

Leaving the European Union: Implications for the environment



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December 2018

www.ciwem.org/brexit

Purpose

In June 2016, the UK voted to leave the European Union in a referendum by 51.9% to 48.1%. The UK must now negotiate a new relationship with Europe and formally withdraw from the EU. This will result in the most significant changes to the UK's constitution in a generation.

The subject has been the focus of considerable analysis and commentary over recent months and rather than repeat much of this work, this briefing provides the context, a brief discussion on the key concerns for the environment and provides signposts to further analysis and commentary.

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CIWEM is the only Royal Chartered professional body dedicated to the water and environment sector. As an independent charity we champion professional standards, impartiality and the use of scientific evidence in the management of the environment.

Recent Progress – December 2018

After months of quiet and seemingly not much progress, Brexit activity has ramped up in the last few weeks. In mid-November, things were looking up for Theresa May. After 20 months of negotiating, the Withdrawal Agreement had almost been agreed upon with the EU, and the Cabinet was invited to review it at a meeting on 14th November.

No sooner had No10 announced that Cabinet had approved the deal, a number of pro-Brexit Ministers and MPs resigned from the government in protest over the terms of the deal. High profile resignations from Dominic Raab MP, Brexit Secretary and Esther McVey MP, Work and Pensions Secretary, were replaced respectively by Stephen Barclay MP and Amber Rudd MP. The new Brexit Secretary's focus will be on domestic preparations rather than negotiations with the EU, which is now fully under the remit of No10.

In addition to those Ministers who resigned, many MPs expressed concerns with the deal, particularly the backstop provision, including a significant number of Conservatives. The backstop will come into force if a future trade agreement is not finalised six months before the end of the transition period in December 2020, and an extension to the transition period is not jointly agreed.

The Northern Irish Democratic Unionist Party (DUP) are particularly unhappy that the backstop effectively creates a border down the Irish Sea, through creation of 'a single customs territory between the EU and the UK'. This will lead to checks on goods between Northern Ireland and the rest of the UK, to which the DUP are vehemently opposed as they don't want differential treatment for Northern Ireland.

Others have raised concerns over the EU's ability to veto the UK's decision about when to exit under the backstop provisions.

Pro-Brexit MPs tried to get the 48 letters required from Conservative MPs to the Chair of the 1922 Committee to trigger a vote of no confidence in the Prime Minister. Despite many MPs announcing they had sent their letter in, this effort failed, for now.

The Political Declaration, published on 22nd November, outlines the plan for the EU-UK relationship after Brexit. It has been roundly criticised for being too vague, and leaving many crucial issues, such as Northern Ireland and future trade, to be dealt with after UK exit.

With regards to the environment, all EU law, including environmental, will continue to apply during the transition period. The backstop would require the UK to observe 'level playing field' commitments and non-regression clauses in relation to the environmental issues such as air emissions, biodiversity and climate change, so there should be no lowering of environmental standards and protections during this time.

The Withdrawal Agreement and Political Declaration were approved by EU leaders on 25th November. MPs will begin 5 days of debate on the deal on 4th December, culminating with a vote in the Commons on 11th December. It is currently expected that MPs will overwhelmingly vote against it. This will leave Theresa May with few options, but possibilities include:

- Renegotiate the deal with Brussels (although the EU has said that this is the only deal available unless the British 'red lines' are significantly changed)
- Extend Article 50

- Hold a second referendum
- Leave on 29th March 2019 with no deal

How will Brexit work?

The *European Union (Notification of Withdrawal) Bill 2017* (the Brexit Bill) passed through Parliament without amendment and received Royal Assent on 16 March 2017.

On 29 March 2017 the UK triggered Article 50 of the Lisbon Treaty, the legal mechanism for the withdrawal of a Member State from the EU. The use of Article 50 started the timer on a two-year process of exit talks.

Talks commenced on 19 June 2017. Michel Barnier, the EU's chief Brexit negotiator made clear that Britain would have to negotiate leaving the EU before negotiating a future trade deal. The terms of reference for the negotiations have now been published¹.

During the negotiation period, EU laws will still apply to the UK, the UK will continue to participate in other EU business as normal but will not participate in internal EU discussions or decisions on its own withdrawal.

In March 2018, the UK and the EU agreed a transition period, conditional on both sides agreeing a final withdrawal treaty. The transition period will last from 29 March 2019 (Brexit Day) until 31 December 2020.

