



ALL PARTY PARLIAMENTARY GROUP

## Agroecology for Sustainable Food and Farming

BRIEFING PAPER

# FARMING POST BREXIT

**Britain's exit from the EU provides the opportunity to build a strategy for food and farming that is better for people at large, for farmers, and for the environment.**



**F**ollowing the summer's European Union (EU) Referendum, the UK is preparing to venture into a radically different landscape, with every part of society set to be impacted as current EU legislation governing aspects of life in modern Britain are reviewed over the coming months and years.

The All Party Parliamentary Group (APPG) on Agroecology for Sustainable Food and Farming believes that with this review, we have the potential to create a uniquely fair and sustainable food and farming infrastructure that supports our rich and varied farm sector.

The UK now has the opportunity to take an agenda setting approach to its food and farming legislation and governance. It can adopt policies that would make us more self-reliant – enhance biodiversity; mitigate climate change; support small and family farmers, and encourage much-needed new entrants.

We must make the most of this chance to craft a better framework and be wary of simply reinventing what we know.

The Group recognises that agriculture, land use, food and energy production is a complex and interrelated system. It is not sustainable to single out just one objective – such as maximising crop or herd production for example – without also ensuring that the systems which deliver the increased yields meet society's other needs, such as public and environmental health.

The adoption of agroecological principles, policies and practices across all relevant departments of government will be key to building a 21st century food and farming policy that is economically rich and robust, while operating sustainably in the truest sense of the word.

The APPG — concerned that all should have the opportunity to have their say in the discussions that are taking place within the relevant government departments – asked its constituent farmers for their views: those who operate small farms, many family-run farms, organic and agroecological farms, and the organisations that support them.

The APPG has produced a collection of thoughts and policy recommendations. Some common themes have emerged which, unsurprisingly, reflect some of the greatest issues facing our world today: food security, environmental protection, sustainable production, individual and sector-wide economic resilience, and the call for a beefed-up government department – or a new independent agency – with the expertise and ability to lead as we navigate our new path.

## ALTERNATIVES TO THE CAP

In leaving the Common Agricultural Policy (CAP), Britain has a historic opportunity to square aspects of the public interest that have all too often been at odds.

How would our land and rural economy need to look to deliver all that is expected of it: resilient and healthy production, climate change mitigation, clean water, animal welfare, wildlife, quality jobs, recreation? What mix of investment, public procurement, trade, ongoing incentives and regulation could get us there?

The harm done by huge CAP payments has become more and more obvious.

Large payments give big farmers the wherewithal to buy more land, thus increasing their payments still further; or to buy bigger machines, thus enabling them to employ fewer people. They are a prime factor in the excessive price of land, which makes starting a farm almost impossible.

Taxpayers' money should rather be invested in producing public benefits that the market does not provide including healthy soils, abundant wildlife and beautiful places for people to enjoy. We need to replace the outdated CAP with a system that is fair to taxpayers – and to farmers – and provides value for money.

## CARETAKERS OF THE COUNTRYSIDE

Farmers need the support of people and government to help protect wildlife and restore habitats. Currently, farmers can use EU funds for work such as wildflower meadow conservation and restoration, creating and maintaining public access, hedgerow restoration, fencing, river restoration, pond creation – and much more.

More farmers should receive more money to do the right things for our countryside to encourage them to do more to reverse the habitat and wildlife declines, for example by reducing their use of pesticides and herbicides, building soil carbon, and reducing soil erosion, ensuring their soil does not run off into the rivers so that future generations have soil to grow food.

## LABELLING AND CONSUMER CLARITY

A growing number of farmers are raising their ruminant livestock exclusively on pasture, with the associated benefits to human health, the environment and livestock health and welfare.

However, clarity is needed on the definition of grass-fed. At present the term can be used to describe products that are “predominantly fed grass”, i.e. just 51 per cent within the lifetime of the animal.

Even the most intensively reared ruminant livestock – raised largely on grain and imported soya – would satisfy this condition so that customers may believe they are buying grain-free when in fact they are not.



## THE COST OF POOR ANIMAL WELFARE

The UK cannot compete in the world market on cost. It must establish itself as a quality producer. High environmental and animal welfare standards must be part of the UK's post Brexit international brand.

Our farmers should be protected from low welfare imports. When negotiating new trade agreements, the UK must insist on the inclusion of a clause that requires imports to meet UK animal welfare standards.

## EATING OUR WAY TO A HEALTHIER FUTURE

The task of creating a post-Brexit 'British Agricultural Policy' that support producers, protects the environment and prioritizes access to healthy, nutritious food for all is a complex but essential one.

Policies should encourage the adoption of balanced diets with less and better quality meat and dairy products. This would produce multiple benefits impacting on issues from human health, climate change mitigation, soil health and improved animal welfare standards.

## NATIONAL FOOD SECURITY

Leaving the EU puts UK food security at a greater risk. We produce less than 60 per cent of the food we consume, rely on the EU for almost 30 per cent of our food imports and hold only three to five days of food reserves.

Post-Brexit, increases in the price of imports, shortages of farm labour and a more volatile market will make this situation worse.

Food and agricultural policy should focus on reclaiming sovereignty by increasing national self-reliance. Tariffs should be applied to imports to prevent the undercutting of domestically produced food, and a further step could be a ban on food produced to lower labour, environmental, welfare standards than in the UK.

## THE GREAT POTENTIAL OF AGROFORESTRY

Agroforestry, one of the most successful agroecological approaches, is a powerful example of how a natural resource should be an integral part of an innovative, leading and sustainable food and farming sector.

The artificial separation of forestry and farming administration due to the difference in competencies at an EU level has led to confusion and complications on the

ground and reduced the ability to deliver a sustainable land policy.

Integrated into farming systems trees contribute by the provision of: shade, shelter, water and pollution management, soil protection (preventing erosion), soil sustainability (through support of microorganisms and addition of valuable nutrients), pollination, integrated pest management and product diversification.

## PROMOTING ALL FORMS OF FARMING EXPERTISE

Nature's principal strategies are those of diversity – which in agriculture means mixed farms, with heterogeneous crops and livestock; and low-inputs – which in farming terms means as organic as possible.

Diverse, low-input farms are necessarily complex, which means they must be skills intensive, with plenty of skilled farmers. In general, complex, skills intensive enterprises of all kinds are most efficient when small to medium-sized.

Britain's farmers are ageing and the overall farm force is dwindling we need a concerted strategy to train and recruit a new generation of farmers.

## BRINGING DEFRA UP TO DATE

Given the importance of food and farming, Defra is a vital part of government. However it needs strengthening and bringing up to date. At present it has little actual contact with farmers and a proper two-way communication is essential so that farmers can contact Defra for advice and information.

Defra should listen to the problems of all farmers, not just the largest ones, and consider how farms can be prosperous — contributing to the community and countryside in many ways, while producing good food in appropriate quantities.

A radical alternative that should certainly be considered would be to establish a new, independent agency for food and farming to represent all groups with a serious stake: farmers, both large and small, organic and "conventional"; agriculturalists; ecologists; cooks and nutritionists; educationists; and representatives of other professions, trades, and people at large.

The APPG would like to thank the following stakeholders for their contribution to this paper



[www.pastureforlife.org](http://www.pastureforlife.org)



[www.campaignforrealfarming.org](http://www.campaignforrealfarming.org)



[www.woodlandtrust.org.uk](http://www.woodlandtrust.org.uk)



[www.soilassociation.org](http://www.soilassociation.org)



[www.innovativefarmers.org](http://www.innovativefarmers.org)



[www.wildlifetrusts.org](http://www.wildlifetrusts.org)



[www.landworkersalliance.org.uk](http://www.landworkersalliance.org.uk)



[www.rspb.org.uk](http://www.rspb.org.uk)



[www.ciwf.org.uk](http://www.ciwf.org.uk)



## POLICY RECOMMENDATIONS

Public opinion and civil society must have a more significant weight in agricultural policy with mechanisms created for structured and regular dialogue between all organisations representing farmers and agricultural workers.

Agroecological systems have a vital part to play in shaping our future. Nobody has all the answers, or ever can, but the more that well-informed people are allowed to contribute to the discussion, the closer we should get to something resembling wisdom. We need:

- A new policy for our countryside to replace the Common Agricultural Policy (CAP) that delivers high environmental standards for land management and support farmers and others to do this.
- The principal role for public funding should be to provide financial support for public goods that the market cannot – or can only partially – deliver such as high environmental and animal welfare standards.
- The establishment of an independent Policy Commission to examine future policy for the environment, farming and rural development.
- All agri-environment schemes to be kept open to new and existing applicants until a replacement scheme is fully operational.
- A joined up 25 Year Plan for the environment. In England, farming and rural development must be a key part of the Government's 25 Year plan for the Environment. Since agriculture now occupies most of the most fertile land on Earth, any plan for the biosphere that does not put farming at the centre is dead in the water from the word go.
- There should be a new UK-wide land use policy embracing environmental security and sustainable food production, with agri/environment schemes that incentivise tree planting and reward landowners for good environmental practice.
- In 2009, in response to a consultation by the Food Standards Agency, Natural England recommended that "the FSA should develop, in close consultation with Natural England and Defra, guidance on the use of the terms 'grass-fed....'". With the extensive use of the term grass-fed this is long overdue and we would like a clear set of agreed definitions, including those relating to the statutory regulations on labelling and advertising, to ensure that consumers are able to make an informed decision.
- The UK should transition from industrial grain-based livestock production towards pasture and land-based farming of animals to high animal welfare and environmental standards.
- The role of livestock should be redefined. Their function should be to convert materials that we cannot consume – grass, crop residues, by-products, unavoidable food waste – into food we can eat. From this viewpoint, appropriate systems for rearing livestock include pasture and rotational integrated crop/livestock production.
- In the short term, it is vital to give farmers some certainty and to protect what is working well. This includes organic farming, which has forged the path for agroecology and provides proven public benefits. We would like confirmation that farmers who wish to convert to organic farming between now and the introduction of any post-EU scheme will continue to be eligible for the automatic elements of Pillar 2, and that automatic organic maintenance payments continue as for the Basic (Pillar 1) Payment.
- A subsidy ceiling of £150,000, because the harm done by huge CAP payments becomes more and more obvious.
- A new-entrants and young farmers scheme including top up payments and capital grants to address barriers including access to land, capital, markets and education.
- Mandatory labelling of meat and dairy produce describing the farming method should be introduced. This would enable consumers to drive the market for higher welfare meat and dairy.
- A robust plan to reduce dependence on antibiotics, and on pesticides such as the neonicotinoids and herbicides such as glyphosate.



ALL PARTY PARLIAMENTARY GROUP

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## **EU Referendum – Forward actions and engagement**

### **Summary**

This paper provides the first opportunity for Board and Management Team to jointly discuss SNH's forward plan for engaging with the implications of the EU Referendum. The discussion is framed in the context of 'Scotland's Place in Europe', Scottish Government's position following the result of the EU referendum vote. The paper is in two halves. The first provides a briefing on SNH engagement to date (paragraphs 1-16). The second half presents actions identified for the coming 6 months.

### **Board and Management Team are invited to:**

- **Discuss the current position and wider developments noted in the paper and our current planned response (paragraphs 1-21)**
- **Provide initial comments on the risks emerging and key controls in mitigation (paragraph 22)**

### **Background**

1. On the 23 June 2016 the United Kingdom voted to leave the European Union. Although a UK referendum, the Scottish voting pattern indicated a clear majority in favour of retaining EU membership. In response, the First Minister Nicola Sturgeon established a 'standing council' of experts to provide advice to Government. During the late summer and autumn of 2016, SNH was involved in one of a number of round table discussions led by members of the Standing Council, aimed at building a picture of wider implications and options.
2. In July 2016 Scottish Parliament's European and External Relations Committee issued a call for evidence relating to the impact of the Referendum vote across all sectors. SNH focussed evidence on our work with the EU, funding impacts and environmental benefits. Our earlier review on funding impacts has since been refreshed on further request by Scottish Government.
3. In December 2016 the First Minister published 'Scotland's Place in Europe', Scottish Government's direct response to the implications of the EU referendum. This publication lays out a number of areas which have since become significant in discussions between devolved administrations and Westminster. Significantly for SNH, Scotland's Place in Europe lays down stated expectations that environmental protections are a key element of any future arrangement. It goes on to state, *'....protecting the environment is central to the case for continued membership of the European Single Market'*.



4. Since the turn of the year, UK Parliamentary process has mainly dominated the EU referendum dialogue in advance of triggering 'Article 50' by the end of March 2017. The Article 50 Parliamentary process has increased the profile in Scotland around a further independence referendum highlighting the differing positions adopted by UK and Scottish Governments.
5. Future engagement with this area must be carefully considered. Nugatory effort is a real risk to delivery of current priorities particularly in the context of a significant budget reduction for 17/18. Nonetheless, we must be prepared to answer the questions directly relevant to our expertise and role in support of Scottish Government.

### Scoping Change

6. 'Scotland's Place in Europe' sets out Scottish Government's position in response to the EU Referendum and as such provides the foundation against which to explore our future relationship with the EU. Throughout, Scottish Government has been clear that environmental protections are key markers of a just and equitable society. Scottish Government has been explicit in stating that *'Scotland has a moral and legal obligation to protect our country's magnificent natural resources and we remain committed to maintaining, protecting and enhancing our environment.'*
7. In response to changes ahead and delivering the commitment noted above, a new SG 'EU Hub' covering agriculture, environment and forestry has been established to take the lead in co-ordinating the Scottish Government's post-EU referendum work across these areas. This hub is tasked with scoping the options for change ahead against a backdrop of Ministers' retaining a close relationship with Europe.
8. An initial assessment of the impact on Scotland from the UK leaving the EU has been undertaken, examining the funding, legislative and labour market impacts on Scotland. The EU Hub is now focussed on coordinating work across Scottish Government directorates to deepen our understanding of the legislative implications from the UK leaving the EU and what amendments might be required to ensure a smooth transition following the UK's departure from the EU.
9. This work raises a number of key policy choices across a range of issues as Scottish Government recognises that in many cases simply rolling over legislation is not an option. Therefore having a clear strategic approach is vital. Work is already underway on a number of fronts, such as the [Agriculture Strategy](#) and the [Climate Change Plan](#), and the EU Hub will support these and drive forward the development of an overarching 'Environment Strategy'.
10. Ian Jardine, Nick Halfhide and Stuart MacQuarrie recently met with members of the EU Hub and discussions were opened as to how we might incorporate delivery perspectives into formulation of the environmental strategy. In response, SNH participated in the first steps of scoping the strategy during



February. The development of this strategy will progress alongside development of SNH's Corporate Plan for 2018-22.

11. Alongside liaison with Scottish Government colleagues, SNH is well connected to colleagues within the ENFOR family of organisations, leading an initial information sharing forum. We are also connected to frequent UK intergovernmental discussions with other nature conservation agencies, although these discussions have tended to highlight the different positions and approaches adopted by each of the UK countries.

### **Key Points of Engagement – Domestic, EU and International**

12. SNH's current work with the EU was captured in our submission to the European and External Relations Committee last July. In summary, there are seven Directives which directly connect to our current role and significant EU policy areas such as Agriculture and Fisheries, where our input ranges from design and administration (in the case of SRDP) to Fisheries (which includes input to environmental provisions). There is a range of other Directives and Regulations that form the wider legal framework within which we operate and under which other public bodies also discharge their duties.
13. EU funding opportunities for nature conservation can be accessed across a range of funding programmes such as the European Maritime & Fisheries Fund, INTERREG and the Rural Development Programme. Whilst SNH has historically been successful in accessing these funds, the greater impact and reach on the environment has been through green subsidies linked primarily to agriculture. Where there have been funding gaps, SNH has been particularly successful at using bespoke funding via the EU's dedicated nature and biodiversity funding programme LIFE+. Overall the value of the projects and schemes utilising EU funding which we are directly engaged with is currently worth circa £105m. The total investment for the current SRDP is circa £1.3bn, 30% of which is targeted at greening.
14. The UK is also a signatory to a number of international conventions which are binding. Significant contributions towards these conventions (e.g. CBD, OSPAR, BONN, BERN, RAMSAR) are delivered through existing Directives (e.g. Birds, Habitats and Marine Strategy Framework Directives). Our ongoing obligations towards achieving outcomes against those conventions will remain. Supporting legislation would still be required to enact these international commitments.
15. Whilst these international conventions provide a backstop to maintaining and protecting the environment on departure from the EU, there are discussions ongoing to ensure the full suite of protections are sustained following withdrawal. Options include a new [UK Environment Protection Act](#), however responsibilities flowing to the UK from the EU may be more appropriately devolved to Scotland given that existing nature conservation responsibilities are largely devolved. As such a new devolution workstream has recently been created as part of Defra's EU exit programme. Priorities are to identify where



consistent cross-UK/GB standards, regulations or approaches may be needed, and to build the Defra group's devolution capability.

16. It is worth noting that the evidence base in support of the 'state of nature' on land is largely driven by SNH through our leadership and responsibilities for reporting under the Scottish Biodiversity Strategy, Common Standards Monitoring (in relation to the Birds and Habitats Directives) and reporting against the National Performance Framework. In the marine environment, SNH is one of the key players working to develop the evidence base (e.g. alongside Marine Scotland Science and JNCC) and we collaborate with a range of organisations for reporting (e.g. under OSPAR and the Marine Strategy Framework Directive). As such, SNH is well placed to draw out what is and isn't working well in relation to delivering current Government expectations as well as advising on the overall efficacy of monitoring strategy.

### **Positioning SNH in readiness for change**

17. The actions noted in bold below aim to put us in a stronger, proactive position over the next 6 months. Overall, we propose to focus on two areas, 1) preparing our own background material in support of Ministers' position 2) maintaining direct input and engagement with the SG 'EU Hub'.
18. Future implementation of the intent of the Nature Directives post EU Exit is already under scrutiny. Our response is first to prepare material about what the current Directives do and have achieved in anticipation of such a request from the Cabinet Secretary. As such **Management Team has commissioned a short assessment of the benefits of the EU (Natura) Directives in 'maintaining, protecting and enhancing our environment'**.
19. As some of the marine protected areas are outwith the assessment noted above, **Management Team has commissioned an overview of non-EU international marine commitments applicable to Scotland in partnership with Marine Scotland**. This will provide a basis against which future Common Fisheries Policy discussions can be supported.
20. The current planned Agriculture Strategy will be significant for nature outcomes in Scotland. Currently, incentivising land managers through the rural development programme is the single largest source of funding for nature friendly farming practices. That funding has a substantial EU component to support greening and with significant changes ahead our route to influence the 'maintenance, protection and enhancement' of the environment is through the principles on which the Agricultural Strategy is built. **Management Team agreed to focus effort on contributing towards influencing the principles underpinning the Agricultural Strategy offering direct resource from SNH to support Scottish Government (Rural Payments and Inspections Division).**
21. We will also **maintain and develop connections with the EU Hub as a means of ensuring our own planning and prioritisation is in step with the likely resource requirements ahead**. This may also lead to the offer of

secondment as strategy turns to design and delivery. In the meantime, engagement will be led by Nick Halfhide as lead Director supported by Stuart MacQuarrie.

22. The current corporate risk as requested by ARMC, is stated, 'As a result of prolonged uncertainty following the outcome of the referendum on EU membership, there is a risk of loss of confidence and motivation among partners, stakeholders and staff, and consequential impacts on partnerships, projects and delivery of our work'. Whilst this risk was raised after the immediacy of the Referendum vote, the position has since moved on. The more significant emerging risks for SNH now are around preparedness for change ahead and communications challenges around what those changes may be. **Board views on the risks and possible controls are welcomed prior to review of the current corporate risk.**
23. There are opportunities ahead. As an organisation we are uniquely placed to assess and present knowledge of the state of nature as well as a clear view of what is working and what is at risk. Changes ahead afford us the opportunity to focus more closely on problem areas in support of Government aspirations, worrying less about resourcing areas that either we can do nothing about or are too costly to put right.

Stuart MacQuarrie  
Nick Halfhide  
March 2017





## BRIEFING PAPER

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# Brexit: Future UK Agriculture Policy

By Emma Downing  
Sarah Coe

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## Summary

**Update: The [Agriculture Bill](#) was introduced and had its First Reading on 12 September 2018. This briefing will be updated in due course with information on the details of the Bill.**

After Brexit (and any transition phase) UK agriculture will be operating outside of the EU's Common Agricultural Policy (CAP).

This means that a new domestic agriculture policy is needed. It gives the UK Government and devolved legislatures the opportunity to rethink farm subsidies and incentives and the general operating environment for farm businesses. The CAP currently provides nearly £4 billion of support annually to farmers across the UK as well as providing market safety nets.

These developments will come within the context of wider regulatory and trading changes that farmers will face, the impact of which will depend on the arrangements for the UK's future relationship with the EU.

The key questions around a new UK agriculture policy are therefore:

- How might UK agricultural policy diverge from the CAP?
- How much financial support will the UK Government continue to offer and how will it be allocated across the UK?
- How will UK agricultural support be managed across the devolved nations?
- How will new trade and labour policies impact UK agriculture in concert with any changes in farm support?
- How far will regulation of issues such as food safety, pesticide approval and animal and plant health diverge from the current EU approaches?

Currently, direct CAP subsidies can make up anywhere from 50-80% of a UK farmer's income and agricultural practices will be sensitive to any change of direction, priorities or funding levels of this support.

The UK Government has pledged to maintain the same cash funds as currently for CAP (for the whole of the UK) until the end of this Parliament which can run until 2022. The allocation and conditions of this support may alter during this time but the UK Government has indicated that it is unlikely to move to any brand new system of farm support until after 2024.

The [UK Government's 25 Year Environment Plan](#) (January 2018) set out plans for a new environmental land management system based on paying farmers public money for public goods (e.g. environmental enhancement), replacing current direct payments to farmers in England from 2024.

An Agriculture Bill is forthcoming which will set out a framework for post-Brexit arrangements for farmers. As a pre-cursor to this the UK Government consulted on the shape of this support and the transition to this new approach via its February 2018 Command Paper, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#).

The **key elements of the emerging new policy for England** are:

- The [Basic Payment Scheme \(BPS\)](#) (direct subsidies by area farmed) for 2019 will be paid as normal with some simplification.



- A transition phase of “several years” from farming subsidy to a system of public money for public goods over time whilst limiting some of the largest subsidy payments.
- No lower animal welfare or environmental standards in trade deals

Farming unions and environmental groups have broadly welcomed the initial proposals. Farming unions want any new farm support system to be part of a coherent approach to food production with domestic agriculture policy post-Brexit helping farmers to mitigate volatility and enhance productivity as well as delivering environmental benefits. Environmental groups want to see current funding for farmers maintained to support sustainable land management.

Devolved legislatures have consulted or are consulting on similar approaches and timescales but with priorities tailored to their farming systems:

- Scottish Government, [Stability and Simplicity: Proposals for a rural funding transition period](#), June 2018 (consultation closed 15 August 2018).
- Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), July 2018 (consultation closes on 30 October 2018)
- The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), August 2018 (consultation closes on 10 October 2018)

The UK Government has also said that it is seeking a flexible migration policy overall and post-Brexit wants to ensure “access to seasonal agricultural labour”. A new pilot scheme will allow recruitment of some 2,500 non-EU migrants to work in agriculture each year from spring 2019 to December 2020.

The UK produces some 60% of the food it consumers so is reliant on trade to maintain food supplies. The UK imported some £46 billion of food, feed and drink in 2017 and exported some £22 billion worth. The impact of Brexit on agriculture trade will depend on the future trade framework with the EU but Environment Secretary Michael Gove [said in January 2018](#) that he was confident of “building a new economic partnership with the EU” that guarantees tariff-free access for agri-food goods between the UK and EU. The Chequers Deal sets out plans for a common rulebook with the EU for those regulations that are needed for frictionless trade at the border. The Government also aims to increase trade with non-EU countries through new Free Trade Agreements.

# 1. UK agriculture

## 1.1 Overview of the sector

The UK agriculture sector has a key role in the UK economy and the rural environment.

The [latest UK agriculture statistics](#) show that in 2017:

- Approximately 72% of the total UK area is utilised for agriculture (some 17.5 million hectares).
- Around 25% of UK land is used for arable crops such as wheat and barley, and 1% for horticultural crops.
- Agriculture's contribution to the national economy remained at less than 1% and its share of employment remained stable at 1.48%.
- In real terms, total income from farming is estimated to have risen by £1,683 million (41%) to £5,743 million.
- Farm Business Income (FBI) varied greatly with around 20% of UK farms failing to make a positive FBI whilst just under a quarter of UK farms had a FBI of more than £50,000.<sup>1</sup>
- Some 474,000 people (c.1.5% of the total workforce<sup>2</sup>) were working in the UK agricultural sector in 2016 and 218,000 on agricultural holdings.<sup>3</sup>

The sector is not homogenous. Types of agriculture, products and farm size and income vary widely across the UK. England, Scotland, Wales and Northern Ireland have different farming terrains and policy priorities.

- Farm size varies widely across the UK with Scotland having on average the largest holdings and Northern Ireland the smallest. The average size for holdings larger than 20 hectares (ha) is 292ha (Scotland), 139 ha (England), 99 ha (Wales) and 62 ha (Northern Ireland).<sup>4</sup>
- In terms of employment and GDP, Northern Ireland is more dependent on the agricultural sector (including the agri-food business) than any other area of the United Kingdom and draws heavily on the Common Agricultural Policy.<sup>5</sup>

Table 1 below illustrates the scale of the main sectors in the UK and the intra-UK variations. The variations in farm income (which can be less than total CAP payments received) are discussed in Section 7.1.

Almost 72% of the total UK area is utilised for agriculture (some 17.5 million hectares).

Around 25% of UK land is used for arable crops, 1% for horticultural crops.

Nearly half a million people work in agriculture.

Farm Business Income (FBI) varies greatly: around 20% of UK farms fail to make a positive FBI while a quarter had a FBI of more than £50,000

<sup>1</sup> Defra, Agriculture in the United Kingdom 2017, May 2018 **Farm Business Income (FBI)** is the preferred measure for comparisons of farm type and represents the return to all unpaid labour (farmers, spouses and others with an entrepreneurial interest in the farm business) and to all their capital invested in the farm business including land and farm buildings.

<sup>2</sup> ONS Statistical Bulletin, [UK Labour Market](#), Sept 2017. Assuming 32.14m people in work in 2016.

<sup>3</sup> Defra, [Agriculture in the United Kingdom 2017](#), May 2018

<sup>4</sup> Defra, [Agriculture in the United Kingdom 2017](#), May 2018, Table 2.4

<sup>5</sup> Northern Ireland Assembly, [2016-17 Knowledge Exchange Seminar information](#), accessed 31 January 2018



**Table 1: Selected Farming Facts and Figures (most recent comparable data)**

SELECTED FARMING FACTS AND FIGURES 2017					
	UK	England	Scotland	Wales	Northern Ireland
Total agricultural area (000s ha)	18,834.6	9,575.2	6,338.3	1,867.0	1,054.0
Number of farms		105,925.0	50,849.0	35,046.0	24,815.0
Total employment in agriculture (000s)	474.1	306.4	67.0	51.9	48.7
Crops: Grass: Rough grazing (% of total farmed area) <sup>1</sup>	77:19:4	83:13:4	69:26:5	37:63:1	24:75:1
Average farm size (000s ha)		86.6	113.2	48.1	41.1
Wheat (000s ha)	1,791.8	1,652.1	109.5	21.5	8.7
Barley (000s ha)	1,176.7	842.5	291.3	21.8	21.1
Oilseed rape (000s ha)	562.4	523.1	34.2	4.3	0.7
Potatoes (000s ha)	144.9	108.2	29.3	3.4	4.1
Beef cows (000s head)	3.9	1.9	0.9	0.4	0.7
Dairy cows (000s head)	3.3	2.0	0.3	0.5	0.5
Breeding ewes (000s head)	16,669.4	7,385.2	3,347.4	4,963.5	973.3
Breeding pigs (000s head)	511.6	416.2	37.3	3.5	54.6
Broiler chickens (000s head)	117,618.8	90,605.2	6,249.1	3,997.9	16,766.6
Total laying and breeding fowl (000s head)	52,939.0	33,747.9	7,981.5	3,517.9	7,691.6
Gross output at basic prices (£m)	16,040	11,643	1,810	1,138	1,449
Gross value added at basic prices (£m)	10,300	7,799	1,401	457	644
Total direct payments to farmers 2017 (£m)	3,297	2,129	552	296	320
Subsidies as % of TIFF <sup>2</sup>	57%	52%	60%	107%	68%

**Notes:**

1. Total crops, temporary grass under 5 years old, uncropped arable land as % of total croppable area
2. Total direct payments to farmers (all public payments) as percentage of the Total Income from Farming

**Sources:** Defra, [Structure of the agricultural industry in England and the UK at June](#), 20 March 2018 and Defra [Agriculture in the United Kingdom data sets](#), 31 May 2018

## 1.2 Imports and exports

More than £66 billion of food and animal feed is traded into or out of the UK annually. Box 1 below provides an overview of the key imports and exports and trading countries.

There is considerable complexity in the supply of food from farm to fork. Some products cross borders more than once. This is particularly true for products such as dairy products on the island of Ireland. The Food and Drink Federation has noted that most UK food businesses treat the island of Ireland “as a single territory” and “workers, raw materials, part-finished and finished goods cross the border, sometimes several times”.<sup>6</sup>

The exact impacts of Brexit on particular foodstuffs and supply chains are not yet clear because the terms on which the UK will trade with the

<sup>6</sup> Food and Drink Federation written evidence to the Environment, Food and Rural Affairs Committee inquiry, [Brexit: Trade in Food](#), October 2017 ([BRT 0063](#))

EU in the future are not defined nor are any likely barriers to trade with other countries. (These issues are discussed in Section 9).

In 2017, the UK imported £46.2 billion of food, feed and drink products and exported around £22 billion, with Scotch whisky being the largest single export at £4.5 billion. This compares with UK total imports in 2017 worth £468 billion and exports worth £330 billion.<sup>7</sup>

The UK has a trade deficit in food and feed products with both the EU and with non-EU countries (taken as a whole). The trade gap widened by 6.2% between 2016 and 2017 and has widened by more than 30% from £16.9 billion in 2005 to £24.2 billion in 2017 in real terms.<sup>8</sup> Around £19 billion of this deficit was with EU countries.<sup>9</sup>

61% of the UK's exports of food, feed and drink are to EU countries and 70% of the UK's imports of these products are from EU countries.<sup>10</sup> The Government has a policy of increasing exports of agri-food products to non-EU markets. These increased from £4.2 billion in 2008 to £8.7 billion in 2017.<sup>11</sup> Environment Secretary, Michael Gove has said that the Government is seeking to increase agricultural exports, for example to China.<sup>12</sup>

### 1.3 Food security

The UK is currently 61% self-sufficient in all foods and 75% sufficient in indigenous foods.<sup>13</sup>

It is reliant on imports to secure food supplies to meet the volume, choice and standard of products to meet consumers' needs and preferences including to provide products that the UK does not produce.

