HOUSE OF LORDS

European Union Committee

12th Report of Session 2016–17

Brexit: environment and climate change

Ordered to be printed 6 February 2017 and published 14 February 2017

Published by the Authority of the House of Lords

HL Paper 109

The European Union Committee

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CONTENTS

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Q in footnotes refers to a question in oral evidence.

SUMMARY

Membership of the EU has had a fundamental impact on environmental legislation in the UK, and withdrawal from the EU will affect nearly every aspect of the UK's environmental policy. In recent years, UK climate change policy has also become increasingly enmeshed in EU policy.

EU environmental law includes such diverse areas as nature and biodiversity, waste and recycling and chemicals regulation, while the EU's climate action measures include emissions trading, energy efficiency standards and support for low carbon technologies. Though the UK has strong domestic climate change legislation, domestic environment policy is heavily influenced by EU law. Brexit is an opportunity to amend or repeal existing legislative measures, but the environment, and those seeking to preserve or invest in it, need long-term policy stability. Maintaining this stability during the Brexit process will be crucial to ensure that legal protections for the UK's environment remain complete and effective.

While the Great Repeal Bill should in principle help to achieve a degree of stability, it is far from clear whether it will be comprehensive. The complexity and extent of EU environmental law, as transposed into domestic legislation, are such that many stakeholders are now concerned that environmental protections and ambitions will be diminished. The Government will need to map out the EU's environmental *acquis* to assess where the Great Repeal Bill will not be able to preserve legislative and policy stability, and act accordingly to ensure that environmental protection does not diminish as a result of Brexit.

EU environment and climate change laws do not stand alone. Their implementation is monitored and enforced by EU institutions, in particular the European Commission and the Court of Justice of the European Union. Both institutions have played a key role in driving improvements to the UK's environment over the course of the UK's membership of the EU, particularly through the threat of infraction proceedings. Governmental self-regulation will not be an adequate substitute post-Brexit. An equally effective domestic enforcement mechanism, able to sanction non-compliance, will be necessary to ensure that the objectives of environment legislation continue to be met in practice.

The UK is leaving the EU, not Europe. Its environment will remain inextricably linked to the environment of Europe. In many areas, such as species conservation, or air and water quality, it will be vital for the UK and the EU to continue to co-operate in order to protect the shared European environment, whether terrestrial, marine, or atmospheric.

The UK's future trading relationship with the EU could also have a major impact on the extent to which the Government could, or would, seek to deregulate environmental policy post-Brexit. The UK would need to comply with, or seek to adopt measures equivalent to, EU environmental standards in order to continue to trade freely with the EU. Chemicals regulations are a case in point. The UK will have no formal role in the development of EU standards post-Brexit, so the Government should seek to maximise the UK's informal influence.

Brexit will also change the means by which the UK can most effectively contribute to international efforts to mitigate climate change. Outside the EU, it will be important for the Government to consider alternative alliances that may assist the UK in furthering its aims; and to take an ambitious domestic approach to combating climate change, thereby lending credibility to its negotiating position.

The Department for Environment, Food and Rural Affairs (Defra) faces an enormous challenge as the UK approaches Brexit. Together with the Devolved Administrations, it is responsible for repatriating and replacing the Common Agricultural Policy and the Common Fisheries Policy. Alongside the Department for Business, Energy and Industrial Strategy (BEIS) it must also map the extent to which environmental and climate change policies can be preserved through the Great Repeal Bill. Furthermore, Defra will need to design regulatory structures to ensure that environmental protections are enforced as effectively after Brexit as before. Resolving the tensions inherent in these competing tasks will be vital if the Government is to deliver on its commitments to leave behind a better environment than it inherited.

Brexit: environment and climate change

CHAPTER 1: INTRODUCTION

Brexit and the environment

1. The EU is the source of, and vehicle for, most environmental legislation and protection in the UK.[1] From regulatory standards to governance and enforcement structures, membership of the EU has had a significant impact on environmental legislation in the UK, and, in more recent years, climate change policy.

2. Nevertheless, environmental policy played little part in the referendum campaign. Professor Andy Jordan, Professor of Environmental Sciences at the University of East Anglia, pointed out that it "was not an issue during the referendum and was not discussed very much in David Cameron's New Settlement".[2] As a result, according to The Wildlife Trusts:

> "There is no evidence that the public intended the referendum vote to result in any diminution of levels of protection for wildlife and wild places. Indeed, over 80% of the public support at least the same level, if not higher levels of protection following exit from the EU."[3]

Michael Jacobs, Director at the Institute for Public Policy Research (IPPR), echoed this view: "What we know about public opinion is that the environment is one of the things they think the EU is good for, but it did not outweigh the other things that 52% of the population thought it was not good for."[4]

3. The aim of this report is to shed light on the likely impact of Brexit on UK environment and climate change policy, and highlight what action will need to be taken to manage the issues that arise.

The EU Committee's work

4. Following the referendum on 23 June 2016, the European Union Committee and its six sub-committees launched a coordinated series of inquiries, addressing the most important cross-cutting issues that will arise in the course of negotiations on Brexit.[5] These inquiries, though short, are an opportunity to explore and inform wider debate on the major opportunities and risks that Brexit presents to the United Kingdom.

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1 Q 1
2 Q 1
3 Written evidence from The Wildlife Trusts (ECB0007), citing Yougov Plc, *Yougov/Friends of the Earth Survey results*, 17–18 August 2016: https://www.foe.co.uk/sites/default/files/downloads/yougov-survey-brexit-environment-august-2016–101683.pdf [date accessed 17 January 2017]
4 Q 59
5 European Union Committee, *Scrutinising Brexit: the role of Parliament* (1st Report, Session 2016–17, HL Paper 33)

This report

5. We are grateful to the witnesses who gave oral evidence and to those who responded to our targeted request for written contributions. We are also grateful to David Baldock, Senior Fellow at the Institute for European Environment Policy, who acted as Specialist Adviser to the inquiry. All views expressed in this report are of course our own.

6. **We make this report to the House for debate.**

CHAPTER 2: EU ENVIRONMENTAL LEGISLATION AND ACTION

The environmental *acquis*

7. EU environmental legislation is complex and wide-ranging, reflecting the cross-cutting nature of the environment itself.

8. The Government's Balance of Competences Review noted that "the original Treaty of Rome [which established the European Economic Community] did not contain any references to environmental protection".[6] Thus much of what is now regarded as EU environmental legislation originated in the harmonisation of product and other standards with a view to removing substantial differences in national environmental rules, thereby enabling the free movement of goods within the common market. Typically, the Commission brought forward such legislation under the standard common market legal base, Article 100 EEC.[7]

9. In addition, the Community was able to address specific environmental issues using the catch-all legal base, at that time Article 235 EEC, which allowed the Community to introduce legislation to attain "objectives set out in the Treaties" even where the Treaties themselves did not provide the necessary powers.[8] Thus the Wild Birds Directive, one of the first pieces of purely environmental legislation at European level, was adopted in 1979 under Article 235 EEC.[9]

10. As the EU evolved, and as awareness of global threats to the environment became more acute, so EU competence in respect of environmental policy expanded. With the coming into force of the Single European Act in 1987 Treaty powers explicitly authorising environmental action at EU level were established for the first time, and the scope of these powers (now embodied in Title XX of the Treaty on the Functioning of the European Union) has not changed much since that time.

11. Even after 1987, however, much legislation that was 'environmental' in character continued to be made under the standard Single Market legal base. Thus the first EU legislation on energy efficiency labelling of household appliances, introduced in 1992, used an Article 100 EEC legal base.[10] More recently, the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation,[11] which regulates chemical substances in

6 HM Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change*, February 2014, p 19: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf [accessed 14 December 2016]

7 Historically Article 100 EEC, Article 95 TEC and now Article 114 Treaty on the Functioning of the European Union, OJ C 202 (consolidated version of 7 June 2016), its amended text refers to the "internal" rather than the "common" market.

8 Article 235 EEC; Article 308 TEC and (now) Article 352, Treaty on the Functioning of the European Union.

9 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103 (25 April 1979), pp 0001–0018

10 Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances, OJ L 297 (13 October 1992), pp 0016–0019

11 Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency , OJ L 396 (30 December 2006)

the EU, and the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment,[12] have also used the standard Single Market legal base.

12. Within Title XX, Article 191 of the Treaty on the Functioning of the EU (TFEU),[13] as amended over the years, sets out the EU's objectives for environment policy:

> "Union policy on the environment shall contribute to pursuit of the following objectives:
>
> - preserving, protecting and improving the quality of the environment,
> - protecting human health,
> - prudent and rational utilisation of natural resources,
> - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

13. Under Article 191(2) TFEU, policy on the environment shall also "be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

14. Since its adoption in 1987 Title XX has provided the legal base for a range of 'purely' environmental legislation, including the Habitats Directive of 1992,[14] which provided for the conservation of rare endemic animal and plant species, and the Water Framework Directive of 2000,[15] which established a framework for protecting European rivers, lakes, and coastal waters, among others. A Title XX legal base also underpinned the introduction of the first EU Emissions Trading Scheme, a key component of the EU's policy on combating climate change and reducing greenhouse gas emissions.[16]

15. As well as acting in areas affecting the internal market and, since 1987, the environment itself, the EU has, since its inception, played a key role in shaping farming practices, through the Common Agricultural Policy (CAP). This has its own legal base within Title III TFEU. Under Article 39 TFEU the objectives of the CAP are essentially economic: to increase agricultural productivity and stabilise markets, for the benefit of both farmers and consumers. The CAP reforms affecting the period 2014–2020 introduced the 'green payment', subjecting 30% of Member State total Direct Payments

12 Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, OJ L 174 (1 July 2011) pp 147–169

13 Treaty on the Functioning of the European Union

14 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 (22 July 1992), pp 7–50

15 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327 (22 December 2000), pp 1–73

16 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275 (25 October 2003), pp 32–46

to environmentally beneficial greening practices, such as the maintenance of permanent grassland, ecological focus areas and crop diversification.[17]

16. The Common Fisheries Policy (CFP), dating back to the accession of the United Kingdom, Denmark and the Republic of Ireland in 1973, governs access to EU fisheries and the setting of quotas for particular species. Although the CFP too was a primarily economic instrument in its original form, the wider development of international law, and the Lisbon Treaty's conferral upon the EU of exclusive competence in respect of marine conservation, have meant that it too now has a substantial environmental aspect. This is discussed in our report *Brexit: fisheries*, published on 17 December 2016.[18]

Box 1: Components of EU legislation

European Union law consists of the founding Treaties (primary legislation) and the provisions of legislative instruments such as Regulations and Directives as enacted by the EU's legislative institutions (secondary legislation). In a broader sense, EU law encompasses all the rules of the EU's legal order: the case law of the Court of Justice of the European Union (CJEU), the General Principles of EU law (including those now reflected in the Charter of Fundamental Rights of the EU) as interpreted by the CJEU and the national courts of the individual Member States, and the law flowing from the Union's external relations. All these instruments and laws form part of what is known as the EU's *acquis*.

The three principal EU legislative instruments are:

- Regulations: these are binding in their entirety and directly applicable in all Member States;
- Directives: these bind the Member States as to the results to be achieved, but they have to be transposed into the national legal framework and thus leave a margin for manoeuvre as to the form and means of implementation;
- Decisions: these are fully binding on those to whom they are addressed.

The EU's institutions can also adopt Recommendations and Opinions which are non-binding, declaratory instruments.

Source: Article 288, Treaty on the Functioning of the European Union

17. The EU's suite of environmental legislation and policies is clearly something of a patchwork quilt, drawing on a range of policy motivations and legal bases, as they have been amended by various iterations of the Treaties. While the European Commission states that the environment *acquis* alone comprises over 200 "major legal acts",[19] this figure excludes product standards, labelling, and other relevant internal market legislation, as well as the energy sector, agriculture and fisheries. In most of these areas, the EU institutions and the individual Member States share the power to adopt environmental legislation (shared competence); in specific areas, notably marine conservation, the Member States have passed legislative power to the EU (exclusive competence). The exact proportion of UK environmental

17 European Union Committee, *Responding to price volatility: creating a more resilient agricultural sector* (15th Report, Session 2015–16, HL Paper 146) p 22

18 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78)

19 European Commission, 'European Neighbourhood Policy and Enlargement Negotiations': http://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership/chapters-of-the-acquis_en [accessed 17 January 2017]

law that stems from EU legislation is hard to quantify, but it is substantial.[20] Professor Richard Macrory, Professor of Environmental Law at University College London, noted Kramer's EU Environmental Law (2011) lists 111 Regulations, 256 Directives and 136 Decisions that were in place by 2010.[21] Defra told us that "over 1,100 core pieces of directly applicable EU legislation and national implementing legislation have been identified as Defra-owned",[22] that is to say they relate to policy areas that fall within the remit of the Department.

18. A non-exhaustive summary of the extent of EU environmental policy activity is set out in Box 2.

Box 2: Key environment and climate change policies at the EU level

Environment

- Chemicals regulations (such as the registration, evaluation and labelling of chemical substances)
- Circular economy (such as the avoidance of waste and promotion of new uses for materials)
- Clean air (such as ambient air quality, industrial emissions and transport-related air policy)
- Marine and coastal environment (such as the Common Fisheries Policy, and environmental aspects of coastal and marine policy)
- Nature and biodiversity (such as biodiversity strategy, species protection and Natura 2000 protected areas)
- Noise pollution
- Soil quality
- Urban environment
- Waste and recycling (such as packaging requirements)
- Water resources (such as the Water Framework Directive, river basin and flood risk management, drinking water, bathing water)
- Environmental aspects of the Common Agricultural Policy (such as cross-compliance, environmental standards and biodiversity)

Climate action

- Adapting to climate change
- Emissions trading
- Energy efficiency (such as the EcoDesign Directive setting standards for electronic goods,[23] rules on buildings, industry, consumer products and transport)
- Fluorinated greenhouse gases

20 House of Commons Library, *How much Legislation comes from Europe?* Research Paper 10/62, 13 October 2010
21 Written evidence from Prof Richard Macrory (ECB0015)
22 Supplementary written evidence from Defra (ECB0016)
23 Directive 2009/125/EEC establishing a framework for the setting of ecodesign requirements for energy-related products, 21 October 2009, OJ L 285 (31 October 2009), pp 10–35

- Forest and agriculture emissions (such as deforestation, emission removal and storage)
- Greenhouse gas emission reduction
- International climate action
- Low carbon technologies
- Ozone layer
- Renewable energy (such as deployment targets and national action plans, and support schemes)
- Transport emissions (such as road transport, shipping, aviation and fuel quality)

Source: European Commission, 'Policy Area: Environment': https://ec.europa.eu/info/strategy/environment_en *; European Commission, 'Policy Area: Climate action':* https://ec.europa.eu/info/strategy/climate-action_en*; European Commission, 'Policy Area: CAP':* http://ec.europa.eu/agriculture/cap-overview_en *[accessed 19 January 2017]*

Enforcing the environmental *acquis*

19. EU law is enforced by the European Commission, as the 'Guardian of the Treaties', and overseen by the Court of Justice of the European Union (CJEU), which can levy fines on Member States that are found to be in breach of EU law.[24] EU environment and climate change law is therefore embedded in the institutional enforcement structures of the EU.

Risks and opportunities

20. It will be clear from the summary we have given that almost all aspects of domestic environmental policy are bound up with EU policies and legislation. As Professor Maria Lee, Professor of Law at University College London, told us: "Currently, all our environmental standards and norms are profoundly embedded in EU accountability, governance and legal structures."[25]

21. The process of disentangling both legislative standards and governance structures will thus be a hugely challenging element within the wider Brexit process. Yet some see Brexit as an opportunity to review and improve environmental legislation in the UK. The Society for the Environment told us:

> "We would be pleased to work with the Government in finding ways and means of transposing national legislation made in pursuit of European Union legislation into purely UK driven legislation, which sustain the objectives but which are at the same time efficient and effective."[26]

22. Others, in contrast, are concerned that Brexit could lead to a deterioration of environmental protection in the UK. In the words of Prof Jordan: "Many of the NGOs are worried that, after the Article 50 process has ended, it is going to be open season on environmental regulations and large swathes of policy are going to be quickly deregulated."[27] In part, this concern reflects a risk that environmental policy could be 'orphaned' within the wider Brexit process. In the words of Prof Macrory: "In most areas of law—be it competition law,

24 See Articles 258 and 260 Treaty on the Functioning of the European Union
25 Q 1
26 Written evidence from the Society for the Environment (ECB0011)
27 Q 8; Q 2 (Prof Andy Jordan) Q 12 (Trevor Hutchings) and Q 28 (Dr Doug Parr)

social security law or welfare law—there will be clear economic interests who will protect themselves, go to court or whatever. With the environment, bits of it may be unowned; there is no clear interest." Quoting a prominent expert in EU law, Prof Macrory commented that the environment "dies in silence".[28]

23. Such concerns reflect in part the fact that the EU's environmental *acquis* is more than a corpus of law: it is also a complex but effective trans-national system of governance and enforcement. As Prof Lee told us: "The legislation does not stand alone. The legislation is embedded in an EU governance structure".[29] Within this structure, as we have noted, the European Commission and the CJEU play key roles in enforcing environmental legislation in the UK. We discuss enforcement in Chapter 4 below.

