

Leaving the European Union: Implications for the environment



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October 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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Recent Progress – October 2019

There has been a huge amount of turmoil in government in recent months. After Parliament voted overwhelmingly to extend Article 50 in March, the EU agreed to an extension and exit day was delayed until 31st October. Theresa May resigned as Prime Minister in June, paving the way for Boris Johnson to be elected as Conservative Party leader by its membership, and therefore become Prime Minister, in July.

Parliament was controversially prorogued in September for a period of five weeks, ending the previous parliamentary session, curtailing a series of important Bills progress through the Houses, and meaning no parliamentary business could take place in the weeks leading up to exit day.

However, prorogation didn't take place before legislation to frustrate leaving without a deal could be hurried through Parliament. The so-called Benn Act requires MPs to approve leaving the European Union on 31st October without a deal if a deal is not reached with the EU, and to request another extension to Article 50 if it was not approved. 21 Conservative MPs were stripped of the whip and ejected from the Party for voting against the government on this, and coupled with a series of resignations and defections from the Party, Boris Johnson was soon leading a government with no majority.

The government failed twice to win a vote in the House of Commons to call an early election to break the deadlock in Parliament, and are back at the negotiating table in Europe, and trying to find alternatives to the Northern Ireland backstop.

Although a lot has happened, there has been little material change in position, and

anything could still happen. The options still remaining are:

- Renegotiation of the Withdrawal Agreement, although time is running out to achieve meaningful progress.
- Another extension to Article 50 in order to hold either:
 - A second referendum.
 - A general election.
- The UK leaves the EU on 31st October with no deal, subject to Parliamentary approval.

Again, we are only matter of weeks away from exit day and there is still a great deal of uncertainty about what format Brexit will take. Preparations for no-deal are underway across Whitehall, and calls for Article 50 to be extended again are even louder, with the Liberal Democrat party now advocating a straight revoke stance.

The biggest risk with regards to the environment is under a no-deal scenario. The Withdrawal Agreement, as negotiated by Theresa May's government, contained a hard-won commitment to 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, through a clause in the controversial Northern Ireland backstop protocol. This protocol, however, is the biggest reason for opposition to the Withdrawal Agreement. A no-deal scenario does not have such protections.

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. Soon after moving into Downing Street, Boris Johnson confirmed that the UK would seek to diverge from EU rules and

set its own regulatory standards, including on the environment.

There is to be a Queen's Speech on 14th October in which the Government will set out its legislative programme for the next Parliament. This is likely to contain provision for the development of new versions of previous so-called Brexit bills which never completed their passage through Parliament before it was prorogued, such as the Agriculture and Fisheries Bills.

It is also likely to feature an Environment Bill very early on in the session – likely within days of the Queen's Speech. Whilst not a Brexit bill as such, the draft Environment Bill developed under previous Environment Secretary Michael Gove contained much provision within its governance and scrutiny components to replace the functions of the European Court of Justice. Now that Government is indicating that regulatory equivalence with the EU is not something it favours, it remains to be seen whether such provisions will remain intact.

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.

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 still apply to the UK, the UK will continue to participate in other EU business (although this has occurred at a much-reduced level) and it has not participated in internal EU discussions or decisions on its own withdrawal.

On the EU side, the negotiations have been undertaken 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."

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

Select Committees have played a significant role in scrutiny, such as the House of Commons Environmental Audit Committee and the House of Lords EU Energy and Environment Sub-Committee. These and many other committees have undertaken a range of inquiries holding Government to account and influencing the development of resulting draft legislation.

An Amendment to the EU Withdrawal Act requires Parliament to vote on the final deal once the government has effectively agreed it with European counterparts. The Agreement negotiated by Theresa May's government was rejected by MPs three times. If there is no agreement and the UK leaves with no deal, then it would be subject to World Trade Organisations rules.

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.