It is widely acknowledged that there is an opportunity for the UK to import less food, in particular indigenous fruit and vegetables.

The National Farmers' Union (NFU) has argued that "a lot of that [imported food] could be grown in the UK. Our ambition as part of this process is to narrow that trade gap".<sup>14</sup> The NFU has estimated that at the current rate of production, if the UK tried to survive solely on food produced in the UK from 1 January, it would run out on 6 August.<sup>15</sup>

<sup>7</sup> HM Revenue and Customs, [Regional Trade in Goods Statistics, Fourth Quarter 2017](#), 8 March 2018

<sup>8</sup> Food, feed and drink is a category that includes raw agricultural products, lightly and heavily processed foods, and beverages). Source: DEFRA publication [Agriculture in the United Kingdom 2017](#), May 2018, (chapter 13)

<sup>9</sup> Data from [HMRC UK Trade Information](#) (accessed 11 September 2018)

<sup>10</sup> For further information see the Library briefing [Brexit: Agriculture and trade](#) and the DEFRA publication [Agriculture in the United Kingdom 2017](#), May 2018, (chapter 13)

<sup>11</sup> Data from HMRC, [UK Trade Info](#) (accessed 11 September 2018)

<sup>12</sup> Rt Hon Michael Gove, [Farming for the next generation](#), speech to Oxford Farming Conference, 5 January 2018

<sup>13</sup> House of Lords European Union Committee, [Brexit: Agriculture](#), HL Paper 169, May 2017 p. 7

<sup>14</sup> As above, pg. 36-37

<sup>15</sup> As above, p. 7

### Box 1: Key Facts – UK Trade in Food and Drink 2017

- The UK exported £22 billion of food, feed and drink, up 22% on the previous year.
  - Whisky is the UK's top export at £4.5 billion, with cereal and associated products at £2.3 billion, dairy and eggs at £1.8 billion and meat at £1.8 billion.
- The UK imported £46.2 billion of food, feed and drink, up 7.1% on the previous year.
- The UK's five largest export markets are the Irish Republic, France, the US, Germany, and the Netherlands.
- China is the UK's largest non-EU export market.
- Imports of fresh fruit and fresh vegetables grew by 4.6% to £3.8 billion and 2.5% to £2.4 billion respectively.

#### UK-EU food trade

- 60% of UK food exports go to the EU and 70% of imports come from the EU.
- **Exports:** Seven of the UK's top 10 export markets are EU member states.
- The Irish Republic is the UK's largest export market: UK exports of food, feed and drink to Ireland were £3.7 billion in 2017.
- All the main categories of product have increased their exports:
  - the largest increase last year was in dairy and eggs which rose 28% to £1.8 billion, followed by animal feed exports which increased by 20% to £1.4 billion.
  - In 2017 exports of both meat and fish increased by 14% and exports of fruit & vegetables increased by 7.7% to £1.2 billion.
- **Imports:** the UK imported more from the Netherlands than any other country in 2016 (noting the Rotterdam effect)<sup>16</sup>
- The top nine countries from which the UK imported food, feed and drink in 2016 were EU members.

**Source:** Defra and Devolved Administrations, [Agriculture in the United Kingdom 2017](#), May 2018

<sup>16</sup> The 'Rotterdam effect' refers to errors in trade calculations when trade flows through ports en-route to another destination. A large proportion of goods are unloaded in Rotterdam and reloaded for another country, distorting the breakdown between the UK's trade with the Netherlands and the UK's trade with other countries.



## 2. Developing a future farming policy for the UK

Current UK farming policy and agricultural systems have been very much shaped by the EU Common Agricultural Policy (CAP). However, UK agriculture, post-Brexit, will be operating outside of the CAP under any scenario. This is because the CAP is not open for association with third countries.<sup>17</sup> Exiting the EU will therefore mean that the UK can develop a new approach to domestic agriculture policy. Defra Secretary of State, Michael Gove said in July 2018 that a new CAP could have "all manner of implications for the UK".<sup>18</sup>

Any future agricultural policy and intervention framework has to be designed to comply with WTO obligations (e.g. on providing agricultural support) and not create market distortions within the UK.

Agriculture and the implementation of CAP is devolved. Currently the CAP system provides:

- **Direct Payments** to farmers as income support (known as Pillar 1)
- broader **rural development funding** (known as Pillar 2) and
- market support measures under the Common Market Organisation regulation.

This system has evolved since the CAP was provided for in the 1957 Treaty of Rome which established the European Economic Community (EEC) – the "common market".<sup>19</sup> The evolution and current functioning of the CAP is explained in more detail in Chapter 7.

The UK Government has pledged to maintain the same cash funds as currently for CAP until the end of the Parliament (for all parts of the UK), under the expectation that this will be 2022.<sup>20</sup>

The scale and nature of the immediate impact of Brexit on UK agriculture will therefore largely depend on:

- Future levels of income support for farmers and rural development funding beyond the Common Agricultural Policy (CAP) and the approach to a common framework
- The nature of any trade deal with the EU and how agriculture fares in trade-offs with other sectoral interests.
- How far access to migrant and seasonal labour is maintained
- The degree of future divergence from the EU in terms of animal welfare standards, pesticides regulation, plant and animal health regulation, and food labelling requirements and protections.

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<sup>17</sup> Cabinet Office, [Explanatory Memorandum for European Legislation](#), 26<sup>th</sup> June 2018

<sup>18</sup> Rt Hon Michael Gove MP, [Oral evidence to European Scrutiny Committee, EU Withdrawal, HC 763, 18 July 2018, Q 697](#)

<sup>19</sup> Europa, [The history of the European Union](#) [as viewed on 10 September 2018]

<sup>20</sup> GOV.UK [The Unfrozen Moment – Delivering a Green Brexit](#), 21 July 2017

A new Agriculture Bill, announced in the [Queen's Speech](#) and expected this Session, will seek to ensure a smooth transition from the CAP. It will include:

...measures to ensure that after we leave the EU, and therefore the Common Agricultural Policy, we have an effective system in place to support UK farmers.

The Bill is intended to provide stability for farmers and measures to protect the natural environment (see section 2.5).<sup>21</sup>

As a precursor to the Bill, Defra published consultation proposals in its February 2018 command paper [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#). The consultation closed on 8 May 2018 and received over 44,000 responses.

The paper sets out potential options for fundamental reform of agriculture in the UK after Brexit. These are discussed further in Chapter 3.

Consultations in the devolved administrations have also been issued with those in Wales and Northern Ireland still open (see separate chapters on each):

- Scottish Government, [Stability and Simplicity: Proposals for a rural funding transition period](#), June 2018 (consultation closed 15 August 2018).
- Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), July 2018 (consultation open until 30 October 2018)
- The Northern Irish Department for Agriculture, Environment and Rural Affairs (DAERA), [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), August 2018 (consultation open until 10 October 2018)

## 2.1 EU Withdrawal Act 2018 and agriculture

*The EU (Withdrawal) Act 2018* (EUW Act) will have the effect of preserving directly applicable EU Regulations in UK law with necessary corrections. Commons Library briefing, [The status of "retained EU law"](#) explains these provisions.

To go further requires primary legislation. The CAP functions through a set of regulations which will need to be retained and amended. The UK Government is already committed to an Agriculture Bill to introduce provisions to transition out of and replace the CAP.

Environment Secretary Michael Gove has indicated that he expects the devolved legislatures to also bring forward their own Agriculture Bills to enact their own plans for future farm support.<sup>22</sup> The Welsh Government

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<sup>21</sup> Cabinet Office, [Queen's Speech: Background Briefing Notes](#), 21 June 2017

<sup>22</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament's Rural Economy and Connectivity Committee](#), 26 June 2018 c4

has already recognised the need to bring forward primary legislation to make provision for the programme (See Chapter 6).

The UK Government intends that powers conferred on devolved administrations under section 11 of and Schedule 2 to the EU (Withdrawal) Act 2018 will enable them to modify retained EU law in devolved policy areas. This applies except, in the case of direct retained EU law, where regulations are made under section 12 of the Act so that existing frameworks are temporarily maintained in specific areas. As will be the case for the UK Government, the correcting power will remain available to the devolved administrations until two years after the end of the implementation period.<sup>23</sup>

The Scottish Parliament and Government have continued to object to this approach (and withheld legislative consent for the EUW Act). They agree that common frameworks are needed and that, in some cases, regulatory alignment within the UK will be desirable. However, they maintain that restrictions on the Parliament's competence should only come with explicit devolved consent and on a case-by-case basis, rather than by secondary legislation.<sup>24</sup>

The UK Government has committed in its [Intergovernmental Agreement](#) with the Welsh Government that it will not "normally" make section 12 regulations without devolved consent, provided that consent is not unreasonably withheld.<sup>25</sup>

The UK Government has argued that this "freezing" of EU powers is necessary to prevent regulatory divergence in areas of common strategic interest throughout the UK. It intends to recreate through "common frameworks" some of the harmonised standards and approaches that currently apply throughout the EU, but on a UK-wide basis.<sup>26</sup>

## 2.2 Draft EU Withdrawal Agreement and CAP

The [draft EU Withdrawal Agreement](#) sets out the proposed terms of a formal transition period expected to cover 29 March 2019 (the day of exit) until 31 December 2020.

As drafted, EU rules will continue to apply until that date but subject to UK and devolved provisions made under the *EU (Withdrawal) Act 2018*. In the event of no withdrawal agreement, all powers and responsibilities will take effect from 29 March 2019 under provisions made through the Act.

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<sup>23</sup> Cm 9674, DExEU, [Legislating for the Withdrawal Agreement between the UK and the EU](#), July 2018. This blog from the Scottish Parliament's Information Centre also provides an overview, SPICe [Spotlight, Legislating for withdrawal from the European Union – Where are we now](#), 29 June 2018

<sup>24</sup> House of Commons Library Debate Pack 0166, [Implications for Scotland of Leaving the EU](#), 29 June 2018

<sup>25</sup> GOV.UK, [Intergovernmental Agreement on the EU \(Withdrawal\) Bill: Intergovernmental Agreement on the EU \(Withdrawal\) Bill and Establishment of Common Frameworks](#), 25 April 2018

<sup>26</sup> House of Commons Library Debate Pack 0166, [Implications for Scotland of Leaving the EU](#), 29 June 2018

An important exception within the withdrawal agreement relates to the **CAP Direct Payments**. These will be under UK legislation from claim year 2020, not 2021. Claim years 2018 and 2019 by contrast will operate on the same basis as previous years. Direct support from 2020 will then operate under domestic legislation.<sup>27</sup> Under EU CAP reform proposals, although provisions are expected to come into force on 1 January 2021, specific articles would apply from 16 October 2020 (the start of the EU 2021 financial year). Given the proximity to the end of the Implementation Period, the UK is however seeking a “carve-out” from application of any Article earlier than 1 January 2021.<sup>28</sup> This would preferably be as part of the Withdrawal Agreement.<sup>29</sup>

The Welsh Government has noted that The Rural Development Programme for Wales will continue to operate under EU regulation until the end of the Programme ‘which could be until 2023.’<sup>30</sup>

## 2.3 A UK common framework for agriculture

The UK Government has identified 24 policy areas where repatriated EU powers intersect with devolved competency and where there needs to be more detailed discussion to explore whether ‘legislative common framework’ arrangements might be needed, in whole, or in part for the UK.

Several agriculture policy areas are included:<sup>31</sup>

- **Agricultural Support:** Policies and Regulations under the EU Common Agricultural Policy covering Pillar 1 (income and market support), Pillar 2 (rural growth, agri-environment, agricultural productivity grants or services and organic conversion and maintenance grants) and cross-cutting issues including cross-compliance, finance and controls.
- **Fertiliser Regulations:** Regulations providing common standards for compositional ingredients, labelling, packaging, sampling and analysis of fertilisers. The UK is also signed up to several international agreements (e.g. the Gothenburg Protocol) and EU agreements (the National Ceilings Directive) related to fertiliser regulation.
- **Genetically Modified Organisms (GMO) marketing and cultivation:** Standards for marketing and cultivation of genetically modified organisms.
- **Organic farming:** Regulations setting out standards for organic production certification.
- **Zootech:** EU legislation providing a common framework of rules on breeding and trade in pedigree animals and germinal products

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<sup>27</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), 1 August 2018

<sup>28</sup> Cabinet Office, [Explanatory Memorandum on European Commission proposals for post-2020 CAP reform](#) [Accessed 11 September 2018]

<sup>29</sup> Rt Hon Michael Gove MP, [Oral evidence to European Scrutiny Committee, EU Withdrawal, HC 763, 18 July 2018, Q 696](#)

<sup>30</sup> Welsh Government, [Brexit and Our Land: Securing the Future of Welsh farming](#), July 2018, para 8.22

<sup>31</sup> Cabinet Office, [Frameworks Analysis](#), 9 March 2018



in the EU and the treatment of imports from 3rd countries. Each of the UK regions has competent authorities in their areas for recognition of breed societies under this legislation.

- **Animal health and traceability:** EU rules and standards that aim to maintain animal health and allow their movement, including policies covering: prevention of disease (entering UK), control of disease (endemic and exotic), surveillance (for exotic disease) movement of livestock, pet passports and veterinary medicines.
- **Animal welfare:** EU rules relating to aspects of animal welfare including on-farm issues, movement of livestock and slaughter.
- **Chemicals Regulation (including pesticides):** EU regulations on the classification, labelling and packaging of substances and mixtures (CLP); the placing on the market and use of biocidal products (e.g. rodenticides); the export and import of hazardous chemicals; the registration, evaluation, authorisation and restriction of chemicals (REACH); and plant protection products (e.g. pesticides).

The UK, Scottish and Welsh Governments agreed the principles that will guide how the UK Government will approach common frameworks in future at the Joint Ministerial Committee on EU Negotiations on 16 October 2017. In January 2018, Secretary of State for Scotland, David Mundell, said that those principles “have facilitated constructive engagement at official level, and we expect to make significant further progress in the coming months, including publishing our analysis”.<sup>32</sup>

The Government has not provided any detail on what these frameworks will look like in substance. They are expected to be introduced by primary legislation engaging the Sewel Convention. It is also not clear what decision-making structure they will employ and therefore what degree of influence the devolved administrations will have on them.<sup>33</sup>

The Written Ministerial Statement accompanying the [Health and Harmony](#) command paper stated:

... We will continue to work closely with the devolved administrations to establish common frameworks, where these are necessary, in order to enable the functioning of the UK internal market or so that the UK can negotiate, enter into and implement new trade agreements. Overall it is the government’s expectation that the process will lead to an increase in decision - making for each of the devolved administrations.<sup>34</sup>

The Executive Summary to the command paper notes that the Joint Ministerial Committee (EU Negotiations) principles state that frameworks will be established where:

...they are necessary in order to enable a well-functioning internal market across the UK, compliance with international obligations and protection of our common resources. Together we are

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<sup>32</sup> [HC Deb 24 January 2018 c254](#)

<sup>33</sup> House of Commons Library Debate Pack CDP 0166, [Implications for Scotland of leaving the EU](#), 28 June 2018

<sup>34</sup> Defra, [Written Ministerial Statement](#), A brighter future for farming and our countryside, 27 February 2018

confident that we can determine frameworks with the right mix of commonality **and** flexibility.<sup>35</sup>

However, it states that the UK Government also recognises that each administration has the power to decide its own priorities.<sup>36</sup>

The House of Commons Environment, Food and Rural Affairs Committee has emphasised that where such UK agreements are made, they must be agreed “following consultation, and with the support of the Governments of the constituent parts of the UK”.<sup>37</sup>

## How will a framework work for agriculture?

The UK Government has said that in terms of future agriculture policy it is ‘committed to delivering an approach that works for the whole of the UK and reflects the needs and individual circumstances of Scotland, Wales and Northern Ireland’. Ministerial and official meetings got underway in summer 2017 to start discussions on UK common agricultural frameworks.<sup>38</sup>

The last CAP was the most flexible ever in terms of using different options to meet its requirements. There are few areas of common approach across England and the CAP systems implemented by the devolved administrations within the UK have highly diverged. This means there are already four different farming support systems in the UK reflecting different needs and priorities.

When Lesley Griffiths (Welsh Cabinet Secretary for Energy, Planning and Rural Affairs) [appeared before the Welsh Assembly’s Finance Committee](#) on 27 June 2018, she discussed UK frameworks for agriculture and animal welfare.

A Welsh Government official provided an update on these frameworks:

- detailed conversations were taking place around Defra’s UK Agriculture Bill at official level as this is expected to give effect to some of the legislative aspects of the frameworks.
- that framework discussions have centered on how governments can “work collectively to come to either a common position or a different position that is understood and recognised and that any of the implications for other parts of the UK are understood”
- Animal welfare and fisheries are areas where joint working is well-established and these mechanisms are being formalised and used as a model.<sup>39</sup>

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<sup>35</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, para 7.

<sup>36</sup> Defra, [Written Ministerial Statement](#), A brighter future for farming and our countryside, 27 February 2018

<sup>37</sup> HC 870, Sixth Report of the House of Commons Environment, Food and Rural Affairs Committee, [The Future for food, farming and the environment](#), May 2018

<sup>38</sup> [Written Question 112802 20 November 2017](#)

<sup>39</sup> [Oral Evidence to the National Assembly for Wales’ Finance Committee](#), 27 June 2018

In response to a June 2018 Commons debate on upland farming, Farming Minister George Eustice outlined how common frameworks were being approached for agriculture:<sup>40</sup>

It is recognised by everyone that there will be a need for some UK frameworks, particularly when it comes to delivering international obligations such as our obligations to the World Trade Organisation...but also in ensuring integrity in the UK single market. We are taking two approaches. There will be areas where things may be reserved—for instance, where they are directly attributable to international trade and international agreements that we have entered into. There will be others where we can construct frameworks through memorandums of understanding. There is already a lot of quite detailed work being done in that space.

He also commented that, at an official level, there had been an ‘incredibly close working’ on developing the statutory instruments that need to be brought forward across the legislatures under the *European Union (Withdrawal) Act 2018* and ‘detailed work’ on what future frameworks would look like. Mr Eustice said that policy had been considered line by line to see what could be fully devolved, reserved or where a memorandum of understanding would work and that this work was at “an advanced stage”.<sup>41</sup>

## 2.4 Funding allocations and internal markets

Currently, EU CAP funding is allocated by the UK Government to the devolved administrations and the basis for this is set out at the beginning of each seven-year CAP ‘round’. The UK Government has guaranteed current levels of funding until 2022 across the UK which will continue to be ring-fenced for agriculture and the rural economy.<sup>42</sup>

The amount of future funding that each part of the UK receives for successor arrangements beyond EU exit will be dependent on the outcomes of discussions with the UK Government on the financial settlements reflecting EU exit and the UK Government’s 2019 Spending Review.<sup>43</sup>

The UK will have to comply with WTO commitments which set ceilings for aggregate market support e.g. intervention prices. The UK Government will therefore also have to agree some form of internal market measures with the devolved legislatures.<sup>44</sup>

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<sup>40</sup> [HC Deb 26 June 2018 c357WH](#)

<sup>41</sup> [HC Deb 26 June 2018 c357WH](#)

<sup>42</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament’s Rural Economy and Connectivity Committee](#), 26 June 2018 c4

<sup>43</sup> Scottish Government, [Stability and Simplicity: Proposals for a rural funding transition period](#), June 2018 para 8

<sup>44</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), 1 August 2018 and HC 870, Oral Evidence to the House of Commons Environment, Food and Rural Affairs Committee, [Q332](#), 2 May 2018

The WTO limits subsidies that distort trade and production and these are known as 'Amber Box' following the WTO terminology where subsidies are identified by '[boxes](#)' given the colours of traffic lights.<sup>45</sup>

It is expected that the UK will secure its pro-rata share of the EU Amber Box headroom as part of the exit agreement and that this will be established in the UK's WTO schedule. This will provide maximum scope for future policy flexibility within the UK.<sup>46</sup>

Farming Minister, George Eustice told the Commons Environment, Food and Rural Affairs Committee in May 2018:

...our feeling at the moment is that the £3 billion a year that we spend on farm support is still a relatively modest sum of money. It is modest enough that it probably does not create the sorts of distortions that people might anticipate, provided we abide by state aid rules and do not try to manipulate prices.<sup>47</sup>

### **New approaches to future funding allocations?**

In the last CAP round, the UK Government used the same allocation split of funding across the UK as it had in the previous round. This was in agreement with all the devolved legislatures except the Scottish Government who wanted a higher share. Environment Secretary, Michael Gove has suggested that the particular challenges of upland farming and the particular needs of Scotland and Northern Ireland may be acknowledged more in future allocations.<sup>48</sup>

Scotland's concern with the current allocation is that the UK received an 'uplift' in its Direct Payment (Pillar 1) budget for 2014-20 under the CAP's 'external convergence mechanism' which is triggered to close a gap in funding when Member States receive less than 90% of EU average payments per hectare.

The Scottish Government argued that it was its farms that had helped the UK to qualify for the payment and therefore Scotland should receive a higher allocation reflecting this. This uplift was worth around €10m in 2015 rising to €60m in 2019. This is a total of €230m over the period.<sup>49</sup> Commons Library Briefing [CAP reform 2014-20: EU Agreement and Implementation in the UK and in Ireland \(updated\)](#) provides further detail.

Environment Secretary, Michael Gove has indicated that there should be a review of allocations at some point. Farming Minister, George Eustice

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<sup>45</sup> See WTO, [Domestic support in agriculture](#) (as viewed on 7 September 2018)

<sup>46</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), 1 August 2018

<sup>47</sup> HC 870, Oral Evidence to the House of Commons Environment, Food and Rural Affairs Committee, [Q332](#), 2 May 2018

<sup>48</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament's Rural Economy and Connectivity Committee](#), 26 June 2018 c. 4

<sup>49</sup> House of Commons Library (and other UK and Irish parliamentary research services) Briefing [CAP reform 2014-20: EU Agreement and Implementation in the UK and in Ireland \(updated\)](#), 30 October 2014



has said “we are not at that point yet but it is something that we are exploring.”<sup>50</sup>

The Scottish Parliament’s Rural Economy and Connectivity Committee questioned the Defra Secretary of State Michael Gove about the funding allocations and previous convergence issue in June 2018. The Minister acknowledged the controversy regarding the allocation but emphasised that it was important to look to future allocations:

My aim... is to ensure that, in the future, we allocate funding in a way that is sensitive to the specific needs of each part of the United Kingdom.<sup>51</sup>

...We can look at why decisions were made in the past and perhaps reflect on mistakes, errors or misjudgments that might have been made then and allow them to inform the future. We are not clawing money back; we are being aware that good arguments were made at the time in good faith and we will honour the integrity of the individuals who made those arguments and decisions at the time.

...I freely acknowledge, which is that it is in the nature of the landscape and the environment in Scotland—and also in other parts of the United Kingdom—that the preponderance of less-favoured areas and the nature of upland farming impose particular challenges that require a specific level of support. I have said to the Cabinet Secretary, Fergus Ewing, that we need to look in the future at how we allocate funding across the United Kingdom in order to reflect that.

Mr Gove also indicated that there might be more funding for Scotland and Northern Ireland in the future:

...I suspect that in future, particularly given Scotland’s unique needs, or the unique needs of other parts of the United Kingdom, we could contribute as a proportion of overall agricultural spending an even bigger slice—possibly—to Scotland and Northern Ireland.<sup>52</sup>

## 2.5 The Agriculture Bill

An Agriculture Bill was included in the Queen’s Speech last year. The Bill is intended to enable a smooth break from the CAP as well as providing the legislative framework to allow Ministers to introduce and develop a new domestic policy.

The [notes to the Queen’s Speech](#) last year set out the Government’s intentions for the Bill.<sup>53</sup>

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<sup>50</sup> HC 870, Oral Evidence to the House of Commons Environment, Food and Rural Affairs Committee, [QQ327–328](#), 2 May 2018

<sup>51</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament’s Rural Economy and Connectivity Committee](#), 26 June 2018

<sup>52</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament’s Rural Economy and Connectivity Committee](#), 26 June 2018 c 4

<sup>53</sup> Prime Minister’s Office, [The Queen’s Speech and associated background briefing on the occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017, p 23

In line with the manifesto, the Bill will ensure that after we leave the EU we have an effective system in place to support UK farmers and protect our natural environment.

The Bill will:

- provide stability to farmers as we leave the EU;
- protect our precious natural environment for future generations;
- deliver on the manifesto commitment to “provide stability for farmers as we exit the EU.

The regulations that currently implement CAP will be rolled over and become EU retained law under the provisions of the EU (Withdrawal) Act 2018.

However, they will need amending to make sense in domestic legislation. In addition, the UK government has said that the Bill is needed to provide ‘a new statutory framework’ to ‘deliver many of the reforms’ set out in the White Paper.<sup>54</sup>

The command paper lists some of the legislative powers that the Bill could include:<sup>55</sup>

- continuing to make payments to farmers
- to create new schemes to protect the environment or to increase productivity
- to establish a new compliance regime

The UK Government has also said that it wants the Bill to ‘support our farmers to compete domestically and on the global market, allowing us to grow more, sell more and export more, great British food. It has also outlined one of the main benefits of the Bill to be “to support a thriving and self-reliant farming sector that is more competitive, productive and profitable”’.<sup>56</sup>

## 2.6 What provisions will the Bill include?

The Bill is expected to be a framework bill setting out a legislative framework which enables the UK to “break from” the Common Agricultural Policy (because the CAP cannot apply when the UK is not a member of the EU under any scenario) and to introduce new agricultural schemes which support farmers and enable them to be paid for delivering certain public goods e.g. environmental enhancement.<sup>57</sup>

Further detail relating to these schemes may be provided for in secondary legislation. The Bill is therefore expected to set out overall

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<sup>54</sup> Cm 9577, Defra, [Health and Harmony, The future for food, farming and the environment in a green Brexit](#), 27 February 2018 p.67

<sup>55</sup> Cm 9577, Defra, [Health and Harmony, The future for food, farming and the environment in a green Brexit](#), 27 February 2018 p.67

<sup>56</sup> Prime Minister’s Office, [The Queen’s Speech and associated background briefing on the occasion of the Opening of Parliament on Wednesday 21 June 2017](#), 21 June 2017 p.23

<sup>57</sup> Cm 9577, Defra, [Health and Harmony, The future for food, farming and the environment in a green Brexit](#), 27 February 2018, Chapter 15

purposes for which payments can be made etc and allow for changes in EU retained law relating to the 'rolled over' CAP regulations.

The Bill will mainly apply to England, unless devolved administrations specifically request that certain provisions are extended to them.<sup>58</sup> It may also make provision for UK-wide frameworks where commonality of approach is required across the UK administrations.

The Welsh Government has said that it is "considering including Welsh-specific provisions" in the forthcoming Agriculture Bill "on a time-limited, interim basis." This would be to provide powers for Welsh Ministers to commence the phased transition plan until Welsh primary legislation takes effect.<sup>59</sup> The Welsh Government has said that its "ambition" is to put this in place before the end of this Assembly term and in good time to ensure the phased transition period can take effect.<sup>60</sup>

Agriculture and the implementation of CAP are devolved, and Scottish, Welsh and Northern Irish CAP regulations also needed to be amended to make sense after Brexit. When giving evidence to two Scottish select committees in June 2018, Environment Secretary Michael Gove, indicated that Scotland may also wish to bring forward its own Agriculture Bill with similar timing to be able to implement and police its own future payment arrangements etc. He also suggested that some joint aims, e.g. simplifying some of the current requirements around the payments could be applied across the UK:

...I noted that Fergus Ewing indicated that he would like to remove some of the onerous EU bureaucracy that is tied to some of the payments. Should he wish to do so, we might want to disapply that bureaucracy across the UK, or he might want to go further than we do. That is a matter for discussion. If Fergus Ewing wants to go further, that would only reinforce the appropriateness of there being a separate Scottish farming bill in the Scottish Parliament.<sup>61</sup>

## 2.7 What do stakeholders want from a new policy?

A broad range of stakeholders have been engaging with the consultations conducted by the UK legislatures and views on particular proposals are discussed in Chapter 3.

It is also helpful to step back and consider the key asks, guiding principles and themes which have been emerging. A snapshot across the agricultural and environmental sectors are provided below:

<sup>58</sup> See Cabinet Office, [Guidance on devolution, Section on Preparation of Primary Legislation](#), 20 February 2013

<sup>59</sup> Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), 10 July 2018, para 8.24

<sup>60</sup> As above, para 8.23

<sup>61</sup> Session 5, [Oral evidence from The Rt. Hon Michael Gove, Secretary of State for Environment, Food and Rural Affairs to the Scottish Parliament's Rural Economy and Connectivity Committee](#), 26 June 2018 c. 4

- The [National Farmers Union \(NFU\)](#) has called for a domestic agriculture policy aimed at helping farmers to mitigate volatility, enhance productivity and to deliver environmental benefits post-CAP. This includes having a transitional period where the UK trades within a customs union.

The NFU has said that a “farmed environment scheme should be a key feature of a future domestic agricultural policy”. It has also highlighted that this should do more than currently to encompass: flood management, air quality, health and wellbeing as well as landscape benefits, climate change mitigation, soil management, water resources and biodiversity.<sup>62</sup>
- [NFU Scotland \(NFUS\)](#) has said that it is looking to Westminster for guarantees on the financial framework and the flexibility for Scotland to develop agricultural policies bespoke to the needs of Scotland’s farmers and crofters. It is also looking to the Scottish Government to expand its policy vision for Scottish food and farming.<sup>63</sup>
- [NFU Cymru](#) wants to help to create a new framework delivering a vision of a productive, progressive and profitable farming industry which delivers jobs, growth and investment for Wales. It also wants the timeframe of the common framework to be determined by the trading relationship with the EU and working to the current formula of allocating CAP funds within the UK.<sup>64</sup>

The [Farmers’ Union of Wales](#) has said that the evidence supporting the need for the UK to remain in the single market and customs union after Brexit is now “incontrovertible”.<sup>65</sup>
- The [Ulster Farmer’s Union](#) has welcomed the UK Government’s pledge to develop a coherent food policy and to champion good quality food at home and abroad. However, it has cautioned that this and food security would not be achieved “if there was an imbalance in the support equation in favour of the environment and away from food production”.<sup>66</sup> Without funding to support food security, the UFU is concerned that the UK’s reliance on imported food will increase thereby undermining local food production and driving down standards.
- The [Country Land and Business Association](#) (CLA) and NFU have both highlighted that Government could help the farming industry to build long term resilience, through and beyond transition through a range of measures to tackle the low productivity of recent years and developing new and existing markets. The CLA has said that the Government must recognise

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<sup>62</sup> NFU, [Delivering a bold and ambitious future for farming: Domestic Agriculture Policy: A framework for Success](#), 17 October 2017

<sup>63</sup> NFUS, [Food and Trade commitments welcomed in Secretary of State’s Oxford address](#), 4 January 2018

<sup>64</sup> NFU Cymru, [The Welsh Government commits to ring-fence funding for Welsh farming](#), 2 November 2017

<sup>65</sup> Farmers’ Union of Wales, [Time for Common Sense to Prevail over Single Market and Customs Union](#) says FUW, 16 October 2017

<sup>66</sup> Ulster Farmer’s Union, [UFU welcomes Gove’s commitment on food policy but warns change still poses a threat](#), 5 January 2018



that a “long term programme will be required to work with the range of business planning cycles and succession decisions”.<sup>67</sup>

- The [British Retail Consortium](#) believes that there “is a positive future for UK farmers.” It highlights that there is strong support amongst consumers for UK food, recognising the commitment of British farmers and the high standards of environmental and livestock management.