24. **The EU environmental *acquis* is a patchwork quilt of laws, some relating to the rules of the internal market, others to issues of trans-national environmental significance, such as species conservation or clean air. Some sectoral policies, such as the EU's agricultural and fisheries policies, also have substantial environmental elements and regulate significant flows of expenditure in this field. These laws are implemented and enforced by well-developed and powerful EU institutions, both regulatory and judicial.**

25. **The repatriation of environmental policy as a result of Brexit presents opportunities and risks, which we explore in the remainder of this report. But what must not be under estimated is the scale and complexity of the task of repatriating environmental policy, and its profound implications for domestic governance as well as for domestic law.**

28 Q 10, quoting Ludwig Krämer
29 Q 3

CHAPTER 3: THE ENVIRONMENT AND THE GREAT REPEAL BILL

The Government's commitment to environmental protection

26. As we have already indicated, the environmental *acquis* is cross-cutting and complex. At the same time, it is the source of a large proportion of environmental law in the UK, regulating protection of the natural environment and climate as well as standards for products such as chemicals, electrical goods, fertilisers and plant protection products, to name but a few. Transferring responsibility for environmental legislation from the EU to the UK, as a result of Brexit, will therefore have profound implications.

27. Several witnesses underlined that, as far as climate change policy was concerned, while EU policy and activity in the international sphere are important, the UK has an established domestic commitment to action on climate change. In the words of Bob Ward, Director at the Grantham Institute: "The UK has very clear national legislation that guides primarily our action on climate change, the Climate Change Act."[30] Jesse Norman MP, Minister for Industry and Energy at the Department for Business, Energy and Industrial Strategy (BEIS), elaborated the point: "We have carbon budgets which take us up to 2030 and we have a climate change committee. None of those are EU-dependent and they are a very important part of the enforcement of targets we are internationally committed to."[31]

28. However, the same does not apply across all areas of environment policy, and we heard concerns about the potential dynamics of and pressures for lower environmental standards post-Brexit. Prof Michael Grubb, Professor of International Energy and Climate Change Policy at University College London, cautioned that in the context of Brexit, economic considerations could be prioritised to the detriment of the environment:

> "I have become increasingly aware of a narrative that basically says Britain is desperate for foreign investment and will do anything to try to make itself industry-friendly … The real risk we face is if Brexit becomes a catch-all excuse for pushing aside anything else in the desperation to attract foreign investment and big business."[32]

29. Such concerns are being felt across sectors. Sarah Mukherjee, Director of Environment at Water UK, told us: "it is not necessarily a race to the bottom; it could be a stroll to the bottom. You could just have a little bit of this legislation taken off or rounded off, or at the next price review we are not looking so hard at this."[33] Alan Andrews, lawyer and Clean Air Project Leader at ClientEarth, was worried about air quality regulations after Brexit: "We have seen that the Government have been trying to weaken the Ambient Air Quality Directive, particularly in relation to nitrogen dioxide, for years."[34]

30. In written evidence submitted in November 2016, Professor Dickon Howell, Director at Howell Marine Consulting, expressed concern that the environment did not appear to be a central consideration in the

30 Q 36 (Bob Ward), referring to the Climate Change Act 2008; also Q 58 (Dr Doug Parr)
31 Q 66
32 Q 40
33 Q 24
34 Q 24

Government's preparations for Brexit. He pointed out that the Department for Exiting the EU "currently has teams for Economy, Infrastructure, Tax, Customs, Home Affairs, Public Services, Justice, Security, Data, Migration, Trade, International Partnerships and Devolved Administrations but no Environment".[35] We do, however, note that as of December 2016, Infrastructure and Environment was specified as a policy area under Cross-Government Policy Coordination within the Department.[36] This indicates a developing recognition both of the importance of environment as a policy issue and its cross-departmental relevance, which we welcome, though the association with infrastructure should not preclude the consideration of all aspects of environment policy or of climate change.

Policy stability

31. Witnesses also warned against the prospect of policy instability arising from the uncertainties relating to Brexit and the future UK-EU relationship, in both the short and long term. Addressing the immediate aftermath of withdrawal, Prof Macrory told us: "on exit, in whatever form that takes, we need a period of regulatory stability … The last thing you want is to find that there are gaps, lots of litigation and so on; that will not help business or anybody else."[37]

32. A key driver for environmental policy stability is the need to support investment. Commenting on the importance of policy stability to the effective management of the UK environment, Leah Davis, Acting Director of Green Alliance, gave a domestic example:

> "The best example I can give of where policy direction is really important is the Government's infrastructure pipeline. Towards the end of this decade, we see a drop-off when policy certainty ends, and therefore the infrastructure investment ends. We see a 96% drop in the investment from about £7.7 billion to £0.3 billion."[38]

33. More broadly, The Wildlife Trusts told us: "Political stability is crucial when dealing with environmental or climate change policy as these are often issues that take place over the long term and that require a long-term and stable solution."[39] Hitherto the EU, partly because of its size, has provided such stability, as the Aldersgate Group noted: "EU Directives have provided stability beyond domestic policies and confidence in the direction of travel, which otherwise could be vulnerable to the national parliamentary cycle."[40] The Country Land and Business Association (CLA) agreed: "The EU may take a long time to produce policy and legislation, but once they have been agreed they do not change frequently, so providing public authorities and private investors with the certainty over the long term that allows them to make decisions with a significant degree of confidence."[41]

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35 Written evidence from Dickon Howell (ECB0003)
36 Department for Exiting the EU, 'Senior Management Team', January 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575132/department_for_exiting_the_eu_senior_management_team.pdf [accessed 4 January 2016]
37 Q 1
38 Q 14
39 Written evidence from The Wildlife Trusts (ECB0007)
40 Written evidence from the Aldersgate Group (ECB0009); also Q 8 (Prof Andy Jordan)
41 Written evidence from the CLA (ECB0001)

34. The Ministers acknowledged the need for policy stability both during the Brexit period and beyond. Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities at Defra, stated: "In the future I fully expect us to try to have a stable and clear legislative framework."[42]

35. **The medium-term stability and predictable review cycles provided by the EU have aided both investor confidence in the environment sector and civil society's ability to engage with environment and climate change policies.**

36. **Policy stability will be critical during the process of, and in the immediate aftermath of, withdrawing from the EU to avoid the emergence of legislative gaps and avoidable uncertainties in the sphere of environmental protection. Once the UK has withdrawn from the EU, environment legislation and policy will be more vulnerable to short term and less predictable changes at a domestic level.**

The Great Repeal Bill

37. The Government proposes to address the issues we have touched on by means of a 'Great Repeal Bill', which will retain all existing EU law in domestic law.

Box 3: The Great Repeal Bill

In October 2016, Prime Minister Theresa May announced the Government's intention to introduce a Great Repeal Bill. It will repeal the European Communities Act 1972, which makes EU laws part of the UK legal system, and will convert existing EU law into domestic law, wherever practical. The aim of the Bill is to ensure a "calm and orderly" exit from the EU.

Source: Statement to Parliament by Secretary of State David Davis on 10 October, HC Deb, 10 October 2016, cols 40-42

38. According to Dr Norman, the Minister for Industry and Energy, "Part of the goal of the Great Repeal Bill is to make sure that that stability is maintained and that those gaps do not exist".[43] Other witnesses also looked to the Great Repeal Bill to provide some certainty about the level of environmental protection and standards, at least in the short term.[44] Trevor Hutchings, Director of UK and EU Advocacy at WWF, told us: "Clearly, there are some questions around quite what that means in practice, but as a starting point it is exactly what we would like to see."[45]

39. Translating the Government's vision of a Great Repeal Bill into reality will not, however, be a simple task, particularly in respect of environmental legislation. The Wildlife Trusts noted that "the extensive nature of our environmental legislation with foundations in the EU and the number of different instruments that have been used to reflect this in UK law, means that the manner of transposition through the Great Repeal Bill will be complex".[46]

42 Q 67 (Dr Thérèse Coffey MP)
43 Q 71 (Jesse Norman MP)
44 Written evidence from the RSPB (ECB0006); and The Wildlife Trusts (ECB0007)
45 Q 12
46 Written evidence from The Wildlife Trusts (ECB0007)

40. Prof Lee developed similar concerns, focusing in particular on those aspects of EU environmental law that currently bind the UK, but which have never been transposed into domestic law:

> "There is a question over whether it will be, literally, all EU law, Treaties, Regulations, Decisions and Directives, or whether it is just EU law that currently finds its home in the domestic system through secondary legislation. If we do not do all EU law, then there will be an enormous gap because we will miss everything that has not already been put into secondary legislation."[47]

41. Similarly, Prof Jordan argued that:

> "The Great Repeal Bill will need in Section 2 to provide for the critical difference between EU laws that are directly effective—Decisions and Regulations—and those that require enabling legislation, namely, Directives. That will have to be made clear in the enabling legislation, because—and this is important—environmental policy is enacted through a whole range of these different types of policy."[48]

42. The Mineral Products Association was also concerned that, because EU Regulations are given direct effect in national legislation by virtue of the 1972 European Communities Act, "there is potential for 'Regulation' vacuum and operators will need immediate legal certainty on these Regulations on Day 1 Brexit."[49] Prof Macrory focused on Decisions:

> "One should also mention Decisions which are legally binding on those to whom they addressed. Decisions are often addressed to Member States, though often confined to detailed administrative matters such as setting up committees, EU adherence to international treaties, technical standards concerning eco-labelling, etc. … Post Brexit existing Decisions would have no legally binding effect unless some provision is made in the Great Repeal Bill."[50]

43. Prof Macrory also highlighted the complexity of "legislation by reference":

> "We have examples in this country of legislation that refers to Directives—that is called legislation by reference—such as environmental permitting regulations, which require the Environment Agency to have regard to or to follow certain Directives. It seems to me, on the surface, that that should survive because they could refer to a WHO standard or whatever. Then there are various guidance notes that come in and so on, and we have to decide their status."[51]

He concluded: "The extent to which these references can survive depends on the context, and a number of different categories emerge."[52]

44. Prof Macrory also provided a helpful analysis of the main technical challenges that would be faced in giving effect to the Government's plans to ensure stability of environmental law by means of the Great Repeal Bill:

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47 Q 3
48 Q 3
49 Written evidence from the Mineral Products Association (ECB0005)
50 Written evidence from Prof Richard Macrory (ECB0015)
51 Q 3
52 Written evidence from Prof Richard Macrory (ECB0015)

- Preserving references to definitions or technical specifications in Directives would not be problematic.[53]

- Some national regulations may refer to substantive obligations contained in Directives, such as the reference in the Air Quality Regulations where the Secretary of State is given power to issue directions: "For the purposes of implementing any obligations of the United Kingdom under Directive 2008/50/EC, Directive 2004/107/EC and Council Decision 97/101/EC establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the member State (reg 31(i))." Prof Macrory suggested that "since post Brexit, there will be no 'obligations' as such under the Directives or Decisions", provisions in Regulations drafted in this manner would "be rendered meaningless in national law."[54]

- References to obligations to other Member States, for example the obligation under Environmental Permitting Regulations for the competent authority to consult with other Member States, could be retained, but might not be reciprocated by the EU Member States after Brexit.[55]

- The UK could not continue participating in the EU Emissions Trading Scheme (EU ETS) by virtue of the Great Repeal Bill. Instead the UK would have to reach agreement with the EU to remain in the EU ETS, if it so wished, or seek to adapt the current Regulation into a domestic trading scheme instead. As a result, "amendments would be necessary".[56]

- References to the powers of specific EU institutions, such as competences relating to the European Chemicals Agency under the REACH Enforcement Regulations 2008/2852, "could not survive", because after Brexit "the relevant Community institution would have no legal authority or obligation to act." Instead, "The Great Repeal Bill could provide powers to the Government to amend existing regulations to designate national successor bodies before Brexit takes place".[57]

45. As well as presenting technical challenges, the Great Repeal Bill will require the Government to take and, through legislation, give effect to a number of difficult political decisions on future environmental policy. This was highlighted by Prof Lee:

> "The legislation is embedded in an EU governance structure … How do we continue to participate in EU chemicals regulation when we are no longer a member of the European Union? Presumably, we will want chemicals that have already been authorised to continue to have access to the UK market. Presumably, we will want chemicals that have been restricted at the EU level to be restricted at the UK level. These are not simple questions and they are not technical questions. They are quite profoundly political questions about who will be governing us and on

53 Written evidence from Prof Richard Macrory (ECB0015)
54 Written evidence from Prof Richard Macrory (ECB0015)
55 Written evidence from Prof Richard Macrory (ECB0015)
56 Written evidence from Prof Richard Macrory (ECB0015)
57 Written evidence from Prof Richard Macrory (ECB0015)

> what basis … all this legislation is embedded in EU structures, and unpicking that will be very complicated and political."[58]

We return to the question of how environmental laws will be upheld in Chapter 4.

46. Finally, there is also the question of what will happen after the Great Repeal Bill has been enacted, and what will happen to environmental legislation over time as it changes at EU-level. Lesley Griffiths AM, Cabinet Secretary for Environment and Rural Affairs in the Welsh Government, told us: "Further clarity is needed in relation to the Repeal Bill announced by the UK Government, particularly in respect of the extent to which it will … respond to any forthcoming changes in these areas."[59] Prof Macrory, Abi Bunker, Head of Policy and Advocacy at the RSPB, and The Wildlife Trusts all argued for close parliamentary scrutiny of any changes to legislation adopted through the Great Repeal Bill, in order to maintain standards and avoid a "race to the bottom".[60] In this context, we note Prime Minister Theresa May's statement on 17 January 2017 that "it will be for the British Parliament to decide on any changes to that law [converted from the EU *acquis* into British law] after full scrutiny and proper Parliamentary debate."[61]

International law

47. As Ms Griffiths reminded us, international environmental conventions, to which the UK is party, "will continue to apply post EU withdrawal".[62] This includes conventions such as the Berne Convention (which has been implemented through the Habitats Directive), the OSPAR Convention and the UN Framework Convention on Climate Change. They will apply regardless of the nature of the UK's future relationship with the EU, and may constrain the extent to which the UK is able to pursue new approaches to environment or climate change policy.