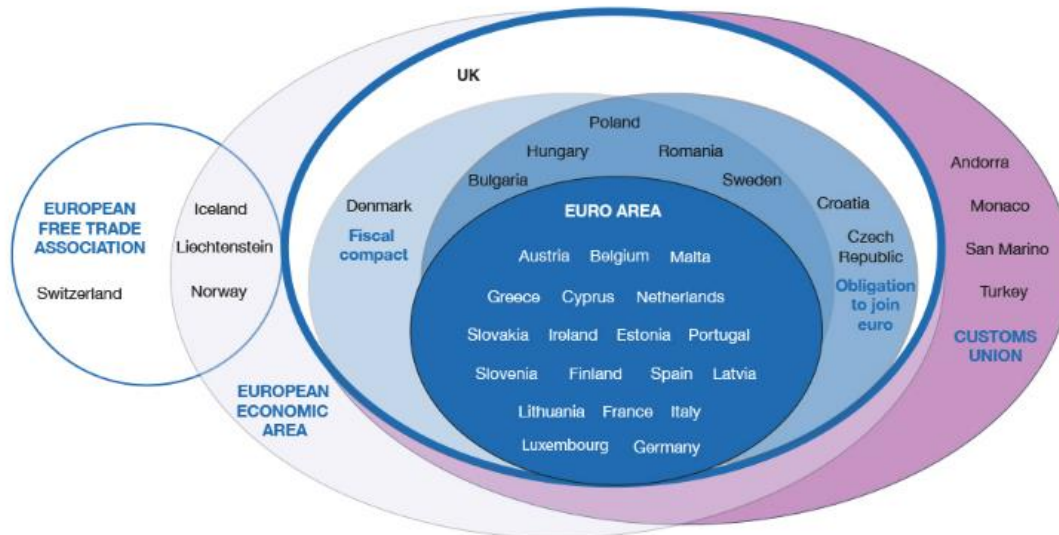
The Northern Ireland Executive has not published a White Paper on EU exit. The Northern Ireland border issue has become one of the most contentious and complicated of the Brexit process. The details of the UK/EU border will be finalised during the trade agreement talks.

What will Brexit mean for the UK?

The Withdrawal Agreement was agreed with the EU and published in November. It was rejected three times by MPs and continues to be renegotiated by the government.

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. The Bill failed to complete its passage through Parliament before the end of the session, and will have to be re-laid in the next session and start from scratch.
- 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 The Bill failed to complete its passage through Parliament before the end of the session, and will have to be re-laid in the next session and start from scratch.
- A fisheries bill - This will enable the UK to take control of its fishing waters after Brexit and to set fishing quotas. The Bill failed to complete its passage through Parliament before the end of the session, and will have to be re-laid in the next session and start from scratch.
- 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. The Bill failed to complete its passage through Parliament before the end of the session, and will have to be re-laid in the next session and start from scratch.
- 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 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.

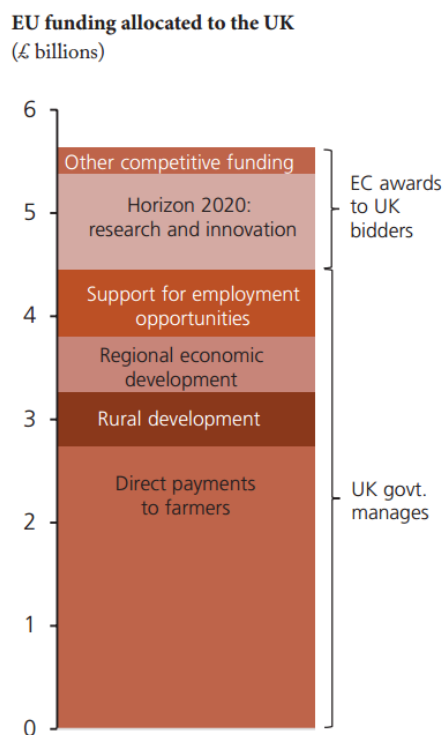
The Environment Bill was not laid before Parliament before it was prorogued. Theoretically, the Bill could be laid in the next session, but a new government might be tempted to make amendments leading to concerns that necessary ambitions could be watered down. It's also possible that a no-deal government could can the Bill and the proposed OEP completely.

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.

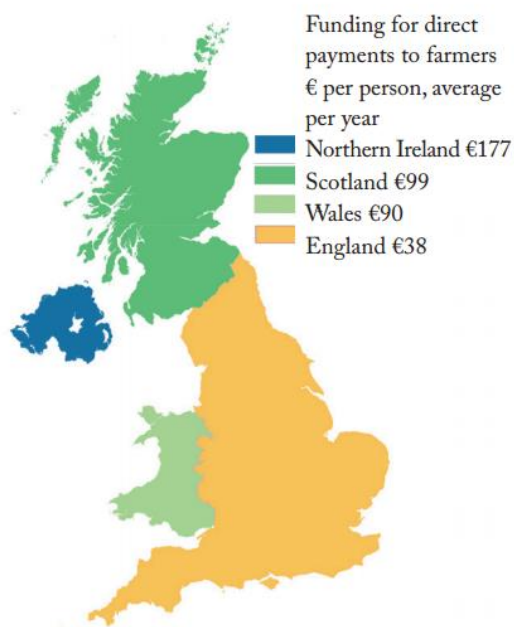
The 'precautionary principle' and the 'polluter pays principle' – the fundamental foundations of environmental protection – must be transposed into UK law and any trade deal must treat environmental standards as non-negotiable.

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](#)