However, the BRC has cautioned that there is a limit on the premium they will pay for it. “In a highly competitive retail market we need to ensure producers are able to compete on price as well as exploit the obvious advantages they have over imported produce. To ensure the long-term sustainability of our farmers, we need to ensure they are rewarded both through the market and Government support”.<sup>68</sup>

- [The Environment Agency](#) has said that the case for change as the Government sets out to design a new agricultural policy is “compelling.” It has highlighted that despite improving food security as intended, the CAP has been ‘bad’ for the environment with recent environment measures introduced only just starting to register small improvements in some areas. It also notes that agriculture is regularly responsible for more pollution incidents than any other sector in a given year.

The Agency is pleased that “the government has recognised the importance of long term environmental planning if we are to achieve sustainable development and has set ambitious goals in the 25 Year Environment Plan. Farmers and land managers will have a key role in realising these goals; to improve the quality of our air; to ensure there is plentiful and clean water; to help reduce flood risk and to mitigate the effects of climate change”.<sup>69</sup>

- [Greener UK](#) (a coalition of environmental NGOs) highlighted in 2017 that agriculture was at a crossroads and that “future policies should build on successful agri-environment schemes, drawing on evidence and experience of how to reverse declines in nature, and secure ecosystem services vital to farming and wider society. A well-resourced programme of research and monitoring will facilitate continuous improvement”.<sup>70</sup>

Environmental NGOs have largely welcomed moves towards a ‘public goods’ approach supporting outcomes such as improved animal health and welfare, public health and healthy food production.<sup>71</sup>

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<sup>67</sup> As above

<sup>68</sup> BRC Written Evidence ([BFS 0007](#)) to the House of Lords European Union Committee, 14<sup>th</sup> Report, [Brexit: Food Prices and Availability](#), 10 May 2018

<sup>69</sup> Environment Agency, [Response to Defra Consultation: Health and Harmony – The future for food, farming and the environment in a Green Brexit](#), May 2018

<sup>70</sup> Greener UK, [Agriculture at a crossroads: the need for sustainable farming and land use policies](#), February 2017

<sup>71</sup> As above, [Og242–243](#) [Professor Dwyer]; Anglian Water Services ([HAH0016](#)), para 3; Friends of the Earth England Wales and Northern Ireland ([HAH0027](#)), paras 3.1-3.9; Sustain: the alliance for better food and farming ([HAH0004](#)), paras 11-12; National Pig Association ([HAH0021](#)), paras 15-18; First Steps Nutrition Trust ([HAH0039](#)), para 2

### 3. England: Post-2019 farm support

The UK Government has said that it wants a post-Brexit agricultural policy which helps land owners and managers to make the transition from the current system of subsidy to a new approach of paying public money for the provision of public goods over time.<sup>72</sup>

Defra published a consultation on the future for food and farming on 27 February 2018 as the command paper, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#). This is a pre-cursor to the Agriculture Bill (see section 2.5). The consultation closed on 8 May 2018.

The paper reiterates the UK Government's commitment that the same total cash funding will be maintained until the end of the Parliament – and this “applies to each part of the UK”.<sup>73</sup>

The proposals are for England only. However, the UK Government has said that they ‘could work for the whole of the UK’ but it recognises that devolution means that each administration has “the powers to decide its own priorities”.<sup>74</sup>

The paper sets out the expectation that the process of developing common frameworks will lead to an increase in decision-making for each of the devolved administrations (see section 2.3 above).

The command paper's concept of a new system of farm support based on public money for public goods had already been included in [A Green Future](#), the UK Government's 25 Year Environment Plan (January 2018) as part of a proposed new environmental land management system to pay farmers for providing public goods such as habitat enhancement.<sup>75</sup> House of Commons Library Briefing [25 Year Environment Plan](#) provides further detail.

Environment Secretary, Michael Gove has also said that the UK Government hopes to produce a “food strategy document”, which will look at everything from improving Government procurement to “considering what the right steps are in order to help lead to more responsible and sustainable food production”.<sup>76</sup>

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<sup>72</sup> As outlined in .GOV.UK, [Farming for the Next Generation](#), 5 January 2017 and Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577

<sup>73</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Executive Summary, para 8. This includes all EU and Exchequer funding provided for farm support under both Pillar 1 and Pillar 2

<sup>74</sup> Defra, [Written Ministerial Statement](#), A brighter future for farming and our countryside, 27 February 2018

<sup>75</sup> Defra, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018

<sup>76</sup> HC321 Oral evidence from Rt. Hon Michael Gove, Secretary of State for the Environment, Food and Rural Affairs to the House of Commons Environment, Food and Rural Affairs Committee: The Work of Defra, [Q119](#), 13 June 2018

The Government's November 2017 [Industrial Strategy](#) already commits to a 'farm to fork' food policy and a Food and Drink Sector Council which has been operational since January 2018.<sup>77</sup>

In January 2018, Mr Gove set out why he thought a new farm support approach was needed in his [speech](#) to the Oxford Farming Conference:<sup>78</sup>

'..Having a subsidy system which incentivises farmers to place every acre they can into food production means that public money isn't always being spent on renewing natural capital assets like forestry and wetlands.'

"..Paying landowners for the amount of agricultural land they have is unjust, inefficient and drives perverse outcomes....It gives the most from the public purse to those who have the most private wealth.....It bids up the price of land, distorting the market, creating a barrier to entry for innovative new farmers and entrenching lower productivity."

He also outlined the UK Government's plans for future agricultural support until 2022 and four areas where he wants to drive a change in overall agricultural policy: <sup>79</sup>

- Developing a **coherent policy on food and a new metric for food quality**  
This is intended to integrate the needs of "agriculture, businesses, other enterprises, consumers, public health and the environment." It complements the Food Sector Council announced in the Industrial Strategy.
- Giving farmers and land managers the **time and tools to adapt** to the future to avoid a "precipitate cliff edge" but also to "prepare properly for the changes which are coming."
- Developing a **new method of providing financial support** for farmers which moves away from subsidies for inefficiency to public money for public goods.
- Ensure that "we build **natural capital thinking** into our approach towards all land use and management....so that we develop a truly sustainable future for the countryside."

### 3.1 Health and Harmony White Paper (Feb 2018)

The Defra command paper, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#) (February 2018) consulted on a "new, post-CAP domestic settlement for agriculture" marking the 'first step on the road to a new agricultural policy outside of the EU..."

The consultation was accompanied by [The Future Farming and Countryside Evidence Compendium](#) intended to provide a "detailed

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<sup>77</sup> Food and Drink Sector Council, [Summary of 3<sup>rd</sup> Meeting](#), 2 July 2018

<sup>78</sup>.GOV.UK, [Farming for the Next Generation](#), 5 January 2017

<sup>79</sup> .GOV.UK, [Farming for the next generation](#), 5 January 2018

assessment of the current state of agriculture in the UK” to underpin the proposals.

The consultation generated more than 44,000 responses.<sup>80</sup> During the 10 week consultation, Defra hosted 17 events across the country alongside groups including the National Trust, the NFU and the Eden Project, to hear ‘first-hand’ from more than 1,250 representatives of the UK’s food and farming sectors.<sup>81</sup>

The consultation centred on proposals to replace the Common Agricultural Policy and its current system of direct payments to farmers, with a new approach that ‘values not only the great British food farmers produce but also the unique public goods that farming, horticulture and forestry provide.’<sup>82</sup>

Secretary of State, Michael Gove’s accompanying [Written Ministerial Statement](#) criticised the “flawed” CAP for its “unjust, inefficient system that can drive perverse outcomes” and its bureaucratic approach that, in his view, constrains the UK’s ability to improve the countryside and natural environment.<sup>83</sup>

The consultation paper describes the approach of the proposed new land management system:

We will incentivise methods of farming that create new habitats for wildlife, increase biodiversity, reduce flood risk, better mitigate climate change and improve air quality by reducing agricultural emissions. We will achieve this by ensuring that public money is spent on public goods, such as restoring peat bog and measures which sequester carbon from the atmosphere; protecting dry stone walls and other iconic aspects of our heritage; and reducing disease through new initiatives that better monitor animal health and welfare.<sup>84</sup>

Mr Gove’s Ministerial Foreword to the command paper states:<sup>85</sup>

...Now we are leaving the EU we can design a more rational, and sensitive agriculture policy which promotes environmental enhancement, supports profitable food production and contributes to a healthier society.

The environmental damage we have suffered while inside the Common Agricultural Policy has been significant. Soil health has deteriorated. Farmland bird numbers have dropped. Precious habitats have been eroded.

And at the same time a system of subsidy skewed towards those with the biggest landholdings has kept land prices and rents high, prevented new talent coming into farming and held back innovation.

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<sup>80</sup> Defra, [More than 44,000 responses to future farming consultation](#), 9 May 2018

<sup>81</sup> As above

<sup>82</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577

<sup>83</sup> Defra, [Written Ministerial Statement](#), A brighter future for farming and our countryside, 27 February 2018

<sup>84</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018 para 6

<sup>85</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, p5



### 3.2 Proposed timetable for transition

The UK Government has indicated some of the timings and changes in farm support involved in a transition to a new UK agricultural policy. These are set out in Table 2 below.

**Table 2: Proposed Timings: Transition to a new environmental land management system in England**

YEAR		
2018	Basic Payment Scheme (BPS) as normal	Payments are made in the normal EU payment window of 1 December 2018- 30 June 2019.
2019	BPS as normal <i>(potential for some simplifications such as reduced evidence requirements and more on-line offers)</i>	Assuming that payments are made in the normal EU payment window of 1 December 2019- 30 June 2020.
CURRENT UK IMPLEMENTATION PERIOD FOR EU EXIT:		
29 March 2019 – 31 December 2020		
2020	<b>Agricultural Transition</b> = “several years” after any implementation period agreed with the EU. Defra is “looking” at what it will ask farmers to do in order to receive their Direct Payments during this period. <ul style="list-style-type: none"> <li>Will guarantee payments for a transition period in England beyond March 2019 (subject to consultation).</li> <li>Current cash total funds are guaranteed until 2022 <i>(including all EU and Exchequer funding under Pillar 1 and 2 of the CAP)</i>.</li> </ul> Propose to use this transition to start to: <ul style="list-style-type: none"> <li>reduce the largest BPS payments – either by a maximum cap or sliding scale of reductions</li> <li>Simplify schemes and inspections</li> <li>Review past schemes and pilot new approaches</li> </ul>	
2021		
2022		
2023		
2024		
Post 2024	New environment land management system.	After the agreed CAP transition period, Defra will replace the BPS with a system of public money for public goods (not naturally provided for by the market).

**Source:** Based on information provided in GOV.UK, [Farming for the Next Generation](#), January 2017 and Cm 9577 [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), February 2018

### 3.3 What are the key proposals?

Much of the consultation reiterated general aims for an improved, more self-reliant agriculture industry with a shift in farm support based on public money for public goods as set out in previous speeches.

It is proposed that existing payments will be re-distributed in a dedicated, agricultural transition period (which follows the EU/UK implementation period) by reducing the largest payments.

In many areas, the consultation sought views on specific approaches and timescales and how to support some of the most remote places which may find it most difficult to adapt after direct support is removed.

**Table 3** below summarises the key proposals in the White Paper for quick reference. Some key themes are then discussed in further detail in the sections which follow highlighting stakeholder comment.

**Table 3: Key proposals: Health and Harmony White Paper 2018**

<b>'Agricultural Transition' Period:</b>	<p>It is proposed that Direct Payments will continue during an 'agricultural transition' in England but they will be reduced and phased out by the end of that period. to prepare for new environmental land management systems.</p> <p>The agricultural transition will follow the expected Brexit two-year implementation period from March 2019 and will last a "number of years" beyond the implementation period.</p> <p>The consultation asks for views on the length of transition. Mr Gove has previous indicated that a possible period of 5 years might be appropriate.<sup>86</sup></p>
<b>Reduction in farm payments</b>	<p>To help to free up funds to help farmers prepare for change during this period, the Government proposes to apply reductions to Direct Payments starting with those receiving the highest payments, to fund environmental pilots of environmental land management schemes and to 'help farmers unlock their full potential for sustainable production.'</p> <p>Specific options for how payments might be reduced to some recipients are provided (see section 3.5 below).</p>

<sup>86</sup> Oxford Farming Conference, Q&A session, 5 January 2018.  
<https://www.youtube.com/watch?v=TxTkdCqS4o>.

### Devolved Administrations

The devolved administrations will have “the same flexibility to target support in a way that best suits their circumstances”.<sup>87</sup>

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#### Developing payments for public goods

Direct payments will be phased out by the end of the agricultural transition period to be replaced by a new Environmental Management System as set out in the Government’s 25 Year Environment plan.<sup>88</sup>

This will be based on a system of payments for delivering ‘public goods’ and it will replace greening, cross-compliance and Countryside Stewardship (the existing agri-environment scheme).<sup>89</sup>

It is proposed that these will mainly be around environmental enhancement e.g. incentives for farmers to deliver environmental improvements such as: creating new habitats for wildlife, reducing flood risk, improved soil health, reduced emissions of air and water pollutants, and greater biodiversity.

‘Public goods’ could also include: encouraging better public access to the countryside and improved health and welfare of farmed animals.

Defra intends to “learn from the implementation of past schemes, consult with stakeholders on the design of new and ambitious schemes and pilot them in preparation for the introduction of the system”. Pilots will be funded from the reductions in direct payments.

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#### Simplifying existing schemes

It is proposed that Countryside Stewardship schemes and cross-compliance could be simplified during the ‘agricultural transition’ period whilst the current ‘ineffective’ greening requirements currently set under CAP could be reduced or removed before moving to the new regulatory regime.<sup>90</sup>

Countryside Stewardship for 2019 will potentially include more simplified packages, simpler application forms, improved online offers and

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<sup>87</sup> As above, Executive Summary, para 10

<sup>88</sup> HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018,

<sup>89</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, p.16

<sup>90</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, para 13

reduced evidence requirements.<sup>91</sup> Some simplifications are already in place for 2018.<sup>92</sup>

<b>Animal Welfare</b>	The paper acknowledges the public's 'expectation of high animal welfare standards' and that consumers 'want to know what they are buying'. It then suggests a system for paying farmers who go further than legislative requirements in certain sectors (See Section 3.3).
<b>Plant and animal health standards</b>	Aims of preventing and tackling pests and diseases as set out in the 25-year environment plan are reiterated.
<b>Regulation and enforcement</b>	<p>The current system is criticised for disproportionate penalties in parts and for its insufficient scope for farmers to remedy underperformance.</p> <p>The paper commits the government to designing a new, fairer enforcement system and commissioning a review on lessening the burden on farmers.</p> <p>During the agricultural transition period there will be a more "integrated, appropriate and targeted enforcement system" than now.<sup>93</sup></p> <p>The payments made after the general Brexit implementation period could be made without adhering to cross-compliance rules. Instead, risk-based inspections would be made, and payments guaranteed as long as domestic animal welfare, environmental and other laws were observed.</p>
<b>Managing risk and volatility</b>	<p>The consultation discusses how the Government is exploring the role that it can and should play to facilitate developments in risk management tools to help smooth income volatility for farmers without distorting the development of a private market in this area.</p> <p>The Government will conduct behavioural research and engage the farming and insurance sectors to further inform work in this area.<sup>94</sup></p> <p>Defra is consulting on barriers to wider development of insurance, futures contracts and other risk management tools for farmers. The</p>

<sup>91</sup> As above, p.19

<sup>92</sup> .GOV.UK, [New Countryside Stewardship offers open for applications](#), 15 January 2018

<sup>93</sup> As above, Executive Summary, paras 20-22

<sup>94</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, p.53

Government is also considering how to improve the government response to major crises.<sup>95</sup>

The paper proposes “domestic provision for safety net mechanisms currently provided by the EU Common Market Organisation regulations, which will allow the government to intervene in such crises”.<sup>96</sup>

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**Fairness in the Supply Chain**

Farming Minister, George Eustice, has been tasked with considering overall fairness in the food supply chain and Secretary of State, Michael Gove has said that the Government could look at how the apprenticeship levy works to spend money for skills training more effectively across supply chains.<sup>97</sup>

**Data**

The Government wants to help farm businesses have a better view of the market akin to the larger retailers and processors. This is intended to reduce mistrust about pricing and profit-sharing along the supply chain.

Defra wants to explore how “the collection and dissemination of market data could be improved to increase transparency, encourage better communication and the sharing of information, and support efficient working across the supply chain”.<sup>98</sup>

Defra has committed to exploring the case for mandatory reporting of price and volume data from producers, manufacturers, wholesalers and retailers for some agricultural commodities whilst safeguarding the privacy of sensitive information.<sup>99</sup>

**Producer Organisations**

The paper promotes Producer Organisations as helping farmers increase their power in the supply chain. However, it is not clear how this diverges from current EU approaches.<sup>100</sup>

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<sup>95</sup>As above, Executive Summary, para 23

<sup>96</sup>As above, p 54

<sup>97</sup> Rt Hon Michael Gove, Farming for the next generation, speech to Oxford Farming Conference, 5 January 2018

<sup>98</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018,

<sup>99</sup> As above p.55

<sup>100</sup> As above p.59



<b>Rural Communities</b>	Digital connectivity is recognised as key. Defra is working with other Departments to support rural businesses on broadband and 4G access. <sup>101</sup>
<b>International Trade</b>	The paper states that competition will help drive down prices and that accessing new markets helps farmers. <sup>102</sup> The government is “fully committed” to maintaining high standards of consumer, worker and environmental protection in trade agreements”. It also recognises that the industry “needs sufficient time to prepare”. <sup>103</sup>
<b>Skills and Advice</b>	<p>Take-up of skills and knowledge is linked in the paper as an essential factor in improving efficiency and competitiveness on-farm. The Government is seeking to:</p> <ul style="list-style-type: none"> <li>• encourage more farmers to benchmark themselves against the best and commit to Continuing Professional Development (CPD).</li> <li>• acknowledge that “there is an important role for knowledge sharing, producer cooperation, and farmer-to-farmer learning to kick-start a wider culture of excellence.”</li> <li>• encourage farmers and growers to “invest in new technologies and processes to increase their profitability, tackle plant and animal diseases and improve animal health.”</li> <li>• work with the Agriculture and Horticulture Development Board (AHDB) to encourage a focus on stronger resource efficiency and sustainable growth.</li> </ul>
<b>Business Environment</b>	<p>The Government has committed to action in a number of areas to improve the overall business environment for agriculture:</p> <ul style="list-style-type: none"> <li>• Help create opportunities for the next generation of “talented people to enjoy a successful career in farming”, including further work with councils to encourage a vibrant network of council farms.</li> <li>• Explore new business models and the scope for reforming agricultural tenancy laws to support succession planning and remove barriers to investment.</li> </ul>

<sup>101</sup> As above, Executive Summary, para 24

<sup>102</sup> As above p.61

<sup>103</sup> As above, Executive Summary, para 25

<b>Integrating Research</b>	The UK Government wants to see more investment in automation and machine learning – towards the “hands-free farm.”
<b>Northern Ireland</b>	The paper briefly addresses the need to consider impacts on cross border farms in Northern Ireland and on the need to be mindful of the Good Friday agreement, noting the December 2017 Joint UK-EU report commitment to protecting North-South co-operation in full, including with respect to agriculture. <sup>104</sup>

### 3.4 Key themes in more detail and stakeholder reaction

#### Overall approach

Farming and environmental organisations (e.g. NFU, CLA, CPRE and Wildlife and Countryside Link) have broadly welcomed the proposed approach of public money for public goods via agricultural support measures.

However, they have also raised issues around the lack of clarity in the paper about impacts of the proposals, levels of funding during transition, the comparatively short timescales for implementation and highlighted the need to support the sector to achieve domestic food production policy aims.<sup>105</sup>

The [NFU's response](#) to Health and Harmony calls for the Government to ensure future plans provide a level playing field, maintain high standards and maintain investment in agriculture even if it is through other policies and less through subsidies.<sup>106</sup>

Some stakeholders fear that the capping and removal of Direct Payments has the potential to create a period of uncertainty and volatility for many in the farming community. The NFU has highlighted the role of Government in regulating to mitigate the impact of market failures on the sector.<sup>107</sup>

Shadow Defra Secretary Sue Hayman MP has been quoted as saying that the consultation showed the Government was “deeply confused about food and farming post-Brexit” with Labour offering “real solutions” including a comprehensive EU-UK customs union, widening

<sup>104</sup> As above, p 63

<sup>105</sup> House of Commons Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870, written submission by Wildlife and Countryside Link (HAH0012), para 1.1; Chartered Institution of Water and Environmental Management (HAH0009), para 2.1, [Q8, Q42](#) [Guy Smith]

<sup>106</sup> NFU, [Summary response to the Government's consultation 'Health and Harmony – The future for food, farming and the environment in Green Brexit](#), May 2018.

<sup>107</sup> NFU, [Consultation response to the government consultation: Health and Harmony: Environment, Food, Farming and a Green Brexit](#), 8 May 2018, p.67

of the Grocery Code Adjudicator's remit and reinstating the Seasonal Agricultural Workers Scheme.<sup>108</sup>

### **Food Supply Chain Manifesto**

Following the consultation deadline, a wide range of organisations across the food supply chain, including the NFU, published a joint manifesto – [Food Supply Chain Manifesto for a Successful Brexit](#).

This noted 'the detailed policy proposals' for reforming farm support and stated:<sup>109</sup>

The food and farming sectors are enthusiastic about the opportunity to reform agricultural policy once we leave the EU. In the short to medium term, while there remains considerable uncertainty about the trading environment in which farm businesses will operate post-Brexit, it's crucial that the government ensures stability and certainty for farmers, their suppliers and customers.

This had the key ask that changes to support for farming (both level and allocation) be phased in with time for businesses to adapt and become more productive and resilient. It also called for government to ensure that the alternative schemes and programmes are properly tested and 'can be shown to support productive, innovative and sustainable agriculture.'

The manifesto welcomed the commitment to the maintenance of funding in total cash terms until the end of this Parliament and called for public investment in agriculture to be maintained at sufficient level "to achieve policy objectives that support domestic food production alongside the delivery of public goods".<sup>110</sup>

### **Commons Environment, Food and Rural Affairs Committee (June 2018)**

The Environment, Food and Rural Affairs Committee held a short inquiry into the consultation proposals resulting in their June 2018 report [The Future of Food, Farming and the Environment](#).<sup>111</sup>

The Committee welcomed the 'level of ambition' in Defra's consultation and supported the public money for public goods approach. The Committee called for the government to 'seek to deliver public support for the integration for managing the land for environmental benefits and profitable food production.' It also welcomed the commitment to build on the success of existing agri-environment schemes.<sup>112</sup>

However, the Committee was concerned at the 'absence of detail':

...Too many central tenets of the policy remain unclear. Without clarity on funding, timing and delivery of the future agricultural

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<sup>108</sup> Farmers Guardian, Abi Kay, [Industry groups disappointed with consultation on future of farming](#), 27 February 2018

<sup>109</sup> [Food supply chain manifesto](#), 28 May 2018

<sup>110</sup> NFU, [Food Supply Chain Manifesto for a Successful Brexit](#), p.3

<sup>111</sup> HC 870, House of Commons Environment, Food and Rural Affairs Committee, [The work of Defra: Health and Harmony](#)

<sup>112</sup> HC 870, House of Commons Environment, Food and Rural Affairs Committee, [The work of Defra: Health and Harmony](#), para 114

policy, there is a risk that Defra's welcome ambitions will not be met. We look forward to receiving clarification and the opportunity to provide pre-legislative scrutiny well before the introduction of the Agriculture Bill.

The Committee called for a range of new detail from Defra:

- An **assessment of which current public bodies are suitable to provide the co-ordination of its new environmental land management system** and an assessment of what additional skills and resources this body will require given past performance of delivering rural payments and stewardship schemes.
- A **thorough sectoral assessment** of the withdrawal of Direct Payments to allow Defra to better target the additional support that will be required by small and medium-sized farms and businesses in especially vulnerable sectors.
- A **government commitment to fully fund the agricultural policy following transition (post-2022)** and ring-fence the funds that are released from the withdrawal of Direct Payments to fund the rural economy and the environment.
- Defra to **confirm as soon as possible**:
  - the timing and length of the 'agricultural transition' period
  - the status of cross-compliance and 'greening' requirements during the transition period.
  - that all existing environmental schemes will be supported to their completion.
- The Government to produce **a farm productivity plan** by May 2019 covering: the provision of farm advice (including on new technologies), tax breaks, capital grants, mobile and digital infrastructure.

## Transition period

Defra has proposed an 'agricultural transition' period after any agreed withdrawal period with the EU. This is intended to "give farmers time to prepare for new trading relationships and an environmental land management system".<sup>113</sup>

During transition direct payments will be redistributed (see section below) and existing schemes will be simplified.

The consultation proposes that before the new system is introduced, during the transition period, existing scheme rules will be simplified, principally those under Countryside Stewardship and cross-compliance and "ineffective greening requirements" currently set under CAP will be reduced.<sup>114</sup>

The [consultation](#) also proposed making payments during the transition period irrespective of the area farmed:

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<sup>113</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Executive Summary, para 9

<sup>114</sup> As above, para 13

Under this approach, there would be no requirement to remain a farmer. It would be a radical simplification and, for example, would remove the need for recipients to meet land eligibility rules or comply with greening to receive payment. Payments to each applicant could be based on the value of Direct Payments made to them in a historic reference period. Farmers might choose to use the payments to invest in and adapt their businesses, or exit the sector.<sup>115</sup>

Farming unions across the UK continue to highlight that uncertainty in the industry will deter farmers from making long-term improvements and investment decisions.<sup>116</sup>

The Commons Environment, Food and Rural Affairs (EFRA) Committee noted in its report on the White Paper that “while a transition period is welcomed, there appears to be little consensus on how long it should be.” Evidence to the committee gave a range of estimates from 3-7 years.<sup>117</sup>

Those from the agricultural sector e.g. NFU and Dairy UK want the period to be long enough to ensure that farmers in England have time to adapt to change and invest to improve their productivity. However, environmental organisations such as Wildlife and Countryside Link and the Chartered Institution of Water and Environmental Management are concerned that any delay could result in inaction by farmers.<sup>118</sup>

The CLA has highlighted that the transition is a crucial phase and ‘it is vital that no business with the potential to be viable in the long term should be compromised in the way transition is handled.’ The CLA wants to see transition offered as a managed process allowing farming businesses to adapt to the new trading environment, new labour arrangements and the new, food, farming and environmental policy rather than the removal of direct payments.<sup>119</sup>

Professor of Rural Policy and Director of the Countryside and Community Research Institute, Janet Dwyer, has suggested a longer transition period to avoid potential environmental risk arising from too quick a policy change.<sup>120</sup> She has drawn parallels with the approach taken when 2005 CAP reforms meant that Member States had to start moving payments from being based on historic payments to being area based and subsidies were decoupled from production. She has cautioned that Defra phased that change over 10 years to ensure that farmers knew what was happening and had time to adjust and make plans.<sup>121</sup>

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<sup>115</sup> Cm 9577, Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018 p 21

<sup>116</sup> NFU online, [Banks join NFU calls for certainty around investment](#), 29 June 2018

<sup>117</sup> Soil Association (HAH0019), para 31; British Ecological Society (HAH0032), para 16

<sup>118</sup> As above, Chartered Institution of Water and Environmental Management (HAH0009), paras 5-5.5; Wildlife and Countryside Link (HAH0012), para 5.4

<sup>119</sup> CLA, [Consultation response: Health and Harmony – The future for Food, Farming and the Environment in a Green Brexit](#), 20 April 2018

<sup>120</sup> As above, [Q212](#) [Professor Dwyer]

<sup>121</sup> As above, [Q206](#)



## Public money for public goods

### A new direction for farm support

The consultation includes proposals for a new system of support for farmers and land managers which is “underpinned” by payment of public money for the provision of public goods and a natural capital approach which properly values the natural environment.<sup>122</sup> The new system will pay for the delivery of public goods (described below) which the market does not naturally provide for. The new system is aimed at providing support as “we move towards a more effective application of the ‘polluter pays’ principle”.<sup>123</sup>

Successive UK Governments have highlighted in various CAP reforms that farm support, without requiring public goods in return, is not the best use of tax-payers money.<sup>124</sup>

The Commons EFRA Committee has noted that “Defra has a “huge task” to ensure a lead agency and national framework are in place to start delivering its policy based on public goods with adequate funding to police an independent inspection regime.<sup>125</sup> It has suggested that civil sanctions and fines could be hypothecated to provide the Environment Agency or equivalent public body with the necessary extra resources.<sup>126</sup>

### Is this a completely new approach?

A system of incentivising public goods is not an entirely new approach for farmers.

The current CAP system is largely based on area payments but some elements of direct payments and rural development grants under the CAP are already linked to incentivising or requiring farm management/activities which enhance or protect the environment as well as promoting the rural economy. The next CAP round (see section 7) is further emphasising this approach.

Currently Member States can ‘modulate’ some funds (move across budgets) from direct payments to rural development programmes if they want to take a more public goods approach. Funding already differs across the UK, indicating the different priorities of the devolved nations.

Wales modulates the full 15% which is allowed compared to 12% in England and 9.5% in Scotland and no Pillar 1 to Pillar 2 transfer in Northern Ireland.<sup>127</sup> These include some of the higher transfers among

<sup>122</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, para 13

<sup>123</sup> As above paras 13-15

<sup>124</sup> See GOV.UK, [CAP greening criteria announced](#), 10 June 2014 and House of Commons Library briefing, [Brexit impact across policy areas](#), 26 August 2016

<sup>125</sup> Environment, Food and Rural Affairs Committee inquiry, [The future for food, farming and the environment](#), Sixth Report of Session 2017–19, HC 870, para 89

<sup>126</sup> As above, para 98

<sup>127</sup> Northern Ireland’s 0% modulation was initially due to lack of political consensus and legal intervention. There was an opportunity to review this for 2017 but Northern

Member States with transfers of around 3% for France and 4.5% for Germany in the same direction.<sup>128</sup>

The WTO agriculture agreement allows governments to support their rural economies and agri-environment schemes, but preferably through policies that cause least distortion to trade. It also allows some flexibility in the way commitments are implemented.<sup>129</sup>

The House of Lords EU Energy and Environment Committee enquiry on [Brexite: Agriculture](#) (May 2017) explored how the public money for public goods approach could work with WTO rules.

