

Environment

Brexit Monitoring Report

3 April - 12 June 2019



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National Assembly for Wales

Senedd Research

Environment

Brexit Monitoring Report

3 April – 12 June 2019

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Paper Overview:

Brexit will bring significant changes in the environmental policy area. Senedd Research has prepared this monitoring report for the Assembly's Climate Change, Environment and Rural Affairs Committee. It provides an update on recent Brexit developments that are of importance to environmental policy in Wales.



The Assembly and

BREXIT

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1. Introduction

This report provides an update on recent developments relating to Brexit in the environmental policy area. It has been prepared by Senedd Research for the Assembly's **Climate Change, Environment and Rural Affairs (CCERA) Committee** and covers the time period running from 3 April to 12 June 2019. The **previous report** covers 31 January to 2 April 2019.

This document provides an overview of developments within the EU and UK that impact on the environmental policy area. It focuses on the activities of:

- The EU institutions;
- The governments and legislatures within the UK; and
- Provides other key sources of information.

For a full overview on the negotiations relating the UK's withdrawal from the EU, see Senedd Research's general **Brexit Monitoring Reports and Brexit Updates** that are prepared for the Assembly's **External Affairs and Additional Legislation (EAAL) Committee**. Information can also be found on the **Assembly and Brexit** webpages.

2. EU action

On 12 June the European Commission published a **communication updating on its preparations and contingencies for Brexit**. The document covers a broad range of issues including customs arrangements and fisheries activities.

3. UK Government action

Agriculture and food

On 21 May, the Prime Minister, Theresa May, **introduced a 'new Brexit deal'** that she hoped would command a majority in the UK Parliament. The Prime Minister laid out a ten-point offer to MPs to be included in the Withdrawal Agreement Bill. In terms of environment and rural affairs it included:

- There will be no change in the level of environmental protection when we leave the EU;
- The UK will seek as close to frictionless trade in goods with the EU as possible while outside the single market and ending free movement;
- The UK will keep up to date with EU rules for goods and agri-food products that are relevant to checks at the border protecting the thousands of jobs that depend on just-in-time supply chains; and
- The UK Government will bring forward a customs compromise for MPs to decide on to break the deadlock.

Energy and climate change

On 2 May the UK Government launched a **consultation on the future of UK carbon pricing**. The consultation sets out the UK Government and devolved administrations' approach to UK carbon pricing post-Brexit, and seeks stakeholders' views on the design of a future scheme.

4. Welsh Government action

Agriculture and food

On 9 April the Welsh Government launched a **consultation on agricultural tenancy law**. The consultation is running concurrently with a UK Government consultation and builds on the recommendations of the **Tenancy Reform Industry Group**, which provided advice on the priorities for the tenanted sector in light of Brexit. The consultation closes on 2 July and is accompanied by a **press release**.

On 20 May the Welsh Government launched a **consultation on changes to legislation relating to food labelling**. The consultation closes on 28 June. The changes are aimed at helping business to adapt to possible changes to labelling requirements after Brexit and cover:

- Protected food name and geographical indicator products;
- Wine products; and
- Mixed fruit and vegetable produce originating from more than one country.

On 5 June the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, issued a **Written Statement**, and made an **Oral Statement**, in relation to the Welsh Government's proposals for a post-Brexit future land management programme.

The statements were accompanied by a **summary of responses to the Brexit and our Land consultation**, the **Welsh Government's response to the responses** and an **evidence pack** which 'objectively assesses the current state of play of the agricultural sector'.

In her Oral Statement the Minister stated that, reflecting on the consultation responses, the Welsh Government now proposes to bring together the economic resilience and public goods schemes proposed in **Brexit and our Land** into a single sustainable farming scheme. The scheme would provide annual payments to farmers in return for public goods outcomes on their farms, with payments being targeted at specific outcomes.

The Minister also said she is planning to publish a detailed 16-week consultation on the updated proposals in early July, before the Royal Welsh Show. Analysis of the consultation responses will likely be reported in spring 2020. Parallel to the consultation, she also intends to launch a process to 'co-design' the practical aspects of the proposals, with farmers and other stakeholders.

Finally, the Minister noted that the UK Government has guaranteed agricultural funding at current levels until 2022 and reiterated that the Welsh Government would 'continue to insist Wales receives its current share' beyond that date. Once the budget is known, she said, a full impact assessment of the proposals on different farm types can be carried out.

