



Lawyers Against Brexit Greener In EU

**Key Brexit challenges related to the environment:
Myth Buster**

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Lawyers Against Brexit briefings are intended to provide a snapshot of current legal issues relating to Brexit. These briefings are as accurate but accessible as possible at the time of drafting and will be subject to updates in the light of ongoing negotiations between the UK and EU, as well as developments in domestic legislation brought forward relating to Brexit. They are an overview and not intended to be exhaustive or an in-depth legal analysis.

Introduction and Overview

Brexit and our impending departure from the EU and its structures will have unprecedented impacts on UK environmental protection and governance frameworks. In attempting to disentangle UK law and policy across four administrations from over 40 years of progressive harmonisation, integration and alignment, the environmental field is profoundly vulnerable to the impacts of Brexit. These impacts are factual, practical, technical and legal.

At its most basic, the environmental issues facing humanity today do not respect artificially drawn political borders and implicitly require international, collaborative and joined-up efforts by states to respond to them. They cannot be resolved by any one country acting alone.

The purpose of this short briefing is to help to bust some of the most common ‘Brexit myths’ related to the environmental field and help the wider public to break-through the rhetoric by making key technical information more accessible. This is a particularly challenging regulatory area even for those specialising in it. We provide an overview of some of the key risks, the ‘known unknowns’ and also the ‘unknown unknowns’ for the environment resulting from Brexit. At the time of publishing this paper, it is important to stress that there are still a number of fast-moving pieces which continue to shape the complex debate surrounding a proposed ‘Greener Brexit’. Key further developments are anticipated in the coming weeks.

The scale of the task ahead for post-Brexit environmental safeguarding is vast and has, in our professional view, been significantly understated by the UK Government to date. **At this juncture, there remain key risks and threats for the environment and public health despite significant engagement by non-governmental organisations and wider civil society to help mitigate them.** These risks arise directly (for example, due to gaps in legislative frameworks which have not been satisfactorily addressed) but equally as a consequence of stagnation, and possible inertia, resulting from Brexit. **To date, Ministerial assurances and policies proposed by the Government to address them are not sufficient to address these legal concerns.**

Common myths about environmental protection after exit day

Myth 1: After Brexit, the UK will regain unfettered sovereignty in relation to environmental issues. We are taking back control. FALSE

As a matter of international law, the version of sovereignty which has been portrayed politically by the current UK Government does not exist.



By their very nature, **the consequences of environmental degradation cannot be tackled comprehensively within the confines of national political borders.** Furthermore, the impacts of everyday activities in the UK cross such borders (whether directly, such as the abstraction of water, or in more diffuse and aggregate impacts, such as industrial emissions). Activities of this sort therefore engage broader international legal duties in the environmental sphere at the state-to-state level (such as the ‘no-harm’ principle, duties of good-neighbourliness and due diligence). The so-called ‘transboundary’ nature of many environmental challenges today are clear when thinking about air pollution, water contamination and biodiversity loss, to name some of the most commonly cited examples.

The UK operates within, and is bound by, this broader international legal framework and ‘rulebook’ regardless of whether it leaves the EU. These broader international legal obligations may be seen to constrain sovereignty in the sphere of the environment (for example, requiring the UK to undertake environmental impact assessment in a transboundary context). Equally – and perhaps more importantly – they are also an expression of sovereignty by providing a means for the UK to engage in multi-lateral mechanisms which also constrain the sovereignty of others to the benefit of the UK’s own national interests; for example, requiring the UK to be notified when others undertake activities like the re-consenting of nuclear plants and for our involvement in associated decision-making to prevent and mitigate harms. We too are exposed to the transboundary effects of environmental harm.