In WTO terminology subsidies are identified by 'boxes' given the colours of traffic lights.<sup>130</sup> Amber is used for subsidies that distort trade and production and should be limited, green box subsidies broadly cannot distort trade or involve price support. UK Ministers have already acknowledged that the UK might need to use its Amber Box allowances, not just Green, to pay for a wider range of public goods than environmental enhancement.

### **Which public goods might be funded?**

The Government has indicated that environmental enhancement and protection are of key importance as a public good as well as "cultural benefits that improve our mental and physical well-being, while protecting our historic environment".<sup>131</sup>

The five main areas suggested in the consultation for future public support are:<sup>132</sup>

- Environmental enhancement and protection (*including improved air, water and soil quality, increased biodiversity, climate change mitigation and adaption*)
- Animal and plant health and welfare
- Improved productivity and competitiveness
- Preserving rural resilience, traditional farming and landscapes in the uplands
- Public access to the countryside

The 25 Year Environment Plan also refers to a range of particular public goods that farmers can be paid to deliver such as:<sup>133</sup>

- returning cultivated land to wildflower meadows

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Ireland Executive has maintained the position after consultation. See DAERA, [McIlveen announces no reductions to Pillar I funding](#), 22 June 2016

<sup>128</sup> IEEP, CAP 2020: [Member State implementation of the CAP for 2015-2020 - a first round-up of what is being discussed](#), 16 April 2014

<sup>129</sup> WTO, [Agriculture: Fairer markets for farmers](#) (accessed 11 September 2018)

<sup>130</sup> See WTO, [Domestic support in agriculture](#) (accessed 11 September 2018)

<sup>131</sup> Cm 9577, [Defra, Health and Harmony: the Future for food and farming and the environment in a Green Brexit](#), February 2018, Executive Summary para 16

<sup>132</sup> Cm 9577, [Defra, Health and Harmony: the Future for food and farming and the environment in a Green Brexit](#), February 2018, Executive Summary, para 14 and 16

<sup>133</sup> HM Government, [A Green Future: Our 25 Year Plan to Improve the Environment](#), January 2018, p.7

- planting woodland
- restoring habitats for endangered species
- recovering soil fertility
- increasing biodiversity

The consultation paper asked respondents to rate public goods in order of preference. However, some environmental organisations (eg The Institution of Environmental, and The Wildlife Trusts) believe that this risks over-simplifying the complexity of the natural world. Most witnesses to the EFRA Committee investigation supported wider ‘public good’ outcomes such as improved animal health and welfare, public health and healthy food production.<sup>134</sup>

Secretary of State, Michael Gove also indicated earlier in 2018 that the delivery of wider public goods such as: scientific innovation, technology transfer, skills, infrastructure (e.g. universal super-fast broadband), public access and rural resilience (smaller farms and rural businesses supporting rural communities and culture) could be rewarded.<sup>135</sup>

The 25 Year Environment Plan also commits the Government to:

- incentivise and reward land managers to restore and improve natural capital and rural heritage with a more effective application of the ‘polluter pays’ principle (where those who cause pollution pay for it)
- explore new approaches such as offering private payments for eco-system services, reverse auctions and conservation covenants.
- Build on previous countryside stewardship and agri-environment schemes but keep the bureaucracy of future land management schemes to a minimum.
- explore where capital grants could support the adoption of long-term sustainable land management practices.

The Natural Capital Committee has noted that if good value for money is demonstrated in the switch in approach to funding public goods, then “further investment is justified”.<sup>136</sup>

### **Broad consensus on the approach**

Farming organisations, the wider agri-food sector and environmental organisations broadly support this shift in approach. They vary in the emphasis that they think should be placed on different ‘goods’ and there is a lively debate about how far food production is a public good.

The NFU has welcomed the Government’s recognition of farming’s “unique position” to “deliver for the environment” as set out in the 25

<sup>134</sup> As above, [Qq242–243](#) [Professor Dwyer]; Anglian Water Services ([HAH0016](#)), para 3; Friends of the Earth England Wales and Northern Ireland ([HAH0027](#)), paras 3.1–3.9; Sustain: the alliance for better food and farming ([HAH0004](#)), paras 11–12; National Pig Association ([HAH0021](#)), paras 15–18; First Steps Nutrition Trust ([HAH0039](#)), para 2

<sup>135</sup> GOV.UK, [Farming for the Next Generation](#), 5 January 2017

<sup>136</sup> Natural Capital Committee, [Advice to Government on the 25 Year Environment Plan](#), September 2017

Year Environment Plan and Health and Harmony, However, it has also cautioned that only productive and viable businesses can deliver the environmental benefits envisaged in the Plan. It therefore believes that it is vital that a holistic approach is taken with environment policy joined-up with future food policy (as outlined in the Government's [Industrial Strategy](#)) and measures to manage volatility enabling 'profitable, productive and progressive' farm businesses post-Brexit.<sup>137</sup>

In August 2018, a coalition of 55 NGOs (including Wildlife and Countryside Link, National Trust, RSPCA and WWF) [wrote to the Prime Minister](#) to highlight the importance of maintaining the Government's "ground-breaking approach" describing the forthcoming Agriculture Bill as presenting a "once in a generation opportunity to secure public goods for society".<sup>138</sup>

Organisations such as Buglife,<sup>139</sup> and the Soil Association have welcomed the proposals in the UK Government's 25 Year Environment Plan to support habitats, soil maintenance and pollinators in a new land management system.<sup>140</sup>

The [RSPB](#) views the proposed system as a better way of investing the existing farm support budget in a way which works for nature and underpins farm livelihoods. It has highlighted recent joint research with Defra which shows that some agri-environment schemes have led to more than a doubling in the abundance of around 17 priority bird species despite the overall national trend of declining numbers of farmland birds since 1970.<sup>141</sup>

A recent WWF poll, undertaken by Populus, found that 91% of the UK public want to see farmers paid to protect nature (Populus polled 2069 people).<sup>142</sup>

### **Animal Welfare as a public good?**

The House of Commons Environment, Food and Rural Affairs Committee reported that it had "heard widespread support" for the inclusion of animal health and welfare as public goods. The Committee recommended that Defra should commit to exploring how this could be achieved in trials during the agricultural transition period.<sup>143</sup>

The consultation suggests that rather than "significantly raising the UK legislative baseline, we could pilot schemes that offer targeted

<sup>137</sup> NFU, [25 Year Environment Plan launched by PM: Environmental Policy and food production must go hand in hand – NFU](#), 12 January 2018

<sup>138</sup> [Letter to Theresa May](#), 24 August 2018 as highlighted in Wildlife and Countryside August update on [Agriculture](#) web page [as viewed on 9 September 2018]

<sup>139</sup> Buglife, [25 Year Environment Plan promises meadows for bees](#), 11 January 2018

<sup>140</sup> Soil Association, [Secretary of State commits to soil health](#), 25 October 2017

<sup>141</sup> RSPB, [UK farmers offer hope for farmland birds](#), 2 January 2018

<sup>142</sup> Defra, [More than 44,000 responses to future farming consultation](#), 9 May 2018 and WWF, [Whilst England basks in a sunny bank holiday, 8 out of 10 people want farmers paid to protect nature](#), 5 May 2018

<sup>143</sup> Environment, Food and Rural Affairs Committee inquiry, [The future for food, farming and the environment](#), Sixth Report of Session 2017–19, HC 870, para 85

payments to farmers who deliver higher welfare outcomes in sectors where animal welfare largely remains at the legislative minimum".<sup>144</sup>

The British Veterinary Association has supported the concept of public money to support animal welfare.<sup>145</sup>

BVA has called on the Government to utilise public money to incentivise and support animal health and welfare outcomes as public goods. Therefore, we welcome the Government recognition of animal health and welfare as public goods that will be supported within future agricultural policy post Brexit.

Various witnesses to the EFRA inquiry, including the NFU and Compassion in World Farming supported the idea that improved animal health and welfare should be funded as a public good.<sup>146</sup> Which? suggested that this approach could be trialled during the transition period:

As well as piloting environmental land management schemes during this transition period, there is also a need to understand and test how issues that matter to consumers, such as higher food safety, quality and welfare standards can also be incentivised and achieved.<sup>147</sup>

The National Pig Association has said that the Government should place equal value on improving animal health as it does on environmental protection.<sup>148</sup>

### **Food production as a public good?**

The House of Commons Environment, Food and Rural Affairs Committee report on the consultation – [The Future of Food, Farming and the Environment](#) (June 2018) highlighted that the consultation paper lacked discussion of wider food policy and had ‘failed to link agricultural policy to wider public health goals and reducing diet-related diseases.’ The Committee recommended that healthy food should be supported as a public good under the new farm support model.<sup>149</sup>

Organisations such as The Soil Association and specialists such as Prof. Tim Lang from the [Centre for Food Policy](#) have also argued that these ‘public goods’ should include healthy, safe and affordable food.<sup>150</sup>

However, food production is an unlikely candidate to be specified through the ‘public goods’ approach. Linking any farm payments to production has constraints under World Trade Organisation rules, which CAP subsidies are already subject to. Also, food production has a commercial market and the proposed funding is to help deliver public goods which the market does not normally provide for.

<sup>144</sup> Defra, [Health and Harmony](#), February 2018, Executive Summary, para 18

<sup>145</sup> [British Veterinary Association](#) consultation response para 15

<sup>146</sup> Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870Q4 [Guy Smith, NFU] [Tim Breitmeyer]; [Q243](#) [Professor Dwyer]; Soil Association ([HAH0019](#)), para 24

<sup>147</sup> As above, Which? ([HAH0020](#)), para 11

<sup>148</sup> As above, National Pig Association ([HAH0021](#)), para 3

<sup>149</sup> HC 870, Sixth report of the House of Commons Environment, Food and Rural Affairs Committee (Session 17-19), [The Future for Food, Farming and the Environment](#), 23 May 2018

<sup>150</sup> See for example, Soil Association, [The Clock is Ticking](#), 1 May 2018



However, the Government may want to use other policy levels to ensure that farm businesses can flourish with high productivity e.g. through public health goals and other general measures which support farm businesses in general (and therefore indirectly support food production). For example, tax breaks, accreditation schemes, reducing volatility and improving resilience.

Environment Secretary, Michael Gove has said that Defra hopes to "produce a food strategy document which will look at everything from improving Government procurement to considering what the right steps are in order to help to lead more responsible and sustainable food production and help people towards a better diet".<sup>151</sup>

### **Funding levels**

Some organisations such as the Green Alliance have suggested that the proposed funding for environmental provision is insufficient and that even the current financial contribution of £3.1 billion for agri-environment schemes is not enough to reach existing Government commitments on the environment.<sup>152</sup>

A report commissioned by RSPB, the National Trust and the Wildlife Trusts in 2017 made a 'conservative estimate' that an annual budget of £2.3bn would be required to deliver the Government's existing commitments for environmental land management in the UK (£1.3bn in England). This estimate was produced before the publication of the Government's 25 Year Environment Plan and did not include administrative requirements, advice or costs associated with monitoring and evaluations.

The UK currently spends £3.1 billion on the CAP, with around £2bn of this being spent in England. However, only £400 million is spent on agri-environment schemes.<sup>153</sup>

Several organisations, such as The National Trust, have suggested that the provision of public goods could also be funded by other non-public sector sources such as water companies.<sup>154</sup> The Chartered Institution of Water and Environmental Management (CIWEM) has cautioned that private markets for public goods are not "sufficiently mature to be applied as widely as would be required" so public money will be needed in the interim.<sup>155</sup>

### **How could the new schemes work?**

Defra has said that it will seek to incorporate the best elements of previous and existing schemes in designing the new, improved post-EU exit offer in a new environmental land management scheme. It is also looking at management practices to deliver a broader suite of

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<sup>151</sup> HC 321: The Work of Defra, Oral evidence from The Rt Hon Michael Gove to the House of Commons Environment, Food and Rural Affairs Committee, [Q119](#), 13 June 2018

<sup>152</sup> To restore nature within a generation and deliver commitments in the 25-year environment plan

<sup>153</sup> RSPB, [Health and Harmony consultation response](#), 5 May 2018

<sup>154</sup> As above, The National Trust ([HAH0005](#)), para 16

<sup>155</sup> As above, Chartered Institution of Water and Environmental Management ([HAH0009](#)), para 4.2

environmental outcomes as well as alternatives to an option-based approach to delivery.<sup>156</sup>

Annex A of the consultation notes that the department has “access to a lot of data to evaluate hundreds of similar options that have been offered in recent decades; and a review of current measures will form one part of our approach to designing a new system”.<sup>157</sup>

Generally, witnesses to the EFRA committee inquiry suggested the system should be on a contractual basis where environmental outcomes are bought by the Government or public-sector organisation from farmers and land owners. Witnesses made a range of suggestions for effective co-ordination of new approaches including:

- A single agency to “lead a national framework for delivering environmental policy outcomes”.<sup>158</sup>
- delivery may be most appropriate at the ecosystem level, connecting agri-environment schemes on a larger spatial scale;<sup>159</sup>
- a ‘buyers’ and a ‘sellers’ network could be established which would echo the direction of the Catchment Based Approach and 25 year plan with strategic supra-catchment oversight;<sup>160</sup>
- a contractual basis for delivering public goods, on a multi-annual basis to provide certainty;<sup>161</sup>
- An agreed national framework should inform local delivery. The lead agency should also have a role in funding pilots and novel approaches, such as reverse auctions and direct commissioning of specific outcomes, in some instances devolving delivery to local partnerships”;<sup>162</sup> and
- at the local level a joint ‘committee’ could be made up of local community reps, farmers and landowners, park authorities, conservation bodies, private sector and planners, in facilitated meetings, who would devise a management plan for the area to be signed off by the Secretary of State”.<sup>163</sup>

### 3.5 Phasing out Direct Payments

Direct payments will be phased out by the end of the agricultural transition period to be replaced with a new Environmental Management System. This approach was made clear in Defra’s [25 year environment](#)

<sup>156</sup> Cm 9577, Defra, Health and Harmony, The future for food, farming and the environment in a green Brexit, [Annex B: Current Countryside Stewardship Options](#), February 2018

<sup>157</sup> Cm 9577, Defra, [Health and Harmony, The future for food, farming and the environment in a green Brexit, Annex A: Stakeholder Proposals](#), February 2018,

<sup>158</sup> House of Commons Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870, The National Trust ([HAH0005](#)), para 33

<sup>159</sup> As above, British Ecological Society ([HAH0032](#)), para 7

<sup>160</sup> As above, Anglian Water Services ([HAH0016](#)), para 4

<sup>161</sup> As above, [Q51](#) [Tim Breitmeyer]

<sup>162</sup> As above, Wildlife and Countryside Link ([HAH0012](#)), paras 4.4

<sup>163</sup> Sustain: the alliance for better food and farming ([HAH0004](#)), para 20

[plan](#) and the Health and Harmony consultation sets out possible ways of achieving the transition.

### Stakeholder views

Most stakeholders, across sectors, seem supportive, or at least understanding, of the Government's proposal to withdraw Direct Payments from farmers and landowners.<sup>164</sup>

Farming unions have generally welcomed the Government's commitment to maintaining the same cash funds for farm support until 2022. The NFU and Dairy UK have also positively acknowledged the phase out of direct support.

[Dairy UK](#) has said that it "broadly supports" the move to phase out the direct payments as long as assurances are given that these funds are ring fenced for the purpose of agriculture and invested to improve and maintain the competitiveness of UK dairy farms against their European neighbours.<sup>165</sup>

The NFU has said that UK farmers 'share the aspiration of reducing their reliance' on direct payments.<sup>166</sup> The NFU has acknowledged that 'direct payments based on area are crude and not very sophisticated';<sup>167</sup> The NFU [response](#) to the Health and Harmony consultation explains what farmers expect in terms of alternative government support for the industry:<sup>168</sup>

Measures to help farmers manage their **exposure to risk** are essential to deal with a variety of external factors that contribute to income volatility such as global commodity market fluctuations, changing trade relations and weather, pest and disease threats. Direct payments are currently the most substantial and effective tool that farmers have to mitigate this volatility. While farmers in the UK share the aspiration of reducing their reliance on these payments, it should not be arbitrarily pursued without sufficient and robust policy replacements.

In the short to medium term direct payments will continue to play a significant role in underpinning the financial viability of many farm businesses, given price volatility and the failure of markets to deliver a fair reward. In the medium to long-term the UK should look to develop **market based tools** which will help to smooth the impact of market forces on farm incomes. The government has a clear role to play in regulating to mitigate the impact of market failure situations, such as ensuring minimum contract terms, or other legal safeguards in situations of significant market imbalance.

The [AHDB's consultation response](#) states that the policies are "highly likely" to lead to restructuring of farming and growing as businesses which become unviable cease production. It considers it vital to equip

<sup>164</sup> See for example, HC 870, House of Commons Environment, Food and Rural Affairs Committee, [The work of Defra: Health and Harmony, Q88](#); The Campaign to Protect Rural England ([HAH0026](#)), para 6; British Ecological Society ([HAH0032](#)) para 3; Wildlife and Countryside Link ([HAH0012](#)) para 5.5; Which? ([HAH0020](#)) para 10

<sup>165</sup> Dairy UK, [Dairy UK responds to Defra announcement of consultation on the Future of Food, Farming and the Environment](#), 27 February 2018

<sup>166</sup> NFU online, [NFU response to Health and Harmony consultation](#), 8 May 2018

<sup>167</sup> As above, [Q16](#)

<sup>168</sup> NFU online, [NFU response to Health and Harmony consultation](#), 8 May 2018

farmers and growers with evidence and tools to make strategic choices.<sup>169</sup>

A range of stakeholders including the Council for the Protection of Rural England (CPRE) and Sustain: The Alliance for better food and farming have warned that small and medium-sized farms would suffer disproportionately from the loss of Direct Payments.<sup>170</sup>

In oral [evidence](#) to the EFRA Committee on 2 May 2018, Farming Minister George Eustice said that the Government was looking at the impacts on different sectors of phasing out the direct payments:<sup>171</sup>

What is generally accepted is that in some sectors, particularly beef and sheep, particularly in upland areas or moorland areas on more disadvantaged farmland, and particularly, as well, if, in addition to those disadvantages, they are tenant farmers, there is more vulnerability there to disturbance of the existing direct payments system.

We have kept open in our consultation. We have said that we recognise that there could be some particularly vulnerable sectors, and that we are inviting views on how we should address that. It may be that you would have a slower pace of change, or recognise that they provide an important position for the social fabric in some of those areas, or it may be that you design your new system in a way that is sufficiently generous that they can have a business model.

He also commented that some sectors might receive higher payments than now because they can deliver more 'public goods':

There are lots of public goods that the uplands can offer and could be rewarded for, in a way that perhaps they are not now, because at the moment the moorland rate is lower than the lowland rate of subsidy. It is almost perverse and upside-down that the most disadvantaged areas, which are doing most for public goods at the moment, are getting a lower payment. Probably we could correct that in the design of the new system.<sup>172</sup>

## Options Proposed

The command paper sets out in more detail for the first time some of the options for changing direct payments.<sup>173</sup> It outlines three possible approaches:

- **Apply progressive reductions to farmers' payments, with higher percentage reductions to amounts in the higher payment bands** (as with income tax). This would affect some 19,000 farmers, or 22% of recipients.

<sup>169</sup> AHDB, [AHDB response to Health and Harmony consultation](#), May 2018

<sup>170</sup> As above, [Q108](#); [Q209](#) [Peter Dawson]; Sustain: the alliance for better food and farming ([HAH0004](#)); para 5-7; Chartered Institution of Water and Environmental Management ([HAH0009](#)), para 1.3-1.4; The Campaign to Protect Rural England ([HAH0026](#)), para 1

<sup>171</sup> As above, [Q290-366](#)

<sup>172</sup> As above

<sup>173</sup> Cm 9577, Defra, [Health and Harmony, The future for food, farming and the environment in a green Brexit](#), 27 February 2018 p20-24

- **Apply a cap to the largest payments, such as a cap of £100,000 for the first year of transition.** This would affect 2,100 farmers (around 2% of recipients)
- **Apply a different cap or reduction to a higher or lower number of payments,** using different thresholds and reduction percentages.

Each 1% reduction in Direct Payments in England releases approximately £16.5 million. The examples given would free up £150 million in the first year.<sup>174</sup>

The command paper sets out new approaches on conditions for receiving direct payments during the agricultural transition period:

- Broadly retain and simplify the current system (such as cross compliance and removal of ineffective greening rules)
- Continue to pay current recipients irrespective of the area farmers, with no requirement to remain a farmer.

This “radical” simplification would remove the need to meet land eligibility or greening rules and farmers could choose to invest in and adapt their businesses or exit the sector. A new enforcement mechanism would be needed to ensure farmers were meeting environmental and animal and plant health and welfare rules. Delinking payments would avoid perverse incentives to split businesses under the model for capping payments to larger recipients.

### Stakeholder views

Stakeholder reactions have varied. Some, such as Friends of the Earth, who during previous CAP reform consultations have supported the broad principle, continue to support capping of payments to those receiving the highest amounts “to help ensure fairer distribution of money and greater delivery of public goods.” The organisation’s response to Defra’s consultation added that capping:

could be complimented during the transition period by a gradual reduction in payments to all farmers, with higher percentage reductions applied to larger recipients. The lowest bands and farmers who rely on direct payments for the majority of their income, such as upland livestock farmers, could potentially be exempt from reductions for longer.<sup>175</sup>

Farming organisations were more critical of the proposals. The NFU considered that none of the options are suitable for “a proportional and equitable transition to a new support regime”. Their consultation response stated that:

The NFU’s long held position is that capping is not a beneficial or equitable approach for the redistribution of funding as farmers at all scales of production face significant economic pressures which the direct payments address. However, in the case of reducing direct payments, widespread NFU member consultations have

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<sup>174</sup> Cm 9577, [Defra, Health and Harmony. The future for food, farming and the environment in a green Brexit](#), 27 February 2018 p20

<sup>175</sup> [Friends of the Earth Defra Health and Harmony consultation response](#), May 2018 [Accessed 11 September 2018]



demonstrated that once there is greater certainty about our international trading environment, and the government has developed proven alternative ways to support the industry, a phased reduction approach be adopted adhering to the following principles:

- It should remain equitable and fair for all active farmers,
- It should not compromise the UK's safe, secure and traceable domestic food supply base,
- Reductions in direct payments must be commensurate with a realistic ability to redirect spending effectively and productively in a way that maintains support for active farmers.<sup>176</sup>

The Tenant Farmers Association (TFA) accepted the capping principle but preferred option (ii) which is to apply a cap to the largest payments, and then only down to a level of £100,000:

we do not consider that it would be appropriate to go any lower. We believe that this would immediately take the pressure off levels of rents payable on Farm Business Tenancies as it will reduce the incentive for existing owner occupiers to acquire additional land to expand their operations and take advantage of the direct payments available with entitlements acquired in the marketplace. The TFA would argue that this cap should apply for a period of five years whilst new schemes are developed to replace those be left behind.<sup>177</sup>

### 3.6 Regulation and enforcement

The current system of farm regulation is criticised in the consultation document for disproportionate penalties in parts and for its insufficient scope for farmers to remedy underperformance. A new fairer enforcement system is to be designed.

The UK Government has also said that it will be continuing to look at overall agricultural regulation from risk-based inspections to simplified applications for support schemes. The UK Government lobbied for this in the Commission's recent CAP simplification exercise.<sup>178</sup> Michael Gove has described how the UK will "seize opportunities to develop a different regulatory culture" outside the EU.<sup>179</sup>

Dame Glenys Stacey has been commissioned by Defra to conduct a review on lessening the burden on farmers. No timescale for its conclusion is set out but an interim report was published in July 2018. During the transition period there will be a more "integrated, appropriate and targeted enforcement system" than now.<sup>180</sup>

The opportunities for a new regulatory culture are discussed further in Chapter 8.

<sup>176</sup> NFU online, [NFU response to Health and Harmony consultation](#), 8 May 2018

<sup>177</sup> [Tenant Farmers Association response to Health and Harmony consultation](#), 3 May 2018 [Accessed 11 September 2018]

<sup>178</sup> See for example .GOV.UK, [Environment Secretary calls for fewer inspections to make CAP simpler for fairness](#), 21 July 2015

<sup>179</sup> GOV.UK, [Farming for the next generation](#), 5 January 2018

<sup>180</sup> Defra, [Health and Harmony](#), February 2018, Executive Summary, paras 20-22

Respondents to the consultation have expressed concerns about the impact of withdrawing subsidies without having adequate regulations in place to prevent a 'race to the bottom', drawing on the experience in New Zealand in the 1980s. Chief Economist at the Green Alliance, Angela Francis cautioned that light-handed regulation caused "devastating" environmental damage in that particular instance.<sup>181</sup> However, in New Zealand's case, the withdrawal of subsidies was due to wider budget problems and was not a phased and programmed withdrawal.<sup>182</sup>

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<sup>181</sup> Environment, Food and Rural Affairs Committee inquiry, [The work of Defra: Health and Harmony](#), HC 870 [Q95](#)

<sup>182</sup> HL Paper 146, House of Lords European Union Committee, 15<sup>th</sup> Report of Session 2015-16, [Responding to price volatility: Creating a more resilient agriculture sector](#), 16 May 2016

## 4. Scotland: A Rural Funding Transition

The Scottish Government explored potential outcomes for Brexit in its report [Scotland's Place in Europe: People, Jobs and Investment](#) (January 2018). This highlighted the importance of beef farmers to the Scottish farming sector and its vulnerability to high export tariffs.

Four champions of agriculture were appointed in early 2017 to advise the Scottish Government on a strategy for delivering the vision set out in the Scottish Government's vision for the 'Future of Scottish Agriculture' (2015). The agricultural champions published their [Future Strategy for Scottish Agriculture](#) in May 2018.

This noted that:<sup>183</sup>

Unprecedented changes are coming, on top of longstanding problems. Past policies have led to dependency, inefficiency and inequality in many cases and will not work for the future.

Farm support is not a right, it's an asset given by the public to help farmers and crofters improve their businesses and deliver what the marketplace does not fund. We recommend that a top priority starting immediately is mindset change, to help farmers and crofters to become more progressive, entrepreneurial and resilient in a way that is already the culture in the unsupported sectors. All businesses must keep pace with the evolution of demand and societal preferences, and farming is no different.

The Champions also called for co-operation between Government and stakeholders on a 10-15 year strategy for Scottish farming including the transition from the current support system. They recommended that the transition period should be no more than 3-5 years.

### 4.1 Scottish Consultation: Stability and Simplicity

The Scottish Government set out its proposals for rural funding after Brexit in its June 2018 consultation [Stability and Simplicity: Proposals for rural funding transition period](#) (which closed in August 2018).

In the Ministerial Foreword, Fergus Ewing, the Cabinet Secretary for the Rural Economy and Connectivity, observes that Scotland is setting out its own domestic plans because it can "no longer wait for Westminster":

There is little clarity over funding. We have a commitment to provide the same cash total in funds for farm support until the end of the current UK Parliament, and for contracts entered into before the end of March next year to be honoured. But that is all. We continue to seek additional information around future funding.

In the near future, we might not even have the powers over farming, food production and environment previously devolved to

"Despite the uncertainty from the UK Government on funding and powers, time is running out and we need to develop a new rural support policy for Scotland."

Scottish Government, [Stability and Simplicity](#), June 2018

"All businesses must keep pace with the evolution of demand and societal preferences and farming is no different."

"It must be accepted that some farm businesses won't survive even if current policies were to remain."

[Final Report](#) of the Scottish Government Agriculture Champions

May 2018

<sup>183</sup> A Future Strategy for Scottish Agriculture: [Final Report by the Scottish Government's Agricultural Champions](#), 31 May 2018

Scotland with which to make the best of things. We might have no say over future policy or funding schemes, even though we have distinct Scottish needs that differ significantly from the rest of the UK. But we can no longer wait for Westminster and must get on with determining our own future. People deserve security and stability in the short-term.<sup>184</sup>

The consultation seeks views on the same kinds of areas as the Welsh, English and Northern Irish consultations with less emphasis on a payment for public goods approach. It continues to work a little more within the existing CAP architecture but as in the other consultations, indicates that there is scope for some support schemes to be 'streamlined and simplified', to free up resources that could be used to pilot and test activities likely to feature in future farming and rural support policy.

The consultation discusses:

- creating a defined transition period of approximately five years to 2024 (from EU Exit Day on 29 March 2019) with minimal changes to current funding and payments in the earliest stages.

*This would include the 2 year implementation period during which Scotland would implement all EU rules on CAP. From January 2021- January 2024 practical simplifications and improvements in customer service would be sought.*

- how to reduce the administrative burden on a range of steps in the payments system and process, including inspections, mapping and scheme rules
- at what level to cap payments to release funds to test new policy priorities
- how to protect and enhance long term future support for Less Favoured Areas
- shifting, where possible, from a strict compliance approach towards combining delivery of outcomes with support
- proposals to streamline and synergise some of the Pillar II schemes
- where Scotland should be piloting new approaches, expanding on activity we want to continue into the future and testing fresh ideas and innovation.

## What are the key proposals?

Essentially the Scottish Government is proposing two key processes:

- an immediate simplification of current rules with
- civic engagement on the development of new "innovative" approaches for agriculture, the environment and the rural economy.

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<sup>184</sup> Scottish Government, [Stability and Simplicity: Proposals for a rural funding transition period](#), June 2018

- **A simplification task force will run from Autumn 2018 for c.1 year.**

This will work with officials and key partners to consider responses to the Stability and Simplicity consultation determine and test possible changes in current operations to improve the experience for recipients of CAP payments, reducing complexity and improving public value.

The Scottish Government sees a need in the short-term to “unwind some of the complexity of CAP and release efficiencies where this can be achieved without compromising the control measures that protect the security of our food, the welfare of our animals, our environment standards and ultimately our ability to trade on a reputation for quality produce.”

- **Work to shape the new domestic policy**

The new domestic policy envisaged to be from 31 March 2024 will be shaped by the [CAP Greening Report](#), the Agriculture Champion’s Report, the results of this consultation, and the final report due from the [National Council of Rural Advisors](#).<sup>185</sup>

The results of the consultation later this year on Environmental Principles and Governance, the planned Climate Change legislation that will be in place from 2020, other domestic legislative requirements (such as those in the Forestry (Scotland) Act 2018) and new analysis on the impact of existing CAP policies will also be used to inform new policy.

- **Immediate options for Direct Payments (Pillar 1)**

The consultation outlines the pros and cons of working to no change in current payments for the implementation period (21 March 2019 – December 2020) and maintaining the CAP architecture but making selected changes designed to improve it.