48. As Prof Macrory explained, many of these conventions are "mixed agreements",[63] covering areas of both EU and Member State competence. As a result, they have been ratified by both the EU and by individual Member States.[64] Although there are differing views within the legal community, both Prof Macrory and Prof Lee concluded that the UK would still be bound by them.[65] The Minister, Dr Coffey, concurred: "It is my understanding that as the UK is already a party in its own right it absolutely will stick to the commitments, and is obliged to, once we leave."[66]

49. Such international conventions tend to be couched in broad terms, and have hitherto generally been implemented by means of more detailed EU legislation. This was highlighted by Prof Macrory: "One will have to look at

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58 Q 3
59 Written evidence from the Welsh Government (ECB0008)
60 Written evidence from The Wildlife Trusts (ECB0007); Q 6; Q 15
61 Prime Minister Theresa May, Speech on The Government's negotiating objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 19 January 2017]
62 Written evidence from the Welsh Government (ECB0008)
63 Mixed agreements arise between the EU and external countries when the agreement concerns issues of both EU and Member State competence. They are thus signed by both the EU and its Member States.
64 Q 10
65 Q 10
66 Q 69; supported by Jesse Norman MP (Q 69)

these international conventions, because up to now they have been transposed or extended by EU law … Some of them like the Ramsar Convention are very vague and they will probably need fleshing out."[67] Prof Jordan agreed:

> "Generally, the EU has not simply taken an international convention and transposed it into EU law, and left it at that. It has often added in hard edges. It has added in deadlines, timetables and things like that. A classic example is how the Berne Convention was gradually developed, evolved and transmogrified into the Birds Directive and the Habitats Directive."[68]

50. Those international agreements that have been implemented through EU law thus present a distinct challenge. Prof Macrory highlighted the Shipment of Waste Regulation (1013/2006) which in part implements the Basel Convention of 1989, to which the UK, other Member States and the EU are all parties. The Regulation, though, has a wider application than the Convention. After Brexit, the UK would continue to be party to the Convention, but even if the Regulation were preserved in UK law in the Great Repeal Bill, Prof Macrory was not convinced that "competent authorities in other Member States" would "have any obligation to deal with the UK other than in respect of Basel obligations".[69]

51. There are also questions over the legal force of international conventions. The RSPB said that "it is important to note that [the Berne Convention] offers a lower degree of protection, and its impact (e.g. measured in terms of species population trends and protected area coverage) has tended to be much less outside the EU given the lack of strong enforcement mechanisms".[70]

52. Prof Lee noted that after Brexit "international law will become politically more significant" because "that will be the backstop beyond which we cannot fall in terms of environmental standards."[71] The Minister, Dr Coffey, reiterated the Government's commitment to international environment Conventions: "You will be aware that we are already members of many multinational agreements, and we will continue to honour those and indeed play a leading part where we have specific expertise".[72]

Court of Justice of the European Union and case law

53. Prof Macrory highlighted the significance of European Commission guidance and CJEU judgments in the sphere of environmental law:

> "There has been a lot of case law on the Habitats Directive, such as how the precautionary approach applies and what sort of assessment is required, in fleshing out the details. The judge starts with saying, 'I can summarise now in about seven or eight paragraphs what are the key principles that apply from this case law and then we will apply it to a very difficult set of facts'."[73]

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67 Q 10
68 Q 10
69 Written evidence from Prof Richard Macrory (ECB0015)
70 Written evidence from the RSPB (ECB0006)
71 Q 10
72 Q 66
73 Q 3, referring to *Mynydd y Gwynt Ltd v Secretary of State for Business, Energy and Industrial Strategy* [2016] EWHC 2581 19 Oct 2016

Prof Macrory concluded that the Government should "keep [CJEU] interpretations in the law", at least until environment legislation was revised post-Brexit.[74] Mr Andrews concurred, identifying a need to transfer the CJEU's "case law over into the UK system so that we benefit from case law which has guaranteed individuals' rights to enforce, hold governments to account, access information and so on".[75]

54. Dr Coffey, as we have seen, was clear that the Great Repeal Bill would seek to ensure legislative continuity, but she also indicated that the question of whether EU jurisprudence would transfer to the UK as part of the Great Repeal Bill was not yet settled.[76] Her colleague Dr Norman developed the point:

> "As regards the Great Repeal Bill and the [CJEU], of course, where there are interpretations that are, as it were, already mirrored in UK law separately, those will persist and, where they are brought in under the Great Repeal Act or similar legislation, they will be imported. There may well be [CJEU] judgments that sit in, as it were, limbo where they are not imported and it may be open to judges to follow or not follow those, depending on their view of the jurisprudence, so it is not a matter that is precisely capable of definition, even in principle, at this stage."[77]

Mapping the challenge

55. The way in which EU environmental legislation has been implemented in the UK means that its transposition will, in Prof Macrory's words, require "a very detailed mapping exercise looking at all our UK environmental law and that which is devolved, saying, 'Where has it come from? How has it come from EU law and what is it doing?'"[78] The Minister referred to just such an exercise:

> "Defra has not yet finished doing this mapping exercise because it is so huge for us. What is very clear … is that the key areas where it is most complex are chemicals, pesticides and greenhouse gases, and they are what is consuming a lot of grey matter. Very detailed work is being done to ensure that nothing falls between the gaps in preparation for the Great Repeal Bill."[79]

56. We note that Defra is hiring up to 30 staff to, among other tasks, "ensure UK environmental legislation is integrated into UK law on exit and that we have arrangements in place to ensure the many environmental services currently provided by Brussels can continue to be provided effectively on exit".[80]

57. We also note that the Secretary of State, Rt Hon Andrea Leadsom MP, has told the Environmental Audit Committee:

> "We think that in the region of about two-thirds of the legislation that we are intending to bring into UK law will be able to be rolled forward

74 Q 3
75 Q 27
76 Q 71
77 Q 71
78 Q 3
79 Q 71 (Dr Thérèse Coffey MP)
80 Civil Service jobs: https://www.civilservicejobs.service.gov.uk/csr/jobs.cgi?owner=5070000&ownertype=fair&jcode=1520138&posting_code=0&language: [accessed 19 December 2016]

> with just some technical changes, so roughly a third won't, which means that obviously there will be work to do to ensure that we can make those measures continue to work once we leave the EU."[81]

58. In supplementary written evidence, Defra acknowledged that it "has a significant challenge in handling the return of legislative competence from the EU."[82] Of the more-than 1,100 pieces of legislation for which it is responsible, it noted that "some areas (such as chemicals or ozone-depleting substances) might present more challenges than others because they are currently delivered by EU agencies, systems or resources."

59. Dr Coffey gave the following assurance:

> "The purpose of the Great Repeal Bill is not to repeal all EU legislation, it is to repeal the European Communities Act and, very precisely, the Prime Minister has said that we will bring EU Regulations, which are not already part of UK law and have not already been transposed, into that."[83]

The Prime Minister confirmed this when she stated that "The same rules and laws will apply on the day after Brexit as they did before."[84] However, in its white paper *The United Kingdom's exit from and new partnership with the European Union*, the Government stated that the Great Repeal Bill would mean that "wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before."[85] We note that, referring to the statement by the Secretary of State for Exiting the EU on the Great Repeal Bill (see box 3), Prof Macrory told us as early as October 2016 that he was "concerned" about "[slipping] in some words such as 'as far as practicable'" to the Bill.[86]

60. Defra recognised that delivering on its intention to "ensure a smooth and orderly transition via the Repeal Bill"[87] will be a significant undertaking: "There are decades of EU law to consider, and we must ensure our statute book works on exit and that we provide the maximum possible stability, without pre-judging future decisions Parliament may make."[88] Defra also told us, in its supplementary evidence, that "where laws need to be fixed, that's what the Government will do."[89] As the evidence explored above reveals, this is easier said than done in the realm of environmental legislation.

61. **The breadth and depth of EU environment and climate change law means that transposing that legislation into UK law will be immensely complex. The Government intends that the Great Repeal**

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81 Oral evidence taken before the Environmental Audit Committee, 25 October 2016 (Session 2016–17), Q 327 (Andrea Leadsom MP)
82 Supplementary written evidence from Defra (ECB0016)
83 Q 71
84 Prime Minister Theresa May, Speech on The Government's negotiating objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 19 January 2017]
85 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, February 2017, p 35: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 6 February 2017]
86 Q 6
87 Supplementary written evidence from Defra (ECB0016)
88 Supplementary written evidence from Defra (ECB0016)
89 Supplementary written evidence from Defra (ECB0016)

Bill will ensure a degree of environmental legislative stability, while returning the responsibility for regulatory and judicial oversight to the UK, and in principle we welcome this approach.

62. **The Government's approach, though, begs a number of questions, including what the scope of the Great Repeal Bill will be, and how it will accommodate so-called 'legislation by reference', as well as references to the EU's institutions, its Executive Agencies and obligations imposed on other Member States. It is also unclear how and to what extent CJEU judgements and soft law such as Commission guidance notes, which are important tools for interpreting and implementing environmental law, will be transposed into domestic law. These are central to maintaining legislative consistency and predictability, and the extent of their continuing applicability will need to be clarified in tandem with the Bill. Although we recognise Defra's determination to deliver the intention of the Great Repeal Bill, we are not confident that it has yet translated this determination into a delivery plan that works for the more complex areas of EU environmental legislation.**

63. **International agreements will continue to shape aspects of the UK's environment and climate change policies post-Brexit. Given that such agreements are often less detailed than the EU legislation through which they are implemented, and lack the institutional enforcement mechanisms offered by the EU, the Government will need to consider carefully the means by which they are given effect in domestic law, so as to ensure that the UK's adherence to its international commitments is not watered down post-Brexit.**

64. **The review being undertaken by each Department of how legislation in their policy areas will be affected by Brexit is key to ensuring that current levels of environmental protection are maintained. The Government should use this review to clarify the extent to which the Great Repeal Bill will minimise the risk of a legislative deficit for the environment, and to inform legislative action to ensure that equal levels of environmental protection and standards are retained after Brexit.**

65. **The Government should also clarify what will happen to environmental legislation transposed through the Great Repeal Bill over time, in particular whether it will respond to any changes adopted by the EU after transposition. Regardless of the reason for any changes to environmental legislation, Parliamentary scrutiny will be vital to ensure current levels of environmental protection are at least maintained; we therefore welcome the Prime Minister's recognition of the importance of this process.**

CHAPTER 4: ENFORCEMENT OF ENVIRONMENTAL LAW

Enforcement within the EU

The role of the Commission

66. Regardless of what form the Great Repeal Bill takes, it cannot in itself transfer the enforcement mechanisms and institutions that currently underpin EU environmental law and standards. In particular, as Prof Lee noted, a Bill, the primary focus of which is repeal of the European Communities Act 1972, will not be the appropriate vehicle for replacing the central role in enforcing environmental regulation currently played by the European Commission:

> "It sounds so far-fetched to say that we might replace the Commission, but we have taken the Commission's role in supervising compliance completely for granted for 40 years, and that will go. We should think about whether it is feasible to replace that with a parliamentary body, a government body or some other sort of public body that will supervise government and agency compliance with the law. It sounds ambitious in the current climate, but we have had this for 40 years and we are about to lose it. It is important."[90]

67. The Commission is a key player in the current enforcement of environmental legislation. Prof Lee cited our "obligations to report on how we intend to comply, then to report on how we did comply, and to explain how we will come into compliance if we fail to do so. We report to a well-resourced, well-informed, named body—the Commission."[91] The Wildlife Trusts noted that the Commission "provides a great deal of support on environmental legislation, including sharing information, monitoring progress, facilitating reporting on progress across Member States, providing guidance and interpretation of legislation".[92] The RSPB summarised the importance of these structures:

> "Periodic monitoring and reporting to the European Commission on the implementation of laws such as the Birds and Habitats Directives, combined with robust EU scrutiny and enforcement mechanisms, enables progress to be objectively assessed and Member States held to account if necessary."[93]

The role of the Court of Justice of the European Union

68. The Commission's enforcement role is underpinned by a right to bring infraction proceedings against Member States to the CJEU, in the event that they fail to comply with their obligations under EU law. According to The Wildlife Trusts, the value of the CJEU is that it "provides access to justice for all, via a free process that allows breaches of EU law to be raised, potentially resulting in infraction proceedings, judgments and subsequent case law."[94] They therefore cautioned: "Even a direct transfer of EU environmental legislation into UK law will result in an erosion of the protections that this legislation provides. Of concern is the loss of accountability from both the

90 Q 9
91 Q 9
92 Written evidence from The Wildlife Trusts (ECB0007); Q 27 (Alan Andrews)
93 Written evidence from the RSPB (ECB0006), citing the EU review of the Habitats and Birds Directives as part of the REFIT programme: http://www.wcl.org.uk/habsregs.asp [accessed 30 January 2017]
94 Written evidence from The Wildlife Trusts (ECB0007)

European Commission … and the [CJEU]".[95] Mr Hutchings agreed: "A whole range of accountability mechanisms are potentially at risk as we leave the EU."[96]

69. In evidence to the Environmental Audit Committee in February 2016, the Commission stated that 30 environment cases brought by the Commission against the UK had resulted in judgments against the UK.[97] Such enforcement proceedings have been a driver for environmental improvement, as Mr Andrews told us: "The EU conducted a review of air quality law in 2013 and the Government were very open about their intention to use that process to avoid the risk of infraction, which is code for avoiding the risk of being sued by the Commission."[98] Ms Mukherjee made a similar point: "Governments pay a lot of attention to the risk of being infracted because it is very expensive and it is not brilliant for your reputation".[99]

70. Mr Jacobs agreed that, during his time as a Government adviser, "the threat of infraction drove environmental policy. Our recycling targets were driven by the threat of infraction, and the sums of money that we were going to be fined were absolutely at the heart of that process."[100] Similarly, according to Mr Andrews, "the main driver behind [the Government's] new air quality plan was not the Supreme Court order from the UK in 2015, but the threat of being infracted by the Commission. They aimed to comply based on when they thought the Commission might move to issuing fines."[101] This was underlined in the High Court's ruling on the case brought against Defra by ClientEarth, which stated: "A principal driving factor in selecting 2020 [as the date for introducing measures to reduce nitrogen dioxide emissions] was not the obligation to remedy the problem as soon as possible but to remedy it in time to avoid EU infraction proceedings."[102]

Conclusion

71. **The European Commission and the Court of Justice of the European Union have had a strong impact in ensuring the UK's compliance with EU legislation that affects environmental protection. The evidence we have heard suggests the effectiveness of the EU regulatory regime is thanks in part to the deterrent effect of the power of EU institutions to hold Member States to account and to levy fines upon them for non-compliance.**

UK judicial oversight

72. Following Brexit, without the jurisdiction of the CJEU, it would be for domestic courts to enforce public authorities' and Ministers' compliance with environmental legislation, typically by means of judicial review.[103] Witnesses expressed differing views on the effectiveness of domestic judicial review.

95 Written evidence from The Wildlife Trusts (ECB0007)
96 Q 12
97 Further written evidence from the European Commission to the Environmental Audit Committee (AEP0065) p 3
98 Q 24
99 Q 30
100 Q 59
101 Q 30
102 *Clientearth v Secretary of State for the Environment, Food and Rural Affairs, (2016) EWHC 2740 (Admin)*, para 66. ClientEarth took Defra to court to challenge its Air Quality Plan, as required by the Air Quality Directive (2008/50/EC).
103 Q 9 (Prof Maria Lee); Q 24 (Alan Andrews)

While the Minister, Dr Norman, called it "an extraordinarily effective means of holding the Government to account",[104] Prof Macrory was more cautious: "Despite some efforts to limit exposure of costs, it is still a very expensive and time-consuming process."[105] Mr Andrews had similar concerns: "It would be very easy to make judicial review difficult or impossible for environmental NGOs such as ClientEarth as it was five years ago when the cost of bringing legal action was so prohibitively expensive we could not even consider it."[106]

73. The powers of domestic courts are also significantly less than those of the EU institutions. This is in large part because, in the words of Mr Jacobs: "The Commission can fine. The Supreme Court does not fine."[107]

74. As Prof Macrory noted, questions of enforcement and judicial oversight are not confined to environmental law: "This whole question of enforcement and so on is going to apply to all areas of law if we leave the EU." He believed, though, that the environment was particularly vulnerable, because there was no clear economic owner to protect it.[108] He believed that there might be a case for "special treatment" of the environment, and The Wildlife Trusts also suggested that "serious consideration [should be] given to the creation of a specialist forum for environmental cases".[109]

75. Ms Mukherjee raised the more fundamental question of what party, in future cases before the domestic courts, would be liable for any infractions:

> "At the moment it is the UK Government and that drives an awful lot of thinking by the Government about how not to be infracted. If it is not the Government, but a sector, or the Environment Agency in any of the four UK Administrations that raises the question, would there be that impetus and that brainpower behind assuring an avoidance of infraction?"[110]

The need for additional enforcement

76. Many witnesses told us that the UK would need additional enforcement mechanisms to fill the gap left by the Commission, and to ensure that the Government continued to meet its environmental obligations post-Brexit.

77. In the absence of such additional mechanisms, there could be a void. Ms Davis acknowledged that "trying to find a replacement [for EU level accountability] that is at least as strong at UK level will be a challenge",[111] while the Game and Wildlife Conservation Trust said: "There is little use of having good legislation if there is limited means to enforce it."[112] Mr Andrews agreed: "Simply by not replacing the enforcement mechanisms that we lose when we leave the EU we could render the air quality laws pretty much ineffective."[113]

78. Witnesses argued strongly that the EU enforcement and oversight mechanisms should be replicated, as far as possible, in future domestic arrangements.