EU law is admittedly sometimes more specific than international law in the field of the environment and the precise mechanisms for its enforcement may be different. But in general terms, EU law very often just provides the ‘how’ of complying with these broader legal obligations. Thus, if the UK doesn’t deliver its international environmental obligations via existing EU mechanisms it will have to find another means and procedures by which to do so. This includes complying with requirements of existing international treaties, as well as customary laws (which the UK cannot unilaterally change). Further, it is important to note that co-operation with other states is an *intrinsic* requirement of sovereignty (not a separate notion), as well as being a founding requirement applicable under the Charter of the United Nations.¹ **Therefore the concept of ‘taking back control’ is fundamentally misconceived and misrepresented from a legal perspective in the Brexit discussions.**

Whilst the UK has given political assurances that there will be no backsliding in environmental obligations, these assurances alone are inadequate to prevent regulatory chill and environmental exploitation by unscrupulous developers and corporate entities whose priority may be profit before planet. However, when pressed on this by the House of Commons Environmental Audit Committee, Michael Gove, Secretary of State for Environment, Food and Rural Affairs, stated unequivocally that a specific clause on non-regression within the EU (Withdrawal) Bill is “*unnecessary*” and “*contrary to the intention of taking back control*”. This calls into question earlier assurances. It is important also to stress that any perception of a watering down or regression in these standards would send an extremely dangerous message globally to other states, potentially undermining key mechanisms which it is in our (UK) national interests that others also respect and comply with.

¹ Reflected, for example, in Article 55 and 56 of the Charter of the United Nations.



Moreover, there is now a very clear risk **that the UK will simply spend years ‘reinventing the wheel’ to arrive at the same or less favourable positions relative to its domestic environmental protection and governance frameworks.** Yet, the environmental challenges we face today are urgent, systemic and pervasive – and the next five-year horizon has been identified as critical by world-leading scientists to bring our activities at the global scale within key planetary boundaries. That is, the very ecological limits of the planet. Therefore, Brexit is creating profound risks that finite resources and expertise are diverted from dealing with these key real-world challenges (for example, climate change, biodiversity loss, the plastic epidemic, to name key examples).

Removing the full force of EU Environmental legal safeguards is therefore a dangerous path that should not be pursued and especially not at this juncture.

Myth 2: EU laws will be “copied-and-pasted” on Brexit day

FALSE

For the reasons explained below, **it is an extreme over-simplification to suggest that EU laws can be copied and pasted ready for exit day.** Since the early days of Brexit, lawyers and leading experts have raised fundamental concerns about the ability to achieve this overarching aim through general glosses and savings provisions within the EU (Withdrawal) Bill given the complexity and different types of considerations involved. Those fears have played out in practice with the current version of the EU (Withdrawal) Bill which fails to deliver the required levels of legal certainty to ensure a smooth transition. Further, it is important to note that the approach to environmental protection in the UK is not uniform. Very often the devolved administrations have taken divergent approaches in the field of the environment: a fact has been consistently, inadequately addressed by the UK Government and downplayed.

To understand why ‘copy and paste’ is a myth, it is necessary to appreciate the complexity and differing components of the EU’s influence on our environmental laws and how these are reflected in existing domestic law. These are issues which require to be comprehensively worked through and addressed if departing existing EU structures. **Substitutes or alternative mechanisms need to be developed to fill them to prevent lacunae –**

- the EU helps set ‘**Road Maps’ and long-term strategies** that have a longer-term horizon beyond national Parliamentary cycles (such as [EU Action Programmes](#)). They also bring together leading experts and the latest thinking from across the EU (and globally) in their development.
- There are **different types of [EU Environmental Law](#)** which each bring different considerations, including:
 - 1) *Regulations* – which are addressed to Member States and directly applicable and enforceable in our national law. Only rarely do they require Member States to create specific legal rules to fulfil them;
 - 2) *Directives* – which specify the result to be achieved and provide the framework for doing so but usually leave it to Member States to devise their own precise domestic laws to meet them. In practice, many Directives have been given effect in national law using the powers under section 2(2) of the European Communities Act 1972 (which the EU (Withdrawal) Bill will repeal), as well as through specific UK legislation; and



- 3) *Decisions* – which may be addressed to a particular party or parties (individuals, companies or member states).