Possible changes suggested within the latter course include: capping payments, streamlining applications, inspections and accounting, funding (from possible capping) used for new entrants, innovation, climate change and the environment.

The consultation states that **capping** “should be examined more closely” during transition with further analysis and consultation needed to determine a fair and simple capping policy. It notes that a “more progressive capping policy” could be a first step to a future agriculture policy which “widens the benefits/range of recipients, and supports new entrants and small businesses”.<sup>186</sup>

- **Increased availability of capital support**

The Scottish Government is keen to explore the potential of increasing the availability of capital support (subject to budget availability). This

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<sup>185</sup> Scottish Government, [Stability and Simplicity: Proposals for a rural funding transition period](#), June 2018 p.5

<sup>186</sup> As above pp 10-11



could be through widening the targeting of current support, for example to upland farms, and through the use of financial instruments, such as publicly-funded loans. It is proposed that the potential use of financial instruments is explored with the possibility of introducing a pilot approach during the transition period.

## Initial Stakeholder Reaction

Whilst welcoming proposals to modify some elements of the current payments system, a range of organisations have suggested that what they really want to input to is a discussion about a very different agriculture policy for Scotland.

The [National Farmers Union Scotland](#) has welcomed the consultation as an “important step in delivering the correct policy for Scottish farmers and crofters” indicating that it is very much in line with what they have been calling for.<sup>187</sup> See for example NFUS, [Steps to Change: A new Agricultural Policy for Scotland](#) (March 2018). The union has also stressed that agriculture already “supports more than 75,000 businesses in the food and drinks industry” and is therefore very much part of Scotland’s food and drink “success story”.<sup>188</sup>

The NFUS described the commitments to look at legislative simplification, disproportionate mapping, inspection and penalty processes as “music to the ears’ of farmers and crofters”.<sup>189</sup>

NFU Scotland has “welcomed the Scottish Government’s intent” especially in the context of plans for transition but has “urged it to move the debate on quickly to the industry’s post-CAP future.” The union has said that the Government has stopped short of what is required when it comes to a future vision. The NFUS highlights that the current proposals are “almost exclusively focused on modifications to the existing CAP as currently delivered in Scotland.” The union wants Scotland to “move quickly to the next stage and develop “our own agricultural and rural policy for life beyond transition and the CAP itself”.<sup>190</sup>

The [Scottish Crofting Federation](#) (SCF) has emphasised that the direct payments regime needs urgent change and wants the Scottish Government to take the opportunity of EU Exit to improve the system and “rebalance how the system works for public good, to target resources to where they most benefit sustainable food production, environmental maintenance and the wellbeing of rural communities.” The SCF wants issues such as encouraging new entrants and payments for rough grazing to be revised and better targeted.<sup>191</sup>

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<sup>187</sup> NFU Scotland, [Union welcomes Scottish post-Brexit Agricultural Policy Consultation Launch](#), 20 June 2018

<sup>188</sup> As above

<sup>189</sup> As above

<sup>190</sup> NFU Scotland, [Union calls for Stability and Simplicity to look further into the future](#), October 2018

<sup>191</sup> Scottish Crofting Federation, [Payments transition an opportunity to get things right for crofting says Federation](#), 21 August 2018

[Scottish Environment Link](#) (a forum for Scotland's voluntary environment organisations) has called for agricultural policy and funding to be "fundamentally transformed" in the long term to "drive integrated land use and the delivery of public goods." It notes that "despite current policies we continue to see declines in wildlife, significant greenhouse gas emissions from agriculture and land management, problems with soil and water quality, deterioration in Scotland's lowland and upland landscapes, and competing pressures on land".<sup>192</sup>

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<sup>192</sup> Scottish Environment Link, [Response to the consultation on Stability, Certainty and Stability in Rural Support](#), August 2018

## 5. Wales: A new land management programme

The Welsh Government has described food production as a major competitive advantage for Wales and one that it is “vital that it retains and builds on its competitiveness, with a strong emphasis on export”.<sup>193</sup> [Securing Wales Future](#) (January 2017) highlights how any Brexit risks to Welsh farming are also risks to managing environmental resources. It notes that:<sup>194</sup>

Securing resources is not only about supporting farming. With 83% of Wales’ land surface being managed for farming and 14% for forestry, a separation between the management regimes for ‘environment’ and ‘agriculture’ is at best artificial. A crisis in Welsh farming would pose huge risks for maintaining the environmental resources of Wales. The countryside and coastline are essential to the heart of Wales and an asset for all our people.

It also sets out ways in which the Welsh Government is looking to respond to the challenges and opportunities of EU withdrawal. For example, strengthening supply chains and increasing added value of products.

The Welsh Government has called for the UK Government to provide Wales with “equivalent or greater resources to those Wales would have received from the CAP and CFP” to support Welsh farming and fisheries.<sup>195</sup>

### 5.1 Green Paper: Brexit and Our Land (July 2018)

The Welsh Government has [set out proposals](#) for a new Land Management Programme for Wales including farming and forestry to replace the CAP in Wales in its entirety.<sup>196</sup> The consultation is open until 30 October 2018.

The Welsh Government has set out proposals for a multi-year transition and proposes that the new Land Management Programme will have two elements of support:

- An Economic Resilience Scheme (investment for economic activities)
- A Public Goods Scheme (direct support for public goods delivery)

The consultation states that there “are strong links between the schemes and they will need to be designed and implemented in parallel. Many land managers will be able to benefit from both schemes”.<sup>197</sup> The Welsh Government wants to align the schemes to ensure that the value

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<sup>193</sup> Welsh Government, [Securing Wales’ Future](#), January 2017, p.21

<sup>194</sup> Welsh Government, [Securing Wales’ Future](#), January 2017

<sup>195</sup> As above, p.21

<sup>196</sup> Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), 10 July 2018

<sup>197</sup> As above, para 4.18

of the land is optimised. However, the consultation also seeks ideas on whether there are additional or better ways of delivering “our vision for Welsh land and the principles for reform”.<sup>198</sup>

In a [written statement](#) on 10 July 2018, the Welsh Government’s Cabinet Secretary for Energy, Planning and Rural Affairs, announced that there will be a further detailed consultation in the spring and that her “ambition is to publish a Bill before the end of this Assembly term in 2021.” The Welsh Government is planning for complete reform by 2025 and wants the legislation in place to ensure a phased transition period can take effect.<sup>199</sup>

### Economic Resilience scheme

The scheme will provide investment for economic activities, in particular food and timber production. The Welsh Government proposes that the Economic Resilience scheme will provide targeted investment to both land managers and their supply chains.

The scheme will provide support to:

- increase market potential
- drive improvements in productivity
- diversify
- improve risk management and
- enhance knowledge exchange and skills.

### Public Goods scheme

The proposed Public Goods Scheme will provide direct support for public goods delivery, in particular for the environment.

The Welsh Government proposes it will provide a new income stream for land managers and make a “significant contribution” to addressing climate change, biodiversity decline, adverse air quality and poor water quality.

### Initial stakeholder reaction

Farming unions have welcomed the focus on public goods alongside production. The CLA has noted that the consultation “sets out a bold vision for supporting farmers and land use in the future” and reflects “the changing expectation that the public have of farming and the way we use our land”.<sup>200</sup>

Both NFU Cymru and the CLA have also cautioned that other measures to support farming as a business need to complement the new systems.<sup>201</sup> The CLA has said that it will be looking at the consultation to

<sup>198</sup> Welsh Government, [Brexit and Our Land: Securing the future of Welsh Farming](#), 10 July 2018, para 4.20

<sup>199</sup> Welsh Government, [Written Statement: Launch of Brexit – Our Land](#), Lesley Griffiths AM, Cabinet Secretary Energy, Planning and Rural Affairs

<sup>200</sup> As above

<sup>201</sup> See for example, NFU Cymru, [First Minister speaks at packed NFU Cymru Brexit Seminar](#), 23 July 2018

“see how it fits alongside other enabling policies to provide farmers with the required conditions to sustain their businesses”.<sup>202</sup>

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<sup>202</sup> CLA, [Welsh Government consultation “Brexit and our land”](#) [as viewed on 9 September 2018]

## 6. Northern Ireland: Stakeholder Engagement on future framework

Northern Ireland was the last UK legislature to publish its proposals for post-Brexit agriculture policy. It is currently running without a Northern Ireland Executive.

The Ulster Farmers' Union has expressed some frustration with this delay even though it accepts the circumstances for Northern Ireland have been difficult.<sup>203</sup>

The Department of Agriculture, Environment and Rural Affairs (DAERA) has established a range of stakeholder groups to ensure that the Department can respond effectively to the evolving Brexit position and provide the UK Government with a collective view from a Northern Ireland agri-food, rural and environmental perspective.<sup>204</sup>

DAERA published a [stakeholder engagement document](#) in August 2018 setting out the key desired outcomes and long-term vision for the NI agricultural industry.<sup>205</sup>

1. Increased productivity in international terms;
2. Improved resilience to external shocks;
3. An agriculture industry that is environmentally sustainable; and
4. An industry which operates within an integrated, efficient, sustainable, competitive and responsive supply chain.

The Department has made clear that during this engagement with stakeholders, it will:

not in any way prejudice or constrain the ability of an incoming Minister, NI Executive and NI Assembly to decide what is appropriate for the Northern Ireland agri-food sector. It is likely, therefore, that there will be further consultations on specific proposals which arise as a result of this exercise.<sup>206</sup>

In June 2017, Graeme Wilkinson, DAERA's Head of Brexit Division, [commented](#) that:

Northern Ireland's position is unique for many reasons, not least the importance of our agri-food sector, worth over £4.6billion to the economy and our land border with the Republic. DAERA's role is to ensure this position is understood by all sides involved in the formal negotiations and is considered when the final outcome is reached. Our work has been, and will continue to be, guided by this simple principle.<sup>207</sup>

<sup>203</sup> Ulster Farmers Union, [DAERA document a welcome start](#), 1 August 2018

<sup>204</sup> Letter from Dr Denis McMahon, [Permanent Secretary DAERA to House of Commons Northern Ireland Affairs Committee](#), 20 June 2018

<sup>205</sup> DAERA, [Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement](#), 1 August 2018

<sup>206</sup> As above, para 1

<sup>207</sup> Graeme Wilkinson, DAERA, [Update on Brexit](#), 26 June 2017



The DAERA consultation is the only one of the UK legislature consultations to feature food security.<sup>208</sup>

The consultation acknowledges that food security is an important strategic context for the new approach even if it is not a primary objective for regional agricultural policy. It highlights that the 'strategic imperative' of being able to secure basic food supplies goes beyond metrics of self-sufficiency and incorporates matters such as: the protection of productive capacity, supply chain vulnerability and trade and distribution networks.<sup>209</sup>

## 6.1 Key elements proposed

The consultation paper sets out the following key elements of a future agriculture policy framework and the transition to it:

- It is envisaged that there may be an opportunity to simplify the administration the existing direct support schemes for 2020 and 2021, for example in relation to the Basic Payment Scheme (BPS).
- DAERA will seek the legal authority to maintain the status quo during the 2020 and 2021 scheme years, enabling it to continue to implement the Direct Payment schemes as if they were still operating under EU rules.
- As part of a transition to a new agricultural policy framework, limited changes could be made in the 2020–2021 scheme years to simplify the current support regime and to remove requirements that are not particularly relevant or worthwhile in a Northern Ireland context.
- The 2020–2021 scheme years could also be used to make the necessary preparations to deliver a new agricultural support framework post 2022 or pilot new approaches, and to signpost clearly any changes so that farmers have time to evaluate their future business plans.<sup>210</sup>

### **'Greening' measures** (for transition up to 2021)

- The consultation notes that the current CAP greening requirements are directly relevant to only a very small sub-set of Northern Ireland producers and deliver minimal, if any, changes in farming practice, but require a disproportionate administrative effort to implement. Therefore, the greening requirements of crop diversification, ecological focus area and retention of permanent grassland could be abolished and the value of the greening payment incorporated into Basic Payment entitlement values.
- One aspect of greening - the current ploughing ban on environmentally sensitive permanent grassland (i.e. within Special Protection Areas and Special Areas of Conservation) - could be retained. The ban helps protect areas such as peat and wetlands which are environmentally sensitive. This ban could be retained

<sup>208</sup> [NI first UK nation to recognise the importance of food security in post-Brexit policy](#), *Farmers Guardian*, 6 August 2018

<sup>209</sup> As above p.20

<sup>210</sup> DAERA, Northern Ireland Future Agriculture Policy Framework: Stakeholder Engagement, 1 August 2018, para 2.2

either through the Environmental Impact Assessment Regulations or by making it a condition of receiving the Basic Payment.

For the period **after 2021**, the paper discusses in general terms some broad components of future NI agricultural policy. This focusses on key themes such as:

- improving productivity through education and knowledge transfer
- targeting investment on innovation and new technology linked to strategic objectives (notably environmental performance)
- provision of investment incentives other than capital grant (such as loans, loan guarantees, interest rate subsidies etc.)
- provision of a basic farm resilience support measure, including targeting to take account of issues such as natural disadvantage and possible tiering/capping of payment
- cross compliance regime issues
- introduction of anti-cyclical/insurance type measures to help address volatility
- environmental principles to be incorporated within the agricultural policy framework
- a shift towards outcome based environmental measures for agriculture, including co-design with farmers and land managers
- need for future schemes to move beyond the costs incurred income forgone approach to incentivise changes in farming practice to enhance environmental sustainability,
- the role of government in ensuring market transparency and better functioning of the agri-food supply chain.

### Stakeholder reactions

The [Ulster Farmers Union](#) (UFU) has said that it is “essential that the local share of farm support remains the same as now, but farmers recognise the delivery model is going to change.” The UFU wants a model that is targeted at “those who take the risks in primary food production.”

The UFU has said that support arrangements are “only part of the equation” and “their ultimate format depended on other crucial issues being resolved” such as beneficial trade deals with the best possible access to the EU-27 and other markets. The UFU has said that it will work with other stakeholders to ensure farming, the environment and food processing can have a “post-Brexit joined up future”.<sup>211</sup>

The [RSPB blog](#) by NI policy officer Phil Carson supported the concept of public goods provision:

At present, policy allocates significant public funding that provides little in terms of public benefit. We believe that this money should

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<sup>211</sup> Ulster Farmers Union, [DAERA document a welcome start](#), 1 August 2018

be repurposed to provide more of what society needs, such as a vibrant countryside rich in nature, clean air and water and resilient productive soils. By moving towards a policy that places environmental enhancement as its central aim, this will be within grasp.<sup>212</sup>

The [British Veterinary Association](#) has highlighted that it is important for the veterinary profession in Northern Ireland to engage with the consultation because its key concerns are largely absent i.e. “an emphasis on animal health and welfare, as well as the vital input of vets towards the operation of a thriving agricultural sector”.<sup>213</sup>

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<sup>212</sup> Phil Carson, RSPB NI Policy Officer, blog, [Why we need a new farming policy for Northern Ireland](#), [Accessed 11 September 2018]

<sup>213</sup> BVA Blog, [Agriculture after Brexit...where next for NI](#), 5 September 2018

## 7. Leaving the Common Agricultural Policy (CAP)

### 7.1 Evolution of the CAP

The CAP was provided for in the 1957 Treaty of Rome and was intended to increase food production in the European Union after the Second World War. Since then successive EU reforms have sought to move the policy towards trying to incentivise a competitive farming industry which also protects and enhances the environment.

Commons Library Briefing [CAP reform 2014-20: EU Agreement and Implementation in the UK and in Ireland \(updated\)](#) describes this evolution across past CAP reforms in more detail.

Despite many efforts to simplify the policy, the CAP remains a complex set of regulations. An interim report from the UK Government's Farm Inspection and Regulation Review describes farmers and regulators alike 'exasperated by the demands of regulation, which are unduly precise and inflexible.'<sup>214</sup>

### 7.2 How does the CAP work?

The CAP runs for a seven-year period in line with the EU budget cycle. The current CAP agreement and funding runs until 2020 and the EU process for agreeing the new CAP round for 2021-2027 is already underway

The EU has budgeted its CAP post-2020 proposals on the basis that the UK does not participate as the CAP is not open to association with third countries.<sup>215</sup>

CAP funding for the UK currently provides:

- Direct payments based on the area farmed (known as Pillar 1) through the [Basic Payment Scheme](#)
- Rural development funding (known as Pillar 2) which includes support for agri-environment schemes and wider rural economy.
- Market support measures as part of the [Common Market Organisation](#) regulation (CMO). This is the set of rules used to organise the single market for agricultural products. The rules cover a wide range of provisions from market safety nets such as public intervention, exceptional measures in case of market disturbances such as animal disease outbreaks, marketing standards, trade provisions and various operational programmes for particular sectors e.g. fruit and vegetables, wine and hops.

Agriculture and implementation of the CAP is devolved so each devolved administration has to comply with meeting the legislative framework of the CAP and manage the direct payments to farmers.

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<sup>214</sup> Defra, [Farming regulation changes proposed](#), 12 July 2018

<sup>215</sup> HM Government, [Explanatory Memorandum for European Union Legislation](#), 21 June 2018

Outside of the CAP reform process, UK farm policy can be more flexible and tailored to UK priorities and farming systems. The EU Commission is also proposing to ensure more flexibility for Member States within the next CAP round (see below). However, this aim is somewhat constrained by the need to agree and provide some form of common framework for 27 Member States.

## 7.3 Current levels of farm support

### Box 2: Current levels of funding for farm support

- **The UK allocation over the 2014-2020 period of the current CAP is €25.1 billion (c.£22.3bn) in direct payments (Pillar 1) and €2.6 billion (£2.3bn) in rural development funds for rural development and the environment (Pillar 2).<sup>216</sup>**
- **The UK Government has pledged to maintain the “same cash funds” of support for farmers (as they receive under the CAP) until the end of the Parliament, expected to be 2022.<sup>217</sup>**
- **Farmers will then have some form of guaranteed payments for a transition period expected to last until at least until 2024.<sup>218</sup>**

Currently CAP support through both the Basic Payment Scheme and rural development grants can make up to around 50-60% of farm incomes in England. In other parts of the UK it is a much larger proportion, mainly because there is more land which has more difficult farming conditions e.g. hill farming.<sup>219</sup>

Table 4 below sets out CAP related payments as a proportion of total income from farming in 2017 (including both Basic Payment Scheme and agri-environment schemes). It clearly shows that in Wales in 2017 that payments were actually larger than the profits from agriculture with payments representing more than 50% of their profits. Table 5 provides the total income and total payments figures to illustrate this further.

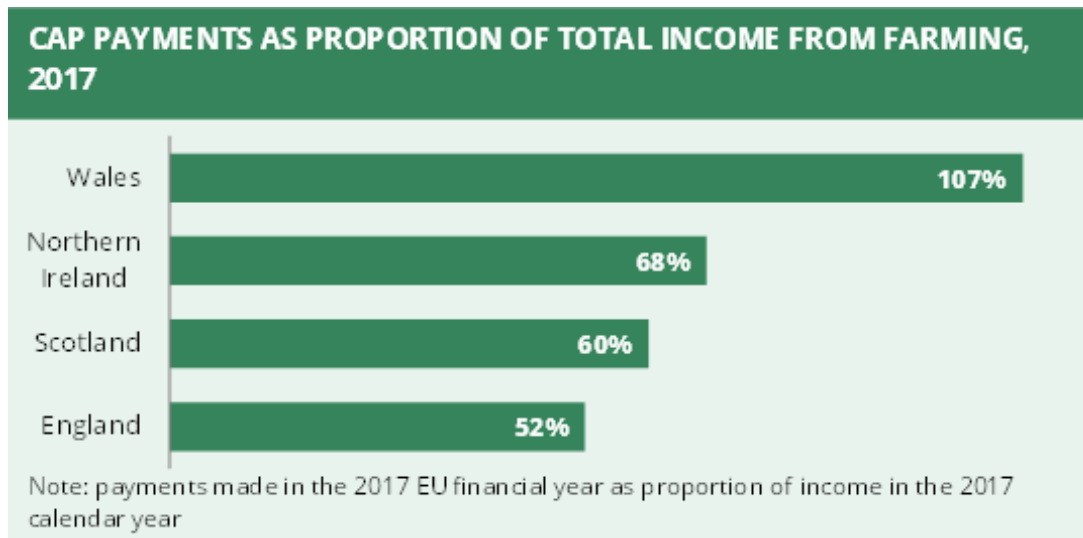
It should be noted that some of these payments e.g. for agri-environment schemes are already designed to compensate for income foregone by the farmer to provide environmental measures etc.

<sup>216</sup> GOV.UK Press Release, [CAP allocations announced](#), 8 November 2013

<sup>217</sup> [HC Deb 2 November 2017 c.949](#) and GOV.UK, [Farming for the Next Generation](#), 5 January 2017

<sup>218</sup> .GOV.UK, [Farming for the Next Generation](#), 5 January 2017

<sup>219</sup> [Northern Irish agriculture subsidies to fall after Brexit report warns](#), *The Irish News*, 16 January 2018

**Figure 4:****Table 4**

CAP PAYMENTS AS PROPORTION OF TOTAL INCOME FROM FARMING, 2017			
Country	Total Income from Farming £million	Total Direct payments to farmers £ million	CAP funding as proportion of income
England	4,077	2,129	52%
Scotland	917	552	60%
Northern Ireland	473	320	68%
Wales	276	296	107%
United Kingdom	5,743	3,297	57%

**Sources:** [Data sets to accompany, Agriculture in the United Kingdom 2017](#) (Total income from farming: [Chapter 3 -farming income](#) (ODS 73.3KB) – Table 3.2 and Total Direct Payments to farmers: [Chapter 10 -public payments](#) (ODS, 56.2KB) Table 10.3.

In Northern Ireland Pillar 1 of the CAP currently provides approximately €327m per annum of direct support to Northern Ireland farmers, Over the last five years, direct CAP support (Pillar 1) amounting to £1.3bn has accounted for 83% of the cumulative total income of the Northern Ireland (NI) agricultural industry. In two of these years, the industry (as a whole) would have been in a loss-making position without this support. In the same time, farmer-facing rural development measures have delivered just over £200m of EU funding and associated national monies to improve both economic and environmental performance.<sup>220</sup>

CAP support is made up of direct payments under the [Basic Payment Scheme](#) and payments for agri-environment measures and grants for rural development projects which contribute to wider rural development objectives under the Rural Development Programmes for each part of

<sup>220</sup> As above



the UK. The CAP also has mechanisms to regulate the organisation of EU agricultural markets.

Each administration has its own schemes. For example the agri-environment scheme in England is [Countryside Stewardship](#). In addition, up to 30% of direct payment support is linked to specific 'greening measures' such as maintaining permanent grassland. However, environmental measures linked to the direct payments, (rather than specific agri-environment schemes) have had limited impact.<sup>221</sup>

Farmers also have to comply with a range of environment and farm management practices to receive their payments. This is known as cross-compliance.

Table 5 shows the total UK CAP payments over the last 6 years across the UK. These are paid in Euros based on an average of the European Central Bank exchange rates.<sup>222</sup>

**Table 5: CAP payments in the UK**

<b>CAP PAYMENTS BY COUNTRY</b>							
Euros million, EU financial years							
	2010	2011	2012	2013	2014	2015	2016
Total England CAP payments	2,761	2,696	2,777	2,792	2,714	2,533	2,626
Total Wales CAP payments	413	417	426	406	413	367	338
Total Scotland CAP payments	779	826	840	819	757	799	584
Total Northern Ireland CAP payments	384	388	390	400	415	410	379
<b>Total UK CAP payments</b>	<b>4,337</b>	<b>4,327</b>	<b>4,433</b>	<b>4,417</b>	<b>4,299</b>	<b>4,109</b>	<b>3,927</b>

Notes:  
 Information based on EU financial year 16th October – 15th October. Figures exclude financial corrections/penalties.  
 Source: Agriculture in the UK datasets: Chapter ten - public payments

## Impact of subsidies on farming practice

Direct Payments provide farmers with important income support to withstand protracted periods of low prices.

The Ulster Farmer's Union (UFU) has said:

The funding farmers receive is not a luxury. Without it most family farms in Northern Ireland would not be viable. By producing food and looking after the countryside, farmers deliver jobs and environmental benefits for society – and the government has given this welcome recognition.<sup>223</sup>

Farm subsidies have very much shaped UK farming practice and business structures and some commentators and farmers believe that this has hampered innovation and competitiveness.<sup>224</sup>

[Anderson's Outlook 2017](#), the annual take on the industry from a farm business consultancy notes:

<sup>221</sup> Alliance Environnement, [Evaluation of the CAP greening measures](#), November 2017

<sup>222</sup> See for example, Rural Payments Agency, [BPS 2017 Payments Exchange Rate set](#), 29 September 2017

<sup>223</sup> UFU, [UFU welcomes Gove's commitment on food policy but warns change still poses a threat](#), 5 January 2018

<sup>224</sup> Andersons, [The best British farmers – what gives them the edge?](#), Oxford Farming Conference Report, 15 December 2014

... it is a salutary fact that, without subsidy, over the last 20 years UK farming has not, on aggregate, made a profit from growing crops and husbanding livestock.

However, issues with this approach have been raised. The House of Lords EU Energy and Environment Sub-Committee's 2016 report on [price volatility in the agricultural sector](#) noted that subsidies can also reduce incentives for innovation and efficiency gains and hold back much needed structural change. This is because direct payments offer farmers a guaranteed income regardless of their actions to improve resilience.<sup>225</sup>

The Committee heard evidence from Barclays and HSBC that sectors that did not benefit from direct payments might be better prepared to operate in competitive markets. They cited the pig and poultry sectors, along with horticulture as being ahead in terms of having the business knowledge and recording systems to understand their production costs.

A report by Andersons for the Oxford Farming Conference in 2014 highlighted the same message concluding that "direct subsidies don't help competitiveness, but the subsidised sectors should look to learn more from unsupported sectors in and out of agriculture".<sup>226</sup>

## 7.4 The influence of the next EU CAP reform

The current round of CAP spending is for 2014-2020. As the UK leaves the UK the EU Member States will be preparing to embark on the next CAP round for 2021-2027.

The Commission has proposed that funding for the CAP is 'moderately reduced' by around 5% 'to reflect the new reality of a Union at 27.' The Commission has said that the policy will be 'modernised' to ensure that it can still 'deliver with less and even serve new priorities'.<sup>227</sup>

The Commission proposal for the multiannual financial framework (MFF) 2021-2027 includes €365 billion for the CAP (in current prices). This corresponds to an average share of 28.5% of the overall EU budget for the period 2021-2027. Out of this amount for the CAP:

€265.2 billion is for direct payments

€20 billion for market support measures (European Agricultural Guarantee Fund - EAGF) and

€78.8 billion is for rural development (European Agricultural Fund for Rural Development - EAFRD).<sup>228</sup>

In November 2017, the European Commission published its [Communication on the Future of Food and Farming](#) which set out the

<sup>225</sup> House of Lords European Union Committee, [Responding to price volatility: Creating a more resilient agricultural sector](#), 16 May 2016, HL Paper 146-I, para 124

<sup>226</sup> Andersons, [The best British farmers – what gives them the edge?](#) Oxford Farming Conference Report, 15 December 2014

<sup>227</sup> European Commission, [EU budget: Commission proposes a modern budget for a Union that protects, empowers and defends](#), 2 May 2018

<sup>228</sup> European Commission Press Release, Factsheet: [EU Budget: The CAP beyond 2020](#), 1 June 2018

Commission's vision of the future CAP. This is essentially a simpler, smarter, more modern, sustainable CAP with a new delivery model.<sup>229</sup> The Commission intends to increase the flexibility introduced in the last round for Member States' to tailor the CAP options to their particular farming needs in meeting the overall EU goals.

EU Agriculture Commissioner Phil Hogan has described the proposed approach as an "evolution, not a revolution".<sup>230</sup>

## Draft Legislative Proposals

On 1 June 2018, the European Commission presented its [legislative proposals](#) on the future of food and farming. These take account of available evidence on the performance of the policy so far.<sup>231</sup>

As the UK develops its new agriculture policy outside of the CAP, the new CAP itself may take different directions which will influence UK/EU farmers interactions and trade.

The Commission's own deregulation initiative (the REFIT Platform) has highlighted the need to reduce the regulatory burden of the CAP and improve its value for money and increase its integration with other policy areas. It has put the focus on "the excessive administrative burden" of the current greening measures, the control and audit system and the growing overlaps between Pillar I and II.

The Commission describes the new legislative proposals as making the CAP 'apt to respond to future challenges' and has said that the CAP 'remains at heart a policy designed to support European farmers and ensure Europe's food security, while guaranteeing a resilient, sustainable and competitive agricultural sector'.<sup>232</sup>

The next CAP is intended to shift the emphasis from compliance and rules towards results and performance.

## Themes for the next CAP

The European Commission has proposed that the next CAP will be based on nine objectives:<sup>233</sup>

- to ensure a fair income to farmers
- to increase competitiveness
- to rebalance the power in the food chain
- climate change action
- environmental care
- to preserve landscapes and biodiversity
- to support generational renewal
- vibrant rural areas

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<sup>229</sup> COM (2017) 713 Final, [The Future of Food and Farming](#), 29 November 2018

<sup>230</sup> EurActiv, [Parliament cautiously welcomes a new post-2020 CAP vision](#), 30 November 2017

<sup>231</sup> EurActiv, [Parliament cautiously welcomes a new post-2020 CAP vision](#), 30 November 2017

<sup>232</sup> European Commission, [Future of the Common Agricultural Policy](#) [as viewed on 15 July 2018]

<sup>233</sup> European Commission website, [Future of the Common Agricultural Policy](#) page [as viewed on 2 September 2018]

- to protect food and health quality.

Through strategic plans, countries will set out how they intend to meet these 9 EU-wide objectives using CAP instruments while responding to the specific needs of their farmers and rural communities.

### Key elements proposed for the new CAP

The European Commission's fact sheet [EU Budget: The CAP beyond 2020](#) (June 2018) summarises the proposals for the next CAP.

There are no radical new features proposed for the next CAP but the Commission's proposals do simplify and modify a range of previously unpopular measures. For example, the greening measures required to secure 30% of the Basic Payment have been criticised by farmers and environmental groups alike for being overly bureaucratic with little environmental benefit.<sup>234</sup> The proposals have similarities with the UK's aims of simplifying and improving scheme flexibility as well as capping payments and focusing on environmental improvement. However the principle of basic payments remains.