Fisheries

On 1 May Lesley Griffiths launched a **consultation on the Welsh Government's approach marine and fisheries policy after Brexit**.

The consultation, entitled **Brexit and our Seas**, is 'the first stage in creating a new policy, management regime, and legislation' for Wales and seeks views on a range of issues including sustainable fisheries management, trade, innovation and funding support. It closes on 21 August.

UK common frameworks

On 20 May Counsel General and Brexit Minister, Jeremy Miles, issued a **Written Statement on the European Union (Withdrawal) Act and Common Frameworks**. The Act requires the UK Government to report to the UK Parliament periodically on matters relating to common frameworks and the use (if any) of powers under section 12 of the Act (the so-called 'freezing powers') to maintain existing EU law limits on devolved competence. The **third such report** was laid in the UK Parliament on 16 May.

The report highlights that 199 Statutory Instruments (SIs) relating to devolved matters were laid in the UK Parliament before 29 March 2019. The UK Government has concluded that it isn't required to bring forward any section 12 regulations at this time. It states that the Welsh and Scottish Governments have reaffirmed their commitment not to create divergent policy in ways that could cut across future frameworks. This is in policy areas where it has been agreed that frameworks are necessary, or in areas where further discussion is on-going.

The report states that officials are continuing to engage in discussion in the 24 policy areas that have been identified as requiring common frameworks and are developing 'outline agreements'. Many of these are in environmental policy areas.

On 24 May Jeremy Miles **provided a response** (item 6.5) to the External Affairs and Additional Legislation Committee Chair's letter of 7 May. The letter requested more information on the Welsh Government's view of the UK Government's revised framework analysis. The letter recognised that while 'strong progress' has been made on common frameworks and governance issues generally, 'there remain some fundamental issues to be resolved before individual frameworks can be subject to wider consultation and discussion and then be brought to completion.' He further advised that the terms of the UK's exit from the EU will be a 'critical factor'.

Statutory Instruments

The Welsh Government is laying SIs made under the *European Union (Withdrawal) Act 2018* for sifting by the Assembly's Constitutional and Legislative Affairs Committee. The Committee's website **lists the SIs laid to date**; many of which are in the environmental policy area.

5. Scottish Government action

On 15 April the **Scottish Government published a news article** reiterating its view on the importance of EU citizens to the success and sustainability of coastal and rural communities.

On 29 April the Inter-Ministerial Group for Environment, Food and Rural Affairs met in Cardiff. The **Scottish Government published the minutes on 27 May**, which state that the group discussed contingency plans for a no-deal Brexit, the progress of the UK agriculture, fisheries and environment bills, and funding.

Statutory Instruments

On 9 April the Scottish Government published **an index of Brexit-related Statutory Instruments (SIs)**. The index contains a list of notifications to the Scottish Parliament regarding UK and Scottish SIs that will be amended in the event of a no-deal Brexit scenario. Many of these SIs relate to the environmental policy area.

6. CCERA Committee action

Agriculture and food

On 14 May the **Committee Chair wrote to the Lesley Griffiths** seeking further reassurances in relation to the Secretary of State's powers under Part 7 (WTO Agreement on Agriculture) of the UK Agriculture Bill. The **Minister responded on 21 May** setting out the latest position.

On 11 June May the Committee published its **report on the Supplementary Legislative Consent Memorandum (LCM) for the UK Agriculture Bill** (PDF 1MB). This report sets out the Committee's conclusions on the main changes made to the Bill at Committee Stage in the House of Commons for which the Welsh Government is seeking consent.

This is the Committee's second report on the Bill. The **first report on the LCM for the Bill** (PDF 1.26MB), was published in January. In both reports, the Committee recommends that the Assembly gives consent to the provisions in the Bill, subject to a number of conditions.

Environmental Governance

On 8 May the **Committee Chair wrote to** the Auditor General for Wales, Future Generations Commissioner for Wales and the Public Services Ombudsman for Wales asking for views on environmental governance arrangements and principles post-Brexit. This was to support the Committee's forthcoming inquiry into environmental principles and governance post Brexit. Their responses can be found on the **Committee's website**.