On the EU side, the agreement will be negotiated by the European Commission

following a mandate from EU ministers and concluded by EU governments "acting by a qualified majority, after obtaining the consent of the European Parliament." This means that the European Parliament may be an unpredictable factor in striking a deal and UK MEPs will still have an involvement.

Select Committees will also have a role in scrutiny, such as the House of Commons Environmental Audit Committee and the House of Lords EU Energy and Environment Sub-Committee. There is a newly created Exiting the European Union Committee, although given this committee has a large scope and a high number of members, with ten 'leave' and 11 'remain' MPs, it is likely that the departmental committees may be more effective at scrutiny.

An Amendment to the EU Withdrawal Act means that Parliament will have a vote on the final deal once Theresa May has effectively agreed it with her European counterparts, although this is unlikely to be meaningful, simply an agreement to the deal on the table or to go forward with no deal at all. If there is no deal at all then the UK would be subject to World Trade Organisations rules.

In July 2018, the Cabinet agreed a strategy for Brexit negotiations, the so-called 'Chequers Agreement'². Key points included:

- A common rulebook for all goods including agri-food
- Maintain high regulatory standards for the environment, climate change, social and employment, and consumer protection.

¹ [Terms of reference](#) for the Article 50 negotiations between the United Kingdom and the European Union

² [Statement from HM Government](#), 6 July 2018

- Joint institutional framework to provide for the consistent interpretation and application of UK-EU agreements
- Phased introduction of a new Facilitated Customs Arrangement, which would remove the need for customs checks

Following the publication of the Chequers Agreement, Boris Johnson and David Davis resigned from the Cabinet in protest as they were not supportive of the strategy. Jeremy Hunt was appointed Foreign Secretary and Dominic Raab Secretary of State for the Department for Exiting the European Union (DExEU).

Two key pieces of legislation were narrowly passed in the House of Commons on 16 and 17 July, the Customs Bill and the Trade Bill. The Government was forced to accept four amendments to the Customs Bill by leave-supporting MPs who were unhappy with the proposals in the Chequers Agreement.

On 24 July 2018, Prime Minister Theresa May announced that she would be taking the lead in negotiations with the EU from DExEU. The Cabinet Office Europe Unit now has overall responsibility for the preparation and conduct of the negotiations, with DExEU continuing to lead on domestic preparations for a deal and no deal scenario.

Throughout the summer, the Chequers proposal came under sustained criticism and by the time of the autumn party conferences, it had been dropped by No. 10 as a firm UK position.

Brexit and Devolution

The UK negotiated the proposed Withdrawal Agreement on behalf of the devolved administrations as it is a reserved

matter. However, both the Scottish and Welsh Governments (supported by Plaid Cymru) published White Papers that set out their preference to remain in the Single Market.

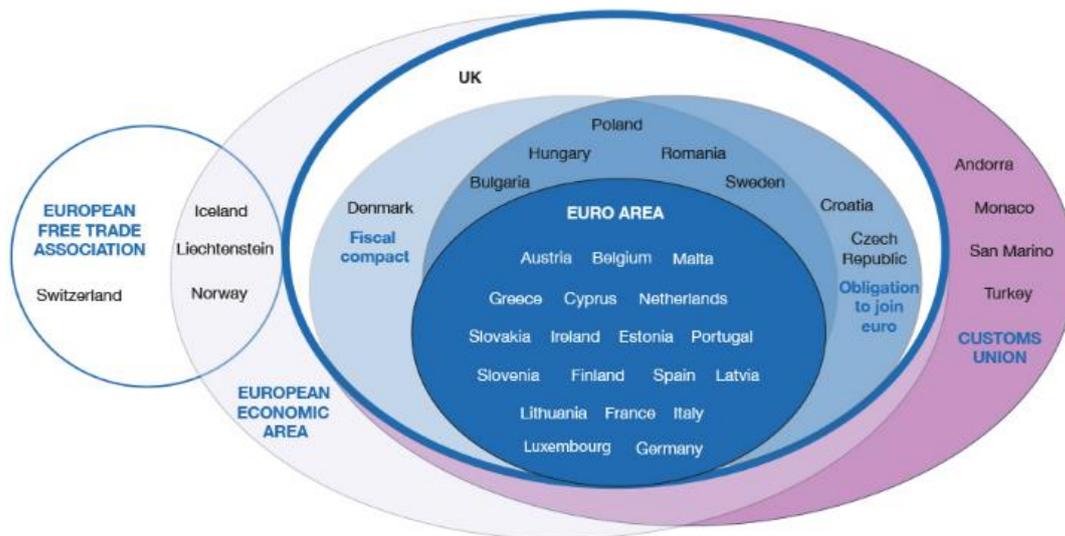
The Northern Ireland Executive has not published a White Paper on EU exit. The Northern Ireland border issue has become one of the most contentious and complicated of the the Brexit process. The details of the UK/EU border will be finalised during the trade agreement talks. If no longterm trade deal has been agreed which avoids a hard border between Northern Ireland and the Republic of Ireland by the end of 2020, then the backstop arrangements of a 'single customs territory between the EU and the UK' will apply.