- **Income support** will remain 'an essential part of the CAP' to ensure predictability and stability
- **Basic Payments** will continue to be based on the farm's size in hectares.
- **Small and medium-sized farms** will be prioritised with a higher level of support per hectare
- Member States will be required to dedicate at least **30% of their rural development budget to environment** and climate measures.
- **Young farmers** will be encouraged to join the profession with 2% of direct support payments allocated to each country to be set aside for young farmers complemented by financial support under rural development and measures facilitating access to land and land transfers.
- A reduction in the share of direct payments received above €60,000 per farm and payments limited to €100,000 per farm to ensure a **fairer distribution of payments**
- **Higher ambition on environmental and climate action,** Farmers will have the possibility to contribute further and be rewarded for going beyond mandatory requirements. The CAP will maintain voluntary agri-environment schemes to incentivise farmers. Member States will be required to make a system of farm advisory services available to farmers which will cover areas such as compliance with environmental legislation, risk management and access to innovation and technology.
- Mandatory requirements proposed include:

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<sup>234</sup> See Defra Press Release, [Environment Secretary calls for fewer inspection to make CAP simpler for farmers](#), 21 July 2015. NFU, [NFU joins forces on CAP simplification](#), 21 July 2015

- **preserving carbon-rich soils** through protection of wetlands and peatlands
- obligatory nutrient management tool to improve **water quality**, reduce ammonia and nitrous oxide levels
- **crop rotation** instead of crop diversification
- To make environmental protection easier, the Commission will set a common set of EU standards and objectives which each country can adapt. For example, the EU will set a simple obligation for crop rotation and each country can define crop rotation requirements adapted to their farms
- **Tougher food safety and quality requirements** with financial support only given when there is compliance, for example with rules on reducing the use of pesticides and antibiotics.
- Member States will be able to design their own control and penalty system and be able to suspend payments to farmers in cases of continued underperformance.
- Supporting the next generations of farmers through mentoring, knowledge transfer, succession plans and encouraging EU countries to do more nationally e.g. with more flexible rules on taxation and inheritance.
- setting tougher **food safety and quality** requirements on farmers, by giving financial support only when complying with rules on reducing the use of pesticides or antibiotics for instance
- A specific budget of €10 billion from the [Horizon Europe programme](#) will be set aside for research and innovation in food, agriculture, rural development and the bioeconomy.

## 7.5 Stakeholder reaction

At the [EU Agriculture and Fisheries Council](#) on 18 June 2018, EU agriculture and fisheries ministers discussed the post-2020 CAP reform package and the agricultural market situation.<sup>235</sup>

Farming Minister, George Eustice represented the UK, His [statement](#) following the Council highlighted that:<sup>236</sup>

..Member states expressed a range of views, with some of them concerned about planned budgetary cuts. Member states agreed on the importance of achieving real simplification. The Commission signalled further discussion on this topic and welcomed further constructive recommendations from member states.

The Commission also gave an update on the agricultural market situation, giving a generally positive assessment of the health of EU markets.

The European Farming Union, [Copa Cogeca](#) has said that it is very concerned about the impacts of the Commission's proposals, It views

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<sup>235</sup> European Council, [Agriculture and Fisheries Council: June 2018](#), 18 June 2018

<sup>236</sup> [HCWS 820](#) 3 July 2018

direct payments as being “eroded” further under the proposal when they are the “best and by far most efficient way to stabilise farmers’ income and to help them better manage income risks”. Copa Cocega opposes any capping or degressivity of payments.<sup>237</sup>

Farm Europe, a think-tank specialised in farming issues, has estimated that farmers’ income would be reduced by 16 to 20% and this would eventually result in a “massive exodus” from the rural areas.<sup>238</sup>

The Institute for European Environmental Policy (IEEP) has highlighted that the proposals do not align the bulk of CAP spending with the ambitious delivery of public goods because of the continued focus on direct payments, even with the redistribution proposed.

The IEEP argues that this:<sup>239</sup>

...continues a system that has been shown to be an inefficient, ineffective and inequitable way of supporting policy goals, including farmers’ incomes.

The IEEP also notes that although the environmental components of the CAP have some welcome additions e.g. crop rotation and a farm nutrition management tool, the existing requirements are largely maintained. In addition, Member States have a good deal of discretion to set the level of ambition which does not signal what the IEEP terms the ‘urgent need to lift the environmental performance of the CAP on a progressive basis as it remains largely based on static requirements.’

Despite this, the IEEP views the mandatory proposed eco-scheme as an opportunity to pay farmers proportional to the level of ambition achieved.

## 7.6 How do other countries support their farmers?

Most countries offer some farm support. Globally, the use of protectionist measures and subsidies is higher in agriculture than in any other sector, but their use has been falling over the past three decades.

In OECD countries, agricultural producer support dropped from almost 2.5% of GDP in 1986 to 0.4% in 2015.<sup>240</sup> Countries mainly offer farm support to help to stabilise incomes with farmers exposed to volatile markets but these interventions are also usually tied up with issues around food security and protecting the environment.<sup>241</sup>

However, the OECD’s [Agricultural Policy Monitoring Evaluation 2018](#) found that in the period 2015-17 almost two-thirds of producer support

<sup>237</sup> Euractive, [European Commission under fire after new CAP proposals unveiled](#), 1 June 2018

<sup>238</sup> As above

<sup>239</sup> IEEP, [What is the fate of environmental ambition in the proposed EU agriculture policy?](#) 1 June 2018

<sup>240</sup> Chatham House, [The Implications of Brexit for UK, EU and Global Agricultural Reform in the Next Decade](#), November 2017 and OECD, [Agricultural Policy Monitoring and Evaluation](#), 2017

<sup>241</sup> See Dieter Helm, [Agriculture after Brexit](#), Oxford Review of Economic Policy, vol 33, 1 March 2017 for an overview of why countries provide farm support.



across the 51 countries covered continued to be provided via measures that distort farm business decisions particularly strongly. The latest study notes:<sup>242</sup>

It is imperative that consideration be given, on a much more urgent basis, to shifting the policy effort towards addressing these challenges. Doing so requires a clear separation of measures that provide income support to farm households in need, from measures that would underpin increased farm productivity, sustainability, resilience, and overall profitability.

Targeting transitional income support to farm households in need can both make that support more effective and free-up resources for public investment in agricultural innovation, environmental care, and resilience.

In terms of supporting resilience in the agricultural sector the OECD also recommends that Governments should:<sup>243</sup>

...streamline their risk management policies by clearly defining the limits between normal business risks, risks for which market solutions can be developed, and catastrophic risks requiring public engagement. Doing so enables pre-defined public intervention, when required, while sending clear signals to farmers and other private agents for developing relevant on-farm and market-based, privately-organised risk management tools.

Governments can also play a proactive role in providing information on market risks and coping strategies for farmers and the private sector in order to facilitate the development of risk management strategies and tools.

A number of countries have moved away from support and towards a more market-orientated approach.<sup>244</sup> **New Zealand** is a key example: government support for agriculture is just 1% of farm income, well below the OECD average of 18% and the EU's 22%.<sup>245</sup>

However, some emerging economies have gone against the trend in falling producer support and have increased support to agriculture. **Norway, along with Switzerland, Iceland, Korea and Japan** is supporting its producers at levels close to, or above, 50% of gross farm receipts, despite reductions in support since the mid-1990s.<sup>246</sup>

The AHDB's 2016 report [Agricultural Policy Models in Different Parts of the World](#), summarises a range of agricultural policies.

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<sup>242</sup> OECD, [Agricultural Policy Monitoring and Evaluation 2018](#), Summary, June 2018

<sup>243</sup> As above

<sup>244</sup> Agriculture and Horticulture Development Board, [Agricultural Policy Models in Different Parts of the World](#), 4 August 2016

<sup>245</sup> [OECD, Agricultural Monitoring and Evaluation Report 2017](#)

<sup>246</sup> [OECD, Agricultural Monitoring and Evaluation Report 2017](#)

## 8. A new approach to regulation?

As well as developing new post-Brexit farm support schemes, the UK government is taking Brexit plans as an “opportunity to foster a new regulatory culture in agriculture”.<sup>247</sup> This includes simplified farm regulation and new emphasis on some environmental impacts of farming. Depending on the final agreement with the EU, the UK will also potentially need to develop some new regulatory structures to replace EU systems and processes.

The UK Government’s 25 Year Environment Plan sets out a variety of continuing action on the environmental impacts of farming, including water pollution from fertilisers. It also puts a new emphasis on improving soil health and sets out the aim of ensuring the sustainable management of soil by 2030 and establishing sufficient data to understand the current state of soil health.

In October 2017, speaking at a Sustainable Soils Alliance event, Michael Gove [said](#) that ‘bold new measures to protect and restore soil health’ must be at the heart of the forthcoming Agriculture Bill as well as the Plan.<sup>248</sup>

### 8.1 Regulation review – simplified farm regulation

Environment Secretary, Michael Gove has commissioned a farm inspection review for England conducted by Dame Glenys Stacey.

The [Interim report from the independent Farm Inspection and Regulation Review](#) (July 2018) states that there are ‘compelling arguments for one multi-skilled field force, under the command and direction of one regulator day to day and in an emergency.’

Simplified inspection is also considered in the other post-Brexit consultations across the UK including that of the Welsh Government.

### 8.2 Pesticides

The UK currently works within an EU regulatory system of pesticide approval. Active ingredients are authorised at EU level for use across Europe but Member States authorise the specific products which make use of these ingredients and set conditions for their use. The competent authority for doing this in the UK is the Chemicals Regulation Directorate (CRD) in the Health and Safety Executive.

The UK Government has said that it is “considering future arrangements for the regulation of pesticides” as part of the preparation for EU exit and “remains of the view that decision on the use of pesticides should be based on careful scientific assessment of the risks”.<sup>249</sup>

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<sup>247</sup> [Annex A: Stakeholder proposals](#) (last updated 14 August 2018)

<sup>248</sup> Soil Association, [Secretary of State commits to soil health](#), 25 October 2017

<sup>249</sup> [PQ 1510 4 July 2017](#)

The Government has also indicated how the transition to a UK based system would work:<sup>250</sup>

The EU Withdrawal Act 2018 converts the current EU legislation controlling pesticides used in agriculture into retained law in the UK...

...It will be necessary to make some minor corrections by statutory instrument but only where this is necessary so that the regulations can continue to work sensibly in a non-EU context, for example, replacing EU processes set out in the regulations with national processes.

We are also planning for the regulatory capacity we would need to implement the regulation of plant protection products in the UK, building on the existing capacity in the Health and Safety Executive's Chemicals Regulation Directorate.

The Government has not indicated what kind of approach to pesticides regulation it might take in the future. However, the 25 Year Environment Plan includes commitments to:<sup>251</sup>

- encourage the minimum use of pesticides with a stronger emphasis on the holistic Integrated Pest Management approach (IPM) e.g. using effective crop rotation and natural predators. This will include reviewing the UK National Action Plan for the Sustainable Use of Pesticides in 2018.
- maintain EU restrictions post-Brexit on the use of neonicotinoid pesticides because of the "growing weight of scientific evidence" that they are harmful to bees and other pollinators. The Plan states that any continuing use should be limited and permitted only where the environmental risks are shown to be very low.

## 8.3 Genetically Modified Food

Currently, the UK doesn't grow any genetically modified (GM) produce domestically on a commercial basis but does import GM maize, soya, and much animal feed from GM backgrounds.<sup>252</sup>

Defra and the devolved administrations are the regulatory bodies responsible for decisions on the release of genetically modified organisms (GMOs) into the environment.

The Food Standards Agency ([FSA](#)) in England, Wales and Northern Ireland and Food Standards Scotland lead on the marketing of GMOs as food or animal feed products.

Applications for new Genetically Modified Organisms (GMOs) are managed at EU level and include an assessment of the application by the European Food Safety Authority (EFSA) as well as by the national authorities of the EU Member States. The Commission can propose a GMO to be authorised only when there is a favourable risk assessment

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<sup>250</sup> HC [PO 163617](#) 18 July 2018

<sup>251</sup> HM Government, [A Green Future: Our 25 Year Plan to improve the environment](#), January 2018

<sup>252</sup> Dodds Information, [The future of food: Will Defra embrace GMOs post-Brexit](#), 13 June 2018

by EFSA. Member States vote within a regulatory committee on the authorisation decision proposed by the Commission.

Where licensing decisions are currently taken as part of a centralised EU process, the Government has said that the intention is for the EU rules to be converted into UK law so that a similar regulatory framework will apply after the UK's withdrawal from the EU.

Discussions are ongoing between Defra, the FSA and DAs on how best to convert the EU arrangements.<sup>253</sup>

Defra's no deal guidance, [Developing Genetically Modified Organisms \(GMOs\) if there's no Brexit Deal](#) for no deal on GMOs states that there will be "no significant implications for UK stakeholders".<sup>254</sup>

Regulatory decisions on proposed GM trials would continue as usual on a devolved basis and the UK would apply the same risk assessment process for regulatory decisions on marketing GMOs as currently takes place at EU level (although it is not yet decided whether this would be on a joint-UK basis or separately across the devolved legislatures).

As the UK would be treated as a third country, UK businesses would only be able to export GMO products to the EU if the GMO had EU marketing approval. This would be the same for the EU with UK marketing approval.

## 8.4 Food Labelling

The UK Government has acknowledged that "there will be further opportunities as we leave the EU to look at what more customers would like to see" from food labelling.<sup>255</sup> For example, increasing the food information available, improving consumer transparency and helping consumers to identify high-quality British food.<sup>256</sup>

The NFU has been campaigning across the UK to improve the information available to online shoppers about country of origin. It has said that best practice would be for retailers selling online to identify British products on the listing page with a British flag, which makes British products easily identifiable. A British 'filter button' would give online shoppers the ability to easily choose British products.<sup>257</sup>

The House of Commons Environment, Food and Rural Affairs Committee has been regularly calling for the Government to improve country of origin labelling following EU Exit and to introduce mandatory method of production labelling.<sup>258</sup>

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<sup>253</sup> [HC Written Question 120296 8 January 2018](#)

<sup>254</sup> Defra, [Guidance: Developing Genetically Modified Organisms \(GMOs\) if there's not Brexit deal](#), 23 August 2018

<sup>255</sup> HC Deb 13 October 2016 c428

<sup>256</sup> [HL3093, 22 November 2016](#)

<sup>257</sup> NFU Online, [NFU underlines the importance of post-Brexit food labelling](#), 12 September 2017

<sup>258</sup> Para 106

## Protected Names

The EU has a protected food names scheme. Producers of certain agricultural, food or drink products associated with a particular region or traditional method of production can apply for a form of legal, intellectual property protection from imitation or misuse of the name within the EU.

A number of UK products currently benefit from this status which include association with a particular geographical location (PGI) or characteristics resulting from originating in a certain area (PDO), Box 2 provides examples. The Government has said that “significant” GI-protected products from the UK include Scotch whisky, Scottish farmed salmon, and Welsh beef and lamb.<sup>259</sup>

The Scottish Parliament’s Information Centre (SPICe) briefing [Geographical Indications and Brexit](#) (August 2018) provides a helpful overview of the system and the related issues highlighted by Brexit.

### Box 1: PGI and PDO

- **[Protected geographical indications](#) (PGI) allow food and drink to have a protected status in terms of associating it with a geographical location. E.g. Welsh Lamb, Yorkshire Wensleydale Cheese, and Melton Mowbray pork pies.**
- **PGI is open to products which must be produced or processed or prepared within the geographical area and have a reputation, features or certain qualities attributable to that area.**
- **A [Product of Designated Origin \(PDO\)](#) registration describes products having characteristics resulting essentially from the geographical area and the know-how of the producers in the area of production. E.g. Anglesey Sea Salt and Orkney Beef.**
- **The .gov.uk page [Protected Food Name Schemes: UK Registered Products](#) provides further details.**

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## Maintaining the protections after Brexit

Farming Unions across the UK have highlighted the importance of the UK’s protected food names as crucial for protecting and promoting the UK’s “iconic food provenance” at a time when potentially the UK could have more imported product coming onto the home market, particularly in meat and milk processed products.<sup>260</sup>

The UK Government has consistently said that it fully recognises the importance of these protections and ensuring that they are in place in the future.<sup>261</sup> The EU regulations which currently govern the

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<sup>259</sup> Cm 9593, [The UK’s Exit from, and new partnership with, the EU](#), 12 July 2018

<sup>260</sup> NFU online, [NFU underlines the importance of post-Brexit food labelling](#), 12 September 2017

<sup>261</sup> [PQ 47478 \[on food labelling\]](#) 17 October 2016

enforcement of geographical indications will be placed on a UK legal basis through the EU (Withdrawal) Act 2018.<sup>262</sup>

The latest Brexit White Paper, based on the Chequers Agreement sets out the UK's intention to have its own GI scheme after Brexit:

39. The UK will be establishing its own GI scheme after exit, consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). This new UK framework will go beyond the requirements of TRIPS, and will provide a clear and simple set of rules on GIs, and continuous protection for UK GIs in the UK. The scheme will be open to new applications, from both UK and non-UK applicants, from the day it enters into force.<sup>263</sup>

DExEU Minister Robin Walker said in 2017 it was the Government's intention to "seek agreement with the European Union on mutual recognition of protected names of origin" and that his department will continue to work on its delivery with Defra as the Government enters the future partnership negotiations.<sup>264</sup>

Agreement has been reached to continue the mutual recognition of GIs during any transition period following Brexit. However, the EU has identified continued recognition of GIs after Brexit as an issue to be addressed in the Withdrawal Agreement.

Chief Negotiator, Michel Barnier, told the House of Commons Exiting the EU Committee in September that geographical indications were still one of the "important points of disagreement regarding an orderly withdrawal" despite the UK and EU having agreed "more than 80% of the Withdrawal Agreement" on some major subjects.<sup>265</sup>

The AHDB has advised how the protections could continue after Brexit:

When the UK leaves the EU, registered protected food names should be able to benefit from EU protection against imitation, provided there is a reciprocal agreement between the UK and the EU. There are currently 23 EU GI product registrations from non-EU countries. If the UK wishes to register protected food names post-Brexit with the EU, it would first need to set up its own national approval scheme. Only when products have been approved by a non-EU country's own national scheme can they be considered for approval under the EU protected food scheme. These products would also be protected by countries which have a Free Trade Agreement or bilateral agreement with the EU.<sup>266</sup>

WTO rules require that the UK would offer some protection for the EU's protected food names. Equally the EU is required to offer minimum protection to any traditional products from third countries which are protected in their own domestic markets. The UK could therefore establish its own national approval scheme as the ADHB highlights.

<sup>262</sup> [HL 9259](#) 17 July 2018 and [HC Deb 2 November 2017 c1483](#)

<sup>263</sup> Cm 9593, [The UK's Exit from, and new partnership with, the EU](#), 12 July 2018, para 39

<sup>264</sup> [HC Deb 2 November 2017 c.965](#)

<sup>265</sup> HC 372, [Oral evidence to the House of Commons Exiting the EU Committee, The Progress of the UK's negotiations on EU Withdrawal](#), 3 September 2018

<sup>266</sup> Agriculture and Horticulture Development Board, [The impact of Brexit on protected food names](#), 6 December 2016



The Government considers that EU GI protections will continue for products already listed on EU registers, irrespective of the outcome of negotiations. Farming Minister George Eustice wrote to Baroness Verma in July 2018 explaining that:

This is because UK GIs are already protected by virtue of being on the EU's GI registers, having earned their right to be there by successfully passing the EU's scrutiny processes.

The current EU legislation means that EU GI protection is indefinite unless specific grounds for the cancellation of GIs from the EU schemes are met. These are: compliance with the GI specification is not ensured; or no product is placed on the market under the protected name for at least seven years. Under most of the EU schemes, producers of the GI, a third country or an EU Member State can also request that a GI be cancelled for these reasons. Therefore, protection will continue automatically in the EU unless the relevant entries are removed from the EU registers on one of the above grounds. None of the grounds for cancellation relate to a change in status from a Member State to a third country.<sup>267</sup>

## Organic food

All organic food and drink sold in the EU has to meet the EU organic regulation, this is shown by the green leaf logo on packaging. EU law requires all organic food and drink to be certified by a recognised body. For example, Soil Association Certification Limited is one of the UK's organic certification bodies. It carries out inspections and awards organic certification to farms and businesses that meet its standards.<sup>268</sup>

Defra's 'no deal' notice on organic food sets out how UK businesses could experience delays of up to 9 months after a no deal Brexit because UK organic control bodies offering the necessary certification would need to be approved for operation in the UK by the EU. The UK is hoping to find ways to speed this process up.<sup>269</sup>

The NFU has highlighted how this would in effect be a trade embargo on UK organic products and could have wider, disruptive implications for the future trade of all agri-food products if all of them were subjected to the same problems in approvals and certification. The FDF has pointed out that similar issues will apply for other food currently displaying EU marks or logos.<sup>270</sup>

Farmers Weekly has reported that although no official data is available, it is estimated that about 10% of the UK's organic output (worth some 2.2bn in 2017) is exported and predominantly to EU countries.<sup>271</sup>

The Government has said that it anticipates 'continuing to accept EU organic products in a 'no deal' scenario, but this will be at the UK's discretion' and it expects to negotiate an equivalency arrangement

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<sup>267</sup> [Letter from Defra Minister George Eustice to Baroness Verma](#), 5 September 2018 [Accessed 11 September 2018]

<sup>268</sup> Soil Association, [What are organic standards?](#) [as accessed on 7 September 2018]

<sup>269</sup> Defra, [Producing and processing organic food if there's no Brexit deal](#), 23 August 2018

<sup>270</sup> As above

<sup>271</sup> [No deal Brexit could wipe out British Organic Farming](#), *Farmers Weekly*, 23 August 2018

because the UK will be retaining existing EU requirements for organic food.

The technical notice also states that certification and traceability of organic food and feed products will continue to be required by the UK. However, a new UK-owned imports traceability system would replace the current EU TRACES.NT system to ensure the traceability of organic food and feed. The [EU Trade Control and Expert System](#) (TRACES) tracks the entire trade and certification process for animals, food, feed and plants. The FDF doubts the UK Government's ability to replace TRACES that with a new, comprehensive, functional UK alternative IT system in time for EU Exit Day.<sup>272</sup>

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<sup>272</sup> As above

## 9. Trade Issues

Currently, there is free movement of all goods within the EU, with no tariffs or quotas on trade between EU member states. The Customs Union means the EU sets a common external tariff on goods imported into the EU from non-EU states.

The impact of Brexit on UK agricultural trade will depend on any trade deal negotiated with the EU and the terms of Free Trade Agreements negotiated with other countries. It could have markedly different impacts across different sectors under different scenarios. The impact will also depend on how agriculture fares in trade-offs with other sectors in trade deals and how farmers adapt to new post-Brexit support arrangements.

Sir Ivan Rogers, the UK Ambassador to the EU until January 2017, warned an NFU audience in November 2017 that they should prepare for a turbulent Brexit likely to see agricultural interests traded off.<sup>273</sup>

The Government's economic aims include growth in the export of UK food and feed products to both EU and non-EU markets.<sup>274</sup> The UK has a trade deficit in food and feed products with both the EU and with non-EU countries (taken as a whole).

In 2017 the UK imported over £46 billion of food, feed and drink products and exported around £22 billion of the same with Scotch whisky being the largest single export at £4.5 billion. This compares with dairy and egg exports of £1.8 billion for example.<sup>275</sup>

The UK provides around 60% of its own food needs. It is reliant on imports to secure food supplies to meet the volume, choice and standard of products to meet consumers' needs and preferences including to provide products that the UK does not produce.

The Library briefing on [Brexit: Trade in Agriculture](#) provides more information.<sup>276</sup>

In April 2018, Farming Minister George Eustice indicated where the UK saw opportunities for increasing UK agricultural production:<sup>277</sup>

There are sectors where the UK could, in the medium term, increase its production and processing of certain agricultural products to displace imports from the EU. These include beef, pork, dairy, fruit and vegetables including through increased glasshouse production. The government will consider how best to support these sectors to take advantage of the opportunities of leaving the EU and becoming an independent country in control of our own agricultural policies in future.

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<sup>273</sup> NFU online, [Sir Ivan Rogers outlines British challenges at NFU's inaugural Henry Plumb Lecture](#), 21 November 2017

<sup>274</sup> Defra and Department for International Trade, [UK Food and Drink International Action Plan 2016-20](#), 2016

<sup>275</sup> Defra and Devolved Administrations, [Agriculture in the United Kingdom 2017](#), May 2018

<sup>276</sup> Commons Library briefing, [Brexit: Trade in Agriculture](#), CBP 7974, 29 June 2017,

<sup>277</sup> [WQ 136206 25 April 2018](#)

## 9.1 What does the EU want?

The March 2018 [negotiating guidelines](#) from the European Council set out what the EU wants from a future partnership with the UK. It states that:<sup>278</sup>

- Member States are ready to work towards a “balanced, ambitious and wide-ranging free trade agreement (FTA) insofar as there are sufficient guarantees for a level playing field”.
- The FTA will be finalised and concluded once the UK is no longer a Member State.
- Such an agreement cannot offer the same benefits as Membership and cannot amount to participation in the Single Market or parts thereof.
- The agreement will aim to cover all sectors and seek to maintain zero tariffs and no quantitative restrictions with appropriate accompanying rules of origin. It will also cover sanitary and phytosanitary (SPS) measures i.e. those relating to plant and animal health.

House of Commons Library Briefing Paper, [Brexit: new guidelines for the framework for future EU-UK relations](#), published in April 2018 provides further information on the EU position.<sup>279</sup>

## 9.2 UK Government position

### Chequers agreement and White Paper (July 2018)

On 6 July 2018, the UK Government Cabinet met at Chequers to agree a revised Brexit negotiating position.

A [statement published following the meeting](#) set out the high-level position which includes proposing a ‘**free trade area for goods**’ with the UK and EU maintaining a ‘**common rulebook for all goods including agri-food**.’ The UK would have the choice to opt out of new legislation in this area should it wish, recognising that there would be consequences for market access and/or the frictionless border. It is envisaged that there would be a different arrangement for services.<sup>280</sup>

The [Brexit White Paper](#) published on 12 July 2018 provided further detail.<sup>281</sup> The Prime Minister’s Foreword set out a Brexit which involved:<sup>282</sup>

...leaving the Single Market and the Customs Union, ending free movement and the jurisdiction of the European Court of Justice in this country, leaving the Common Agricultural Policy and the Common Fisheries Policy, and ending the days of sending vast sums of money to the EU every year.

<sup>278</sup> European Council, [EC \(Article 50\) guidelines on the framework for the future EU/UK relationship](#), 23 March 2018

<sup>279</sup> House of Commons Library Briefing Paper, Brexit: new guidelines for the framework for the future EU-UK relationship. [CBP 8289](#), 19 April 2018

<sup>280</sup> HM Government, [Statement from Chequers](#), 6 July 2018

<sup>281</sup> Cm 9593, [The UK’s Exit from, and new partnership with, the EU](#), 12 July 2018

<sup>282</sup> As above, p.1

The paper refers to a move out of the Common Agricultural Policy “ensuring that we can better meet the needs of farming” and sets out the Government’s belief that the new relationship needs to be “broader in scope than any other that exists between the EU and a third country” recognising the “unique starting point.” It refers to the UK and EU “taking a responsible approach to avoiding a hard border between Northern Ireland and Ireland.”

The White Paper sets out the Government’s vision is for an **economic partnership** that includes:<sup>283</sup>

- a common rulebook for **goods including agri-food**, covering only those rules necessary to provide for frictionless trade at the border – meaning that the UK would make an upfront choice to commit by treaty to ongoing harmonisation with the relevant EU rules, with all those rules legislated for by Parliament or the devolved legislatures;
- participation by the UK in those EU **agencies that provide authorisations for goods** in highly regulated sectors – namely the European Chemicals Agency, the European Aviation Safety Agency, and the European Medicines Agency – accepting the rules of these agencies and contributing to their costs, under new arrangements that recognise the UK will not be a Member State;
- the phased introduction of a new **Facilitated Customs Arrangement** that would remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory, which would enable the UK to control its own tariffs for trade with the rest of the world and ensure businesses paid the right or no tariff, becoming operational in stages as both sides complete the necessary preparations;
- in combination with **no tariffs on any goods**, these arrangements would avoid any new friction at the border, and protect the integrated supply chains that span the UK and the EU, safeguarding the jobs and livelihoods they support;

Environment Secretary, Michael Gove has previously said that he is confident of “building a new economic partnership with the EU” that guarantees tariff-free access for agri-food goods between the UK and EU. He has also highlighted that the Government is seeking to increase agricultural exports e.g. to China.<sup>284</sup>

## Stakeholder views

Farming bodies, (NFU Scotland, NFU, NFU Cymru and Ulster Farmers’ Union), welcomed the White Paper proposals in a [joint statement](#) highlighting that “the principle of a free trade area for goods, including agri-food, is vital for our sector” and that “It is our sector’s hope that

<sup>283</sup> Cm 9593, [The UK’s Exit from, and new partnership with, the EU](#), 12 July 2018

<sup>284</sup> Rt Hon Michael Gove, [Farming for the next generation](#), speech to Oxford Farming Conference, 5 January 2018

we maintain the high levels of trade in agricultural goods between the UK and the EU, our largest market for agri-food products".<sup>285</sup>

The National Farmers Union of Scotland (NFUS) has highlighted the importance of UK access to markets in the EU and to other markets via Free Trade Agreement:

It is vital to the future prosperity of Scotland's farming and food sectors that the UK has the best possible access to markets in the remaining EU. Although the UK will not be a member of the EU, it will still be the UK's major trading partner for the foreseeable future. The UK also benefits from more than 50 trade agreements with non-EU countries and these kind of arrangements, whether re-negotiated or not, must be in place in the future.

### 9.3 Tariff-free access to the EU?

Trade between EU member states is tariff free. Imports from outside the EU are subject to tariffs which are high in some cases. The average charge imposed by the EU on agricultural produce not granted preferential access to the European market is 12.2% but this rises for some meat products to up to 67%.<sup>286</sup>

The UK would therefore need to reach a successful free trade agreement with the EU, covering agricultural products and services, for UK producers to avoid these tariff rates.

The EU also has a regime of "**tariff rate quotas**" (TRQs) which allow a certain volume of particular products to be imported into the EU at a reduced tariff rate. The Library briefing on [Brexit: Trade in Agriculture](#) provides more information.<sup>287</sup>

### Stakeholder Views

[Scenario modelling](#) by the Agriculture and Horticulture Development Board (AHDB),<sup>288</sup> and the [NFU](#),<sup>289</sup> have shown the **lamb and beef sectors** to be potentially two of the most vulnerable sectors post Brexit. In particular the sectors' prospects suffer if there is no comprehensive trade deal with the EU that maintains similar tariffs to now, and if subsidies are reduced or removed.