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104 Q 71
105 Q 10
106 Q 24
107 Q 59
108 Q 10
109 Written evidence from The Wildlife Trusts (ECB0007)
110 Q 27
111 Q 12
112 Written evidence from the Game and Wildlife Conservation Trust (ECB0010)
113 Q 24

Thus Prof Howell wanted "a clear framework setting out how the role of the European Commission and the [CJEU] would be replicated in the UK".[114] The Wildlife Trusts also cited the challenge of "how to ensure accountability mechanisms are replaced", and told us: "We believe [the Commission's] expertise will need to be replicated at a domestic level and consideration should be given to the funding and independence of our regulatory bodies to ensure that they are fit for purpose."[115] The Game and Wildlife Conservation Trust stated: "Mechanisms of enforcement and regulation must be secured prior to enactment of the Great Repeal Bill, in the place of [the European] Commission."[116]

79. Various models for filling different aspects of this gap were suggested to us, ranging from a new parliamentary or public body to an environmental ombudsman or a body similar to the Climate Change Committee for the environment.[117] We also heard about possible models in the US Environmental Protection Agency,[118] the Hungarian Parliamentary Commissioner for Future Generations,[119] and the courts enforcing constitutional obligations in India and Pakistan.[120] Prof Lee stated that any reporting model should provide for both political and legal accountability,[121] while Mr Andrews emphasised that the enforcement body should have "powers of inspection and the power to issue fines and penalties".[122]

80. The Minister, Dr Coffey, reassured us that "people should not have cause for concern all of a sudden that we see Brexit as an opportunity to backslide on the environment; far from it. We want to have a better environment than we inherited."[123] She affirmed that "it is the role of Parliament to hold the Government to account", and said that "Part of the role of the Environmental Audit Select Committee in the Commons is exactly to do this kind of work across government—focusing not just on Defra but on others—and hold us to account." She also told us: "The Government are accountable ultimately through the ballot box, but … the law is there and, if people believe that we are not complying with the law, they can take the Government to court about it".[124] In this she echoed the views of the Secretary of State, Rt Hon Andrea Leadsom MP, in evidence to the Environmental Audit Committee:

> "The UK courts will be perfectly well able to deal with any issues of enforcement, as indeed they do now on issues with water or wildlife crime and so on. The UK courts are perfectly well able to deal with matters of enforcement. We won't be needing to replace European courts."[125]

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114 Written evidence from Prof Dickon Howell (ECB0003)
115 Written evidence from The Wildlife Trusts (ECB0007)
116 Written evidence from the Game and Wildlife Conservation Trust (ECB0010)
117 Written evidence from The Wildlife Trusts (ECB0007); Q 9 (Prof Maria Lee); Q 10 (Prof Richard Macrory)
118 Q 27 (Alan Andrews)
119 Q 10 (Prof Richard Macrory)
120 Q 9 (Prof Maria Lee)
121 Q 9
122 Q 27
123 Q 71
124 Q 71
125 Oral evidence taken before the Environmental Audit Committee, 25 October 2016 (Session 2016–17), Q 329 (Andrea Leadsom MP)

81. Dr Norman agreed with his ministerial colleagues:

> "What I think is a good guide is the flexibility with which British Governments over the years have created standards for themselves and been able to hold themselves to account by parliamentary means in a way that has given comfort to the wider public that these standards are being properly enforced and understood."[126]

82. The Government's confidence in its ability to 'hold itself to account' contrasts with the concern expressed by the vast majority of our witnesses, that without supra-national oversight, by means of the EU institutions, environmental protection in the UK could be undermined. In the words of Mr Jacobs: "It is less what standards you have; it is what compliance forces government into acting sufficiently to meet those standards."[127]

83. **The importance of the role of the EU institutions in ensuring effective enforcement of environmental protection and standards, underpinned as it is by the power to take infraction proceedings against the United Kingdom or against any other Member State, cannot be over-stated. The Government's assurances that future Governments will, in effect, be able to regulate themselves, along with Ministers' apparent confusion between political accountability to Parliament and judicial oversight, are worryingly complacent.**

84. **The evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission in ensuring the compliance of the Government and public authorities with environmental obligations. Such enforcement will need to be underpinned by effective judicial oversight, and we note the concerns of witnesses that existing domestic judicial review procedures may be inadequate and costly.**

85. **It will be important for any effective domestic enforcement mechanism to have both regular oversight of the Government's progress towards its environmental objectives, and the ability, through the courts, to sanction non-compliance as necessary.**

126 Q 71
127 Q 59

CHAPTER 5: ENVIRONMENTAL IMPLICATIONS OF FREE TRADE WITH THE EU

EEA membership

86. The Government's white paper on Brexit stated that the UK would not remain a member of the Single Market after leaving the EU.[128] Our inquiry, however, predated that publication, and much of our evidence focused on the implications of European Economic Area (EEA) membership for environment policy and law. The RSPB told us that "countries within the EEA that are not members of the EU … are required to apply large parts of EU environmental law".[129] The Wildlife Trusts agreed, but noted that, "critically, the Habitats and Birds Directives, the Bathing Water Directive and legislation on environmental impact assessments" would not apply.[130]

87. Thus were the UK to seek membership of the EEA as an alternative to EU membership, the change to current practices would be minimal, because the UK would continue to abide by all Single Market legislation facilitating the trade of goods within the EEA, and the majority of environmental protection legislation such as the Water Framework Directive, Air Framework Directive and REACH. However, given the clear objectives set out in the white paper, for the remainder of this chapter we focus on the environmental implications of the Government's preferred option, namely a comprehensive free-trade agreement.[131]

Free trade agreement

88. Entering into a free trade agreement (FTA) with the EU would not oblige the UK to preserve or adopt the EU environment *acquis*. However, as we noted in our report *Brexit: the options for trade*: "Imports from countries outside the Single Market need to comply with relevant EU legislation (for example, product safety and environmental standards)."[132] In other words, equivalence between UK and EU environmental standards would almost certainly be required, as part of any comprehensive FTA, in order to remove non-tariff barriers to trade, thereby ensuring UK access to the Single Market. The UK might therefore need not only to preserve many current standards, but to reflect some new standards as and when they were agreed by the EU, so as to continue to trade into the Single Market.

89. The UK would not necessarily be required to give direct effect to EU law in order to meet EU standards and regulations, "if it could demonstrate that its domestic law had an equivalent effect."[133] For instance, in our report *Brexit:*

128 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, February 2017, p 35: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 6 February 2017]

129 Written evidence from the RSPB (ECB0006); The Wildlife Trusts (ECB0007), CLA (ECB0001); Q 7 (Prof Andy Jordan)

130 Written evidence from The Wildlife Trusts (ECB0007); also Q 7 (Prof Andy Jordan)

131 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, February 2017, p 35: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 6 February 2017]

132 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 39

133 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 140

the options for trade, we cited the example of the EU ETS, where, instead of participating in the scheme, the UK could potentially adopt a carbon tax approach in which the price of carbon was similar and could be considered equivalent.[134] As Prof Lee commented, countries could "decide, mutually, to recognise our different safety standards".[135] Prof Macrory agreed: "Depending on the terms of the agreement, there may be various forms of reciprocal recognition of authorisations", which would have "implications for trading".[136]

90. Key policy areas in respect of equivalence to allow trade include regulations such as the REACH Regulation (see Box 4), the Classification, Labelling and Packaging Regulation,[137] and the Ecolabelling Regulation,[138] which all set product standards for goods traded in the Single Market. It was widely assumed by witnesses that the UK would need to continue to adhere, for instance, to the REACH Regulation, in order to trade chemicals into the EU, because, as the Geological Society noted, that Regulation aims "to allow free movement of substances on the EU market".[139] Steve Elliott, CEO of the Chemical Industries Association, highlighted the importance of this free movement of goods: "Some 60% of all chemical exports go to the continent and 75% of chemical imports come from the continent."[140]

Box 4: The REACH Regulation[141]

REACH (EC 1907/2006) aims to improve the protection of human health and the environment through the better and earlier identification of the intrinsic properties of chemical substances. This is done by the four processes of REACH, namely the registration, evaluation, authorisation and restriction of chemicals. REACH also aims to enhance innovation and competitiveness of the EU chemicals industry. REACH is administered by the European Chemicals Agency (ECHA) in Helsinki.

Source: European Commission, Policy Area: Environment, Chemicals, REACH, https://ec.europa.eu/info/strategy/environment_en *[accessed 19 January 2017]*

91. The Grantham Institute also argued that "It would be sensible for the UK to adopt European Union regulations relating to energy efficiency, including strong fuel standards for land vehicles and product standards for electrical appliances."[142] Finella Elliott, Policy Adviser at the EEF, told us that, for EEF members: "We cannot see a scenario where in order to maintain access

134 European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), para 197
135 Q 5
136 Q 5
137 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396 (30 December 2006), pp 1–849
138 Regulation of the European Parliament and of the Council on the EU Ecolabel, OJ L 27 (30 January 2010) pp 1–19
139 Written evidence from the Geological Society (ECB0002)
140 Q 47
141 The European Union takes a 'precautionary approach' to regulating chemicals which emphasises the hazard of a given substance to human and animal health. Chief scientific advisers in the UK have argued in favour of a risk based approach to regulating such substances instead, focusing on the risk of exposure to the hazard, rather than the hazard itself.
142 Written evidence from the Grantham Institute (ECB0004)

to the Single Market we will not have to continue complying in some way with climate and environment policy."[143]

Enforcement under a free trade arrangement

92. As we discussed in Chapter 4, outside the EU the UK will not be subject to the European Commission or the jurisdiction of the CJEU, and the enforcement of environmental legislation will be primarily a domestic matter.

93. Where disputes arise between the EU and the UK over the regulation of a substance or product, they will be addressed under the rules governing international trade. Prof Lee explained: "Basically, if they have banned it, we cannot export it to the European Union. If we have banned it, they cannot export it to us. There would be a disagreement; there would be a conflict. That is what the WTO is full of all the time."[144]

Replacing current EU policies

94. Once the UK has left the EU, the Common Fisheries Policy and the Common Agricultural Policy will cease to apply.[145] This means that, regardless of the shape of the future EU-UK relationship, the UK will need to replace all environment legislation that is currently embodied in EU fisheries and agriculture policy, respectively designed to manage European fishing fleets and conserve fish stocks, and to provide a stable, sustainably produced supply of safe food at affordable prices whilst ensuring a decent standard of living for farmers and agricultural workers through a system of subsidies and funding.

95. Witnesses were clear that the UK's post-Brexit policies must continue to drive environmental improvements. We heard from the Society for the Environment that "As members of the European Union, we have made significant progress with the quality and quantity of our natural resources over the last 40 years. The Society wish to help protect that progress and maintain it going forward."[146] Prof Macrory stated that the current level of environmental protection "should not be diminished by future changes in legislation".[147] The Wildlife Trusts stated that "EU membership has led to a cleaner and healthier UK environment. Therefore, following exit from the EU, environmental (and climate policy) regulations should be preserved and not weakened."[148]

96. **Subject to the level of access to the Single Market attained, the UK will need to either comply with or align itself to EU environmental standards, such as chemicals regulations and energy efficiency standards. It is therefore vital that the Government should make clear what the free trade agreement with the EU will entail, in order to help to clarify the constraints on future environment policy in the UK.**

97. **Once the UK withdraws from the EU the Common Fisheries Policy and the Common Agricultural Policy will cease to apply to the UK. While equivalent policies could be carried over as a temporary**

143 Q 47
144 Q 5
145 Written evidence from The Wildlife Trusts (ECB0007)
146 Written evidence from the Society for the Environment (ECB0011)
147 Q 1
148 Written evidence from The Wildlife Trusts (ECB0007)

measure by the Great Repeal Bill, alongside other EU environmental legislation, that Bill will not be the appropriate mechanism for evaluating and implementing options for taking forward these key areas of environmental policy. We recommend that the Government set out its plans for conducting such an evaluation, with a view to implementing new domestic policies that build on the progress in environmental protection that has been made in the last few decades in advance of the completion of withdrawal from the EU.

CHAPTER 6: THE DRIVERS FOR ALIGNMENT OF STANDARDS AND POLICY

Opportunities for the UK

98. We asked witnesses about the potential for legislative change after Brexit. Prof Macrory told us: "There will be opportunities to improve things, if we want to. Not everything is right with EU law and the structure of EU law."[149] The Minister, Dr Coffey, agreed: "There may be some things that we think are no longer fit for purpose or not achieving the outcomes which they were originally intended to that we have an opportunity to change."[150] She suggested that after withdrawing from the EU the UK would have the opportunity to develop regulations "more bespoke to the needs of Britain." In particular, she noted that "different parts of our country have different environmental challenges". For example, "Water stress is a massive issue in the south and the east; it is not a big issue elsewhere. You might want to design a policy and a scheme that is more tailored, whereas at the moment they have to be quite uniform."[151]

99. Other examples were given by Ms Mukherjee, Jacob Hayler, Executive Director at the Environmental Services Association, and the Mineral Products Association, as well as by Dr Coffey, who all cited definitions of waste in EU legislation as operationally unhelpful and restricting positive action.[152] The Game and Wildlife Conservation Trust mentioned the merits of a more open approach to developing genetically modified food,[153] while Mr Elliott and the CLA noted that the removal of the EU's state aid rules could allow for a simplified and more ambitious climate change policy within the UK.[154]

100. The key opportunity highlighted by witnesses was stronger future integration of policy areas such as agriculture and environment policy,[155] and energy efficiency and industrial policy.[156] Dr Doug Parr, Policy Director of Greenpeace, suggested that agriculture policies "could be reconfigured so as to have environmental protection at their core rather than as an add-on."[157] The Wildlife Trusts described Brexit as "an opportunity to develop a more ambitious policy which is integrated across a holistic range of environmental elements (soil, biodiversity, food, water quality, flood risk, access and recreation, etc.) and which provides a greater opportunity to farm in a more sustainable and innovative way."[158] The Ministers agreed. Dr Norman told us: "I have noticed that there are clear opportunities for, if not synergy, a more interesting, holistic view of some of the issues."[159] Dr Coffey told us: "I think there are good opportunities for us to think through future agricultural

149 Q 1
150 Q 66
151 Q 66
152 Written evidence from the Mineral Products Association (ECB0005); Q 28 (Sarah Mukherjee); Q 24 (Jacob Hayler), Q 66 (Dr Thérèse Coffey MP)
153 Written evidence from the Game and Wildlife Conservation Trust (ECB0010)
154 Written evidence from the CLA (ECB0001); Q 49 (Steve Elliott);
155 Written evidence from the Game and Wildlife Conservation Trust (ECB0010)
156 Written evidence from the Mineral Products Association (ECB0005) and the Society for the Environment (ECB0011); Q 36 (Jonathan Gaventa),
157 Q 58 (Dr Doug Parr)
158 Written evidence from The Wildlife Trusts (ECB0007)
159 Q 70

support, as an example, where we want to drive specific environmental outcomes."[160]

Policy alignment: trade

101. Many witnesses thus saw Brexit as an opportunity to address elements of environmental policy and seek some degree of change in policy. But witnesses also recognised that any change in policy direction would be constrained by the need for some degree of continued policy alignment in order to facilitate trade with the EU.[161] As we noted in Chapter 5, the future relationship between the EU and the UK will affect the UK's ability to set environmental standards. Speaking to the Committee in July 2016, Dr Charlotte Burns, Senior Lecturer at the University of York, argued that were the UK to pursue a free trade agreement or trade under WTO rules,[162] "there would be scope for the UK Government to put in place different standards".[163] At the same time, she acknowledged that "There will be strong pressure … upon the UK to maintain broadly comparable standards with our European partners".[164] In respect of goods, compliance with environmental standards (such as for engine emissions or Ecodesign) is a pre-condition for full access to the Single Market. Another example, provided by Mr Elliott, is that "Any product coming into the European Union from wherever would need to meet the requirements of REACH."[165]

102. Around half of the UK's overall trade (import and export) is with the European Union, though this figure is higher in some sectors.[166] For those engaged in trade, therefore, continuing co-operation on environmental standards is likely to be a key priority. The Mineral Products Association told us: "European Environmental Standards are likely to remain a benchmark for international acceptance, and a requirement for access to the EU market."[167]

103. Ms Elliott suggested that for the EEF: "Our members absolutely will continue to comply, and there are many reasons for them to continue to comply—most important is retaining that access to the Single Market."[168] She added:

> "Many of our members tell us that there are advantages of having one set of regulations and rules with the EU, and our manufacturers tell us they do not want to have to create multiple products for multiple markets; they want to create one product that they can export to a number of markets, at the same time as maintaining the current level of commitment to environmental standards."