What will Brexit mean for the UK?

The Withdrawal Agreement was agreed with the EU and published in November. Key points include:

- The transition period will apply from 29 March 2019 to 31 December 2020. It can be extended by a maximum of 2 years, and any extension must be jointly agreed with the EU before 1 July 2020.
- UK citizens in the EU and EU citizens in the UK will retain their residency right after Brexit.
- The provision for a backstop arrangement in the event of failure to agree a long-term trade deal, concerning avoiding a hard border between Northern Ireland and the Republic of Ireland, putting Northern Ireland in a closer customs relationship with the EU than the rest of the UK.

- The UK cannot leave without the joint agreement of the EU.
- The UK will remain under the jurisdiction of the European Court of Justice during the transition period.
- The EU and UK will use 'best endeavours to conclude and ratify an agreement on access to waters and fishing opportunities'.



EU and related membership groupings – UK Government White Paper

Implications of leaving the EU and EEA

- ◆ The free movement of goods, services, people and capital within the European Single Market will no longer apply
- ◆ The European Court of Justice (ECJ) will not have jurisdiction in the UK
- ◆ Future access to the Single Market will have to be negotiated. This would still rely on products meeting European standards and meeting internationally agreed standards, e.g. REACH regulations on chemicals and eco-labelling
- ◆ The UK will not contribute to the EU budget, although it will have to settle a 'divorce bill'
- ◆ The UK will not have a say in the formulation and amendment of EU policy on the environment
- ◆ The cornerstone policy that affects land management, the Common Agricultural Policy (CAP) will no longer apply to the UK
- ◆ The Common Fisheries Policy will not apply although there will need to be a mutually beneficial deal between UK and EU fishing industries to retain access to waters
- ◆ The Habitats and Bathing Waters Directives no longer apply
- ◆ Access to the European Investment Bank could be lost
- ◆ Access to joint research programmes and funding could be lost

The Repeal Bill

It is estimated that one sixth of our statute is from Europe and we abide by 12,000 regulations. Most of this European law is transposed into national law so it will remain after the UK exits the EU. The Repeal Bill, officially known as the European Union (Withdrawal) Act, was given Royal Assent on 26 June 2018, and removes the *European Communities Act 1972* and converts the body of existing EU law into domestic law.

The Act has three elements:

- It repeals the *European Communities Act 1972*
- The Act preserves EU law where it stands at the moment before we leave the EU. Parliament (and, where appropriate, the devolved legislatures) will then be able to decide which elements of that law to keep, amend or repeal once we have left the EU - the UK courts will then apply those decisions of Parliament and the devolved legislatures.
- Finally, the Act enables changes to be made by secondary legislation to the laws that would otherwise not function sensibly once we have left the EU, so that our legal system continues to function correctly outside the EU.

Other Brexit Bills

The Queen's Speech 2017 listed a number of other 'Brexit Bills':

- A trade bill - This will allow the UK to operate its own trade policy after Brexit. This may face opposition from those MPs determined to keep the UK in the EU customs union. This Bill has also passed through the House of Commons and is currently in progress through the Lords.
- An immigration bill - This will allow the UK to set its own immigration policy. A White Paper is expected shortly, followed by a draft Bill in 2019.
- A fisheries bill - This will enable the UK to take control of its fishing waters after Brexit and to set fishing quotas. This Bill is currently in progress through the House of Commons.
- An agriculture bill - This will set up a system to support farmers after Brexit takes them out of the common agriculture policy. Following a consultation on the Future of Farming in Spring 2018, the Bill was published in September 2018 and is currently in progress through the House of Commons.
- A nuclear safeguards bill - This will set up a nuclear safeguards regime to compensate for the fact that Brexit will take the UK out of Euratom, a separate treaty governing safety in the civil nuclear power industry. The Nuclear Safeguards Act was given Royal Assent in June 2018.
- An international sanctions bill - This will allow the UK to continue applying international sanctions, because after Brexit it will no longer be bound by EU sanctions policy. The Sanctions and Anti-Money Laundering Act received Royal Assent in May 2018.

