

Leaving the European Union: Implications for the environment



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February 2019

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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 – February 2019

Following five days of debate by MPs in the House of Commons in early December, it became clear that the government was going to be defeated in the final vote on the Withdrawal Agreement scheduled for 11th December. To avoid an overwhelming defeat, Theresa May announced on 10th December that the vote would be postponed, and she would go back to Brussels to secure changes to the Northern Ireland backstop, the main point of opposition to her Brexit deal. The EU have repeatedly stated that they are unwilling to renegotiate the Withdrawal Agreement.

The Chair of the 1922 Committee announced on 11th December that he had received the 48 letters required to trigger a vote of no confidence in the Prime Minister, which took place the next day and was won by the PM with 63% of her MPs backing her.

There followed a period of quiet over Christmas whilst the PM continued with talks with the EU about possible changes to the backstop.

On 15th January, MPs were given a chance to vote on the deal. The PM suffered the heaviest parliamentary defeat in history, losing by 230 votes. Opposition leaders quickly moved to call a vote of no confidence in the government, which took place the following day and was won by the government with a majority of 19.

The PM reached out across the floor to opposition parties to try and reach a compromise which could win the backing of a majority of MPs.

A working group of pro-Brexit and pro-Remain Conservative MPs drew up the so-called 'Malthouse Compromise' to try to unify the Conservative party. The plan has two parts. Plan A covers how the UK would

leave with a deal including an extension to the transition period to 2021, and use of unspecified technology to avoid a hard border in Northern Ireland. Plan B would see the UK leave on 29th March without a deal being agreed but asks the EU to honour the transition period. The EU has indicated that it will not agree to the terms of the plan.

On 29th January, the so-called 'Brady amendment' was passed by the House of Commons, which calls for the planned Irish backstop to be replaced by "alternative arrangements". On the same day, MPs also passed a non-binding motion which ruled out a no-deal Brexit, and rejected the 'Cooper-Boles amendment' which would've allowed parliamentary time for a Bill to give MPs a vote on delaying Article 50, if the Withdrawal Agreement hadn't been approved by Parliament by 26th February.

The government lost another vote on Valentine's Day after pro-Brexit MPs from the European Research Group abstained on the non-binding motion as it ruled out a no-deal Brexit, and effectively removed the Malthouse Compromise as government strategy.

In the week beginning 18th February, 9 Labour MPs quit their party, 8 of whom joined the newly formed Independent Group, mostly in protest at their party's Brexit policy and handling of accusations of antisemitism within the party. They were joined by 3 Conservative MPs, unhappy with the Government's handling of Brexit.

In the latest talks with the EU, Theresa May has confirmed to the EU that there needs to be legally binding changes to the Irish backstop in order to get Parliament's approval of the deal, but the EU has reaffirmed its position and continues to rule out such changes.

The options still remaining are:

- Major renegotiation of the Withdrawal Agreement, which the EU is likely to resist.
- A second referendum. This is not supported by the government and is yet to become official Labour Party policy.
- A general election called by the PM to get a political mandate for her Brexit deal.
- The UK leaves the EU on 29th March with no deal.

The first three options would almost certainly require an extension of Article 50, which would have to be unanimously agreed by all EU member states.

Theresa May has set a deadline for 12th March for the House of Commons to have another meaningful vote on her deal. If it is rejected, MPs will then be given a vote on no-deal, followed by a vote on extending Article 50.

With only matter of weeks remaining until exit day, there is still a great deal of uncertainty about what format Brexit will take. Preparations for no-deal are underway across Whitehall, and the calls for the government to extend Article 50 to avoid a no-deal scenario are getting louder.

The biggest risk with regards to the environment is under a no-deal scenario. If the Withdrawal Agreement is approved, all EU law, including environmental, would continue to apply during the transition period. The Irish backstop provisions in the Agreement 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. A no-deal scenario does not have such protections.

A no-deal scenario is the legal default if no agreement is approved by Parliament, which looks more likely – even through an unintended drift – the closer we get to 29th March. No deal would be likely to result in the UK pursuing a low tax and low regulation economy, leading to strong pressure on environmental standards and protections.

The other big risk lies in the laying of Statutory Instruments (SIs) for the European Union (Withdrawal) Act, the most common form of secondary legislation used to fill in the detail of the primary Act. They are particularly important under a no-deal scenario where the UK has no requirement to observe the level playing field commitments and non-regression clauses. In some environmental areas, SIs are altering current EU legislation and obligations, for example requirements for reporting emissions to air and removing penalties for non-compliance. The inadequacy of the SIs to replace EU systems could lead to ineffectiveness of UK law to ensure environmental protection. The UK's replacement of the EU's REACH regulations for chemicals is very unlikely to be in place by 29th March due to delays with the IT system underpinning it. Concerns have been expressed about the UK's ability to source essential chemicals for water treatment in a no-deal scenario.

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'

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

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. If there is no agreement and the UK leaves with no deal, then it 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.
- 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

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

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.