The EU also regularly adopts measures in order to supplement or amend or implement the rules prescribed in Directives, Regulations or Decisions. Recommendations and opinions, which are non-binding, may also be issued by the EU Institutions and used to aid interpretation before domestic courts.

- The **role of EU Institutions** in the enforcement of environmental law:
 - i) *the European Commission* – such as in investigating breaches of EU Law. Sometimes it reaches a negotiated settlement of these with the member state without the case ever needing to be referred to court;
 - ii) *the European Parliament*;
 - iii) *the Court of Justice of the European Union (“CJEU”)* – in interpreting and enforcing the treaties, infraction proceedings brought against member states, as well as references from national courts on the interpretation of EU acts. **The resulting body of case law is fundamental to the interpretation of EU Law.** The CJEU has provide a pivotal deterrent role also in the enforcement of EU law with the possible sanction of daily fines for non-compliance.

EU measures may provide the frameworks for EU-wide (and global) approaches in the development and setting of technical standards (for example, determining the appropriate levels of permissible discharge limits for specific pollutants) and additionally specific mechanisms for cross-border collaboration (for example, in regulating and planning cross-border, such as the River Basin Management Planning mechanism under the Water Framework Directive (2000/60/EC)). Again, these mechanisms bring together leading experts from across the EU to work collaboratively to solve key environmental challenges. **In practice, in future this may mean the UK will resort to simply a ‘copying’ approach, or of our laws becoming outdated (“zombie legislation”).**

It seems highly challenging to contemplate how this ‘**expertise gap**’ can be filled in a narrower, more isolated, domestic setting. The EU is itself a critical party in global climate change negotiation ensuring, for example, collective efforts to drive meeting emissions targets to reduce and mitigate dangerous climate damage. Environmental issues and climate change are core components in the EU’s international negotiations and conferences with global trading partners, such as the US. **The EU has leveraged influence in such matters because it is a trading block of weight and can demand higher environmental standards from other comparable trading blocks. Individual countries will inevitably be in a weakened position at the negotiating table.**

In relation to enforcement; **the fact that many pieces of legislation expressly refer to the role of EU Institutions and associated enforcement processes requires the UK to accurately adapt and amend existing legislation to avoid dangerous gaps (referred to as the ‘governance gap’) and insufficiencies in existing regulation** (which unless changed could also act as a bar to consenting) after Brexit. For example, the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 contain a requirement to obtain an opinion of from the European Commission on particular projects relating to off-shore oil and gas activities.



While the EU (Withdrawal) Bill is intended to address the majority of these issues (either directly or by providing the powers for subsequent legislation to do so), it fails to adequately do so at present. Concern has also been expressed that it risks opening the possibility for the Government to make key policy changes under the guise of ‘tidying up’, or with limited opportunity for Parliamentary scrutiny (so-called ‘Henry VIII clauses’).

To put the underestimation of this task in context, the process of assessing such changes correctly on the implementation of one EU Directive in the UK (the Water Framework Directive 2000/60/EC) was a two-year project for an entire team of government lawyers and policy officers to ensure a proper, full and complete analysis of the legal changes needed to prevent such gaps and insufficiencies, as well as to adequately address and consult on key policy options.

It is fair to conclude that the scale of the task ahead to even maintain the status quo has been *vastly* understated with **severe risks of legal uncertainty in the years to come as matters stand.**

Myth 3: Leaving the EU will allow the UK to go further in its environmental protection ambitions and deliver a truly Greener UK FALSE

It is important to remember that the EU regulatory system is designed primarily on the notion of *minimum* common standards amongst Member States. They do not, for the most part, prevent states from implementing more stringent environmental protection measures. In contrast, the UK domestic policy stance in recent years (primarily in England and Wales) has been one of vociferously acting to prevent so-called ‘gold-plating’ through the domestic ‘Better Regulation’ agenda.

There are furthermore numerous examples even under the current UK Government of attempts to frustrate and lobby against higher EU-wide ambitions on key environmental measures based on short-term economic considerations.² The recent suggestion that the Government intends to go further than existing EU measures should therefore be met with a high-degree of scepticism.

