

Environmental implications of the new UK-EU deal

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Brexit is a pivotal moment for the environment. An estimated 80 per cent of current environmental law stems from the EU. The EU has afforded the UK an effective forum for tackling many of the environmental challenges we face, with its institutions providing powerful mechanisms to monitor and enforce environmental laws, high standards and often world-leading regulations.

Even these safeguards, however, have not been enough to prevent the continuing declines in our wildlife, ecosystems and climate. It is crucial that gaps in protections are not allowed to open up in Brexit.

Our Green Benchmarks

Greener UK's [Green Benchmarks](#) have provided a framework for judging environmental consequences of any Brexit proposal. These four benchmarks are:

1. **Higher environmental standards** in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for backsliding.
2. **Effective systems of enforcement of environmental law**, fulfilling people's rights to environmental information, public participation, access to justice and substantive remedies.
3. **Mechanisms for effective co-operation** on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.
4. **Trade policy that promotes high environmental standards**, minimises the UK's global environmental footprint and is responsive to engagement by civil society.

Considering the new deal against the benchmarks, our conclusion is that the overall risk to the environment is high.

Analysis

The most significant difference for the environment between the new withdrawal agreement and the one agreed by Theresa May is the removal of the 'backstop'. The backstop contained crucial safeguards for the environment across the UK. There are four important issues to consider with this major change.

First, the previous agreement contained a legally binding mutual commitment to **'non-regression'** in most areas of environmental law, if the transition period did not produce an agreement on the future relationship. The backstop covered practice as well as legislation; a requirement for effective domestic monitoring, reporting, oversight and enforcement; and an independent, adequately resourced body or bodies to enforce those provisions. These environmental safeguards are absent from the new withdrawal agreement.

Second, in this context, it is important to note that the UK government has just published its Environment Bill, primarily for England (and with some provisions for Northern Ireland). The bill has many welcome elements, but it provides neither an **enforcement body** with independence and powers commensurate with EU institutions, nor a commitment to non-regression in domestic law. This means that, should the UK and EU not have determined a future relationship by the end of the transition period in December 2020, there is no legal requirement for the UK to maintain existing standards, and no guarantee that there will be effective enforcement across the UK up and running by this time.

Third, the previous political declaration envisaged a future UK-EU relationship that built upon the provisions in the backstop, including a commitment to a **level playing field** and non-regression from current environmental laws.

The revised political declaration includes some positive aspirations for the environment, proposing that the UK and EU should uphold “common high standards”, including through “appropriate” implementation and enforcement mechanisms, and that the future relationship must encompass “robust commitments to ensure a level playing field”. At the same time, there are repeated references to the development of an **“independent trade policy”**, and a note that the “precise nature of commitments should be commensurate with the scope and depth of the future relationship”, signalling the possibility of a more distant UK-EU relationship. Other parts of the political declaration imply less future co-operation with EU approaches, for example on involvement in the European Chemicals Agency (“explore the possibility of cooperation”).

Fourth, and crucially, **the political declaration is not legally binding**. The statement that the UK and EU should uphold existing standards does not, therefore, replace in detail, strength or ambition the non-regression and governance clauses included in the previous withdrawal agreement.

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