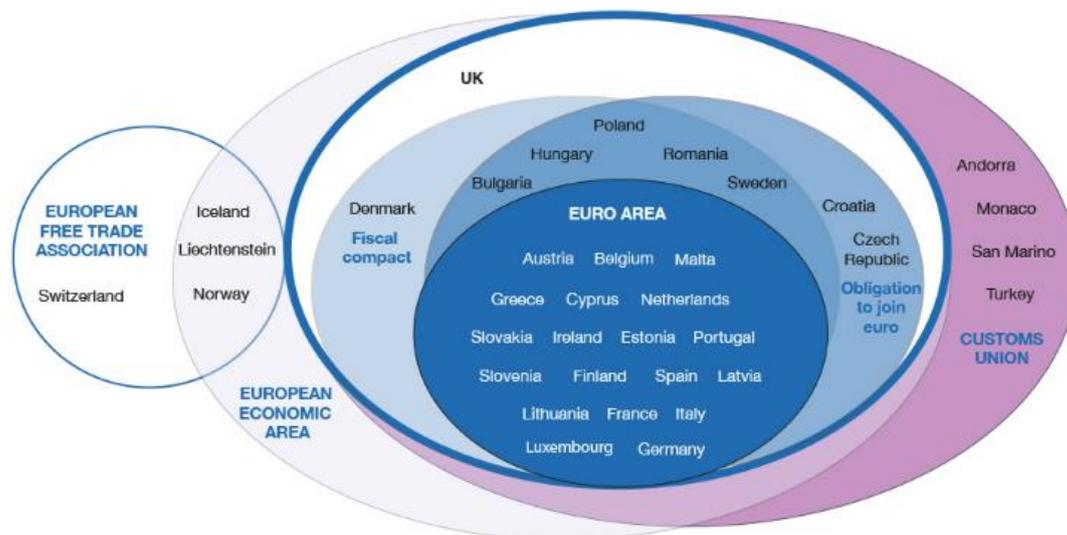
The Northern Ireland Executive has not published a White Paper on EU exit. The Northern Ireland border issue has become one of the most contentious and complicated of the the Brexit process. The details of the UK/EU border will be finalised during the trade agreement talks. If no longterm trade deal 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 customs bill - This will replace EU customs rules and allow the UK to impose its own tariffs after Brexit. The Taxation (Cross-border Trade) Act received Royal Assent in September 2018.
- ◆ 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 after EU exit. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill was passed at second reading in the House of Commons in January 2019 and is now undergoing scrutiny at Committee stage.
- ◆ 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 Government published the draft Environment (Principles and Governance) Bill in December 2018, which includes provisions for the creation of the new environmental watchdog, to be known as the Office for Environmental Protection (OEP), and provisions for enshrining the environmental principles into UK law. The Bill is currently undergoing scrutiny by Parliamentary committees and a full draft Bill is expected early in the next Parliamentary session.

The OEP has been criticised for not being meaningfully independent of government in order to effectively advise, scrutinise and enforce government implementation of environmental law and policy.

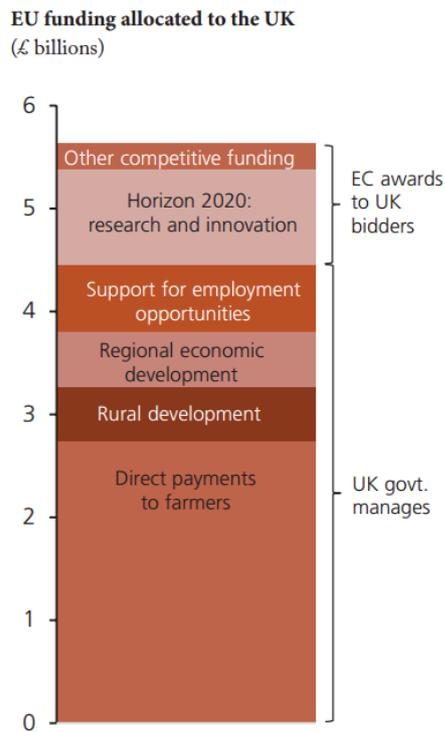
Replacement of EU Funding

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.

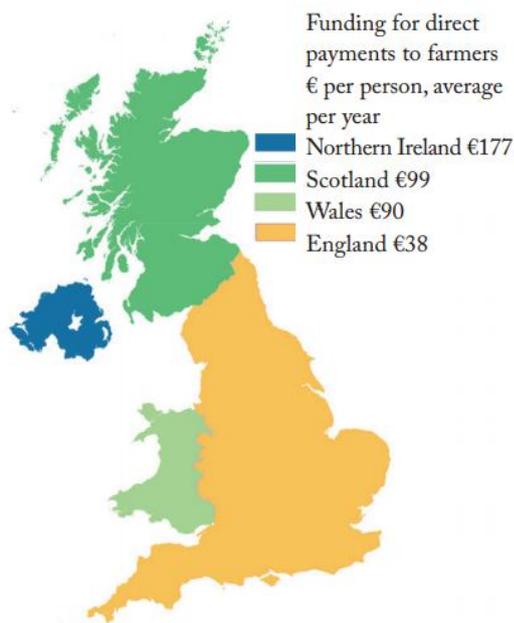
The civil service must be given enough capacity to deliver EU exit alongside a meaningful domestic programme of government. Skilled and experienced staff will be needed to backfill positions lost to the departments coordinating EU exit.

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, November 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](#)