



# EXITING THE EU, NOT THE ENVIRONMENT

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# EXITING THE EU, NOT THE ENVIRONMENT

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# FOREWORD<sup>1</sup>

We stand at an historic moment. After forty years of membership of the European Union (EU), the UK is now on a course for departure that will have profound implications for many aspects of our lives. Not least amongst these is the impact on the natural environment - our rivers, gardens, mountains, lakes, fields, and hedgerows. The simple fact is that membership of the EU has been essential for environmental protection. The Habitats and Birds Directives, for example, have provided far stronger safeguards than any of our domestic legislation. Moreover, challenges like air pollution, sewage in the seas and threats to migrating species don't queue up politely at national borders, waiting for their passports to be checked. By their very nature, environmental problems are transboundary. And from wildlife protections to energy efficiency, marine conservation to air pollution, the EU has been at the forefront of measures to keep our environment clean and healthy.

That is not to say the EU is without its flaws – an aggressive and intensive agricultural policy perhaps being the greatest of those - but it has been an overwhelming force for good when it comes to the environment.

It has been successful in large part because EU law has been a relatively stable and effective driver of environmental change, less exposed to the vagaries of national political cycles and regime change than most domestic law. Where long-term change and substantial investment is required, such as in the systematic creation of a low carbon economy, such stability is game changing.

Outside the EU, there will be much greater probability of legislative change in the UK, more exposure to short term political calculations, and a danger that investors will be wary of potentially higher risks. The relative attractiveness of the UK as a place for green investment is in danger of being further eroded.

If the Government's current plans are upheld, then the UK will only be bound by European environmental law until withdrawal negotiations conclude in March 2019. By then, it hopes to have transposed the entirety of the EU acquis into UK law through the Great Repeal Bill. Yet the Government has yet to identify all of the EU's environment legislation, and legal and environmental experts have been quick to point out that the transfer process will be far from simple - with the risk that protections will be lost, watered-down, or, perhaps most likely, ignored. The House of Commons Library has compiled a list of the main EU Directives affecting the Department for Environment and Rural Affairs – it has 150 entries. Even that substantial tally pales into insignificance alongside no fewer than 1100 pieces of EU environmental legislation for which DEFRA are responsible when it comes to the Great Repeal Bill.

Moreover, Theresa May's courting of the United States in pursuit of a new Free Trade Agreement poses an even greater risk that Ministers may be tempted to water down regulations in their haste to demonstrate the "success" of post-Brexit trade arrangements - such as those on GMOs, pesticides, and animal hormones. The Government has said it wants to retain close economic ties with Europe whilst negotiating free trade deals elsewhere - in practice, the Government will have to decide what level of regulatory standards it wants to adopt.

Despite the dangers ahead being obvious to many, there has so far been a total vacuum of public debate on the environment. A few solitary voices argued during the referendum campaign that the future of our natural environment was at grave risk if we left the EU. Since then, the dangers have been sidelined even further. Parliament's Environmental Audit Committee has sought to influence the agenda but, with environmental organisations and civil society wary of being seen to intervene too forcefully in the toxic politics of Brexit, the ecological dimension to the crisis we face is struggling to gain much traction in either the public or political narrative.

<sup>1</sup> With thanks to a number of experts including Global Justice Network, the House of Commons Library and David Baldock, former Director of IEEP.

**This report is an attempt to change things.**

As well as outlining many of the dangers we currently face, it seeks to present solutions. In the midst of the current political chaos, it would be easy for those on the right, who persist in their mistaken view of regulation as a ‘burden’ on the free-market, to attack the protections so many of us has fought so hard to win. To avoid the worst, it will not be enough to trust the Government’s warm words. We need a Green Guarantee that will deliver on Ministers’ commitment to ensuring that “we become the first generation to leave the environment in a better state than we found it.”<sup>2</sup> This would take the shape of a coherent plan to maintain and enhance environmental standards, ambitions and drivers during and after the Brexit process.

To make sure that happens, we’re going to need the voices of people across the country to hold the Government to account. So this report is also intended to offer a positive vision. To inspire the degree of action required if we want to guarantee the same protections for the natural world we have enjoyed as members of the EU – and ideally to better them.

Inside or outside of the EU, the UK’s magnificent landscape and wildlife offers us a glimpse of a different world– one full of beauty and wonder. One that’s too important to allow politics to trade or destroy. Above all, then, this report is intended as a call to arms around which those from across the political spectrum can unite in a shared purpose – to make this historic moment count for something.



**Caroline Lucas MP, Brighton Pavilion & Green Party Co-leader - Spring 2017**

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/589191/The\\_United\\_Kingdoms\\_exit\\_from\\_and\\_partnership\\_with\\_the\\_EU\\_Web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf) page 45

# INTRODUCTION

Over time, the implications of exiting the EU may be very different from those we are able to anticipate today, but one thing is certain: there will be major changes in law and governance and these need to be considered in the immediate future rather than after negotiations have been concluded and new legislation established in the UK.

At the moment there is a danger of the environment being overlooked by the Government in the Brexit debate, and the risks under-estimated, with potentially deeply serious consequences. It was almost entirely absent from the Prime Minister's Lancaster House speech of 17 January (despite the prompt offered by the Environmental Audit Committee published two weeks before), and whilst the recent White Paper does at least mention the environment, it is in the vaguest of terms and certainly brief. It figures nowhere in the twelve principles adopted by the Government to guide its approach to Brexit (unlike protecting workers' rights) and was addressed only in a cursory way by MPs during the three days' of debate on triggering Article 50

The Prime Minister favours a Brexit model that includes withdrawal from the Single Market and negotiating a special relationship with the EU, ruling out membership of the European Economic Area. This model has a number of implications for environmental policy and law. So too does her objective of bringing to an end the jurisdiction of the Court of Justice of the European Union (ECJ) in the UK.

Environmental law and policy within the UK is based in large part on EU legislation which has grown up since the 1970s on the basis of a political choice to share a joint approach in this arena. There have been many reasons for this, including the benefits of working together on cross border and common problems, but also the economic advantages of common standards within a free trade area. The policy is comprehensive, covering everything from climate and air pollution to biodiversity, recycling, waste management, chemicals and noise control. Hundreds of items of legislation are involved and there is a process of regular updating and amendment, supplemented by a system of strategic forward planning and periodic reviews of whether legislation is fit for purpose.

The implementation of this body of law is an active process, subject to surveillance by the European Commission, regular technical discussions and substantial pressure on governments to comply with the law that has been agreed. Ultimately, although not without a lengthy process, the ECJ can levy fines of hundreds of millions of Euro on countries that are found to be in breach of their obligations.

Consequently, this model of environmental policy in the round is not just a list of legislation. It includes a whole system of looking ahead, assessing the need for new measures, relating them to existing law, developing, debating and adopting legislation and then implementing it within a fabric that allows for oversight by the European Commission and other institutions and for complaints to be heard, including those from civil society. Departure from the EU and the Single Market means a radical break from this system in favour of an independent approach while maintaining some level of engagement with the EU, even if only as a neighbour and a source of influential standards that will continue to apply to UK products sold in the EU market.

Separation therefore is a much larger undertaking than it may appear, even more so when the time scale is so short. Whether Defra and other ministries, along with their counterparts in Scotland, Wales and Northern Ireland have the capacity to move legislation across is already in question. That in itself is a mammoth task, given the volume of legislation - research by the House of Commons library has identified over 1100 pieces of EU environmental legislation that are DEFRA "owned".<sup>3</sup> It will be made far harder now that DEFRA's budget has been cut - it now has just one third of the core staff it had ten years ago and still has to make substantial spending cuts.

Moreover, a fuller replication of the current system of environmental protection within the UK once we are outside the EU would mean much more than this. In addition there are cross-cutting issues such as governance and compliance, as well as many related areas of policy, such as agricultural and fisheries policies, or those on animal protection and consumer rights, that for the purposes of this report are considered only at the margin. This is for practical reasons rather than because they are not significant.

Advocates of leaving the EU claim there will be many opportunities to improve the environment in the UK by means of new legislation and other initiatives in the years ahead. What they do not always readily admit is that most of these opportunities exist already - EU membership

<sup>3</sup> 150 of the main Directives identified by the House of Commons Library are set out in an appendix to this report.

imposes some constraints but there's very little evidence that it inhibits the UK from, for example, setting even more ambitious targets for renewable energy or developing a planning system that has zero tolerance for the destruction of ancient woodland. There will be some genuine opportunities that are opened up, for example because of the removal of EU constraints on public procurement, or because resources can be focused on specifically UK issues. On balance though, these are far outweighed by the loss of opportunities to promote environmental progress on a European (and wider) scale by working closely with other countries and with the EU institutions, which is much more difficult to achieve from outside the EU.

