; their likely disappearance after the UK leaves the EU could slow the progress of these sorts of protections.

#### 5 Co-operation

- ✔ The UK continues to participate in and provide input to EU nature cooperation and co-ordination processes. During this update period the UK submitted comments on the proposed Action Plan to follow up the fitness check of the Nature Directives, confirming, “The UK is willing to work with the Commission and others to take this work forward as quickly as possible.” However, there is no news as to whether, and if so, how, the UK will co-operate with the EU in this policy area after Brexit.

#### ⊖ Waste and resources

The EU’s new Circular Economy Package is currently being debated in the European Parliament, Council and Commission. It is expected to be finalised at some point this year. The UK has been largely quiet on the package, though the government is wary of increasing recycling targets or changing the definition of recycling, saying this could result in ‘perverse’ outcomes. The UK government says it is playing an active role in negotiations, but it is unclear whether it will adopt the new targets post-Brexit.

#### 1 Principles & strategies

- ⊖ The Great Repeal Bill White Paper fails to give a clear commitment to carrying across the general principles in the EU treaties that underpin waste and resources policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle.

## 2 Legislation

- ⊖ The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in environmental protections.

Brexit may lead recycling rates to stagnate, as the current targets expire in 2020, and the UK's progress on raising recycling rates has stalled at around 44%. It is not clear whether or not the UK will transpose the EU's proposed 2030 recycling targets or develop its own targets or alternative approach.

Ecodesign, a policy which requires manufacturers to make products that are more efficient, durable and repairable, has the potential to make a significant contribution to resource efficiency in the UK. In November 2016 the European Commission announced new ecodesign priorities and a new plan for regulations over the next few years. However, while the UK government has pledged to maintain current environmental standards it is unclear how or if the UK will stay in sync with EU product standards.

## 3 Capacity & funding

- ⊖ Defra is due to see a 15% reduction in its resource spending between 2015 and 2020. It is unclear whether it (and the Environment Agency, which receives funding from Defra) will be able to cope with any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

## 4 Governance

- ⊗ The Great Repeal Bill White Paper does not make clear what, if any, domestic governance arrangements will be put in place to replace the European Court of Justice (ECJ) and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to ensure the effective implementation of waste and resources legislation.

The government's decision to end the jurisdiction of the ECJ in the UK is very significant for resource policy: there is a large body of case law which sets the rules for waste treatment, waste targets compliance, and product standards compliance are ultimately subject to ECJ decisions. Without some form of co-ordination mechanism, as decisions on these matters continue to be made, the UK may end up with conflicting rules on product standards, which would hinder trade, and on waste rules, which could strand investments in UK waste treatment facilities.

## 5 Co-operation

- ⊖ While it is still an EU member, the UK is continuing to engage in the Circular Economy Package negotiations, but the degree of future collaboration remains uncertain, making it difficult to judge the risk involved.

## ⊖ Water

The government is failing to act in a number of EU policy areas relating to water, particularly around land management, phosphorus and abstraction, and the government's reluctance is concerning as an indication of its likely approach to implementing water quality standards after the UK leaves the EU.

### 1 Principles & strategies

- ⊖ The Great Repeal Bill White Paper fails to give a clear commitment to carrying across the general principles in the EU treaties that underpin water policy, such as the goals of sustainable development and a high level of environmental protection, the precautionary principle and the polluter pays principle.

The government has signalled its intention to continue to follow a catchment-based approach, which was introduced under the Water Framework Directive (WFD). However, it has not yet clear whether the principle aim of the WFD – to achieve good qualitative and quantitative status of all water bodies – will guide the catchment-based approach.

The UK government is working on a 25 year plan for the environment that may set out the direction for future water policy after the UK leaves the EU. However, this plan has been beset with delays for over a year and there is still no confirmed date for its publication. It remains unclear whether the plan would apply to England only, or across the whole of the UK.

### 2 Legislation

- ⊖ The government's stated goal in the Great Repeal Bill White Paper is to "ensure that the whole body of existing EU environmental law continues to have effect in domestic law". This broad commitment is reassuring, yet it is stated elsewhere that the bill will only convert EU law into domestic law "wherever practical and sensible", and it is not yet clear whether this could create gaps in environmental protections.

Implementation of EU water policy remains incomplete at UK level (see baseline), which raises concerns about the government's likely approach to nature conservation after the UK leaves the EU. Rules such as the 'one out, all out' and the 'no deterioration' principles have come under pressure from industry (1,2) and government, leading to worries of weakening. There is significant risk that these aspects of the legislation will be lost after the UK leaves the EU.

### 3 Capacity & funding

- ⊗ Defra is due to see a 15% reduction in its resource spending between 2015 and 2020. It is unclear whether it (and Natural England and the Environment Agency, which receive funding from Defra) will be able to cope with any additional workload associated with the transposition of all EU rules to the UK, and then the monitoring of existing policy and creation of new policy. Most of this effort has happened at EU level thus far.

The Environment Agency is reviewing its monitoring strategy with the main approach being “more strategic” due to its need to make cuts. This could put some of the UK’s long term data monitoring at risk. As the UK leaves the EU there is even greater risk that monitoring will be reduced as EU requirements disappear. Furthermore, parliamentary and civil service time and resource for key changes such as abstraction reform and sustainable drainage systems reform are under pressure.

### 4 Governance

- ⊗ The Great Repeal Bill White Paper does not make clear what, if any, domestic governance arrangements will be put in place to replace the European Court of Justice and the role it jointly plays with other EU institutions in providing the monitoring, oversight, accountability, and enforcement functions required to ensure the effective implementation of water quality legislation.

The EU continues to advance infraction proceedings against the UK concerning breaches of the Water Framework Directive (WFD) and the Urban Waste Water Treatment Directive. Once the UK has left the EU, such infraction proceedings will cease and it is unlikely that much progress will be made in areas where the UK is currently failing to deliver. For example, in 2015 the UK was threatened with infraction if it failed to act on reducing diffuse pollution from agriculture under the WFD, particularly regarding phosphorus. There has been no government response, and it is unlikely that new efforts will be made to reduce diffuse pollution from agriculture before the UK leaves the EU.

### 5 Co-operation

- ⊖ The UK continues to participate in and provide input to EU water co-operation and co-ordination processes, but the degree of future co-operation is uncertain.

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Greener UK is a group of 13 major environmental organisations, with a combined public membership of 7.9 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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