- ◆ An EU (approvals) bill - This is a technical bill, implementing changes to treaties involving the EU, the UK and non-EU countries. The European Union (Approvals) Act received Royal Assent in December 2017.

Key concerns for the environment

Increasingly environmental challenges from air pollution to water quality have been understood as transboundary in nature and have required a multi-national approach to resolve. There is a risk that the environment is neglected post-Brexit as a result of not having EU drivers and we could undo some of the environmental gains of the last few decades.

The impact will be felt strongly within the environment department:

- ◆ Of around 12,000 EU laws, a quarter of the total relate to Defra
- ◆ Defra distributes £3 billion a year of EU money to farmers and land managers; around 2000 people in the Rural Payments Agency ensure this money is paid, and similar numbers in Natural England help them improve the environment;
- ◆ Some 60% of the UK's food and drink exports—the largest UK manufacturing sector—went to the EU in 2015. Over 70% of our annual agri-food imports come from the EU.

There is a concern over the capacity within government departments to deliver on these aspirations with Defra having already faced a 25% cut in resources. It has though hired additional staff to work on its EU Exit strategy.

The Future Relationship Between the UK and the EU White Paper stated that the UK would:

"Commit to...agreeing to maintain high standards through non-regression provisions in areas including the environment".

Risks relate to what happens once this legislation is firmly under control of the UK Parliament; in these circumstances legislation is easier to repeal, particularly if it is transposed as secondary and not primary legislation.

The Birds and Habitats Directives and the Bathing Waters Directive are not applicable once we leave the EU. The farming Minister George Eustice, made his feelings on the Habitats and Birds Directives clear when he denounced them as "spirit crushing green directives". EU nature legislation is considerably stronger than the UK legislation which preceded it. These hugely valuable protections for our national wildlife would undoubtedly be under pressure if they were perceived sufficiently widely as a brake on the pace of development, particularly housing and economic growth.

There has been little discussion of the fate of the Water Framework Directive post-Brexit by government and commentators. Many of the 10,000 people in the Environment Agency check the quality of water bodies against standards set by the EU which have vastly improved their quality over the years.

It is not clear what the long-term fate of these Directives will be, but they will continue to apply until changed by Parliament. CIWEM considers there will undoubtedly be serious public opposition against any proposals to remove or significantly weaken such major environmental protections as the Habitats, Birds, Bathing Water or Air Quality Directives which safeguard the quality of our environment.

A crucial factor which has played a key part in the achievement of significant environmental improvements in the UK at times, has been the ability of the European Court of Justice to hold national governments' feet to the fire in the form of infraction proceedings (valuable in forcing implementation of the requirements of the Bathing Water Directive and Ambient Air Quality Directive). Without this enforcement mechanism, an alternative approach will be needed, such as enhancing the powers of the UK Supreme Court.

Environmental Governance post-Brexit

In its flagship environmental policy launched in January 2018, the 25 Year Environment Plan, the Government pledged to be the "first generation to leave the environment in a better state than we found it" and committed to consult on creating a world-leading environmental watchdog to replicate the functions of the EU. Currently, the European Commission provides a scrutiny function and the Court of Justice of the European Union provides the enforcement function of the UK government's implementation of environmental law.

During the passage of the EU Withdrawal Bill through the Houses of Parliament, concern was raised that environmental

protections would be weakened post-Brexit. Following the publication of the consultation on Environmental Principles and Governance after EU Exit in May 2018, there was still concerns about the lack of adequate powers proposed for the new watchdog to hold the government to account, and that the environmental principles that have underpinned EU environmental law would not be transferred to UK law. An Amendment to the EU Withdrawal Bill initiated by the Lords, and altered by the government, now means that the environmental principles will be enshrined into a new Environment Bill, and the watchdog will have the power to hold the government to account through the legal system.