When Britain went to the polls on 23rd June 2016, nobody was voting to scrap environmental protection and the Prime Minister has no mandate to do this. Yet the model she has chosen for exiting the EU represents an imminent danger of weakening the effectiveness and dynamism of environmental policy - even if the whole of current EU environmental law is transposed into equivalent UK legislation - with long lasting and potentially catastrophic implications.

This danger can be broken down into ten important issues outlined here; together they amount to one of the largest challenges of negotiating our future relationship with the EU, yet are inexplicably missing from the list of 10 principles set out in the Government's White Paper.

This list is not comprehensive but gives an impression of the nature and scale of consequences for the environment following Brexit and the risks arising in several different domains.

It does not include important cross-cutting issues such as the way in which the wishes of people and governments in Northern Ireland, Scotland and Wales are respected and the distribution of powers over the environment are arranged appropriately. This is already rising up the political agenda. Again, the lack of detail in this overview is for practical reasons rather than because they are not significant.

# TEN ENVIRONMENTAL CHALLENGES

## Legal foundations

**#1 The EU Treaties** are the foundation of all EU law and provide durable principles on which environmental policy has been built. They both shape and constrain other policies with a potentially major environmental impact, such as agriculture and development assistance. Most essentially these include the precautionary and the polluter pays principles, as well as the principle of integrating environmental goals into other policies.

There is no equivalent foundation for the environment in UK law and the Government has not indicated any interest in bringing this element of EU law across to domestic legislation. Doing so via the forthcoming Great Repeal Bill would show commitment to continued application of the principles that underpin current law, and provide some protection against large scale deregulation.

**#2 EU law** provides a large measure of environmental protection, if it is correctly implemented. It sets goals and standards to be reached, some immediately, others over a longer time scale in a very wide range of important areas. The Water Framework Directive, for example, sets water quality standards that the UK is some way off meeting, but there is a process in place for moving towards agreed goals. Protection of the environment depends on an ongoing commitment to meet these requirements.

The Government intends to bring all EU legislation into domestic law initially, although it admits that this is a major challenge in some areas, where it simply won't be possible to "cut and paste" eg chemicals and regulations with direct effect in the UK. There are thought to be over 1100 items of EU legislation in the DEFRA domain, which includes agriculture and fisheries, and the DEFRA Secretary of State has indicated that about one third of measures could fall into the problematic category.

On top of uncertainty about whether this complete initial migration into UK law can or will be fully achieved, as well as about the status of the UK legislation that arises, most of the new legislation is expected to be in the form of Statutory Instruments (SIs) which are secondary rather than primary legislation. Consequently, this new body of law will be easier for this and future governments to alter, unless there are specific provisions to require parliamentary scrutiny of any proposed changes.

This is problematic in terms of public accountability and raises concerns about the scope for watering down current standards across a wide field. It also reduces the level of confidence amongst investors who are looking for a good level of certainty about the future duration of environmental standards before committing to long term capital projects, for example to reduce air and water pollution from industrial sources.

The Government could increase the level of confidence in maintaining current standards by making clear commitments and, where possible, embodying them in law in the Great Repeal Bill. Where there are fixed compliance dates or targets for the future in EU legislation, their status needs to be confirmed beyond the date of Brexit.

EU law will not cease to evolve just because Britain is no longer at the table and a major gap and source of confusion could open up if corresponding UK law is frozen at the time of Brexit, that is unless some formal mechanisms of alignment are created. For example, as vehicle emission standards tighten progressively over time, as is necessary, there needs to be a mechanism for the UK legislation to move in parallel with the parent legislation. This too could be done in the Great Repeal Bill. The fact that, since its enactment in 2006, the EU Chemicals policy, REACH, has been amended no fewer than 38 times, is an indication of the scale of the challenge of keeping law up to date.

Certain provisions commonly found in EU law are separate to the laws themselves but it's unclear whether these will be adopted in the UK following transposition. For example the European Commission can grant a degree of flexibility in relation to some environmental legislation. These "derogations" might allow a Government longer time to comply with the requirements of a Directive and we need to know whether they will have any counterpart in UK law. Could the Government effectively grant itself a derogation?

Similarly, reporting on action taken in response to environmental law: at present, some level of public accountability and transparency about how national and regional governments are applying EU legislation is maintained by legally binding reporting requirements. Many EU environmental Directives include such obligations. Typically, there is a requirement to make regular periodic reports to the Commission. Outside of the EU, the principle of public reporting remains valuable but who will receive such reports?

Modifying the reporting arrangements to provide a level of public information and transparency appropriate to the UK is not a matter for the Government to decide without debate and Parliamentary scrutiny. The devolved administrations will have a strong interest in many issues of this kind as well.

There will be many other examples, and the full extent of the gaps and other questions arising from the Government's apparently simple solution of a Great Repeal Bill to transpose all EU law into UK law is far from clear yet. But a number will have real environmental significance and there is no sign that

Ministers are ready to disclose their thinking on how to address these issues or to enter into a debate on the most effective solutions where these are required.

Much further disclosure and discussion is required as a matter of urgency. In addition, an independent report should be commissioned, preferably by Parliament, to catalogue these issues and to propose a range of potential alternative solutions so that these can be studied in advance and then be debated in Parliament and elsewhere.

Stakeholders need an opportunity to appraise changes that could have a significant impact on them and be part of the process of identifying the best available arrangements to be embodied in the Great Repeal Bill and subsequent individual legislation where appropriate. These may include adopting new, more formal, long term domestic targets in a broad range of environmental areas parallel to the Climate Act and carbon budgets.

**Case law** fills the gaps when EU law is imprecise or new issues arise. The ECJ has played an important role in interpreting EU law, duly issuing judgments, and UK national courts need to take full account of this jurisprudence at present. When the UK exits the EU, it's far from clear what, if any, obligations will apply. This could create considerable uncertainty and could also weaken environmental protection in certain areas (eg the Nitrates Directive) if the UK courts interpret EU law in a different and less rigorous way.

This is not an issue that is unique to the environment and it needs to be addressed across the board via the Great Repeal Bill or related legislation. There are strong arguments for maintaining the status of established ECJ case law after Brexit for reasons of certainty and consistency whatever the government's sensitivities about the ECJ itself.

**#3 Full parliamentary scrutiny** is an area of concern across all policy areas but is particularly critical for the environment, where long term goals and investments play a central role. EU environmental policy has advanced across a broad front at a steady pace. While the process of developing and agreeing proposals is generally slow, it is not subject to serious bottlenecks within the legislative system. In the UK, conditions are different. Proposals can be produced much more quickly but Parliamentary time is at a premium, resulting in frequent bouts of primary legislation, sometimes in the form of omnibus laws covering many topics. This can be a reason either to delay legislation on the environment or to fall back on measures that do not require full Parliamentary scrutiny and approval.

The Government needs to make a firm commitment that the principal measures of environmental law will not be changed without such scrutiny.

After the UK has exited the EU, there will likely be amendments or major alterations to the EU legislation upon which UK legislation is based. There may be instances where it would be better in environmental terms not to follow amendments to EU law but, judging from past history, it is more likely to be beneficial. This is a significant issue given the number of regulations involved and given the UK will have a strong economic as well as environmental incentive to do some updating – it will most certainly need to comply with a large proportion of this amended environmental legislation where it applies to products that are exported to the EU.

So Parliament needs to be confident that it is informed about changes in relevant EU law and that it will receive a report from the Government as far in advance as possible recommending a way forward, with a clear rationale. A process for achieving this, and putting forward ensuing amendments to UK law, needs to be established. This is a minimum requirement and could be included in the Great Repeal Bill.

**#4 International conventions and agreements** are often set down into binding legislation via EU law, which then becomes the vehicle for the obligations that individual countries have signed up to and ratified. In some cases the EU provisions are rather more precise or stricter than the provisions in the original conventions. The Government needs to advise how it will treat its obligations under these conventions and treaties once it is solely a signatory in its own right – and confirm that it will not use the possibility of a different and lighter regime to downgrade protections. The Aarhus Convention, which covers environmental rights for citizens and related issues, is an important example where the UK could arrive at weaker levels of protection without a firm commitment from Government to retain the current levels of protection.

If the UK is a signatory to international agreements or conventions, we also need to know that it will not step back from implementing measures embodied in EU law, even if this no longer applies in the UK.