104. Mr Elliott gave another example: "To try to look at, adapt and adopt alternatives [to environmental permitting] would be very complex and incredibly resource-intensive."[169] He noted that "Any differences in compliance requirements could be a financial burden on exporters and

160 Q 66
161 These issues will be considered more broadly in the forthcoming report *Brexit: trade in goods*
162 For details on what trade under WTO rules entails, see European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), pp 51–62
163 Oral evidence taken on 20 July 2016 (Session 2016–17) Q 7
164 Oral evidence taken on 20 July 2016 (Session 2016–17) Q 7
165 Q 55
166 See European Union Committee, *Brexit: the options for trade* (5th Report, Session 2016–17, HL Paper 72), table 1
167 Written evidence from the Mineral Products Association (ECB0005)
168 Q 54
169 Q 48

importers."[170] The Mineral Products Association raised similar concerns.[171] However, Mr Elliott also acknowledged that:

> "If you are a UK-based chemical business whose trade is perhaps much more with other parts of the world, such as the United States and Switzerland, there is a feeling among that community and our membership that there is some scope for … a regime that is a bit more risk-based, pragmatic and proportionate than the demands that REACH puts upon their trade with the European Union."[172]

At the same time, he noted that "there are many countries and regions of the world that are now following the example which the European Union has set with REACH. South Korea is an example, and others are following".[173]

105. Policy alignment may also be desirable to maintain competitiveness. The CLA argued:

> "If the UK were to set more ambitious emissions targets for itself, there would be the risk that those sectors that compete with EU Member States, such as agriculture, could end up subject to far stricter requirements, and therefore having to pay additional costs, compared with their competitors".[174]

Similarly, the Mineral Products Association raised the concern that "post-Brexit, further disparities will develop between the UK Regulatory [sic] approaches and those adopted by other countries, both in Europe and more widely, which disadvantage UK manufacturers operating in global markets."[175]

106. The policy alignment that would allow for continued trade with the EU could also aid environmental protection within the waste sector.[176] Mr Hayler told us that just over a quarter of the sorted materials the UK exported to be recycled back into products went to the EU,[177] and that, thanks to the limits of the UK's domestic processing capacity, "We are going to have to keep relying on those overseas markets to fulfil our recycling ambitions."[178] Geographical proximity was a key enabler of this trade:

> "There is a lot of overcapacity for that sort of treatment in other parts of northern Europe and they are very keen for us to maintain those flows of materials into their facilities. It would be a cost issue. If we were further away it would be too expensive to do that, whereas for recycling that material has a positive value which means it can travel a lot further."[179]

107. Furthermore, Mr Hayler told us that the UK exported "around 4 million tonnes of waste as fuel to the EU", under the terms of the Waste Shipment

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170 Q 47
171 Written evidence from the Mineral Products Association (ECB0005)
172 Q 49
173 Q 49
174 Written evidence from the CLA (ECB0001)
175 Written evidence from the Mineral Products Association (ECB0005)
176 Q 25. EU legislation regulates waste management, including landfill and incineration, as well as the transportation and definitions of waste. These regulations are under review as part of the Circular Economy package. Jacob Hayler set out the ways in which the EU governs recycling and landfill.
177 Q 23
178 Q 30
179 Q 31 (Jacob Hayler)

Regulation.[180] He still expected the industry to be able to export waste after Brexit,[181] but noted that "There are fears about potential future tariffs … [which] would drive up our costs and create difficulties for waste management in the UK."[182]

108. Prof Grubb and Prof Howell both raised the possibility of equivalent environment and climate standards being incorporated into the UK's future trade agreements with the EU.[183] Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Land Reform in the Scottish Government, told us: "It is important that bilateral trade deals support the achievement of environmental and climate change objectives. Whatever the good intentions of governments, we know that maintaining high standards is difficult without trading arrangements that allow this to happen."[184] The Minister, Dr Norman, noted: "Environmental standards are already written into trade agreements that the EU has. It is a well-known issue to try to make sure that the standards, as it were, are applied across a level playing field in trade agreements".[185]

109. **Whatever the shape of the UK's future free trade agreement with the EU, there is a strong shared interest in maintaining cross-border trade. A degree of alignment between the UK and the EU on environmental standards will thus continue to be key to maintaining access to each other's markets across many sectors.**

110. **Any restrictions, or the imposition of tariffs, on the UK's trade with the EU in recycling and waste could significantly increase the costs of waste management post-Brexit. Once the UK Government has clarified the details of the FTA it is seeking with the EU, the Government, in consultation with industry, will need to assess whether its approach to waste management is still feasible and fit for purpose.**

Policy alignment: effective protection of the natural environment

111. There is also a practical case for some degree of continuing policy alignment, stemming from the cross-border nature of environmental challenges. Ms Bunker argued that "more than any other part of the world we live in, the natural environment transcends political and national boundaries."[186] The UK's natural environment is intertwined with that of other EU Member States and, in areas such as climate change and marine pollution, the rest of the world. As Prof Lee told us: "When we assess environmental quality, consumer safety and all those things, it is not just about the science. It is, indeed, about the world we want to live in and about politics as well as science."[187]

112. Thus if the UK or the EU are to regulate the natural environment effectively after Brexit, a degree of policy alignment will be necessary. As Dr Parr

180 Regulation 660/2014 of 15 May 2014 amending Regulation (EC) 1013/2006 on shipments of waste, OJ L 189 (27 June 2014), pp 135–142
181 Q 25
182 Q 23
183 Written evidence from Prof Dickon Howell (ECB0003); Q 42
184 Written evidence from the Scottish Government (ECB0012)
185 Q 70
186 Q 21
187 Q 5

told us: "there are clearly a number of areas where it makes absolutely no sense to try to do stuff on your own."[188] The RSPB agreed: "Specifically as regards wildlife, an alignment of EU and UK nature conservation policies and actions will increase the chances of UK actions being successful."[189] Co-operation allows broader geographical coverage, a focus on transboundary connectivity, and opportunities to share knowledge, experience and best practice.

113. The Minister, Dr Coffey, acknowledged that "the environment and climate change really do not know boundaries, so it will continue to be a feature of our policies moving forward to work closely with the EU as well as other countries".[190] Mirroring the Minister's point, Mr Hutchings drew on the character of environmental issues as a driver for co-operation:

> "We benefit from migratory birds, but they will be affected by regulations applied in other parts of Europe where they migrate to and from. Likewise, some of the air quality challenges we face in the UK are a consequence of what happens in continental Europe, and surely the UK will want to influence the regime in Europe."[191]

The Wildlife Trusts also cited migratory species as a case "where stringent action in one country will not be nearly as effective if it is not replicated within those countries which share that species' range."[192]

114. Ms Cunningham noted that this was also true of climate change: "Climate change targets are challenging, and the best way of achieving them is to continue with multilateral engagement and collective effort, especially to deliver the Paris Agreement commitments."[193] Ms Davis commented that, although the UK and EU had shared ambitions, particularly with regard to climate action, "The question is how we share some of that effort. At the moment we have effort-sharing in decisions on climate and emissions trading, and the question is about how that is split further on."[194]

115. The UK's commitment to overarching international agreements underlines the cross-border nature of environmental challenges, and thus the UK's shared interests not just with the EU but more widely. Ms Bunker told us:

> "Some of the European legislation we have been talking about, the Birds and Habitats Directives and others, takes its lead from international Conventions—the Berne and Bonn Conventions and the Convention on Biological Diversity … If the UK Government take those commitments seriously, and if the EU does, there will need to be alignment to some extent."[195]

116. Witnesses highlighted a number of environmental policy areas necessitating policy co-operation and alignment in order to ensure effective environmental protection regardless of Brexit. Though it is beyond the scope of this report to consider them all in detail, we highlight three examples below.

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188 Q 58
189 Written evidence from the RSPB (ECB0006)
190 Q 66
191 Q 20
192 Written evidence from The Wildlife Trusts (ECB0007)
193 Written evidence from the Scottish Government (ECB0012)
194 Q 20
195 Written evidence from The Wildlife Trusts (ECB0007); also Q 20

Marine and aquatic environments

117. Prof Howell reminded us that "we are geographically intertwined with our neighbours' marine space." As a result, "effective management of this sensitive environment and the activities that go on within it … calls for some level of cohesion and consistency that previously was provided from working within the EU framework, or that of the OSPAR Convention."[196] He therefore believed that marine management must be done "on a regional sea basis".[197]

118. As we noted in our report *Brexit: fisheries,* the geographical proximity of the UK to the EU necessitates a degree of co-operation and alignment of policy if the marine environment, and the living resources found therein, are to be managed effectively and sustainably.[198] This affects both commercial fishing and marine conservation. As The Wildlife Trusts argued: "Truly sustainable fisheries cannot be achieved without transnational cooperation."[199]

119. The Wildlife Trusts also suggested that a "pragmatic approach" to co-operation would be appropriate for managing offshore marine sites, where agreement with EU Member States would be required, but added that it "needs to be clear who is going to pay for the monitoring" of these sites.[200] The Geological Society noted that the Water Framework Directive "was designed to shift the management of water resources to river basins, which can cross political borders".[201] They added that it was "widely considered to be effective … and has yielded very positive results".

120. The Minister, Dr Coffey, told us that "the UK has been at the leading edge in trying to improve marine conservation and we need to make sure that others do not slide back on it."[202] We welcome her commitment to the marine environment.

121. The desirability of continuing cooperation on managing the marine and aquatic environments is brought into sharp focus by the existence of a land border between Northern Ireland and the Republic of Ireland. Witnesses noted that there would be a particular need to co-operate with the EU regarding "the management of water across the border between Northern Ireland and the Republic of Ireland".[203] Moreover, Michelle McIlveen MLA, Minister of Agriculture, Environment and Rural Affairs in the Northern Ireland Executive, noted that other transboundary environmental issues were at play in the region: "The interconnections of the terrestrial, atmosphere and aquatic environment on either side of the border highlight the continuing need for practical co-operation."[204]

196 Written evidence from Prof Dickon Howell (ECB0003)
197 Written evidence from Prof Dickon Howell (ECB0003)
198 European Union Committee, *Brexit: fisheries* (8th Report, Session 2016–17, HL Paper 78), para 96
199 Written evidence from The Wildlife Trusts (ECB0007)
200 Supplementary written evidence from The Wildlife Trusts (ECB0014)
201 Written evidence from the Geological Society (ECB0002)
202 Q 66
203 Written evidence from the Geological Society (ECB0002); also Q 23 (Sarah Mukherjee)
204 Written evidence from the Northern Ireland Executive (ECB0013)

Air quality

122. The environmental and health impacts of air pollution are widely acknowledged.[205] Mr Andrews told us that air pollution was "obviously a transboundary environmental problem par excellence."[206] Dr Parr agreed, calling it a strategic priority for working with the EU.[207]

123. The Minister, Dr Coffey, told us that a lot of the UK's air pollution came from the continent.[208] Mr Andrews developed the point: "of the PM2.5 pollution, the microscopic harmful particles that we breathe into our lungs and which are very harmful to human health, causing something like 29,000 early deaths each year, only about half originates in the UK."[209] But he also emphasised that pollution originating in the UK affected the EU in return, noting that "prevailing winds tend to take our pollution over to the continent more often than not, so we are a net exporter".[210]

124. Dr Parr therefore believed that there was "a whole suite of regulatory standards where we share a common space. Those apply to vehicles, but we should also work with the Large Combustion Plants Directive, NEC ceilings, and the Industrial Emissions Directive".[211] He concluded: "I think it would create quite a lot of animosity if we were effectively lowering our standards and dumping pollution on our European neighbours."

Climate change

125. Action to combat climate change is co-ordinated to a considerable degree at a global level. The UK's contribution to this effort is predominantly as an EU Member State, and the UK actively participates in the mechanisms the EU has introduced to meet collective targets. The EU's climate action policies include targets to reduce greenhouse gas emissions, and mechanisms to help its Member States meet those targets cost-effectively and to ensure that each contributes its fair share to the collective effort. The evidence we received drew out the extent to which co-operation with the EU affected the UK's emissions reduction targets and ability to meet them, and how Brexit might change that co-operation. Matthew Bell, Chief Executive, Committee on Climate Change, stated that "our sense was that about half, 55% or so, of the emissions reduction that the UK would have made to 2030 would have come from policies that would have been negotiated at an EU level".[212] Ms McIlveen echoed this view, adding that changes to EU policies such as emission standards for cars and buildings, eco-design requirements for energy-related products, energy labelling systems and restrictions on fluorinated industrial gases (F-gases),[213] "may have an impact on our contribution towards UK, EU and international emission reduction targets".[214]

126. Other witnesses noted the difficulties the EU may face in meeting its targets, post-Brexit. The Grantham Institute told us:

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205 Environment, Food and Rural Affairs Committee, *Air Quality* (Fourth Report, Session 2015–16, HC 479)
206 Q 23
207 Q 63
208 Q 66
209 Q 23
210 Q 23
211 Q 63 , referring to 2001/80/EC, 2001/81/EC and 2010/75/EU respectively.
212 Q 76
213 Commonly referred to as CFCs and HFCs
214 Written evidence from the Northern Ireland Executive (ECB0013)

> "The latest figures published by the European Environment Agency show that emissions from the 28 Member States were 24.4 per cent lower in 2014 than they were in 1990. But without the UK, the emissions of the 27 Member States were only 22.8 per cent lower in 2014 than in 1990."[215]

Mr Ward underlined the point, noting that the EU has a target to reduce its greenhouse gas emissions by 40% relative to 1990 by 2030, but that "because the UK has been cutting its emissions more quickly than other Member States [this target] will be more difficult for the other Member States to collectively achieve."[216]

127. One of the EU measures that has contributed to the UK's emissions reductions is the EU Emissions Trading Scheme (EU ETS), described in Box 5. The Government's view, as set out by Dr Norman, is that the EU ETS: "is not functioning perfectly at the moment". He added: "It is a further matter for discussion at government level as to whether or not we withdraw from that or what relationship we might have with it in the future."[217]

Box 5: EU Emissions Trading Scheme

The EU ETS is part of the EU's policy to combat climate change and its key tool for reducing greenhouse gas emissions cost-effectively. A cap is set on the total amount of greenhouse gases that can be emitted by the sectors covered by the system. Within the cap, companies receive or buy emission allowances, and each year a company must surrender enough allowances to cover all its emissions. The EU ETS is the world's largest carbon market.