Concerns have also been raised across the UK. For example, the Welsh Assembly's Climate Change, Environment and Rural Affairs Committee has highlighted the risks to Welsh producers, in particular lamb producers.<sup>290</sup>

<sup>285</sup> [UK Farming Unions Respond to Government Brexit White Paper](#), NFU Scotland, NFU, NFU Cymru, Ulster Farmers' Union joint press release, 13 July 2018

<sup>286</sup> WTO, [World Tariff Profiles 2017](#), p81

<sup>287</sup> Commons Library briefing, [Brexit: Trade in Agriculture](#), CBP 7974, 29 June 2017,

<sup>288</sup> NFU online, [NFU and AHDB team up for Brexit Roadshows](#), 25 October 2017

<sup>289</sup> NFU Online, [British Agriculture: The implications of a UK Exit from the EU – Summary of a study by the LEI Wageningen UR for the NFU of England and Wales](#), April 2016

<sup>290</sup> Welsh Assembly Climate Change, Environment and Rural Affairs Committee, [The Future of Land Management in Wales March 2017](#)



## Opportunities

Under all of the post-Brexit trading and support scenarios modelled by the AHDB, the top 25% of performers in all farm sectors, regardless of size, remain viable. AHDB is therefore calling on farmers to “get fit for the future” by learning from the high-performing farm businesses about the way they operate.<sup>291</sup>

The NFU study concluded that some sectors such as the poultry sector could have opportunities to increase productivity and incomes under a free trade agreement with the EU. The study also highlights that if imports from the EU become more expensive then there may be opportunities for domestic suppliers to sell more produce locally.<sup>292</sup>

## 9.4 Regulatory standards: non-tariff barriers

Trade in agricultural products is also subject to non-tariff barriers. These include sanitary and phytosanitary (SPS) rules relating to plant and animal health. For example, imports of beef from animals treated with growth hormones are banned by the EU.

As part of the EU, the UK abides by regulatory standards on a range of issues affecting farming, including environmental standards for production methods and animal welfare.

Farming and environmental organisations have expressed concern about the potential for new trade arrangements to drive down food standards and animal welfare where countries exporting products to the UK have lower standards. For example, different rules to the UK on hormone-fed beef, use of anti-biotics, or density of stock in chicken farms. However, others have argued that food prices can be cut for consumers, without compromising product safety. The Adam Smith Institute argued that agreeing to import chlorinated chicken from the US would illustrate the UK's willingness to adopt “sensible compromises” that could cut prices of chicken by 21%.<sup>293</sup>

Some of these issues are discussed in the House of Lords Library briefings [Leaving the EU: Antimicrobial Resistance](#) and [Leaving the EU: Food Safety](#).

The Countryside Alliance argues against a “[downward harmonisation of standards](#)”.<sup>294</sup> The [Tenant Farmers Association](#) (TFA) warns that imports to the UK are “not perfect substitutes” if the country of origin has differing animal welfare conditions and differing regulations. The TFA wants mandatory country of origin labelling on all major retailer sold food. They highlight the “general lack of awareness amongst consumers about the difference in quality of the products”.<sup>295</sup>

<sup>291</sup> NFU online, [NFU and AHDB team up for Brexit Roadshows](#), 25 October 2017

<sup>292</sup> NFU Online, [British Agriculture: The implications of a UK Exit from the EU – Summary of a study by the LEI Wageningen UR for the NFU of England and Wales](#), April 2016

<sup>293</sup> Adam Smith Institute, [Blog, Don't get in a flap about chlorinated chicken](#), 24 July 2017 [Accessed 11 September 2018]

<sup>294</sup> Countryside Alliance, Brexit Policy Document, [Sustaining a Living and Working Countryside outside of the European Union](#), April 2017

<sup>295</sup> Tenant Farmers Association, [A post EU farming policy for Britain](#), accessed 30 January 2018

In July 2017, Environment Secretary Michael Gove indicated that the UK should not “dilute” its animal welfare standards as part of any future trade deal.<sup>296</sup> He also said in a Commons [debate](#) in July 2017:

The future for British farming is in quality and provenance, maintaining high environmental and animal welfare standards. We have a world-leading reputation based on doing things better, and that will not be compromised while I am in this Department.<sup>297</sup>

Giving evidence to the Scottish Parliament’s Environment, Climate Change and Land Reform Committee in June 2018, Mr Gove also said that:<sup>298</sup>

...we need to maintain high environmental standards, and high animal welfare standards for that matter, in any trade deal that we conclude. We want to do that not just because it is right morally but because it is the pragmatic, economic thing to do. Britain and the individual nations of the United Kingdom will succeed in the future on the basis that the products that we produce are known worldwide for the high-quality standards that lie behind them, and there is no future for the United Kingdom in trying to lead a race to the bottom.

Some European farming leaders have also stressed the importance of the UK maintaining its standards. The Danish Agriculture and Food Council Chair Martin Merrild closed a meeting of European farming leaders in April 2018 by saying:

What we are asking for is a future relationship that maintains a level playing field between the UK and EU. This means protecting the standards – the product standards as well as the production standards – on both sides of a future border. If this is achieved we are able to continue to provide high quality, sustainably produced food at competitive prices to the consumers.<sup>299</sup>

## A ‘no deal’ scenario

The National Farming Union (NFU) has said that a no-deal outcome is the worst possible one for the farming industry.<sup>300</sup> The Food and Drink Federation has called ‘no-deal’ a “grisly prospect”.<sup>301</sup> In a ‘no deal’ scenario for agriculture, trading arrangements i.e. tariffs and standards are the main issue, as well as access to labour (see section 10 below). Commons Library briefing [Brexit: What if there’s no Brexit deal?](#) sets out the implications of a no deal scenario across a number of areas including food and farming.

The UK Government issued the following no-deal technical notices relevant to agriculture on 23 August 2018:

<sup>296</sup> BBC News Online, [Michael Gove: UK won’t accept US chlorinated chicken](#), 26 July 2017

<sup>297</sup> [HC Deb 20 July 2017 c959](#)

<sup>298</sup> Rt. Hon Michael Gove MP, [oral evidence to Scottish Parliament Environment, Climate Change and Rural Affairs Committee](#), 27 June 2018, p7

<sup>299</sup> NFU online, [We have a shared farming future after Brexit say British and European farmers](#), 26 April 2018

<sup>300</sup> NFU Online, [Technical notice serves warning over continuity of British food exports](#), 23 August 2018

<sup>301</sup> FDF, [FDF response to Government’s no deal technical notices](#), 23 August 2018

- [Farm payments if there's no Brexit deal](#)
- [Receiving rural development funding if there's no Brexit deal](#)
- [Producing and processing organic food if there's no Brexit deal](#)
- [Developing Genetically Modified Organisms \(GMOs\) if there's no Brexit deal](#)

In view of the current regulatory regimes which are largely EU based, it is likely that future technical notices will also need to cover areas such as: food safety and food labelling, imports of food and feed, plants and seeds, veterinary medicines, fertilisers and pesticides.

For example, the Food Standards Agency (FSA) has highlighted that the UK's departure from the EU will create gaps in the food safety regime for the UK. Some of the institutions which currently carry out regulatory activities Europe-wide will no longer carry out those activities on behalf of the UK and some systems used for administering the regulatory regime will not be available.<sup>302</sup>

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<sup>302</sup> Food Standards Agency, [An update on the FSA's preparations for the UK's Exit from the EU](#), FSA Board Meeting, 20 June 2018.

## 10. Access to agricultural labour

Defra's [Health and Harmony White Paper](#) (February 2018) acknowledges that a "significant proportion" of the agricultural workforce comes from outside of the UK and that stakeholders are concerned about this reliance on migrant workers.<sup>303</sup>

In 2014, there were more than 34,000 non-UK-born workers employed in UK agriculture, excluding the significant numbers of seasonal workers.<sup>304</sup> There are an estimated 75,000 temporary migrant workers in agriculture every summer in the UK.<sup>305</sup>

The availability and willingness of the UK's own labour pool to work seasonally on farms has been in long-term decline. The 1990s saw a general trend of increased employment of foreign nationals across various sectors in the UK and this has become especially important to the agricultural industry. The labour gap has been increasingly filled by workers from Eastern Europe where labour mobility increased with accession to the European Union in 2004.<sup>306</sup>

Ministers have indicated that Defra is working closely with the Home Office to "ensure that there is a long-term strategy for agricultural labour as part of our future immigration policy".<sup>307</sup>

The Government has responded to particular concerns about seasonal migrant labour by announcing in September 2018 the introduction of a 2 year pilot scheme to allow non-EU nationals to work in the UK for 6 months. (see section below).

The Brexit White Paper acknowledges the need for an implementation period following EU Exit "to avoid a cliff edge for businesses".<sup>308</sup> In the longer term, it indicates that the Government wants to "work with industry to encourage more domestic workers to enter the profession and attract the engineering, manufacturing, research and other STEM skills necessary for an increasingly sophisticated food and farming industry",<sup>309</sup>

Under the implementation period agreement, employers in the agricultural and food processing sectors can continue to recruit EU citizens until the end of 2020.<sup>310</sup> In June 2018, the Home Office also [announced](#) details of how EU citizens and their families can obtain settled status in the UK.<sup>311</sup>

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<sup>303</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, p.29

<sup>304</sup> [Welsh Assembly Record, Plenary 28 November 2016, c 205](#)

<sup>305</sup> CBP – 7987, House of Commons Library Briefing Paper, [Migrant Workers in Agriculture](#), July 2017

<sup>306</sup> SRUC, [Farm Workers in Scottish Agriculture: Case studies in the International Seasonal Migration Labour market](#), March 2018

<sup>307</sup> See for example, [HL 8934 29 June 2018](#)

<sup>308</sup> P.30

<sup>309</sup> Defra, [Health and Harmony: the future for food, farming and the environment in a Green Brexit](#), 27 February 2018, Cm 9577, Executive Summary, p.29

<sup>310</sup> As above

<sup>311</sup> GOV.UK, [Home Office publishes details of settlement scheme for EU citizens](#), 21 June 2018

## Data

The Office for National Statistics set out some data on seasonal workers in its 6 February 2018 [Labour in the Agriculture industry release](#). This notes that the NFU annual survey provides information on workers in the industry but that there are no official data sources.

The EFRA Committee's report [Feeding the Nation: Labour Constraints](#) (April 2017) noted that official data on agricultural labour is need of review so that the sector has confidence in the adequacy of the data informing employment and immigration policies post-Brexit.

The Government has commissioned the [Migration Advisory Committee](#) (MAC) to assess the impact of leaving the EU on both seasonal and non-seasonal employment. The MAC is expected to report in September 2018.<sup>312</sup> It produced an interim report on EEA workers in the UK labour market in March 2018.<sup>313</sup>

## 10.1 Seasonal Agricultural Labour

Commons Library briefing [Migrant Workers in Agriculture](#) (July 2017) explains the extent to which EU seasonal workers are used for agriculture in the UK and also explains how a quota based Seasonal Agricultural Workers Scheme (1945-2013) used to work which was closed on the advice of Migration Advisory Committee.

BBC and British Summer Fruits surveys found that 78% of respondents said that recruitment had been more difficult in 2017 than the previous year, and more than half feared that they would not have enough migrant workers to harvest their crops.<sup>314</sup> Low UK unemployment rates and the seasonal nature of farm work are often cited as key difficulties in attracting domestic pickers.<sup>315</sup>

NFU research shows that the number of seasonal workers coming to work on British farms in 2017 dropped by 17%, which left some farms "critically short" of people to harvest fruit and vegetables.<sup>316</sup> Scottish Rural Economy Minister Fergus Ewing was reported as stating in June 2018 that the loss of migrant workers was "not only a threat for the future but is damaging the soft fruit economy right now".<sup>317</sup>

A [March 2018 report on seasonal workers by the Scottish Rural College](#) (SRUC), commissioned by the Scottish Government, identified a range of reasons for reductions in EU seasonal workers including: uncertainties of Brexit, higher wages elsewhere (e.g. in Germany) and opportunities for work in home countries.<sup>318</sup>

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<sup>312</sup> [Written Question 9095](#) 11 September 2017

<sup>313</sup> Migration Advisory Committee, [EEA- Workers in the UK labour market: Interim update](#), March 2018

<sup>314</sup> NFU online, [Is the seasonal cliff edge getting closer](#), 23 June 2017

<sup>315</sup> As above

<sup>316</sup> NFU online, [Drop in seasonal workers leaves some farms critically short](#), 22 June 2017

<sup>317</sup> The Courier, [Farm worker shortages can only be fixed by giving Holyrood immigration powers, says minister](#), 14 June 2018

<sup>318</sup> Scottish Rural College, [Seasonal Workers in Scottish Agriculture](#), March 2018

A 2017 report by the UK Food and Drink Supply Chain Workforce Group (convened by the Food and Drink Federation) found that a third of organisations surveyed across the food and drink supply chain said that their business would become unviable without access to EU nationals.<sup>319</sup>

The specialist horticulture sector is very reliant on EU migrant labour, particularly from eastern Europe. The study also found that a third of UK horticulture businesses would become “unviable” without access to EU workers.<sup>320</sup>

## New pilot scheme for non-EU migrant workers

In September 2018, the UK Government announced a new, two year pilot scheme to allow 2,500 non-EU nationals to come to the UK for 6 months each year to provide seasonal, agricultural support for fruit and vegetable farms.<sup>321</sup>

Environment Secretary Michael Gove said that the Government had listened to farmers. He said:

We have listened to the powerful arguments from farmers about the need for seasonal labour to keep the horticulture industry productive and profitable.

From lettuce in East Anglia to strawberries in Scotland, we want to make sure that farmers can continue to grow, sell and export more great British food.

This two year pilot will ease the workforce pressures faced by farmers during busy times of the year. We will review the pilot’s results as we look at how best to support the longer-term needs of industry outside the EU.<sup>322</sup>

This pilot has very much been welcomed by farming organisations including the NFU and Horticultural Trades Association (HTA) who have highlighted the issues around seasonal labour and Brexit for a number of years.<sup>323</sup> However, the NFU has called for it to be more ambitious.<sup>324</sup> British Summer Fruits has also warned that the proposed pilot does not go far enough and would need to have 10,000 workers provided now to have an impact. BSF reports that the UK horticulture industry employs 60,000 EU seasonal workers with farms already reporting shortages of 10-20% this year. BSF’s June 2017 report [How Brexit could crush out soft fruit industry](#) warned how Brexit was exacerbating a worrying shortage of agricultural labour that “threatens to cripple home-grown berry production, increase our dependence on imports and drive up the price of soft fruit”.<sup>325</sup>

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<sup>319</sup> FDF, [Breaking the chain. Key workforce considerations for the UK food and drink supply chains as we leave the EU](#), 23 August 2017

<sup>320</sup> As above

<sup>321</sup> Defra/Home Office, [UK farmers given support for seasonal labour with new pilot scheme](#) 6 September 2018

<sup>322</sup> As above

<sup>323</sup> See NFU, [Seasonal Labour Pilot Scheme major win for NFU](#), 6 September 2018

<sup>324</sup> The Guardian, [Brexit: Farmers criticise temporary agricultural workers visa scheme](#), 6 September 2018

<sup>325</sup> See also British Summer Fruit, [Prices set to soar as a result of Brexit: Urgent activity needed to ensure essential workforce](#), 26 June 2017



The pilot will be run by two scheme operators who will oversee the placement of the workers will be overseen by the [Gang Masters and Labour Abuse Authority](#). Workers will have to be at least 18 years old. The pilot will start in spring 2019 until the end of December 2020.

The HTA reports that soft fruit production in the UK has grown dramatically, by 130% in the last 20 years. To ensure that this growth continues, and the UK is at the forefront of the next agriculture revolution, it has said that farmers must also look at ways that technology can reduce demands for this physical labour.<sup>326</sup>

However, it also recognises that automated harvesting solutions are not universally available and so, in the short term, this pilot will support farmers during peak production periods.

This time-limited pilot will also explore how to keep British horticulture competitive, as almost all other OECD countries source seasonal workers to pick fruit and vegetables.

## 10.2 Demand for labour in the wider food chain

There is also a high demand for non-UK workers in the wider food chain as well as on farms. The Food Standards Agency (FSA) has highlighted that its workforce, and the workforces of the agriculture, food and drink industries, draw heavily on nationals from other EU member states.<sup>327</sup> Many of these jobs are not seasonal e.g. veterinarians or abattoir workers or those in the food processing sector.

The House of Commons Business Energy and Industrial Strategy (BEIS) Committee's April 2018 report on [The Impact of Brexit on the Processed Food and Drink Sector](#) highlighted that access to EU nationals is crucial to the processed food and drink sector on four grounds:<sup>328</sup>

- hospitality (which is the second largest employer of EU nationals with 1 in 8 employees an EU national)
- R&D (where EU nationals are crucial in filling the skills gap for STEM roles)
- veterinary checks and
- manufacturing (where a third of the workforce—or 117,000 people—are EU nationals and 19 per cent of EU workers are in highly skilled roles).

### The Veterinary Workforce

Vets have a key role in a number of regulatory areas including animal disease monitoring and surveillance, providing certification for the import and export of animals to third countries, and providing official

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<sup>326</sup> HTA, [The Government announces a pilot scheme for non-EU migrant workers](#), 6 September 2018

<sup>327</sup> Food Standards Agency, [FSA's preparations for the UK's exit from the EU](#), 20 September 2017

<sup>328</sup> House of Commons Business Energy and Industrial Strategy (BEIS) Committee, [The Impact of Brexit on the Processed Food and Drink Sector](#), April 2018

controls at food exporting premises, abattoirs and border inspection posts.

The veterinary profession is heavily reliant on vets who qualify elsewhere in the European Union (approaching 50% of annual registrations). Estimates suggest 95% of Official Veterinarians working in abattoirs graduated overseas with the clear majority of these being non-UK EU graduates.<sup>329</sup> In an April 2018 Commons debate, [Leaving the EU: The Veterinary Profession in Wales](#), Environment Minister Dr Thérèse Coffey acknowledged that the UK can't rely solely on domestic graduates to meet the demand for vets and is seeking mutual recognition with the EU regarding professional qualifications. She noted that agreements had already been reached at the European Council level for existing EU nationals in the UK veterinary workforce to continue to work in the UK after withdrawal and vice versa and for EU nationals to continue to be registered to work in the UK as vets in the implementation period.<sup>330</sup>

### Vets and the Shortage Occupation List

Although previously included, on the advice of the Migration Advisory Committee (MAC),<sup>331</sup> vets are not currently listed on the current Home Office [Shortage Occupation List](#) (SOL).<sup>332</sup> All of the main veterinary bodies are campaigning to get vets re-instated on the list. The MAC has been commissioned by Government to review the list and look at which posts are in national shortage and should be given priority within the Tier 2 cap in future. The review will conclude in Spring 2019.<sup>333</sup> The MAC is also currently reviewing the economic and social impacts of Brexit in terms of labour needs and immigration systems.

Since 6 July 2018, there has been a temporary change to the Tier 2 (General) cap which will be kept under review. The Government has said that this was designed to address particular pressures facing the NHS but will mean that more spaces will be freed up within the cap for other sponsored high-skilled occupations, including vets.<sup>334</sup>

## 10.3 A prompt for innovation?

The AHDB has suggested that labour shortages might be the catalyst for structural and other change:

The loss of affordable labour and readily available sources of labour may be the catalyst that forces the industry to achieve these [productivity] increases, in order to remain competitive in a global market post Brexit. Increased capital investment is a possibility. Although not a short-term

<sup>329</sup> British Veterinary Association [written evidence](#) to House of Commons Environment, Food and Rural Affairs Committee inquiry into Brexit: Trade in Food, HC 348 (BTR 0027)

<sup>330</sup> As above

<sup>331</sup> See GOV.UK, [Table 3: Jobs which have previously appeared on the UK Shortage Occupation List since 6 April 2011](#) and MAC, [Skills Shortage Sensible: Full review of the recommended shortage occupation lists for the UK and Scotland](#), September 2011 (Section 5.3)

<sup>332</sup> GOV.UK, [Immigration Rule - Appendix K: Shortage Occupation List](#), updated 28 August 2018 [as viewed on 9 September 2018]

<sup>333</sup> [HL 9258](#) 17 July 2018

<sup>334</sup> As above

solution, due to the cost and time scales involved, it could be feasible in the medium to long term.<sup>335</sup>

The AHDB has identified four main options for ensuring that the agricultural sector has the workforce it needs (or can manage with the workforce it has) post-Brexit:

- Schemes to maintain the current availability of migrant labour
- Increasing agricultural labour productivity
- Increasing automation
- Increasing incentives for the unemployed/economically inactive to work.

The Commons EFRA Committee's report [Feeding the Nation: Labour Constraints](#) (April 2017) highlighted some of the work which the Government had identified as needing to be part of the long-term solution to the sector becoming less reliant on migrant labour and using more UK workers. This included:

- reforms to the benefit system
- greater automation
- increasing skills and qualifications in the sector
- increasing apprentices
- improving the perception and understanding of agricultural work.

The Committee noted that industry witnesses were unanimous that "no matter what policies the Government adopted, there would always be some need for temporary, migrant labour in the sector".<sup>336</sup>

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• <sup>335</sup>AHDB, [The impact of Brexit on the UK agricultural workforce](#), 20 September 2016

<sup>336</sup> House of Commons Environment, Food and Rural Affairs Committee, [Feeding the Nation: Labour Constraints](#), April 2017, [para 22](#)

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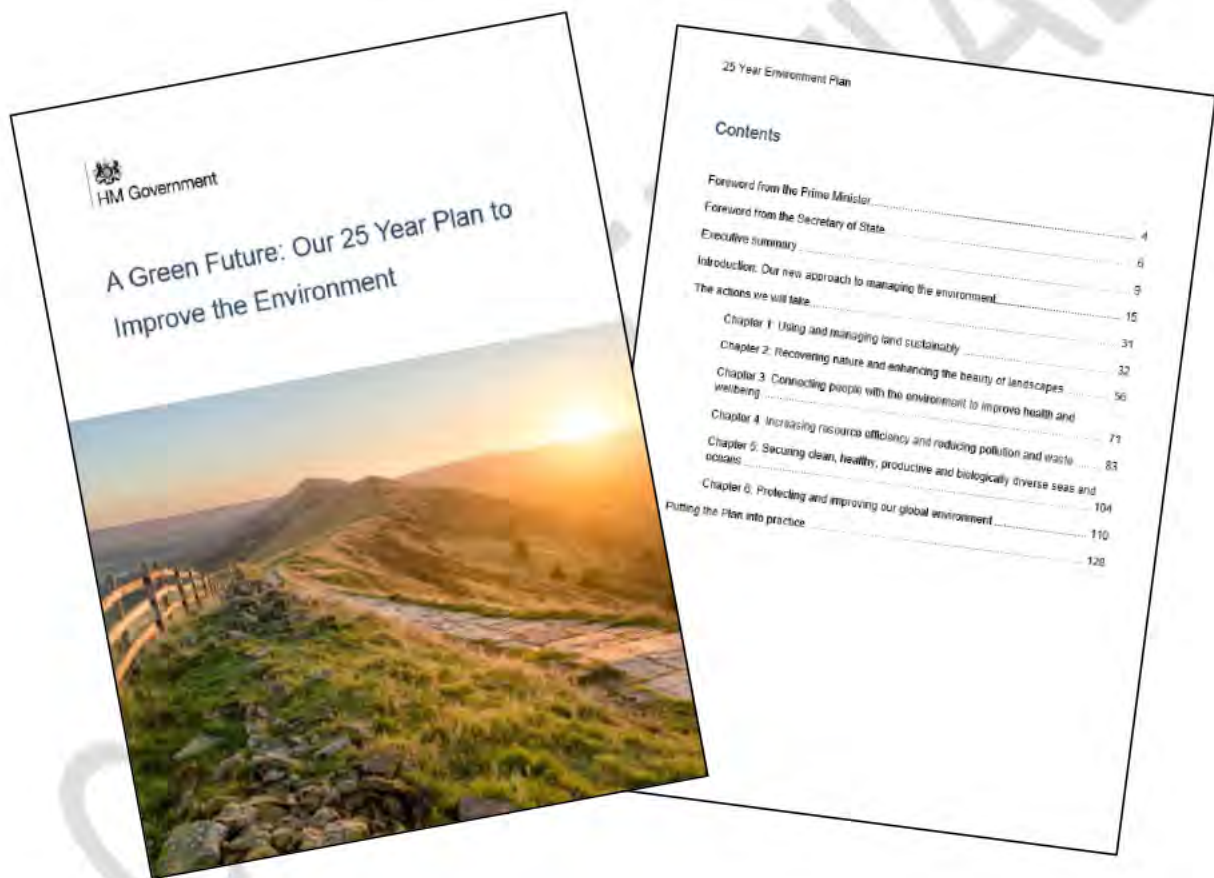
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# Key messages from the 25 Year Plan and UK Government strategy to inform marine fisheries policy post-EU exit

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## Introduction

The aim of this document is to highlight the key messages relating to fisheries policy and the marine environment to provide context when preparing advice for the UK Government and devolved administrations. The main pieces of policy summarised are:

1. The UK Government's [25-Year Environmental Plan](#) for cleaner air and water; thriving plants and animals; and a cleaner, greener country. Some aspects of the plan apply to the UK, however where environmental policy is devolved, the proposals apply to England only.
2. The [Seafood 2040 Strategy](#) sets out industries collective vision of a thriving seafood industry with verifiably sustainable sourcing.
3. The [Marine Strategy](#) fulfils the UK's commitment to the Marine Strategy Framework Directive to put in place measures to achieve GES in their marine waters by 2020.
4. The [Industrial Strategy](#) sets out how the UK Government will help businesses create better, higher-paying jobs with investment in the skills, industries and infrastructure of the future to boost productivity and earning power across the country.

For references, please see the reference lists within each strategy summarised.

## High-level statements with respect to fisheries

### [25-year environmental plan](#)

- We will develop a fishing policy that ensures seas return to health and fish stocks are replenished.
- 25 YEP calls for an approach to fishing that puts the environment first.
- The fishing industry is a good example of natural capital in action. This vital industry is dependent on a healthy marine environment. We need to make sure that we have healthy fish stocks free of persistent pollutants and heavy metals, and that fish stocks are exploited sustainably, in order to ensure the long-term viability of the fishing sector.
- Fishing at sustainable levels will help to protect the wider marine ecosystems that underpin the fish species we rely on.
- We must also protect the marine environment that is their (fish stocks) vital habitat.
- To end wasteful discarding, (we will) put in place the right incentives to ensure compliance, and collect data and use science in the policy decisions we make.
- We will implement science-based plans as part of our approach to managing fisheries sustainably and to recovering fish stocks to sustainable levels in the shortest time feasible.
- Without effective regulation and management, fisheries can suffer from what is called the 'tragedy of the commons' where open access to a common valuable resource results in a tendency to over-exploit.
- While overfishing may provide immediate benefits in the form of increased income, it... undermines the resilience of our marine ecosystem and its ability to support sustainable fisheries in the future.
- An ecosystem approach to fisheries management aims for more sustainable management and accounts for, and seeks to minimise, impacts on non-commercial species and the marine environment generally.

### Marine Strategy

The Marine Strategy was drafted in response to commitments made under the Marine Strategy Framework Directive and contains three parts: an initial assessment of the status of UK waters, the UK's monitoring strategy, and the measures required to achieve Good Environmental Status (GES) by 2020. The strategy states that cooperative working with other EU Member States is key (largely implemented through OSPAR). All commercial fisheries are required to be fishing at MSY by 2020. Data limitation and slow recovery may prevent targets being set and GES being met for some fish (deep-water and coastal fish, cephalopods, elasmobranchs and diadromous species), shellfish (scallops) and shellfish (crab, lobster and scallop). Achievement of MSY depends on the success of the reformed CFP (i.e. landings obligation, TAC and quota, technical gear regulations). Additional management may be needed to reduce fisheries impacts.

### Seafood 2040 Strategy

In May 2016, the UK Government appointed a Seafood Industry Expert Working Group to develop a strategic fisheries framework for England that sets out industries collective vision. The group's vision for the seafood value chain in 2040 was: doubled seafood consumption, verifiably sustainable and flourishing wild-catch fisheries, an expanded aquaculture sector, business growth (better infrastructure, recruitment, skills development and reduced waste and inefficiency), increased production volumes and export opportunities, and access to international markets. The group aim to achieve this vision using collaboration, science and best practise.

### Industrial Strategy

The strategy sets out the UK Government's aims to: maximise the marine economy of the Highlands & Islands using aquaculture, wave and tidal energy and marine biotechnology (page 86), and move the UK towards a regenerative circular economy transforming food production (i.e. a "new Food and Drink Sector Council will lead the work to secure the UK's position as a global leader in sustainable, affordable, safe and high-quality food and drink..." page 188). The paper also mentions that the UK need to take on more apprenticeships, tackle regional disparities in skills, ensure everyone has an opportunity to progress at work, continue to remain a global, outward looking nation, and ensure our migration system supports our Industrial Strategy.

## 25 Year Environmental Plan

### Introduction

The UK Government released their 25-Year Environmental Plan on 11<sup>th</sup> January 2018. Its goals are for cleaner air and water; thriving plants and animals; and a cleaner, greener country. With regards to fisheries, the plan calls for natural capital and ecosystem approaches to fishing that put the environment first to strengthen protection for marine habitats and species in the UK and abroad.

The 25-Year Environmental Plan (YEP) aims to manage pressures on the environment through sustainable and efficient resource-use. The key areas of the plan relating to fisheries are: increasing resource efficiency and reduce waste ([chapter 4](#)), securing clean, productive and biologically diverse seas and oceans ([chapter 5](#)) and protecting and improving the global environment ([chapter 6](#)).

#### High-level statements:

- Leaving the EU means taking back control of the waters around these islands. We will develop a fishing policy that ensures seas return to health and fish stocks are replenished.
- 25 YEP calls for an approach to agriculture, forestry, land use and fishing that puts the environment first.
- The fishing industry is a good example of natural capital in action. This vital industry is dependent on a healthy marine environment. We need to make sure that we have healthy fish stocks free of persistent pollutants and heavy metals, and that fish stocks are exploited sustainably, in order to ensure the long-term viability of the fishing sector.
- In turn, by fishing at sustainable levels we will help to protect the wider marine ecosystems that underpin the fish species we rely on.
- We must also protect the marine environment that is their (fish stocks) vital habitat.
- To end wasteful discarding, (we will) put in place the right incentives to ensure compliance, and collect data and use science in the policy decisions we make.
- We will implement science-based plans as part of our approach to managing fisheries sustainably and to recovering fish stocks to sustainable levels in the shortest time feasible.
- Without effective regulation and management, fisheries can suffer from what is called the 'tragedy of the commons' where open access to a common valuable resource results in a tendency to over-exploit.
- While overfishing may provide immediate benefits in the form of increased income, it... also undermines the resilience of our marine ecosystem and its ability to support sustainable fisheries in the future.
- An ecosystem approach to fisheries management aims for more sustainable management and accounts for, and seeks to minimise, impacts on non-commercial species and the marine environment generally.
- The UK Government state that they will restore thriving wildlife at sea by:
  - *"reversing the loss of marine biodiversity and, where practicable, restoring it;*
  - *increasing the proportion of protected and well-managed seas, and better managing existing protected sites;*
  - *making sure populations of key species are sustainable with appropriate age structures; and*
  - *ensuring seafloor habitats are productive and sufficiently extensive to support healthy, sustainable ecosystems"*.