## Surveillance and compliance

EU wide environmental legislation is only as strong as the associated mechanisms which encourage, and where necessary pressure, all EU governments, including the UK, to comply. History shows that this is a major area of weakness in environmental policy; governments are frequently slow to act even after commitments have been made. This is partly because often there are not strong economic interests with a direct concern to secure compliance. It is often NGOs with limited resources that have to represent the public interest. To counter this, there is a system of surveillance and mechanisms to pursue greater compliance with legislation in the EU.

This is much stronger than the provisions of most international environmental agreements, because the latter tend to lack any meaningful capacity to impose sanctions for non-compliance. Even with the threat of sanctions, compliance with environmental law by governments and others (including car companies such as VW) is far from satisfactory. Without the EU's surveillance and compliance mechanisms the situation would be far worse.

**#5 The EU's compliance incentive** arises from the role of the EU institutions in monitoring and enforcing compliance. This includes the European Commission acting as the "guardian" of the EU Treaties, by responding to legitimate complaints, ultimately referring issues to the ECJ, and the sanctions that can follow noncompliance, including fines of many hundreds of millions of Euro.

This powerful lever on governments to act will be lost when the UK withdraws from the EU. The Government is clear that it wants to escape the jurisdiction of the ECJ, which has been fundamental to securing environmental progress, and so far has made no proposals for mechanisms to balance this loss. Under domestic UK arrangements, the pressure on the Government to implement the law and comply with obligations relies on mechanisms like judicial review, which are subject to a number of limitations and are costly. Relying on judicial review would, therefore, be a major step backwards in terms of environmental protection.

However there are no straightforward alternative ways to fill the ECJ shaped gap.

One option could be to establish a new surveillance body with strong powers to oversee compliance. Other possible but purely domestic measures to offset the risk of reduced implementation might include the creation of a new oversight body, perhaps an equivalent to the Committee on Climate Change but with a remit for the wider environment and with stronger powers, supplemented by a powerful body to handle and respond to legitimate complaints. Or, if the UK is genuinely committed to a high environmental standards approach, the Government could drop its ideological opposition to the ECJ and continue to give it a role, for example by entering into an agreement with the EU that the UK would continue to implement environmental legislation as now. This could be included in a bespoke Free Trade Agreement as part of a set of compromise measures.

**#6 Institutional structures** embed and support the implementation, development and refinement of EU law in several respects. These structures include the powers and capacity of the European Commission, the technical work done by them and their experts and consultants, by the EU agencies, including the Chemicals Agency(ECHA) and the European Environment Agency (the EEA) and by scientists funded by Horizon 2020 and other budgets.

These networks, structures and research programmes provide technical, scientific and other expertise needed to underpin a comprehensive and complex area of policy like the environment. Yet on exiting the EU, the UK will lose its role in, and access to, many of these structures.

As Theresa May negotiates the terms of our withdrawal, she should prioritise active participation in the Horizon 2020 programme and in the work of key European agencies, especially the ECHA and EEA. This would help to retain valuable capacity, expertise and access to networks and would complement gaps that are likely to appear in purely domestic capacity.

Progress and transparency in environmental policy within the EU have been aided by a well-developed forward planning and strategic process developed specifically for the environment in the shape of the regular seven year Action Programmes. This systematic process will not come across from EU law into UK legislation and the UK will not participate in the creation of future Programmes.

The UK has no counterpart to this system, and national institutions that used to play some of this role, such as the Royal Commission on Environmental Pollution, have been abolished. A new approach and an independent body to drive it should be created and would be particularly valuable over the next decade, helping create a new sense of direction in the UK and reduce the uncertainties associated with Brexit.

**#7 Several specific pieces of EU legislation** have been important in pursuing environmental goals but raise particular and urgent questions as the UK exits the EU. These include the **Emissions Trading Scheme (ETS)**, where the UK has been a leading player. Continued British participation in the ETS is probably in the interests of both the UK and the EU, but would the UK have an ongoing role in its governance including the setting of the emissions cap, where historically it has played an important role in trying to increase the level of ambition?

Chemicals policy and the pivotal REACH legislation raises questions about the value, feasibility and cost of creating a separate UK regime to regulate chemicals, especially when most UK industry will need to follow the requirements of **REACH** in any case if they wish to sell to EU markets. There are many other examples.

In negotiating our future relationship with the EU, the UK Government should opt for the most efficient and environmentally effective way forward and not simply pursue a dogmatic insistence on pursuing freedom from all forms of EU authority.

There are numerous further separate issues for the environment arising from the UK ceasing to participate in a wide range of other EU policies, including the Common Agricultural Policy and the Common Fisheries Policy, as well as transport, regional, trade, development and budget policies. Decisions in these areas need to take account of the environmental dimension.

This usually occurs to some degree within the EU because of legal requirements concerning environmental integration set out in the EU Treaties, and because of routine processes such impact assessment procedures for all new regulatory proposals. This certainly does not guarantee a sufficient regard for the environment in all the policies that emerge from the EU, still less a satisfactory outcome. However, it does constitute a process that the UK Government does not have and now could commit to.

**#8 Resources and funding for the environment** are a significant issue. The EU has devoted a considerable slice of expenditure to protecting national environments, most notably via the LIFE+ fund, the CAP Pillar II, aspects of regional and development policy, research and development etc.

That's been reinforced by a formal commitment to allocate 20% of EU expenditure to climate change related activities, covering both mitigation and adaptation. This establishes an important principle in environmental terms and has triggered a process to scrutinize expenditure from a climate perspective.

The EU is a major source of funding for the environment in the UK and the principal source of funding for agri-environmental schemes. In principle there is no reason why the UK cannot spend as much - or more - on the environment after it exits the EU. However, its domestic record suggests this will almost certainly not be the case.

Moreover, the Government will no longer be bound by EU rules, on the CAP for example, and there are voices calling for a major re-direction of funding, certainly away from farming, with potentially devastating effects on some farmers' livelihoods. This creates new hazards for the environment (and indeed for animal welfare, food safety and food security, albeit those fall outside the scope of this report). A commitment to retain existing levels of expenditure on the environment is essential.

At the same time exiting the EU, the UK will be withdrawing from the European Investment Bank, a major source of soft loans for infrastructure and the environment in the UK. Even if loans do not entirely cease, they seem bound to drop very substantially. Alternatives to help maintain investment levels in these sectors need to be created as a matter of urgency. There is little sign the Government recognises this problem so far, especially given its policy on privatisation of the Green Investment Bank.

**#9 A new trade deal** with the EU's 27 remaining countries and the negotiation of new trade agreements with other parties, such as the US, is integral to the UK's future. In both cases, any deal is certain to have environmental implications. These arise from agreements over technical standards and their equivalence, pressures to accept products that don't meet current standards in the UK (such as hormone beef), the power bestowed on external parties via dispute resolution and arbitration procedures, the unintended environmental by-products of new import patterns (which could bring about significant changes in agriculture and land management for example) and other economic and governance factors.

Maintaining and improving environmental standards needs to be a key goal of future trade negotiations, including the Free Trade Agreement the Government intends to negotiate with the EU.

**#10 The loss of a collective approach to environmental concerns in Europe** will have far-reaching consequences. The UK has been an influential player in a sizeable group of governments working jointly to assess environmental risks and to adopt progressively ambitious responses. Frequently these measures are more effective or cheaper if applied at a European scale. EU countries have access to a wide range of resources and perspectives, and often have been aided by the political comfort of moving forward as a group rather than separately. Co-operation means compromise and this has not always suited the UK - or indeed others - but it comes with the reduced risk of negative competitiveness effects from neighbouring countries with lower standards, and in political terms the option (frequently taken) of blaming the EU for measures that carried short term political or economic costs. This benefit is economic as well as environmental, and is not confined to prominent cross border issues such as air pollution.

Outside the EU, the positive advantages of a collective approach will be lost. There are, in principle, opportunities for future UK governments to move more decisively and further on the environment once outside the EU and to pursue higher ambitions. However, the UK's track record does not suggest this will happen, and the prospect of crashing out of the EU with no trade deal and into WTO rules, makes this likelihood even slimmer.

What remedies are conceivable to balance this hazard of reduced political will to maintain high standards when there are new pressures to lower them for putative economic gain? Strong continuing co-operative arrangements with the EU would be particularly logical in the environment sphere. For example this could be one element of the Single Market framework that is retained, perhaps through a binding bilateral agreement on the environment attached to a new Free Trade Agreement. Many companies as well as environmental interests would welcome this.