Myth 4: The environment is devolved in Scotland, Wales and Northern Ireland. So, it doesn’t matter for them what happens at Westminster and in the EU withdrawal talks. The devolved administrations will continue to protect the environment. FALSE

Whilst environmental matters are devolved to the devolved administrations, in practice such issues are often closely intertwined with reserved matters.

By way of example we look at the situation in Scotland. Leaving aside transboundary impacts (as referred to above), in Scotland policy and legislative measures in reserved areas may be critical to actually delivering

² See for example: Financial Times “*UK calls for delays to stricter coal pollution rule*”. Online at: <https://www.ft.com/content/31adfd52-96b6-11e6-a1dc-bdf38d484582>



holistic environment solutions to the challenges we face today (such as in the interface between aspects of environmental regulation and energy or of transport). Therefore, consultation and meaningful cooperation and collaboration among all the UK administrations is essential to tackle key environmental challenges within the current overarching constitutional setting.

Furthermore, it is important to note that matters relating to “*international relations*” are expressly reserved in the Scotland Act to the UK Parliament. It is the UK which is the State Party to international conventions, including those relating to the environment.³ The environment is in many instances also a human rights issue – or emmeshed with human rights considerations – thereby also placing specific obligations and constraints on the actions of the devolved administrations.⁴ This is reinforced by the recent work of the UN Special Rapporteur on Human Rights and the Environment.⁵

This means that the control and development of key modern-day environmental issues contains a complex and intertwined mix of both devolved and reserved matters. Key decisions or lack of decisions at Westminster may therefore have profound impacts for the devolved administrations and lead to complex legal uncertainties.

Myth 5: the UK Government has promised it will be the greenest government ever. The Secretary of State for the Environment, Food & Rural Affairs, Michael Gove, has also committed to keep and exceed all existing EU requirements. We can trust the Government to deliver this. FALSE

In setting the scene here, it’s important to highlight that the UK Government amended the Ministerial Code in 2015 (which outlines the main duties of conduct expected of Ministers and which they are held accountable for) to remove explicit reference to the obligation to comply with international law. This is an unprecedented change and sent a concerning signal about the Government’s respect for the rule of law.

Further, the current UK government has found itself dragged before the UK courts on a number of occasions recently for serious violations of both substantive and procedural environmental rights; including –

- 🌱 being sued (and condemned) for the third time for failing to tackle illegal and dangerous levels of air pollution in the shortest time possible⁶; and
- 🌱 breaches of the UNECE Aarhus Convention relating to the prohibitive costs of access to environmental justice due to amendments to the Civil Procedure Rules which would have had the effect of taking the UK even further from its existing position of non-compliance.⁷

³ Schedule 5, para 7 to the Scotland Act 1998.

⁴ See for example, section 29 and 57 of the Scotland Act 1998.

⁵ <http://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

⁶ The Queen (on the application of ClientEarth) No.3 -v- Secretary of State for Environment, Food and Rural Affairs and ors [2018] EWHC 315 (Admin). Online at: <https://www.judiciary.uk/judgments/the-queen-on-the-application-of-clientearth-no-3-claimant-v-secretary-of-state-for-environment-food-and-rural-affairs-and-othrs/>

⁷ The Royal Society for the Protection of Birds, Friends of the Earth Ltd & Anor v Secretary of State for Justice the Lord Chancellor [2017] EWHC 2309 (Admin) (15 September 2017) Online at: <http://www.bailii.org/ew/cases/EWHC/Admin/2017/2309.html>



It is fair to state, therefore, that the Government has developed something of a track record of being high on rhetoric, low on concrete action and of saying one thing while doing another. This track-record may lead to a well-founded degree of scepticism of its future intentions to actually deliver a “Greener UK”. This is exacerbated by recent cabinet disagreements and in-fighting on the proposed environmental watchdog.