The Amendment also committed the Government to publish an Environment Bill before the end of 2018, which includes provisions for the creation of the new watchdog.

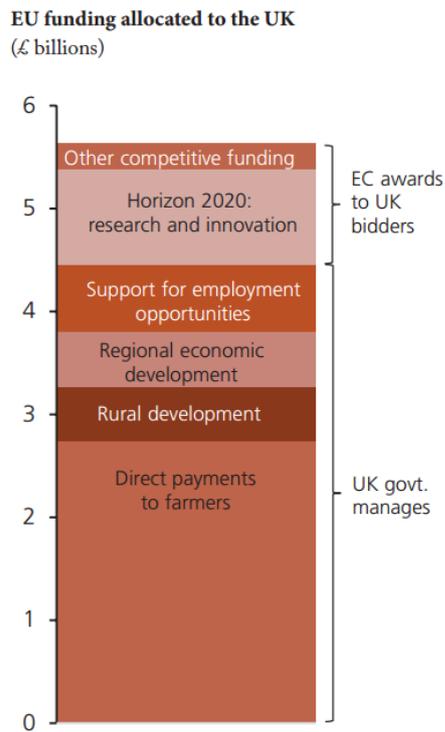
Replacement of EU Funding

The UK receives around £6bn of funding each year. Whilst this is a small sum in overall spending terms, it has significant benefits to agriculture, rural affairs, regional economies and science. Two thirds of agri-environment expenditure originates from the CAP and it is estimated that UK farmers received €3.1bn in 2015.

Another concern is that research may suffer. The UK is one of the largest recipients of research funding in the EU. There are many joint research programmes with partners in Europe and access to European funds such as Horizon 2020, Life funding and European Research Council funding could be at risk. UK universities currently benefit from around £1 billion a year in EU research funding.

The loss of free movement of people may also have implications for access to skills.

House of Commons Library. 2017. The economy



and public finances

The loss of access to the European Investment Bank will mean that the UK will need to develop our own investment funds. In 2015 the EIB provided €7.77 billion to UK infrastructure projects such as the Thames Tideway Tunnel. Norway and Switzerland have found that the EIB will only fund their projects when they are for interconnector projects with EU countries and they have struggled to access low cost finance for other projects.

Opportunities

In the upcoming negotiations and the wider programme of government the focus of the Government will be important. It is already seeking to find the opportunities that Brexit might present across all departments.

The UK has more often than not been a leader rather than a detractor in terms of its handling of EU environmental policy since the 1970s, across governments of all political colour. A great deal of European legislation was led by or supported by the UK. This affords some reassurance that the leave result will be unlikely to result in a bonfire of environmental legislation. Parliamentary time will need to be dedicated to reviewing regulations after the exit which could take a number of years.

CIWEM calls for Environment at the heart of EU exit

Environmental protection and standards must be maintained as we leave the EU and negotiate future trade deals. The new Government must commit to providing equivalent, or better, protection for the environment when we leave the EU.

The 'precautionary principle' and the 'polluter pays principle' – the fundamental foundations of environmental protection – must be transposed into UK law and any trade deal must treat environmental standards as non-negotiable.

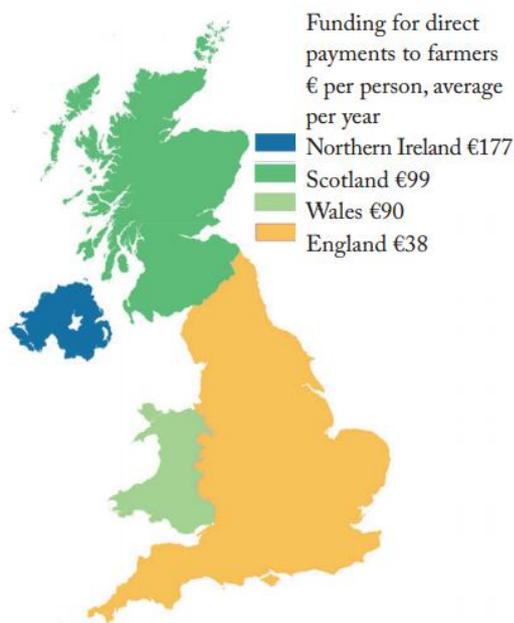
The civil service must be given enough capacity to deliver EU exit alongside a meaningful domestic programme of government. Skilled and experienced staff will be needed to backfill positions lost to the departments coordinating EU exit.