# GREEN GUARANTEE

Though we've barely heard it mentioned by the Government, it's clear that UK environmental policy faces a cocktail of threats from Brexit. The EU has been an effective driver of environmental action, and we are now entering a period of profound uncertainty which could lead to the downgrading of many key protections. Exiting the EU means that the status of much of our environmental regulation could become uncertain, the enforcement infrastructure will be radically reduced, pressure to enforce, a key source of funding for environmental schemes will be cut off and a collective approach to environmental challenges jeopardised.

This comes alongside greater probability of legislative change in the UK, more exposure to the political cycle, and a danger that investors will be wary of potentially higher risks.

And in its relentless pursuit of purely short term economic goals, there is every likelihood that the environment is the price the Government will be prepared to pay as it negotiates new trading relationships with other partners like the US.

Even without Brexit, 60% of species in the UK have been in long-term decline, while 15% are at risk of disappearing from our shores altogether.<sup>4</sup> The UK has only 100 harvests left due to dire state of soils caused by intensive agriculture.<sup>5</sup> Without urgent climate action, the world will hit 4 degrees warming by the end of the century - with parts of the world rendered uninhabitable.

Rising to these complex and interrelated challenges requires bravery and vision.

It requires an understanding that the natural world has an intrinsic value in and of itself, as well as being vital to our wellbeing and wealth. It requires recognition that there is no sustainable and stable economy until we acknowledge that natural resources are finite.

It requires a Green Guarantee.

## #Guarantee 1: All eyes on the environment

**SCRUTINY:** Both Parliament and civil society must be involved in a substantive way in the process of the transfer of environmental legislation into UK law. As outlined in this report, there are a host of risks in transposing EU law to the UK, including stagnation – sometimes dubbed “Zombie Legislation” - and the loss of key protections. Stakeholders such as farmers, conservation and environmental organisations, businesses and citizens need an opportunity to fully contribute to and participate in this process. The Government must give ample Parliamentary time to debate, amend and improve the transfer of EU law.

**MEANINGFUL TRANSFER:** Where there are fixed dates or targets for the future in EU legislation – such as for renewable energy and air pollution – their status needs to be confirmed and clear processes established for enforcement.

**DISCLOSURE:** DEFRA has an active programme of work assessing how the EU environment acquis will be transferred – this process should be as open and transparent as possible, with regular updates on progress and priorities. An independent report should be commissioned to catalogue the many issues and possible ways forward that can then be debated in Parliament and elsewhere.

## #Guarantee 2: No environmental borders

**EU AGENCIES:** We know that environmental challenges do not recognise borders. From reducing air pollution to tackling climate change, we will need to retain relationships with key European institutions that will allow us to most effectively address these issues – notable examples include the European Environment Agency, IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law) and the European Chemical Agency. Importantly, these institutions have helped monitor and enforce EU environmental law. In negotiating our future relationship with the EU, the UK Government should opt for the most efficient and environmentally effective way forward and not simply pursue a dogmatic insistence on pursuing freedom from all forms of EU authority

**PRINCIPLES:** The principles underpinning our approach to the environment are not currently established in UK law – instead, they are found in Article 191 of the Lisbon Treaty. These include the precautionary and the polluter pays principles, and Article 11 of the EU Treaties, which requires environmental protection requirements to be integrated into the definition and implementation of the EU's policies with a view to promoting sustainable development. The Government must commit to legislating for these in the Great Repeal Bill.

**DEVOLUTION:** Environmental and agricultural policy is currently a devolved matter, and there is huge uncertainty about the model for intra-UK environmental governance that will be established. The devolved administrations have often taken a more progressive stance than the UK Government on environmental and climate regulation – the ability of devolved powers to develop more rigorous standards must not be put at risk.

**INTERNATIONAL:** The UK is party to a number of important international conventions on the environment – notably, the Bern Convention, the Aarhus Convention, the Intergovernmental Panel on Climate Change and the Convention of Biological Diversity. Our obligations under these treaties have largely been met through our membership of the EU, and the Government must now set out how it intends to meaningfully uphold international law. Whilst UK climate action has often been driven by a domestic agenda, its role in creating a progressive pan-European climate policy has been hugely important. The UK must continue to work through the EU and ratchet up its action on climate change to meet the 1.5 degree goal set in Paris.

<sup>4</sup> [https://www.rspb.org.uk/Images/State%20of%20Nature%20UK%20report\\_%2020%20Sept\\_tcm9-424984.pdf](https://www.rspb.org.uk/Images/State%20of%20Nature%20UK%20report_%2020%20Sept_tcm9-424984.pdf)

<sup>5</sup> <http://www.independent.co.uk/news/uk/home-news/britain-facing-agricultural-crisis-as-scientists-warn-there-are-only-100-harvests-left-in-our-farm-9806353.html>

### # Guarantee 3: A new Environmental Protection Act

**FULL TRANSFER:** The Government has admitted that an estimated one third of EU environmental protections will be difficult to transfer across to UK statute books. Alongside this, many laws reference EU institutions and regulations of which we may no longer be a part. Where protections are lost or are rendered meaningless, they must be re-established through a new Environmental Protection Act. This Act should be informed by the Government's forthcoming 25 Year Plans for the Environmental and Farming.

**INSTITUTIONS:** Since the UK does not have an equivalent system of monitoring and enforcement to the one currently guaranteed by the ECJ and the European Commission, an Environmental Protection Act should create and guarantee funds for an independent body to ensure UK compliance with environmental regulation.

**FUNDING:** Where it is no longer possible to retain membership or cooperation with the EU, the government must move quickly to establish equivalent institutions. Increased funding must be found for the Environment Agency and Natural England so that they can monitor compliance with environmental law as effectively as the European Union, whilst DEFRA must be given the extra capacity it needs to manage the transfer of powers, and, together with the devolved administrations, take on responsibilities previously undertaken by the European Commission.

### # Guarantee 4: A new deal for sustainable farming & fisheries

**RESTORING NATURE:** European Agricultural and Fisheries Policy have rightly been the subject of criticism over the decades, and there is no doubt that exiting the EU presents an opportunity to make support for fishing communities, farmers and land-owners work better for the environment. The Government must place the restoration of the UK countryside at the heart of any new plans for farming and the rural economy. Crucially, replacing the Common Agricultural Policy must form part of a coherent vision for the environment, and for sustainable land management, addressing issues such as healthy soils, richer biodiversity and low carbon production chains in parallel. The Commons Fisheries Policy must be replaced with a framework that champions coastal communities, restore fish stocks, protects the marine environment, and regionalises fisheries management

**SUPPORT FOR SUSTAINABILITY:** As it stands, wealthy landowners receive millions of pounds from public funds, while smaller farmers receive little. Biodiversity is in crisis whilst our soils are depleted. Instead of subsidising rich landowners, subsidies should be used to encourage sustainable farming, local markets, and community agriculture schemes. We should also support the creation of other public goods such as flood prevention and carbon storage. In the end, we must create a financial support system that is democratic, ecological and fairer to farmers from the UK and abroad.

### # Guarantee 5: A green trade framework

**HIGH STANDARDS:** The UK government has signaled its clear intention to negotiate a series of new trade deals. Such agreements present the danger that the UK will accede to pressure to lower its environmental standards. This must not be allowed to happen. We need guarantees that the Government will at least retain the standards it has now, and that exiting the EU will not result in the UK diverging from the strong standards that have been guaranteed to date.

**US TRADE:** We must not open our borders to beef treated with hormones or chicken washed with chlorine. Disputes over these topics were amongst those that stalled the Transatlantic Trade and Investment Partnership (TTIP) deal between the EU and the US. With climate sceptics now in control of the US administration, and the recent attacks on US climate, energy and environment regulation that have followed, there will be a temptation for the UK to water down EU-derived environmental protections. The UK government, in committing to leave the environment in a better state than when it found it, must not succumb to deregulatory pressure from across the Atlantic – or anywhere else.

# EU LEGISLATION AFFECTING DEFRA

Below is a list of the main pieces of EU legislation on the environment and associated issues like animal health, with some background information, which the House of Commons Library compiled at very short notice. They have attempted to identify all major pieces of legislation, but this is by no means a comprehensive list. A large volume of implementing and amending legislation has not been included. It would take a long period of time to identify that additional legislation. This is not something that Government Departments have provided any information on, though DEFRA have said that they will “provide more detail on the Great Repeal Bill in due course”.<sup>6</sup>

There are other pieces of EU legislation not listed below that have implications for DEFRA policy areas, but for which a different department is the lead. For example:

- EU legislation relating to energy and climate change is largely the responsibility of the Department for Business, Energy & Industrial Strategy;
- EU legislation on Environmental Impact Assessments and Strategic Environmental Assessments is largely the responsibility of the Department for Communities and Local Government;
- EU legislation on green public procurement is largely the responsibility of the Crown Commercial Service, an executive agency sponsored by the Cabinet Office.