Further examples of the UK deference towards short-term economic profits in the face of industry lobbying can be seen when considering –

- ☞ recently announced intentions to [‘fast-track’ the consenting of fracking in England and Wales](#);
- ☞ [nuclear power](#) in providing public support and the potential passing of costs for possible future liabilities to the tax-payer contrary to the polluter-pays principle;
- ☞ [Drax Power](#), which converted from coal to wood burning in name of “cleaner” energy again with substantial (billions) of taxpayer support;
- ☞ the reduction of plastic recycling targets (from 57% to 49% by 2016) after [pressures from plastic lobbying](#) (British Plastics Federation); and
- ☞ the announcement this week of backing for a third runway at [Heathrow](#) notwithstanding key climate and air quality concerns.

Further, the 25-Year Plan for the environment contains scant detail about the need to engage and collaborate actively with international environmental agreements. For these reasons, it is essential that the Government’s promises are backed up by clear and precise laws and mechanisms to hold them to account after Brexit day. Again, what will their position be on Brexit day plus ten when the political stakes are reduced?

Myth 6: In any case, the UK already has some of the highest standards of environmental protection in the world – so what’s all the fuss about? FALSE

The UK was declared in 2016 among the most nature-depleted countries in the world.⁸ Although the UK often has high environmental protection standards enshrined in domestic law, there is often a significant enforcement deficit in their actual implementation at the national level. A recent scientific study further illustrates these issues finding that the River Tame is the most polluted river in the world due to the accumulation and presence of microplastics.⁹ The UK does not have time to risk further regression in its environmental actions if there is a genuine intention to *“pass on to the next generation a natural environment protected and enhanced for the future”*.¹⁰

Moreover, the significant uncertainty surrounding the post-Brexit framework are already having a significant chilling effect on investor confidence in areas where such engagement is pivotal in providing the solutions to meet key environmental challenges. Brexit creates a potential environmental time bomb for our environment, including treasured habitats.

⁸ The State of Nature Report 2016. For a commentary see <https://www.independent.co.uk/environment/nature/nature-wildlife-species-extinct-britain-countryside-state-of-nature-report-2016-rspb-farming-a7256441.html>

⁹ <https://www.telegraph.co.uk/science/2018/03/12/british-river-has-worst-recorded-microplastic-pollution-world/>

¹⁰ 25 Year Plan for the Environment. Online at: <https://www.gov.uk/government/publications/25-year-environment-plan>



Myth 7: The EU (Withdrawal) Bill will make all the necessary changes to ensure an orderly exit in relation to environmental matters. FALSE

As above, the scale of this task legally has been vastly underestimated and understated to date (even once key policy choices have been determined, which they have not yet). The fact that with less than a year to go before exit day the UK Government has still not brought forward a single piece of Brexit environmental legislation to fill the foreseen gaps mean earlier concerns are now even more acute; for example, the precise scope and content of any future Environmental Act is currently unknown. **Key decisions cannot be made today on the basis that these components might emerge in the future in some unknown form.**

In addition –

- 📌 **Lack of consensus with devolved administrations:** the UK Government has failed to properly consult the devolved administrations and there is currently no consensus on how key EU powers should be repatriated after Brexit (such as in so-called ‘common frameworks’). This is far from straightforward given the divergences and fact that there is often both an implementation and greater enforcement gap in England & Wales. The Scottish Parliament has therefore not yet granted [consent](#) to the EU (Withdrawal) Bill. Notwithstanding the legal position surrounding the Sewel Convention (which provides that the UK Government will not normally legislate on devolved matters without such consent), if the UK Government were to press ahead without such consent it would foreseeably give rise to a constitutional crisis of an unprecedented nature.¹¹
- 📌 **Failure to grasp and recognise that environmental challenges are often also human rights issues:** the Government has failed to adequately address this in the debates to date or recognise the degree of mutual interdependence between environmental issues and human rights.
- 📌 **Gaps in the EU (Withdrawal) Bill:** [the House of Lords](#) recently responded to the profound uncertainties (outlined above) by requiring additional safeguards in the form of amendments to the EU (Withdrawal) Bill itself. However, in recent days the Government has announced its intention to push the further consideration of these key amendments – amongst the most significant legal changes in our generation – through the Commons in only a single parliamentary sitting. This will *significantly* impinge on the ability for meaningful debate and scrutiny and has been heavily criticised. The Government has openly indicated that it intends to resist and overturn many safeguard amendments when the Bill is reconsidered by the Commons. Only yesterday, the Government indicated that a [compromise amendment may now be brought forward next week](#) in relation to environmental issues. But again, based on the details known at this time, this would simply defer key issues to a future point.
- 📌 **Proposals for Green Watchdog branded ‘toothless’:** the recent and long-awaited [consultation](#) from the UK Government on its new environmental watchdog has been [highly criticised](#) by leading UK