Source: European Commission, 'The EU Emissions Trading System (ETS)': http://ec.europa.eu/clima/policies/ets_en *[accessed 19 January 2017]*

128. A number of witnesses agreed with the Government that the design of the EU ETS had not been entirely effective. According to Mr Bell: "It has a long way to go to be a scheme that properly delivers the levels of reduction that are compatible not just with the UK's commitments but with the EU commitments as well to the Paris Agreement".[218]

129. Nevertheless, the Aldersgate Group told us that "on balance the UK should remain part of the EU ETS because as the scheme reforms over time, it has the potential to play a greater role within the UK's suite of policies to meet its domestic carbon budgets cost-effectively".[219] The Grantham Institute told us that "UK companies benefit from being a member of the ETS because it increases the potential market within which they can sell and purchase allowances, reducing the overall costs of compliance".[220]

130. We also heard that, if the UK were to withdraw from the EU ETS, "there is an open and rather complicated question about what happens to emissions permits that might have originated in the UK but are no longer held there".[221] Mr Bell explained that "UK-based companies have acquired allowances

215 Written evidence from the Grantham Institute (ECB0004)
216 Q 42
217 Q 71
218 Q 79; also Q 40 (Prof Michael Grubb)
219 Written evidence from the Aldersgate Group (ECB0009)
220 Written evidence from the Grantham Institute (ECB0004) and the Scottish Government (ECB0012); also Q 79 (Matthew Bell), Q 40 (Bob Ward),
221 Q 40 (Jonathan Gaventa); also Q 79 (Matthew Bell)

through the EU Emissions Trading Scheme that have some value, and there would have to be, as part of the negotiations and discussions, a discussion about what happens to those existing allowances that they already own".[222] He also pointed out that if the UK withdrew it would have to change its carbon accounting system.[223]

131. Mr Bell also highlighted the cost efficiency of emissions trading schemes as a means of reducing emissions. He therefore asked: "If we are not part of the EU Emissions Trading Scheme … the first question I would have would be, first of all: could we be part of a different trading scheme?"[224] In the light of moves towards emissions trading in North America, China and Australia, he concluded: "I think it would be unusual for the UK not to be part of a trading scheme as part of a cost-effective way of reducing emissions."[225] Other witnesses, in contrast, proposed a UK carbon tax as an alternative approach to reducing emissions post-Brexit.[226]

132. **The transboundary nature of most environmental pollution means that failure to co-operate with the EU post-Brexit could have significant consequences for both the UK's and the EU's natural environment. Marine conservation, air quality and climate change are three key areas where the UK and EU environments will be conjoined as much after Brexit as before. The Government will need to co-operate with the EU in these areas, among others, to ensure environmental protection is maintained.**

133. **The land boundary in the island of Ireland presents particular and significant environmental challenges. We urge the UK Government to work with the Northern Ireland Executive, the Irish Republic and EU partners to enable effective long-term management of the environment on both sides of the border.**

134. **Climate change in particular is a global issue, transcending EU membership, which is most effectively combated by means of co-ordinated global action. We note that the UK's withdrawal from the EU may affect both parties' ability to meet their climate targets as currently established. The Government will therefore need to reassess the most cost-effective means of reaching the UK's climate change targets post-Brexit.**

135. **Emissions trading schemes, when functioning well, are a cost-effective means of reducing carbon emissions, and the EU ETS is one of the EU's flagship policies for mitigating climate change. If the UK does seek to continue to participate in the EU ETS, it should also seek to retain influence over its operating rules, to ensure that the system operates effectively. If, on the other hand, the Government does not continue to participate, it will need, as a matter of urgency, to evaluate alternative means of driving emissions reductions, so that the UK can continue to fulfil its national and international obligations.**

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222 Q 79
223 Q 79. The UK's carbon budgets are based on net emissions which allow for allowance trading within the EU ETS.
224 Q 82
225 Q 79
226 Q 40 (Prof Michael Grubb and Bob Ward)

CHAPTER 7: INFLUENCE

Influencing the EU

136. As we have seen, the UK may want, or need, to comply with the same or equivalent environmental standards and policies as the EU. On that basis, as Ms Cunningham noted, it is almost certain that the UK will have a continuing interest in "making sure that we do not just have to abide by the rules of the Single Market but also have a say in shaping them."[227]

137. Dan Lewis, Infrastructure Policy Adviser at the Institute of Directors, argued: "If you are in a situation where you have no control over the policies, the regulations and the standards, but you have the legal obligations and the budgetary contributions, that is not a very good place to be."[228] The Aldersgate Group noted that "the UK will remain heavily exposed to EU targets and policy initiatives priorities", and that it will be desirable "to retain UK influence in helping to shape them."[229] More specifically, the Mineral Products Association told us:

> "It will be important for the UK to retain influence on the development of [EU] standards so that UK industry: 1) is not isolated from European or international best practice; 2) does not have need to comply with multiple or disparate standards for market access; and 3) is subject to consistent regulatory costs compared to businesses operating in other countries."[230]

138. On the other hand, many witnesses were concerned that Brexit would lead to some loss of UK influence. The CLA told us that "Outside the EU the UK would lose its ability to influence the legislative agenda which may result in increased environmental obligations".[231] Similarly, Mr Andrews stated: "At the moment central and eastern European Member States in particular have very high emissions of pollution. We will no longer be at the table and able to influence those Member States in bringing down their pollution."[232]

139. Ms Mukherjee developed the point:

> "Without those conversations that happen at European Commission special interest or expert committee meetings that we have access to at the moment, which we will not in the future, without the international research projects that go on and in the coffee-break moments that you have that are so important, I think we lose an awful lot by not being at the table and actually not even being in the room."[233]

140. While some loss of influence may be unavoidable, we heard about a number of issues on which it would be particularly important for the UK to retain a measure of influence, both during withdrawal negotiations and beyond. Mr Elliott mentioned the current review of REACH: "I am exaggerating a little, but not much—it is 27 countries versus one in the way this is being approached, with the one being the UK. If that one voice is lost, we could

227 Written evidence from the Scottish Government (ECB0012)
228 Q 55
229 Written evidence from the Aldersgate Group (ECB0009)
230 Written evidence from the Mineral Products Association (ECB0005)
231 Written evidence from the CLA (ECB0001)
232 Q 30
233 Q 34

end up with every substance categorised as either a known endocrine disruptor or a suspected endocrine disruptor."[234] The CLA gave another example, noting that "the UK was one of the countries most opposed to the Commission's proposal for a Soil Directive … Without the UK, opposition would be reduced and chances of a Soil Directive becoming law increase."[235]

Influence during Brexit negotiations

141. The Minister, Dr Coffey, assured us that "we will continue to [participate in EU policy formation and negotiation] as long as we are full members of the European Union".[236] Mr Elliott, though, told us that the UK's influence on EU policy was already declining: "We are already picking up intelligence that either the UK's voice is not being listened to or our representatives are being less encouraged to speak up on certain dossiers."[237]

Influence after Brexit

142. In the longer term, we heard that there might be ways to preserve some degree of informal influence in the EU on environmental matters. Mr Jacobs pointed out that "European environmental organisations collaborate with one another a lot … particularly in western and northern Europe."[238] He saw no reason for UK organisations to be excluded: "UK environmental organisations, which are particularly strong, well organised, and so on, could be a very important part of that."[239] The Society for the Environment agreed: "The Society will continue to pursue our European partnerships on that basis and we would be pleased to assist the Government in helping to maintain relationships between environmentalists and decision makers across the EU".[240]

143. Industry representatives were also keen to continue to participate in European networks. Mr Elliott told us that Brexit "makes it all the more important for us to keep networked with our continental European headquarter businesses and others to keep the pressure up from other member states on the things where we agree."[241] Ms Elliott agreed.[242] Ms Mukherjee highlighted the importance of EurEau, the European federation of water industries: "We have a lot of conversations between the Commission officials and EurEau."[243]

144. Dr Coffey agreed that there would be fewer formal influencing opportunities for the UK, but emphasised the UK's wider diplomacy: "Just like Norway and the US have embassies in Brussels and are very proactive in their engagement with the EU, I fully expect the United Kingdom to be so. Of course, we also have wider relationships through the Council of Europe, which also has quite a lot of environmental angles to it."[244]

145. **The UK will have much less formal influence, post-Brexit, on the shape of the EU environmental standards, regulations and initiatives**

234 Q 47
235 Written evidence from the CLA (ECB0001)
236 Q 66
237 Q 55
238 Q 64
239 Q 64
240 Written evidence from the CLA (ECB0011)
241 Q 55
242 Q 55
243 Q 32
244 Q 72

to which it may be exposed, and with which it may need to comply in order to trade with the EU.

146. **After Brexit the UK will, however, continue to have the opportunity to continue to influence EU environmental policy by a range of informal means, including UK trade associations and NGOs maintaining close contact with and membership of their European pressure groups. The Government should encourage, and where possible facilitate, the exercise of this informal influence coherently and constructively. Therefore, in tandem with withdrawal negotiations, the Government should review the alternative means by which the UK may be able to influence the EU's environmental and climate change policies where they will affect the UK.**

147. **The UK will remain a full EU Member State until withdrawal is complete. We urge the Government to continue to engage fully and constructively in negotiating and seeking to influence EU environmental proposals for the full term of the UK's EU membership.**

International influence on climate change

148. The challenge of climate change is most effectively combated by means of co-ordinated global action. The UK currently participates in those global discussions through the EU. Indeed, the UK, within the wider EU, is currently viewed as a global leader on climate change. But Mr Ward warned that one of the downsides of Brexit would be that in future "the UK will participate in international negotiations as an independent state rather than as part of the EU bloc. That seems likely, and that will make it less influential".[245] Ms Cunningham agreed: "The UK or Scotland, acting alone, will not be able to achieve the same impact as the EU in these global negotiations."[246]

149. This begs the question of whether the UK could 'team up' with a different group of nations post-Brexit. Mr Jacobs noted that Norway, for instance, "is not part of the EU negotiating bloc; it is part of the umbrella group which includes the US, Canada, Australia and Japan".[247] Other witnesses identified other negotiating blocs that had been effective in driving ambitious climate action, such as the Environmental Integrity Group,[248] the Clean Energy Ministerial,[249] the High Ambition Coalition,[250] and the Intergovernmental Panel on Climate Change.[251]

150. Commenting on the climate change negotiating blocs that the UK may wish to join post-Brexit, the Minister, Dr Norman, told us that it was "too early to decide what specific relationships we will want to have".[252] He reiterated the Government's intention to be a leader on environmental issues and to continue to be part of the UN process,[253] and acknowledged that "we are well known around the world for the relationships we have with the international

245 Q 36
246 Written evidence from the Scottish Government (ECB0012)
247 Q 63
248 Q 43 (Prof Michael Grubb)
249 Q 44 (Bob Ward). This is global forum of private, public and non-governmental organisations designed to promote policies and share best practices to accelerate the global transition to clean energy.
250 Q 44
251 Written evidence from the Grantham Institute (ECB0004)
252 Q 73
253 Q 73

groupings".[254] While the UK "might decide … to affiliate with, or indeed form, new groupings", it was "quite premature to speculate about that at this stage".[255]

151. Witnesses also discussed other ways for the UK to continue to take a leadership role in relation to climate change. The Aldersgate Group suggested that the Government "pro-actively engage in international climate change discussions and prioritise climate change as a topic of positive engagement with the new US Administration".[256] The Aldersgate Group also noted that the UK had been influential in international climate change negotiations, suggesting that after Brexit the UK should build on "the expertise of its international climate team and network of climate attachés within BEIS and the FCO".[257]

152. Dr Parr pointed out the opportunity for the UK to influence global action by taking an ambitious stance itself, thereby "demonstrating to others the possibilities whilst simultaneously generating employment in the UK".[258] Similarly, Jonathan Gaventa, Director at E3G, suggested the UK could influence global action by taking a leadership role:

> "As part of the Paris Agreement, countries will need to develop mid-century decarbonisation plans … There is an opportunity to make that plan not just a box-ticking exercise but something that can become a template and a diplomatic asset with other countries globally about how such exercises are performed."[259]

153. The Minister, Dr Norman, was confident that there would be a role for the UK in continuing to influence global climate action.[260]

154. **The UK in isolation is likely to have less influence in global negotiations, including on climate change, than it currently possesses as part of the EU.**

155. **The UK is currently viewed as a global leader on climate action. In order to preserve this status, and to offset any potential loss of influence after Brexit, the Government should seek to align the UK to other regional and thematic negotiating blocs with which it shares policy goals. The UK should also make use of all other tools, including its diplomatic relationships, so as to continue to influence global action on climate change, but this will be dependent on the UK continuing to pursue leading climate actions itself.**

254 Q 66
255 Q 73
256 Written evidence from the Aldersgate Group (ECB0009)
257 Written evidence from the Aldersgate Group (ECB0009)
258 Q 58
259 Q 44
260 Q 73

CHAPTER 8: RESOURCES

156. It will be a formidable task to replace EU environmental legislation with domestic legislation, developing new policies where necessary, and to fill the gap left by the environment and climate change resources that currently come from the EU.

Funding environment protection and climate change action

157. The UK receives EU funding for environment and climate change programmes from two main sources: the EU budget, and the European Investment Bank. The UK's withdrawal from the EU thus has the potential to affect the funding landscape in significant ways.

EU budget

158. In the current EU budget period, covering 2014–2020, the UK is expected to receive more than €5.8 billion from the EU to fund projects to support the environment and tackle climate change.[261] Ms Bunker, for instance, told us that much of the money spent in the UK on nature conservation came from Europe.[262] Witnesses also noted the significance of EU funding for climate action: Mr Gaventa told us that "the EU budget earmarks 20% of its overall funding for climate-related activities—this is both mitigation and adaptation measures—and the UK has been a beneficiary of this in a number of different forms".[263] Mr Gaventa emphasised that "there is a significant question about … whether the climate-related commitments will be maintained at least at the current level. We would certainly like to see assurances from the UK Government on that point."[264]

159. The EU budget also funds research and development, where the UK is a substantial net beneficiary. The Royal Society noted that the UK Office for National Statistics (ONS) "report an indicative figure for the UK's contribution to EU research and development of €5.4 billion over the period 2007–2013. During this time, the UK received €8.8 billion in direct EU funding for research, development and innovation activities."[265] Although by no means all of this funding is dedicated to environmental and climate change issues, the Committee on Climate Change has highlighted the significance of EU funding in this sphere.[266] We note that the Chancellor has guaranteed that current commitments from EU funding streams will continue until 2020 as part of the transition to new domestic arrangements,[267] but it is unclear whether funding will continue beyond that point.

261 Greenpeace, 'Brexit: 'How much EU money currently goes to the environment?', 7 October 2016: https://energydesk.greenpeace.org/2016/10/07/brexit-eu-money-fund-environment/ [accessed 19 January 2017]
262 Q 15
263 Q 39
264 Q 39
265 The Royal Society, *UK Research and the European Union: The role of the EU in funding UK research*, December 2015: https://royalsociety.org/~/media/policy/projects/eu-uk-funding/uk-membership-of-eu.pdf [accessed 19 January 2017]
266 Committee on Climate Change, *Meeting Carbon Budgets: Implications of Brexit for UK climate policy*, October 2016: https://www.theccc.org.uk/wp-content/uploads/2016/10/Meeting-Carbon-Budgets-Implications-of-Brexit-for-UK-climate-policy-Committee-on-Climate-Change-October-2016.pdf [accessed 19 January 2017]
267 HM Treasury, *Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU,* 13 August 2016: https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu [accessed 19 January 2017]

160. All funding from the EU budget has of course to be offset against the UK's net contribution, which currently stands at around £8.5 billion per annum. The Government's white paper on Brexit stated that after leaving the EU and the Single Market "we will not be required to make vast contributions to the EU budget", though it also acknowledged that "there may be European programmes in which we might want to participate".[268]

The European Investment Bank

161. Mr Gaventa told us that the European Investment Bank (EIB) had been "a very useful instrument for low-carbon energy infrastructure investment in the UK".[269] Since 2000 energy infrastructure development in the UK has absorbed more than €37 billion in EIB loans; the Committee on Climate Change notes that this includes €6 billion towards low-carbon projects.[270] Furthermore, as the (then) Environment and Climate Change Committee noted, "The UK is the biggest recipient of the EIB's Climate Awareness Bonds for renewable energy and energy efficiency, securing 24% of total available funds";[271] and the EIB has lent more than £12.6 billion to the UK water industry since 1975 to combat flooding, river and sea pollution and for energy efficiency measures.[272]

162. Dr Parr doubted that the UK would continue to receive the same amount of EIB funding post-Brexit: "The experts my colleagues spoke to were, shall we say, a little sceptical that it would continue to flow on that scale when the UK ceases to be a member of the EU. There is no formal mandate or statute that says the EIB cannot lend to people outside the EU, but is it likely? I think most people would expect not."[273]

163. The EIB does lend to non-EU Member States—"mostly developing countries and emerging economies around its borders"[274]—but 90% of its funds are spent within the EU. For advanced non-EU members, such as Norway and Switzerland, its lending, relative to the size of their economies, is roughly a tenth of its lending to Member States.[275] Werner Hoyer, the president of the EIB, told the *Financial Times* in October 2016 that the EIB's recent levels of lending to the UK "cannot be maintained".[276]

164. **The UK receives significant funding from the EU, which contributes to both environmental research and infrastructure projects with an environmental outcome, as well as to the routine management of**

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268 HM Government, *The United Kingdom's exit from and new partnership with the European Union,* Cm 9417, February 2017, p 35: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf [accessed 6 February 2017]

269 Q 37

270 Committee on Climate Change, *Meeting Carbon Budgets : Implications of Brexit for UK climate policy*, October 2016: https://www.theccc.org.uk/wp-content/uploads/2016/10/Meeting-Carbon-Budgets-Implications-of-Brexit-for-UK-climate-policy-Committee-on-Climate-Change-October-2016.pdf [accessed 19 January 2017]

271 Energy and Climate Change Committee, *The Energy Revolution and future challenges for UK energy and climate change policy* (Third Report, Session 2016–17, HC 705)

272 Greenpeace, 'Brexit: Is Billions in climate funding at risk?', 13 October 2016: http://energydesk.greenpeace.org/2016/10/13/brexit-billions-climate-funding-risk/ [accessed 19 January 2017]

273 Q 61

274 Q 61 (Michael Jacobs)

275 Energy and Climate Change Committee, *The Energy Revolution and future challenges for UK energy and climate change policy* (Third Report, Session 2016–17, HC 705)

276 'EU bank chief warns of end to cheap infrastructure loans for British projects', *Financial Times*, 11 October 2016

the countryside. We invite the Government to clarify whether this funding will continue in some form or be replaced domestically post-Brexit, and, if so, for how long. If it will not be replaced by domestic funds, we call on the Government to explain by what alternative means it proposes to reach environmental goals.