EU legislation	Information
<b>Nature conservation/biodiversity</b>	
1 The Birds Directive 2009/147/EC	The Directive is one of two key ‘Nature Directives’ introduced in the EU (the other being the Habitats Directive, below).  The Directive helps the EU – and UK – meet various obligations under international law required by the Bern Convention and Bonn Convention. The Nature Directives together provide for a network of conservation areas across Europe relating to specified habitats and birds known as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) respectively.
2 The Habitats Directive	This requires the conservation of a wide range of rare, threatened or endemic animal and plant species. Some rare and characteristic habitat types are also protected.
3 Invasive Species Regulation 1143/2014	This Regulation seeks to address the problem of invasive alien species.
4 Zoos Directive 1999/22/EC	Aims to promote the protection and conservation of wild animal species by strengthening the role of zoos in the conservation of biodiversity.
5 Council Regulation 348/81 on common rules for imports of whales or other cetacean products	Prohibits the import of whale and other cetacean products for commercial purposes.
6 Regulation No 1007/2009 banning the trade in seal products, and implementing Regulation (EU) No 737/2010.	The ban applies to seal products produced in the EU and to imported seal products.
7 There is also the Seal Pup Directive 83/129/EEC to prohibit the import of seal pup products into the EU.	
8 Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.  This is supported and implemented by other legislation such as:	Implements the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in a uniform manner across the EU.
9 Commission Regulation (EC) No 100/2008 as regards sample collections and certain formalities	
10 Commission Regulation (EU) No 791/2012 laying down detailed rules for the implementation of Council Regulation (EC) No 338/97	

<sup>6</sup> DEFRA – Supplementary (ECB0016) evidence to the Lords Committee on the European Union Energy and Environment Sub-Committee, 24 January 2017

11 Commission Implementing Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents	
12 Commission Implementing Regulation (EU) No 2015/736 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora	
Forest Law Enforcement Governance and Trade regulations: 13 FLEGT Regulation 14 EU Timber Regulation	Controls the entry of timber to the EU from countries entering into bilateral FLEGT Voluntary Partnership Agreements (VPA) with the EU, and introduces a prohibition of placing of illegal timber and timber products on the internal market.
<b>Water</b>	
15 The Water Framework Directive 2000/60/EC.	A major piece of environmental legislation, this is driving action to improve the quality and management of water resources (including rivers and lakes).  More information is set out in the Library Briefing Paper on the EU Water Framework Directive: achieving good status of water bodies.
16 Environmental Quality Standards Directive 2008/105/EC	Sets out a list of substances that pose a threat to water-bodies. These 'priority substances' should stay below levels that are safe for water-bodies and human health.  The discharge of some 'priority hazardous substances' has to be stopped by 2020.
17 Bathing Waters Directive 2006/7/EC	The Directive requires the UK to monitor and assess beaches and inland sites used by large numbers of bathers for certain parameters of bacteria. It includes a classification and notification system so the public are aware of the status of the bathing water. More information is set out in the Library Briefing Paper on the EU Water Framework Directive: achieving good status of water bodies.
18 The Nitrates Directive 91/676/EEC	The Directive aims to protect water quality by preventing nitrates from agricultural sources polluting ground and surface waters and by promoting the use of good farming practices.
19 The Urban Waste Water Treatment Directive (91/271/EEC)	The Directive aims to protect the environment from the adverse effects of discharges of urban waste water from public sewers and treatment plants. In March 2016, the European Commission referred the UK to the CJEU over failures to meet the Directive in 17 areas and this case is ongoing.  Separately, in 2012, the CJEU found that the UK was in breach of the UWWTD as a result of frequent and large spillages of waste water in London. In order to address the infractions in London, Defra is currently involved with the Thames Tideway Tunnel – a large sewer running under the River Thames. The project has been underway for a number of years with preliminary construction planned for 2016. The project aims to tackle the problem of waste water overflows for the next 100 years.
20 Drinking Water Directive 98/83/EC	Concerns the quality of water intended for human consumption. Established the essential quality standards at EU level. A total of 48 microbiological, chemical and indicator parameters must be monitored and tested regularly.
21 Floods Directive 2007/60/EC	Requires Member States to assess if all water courses and coast lines are at risk from flooding, to map the flood extent and assets and humans at risk in these areas and to take adequate and coordinated measures to reduce this flood risk.
22 The Groundwater Directive 2006/118/EC	The Directive established a regime that set groundwater quality standards and introduced measures to prevent or limit inputs of pollutants into groundwater.
23 Marine Strategy Framework Directive	Aims to achieve Good Environmental Status (GES) of the EU's marine waters by 2020. It contains the explicit regulatory objective that "biodiversity is

	maintained by 2020". It requires a range of measures including environmental targets and monitoring.
24 Maritime Spatial Planning Directive 2014/89/EU	The Directive established a framework for maritime spatial planning, to ensure coordinated action in this area.
<b>Air</b>	
25 Ambient Air Quality Directive 2008/50/EC (also known as the Air Quality Framework Directive)	This sets out legally binding air quality objectives.  The UK has been failing some of these objectives. See our Brexit Briefing for further information.
26 Industrial Emissions Directive 2010/75/EU	Aims to reduce harmful industrial emissions in particular through the use of the best available techniques. It requires a system of permits for certain industrial activities. Includes controls on waste incinerators.  This regime was heavily influenced by the UK's system for controlling pollution.
27 Medium Combustion Plant Directive 2015/2193.	Places limits on the emission of certain pollutants into the air from medium combustion plants.
28 National Emission Ceilings Directive 2001/81/EC (Sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia).	Set upper limits for each Member State for the total emissions in 2010 of the four pollutants responsible for acidification, eutrophication and ground-level ozone pollution.
29 F-Gas Regulation 842/2006.  There are also a number of implementing Acts, which can be seen here.	This regulation places controls on fluorinated gases ('F-gases'), which are man-made gases used in a range of industrial applications.
<b>Waste</b>	
30 Waste Framework Directive 2008/98/EC (WFD)	This sets the basic concepts and definitions related to waste management and lays down principles such as the "polluter pays principle" and the "waste hierarchy".  There is a significant amount of waste legislation flowing from the WFD. Some of the main legislation is listed below.
31 Landfill Directive 1999/31/EC	This Directive aims to prevent or reduce the negative effects on the environment from the landfilling of waste. It contains technical requirements for waste and landfills and targets for the reduction of biodegradable municipal waste going to landfill.
32 Packaging and Packaging Waste Directive 94/62/EC.  There is also a significant amount of supporting legislation, which is listed here.	The Directive contains measures aimed at limiting the production of packaging waste and promoting recycling, re-use and other forms of waste recovery.  It includes targets for the proportion of packaging waste that must be recycled by material.
33 End of Life Vehicles Directive 2000/53/EC	This Directive aims to prevent waste from end-of-life vehicles and promote the collection, re-use and recycling of their components to protect the environment.
34 Batteries Directive 2006/66/EC	The Directive aims to improve the environmental performance of batteries and minimise the impact of waste batteries. It includes: restrictions on the use of cadmium and mercury in the design and manufacture of new batteries; targets for recycling batteries; a ban on the dumping of untreated car batteries in landfill.
35 Waste Shipment Regulation (EC) No 1013/2006.  36 Regulation (EU) No 660/2014 strengthened the system.	This Regulation specifies under which conditions waste can be shipped between countries.