The CAP is an area where we could significantly improve environmental protection and create a more progressive policy. By focusing funding on delivering public goods including food production,

ecosystem services access, public health, water quality improvements and preventing flooding will make the benefits more tangible.

CIWEM calls for progressive agriculture and land management

An ambitious strategy to replace the European Common Agricultural Policy (CAP) is needed. A replacement for CAP should ensure that public money is used efficiently to deliver sustainable food production whilst improving the provision of public goods including ecosystem services, public health, high water quality and catchment level flood resilience.



House of Commons Library. 2017. The economy and public finances

Although we have an opportunity to design better policies and subsidies to benefit the environment, the difficulty will be in persuading the general public that public money should be spent here when NHS funding was a key topic in the referendum campaign (and to a lesser extent in the subsequent General Election campaign). As the map above illustrates devolution will also come into play when readdressing farm payments.

Loss of policy certainty and continuity

Most businesses, certainly the most forward thinking and successful, do not regard environmental regulation as a great burden. They plan for it and adapt to it, investing accordingly and will typically be more resilient as a result. The common business request in this context is long-term regulatory certainty to enable planning and the ability to raise capital and a level playing field to guarantee fair trade. The longevity of EU policy and regulation has helped deliver against these needs and businesses will be looking for a clear steer from UK government going forwards.

CIWEM will be monitoring events closely and pressing for the maintenance and improvement of levels of environmental protection and performance within the UK. We are keen to extend an invitation to our members to assist us in this work.

Further reading

White Papers

[Withdrawal Agreement and Political Declaration](#), UK Government, July 2018

[Legislating for the Withdrawal Agreement Between the United Kingdom and the European Union](#), UK Government, July 2018

[The Future Relationship Between the United Kingdom and the European Union](#), UK Government, July 2018

[Chequers Agreement: Statement from HM Government](#), UK Government, July 2018

[The United Kingdom's exit from, and new partnership with, the European Union](#), UK Government, February 2017

[Scotland's Place in Europe](#), Scottish Government, December 2016.

[Securing Wales' Future](#), Welsh Government, January 2017

Reports and commentary

BBC News - [The UK's EU referendum: All you need to know](#)

Brexit & Environment – [UK Environmental Policy Post-Brexit: A Risk Analysis](#)

British Water - [Q&A Brexit](#)

Dr Charlotte Burns, University of York (for Friends of the Earth) - [The Implications for UK Environmental Policy of a Vote to Exit the EU](#)

Deloitte - [Brexit: Plotting a new course](#)

Catherine Ross, OFWAT Chief Executive - [Water and wastewater markets: short-term challenges, long-term evolution – opening address: water market reform 2016](#)

Environmental Audit Committee - [EU and UK Environmental Policy report \(published 19/04/2016\)](#)

E3G and Green Alliance - [The Benefits of Europe for Energy and Climate Change - And What Could Happen If We Brexit](#)

House of Lords European Union Committee - [The process of withdrawing from the European Union](#)

House of Lords European Union Committee. [Brexit: environment and climate change](#)

House of Commons Library – Brexit: a reading list of post-EU Referendum publications by the UK Parliament and the Devolved Assemblies

House of Commons Library – [Effect of the UK leaving the EU on the rural economy](#)

House of Commons Library - [EU exit: impact in key UK policy areas](#)

House of Commons Library – [Exiting the EU and science and research](#)

Institute for European Environmental Policy for the All Party Parliamentary Environment Group - [Brexit – the Implications for UK Environmental Policy and Regulation](#)

Institute for European Environmental Policy report for RSPB, The Wildlife Trusts and WWF - [The potential policy and environmental consequences for the UK of a departure from the European Union](#)

Matthew Spencer, Green Alliance - [Seven things you should know about the EU and the environment](#)

National Trust - [The future of our countryside](#)

Royal Academy of Engineering. [Engineering a future outside the European Union.](#)

Royal Society - [UK research and the European Union The role of the EU in funding UK research](#)

The UK in a changing Europe - [The EU Referendum and UK environment: Expert review](#)

Tyndall Centre for Climate Change Research - [How the EU benefits UK environmental policy](#)