Access to information and research projects in the EU

165. We have already touched on EU research funding. Mr Andrews told us:

> "At the moment the UK contributes excellent first-class science on air pollution issues. There might be a risk that that is undermined by the UK not being able to access EU scientific grants and not being involved in these big cross-European studies which are so important."[277]

He noted information-sharing procedures, established under both the Gothenburg Protocol[278] and the NEC Directive,[279] and suggested that "Rather than trying to set up new structures we should continue post-Brexit to engage fully in the structures that are already in place and are relatively effective."[280]

166. Dr Parr agreed, but qualified this by saying that "the idea that [UK academics] are going to be lead investigator, with a package of EU money, when we are outside Europe is just not going to happen."[281] At the same time, he acknowledged the Government's stated commitment to innovation and the knowledge economy, and concluded that rather than funding, his major concern was "being able to maintain that innovation through our access and involvement with other countries". The Prime Minister has since stated that the UK will "seek agreement to continue to collaborate with our European partners on major science, research, and technology initiatives."[282]

167. **Quite apart from the question of funding, loss of access to and participation in research projects and information networks co-ordinated by the EU could severely hamper the UK's environmental and climate change research efforts. We urge the Government to work to ensure that UK academics remain able to participate in research collaborations and exchanges with the EU post-Brexit, and welcome the Prime Minister's recognition of the value of this co-operation.**

Government resource

168. Although the EU's environment and climate change policies (see box 2) have implications for many UK Government departments, the task of managing the UK's environment and climate change policies after Brexit will predominantly fall, respectively, on Defra and BEIS. Dr Coffey acknowledged that "Defra is probably the government department most closely related and

277 Q 34
278 The European Community acceded to the Gothenburg Protocol by Council Decision 2003/507/EC of 13 June 2003, OJ L 179 (17 July 2003) p 1–2. Subsequent amendments to the Gothenburg Protocol were adopted by the EU in 2013 by Decision 2013/0448 (18 December 2013) COM(2013)917
279 Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants OJ L 309 (27 November 2001) pp 22–30
280 Q 32
281 Q 62
282 Prime Minister Theresa May, Speech on The Government's negotiating objectives for exiting the EU, 17 January 2017: https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech [accessed 19 January 2017]

impacted by EU activity", adding that it was in the process of redeploying, advertising and recruiting for new staff.[283] We have already noted that Defra is currently recruiting up to 30 posts.[284] We also note that Defra has been subject to substantial budget cuts, and that the Government's 2015 spending review required the Department to make further resource savings of 15% by 2019/20.[285]

169. Dr Coffey explained that Defra's priorities would be to "have in place a new fisheries policy and a new agriculture policy", and "making sure that nothing falls between the cracks" in the withdrawal process.[286] She also assured us that "We are not diminishing our attention on issues that will impact the UK in the near future and in the medium and long term."[287]

170. Mr Andrews believed that the transfer of EU law to domestic law should be the priority: "At the moment the priority really has to be holding on to what we have got and making sure that the Great Repeal Bill really does transfer all existing legal protections. Only then can we think about actually taking things forward and improving them."[288]

171. We heard concerns, however, that managing the Brexit process could leave Defra without the necessary resource to continue to engage with other areas of policy.[289] Mr Gaventa suggested that "both diplomatic expertise and subject expertise will be devoted to addressing the deep complexities of the disentanglement around Brexit rather than the pressing issues that we were already facing in needing to strengthen action on climate change".[290] The Grantham Institute agreed.[291]

172. Ms Bunker and The Wildlife Trusts both gave the example of a Memorandum of Agreement between industry, environmental NGOs, Natural England and Government, intended to deliver greater biodiversity benefits to protected species and reduce regulatory burdens, which was due to be signed in the week following the referendum, but which had since stalled.[292] The RSPB noted with concern that, despite Dr Coffey's stated commitment to multinational agreements,[293] "No Defra Minister will be attending the 13th Conference of the Parties to the Convention on Biological Diversity in December 2016."[294]

173. **The Government faces a considerable challenge in maintaining environmental legislation through the Great Repeal Bill, while at the same time developing domestic agriculture and fisheries policies.**

174. **Defra and BEIS will also need to ensure that UK and EU policy developments that continue to occur outside and alongside the Brexit**

283 Q 70
284 Civil Service jobs: https://www.civilservicejobs.service.gov.uk/csr/jobs.cgi?owner=5070000&ownertype=fair&jcode=1520138&posting_code=0&language: [accessed 19 December 2016]
285 HM Treasury, *Spending Review and Autumn Statement 2015*, Cm 9162, November 2015, p 110: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf [accessed 6 February 2017]
286 Q 70
287 Q 70
288 Q 28
289 Q 32 (Jacob Hayler)
290 Q 44
291 Written evidence from the Grantham Institute (ECB0004)
292 Written evidence from The Wildlife Trusts (ECB0007); Q 16
293 Q 66
294 Written evidence from the RSPB (ECB0006)

process receive the necessary attention from both staff and Ministers. The Government, and Defra in particular, will need a very substantial increase in resources in order to tackle these challenges, both during and after the Brexit process.

CHAPTER 9: DEVOLUTION AND THE ENVIRONMENT

Alignment across the UK

175. Several of our witnesses pointed out that, although broadly governed by common EU legislation, "The environment is, largely, an area of devolved competence."[295] In the words of Ms Griffiths, Cabinet Secretary for Environment and Rural Affairs in the Welsh Government:

> "As well as being steeped in the EU's operating framework, these are also areas where 17 years of devolution [have] resulted in a divergence of both policy and primary legislation between the different parts of the UK, as most recently seen in our Environment (Wales) Act."[296]

Ms Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform in the Scottish Government, developed a similar point: "The majority of matters relating to environment and climate change are within the devolved competence of the Scottish Parliament. For example, Scotland has its own legislative framework on climate change targets, environmental quality and nature protection."[297]

176. Devolution has led to environment regimes in each of the nations of the UK that are in some respects distinct. Ms Bunker noted that "agri-environment schemes have been developed by each of the four countries slightly differently",[298] and Mr Bell pointed out that with regard to climate change, "the Welsh Assembly has legislated its own set of targets … Scotland is legislating a new Climate Change Act", and "[Northern] Ireland has just legislated its own Climate Change Act with its own targets".[299]

177. In fact, several witnesses asserted that in some respects the Devolved Administrations' environment and climate change ambitions were higher than those of the UK as a whole. Mr Hutchings, for example, said that the Scottish Government had probably "moved further ahead" in terms of its designations for marine protected areas, and noted that the Well-being of Future Generations (Wales) Act was "showcased at UN level as an exemplar of how to go about managing the environment in recognition of the social and economic benefits that come from looking at sustainable development in the round."[300] In respect of recycling, Mr Hayler told us that the UK was "currently struggling to meet the 2020 target which is set at 50% household recycling levels. We are around the mid-40s per cent but there is quite a lot of regional variation. In Wales they are already comfortably meeting that 50%."[301] Ms Cunningham told us that the Scottish Government's "work to decarbonise electricity generation has already made a sizeable contribution to the UK's climate change goals, and only one other European nation has achieved a greater cut in greenhouse gas emissions."[302] Dr Coffey also acknowledged that "It is fair to say that all the four nations are rather ambitious in their plans for the environment".[303]

295 Written evidence from the Northern Ireland Executive (ECB0013)
296 Written evidence from the Welsh Government (ECB0008)
297 Written evidence from the Scottish Government (ECB0012)
298 Q 17
299 Q 84
300 Q 17
301 Q 24
302 Written evidence from the Scottish Government (ECB0012)
303 Q 74

Impact of policy divergence

178. Ms McIlveen told us: "At the moment, as all UK jurisdictions have to comply with community law … a degree of consistency on environmental policy has resulted."[304] Several witnesses suggested that in the absence of the overarching framework of EU legislation post-Brexit, it would be important to continue to co-ordinate policies between central Government and the Devolved Administrations. Ms Griffiths, for example, stated that "there will of course be issues which will be best dealt with on a UK-wide basis".[305] Ms Bunker agreed: "There is real value within the UK … in operating and working collaboratively to deliver what the natural environment needs to be restored and to succeed."[306] The Wildlife Trusts also agreed.[307]

179. At the same time, we heard concerns that the potential for increasingly divergent policies within the UK post-Brexit could lead to "friction".[308] Prof Howell noted: "There is a risk that environment policy and delivery could be further fragmented by setting up distinct policy and delivery frameworks in each UK administration, which would be detrimental to the delivery of a coherent environment policy in the UK as a whole."[309] Mr Hutchings said: "If we can have a more coherent management regime [in the Devolved Administrations], it offers certainty for organisations working in the different countries".[310] The Mineral Products Association, in contrast, highlighted existing "inconsistencies between different national governments in the UK when implementing EU legislation", and suggested that "Brexit offers an opportunity to improve regulatory harmonisation and consistency across the UK."[311] Mr Elliott, while noting that there were already "different environmental regulators" across the UK, thought that "By and large, that co-ordination work currently tends to work very well."[312]

180. Both the Scottish and Welsh Governments told us that they would make use of their devolved powers in relation to the environment. Indeed, both Administrations have now published their Brexit priorities, including on the environment.[313] Ms Cunningham told us that coordination across the UK "cannot be at the cost of discretion over the direction of policy in the separate countries of the UK."[314] Similarly, we heard from Ms Griffiths that "where European law falls within devolved competence it must be for Wales to decide which parts of it are to be preserved or repealed."[315] Ms Cunningham added that the exercise of devolved powers in the environmental field could be "adversely impacted by matters that are within the reserved competence of the UK Parliament".[316]

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304 Written evidence from the Northern Ireland Executive (ECB0013)
305 Written evidence from the Welsh Government (ECB0008)
306 Q 17
307 Written evidence from The Wildlife Trusts (ECB0007)
308 Q 3 (Prof Andy Jordan)
309 Written evidence from Prof Dickon Howell (ECB0003)
310 Q 17
311 Written evidence from the Mineral Products Association (ECB0005)
312 Q 53
313 Scottish Government, *Scotland's Place in Europe*, December 2016: http://www.gov.scot/Resource/0051/00512073.pdf [accessed 24 January 2017]; Welsh Government, *Securing Wales' Future*, 2017: https://beta.gov.wales/sites/default/files/2017–01/30683%20Securing%20Wales%C2%B9%20Future_ENGLISH_WEB.pdf [accessed 24 January 2017]
314 Written evidence from the Scottish Government (ECB0012)
315 Written evidence from the Welsh Government (ECB0008)
316 Written evidence from the Scottish Government (ECB0012)

181. The distinct regimes within the UK may also bring benefits. The Game and Wildlife Conservation Trust noted the importance of taking a local approach to aspects of environment protection:

> "The divergence in environmental stewardship approaches, which has developed in the devolved administrations, should be continued and broadened where necessary, as they foster appropriate prioritisation and action within local areas. The consequential divergence in policy is inevitable and necessary but realistically manageable."[317]

182. Ms Bunker agreed: "The fenlands of East Anglia are very different from the uplands of Wales, and the interactions between farming, forestry or other sectors and the natural environment are different."[318] She therefore proposed "Working together on common principles and ambitions, but utilising the mechanisms that will work best in the different kinds of environment in the UK".

183. Mr Elliott noted that the existence of separate environmental regulators in each of the Devolved Administrations—such as the Scottish Environment Protection Agency and Natural Resources Wales—meant there was "an ability for each regulator to learn from one another and for the businesses to share the experience across borders as well."[319] The Game and Wildlife Conservation Trust agreed that "Information sharing to ensure that each administration learns from each other is key", referring in particular to different approaches in England and Wales to the interpretation of CAP rules on the density of trees on farmland.[320]

184. The Ministers both recognised the importance of co-ordination with the Devolved Administrations. Dr Coffey noted: "Air quality does not change just when you step over the border from Chester to Wrexham … so we need to ensure that we work together on matters that affect our own residents as well as our commitments to the international community."[321] At the same time, she emphasised that "the United Kingdom Government are responsible for upholding the multinational agreements to which we sign up",[322] and added that the UK Government would "take the lead and are the main party on any infractions or judicial review, even if it is happening in another part of the United Kingdom where we do not have direct control."[323] Dr Norman focused on climate change:

> "That central issue is, of course, not a devolved matter, but it is quite important to make sure that, in so far as Devolved Administrations have control over things that bear on policy locally, those things do, as it were, meet the wider emissions targets that we have set ourselves as a country. I do not expect that to be affected particularly by Brexit, as such, but it does mean that we need to continue that process of engagement."[324]

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317 Written evidence from the Game and Wildlife Conservation Trust (ECB0010) and the Society for the Environment (ECB0011)
318 Q 17
319 Q 53
320 Written evidence from the Game and Wildlife Conservation Trust (ECB0010)
321 Q 74
322 Written evidence from the Welsh Government (ECB0008); also Q 74
323 Q 74
324 Q 74

185. Ms Griffiths concluded that "any UK wide frameworks must be based on common consent by all four Governments within the United Kingdom and will need robust and independent dispute resolution mechanisms."[325] Dr Norman's aim was to "construe these potential differences as a fruitful discussion and a fruitful basis for review and consideration rather than, as it were, anything necessarily more conflictual."[326]

186. **There is already variation in environmental policy between the Devolved Administrations. Such variation is likely to increase in the aftermath of Brexit, once the requirement to act in conformity with EU law is lifted, and as policy areas currently reserved to the EU become devolved matters.**

187. **We welcome the acknowledgement both by the Devolved Administrations and the Government of the increased need to achieve an appropriate level of policy coordination, while allowing for some variation to reflect local or regional circumstances. The UK Government should consult closely with the Devolved Administrations throughout the withdrawal negotiations, and in the formulation of its Great Repeal Bill, to ensure environmental management can be co-ordinated across the UK where this will enhance its effect.**

325 Written evidence from the Welsh Government (ECB0008)
326 Written evidence from the Welsh Government (ECB0008)

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

EU environmental legislation and action

1. The EU environmental *acquis* is a patchwork quilt of laws, some relating to the rules of the internal market, others to issues of trans-national environmental significance, such as species conservation or clean air. Some sectoral policies, such as the EU's agricultural and fisheries policies, also have substantial environmental elements and regulate significant flows of expenditure in this field. These laws are implemented and enforced by well-developed and powerful EU institutions, both regulatory and judicial. (Paragraph 24)

2. The repatriation of environmental policy as a result of Brexit presents opportunities and risks, which we explore in the remainder of this report. But what must not be under estimated is the scale and complexity of the task of repatriating environmental policy, and its profound implications for domestic governance as well as for domestic law. (Paragraph 25)

The environment and the Great Repeal Bill

3. The medium-term stability and predictable review cycles provided by the EU have aided both investor confidence in the environment sector and civil society's ability to engage with environment and climate change policies. (Paragraph 35)

4. Policy stability will be critical during the process of, and in the immediate aftermath of, withdrawing from the EU to avoid the emergence of legislative gaps and avoidable uncertainties in the sphere of environmental protection. Once the UK has withdrawn from the EU, environment legislation and policy will be more vulnerable to short term and less predictable changes at a domestic level. (Paragraph 36)

5. The breadth and depth of EU environment and climate change law means that transposing that legislation into UK law will be immensely complex. The Government intends that the Great Repeal Bill will ensure a degree of environmental legislative stability, while returning the responsibility for regulatory and judicial oversight to the UK, and in principle we welcome this approach. (Paragraph 61)

6. The Government's approach, though, begs a number of questions, including what the scope of the Great Repeal Bill will be, and how it will accommodate so-called 'legislation by reference', as well as references to the EU's institutions, its Executive Agencies and obligations imposed on other Member States. It is also unclear how and to what extent CJEU judgements and soft law such as Commission guidance notes, which are important tools for interpreting and implementing environmental law, will be transposed into domestic law. These are central to maintaining legislative consistency and predictability, and the extent of their continuing applicability will need to be clarified in tandem with the Bill. Although we recognise Defra's determination to deliver the intention of the Great Repeal Bill, we are not confident that it has yet translated this determination into a delivery plan that works for the more complex areas of EU environmental legislation. (Paragraph 62)

7. International agreements will continue to shape aspects of the UK's environment and climate change policies post-Brexit. Given that such agreements are often less detailed than the EU legislation through which

they are implemented, and lack the institutional enforcement mechanisms offered by the EU, the Government will need to consider carefully the means by which they are given effect in domestic law, so as to ensure that the UK's adherence to its international commitments is not watered down post-Brexit. (Paragraph 63)