37	Waste Electrical and Electronic Equipment (WEEE) Directive 2012/19/EU	The Directive sets minimum targets for public WEEE collection and places responsibilities on WEEE producers such as the creation of collection schemes where consumers return their WEEE free of charge. These schemes aim to increase the recycling of WEEE and/or re-use.
38	Restriction of Hazardous Substances in electrical and electronic equipment (RoHS) Directive 2011/65/EU	The Directive aims to limit the environmental impact of electrical and electronic equipment when it has reached the end of its life. It does this by controlling hazardous substances in electrical equipment.
39	Sewage Sludge in Agriculture Directive 86/278/EEC	This aims to protect the environment when sewage sludge is used in agriculture. Measures include a ban the use of sludge if concentrations of certain toxic metals are exceeded.
40	Mining Waste Directive 2006/21/EC.	Directive 2006/21/EC introduced measures for safe management of waste resulting from the extraction, treatment and storage of mineral resources and the working of quarries.
41	EU Ship Recycling Regulation 1257/2013	The objective of the Regulation is to reduce the negative impacts linked to the recycling of EU-flagged ships. The Regulation brings into force an early implementation of the requirements of the 2009 Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships. The Regulation also includes additional safety and environmental requirements.
42	Disposal of PCBs and PCTs Directive 96/59/EC	Polychlorinated Biphenyls (PCBs) and polychlorinated terphenyls (PCTs) are man-made chemicals. They are classified as probable human carcinogens and produce a wide spectrum of adverse effects in animals and humans, including reproductive toxicity.
43	Persistent Organic Pollutants (POP) Regulation (EC) No 850/2004	Aligns Community law with the provisions of the international agreements on POPs. To a certain extent the Regulation goes further than the international agreements by emphasising the aim to eliminate the production and use of the internationally recognised POPs.
44	Regulation 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register.	Establishes an integrated pollutant release and transfer register at EU level in the form of a publicly accessible electronic database.
45	Directive 91/692/EEC standardizing and rationalizing reports on the implementation of certain Directives relating to the environment.	Member states are required to report progress on the implementation of different environmental legislation. There are a number of other pieces of legislation related to the reporting requirements under various EU waste legislation. For example, see here.
<b>Environment - general</b>		
46	A system for an EU Ecolabel is set through Regulation No 66/2010	To qualify for the EU Ecolabel, products have to comply with environmental criteria.
47	Environmental Crime Directive 2008/99/EC.	The proposed directive lays down a list of environmental offences that must be considered criminal offences by all Member States, if committed intentionally or with serious negligence.  Most of these offences were in place in the UK prior to the Directive.
48	Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation 1907/2006.	Places restrictions on what types of chemicals can be manufactured or marketed, and ensures that chemicals are assessed for safety. The chemicals safety assessment considered issues such as the hazards to human health and the environment.
49	Detergents Regulation (EC) 648/2004.	Detergents can contain ingredients that make them clean more efficiently but may damage water quality when released into the natural environment. As such, their use must be carefully controlled. The regulation establishes common rules to enable detergents and surfactants to be sold and used across the EU, while providing a high degree of protection to the environment and human health.
50	Controls on substances that deplete the ozone layer through Regulation (EC) 1005/2009 and related legislation.	Implements and goes beyond the Montreal Protocol on protecting the ozone layer.

51 Environmental Noise Directive 2002/49/EC.	Seeks to manage noise pollution. It requires Member States to prepare and publish, every 5 years, noise maps and noise management action plans.  When developing noise management action plans, Member States' authorities are required to consult. It does not set limit or target noise values, nor does it prescribe the measures to be included in the action plans.
52 Environmental Liability Directive 2004/35/EC.	It provided a framework for determining environmental liability in order to prevent and remedy environmental damage. It implemented the “polluter-pays” principle.
53 Public access to environmental information Directive 2003/4/EC.	This implements the Aarhus Convention in the EU. It ensures that the public has access to environmental information.
54 Public participation Directive 2003/35/EC.	This implements the Aarhus Convention in the EU. It seeks to ensure public participation in respect of the drawing up of certain plans and programmes relating to the environment and in access to environmental justice.
55 Council Regulation 1210/90 on the establishment of the European Environment Agency and the European environment information and observation network.	Established the European Environment Agency and the European Environment Information and Observation Network. These organisations aim to provide “independent information on the environment for those involved in developing, adopting, implementing and evaluating environmental policy, and also the general public”.
56 Regulation 614/2007 of the European Parliament and of the Council concerning the Financial Instrument for the Environment (LIFE+).	The LIFE programme funds the implementation, updating and development of EU environmental and climate policy and legislation by co-financing projects.  The budget for 2014–2020 was set at €3.4 billion.
57 Directive 2007/2/EC on the creation and operation of national and European Union infrastructures relating to spatial information for the purposes of EU environmental policies and other policies or activities which may have an impact on the environment.	The Directive primarily sets standards to ensure that environmental data is collected and shared in such a way that all Member States can use it. This should assist environmental policy-making across boundaries.
<b>Animal Welfare</b>	
58 Farm animal welfare framework directive 98/58/EC, which is supported by a number of species-specific directives:  59 Pigs – Council Directive 2008/120/EC.  60 Calves – Council Directive 2008/1 19/EC.  61 Chickens for Meat Production (Broilers) – Council Directive 2007/43/EC.  62 Laying Hens – Council Directive 1999/74/EC.	EU Animal Welfare legislation focuses mainly on farmed animals and is based on the rules of the European Convention for the Protection of Animals kept for Farming Purposes.
63 Council Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations.	This lays down common rules on the transport of animals. It applies to all companies and individuals involved with the transport of live vertebrate animals in connection with an economic activity.
64 Council Regulation (EC) No. 1099/2009 covers the protection of animals at the time of killing.	This is implemented in England by the Welfare of Animals at the Time of Killing (England) Regulations 2015, and by parallel legislation in Scotland, Wales and Northern Ireland.
65 Council Regulation 3254/91 prohibiting the use of leg hold traps Commission Decision (98/596/EC) lists those countries from which specific animal pelts and manufactured goods can be accepted – depending on whether they also ban leg hold traps.	Restricts the use of leg hold traps in the Community and the import of pelts and manufactured goods of certain wild animal species.
66 Regulation No 1523/2007 bans the placing on the market and the import to or export from the Union of cat and dog fur and products containing such fur.	Introduced a ban on dog and cat fur in the EU.

Agriculture	
<p>The Common Agricultural Policy is largely implemented in four EU regulations:</p> <p>67 Rural Development: Regulation 1305/2013</p> <p>68 "Horizontal" issues such as funding and controls: Regulation 1306/2013</p> <p>69 Direct payments for farmers: Regulation 1307/2013</p> <p>70 Market measures: Regulation 1308/2013</p> <p>These regulations are supported by various implementing legislation.</p>	<p>Agricultural policy in the UK is largely guided by EU law. Brexit will therefore have major implications for the UK's food and farming industry.</p> <p>We have a research briefing on the potential implications of Brexit for agriculture, which can be seen here.</p>
<p>71 Fertilizer Regulation 2003/2003.</p>	<p>Provides for the designation of "EC fertiliser" to be applied to products which comply with the conditions laid down governing their agronomic efficacy and nutrient content, and it also sets out a number of conditions relating to their packaging, identification, traceability, marking and labelling.</p>
Fisheries	
<p>72 European Council Regulation No. 1380/2013 introduced a reformed Common Fisheries Policy (CFP).</p> <p>There is a large range of legislation supporting the implementation of the CFP including:</p> <p>73 European Council Regulation No. 1342/2008 established a long-term plan for cod stocks through various measures like restricting the number of days a vessel is permitted to fish.</p> <p>74 Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters</p> <p>75 European Council Regulation (EC) No 850/98 to protect fisheries resources through technical measures, like fishing gear specifications and restricted fishing areas.</p> <p>76 European Council Regulation 1224/2009 is known as the 'Control regulation' and ensures compliance with the CFP.</p> <p>77 Commission Regulation 404/2011 covers related implementing rules.</p> <p>78 Council Regulation (EC) No 199/2008 deals with an EC framework to collect, manage and use data in the fisheries sector, and support for scientific advice on the CFP.</p>	<p>Fisheries are managed by the EU under the Common Fisheries Policy (CFP). Brexit may therefore have major implications for the fisheries sector. The CFP has four key elements:</p> <ol style="list-style-type: none"> <li>1 Fisheries management</li> <li>2 Funding</li> <li>3 Market organisation</li> <li>4 Import tariffs</li> </ol> <p>More information can be found in our briefing on fisheries and Brexit here.</p>
<p>79 Regulation (EU) No 304/2011 concerning use of alien and locally absent species in aquaculture.</p> <p>There is also legislation related to organic aquaculture and seaweed production.</p>	
<p>80 Regulation (EC) No 1005/2008 on establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation).</p>	<p>Only marine fisheries products validated as legal by the competent flag state or exporting state can be imported to or exported from the EU.</p> <p>An IUU vessel list is issued regularly, based on IUU vessels identified by Regional Fisheries Management Organisations.</p> <p>The IUU Regulation also offers the possibility to blacklist states that turn a blind eye to illegal fishing activities.</p>