¹¹ On 12 March 2018, the UK Government published a set of [amendments to the EU Withdrawal Bill](#), including a new compromise on Clause 11. For an overview of the latest implications of clause 11 of the EU (Withdrawal) Bill <https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-bill-clause-11-devolution> “These were debated in the House of Lords on the 21 March. However, the UK Government opted to withdraw them for further consideration rather than putting them to a vote. The proposed amendment to Clause 11 reverses the bill’s original logic. It provides that control of areas where EU and devolved law overlap will pass *by default* to the devolved institutions. However, the amendment also allows UK ministers to make regulations freezing the devolved Governments’ ability to change the law in specified areas. In such areas, Westminster would retain control until agreement is reached about what to put in place of EU law”.



NGOs. From the start, this was an imperfect and inherently weaker solution than current EU oversight mechanisms. But it is now clear that that **the proposals brought forward will not be capable of fulfilling the guardian oversight role and enforcement mechanisms provided by existing EU legal mechanisms, as earlier assured by the UK Government.** Furthermore, the continuing lack of clear provisions on how it would fit with devolved approaches still leave many unanswered questions about how it could be operationalised in practice.

Myth 8: We can be assured by the 25-Year Plan for the Environment that future Governments will preserve and indeed enhance future environmental protections. **FALSE**

On the 18th January, the UK Government published a 25-Year Plan for the Environment¹² (the “25-Year Plan”) and made a policy commitment to leave the environment “*in a better state than we found it*”. In this way, it sought to provide key assurances that Brexit would not decrease environmental protection. However, while the overall ambitions in the 25-Year Plan have been welcomed, it has been criticised as being high on ambition and scant on detail and precise targets. The cracks in the Government’s earlier vague commitments are thus already evident.

Particular areas of concern include –

- 🕒 A lack of adequate prioritisation or recognition of the most urgent environmental challenges;
- 🕒 Weak targets – whereas the Water Framework Directive (2000/60/EC) refers to specific deadlines for Member State compliance by 2027 at the latest, the 25-Year Plan refers only vaguely to taking actions “*as soon as practicable*”. There are numerous further examples of this mismatch between existing and future planned measures;¹³
- 🕒 Insufficiently precise detail about which groups of stakeholders who will be consulted on further steps and measures, as well as the timescales within which those consultations will be undertaken;
- 🕒 The very narrow view of the environmental field which is taken; for example, including insufficient recognition of the need for further regulation of transnational corporations headquartered in the UK;¹⁴
- 🕒 The UK Government is already failing to deliver key promises specified in the Plan!

Of central and overriding importance, **the 25-Year Plan has no legal underpinning at present.**

¹² *Op cit*, note 10.

¹³ On plastic pollution: the EU Plastic Strategy sets stricter duties, aimed at making plastic totally recyclable by 2030, rather than referring to 2042 as the deadline included in the UK governmental Plan; Energy: the clear and strict energy efficiency targets for 2020 included in the EU Directive 2012/27/EU on energy efficiency are counterbalanced by a UK bland approach based on excessively long proposed deadlines for phasing out the sale of diesel cars (2040); the UK position on the ongoing initiative to develop an international chemical and waste regulation to replace SAICM, is still ambiguous despite the UK government formal declaration to “*play a leading role in developing goals for international chemical management beyond 2020*” specified in the 25-Year Plan; Palm Oil: this issue sees on the one hand the EU moving towards a ban of unsustainable productions, and on the other UK supporting highly damaging procedures for the environment, such as wood biomass.