On 12 June the Committee held the **first evidence session in this inquiry**. The session explored the Welsh Government's proposals to fill in the environmental governance gap after Brexit.

The Committee took evidence from academics who provided suggestions relating to the proposed set of environmental principles and their application. The functions and scope of the proposed future governance body was discussed, including monitoring, reporting and enforcement functions to ensure compliance with environmental law.

The academics also considered citizens' access to complaints procedures given the loss of access to the European Commission's procedures post-Brexit. The benefits of a co-ordinated UK approach was discussed, as well as the practicalities of setting up such a body before exit day.

The Committee will take further evidence on these matters in subsequent meetings (20 and 26 June).

7. Other National Assembly action

Agriculture and food

On 14 May in Plenary the First Minister, Mark Drakeford, was **asked whether the Welsh Government will be investing in new cold storage facilities** for lamb in response to pressures arising from Brexit.

The First Minister responded saying he had not found it necessary to do so thus far. Later in the discussion he said the Welsh Government would consult on a new food action plan in the summer which will ‘address the complexities of food products and consumption, with focus on the delivery of safe and healthy food choices, animal welfare and environmental recovery’.

Waste

On 8 May in Plenary Jeremy Miles was **asked what discussions he has had regarding the future of the Waste Incineration Directive following Brexit**. He confirmed the Welsh Government is committed to upholding environmental standards after Brexit and discussions in this area are ongoing between the UK administrations. He also explained that ‘corrective legislation has been put in place’ as part of the preparations for a no-deal Brexit.

8. Other UK legislature action

On 3 April the House of Lords EU Energy and Environment Sub-Committee heard **evidence from the Secretary for State for Environment, Food and Rural Affairs, Michael Gove**, on the topic of his department’s preparations for a no-deal Brexit. A **letter from Michael Gove to the Committee** followed on 9 April.

On 15 May Michael Gove gave evidence via video link to two Scottish Parliament committees. The session with the **Environment, Climate Change and Land Reform Committee** and the **Rural Economy and Connectivity Committee** explored the UK’s environmental, agricultural and fisheries policies.

Agriculture and food

On 1 May the House of Commons Liaison Committee **scrutinised Theresa May**. The Prime Minister was asked about Wales’ preparedness for a no-deal Brexit. She said that devolved administrations were working with the UK Government and she was confident the Welsh Government was prepared.

The Prime Minister was also asked specifically about whether she was confident Welsh sheep farmers would not suffer financially in the event of a no-deal Brexit. She responded saying

One of the aspects that we have been considering as a Government is looking at those areas which could be particularly affected in a no-deal situation and the extent to which it would be appropriate for Government to act in those circumstances. That is a debate that continues.

Environmental governance and principles

Following joint pre-legislative scrutiny of the UK Government’s Draft Environment (Principles and Governance) Bill, the House of Commons Environment, Food and Rural Affairs (EFRA) Committee and Environmental Audit Committee (EAC) published their reports in April.

On 25 April EAC **published its report** which found the Bill to be deficient in the following areas:

- Environmental principles;
- independence and enforcement powers of the Office for Environmental Protection; and

- Environmental improvement plans.

On 30 April the EFRA Committee **published its report** which recommends, among other things, that the Bill be revised to:

- Ensure environment and governance principles will not lose their current legal status and priority;
- Strengthen the Office for Environmental Protection's independence from Government; and
- Provide the Office for Environmental Protection with the necessary powers to ensure there is no governance gap after we leave the EU.

On 15 May the House of Lords EU Committee **scrutinised the Secretary of State for Exiting the EU, Stephen Barclay**, on the subject of Brexit negotiations, including environmental governance.

On 15 May the House of Lords **debated 'Brexit: Plant and Animal Biosecurity'**.

Energy and climate change

On 15 May the House of Commons Exiting the EU Committee took evidence from stakeholders on the **progress of the UK's negotiations on EU withdrawal**. The Committee heard that Defra has produced the greatest number of Brexit-related SIs of any UK Government department, resulting in environmental law being disproportionately impacted.

Statutory Instruments

The House of Commons European Statutory Instruments Committee sifts certain SIs proposed under the *EU (Withdrawal) Act 2018*. The relevant proposed SIs can be seen on the **Committee's website**.

This role is carried out in the House of Lords by the **Secondary Legislation Scrutiny Committee**.