	EU operators who fish illegally anywhere in the world, under any flag, face substantial penalties proportionate to the economic value of their catch, which deprive them of any profit.
81 Regulation (EC) No 1801/2006 on the Fisheries Partnership Agreement between the EC and the Islamic Republic of Mauritania.	The EU has entered into agreements with a number of other countries, in this case Mauritania, to give EU fishers access to their fisheries. The UK has access to some Mauritanian resources under Regulation No 1259/2012, although the agreement is not currently in force.
82 2014/146/EU Council Decision on the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius.	The EU has entered into an agreement with Mauritius to give EU fishers access to their fisheries. The UK has access to some of these resources.
83 Regulation 1446/2007 on the Fisheries Partnership Agreement between the European Community and the Republic of Mozambique.	The EU has entered into an agreement with Mozambique to give EU fishers access to their fisheries. The UK has access to some of these resources – although the agreement is not currently in force.
84 Regulation (EEC) 2211/80 on the Agreement on fisheries between the European Economic Community and the Government of Denmark and the Home Government of the Faeroe Islands.  This is supplemented by additional agreements on catches.	Agreement on the management of shared fish stocks with the Faeroe Islands. The UK receives fish quota related to this agreement.
85 Regulation (EEC) No 2214/80 on the Agreement on fisheries between the European Economic Community and the Kingdom of Norway.  This is supplemented with additional agreements on catches.	The EEC has three fisheries agreements with Norway. The bilateral arrangement covers the North Sea and the Atlantic, the trilateral agreement covers Skagerrak and Kattegat (Denmark, Sweden and Norway) and the neighbourhood arrangement covers the Swedish fishery in Norwegian waters of the North Sea. The bilateral agreement is the most important agreement with a third party in terms of exchange of fish possibilities and in terms of joint management measures.
<b>Pesticides</b>	
86 Regulation (EC) No 1107/2009 regulates the marketing of plant protection products in the EU.	The Regulation aims to harmonise the arrangements for authorisation of pesticides within the EU. It sets out rules and criteria which must be met for EU approval of pesticides, and for member State authorisation of pesticide products. The Regulation includes measures related to risk assessment, the protection of commercial information; and public access to information on pesticides.
87 Regulation (EC) No 396/2005 on maximum residue levels of pesticides.	This sets Maximum Residual Levels (MRLs) for all foods treated by pesticides. These are the largest amount of pesticides which the regulatory body setting the MRL would expect to find in that crop when it has been treated in line with good agricultural practice.
88 Directive 2009/128/EC on the sustainable use of pesticides.	This aims to reduce the risks and impacts of pesticide use on people's health and the environment. It does various things such as require the recording of poisoning incidents, banning certain pesticides and placing restrictions on aerial spraying of pesticides. It also encourages non-chemical alternatives to pesticides.
<b>Genetically modified organisms</b>	
89 Directive 2001/18/EC on the deliberate release of GMOs into the environment.	Controls the deliberate release of GMOs, and requires measures such as risk assessments, monitoring and public consultation.
90 Regulation (EC) 1829/2003 on genetically modified food and feed.	Provides rules related to the labeling of products and food containing genetically modified organisms.
91 Directive (EU) 2015/412 amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory.	Gives Member States powers to restrict or prohibit the use of GMOs on their territory.

92 Regulation (EC) 1830/2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms.	This requires those using or handling GM products to transmit and retain information. For example, where production starts with a genetically modified crop, the company selling the crop for feed production would have to inform any purchaser that it is genetically modified. Information must be retained for five years. See here.
93 Directive 2009/41/EC on contained use of genetically modified micro-organisms.	This regulates activities related to GMOs to ensure that they are not released accidentally to the environment, and that they do not pose a risk to humans or the environment.
94 Regulation (EC) 1946/2003 on transboundary movements of GMOs.	Regulates the export of GMOs to other countries, with the aim of ensuring that they have the information they need to safeguard their environment and their people.  Helps to implement the EU – and UK’s – commitments under the Cartagena Protocol on Biosafety.
<b>Food</b>	
95 General Food Law Regulation 178/2002 laying down the general principles and requirements of food law.	It lays down general principles, requirements and procedures that underpin decision making in matters of food and feed safety, covering all stages of food and feed production and distribution. It also established the European Food Safety Authority (EFSA) and the Rapid Alert System for Food and Feed.
96 Regulation (EU) No 1169/2011 on the provision of food information to consumers.	This sets out the requirements for food labelling – such as minimum font size for mandatory information, allergens, nutrition information and origin information for meat.
97 Regulation (EC) No 258/97 on the authorisation and use of novel foods and food ingredients.	Novel Food is defined as food that has not been consumed to a significant degree by humans in the EU prior to 1997, when the first Regulation on novel food came into force.  Novel Food must be: <ul style="list-style-type: none"> <li>• Safe for consumers.</li> <li>• Properly labelled to not mislead consumers.</li> </ul>
98 Honey Directive 2001/110/EC	Placed various requirements on the trade in honey.
99 Regulation (EC) No 470/2009 on veterinary medicinal products intended for use in food producing animals.	This ensures that veterinary medicines that may be used in food animals do not pose health risks to humans. It places limits on the amount of medicine that might be found in the end product (such as milk, eggs, meat, honey etc).
100 Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs.  There are three supporting regulations.	These schemes are used to protect locally-produced foodstuffs.  For example, Cornish pasties are protected by the Protected Geographical Indication scheme.
101 The trade in breeding animals is covered by a number of species-specific legislation, including: Bovines: <ul style="list-style-type: none"> <li>• Council Directive 2009/157 EC</li> <li>• Council Directive 87/328/EEC</li> </ul> Porcines: <ul style="list-style-type: none"> <li>• Council Directive 88/661/EEC</li> <li>• Council Directive 90/118/EEC</li> <li>• Council Directive 90/119/EEC</li> </ul> Ovines/caprines: <ul style="list-style-type: none"> <li>• Council Directive 89/361/EEC</li> </ul>	Please note: the EU is in the process of recasting and harmonising these Directives into a single Regulation.  These rules seek to include harmonised rules on: <ul style="list-style-type: none"> <li>• recognition of breeders' associations and breeding organisations.</li> <li>• entry of purebred breeding animals in breeding books.</li> <li>• issuing of pedigree certificates.</li> <li>• carrying out performance testing and genetic evaluation.</li> <li>• acceptance for breeding.</li> </ul>

<p>Equines:</p> <ul style="list-style-type: none"> <li>• Council Directive 90/427/EEC</li> <li>• Council Directive 90/428/EEC</li> </ul> <p>Other breeding animals:</p> <ul style="list-style-type: none"> <li>• Council Directive 91/174/EEC</li> </ul> <p>Import from third countries:</p> <ul style="list-style-type: none"> <li>• Council Directive 94/28/EC</li> </ul>	
<b>Animal health – see note.</b>	
<p>102 Regulation 2016/429 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law').</p>	<p><b>IMPORTANT NOTE:</b> This Regulation is the culmination of a major legislative reform project, and it will replace some 40 pieces of EU legislation over the next few years. This means that some of the legislation listed below related to animal health will be replaced and/or repealed in full or in part in 2016 and following years.</p>
<p>103 Regulation (EC) No 318/2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof.</p>	<p>This legislation (which we understand will not be repealed by the above law), bans the import of wild birds into the EU. It was primarily introduced to address the risk of importing Avian Flu. However the ban also received strong support from animal welfare charities and conservation organisations due to concerns about the mortality rate of imported birds and the impact of the trade on wild bird populations.</p>
<p>There is a large amount of legislation relating to veterinary border checks in order to restrict the import of animal diseases.</p> <p>These include:</p> <p>104 Council Directive 91/496/EEC laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries</p> <p>105 Council Directive 92/65/EEC laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos.</p> <p>106 Council Directive 2004/68/EC laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals</p> <p>107 Regulation (EU) No 576/2013 on the non-commercial movement of pet animals</p>	<p>Please note that the 'pet passport scheme' – which enables people to take their pets between EU member states – is provided for under this legislation.</p> <p>Other key points in the legislation include:</p> <ul style="list-style-type: none"> <li>• Harmonisation - the same import principles apply across the EU, preventing the entry of animals with infectious diseases</li> <li>• Animal health requirements before authorising imports</li> <li>• Organisation and competence of veterinary services</li> <li>• Health certificates that all animals must have</li> <li>• Conditions for certain infectious diseases</li> </ul>
<p>108 There are a number of rules about veterinary checks on products containing animals. Council Directive 97/78/EC lays down the principles governing the organisation of veterinary checks on products entering the Community from third countries. Other related legislation includes:</p> <p>109 Council Directive 2002/99/EC laying down the animal health rules governing production, processing, distribution and introduction of products of animal origin for human consumption.</p> <p>110 Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.</p> <p>111 Regulation (EC) No 1069/2009 laying down health rules as regards animal by-products and derived products not intended for human consumption.</p>	<p>These rules, in combination with the ones listed above, seek to reduce the risk that serious human and animal diseases will be imported to the EU.</p> <p>A significant amount of additional legislation supports these rules.</p>
<p>112 Regulation (EU) No 652/2014 provides funding to eradicate, control and prevent various plant and animal diseases.</p>	<p>This has a budget of almost €1.9 billion covering the period 2014-2020.</p>