¹⁴ See further: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2017/25-year-environment-plan-17-19/>



What are the key risks we now face?

1. Running out of time

Both in terms of the Brexit negotiations and also ensuring proper scrutiny of the necessary domestic legal changes. This concern has been particularly heightened by the [announcement](#) this week of the return of the EU (Withdrawal) Bill to the House of Commons on the 12th June for consideration in a single sitting. As above, the Government has stated its intention to attempt to overturn the safeguard amendments secured by the House of Lords. The details currently known of proposed compromise measures would simply seek to defer these difficult issues to a later date and do not yet allay earlier concerns.

2. Years of legal uncertainty and the framework for the interpretation of existing laws, including before national courts

This creates key risks of exploitation by unscrupulous developers to maximise short-term economic interests at the expense of the environment or related fundamental human rights. Further, of the potential for regulatory chill in enforcement and equally uncertainty for companies trying to operate within the rules. The risks of trade-offs in trade deals still remain a key future risk (for example, concerns about techniques used in the US of chlorine washing of chicken used to prepare food for general public's consumption).

3. Lack of clear specification and separation of roles and responsibilities due to limited and insufficient consideration of key changes to legal and governance frameworks; for example, in the remit and function of the environment agencies and any new watchdog body.

4. “Zombie legislation” – which even if correctly transposed into UK law (which remains unassured at present) loses its dynamism by failing to link correctly into strategic action plans which are more closely aligned to ecological realities, as well as updated thinking on technical standards.

5. Significant costs to set up new institutions and governance structures

Cuts in Defra funding in recent years have created a significant gap at the domestic level and clearly pose risks to the ability to develop adequate environmental and protection frameworks post-Brexit. Contrary to streamlining, recent announcements confirm that an addition [1,200 civil servant posts](#) have therefore had to be created in Defra to deal only with immediate Brexit related work-streams.

6. Constitutional crisis related to devolution – due to the perceived power grab resulting from Clause 11 of the EU (Withdrawal) Bill. It is easy to understand the Scottish Parliament's continuing objections on this basis also given the higher levels of environmental protection that have traditionally been adopted north of the border.¹⁵ The First Minister appointed an [Advisory Group on Human Rights Leadership](#) for Scotland in January 2018 as a further means of upholding and advancing key environmental and human rights.

¹⁵ For example, water regulation under the Water Environment and Water Services (Scotland) Act 2003; or leadership on the ban of plastic straws by the end of 2019 as only two examples.



Overall, perhaps the greatest risk is that the UK may now regress from being at the forefront of the development of environmental law and policy – which is also then actively shaped to take account of key UK national interests – to the **role of mere “rule taker”**.¹⁶ The current debate on a new international chemical and waste treaty underscores this fear where the UK is already not actively participating in initial debates notwithstanding general commitments outlined in the 25 Year Plan to do so.

Where can I find out more?

- www.greeneruk.org
- <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8132>
- <https://www.instituteforgovernment.org.uk/explainers/eu-withdrawal-bill-amendments-and-debates>
- <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/105772.aspx>
- <https://services.parliament.uk/bills/2017-19/europeanunionwithdrawal/documents.html>
- <https://www.cigionline.org/sites/default/files/documents/Brexit%20Series%20Paper%20no.15.pdf>
- <http://www.bbc.co.uk/news/uk-politics-43256183>
- https://cdn.friendsoftheearth.uk/sites/default/files/downloads/Environment%20and%20Brexit%2C%200C%20Burns%20Et%20al%2C%20March%202018%20web_0.pdf
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf
- www.livinglaw/blog

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This paper and the underpinning analysis has been undertaken by Living Law, working in conjunction with Lawyers Against Brexit and Greener In EU, on a pro-bono basis and is not supported by the economic funding of any corporate actor.

¹⁶ See for example also debates in relation to the future functioning of the European Chemicals Agency. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2015/inquiry2/>