8. The review being undertaken by each Department of how legislation in their policy areas will be affected by Brexit is key to ensuring that current levels of environmental protection are maintained. The Government should use this review to clarify the extent to which the Great Repeal Bill will minimise the risk of a legislative deficit for the environment, and to inform legislative action to ensure that equal levels of environmental protection and standards are retained after Brexit. (Paragraph 64)

9. The Government should also clarify what will happen to environmental legislation transposed through the Great Repeal Bill over time, in particular whether it will respond to any changes adopted by the EU after transposition. Regardless of the reason for any changes to environmental legislation, Parliamentary scrutiny will be vital to ensure current levels of environmental protection are at least maintained; we therefore welcome the Prime Minister's recognition of the importance of this process. (Paragraph 65)

Enforcement of environmental law

10. The European Commission and the Court of Justice of the European Union have had a strong impact in ensuring the UK's compliance with EU legislation that affects environmental protection. The evidence we have heard suggests the effectiveness of the EU regulatory regime is thanks in part to the deterrent effect of the power of EU institutions to hold Member States to account and to levy fines upon them for non-compliance. (Paragraph 71)

11. The importance of the role of the EU institutions in ensuring effective enforcement of environmental protection and standards, underpinned as it is by the power to take infraction proceedings against the United Kingdom or against any other Member State, cannot be over-stated. The Government's assurances that future Governments will, in effect, be able to regulate themselves, along with Ministers' apparent confusion between political accountability to Parliament and judicial oversight, are worryingly complacent. (Paragraph 83)

12. The evidence we have heard strongly suggests that an effective and independent domestic enforcement mechanism will be necessary, in order to fill the vacuum left by the European Commission in ensuring the compliance of the Government and public authorities with environmental obligations. Such enforcement will need to be underpinned by effective judicial oversight, and we note the concerns of witnesses that existing domestic judicial review procedures may be inadequate and costly. (Paragraph 84)

13. It will be important for any effective domestic enforcement mechanism to have both regular oversight of the Government's progress towards its environmental objectives, and the ability, through the courts, to sanction non-compliance as necessary. (Paragraph 85)

Environmental implications of free trade with the EU

14. Subject to the level of access to the Single Market attained, the UK will need to either comply with or align itself to EU environmental standards,

such as chemicals regulations and energy efficiency standards. It is therefore vital that the Government should make clear what the free trade agreement with the EU will entail, in order to help to clarify the constraints on future environment policy in the UK. (Paragraph 96)

15. Once the UK withdraws from the EU the Common Fisheries Policy and the Common Agricultural Policy will cease to apply to the UK. While equivalent policies could be carried over as a temporary measure by the Great Repeal Bill, alongside other EU environmental legislation, that Bill will not be the appropriate mechanism for evaluating and implementing options for taking forward these key areas of environmental policy. We recommend that the Government set out its plans for conducting such an evaluation, with a view to implementing new domestic policies that build on the progress in environmental protection that has been made in the last few decades in advance of the completion of withdrawal from the EU. (Paragraph 97)

The drivers for alignment of standards and policy

16. Whatever the shape of the UK's future free trade agreement with the EU, there is a strong shared interest in maintaining cross-border trade. A degree of alignment between the UK and the EU on environmental standards will thus continue to be key to maintaining access to each other's markets across many sectors. (Paragraph 109)

17. Any restrictions, or the imposition of tariffs, on the UK's trade with the EU in recycling and waste could significantly increase the costs of waste management post-Brexit. Once the UK Government has clarified the details of the FTA it is seeking with the EU, the Government, in consultation with industry, will need to assess whether its approach to waste management is still feasible and fit for purpose. (Paragraph 110)

18. The transboundary nature of most environmental pollution means that failure to co-operate with the EU post-Brexit could have significant consequences for both the UK's and the EU's natural environment. Marine conservation, air quality and climate change are three key areas where the UK and EU environments will be conjoined as much after Brexit as before. The Government will need to co-operate with the EU in these areas, among others, to ensure environmental protection is maintained. (Paragraph 132)

19. The land boundary in the island of Ireland presents particular and significant environmental challenges. We urge the UK Government to work with the Northern Ireland Executive, the Irish Republic and EU partners to enable effective long-term management of the environment on both sides of the border. (Paragraph 133)

20. Climate change in particular is a global issue, transcending EU membership, which is most effectively combated by means of co-ordinated global action. We note that the UK's withdrawal from the EU may affect both parties' ability to meet their climate targets as currently established. The Government will therefore need to reassess the most cost-effective means of reaching the UK's climate change targets post-Brexit. (Paragraph 134)

21. Emissions trading schemes, when functioning well, are a cost-effective means of reducing carbon emissions, and the EU ETS is one of the EU's flagship policies for mitigating climate change. If the UK does seek to continue to participate in the EU ETS, it should also seek to retain influence

over its operating rules, to ensure that the system operates effectively. If, on the other hand, the Government does not continue to participate, it will need, as a matter of urgency, to evaluate alternative means of driving emissions reductions, so that the UK can continue to fulfil its national and international obligations. (Paragraph 135)

Influence

22. The UK will have much less formal influence, post-Brexit, on the shape of the EU environmental standards, regulations and initiatives to which it may be exposed, and with which it may need to comply in order to trade with the EU. (Paragraph 145)

23. After Brexit the UK will, however, continue to have the opportunity to continue to influence EU environmental policy by a range of informal means, including UK trade associations and NGOs maintaining close contact with and membership of their European pressure groups. The Government should encourage, and where possible facilitate, the exercise of this informal influence coherently and constructively. Therefore, in tandem with withdrawal negotiations, the Government should review the alternative means by which the UK may be able to influence the EU's environmental and climate change policies where they will affect the UK. (Paragraph 146)

24. The UK will remain a full EU Member State until withdrawal is complete. We urge the Government to continue to engage fully and constructively in negotiating and seeking to influence EU environmental proposals for the full term of the UK's EU membership. (Paragraph 147)

25. The UK in isolation is likely to have less influence in global negotiations, including on climate change, than it currently possesses as part of the EU. (Paragraph 154)

26. The UK is currently viewed as a global leader on climate action. In order to preserve this status, and to offset any potential loss of influence after Brexit, the Government should seek to align the UK to other regional and thematic negotiating blocs with which it shares policy goals. The UK should also make use of all other tools, including its diplomatic relationships, so as to continue to influence global action on climate change, but this will be dependent on the UK continuing to pursue leading climate actions itself. (Paragraph 155)

Resources

27. The UK receives significant funding from the EU, which contributes to both environmental research and infrastructure projects with an environmental outcome, as well as to the routine management of the countryside. We invite the Government to clarify whether this funding will continue in some form or be replaced domestically post-Brexit, and, if so, for how long. If it will not be replaced by domestic funds, we call on the Government to explain by what alternative means it proposes to reach environmental goals. (Paragraph 164)

28. Quite apart from the question of funding, loss of access to and participation in research projects and information networks co-ordinated by the EU could severely hamper the UK's environmental and climate change research efforts. We urge the Government to work to ensure that UK academics remain able to participate in research collaborations and exchanges with the EU post-Brexit, and welcome the Prime Minister's recognition of the value of this co-operation. (Paragraph 167)

29. The Government faces a considerable challenge in maintaining environmental legislation through the Great Repeal Bill, while at the same time developing domestic agriculture and fisheries policies. (Paragraph 173)

30. Defra and BEIS will also need to ensure that UK and EU policy developments that continue to occur outside and alongside the Brexit process receive the necessary attention from both staff and Ministers. The Government, and Defra in particular, will need a very substantial increase in resources in order to tackle these challenges, both during and after the Brexit process. (Paragraph 174)

Devolution and the environment

31. There is already variation in environmental policy between the Devolved Administrations. Such variation is likely to increase in the aftermath of Brexit, once the requirement to act in conformity with EU law is lifted, and as policy areas currently reserved to the EU become devolved matters. (Paragraph 186)

32. We welcome the acknowledgement both by the Devolved Administrations and the Government of the increased need to achieve an appropriate level of policy coordination, while allowing for some variation to reflect local or regional circumstances. The UK Government should consult closely with the Devolved Administrations throughout the withdrawal negotiations, and in the formulation of its Great Repeal Bill, to ensure environmental management can be co-ordinated across the UK where this will enhance its effect. (Paragraph 187)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Cunningham of Felling
Lord Curry of Kirkharle
Viscount Hanworth
Lord Krebs
Duke of Montrose
Lord Rooker
Lord Selkirk of Douglas
Baroness Sheehan
Lord Teverson (Chairman)
Lord Trees
Viscount Ullswater
Baroness Wilcox

Declarations of Interest

Lord Cunningham of Felling

No interests to declare

Lord Curry of Kirkharle

Trustee of Clinton Devon Estates

Partner in farming business in Northumberland

Viscount Hanworth

No interests to declare

Lord Krebs

Member, Committee on Climate Change

Chair, Adaptation Sub-Committee, Committee on Climate Change (Until 31 January 2017)

Duke of Montrose

President of the National Sheep Association

An interest in an extensive hill farm

Management of nature reserves and Sites of Special Scientific Interest (SSSIs)

Major share in a farm based hydroelectric generator

Member, NFU Scotland

Farmer in receipt of agricultural, conservation and rural subsidies, including CAP funding under the Basic and less Favoured Area and Environment Management Schemes

Lord Rooker

No interests to declare

Lord Selkirk of Douglas

Diversified investment portfolio in McInroy & Wood Income Fund managed by third party

Interest in small family company with possible interest in one or more wind turbines

Baroness Sheehan

Shareholder in FIM Sustainable Timber & Energy LP

Vice-Chair of the APPG on air pollution

Spouse is a partner of ETF Partners Environmental Technologies Fund, in which he has a financial interest

Lord Teverson (Chairman)

Board Member, Marine Management Organisation

Director-Designate, Green Purposes Company

Trustee, Regen SW

Director, KCS Trade Print Ltd

Lord Trees

Chair, Moredun Research Institute, Edinburgh (Independent animal health research institute, sometimes in receipt of competitive research grant funding from EU)

Viscount Ullswater

Lifetime member of SONE (Supporters of Nuclear Energy)

Paid Director and Trustee of farming estate company in Cumbria, income derived from farming and forestry, quarrying, wind turbines, fishing rights, agri-environmental schemes

Baroness Wilcox

Patron, National Lobster Hatchery

The Specialist Adviser for the inquiry declared the following interests:

David Baldock

Trustee, RSPB

Trustee, Green Alliance

Part time Senior Fellow at the Institute for European Environmental Policy

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)
Baroness Brown of Cambridge
Lord Jay of Ewelme
Earl of Kinnoull
Lord Teverson
Baroness Suttie
Baroness Wilcox

During consideration of the report the following Members declared an interest:

Lord Boswell of Aynho

Income is received as a Partner (with wife) from land and family farming business trading as EN & TE Boswell at Lower Aynho Grounds, Banbury, with separate rentals from cottages and grazing

Land at Great Leighs Essex (one-eighth holding, with balance held by family interests) from which rental income is received

House in Banbury owned jointly with wife, from which rental income is received

Lower Aynho Grounds Farm, Northants/Oxon; this property is owned personally by the Member and not the Partnership

Baroness Brown of Cambridge

Vice Chair, Committee on Climate Change

Chair, Adaptation Sub-Committee, Committee on Climate Change

Non-Executive Director, Green Investment Bank

Non-Executive Director, Offshore Renewable Energy Catapult

Shareholdings: Rolls-Royce PLC, BP Plc

Lord Jay of Ewelme

Trustee, (Non-Executive Director), Thomson Reuters Founders Share Company

Member, Senior European Experts Group

Member, Advisory Group, European Policy Forum

Earl of Kinnoull

In receipt of EU farm subsidy payments for my own account and as Trustee of the Blair Charitable Trust

Chairman of the United Kingdom Squirrel Accord and the Red Squirrel Survival Trust which lobby for EU funding including from LIFE funds

A full list of Members' interests can be found in the Register of Lords Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/brexit-environment-climate-change and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order or oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Professor Andy Jordan	QQ 1–22
*	Professor Maria Lee	QQ 1–22
**	Professor Richard Macrory	QQ 1–22
**	Abi Bunker	QQ 1–22
*	Trevor Hutchings	QQ 1–22
*	Leah Davis	QQ 1–22
*	Jacob Hayler	QQ 23–45
*	Sarah Mukherjee	QQ 23–45
*	Alan Andrews	QQ 23–45
**	Bob Ward	QQ 23–45
*	Jonathan Gaventa	QQ 23–45
*	Professor Michael Grubb	QQ 23–45
*	Steve Elliott	QQ 46–65
*	Finella Elliott	QQ 46–65
*	Dan Lewis	QQ 46–65
*	Michael Jacobs	QQ 46–65
*	Dr Doug Parr	QQ 46–65
**	Department for Environment, Food and Rural Affairs	QQ 66–74
*	Department for Business, Energy and Industrial Strategy	QQ 66–74
*	Matthew Bell	QQ 75–84

Alphabetical list of all witnesses

	Aldersgate Group	ECB0009
*	Alan Andrews (QQ 23–45)	
*	Matthew Bell (QQ 75–84)	
	Country Land and Business Association (CLA)	ECB0001
*	Leah Davis (QQ 1–22)	

*	Department for Business, Energy and Industrial Strategy (QQ 66–74)	
**	Department for the Environment, Food and Rural Affairs (QQ 66–74)	ECB0016
*	Finella Elliott (QQ 46–65)	
*	Steve Elliott (QQ 46–65)	
	Game and Wildlife Conservation Trust	ECB0010
*	Jonathan Gaventa (QQ 23–45)	
	Geological Society	ECB0002
**	Grantham Institute (QQ 23–45)	ECB0004
*	Professor Michael Grubb (QQ 23–45)	
*	Jacob Hayler (QQ 23–45)	
	Professor Dickon Howell	ECB0003
*	Trevor Hutchings (QQ 1–22)	
*	Michael Jacobs (QQ 46–65)	
*	Professor Andy Jordan (QQ 1–22)	
*	Professor Maria Lee (QQ 1–22)	
*	Dan Lewis (QQ 46–65)	
**	Professor Richard Macrory (QQ 1–22)	ECB0015
	Mineral Products Association	ECB0005
*	Sarah Mukherjee (QQ 23–45)	
	Northern Ireland Executive	ECB0013
*	Dr Doug Parr (QQ 46–65)	
**	RSPB (QQ 1–22)	ECB0006
	Society for the Environment	ECB0011
	Scottish Government	ECB0012
	The Wildlife Trusts	ECB0007
		ECB0014
	Welsh Government	ECB0008

APPENDIX 3: GLOSSARY

BEIS	The Department for Business, Energy and Industrial Strategy
Berne Convention	Convention on the Conservation of European Wildlife and Natural Habitats, an international legal instrument
Bonn Convention	Convention on the Conservation of Migratory Species of Wild Animals, an international legal instrument
CAP	Common Agricultural Policy
CFP	Common Fisheries Policy
CJEU	Court of Justice of the European Union
CLA	Country Land and Business Association
Defra	The Department for Environment, Food and Rural Affairs
E3G	Third Generation Environmentalism, a consultancy and think tank
ECHA	European Chemicals Agency
EEA	European Economic Area
EEF	The Manufacturers' Organisation (formerly the Engineering Employers' Federation)
EFTA	European Free Trade Association
EIB	European Investment Bank
EU ETS	EU Emissions Trading Scheme (or EU Emissions Trading System)
FCO	Foreign and Commonwealth Office
FTA	Free trade agreement
Gothenburg Protocol	A protocol designed to reduce acidification, eutrophication and ground-level ozone by setting emissions ceilings
IPPR	Institute for Public Policy Research
NEC	National Emission Ceilings
NGO	Non-Governmental Organisation
OSPAR Convention	The Convention for the Protection of the Marine Environment of the North-East Atlantic
Paris Agreement	An agreement within the United Nations Framework Convention on Climate Change to limit global warming to well below 2°C
PM2.5	An air pollutant formed of fine particulate matter
Ramsar Convention	An international treaty on the conservation and sustainable use of wetlands.

REACH	The Regulation governing the Registration, Evaluation, Authorisation and Restriction of Chemicals
RSPB	Royal Society for the Protection of Birds
TFEU	Treaty on the Functioning of the European Union
WTO	World Trade Organization
WWF	World Wide Fund for Nature