9. Other key sources

Air quality

House of Commons Library Research Briefing, **Brexit and air quality**, May 2019

Agriculture and food

House of Lords Library Briefing Pack, **European Union Committee Report: Brexit: Plant and Animal Biosecurity**, May 2019

National Audit Office, **Early review of the new farming programme (in England)**, June 2019

NFU Cymru, **Brexit Update**, June 2019

NFU Cymru, **UK farmers navigating change in Europe**, May 2019

Scottish Government, **Inter-Ministerial Group for Environment, Food and Rural Affairs: April 2019**, May 2019

Scottish Government, **Inter-Ministerial Group for Environment, Food and Rural Affairs: March 2019**, April 2019

Soil Association, **Setting the bar for a Green Brexit in Food and Farming**, June 2019

SPICe Briefing, **Brexit and veterinary workforce pressures – a perfect storm?**, May 2019

SPICe Spotlight Blog Post, **Brexit and veterinary workforce pressures – a perfect storm?**, April 2019

UK in a Changing Europe blog, **The prospects for post-Brexit trade with New Zealand**, May 2019

UK Trade Policy Observatory, **Not just a technical exercise: a look at new UK pesticides regulation**, May 2019

Energy and climate change

Committee on Climate Change, **Net Zero – The UK’s contribution to stopping global warming**, May 2019

SPICe Briefing, **EU Emissions Trading System** (PDF 2.32MB), April 2019

SPICe Spotlight Blog Post, **The EU Emissions Trading Scheme and Brexit**, April 2019

Environmental governance and principles

Alison Hough BL, **Brexit, the Good Friday/Belfast Agreement and the Environment: Issues arising and possible solutions** (PDF 1.21MB), May 2019

Environmental Law Review, **Out of the frying pan, into the fire? Environmental governance vulnerabilities in post-Brexit Northern Ireland**, June 2019

Brexit and Environment Academic Network, April-May 2019:

- **The Article 50 extension: Implications for environmental governance**
- **Extending the Environment Bill to Northern Ireland: What changes are needed?**
- **The Good Friday/Belfast Agreement and environmental governance: Risks and opportunities after Brexit**
- **Imagining the future of UK environmental law**

Green Alliance Blog, **Businesses need a better Environment Bill**, May 2019

Greener UK, **Briefing for MPs for Opposition Day debate: Environment Bill**, May 2019 PDF

Institute for European and Environmental Policy, **Closing the gap: implementing European environmental policy**, May 2019

Fisheries

Green Alliance Blog, **Brexit legislation unravelling protections for UK marine life and fisheries**, May 2019

House of Commons Library, **The Fisheries Bill 2017-19**, April 2019

Low Impact Fisheries of Europe, **Fishy Business: Fish POs in the EU**, May 2019

National Federation of Fishermen’s Organisation, **Fixed quota allocations and sustainable fishing**, June 2019

National Federation of Fishermen’s Organisation, **Parliamentary Support for the Fishing Industry**, April 2019

Seafish, **UK Seafood Industry Guide Preparing your business for EU Exit**, April 2019

Seafish, **Brexit Blog**, May 2019

SPICe Spotlight Blog Post, **The Fight for the Future of Fish**, May 2019

Welsh Government, **Fisheries and Brexit Bulletin**, ongoing

Other

Brexit and Environment Academic Network, **EU-UK environmental cooperation: Is the backstop the Goldilocks option?**, May 2019

Greener Alliance Blog, **Beyond the no deal panic, we need full scrutiny of Brexit legislation**, May 2019

Green Alliance Blog, **How the UK measures up in environmental league tables**, May 2019

Green Alliance Blog, **In a Brexit compromise, MPs must consider what’s best for the environment**, May 2019

Institute for European and Environmental Policy, **Brexit and its implications for EU environmental policy: speech by Nigel Haigh**, April 2019

Northern Ireland Assembly Research and Information Service Blog Post, **What next for the environment, Brexit and cross-border co-operation?**, May 2019

Oireachtas Library and Research Service and Northern Ireland Assembly Research and Information Service, **A comparison of the planning systems in Ireland and Northern Ireland** (PDF 7.34MB), April 2019

Viviane Gravey, Andrew J Jordan, **Policy dismantling at EU level: Reaching the limits of ‘an ever-closer ecological union’?**, May 2019