113 Regulation (EC) 1760/2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products. Related legislation includes:	This system of permanent identification of individual bovine animals was introduced in response to the BSE crisis.
114 Detailed rules on ear tags, holding registers, passports: Regulation (EC) 911/2004	
115 Control measures: Regulation (EC) 1082/2003	
116 Sanctions: Regulation (EC) 494/98	
117 Regulation (EC) 21/2004 on the identification of sheep and goats.	Introduced rules on the identification of ovine and caprine animals (sheep and goats).
118 Directive 82/894/EEC on the notification of animal diseases within the Community.	Ensures that when an important animal disease is detected, notification occurs so that a prompt response can be taken by those that might be affected.
This is supported by Commission Decision 2005/176/EC laying down the codes for the notification of contagious animal diseases.	
119 Directive 90/425/EEC provides for medical spot checks on animals being moved between countries.	Because there are no border controls for movements between the Member States spot checks are carried out at the point of origin and at the destination.
120 Animal health requirements for intra-Union trade in bovine and porcine animals are laid down in Council Directive 64/432/EEC	This, amongst other things, restricts the movement of bovine animals (i.e. cows) that are at risk of bovine TB.
121 Directive 90/429/EEC lays down the general animal health requirements related to the trade in semen of porcine (pig) species.	
122 Council Directive 77/391/EEC introducing Community measures for the eradication of brucellosis, tuberculosis and leucosis in cattle.	Provides the legal framework for TB eradication programmes. Includes a general duty on Member States to submit an eradication plan for TB to the Commission for approval.
123 Council Directive 78/52/EEC establishing the Community criteria for national plans for the accelerated eradication of brucellosis, tuberculosis and enzootic leukosis in cattle.	Also sets out in more detail the specific minimum criteria to be met by eradication plans, such as on the use of vaccinations.
124 Animal health requirements for aquaculture animals Directive 2006/88/EC.  125 Supported by additional legislation related to various aquatic diseases such as through Directive 2008/53/EC.	This lays down various rules including: <ul style="list-style-type: none"> <li>• minimum control measures in the event of a suspicion or outbreak of certain diseases in aquatic animals.</li> <li>• minimum preventive measures aimed at increasing the awareness of diseases of aquaculture animals.</li> <li>• the animal health requirements to be applied for the placing on the market and the imports of aquaculture animals and products thereof.</li> </ul>
126 Rules for the control of African horse sickness - Directive 92/35/EEC.	The measures include movement restriction and possibly vaccination within an area of 100 km around the infected premises (protection zone) and movement controls within an additional 50 km surveillance zone.
127 Animal health conditions governing the movement and importation from third countries of equidae Directive 2009/156/EC.	Puts in place measures to reduce the risk of importing horse diseases.
128 Horse studbooks and rules related to the trade in horses (equidae) are provided for in Directive 90/427/EEC.	It requires Member States to ensure that registered equidae being moved are accompanied by an identification document issued by the approved breeding organisations or breeders' associations.
129 Rules for the identification of pigs is provided for by Directive 2008/71/EC. Implementing legislation includes:	The system for the identification and registration of groups of pigs includes the following elements:

130 Computerised central database: Directive 64/432/EEC.	<ul style="list-style-type: none"> <li>• Ear tags or tattoos with holding number.</li> </ul>
131 Holding register: Decision 2000/678/EC.	<ul style="list-style-type: none"> <li>• Maintaining a register on each holding (any place in which animals are held, kept or handled).</li> <li>• A register of pigs' holdings at central national level.</li> </ul>
132 African swine fever Directive 2002/60/EC.  There is also supporting legislation for this Directive, such as a diagnostic manual for the disease.	Prevention and control measures to be applied where African swine fever is suspected or confirmed. This is a devastating infectious disease of pigs that is usually deadly.
133 Foot and mouth Directive 2003/85/EC.	This Directive provides for measures to control and eradicate foot and mouth disease.
134 Avian influenza Directive 2005/94/EC.  There is a range of supporting legislation – such as requiring countries to have contingency plans in place under Commission Decision 2007/24/EC.	This Directive and supporting legislation provides for measures to control avian influenza – ‘bird flu’.
135 Bluetongue Directive 2000/75/EC. There is also supporting legislation.	Lays down specific provisions for the control and eradication of Bluetongue.
136 Newcastle disease Directive 92/66/EEC.	Lays down measures to control Newcastle disease.
137 Classical swine fever Directive 2001/89/EC. There is also supporting legislation such as a diagnostic manual.	Lays down measures to control classical swine fever.
138 Swine vesicular disease Directive 92/119/EEC.	Lays down measures to control swine vesicular disease, and other diseases such as lumpy skin disease.
139 The animal health requirements for intra-Union trade of ovine and caprine animals Directive 91/68/EEC.  Additional controls were introduced in Directive 2003/50/EC following the foot and mouth epidemic in 2001.	This Directive harmonises the rules for intra-Union trade for sheep and goats and establishes the animal health guarantees needed for the trade of these animals between Member States.
140 The animal health requirements for intra-Community trade in live poultry and hatching eggs are laid down in Directive 2009/158/EC.	This harmonises the rules for intra-Community trade in poultry and establishes the animal health guarantees needed for trade between Member States.
141 Directive 2008/73/EC requires Member States to draw up, keep up-to-date and make the lists of approved establishments in the veterinary and zootechnical fields available to the other Member States and to the public.	<p>Intra-Community trade in certain live animals and their products is only permitted from establishments that comply with the relevant provisions of EU law and are approved for that purpose by the competent authority of the Member State where they are located.</p> <p>The Directive requires Member States to ensure that a list of these establishments is available.</p>
142 Trade and imports of bovine semen are controlled by Directive 88/407/EEC as amended by Directive 2003/43/EC.	
143 The general animal health conditions governing the trade of bovine embryos are laid down in Directive 89/556/EEC.	
<b>Plants</b>	
144 Directive 2000/29/EC on protective measures against organisms harmful to plants or plant products.  This is supported by a large body of legislation.	Introduces a number of measures to prevent the introduction and spread of harmful organisms.
145 Plant variety property rights are provided by Regulation EC 2100/94, and supporting legislation.	These rights are similar to a patent and once given are valid throughout the EU.

<p>146 EU marketing requirements for plant reproductive material (such as seeds). There are rules for specific plant types, for example:</p> <p>147 Beet seed: Directive 2002/54/EC.</p> <p>148 Cereal seed: Directive 66/402/EEC.</p> <p>A large amount of related legislation implements these Directives. The Beet Directive, for example, is implemented through an additional 9 pieces of legislation.</p>	<p>The legislation aims to ensure the quality of seeds for consumers.</p> <p>Countries wishing to export to the EU must meet these conditions.</p>
<p>The EU registered plant variety database, and implementing legislation:</p> <p>149 Directive 2002/55/EC on the marketing of vegetable seed.</p> <p>150 Directive 2002/53/EC on the common catalogue of varieties of agricultural plant species.</p> <p>151 Directive 2003/90/EC: Rules on minimum characteristics and minimum conditions for examining certain varieties of agricultural plant species.</p> <p>152 Directive 2003/91/EC: Rules on minimum characteristics and minimum conditions for examining certain vegetable species.</p> <p>153 Regulation 637/2009/EC establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species.</p>	<p>The database of varieties of agricultural plant and vegetable species list the varieties that can be marketed in the EU.</p> <p>To be listed, varieties must meet standards on:</p> <ul style="list-style-type: none"> <li>• Distinctness</li> <li>• Uniformity</li> <li>• Stability</li> <li>• Value for cultivation and use - for agricultural crops.</li> </ul> <p>This value is based on:</p> <ul style="list-style-type: none"> <li>• Yield</li> <li>• Resistance to harmful organisms</li> <li>• Response to the environment</li> <li>• Quality characteristics</li> </ul>