The key messages are:

- Use natural capital and ecosystem-based approaches as decision-making tools;
- Set gold standards for protecting and growing natural capital (to take into account national wellbeing, health and economic prosperity with scientific and economic evidence);
- Develop an approach to fisheries that puts the environment first to ensure that our seas return to health and fish stocks are replenished (page 4-5);
- Strengthen protection for marine habitats and species in the UK and abroad: in part by extending MPAs around our coasts and the OTs (page 6-7, 21);
- Set-up an independent, statutory body to hold Government to account for environmental standards (page 6-7, 24);
- Work with the devolved administrations to protect our natural heritage (page 6-7);
- Use emerging technologies to build a greener country and reap the economic rewards;
- Champion sustainable development, lead in environmental science, innovate to achieve clean growth and increase resource efficiency, for future generations;
- Start to make behavioural and institutional changes for sustainable growth and wellbeing;
- Develop a set of metrics to assess progress towards our 25-year goals;
- Review the plan regularly to ensure the right priorities and delivering value for money;
- Strengthen leadership and delivery through better local planning, more effective partnerships and learning from our pioneer projects;
- Establish a green business council to explore the potential for an environment impact fund;
- Work closely with stakeholders to identify their contribution to the goals set out in this plan.

#### Chapter 4: Increasing efficiency and reducing waste

This chapter aims to ensure that resources are used more efficiently and sustainably to minimise waste and reduce environmental impacts. The ultimate goals are to eliminate avoidable waste by 2050, avoidable plastic waste by 2042, and reduce food supply chain emissions and waste (25). To increase efficiency and reduce waste, the Courtauld Commitment 2025 (voluntary agreement involving organisations along the food supply chain to reduce emissions and waste) endorse the use of a scorecard to rank sustainability, nutrition, resource efficiency, socioeconomic value.

The UK Government needs a sustainable, international and transboundary approach to promote practices that prevent harmful matter entering the sea (see the Resources and Waste Strategy 2018 – Yet to be published). Existing programmes also need better enforcement. Marine litter presents significant risk to business (31/32), so the private sector can play a major role. Cleaning-up pollution will protect organisms, delivering economic and environmental benefits. Litter that poses a threat to human health, biodiversity or wildlife should be prioritised - UN Environment Assembly 2017.

The UK Government aim to tackle marine pollution by:

- Promote using port facilities and champion laws concerning dumping waste at sea
- Distribute £450,000 litter innovation fund to pilot small-scale research projects;
- Eliminate waste crime over the next 25 years, prioritising those of highest risk;
- Work with industry to explore options to introduce electronic tracking of waste;
- Develop a new approach to prevent, detect and deter waste crime; and
- Take a partnership approach with industry, regulators and local authorities.

## Chapter 5: Clean, healthy, productive and biodiverse seas

This chapter aims to implement a sustainable fisheries policy post-EU exit and achieve good environmental status of our seas while allowing marine industries to thrive, and complete our ecologically coherent network of well-managed MPAs. The UK Government, view the two major threats to our seas are ocean acidification and coral reef damage. The UK wish to support coral conservation and biodiversity in UK and OTs' waters by championing the International Coral Reef Initiative's (ICRI) 2018 Year of the Reef and increasing engagement with ICRI and OTs to encourage sustainable management for coral reefs, and their associated ecosystems. The UK want sustainable fisheries and food security while upholding social and cultural wellbeing.

### Tackling transboundary issues

The UK Government will work with all UK administrations and neighbouring countries through OSPAR in delivering our ambitions for the marine environment. Our commitments to deliver the Sustainable Development Goals including the 14th: *"Conserve and sustainably use the oceans, seas and marine resources for sustainable development"*, will guide many of our priority work areas. As part of our commitment, the UK will continue to work with the Commonwealth secretariat and partners to draft a Commonwealth Blue Charter that will apply the principles and values of the Commonwealth Charter to oceans, to include maintaining sustainable marine environments, developing prosperous blue economies, delivering fair ocean governance and ensuring a safe and secure maritime environment. The UK Government will build on the success of the Commonwealth Marine Economies Programme to enable them to use their marine space sustainably.

### Reviewing the Common Fisheries Policy

Historically we have fished unsustainably. Unsustainable fishing practices threaten marine ecosystems and impact coastal communities by undermining the ecosystems resilience and limiting the long-term viability of the sector. To reduce overfishing, in 2006 EU fisheries management set TAC quotas to prevent further stock depletion. This was strengthened in 2011 and Maximum Sustainable Yield (MSY) adopted in 2013. In 2010, ~30% of fish stocks were considered sustainable. More action needed to ease the impact of human activity, on seabed habitats and fish populations.

To this end, the UK Government will:

- Publish a Fisheries White Paper setting our future approach to sustainable management;
- Action an ecosystem approach at all levels, including in fisheries negotiations;
- Introduce a world-class fisheries management system based on MSY;
- Implement an ecosystem approach to fisheries management that will recover fish stocks to sustainable levels asap, and minimise impacts on non-commercial species and the marine environment, through technical conservation measures.
- Work with the devolved administrations and stakeholders to end wasteful discarding, develop compliance incentives and collect data for policy decisions;
- Post EU-exit, the Government will publish annual statements on UK fish stocks;
- Maximise the value and benefits from resources, doubling resource productivity by 2050;
- Ensure all fish stocks are recovered and maintained at sustainable levels; and
- Ensure that food is produced sustainably and profitably.

## Reviewing the Marine Strategy Framework Directive

The UK Marine Strategy sets the UK Government targets for effective marine management and how to achieve them. To help achieve this the UK Government will:

- Assess how far our seas have moved towards good environmental status since 2012;
- Review marine targets and indicators to align them with the objectives set here;
- Develop an online assessment tool for the marine environment and pressures affecting it;
- Deliver marine spatial planning and licensing systems to support proportionate management, whilst enabling growth and certainty for industry and investors;
- Establish marine plans for England, and working with partners in the devolved administrations to support those for Northern Ireland, Scotland and Wales by 2021;
- Implement a marine licensing regulatory regime that supports sustainable development while protecting natural capital that coastal authorities will sign-up to by 2021;
- Build on plans to complete our ecologically coherent network of well-managed MPAs by moving to a whole-site approach to protect sites of greatest biodiversity interest;
- Adapt MPA management to respond to changing pressures and develop techniques to help (i.e. remote sensing, earth observation satellites and the use of autonomous vehicles); and
- Consult on Tranche Three MCZs to complete our MPA network in the North East Atlantic.

## Chapter 6: Improving our global environment

Chapter 6 sets out the UK Government's ambition to provide international leadership in improving biodiversity to leave a lighter footprint by enhancing sustainability.

### Tackling biodiversity loss

As a party to numerous conventions that protect marine, migratory and endangered species, including the Convention on Biological Diversity, the UK will work to prevent biodiversity loss by:

- Developing new techniques to manage protected areas in the OTs, i.e. using remote sensing, earth observation satellites and use of autonomous vehicles;
- Working with OTs to continue the implementation of the Blue Belt programme, including supporting efficient monitoring and enforcement of large scale protected areas by 2020;
- Supporting the global moratorium on commercial whaling and lead calls for those countries that still engage in commercial whaling practices to stop;
- Halting and reversing global biodiversity decline and increase sustainable fishing practices, to prevent the extinction of known threatened species, and improve conservation status;
- Securing new international agreement for the conservation and sustainable use of marine areas beyond national jurisdiction;

### Tackling unsustainable practices

To deliver the environmental UN Sustainable Development Goals (Agenda 2030), the UK Government has set-up a Sustainable Development Forum to coordinate implementation, with scrutiny from the Environmental Audit Committee. The SDGs relevant to fisheries include 14 (life below water) and 12 (sustainable consumption and production).

The UK Government aim to attract private finance into environmental projects and focus investment where it can provide the greatest benefit, as well as develop a trading framework that supports foreign and domestic policy, sustainability, environmental and development goals to ensure the environment is protected, and the threat of extinction reduced. The UK Government will use natural



capital approaches and encourage natural capital reporting, standards and accounting across government and businesses, in conjunction with other key initiatives.

Actions the UK Government will take include:

- Work with industry to explore the possibility of developing tools that support businesses to identify sustainable supply chains;
- Establish appropriate mechanisms to screen policies and strategies for potential negative environmental effects overseas;
- Develop new approaches and techniques accounting for natural capital; and
- Host an international conference to discuss new ways of incorporating natural capital approaches to long-term policy making.

### Putting the plan into practise

The UK Government will:

- Consult on a new independent body to hold government to account and a new set of environmental principles to underpin policy-making;
- Develop a set of metrics to assess progress towards our 25 year goals and undertake a second 'National Ecosystem Assessment' type initiative beginning in 2022;
- Refresh the 25 Year Environment Plan regularly to ensure we are focusing on the right priorities, using the latest evidence, and delivering better value for money;
- Strengthen leadership and delivery through better local planning, more effective partnerships and learning from our four pioneer projects;
- Establish a green business council and explore a new natural environment impact fund; and
- Work closely with stakeholders to identify their contribution to the goals set out in this Plan.

This Plan will be revised every 5 years to account for changes in technology, science, data and society as well as the impact of EU-exit. Our starting point however, is that the UK Government will:

1. Set a clear, long-term direction with flexibility to adapt to new evidence and circumstances.
2. Provide robust and credible reporting, governance and accountability.
3. Put in place strong local leadership and a more integrated delivery framework.
4. Resource, set incentives and support innovative finance, including from the private sector.
5. Ensure everyone plays their part in delivering the improved environment.

### Assessing success

The UK Government need to develop metrics to monitor progress, understand how the environment is changing (pressures, state of assets and benefits), assess policy effectiveness to show how the UK are delivering commitments; and inform decisions and promote action in and outside government. To do this, current indicators and monitoring programmes will be reviewed to assess which remain relevant and can include natural capital. The UK Government will establish which measures give the best insight into how natural capital changes over time and take advantage of new technologies (i.e. remote sensing, environmental DNA and mobile phones) to monitor changes in natural capital. The UK Government will measure the actions it takes ('performance measures') and long-term progress ('outcome indicators') to check progress across the goals annually. Analysing trends and groups of indicators together will provide a more robust assessment of environmental change.

## Learning through the pioneer projects

Defra created two marine pioneer projects in 2016 to inform the development and implementation of the 25 YEP. The marine pioneer projects, led by the MMO, operate in North Devon and Suffolk. The pioneers work with partners to produce practical tools for capturing natural capital in decision making, and using natural capital to identify environmental priorities and investment opportunities. The pioneer also look at ways to promote sustainable fisheries, better manage MPAs and develop planning and licensing systems. They are currently developing a fisheries partnership to test regional management opportunities and create markets for sustainably-caught local fish.

Defra expects the pioneers to make an important contribution to future iterations of the 25 YEP. Updates following EU-exit will be key to share good practice. The pioneers can make progress on their existing objectives, and testing and supporting the policies set. At present many organisations pursue their own plans, across different areas and boundaries. In places, there is good coordination but in others opportunities for integrating environmental work are missed. The UK Government want environmental effort to be guided by the goals outlined and reflect local needs and priorities.

## Annex 1: Supplementary evidence

This [annex](#) provides the context that underpins the 25 YEP. This includes the conclusions of the Natural Capital Committee that many aspects of the natural capital are in a poor state, delivering less benefits than desirable and that a long-term plan is required.

### Section 1: Understanding natural capital

Natural capital are “the elements of nature that directly and indirectly produce value or benefits to people (now or in the future), including ecosystems, species, freshwater, land, minerals, the air and oceans, as well as natural processes and functions” ([Natural Capital Committee](#)). This includes non-use value (the wellbeing people receive from knowing that special places or species exist).

The conceptual framework for the 25 YEP categorises the environment into a number of ‘assets’ which provide services and benefits from which we derive wellbeing. Many of these relationships are mediated, and the benefits enhanced, through human activities called ‘other capital inputs’ (i.e. financial, manufactured, social and human). We need to know how to manage natural assets to provide the greatest benefits to society, a strong economy and improved wellbeing.

The assets and benefits are part of an open and highly interdependent system which are influenced by a wide range of ‘external’ drivers (i.e. social changes in demographic or social values, technological advances, environmental changes, and political changes), pressures and ‘internal’ policy or management interventions (see Section 3). Drivers give rise to multiple pressures on the environment (such as habitat loss). However, these drivers also present opportunities, such as advanced technologies to reduce emissions of harmful substances; or economic systems adopting natural capital as a key underpinning framework.

Interventions at different points can improve the net benefits we obtain from the environment. Interventions can focus on reducing pressures on assets by reducing our environmental footprint, protecting assets, achieving sustainable use or increasing productivity by managing ‘other capital inputs’ (e.g. fishing practices). Interventions may also focus directly on improving wellbeing by providing opportunities for people to engage with nature (e.g. education).

Cultural ecosystem services derive from the interplay between environments and the activities undertaken in them and include leisure, recreation and tourism goods; health goods; heritage goods; education and ecological knowledge goods; and religious and spiritual goods (5). The benefits people get from these cultural ecosystem services and goods are also associated with the interaction between the environments and activities undertaken in them. These benefits include rootedness and a sense of place, inspiration and escape, and increased knowledge, health and wellbeing (6).

The conceptual framework is an approach to evaluation that measures progress towards an objective (requiring metrics on pressures, assets and benefits) and evaluates how effective interventions are to inform the plan's evolution. The conceptual framework considers environmental stocks and flows, which facilitates better inclusion of sustainability considerations. By incorporating drivers and pressures, it is possible to take a more systematic view of key current and future challenges as well as the potential synergies and trade-offs involved in policy decisions. The framework works better for assets and benefits that lend themselves to quantification and valuation, enabling a formal approach to natural capital accounting.

Natural capital accounting is an integrated approach to assessing the environment through the measurement of natural assets and the measurement of services from these assets into economic and other human activity. Natural capital accounting goes beyond other approaches by linking natural assets to economic and other human activity by the services provided by the assets. The use of an accounting framework enables the stock of assets and the flows of services to be defined in relation to each other and other environmental, economic and social information. Decisions on using the environment may be better informed by developing information sets recognising the interconnectedness between ecosystems and economy.

#### *Relationships between drivers, pressures, assets and benefits*

Research is ongoing but a preliminary UK ecosystem assessment on the relationships between drivers, pressures, habitat types and ecosystem services concluded that land use and management change, pollution and overexploitation had the highest impact on ecosystem services.

There is evidence available between some pressures and attributes (i.e. the condition of protected areas), however the long-term, cumulative and combined effects of pressures are not fully understood. The relationships between pressures, assets and benefits are complex in space and time, including biophysical, socio-economic and behavioural aspects, some of which are non-linear and may be irreversible.

To identify the most important aspects to monitor, Natural England have reviewed potential indicators for measuring change in the quantity and quality of natural capital, at a range of scales and identified ideal natural capital indicators through the development of natural capital logic chains. This work will be used to inform the development of the framework for monitoring and evaluating the 25 YEP (see Section 5). It is also important to recognise a broad range of values, including people's concern for the natural world and how these vary spatially and temporally.

#### *Synergies and trade-offs*

Natural capital assets can deliver multiple benefits or dis-benefits. Natural capital frameworks can help us understand and quantify trade-offs, to make informed decisions about policy options. Scenario analysis (combining data with expert opinion), should be considered to illustrate how assumptions may affect future use. Scenarios often represent policy extremes with the outputs informing decisions (see Section 4).



### *Complex systems and uncertain futures*

A key concept underpinning a natural capital approach is system-based thinking which recognises the interdependencies between the different elements of the natural capital framework and any emergent properties which occur through these interactions. Systems thinking also recognises the interactions between systems and the need to take account of the speed and direction of changes on the different spatial and temporal scales. The future is often unpredictable, and uncertainties increase the further ahead we look. With a 25-year horizon, there is a risk that actions to achieve long-term objectives in the plan are overtaken by developments, new findings and other factors.

Adopting futures thinking and foresight resources and tools can help to:

- Describe and explore plausible and possible ways the future might play out;
- Flag key opportunities and risks that may occur if pursuing or revising the goals;
- Explore a range of options for action in the face of these risks and opportunities; and
- Build capacity for long-term thinking in policy design and implementation.

There are several resources available to facilitate this approach including UK and international studies of global trends and emerging issues (Box 1.5) and 'Foresight' studies such as the Futures Toolkit. Studies undertaken for the Convention on Biological Diversity (CBD) illustrate plausible scenarios to achieve the CBD's 2050 vision to conserve biodiversity, maintain ecosystem services and deliver benefits essential for all people, but these require transformational change in the way natural assets are used and managed (Box 1.6).

#### **Box 1.5: Global trends and emerging issues**

The UK is part of a globalised world with two-way flows of materials, people, ecosystem services, finances and ideas. As a result, the UK's ecological and societal resilience will be significantly affected by global megatrends (largescale, slow-moving but high impact with interdependent social, economic, political, environmental or technological changes). Recent studies have assessed megatrends and flagged the following to consider in the 25 YEP:

- Diverging trends in demographics e.g. ageing populations in some areas and more young people in others, gives rise to greater diversity of values.
- Increasing disease risks on human, animal and plant health.
- Increasing parochial sentiments from global to sub-national, this may be combined with decreasing sentiments towards cooperation and turning away from globalisation.
- Increasing autonomy where the emphasis is on greater personal control.
- Increasingly transformational, converging and open technological innovation.
- Increasing concern around extreme climate change events and their impacts.
- Increasing pressure on ecosystems, environmental degradation and pollution. Despite tackling point sources, the effects of wider pollution may increase.
- Increasing competition for resources as development, economy and population growth require space, and resources to ensure continued production and enable consumption.
- Diverging trends in economic growth and economic models. There may be a need for alternative metrics, building circular economies that are sustainable.
- Increasing urbanisation and focus on governance and geography. Different kinds of urban pattern are emerging, where and how will these be governed?
- Increasing demand for global policy coordination. There will be a need to recognise limitations of global institutions but also face greater needs for global cooperation.
- Increasingly multi-polar world and eastward economic power shifts.

#### Box 1.6: Pathways to achieve global sustainability goals by 2050

Substantial change are needed to stop the loss of biodiversity, keep average global temperature increases below 2°C and attain other human development goals by 2050. Solutions require a wide range of societal transformations. Scenario analysis suggests these goals can be attained while reaching broader socioeconomic objectives by mixing policies:

- Focus on large-scale technological solutions and a high level of international coordination.
- Focus on decentralized solutions and national policies that regulate equitable access to food.
- Focus on changes in human consumption patterns and reducing losses in food systems.

#### Section 2: Context for the 25 YEP

The 25 YEP considers the different facets of the marine environment, the state of environmental “assets” and the subsequent societal benefits (see Figure 1). It also summarises evidence relating to pressures on and interactions between assets, noting the importance of considering these systematically for integrated policy responses.

The UK's marine waters (excluding the Overseas Territories) extend over 867,000 km<sup>2</sup> (nearly four times the land area; 86). There are 17,820 km of coastline and the widest range of marine habitats of any Atlantic European country. UK coastal waters contain a rich diversity of life, with around 8,500 species of animals and plants (87), and are diverse, rich in heritage and busy with human activities. Marine ecosystems contribute significantly to climate change mitigation, air quality, flood defence, water quality, wildlife, heritage, seascape, health and wellbeing (Figure 3).

The status of the marine environment is assessed using the 11 descriptors listed in the Marine Strategy covering species (including marine mammals, birds and fish), food webs, seabed and pelagic habitats (90). They also address human pressures that impact the marine environment (i.e. invasive species, fishing and litter). With marine assets assessed using a natural capital approach.

The benefits that result from Good Environmental Status and marine assets are currently too complex to quantify. There are knowledge gaps about the effects of natural conditions, current levels of pressures and the impacts they have on the environment and ecological functions, and the effectiveness of management interventions. It is also likely that marine ecosystems will benefit future generations in ways not yet understood.

Spatial management measures, such as Marine Protected Areas (MPAs) have created opportunities for new markets based on greater sustainability attributed to produce from these areas (104). It has been estimated that MPAs in English waters could safeguard an annual recreational value worth £1.9 billion to £3.4 billion (105). The willingness of households in England to pay to halt loss of biodiversity and ecosystem services on the coastal shelf has been estimated at £1.6 billion (106).

All ecosystem components (assets) are linked, and the environment is also connected to social, economic and political systems. Interventions that aim to deliver policy objectives in one area are likely to impact areas. Therefore, to achieve change in one asset action may be required in several others. In some cases, this extends to action and impacts outside England and the UK.

Additional pressures, such as invasive species (one of the main drivers for biodiversity loss globally; 243), are likely to impact marine environmental status and assets. Best available evidence suggests that 1 in 5 threatened species in Europe is directly affected by non-native invasive species. Non-



native invasive species can also have human health implications, interfere with agriculture and recreational activities, reduce house prices, and have direct economic impact by reducing products and services, and increasing the costs associated with eradication/control.



Figure 1. Ecosystem services and benefits provided by marine ecosystems.

### Section 3: Policy intervention effectiveness

This section assesses the evidence available to support decisions on which policy intervention(s) might be the most effective and what actions and behavioural changes need to happen.

Many interventions to improve the environment can also improve the economy and wellbeing. The beneficiaries of these interventions suggest that the government, private sector and civil society have significant parts to play, with strong rationale for dividing responsibilities by benefits accrued. Determining policy interventions will require working with key sectors and individuals involved in delivering the desired change and the necessary levers to incentivise them to change behaviour.

#### *The current situation*

Current interventions include voluntary, legislative, fiscal and governance actions. We know that different aspects of the environment are functionally linked and that responses on single sectors are unlikely to be as effective. An analysis by the UK National Ecosystem Assessment (UK NEA) concluded that responses need to be more integrated. UK NEA also analysed response options that have had positive impacts on natural capital management. Key conclusions are given here which will aid policy development to have increased effectiveness as they work in a more integrated way.



### *Types of policy instrument*

The UK NEA concluded that *“the sustainable management of ecosystems and their services typically involves several approaches including regulation, policy, attitude, incentives, technology and voluntary”*. This emphasises the need *“to manage ecosystems through the adoption of holistic and integrated approaches which recognise the impacts of actions across a range of sectors and provide opportunities for collaboration between actors at different levels”*. There may be trade-offs which lead to difficult choices. Actions in one area can have knock-on effects beyond those unintended.

To analyse the effectiveness of different approaches, the UK NEA classified three tiers of response:

1. **Foundational:** The generation and distribution of knowledge and information on links between biodiversity, ecosystem structure, functions and services. Monitoring and reporting frameworks also need alignment with an integrated approach to environmental management (page 92).
2. **Enabling:** The UK has framed policy in an international context for integrated and collaborative approaches. External obligations need to allow variation in national implementation.
3. **Instrumental:** Market based mechanisms can encourage innovation. Approaches that rely on ecological restoration involve risk due to outcome uncertainty so may require regulation or insurance. New technologies needed to minimise damage to the marine ecosystem.

The importance of stakeholder engagement is acknowledged for the acceptance of measures. Statutory requirements stipulate that the science curriculum must include sustainable development, life processes and living things. Awareness can lead to voluntary action but there are many barriers to volunteering: lack of opportunities, practical constraints and short-term funding streams.

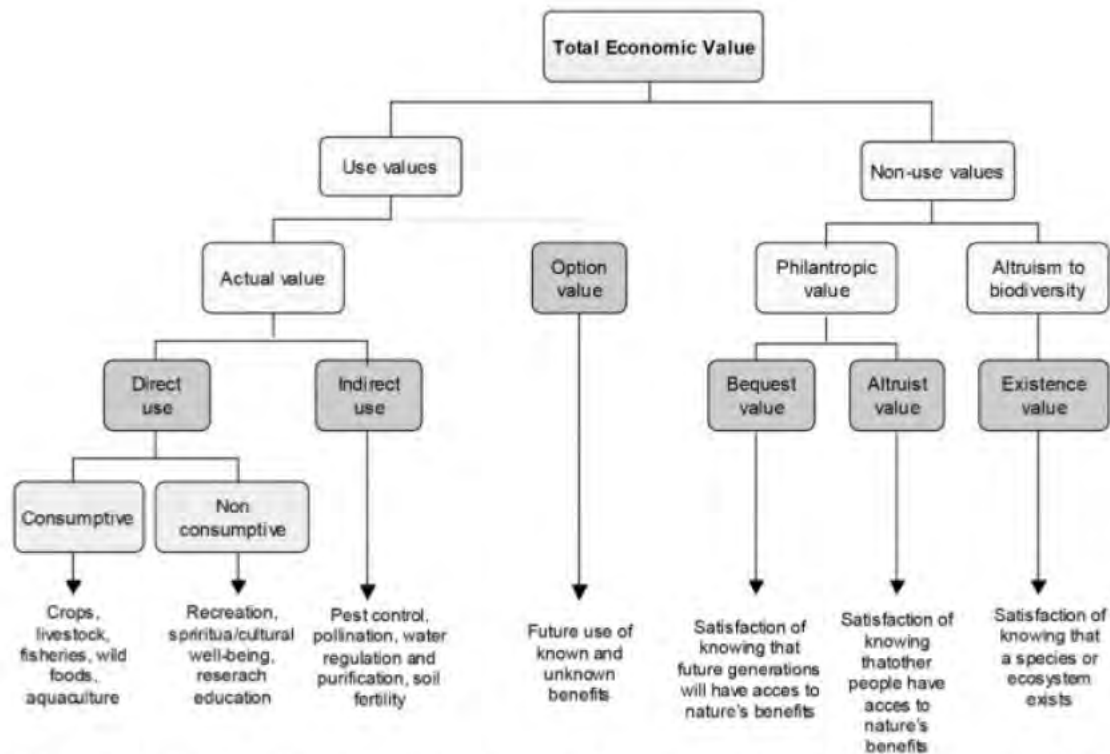
### A combined approach to interventions

- Regulations, technology, incentives and behavioural change needed for national conservation. Integrated approaches across sectors need to recognise their impacts on other sectors and ecosystem services.
- Governments involved in foundational and enabling activities; the scientific community in foundational activities; the private sector in foundational, instrumental and enabling activities, especially shaping social attitudes; and communities involved in enabling activities by changing attitudes, values and instrumental activities by responding to incentives and undertaking voluntary activities.
- Strategic spatial planning is important for ecosystem service delivery, and needs to be better reflected in future responses. Temporally, potential trade-offs between short-term goals and long-term targets may require the adoption of longer planning horizons.
- Flexible, adaptive management frameworks are needed to recognise that the environment is under constant change and uncertainty (i.e. climate change)
- Adaptive management frameworks also need to learn from mistakes and take into account lay and local knowledge to get greater involvement of stakeholders in response strategies.
- As well as incentives, disincentives (taxes) and removing or restricting choice (legislation banning goods). The Behavioural Insight Team’s EAST framework suggests that interventions should encourage behaviour that is Easy, Attractive, Social and Timely (274).

### Section 4: Prioritising action

Prioritisation involves assessing the viability of the intervention at the appropriate spatial scale and considering the mechanisms that will be used to deliver it. Decision-making must combine economic, scientific, social, cultural, moral, ethical and legal factors. Different methods need integration for the decisions based approach to be valid. Monetary valuation is important for transparency, objectivity and clarity in decision-making but insufficient for decision-making.

For cost-benefit analysis we should aim to know the Total Economic Value of all the variables under consideration (see figure below). A natural capital asset is valued based on the flow of benefits it provides to humans. The extent to which natural assets provide benefits is determined by four key characteristics: quantity, quality, location and people's physical exposure to that asset. It is also important to incorporate risk and the threshold which if crossed may lead to a loss of benefits that are disproportionate to the loss of the asset. It may also be very costly or impossible to restore the asset. Values should account for potential substitutes, or the lack of them.



It is important to be cautious when prioritising due to poor data availability and uncertainty, using data inappropriately (i.e. assuming everything in nature has a monetary value) and policy failure (rely too heavily on limited evidence and take drastic action that causes more harm than good). Caution must be exercised to avoid putting too much weight on spurious and unsubstantiated evidence, and so a pluralistic decision-making process should be adopted, where economic, scientific, social, cultural, moral, ethical and legal factors are accounted for.

#### Section 5: Monitoring success

This section sets out a monitoring and evaluation framework for the Plan designed to track progress, as well as to adjust policies and interventions along the way, to adapt to new challenges and learn from experience. The key questions that the evaluation framework is designed to address are:

- How are the pressures on our natural assets changing?
- How well are our interventions working?
- Has our natural environment improved?
- How have our natural assets and the benefits they provide changed?

To comply with international standards and deliver on our international commitments we have a well-developed monitoring strategy for many aspects of our environment but some gaps remain in the information collected. EU-exit provides an opportunity to review these systems. New technologies, such as earth observation and DNA analysis, provide further opportunities.



A natural capital framework can help us to identify gaps and redundancy in available information. For example, Natural England is undertaking a review of metrics of change in natural capital. The amount and type of natural capital assets, their condition and location, and people's attitudes and behaviours, all influence the benefits provided. The project is identifying attributes to measure change, based on quantity, quality and spatial configuration. It is also marrying up these attributes with existing data sets to monitor change, whilst highlighting current data gaps.

We are already working with the Office of National Statistics to develop natural capital accounts. National accounts, with scoping studies developed for marine and coastal broad-scale habitats (303). These accounts are developing standard approaches to measuring the state of our natural capital and the services we receive from the environment, tracking changes over time. The accounts can be compiled in physical and monetary terms because it is not possible to place a monetary value on all the services. In principle, accounts can be compiled at any geographical and economic scale.

An integrated monitoring and evaluation framework will be developed including annual progress checks (using short-term outcome indicators), periodic assessments (baseline assessment taken in 2011 at 10-15 year intervals), policy evaluations (provide early feedback and link to annual progress checks and other sector-specific reports like 5-yearly Climate Change Risk Assessments and OSPAR reporting), international comparisons (i.e. with the Organisation for Economic Cooperation and Development OECD and Intergovernmental Platform on Biodiversity and Ecosystem Services IPBES) and ongoing publication of data and statistics (open-access). To put a new system of metrics and monitoring in place will require a collaborative effort over a number of years across government, public-sector bodies, private, voluntary and academic research sectors.

Planning responses in the face of uncertainty requires more flexible, adaptive management frameworks implemented in reflexive learning environments which recognise that mistakes help to construct more effective future responses. Knowledge frameworks need to support this approach, and recognise lay and local knowledge to get greater involvement of stakeholders in strategies.

## Annex 2: Government conservation strategies

Defra's environment plan sits alongside two other government strategies: the [Industrial Strategy](#) (summarised below) and the [Clean Growth Strategy](#). The plan also relates to the [Seafood 2040 Strategy](#) (a framework for England) and the Marine Strategy (both summarised below):

Outcome	Strategy	Published
Clean, healthy, productive and biodiverse seas	<a href="#">Seafood 2040: A strategic framework for England</a> <a href="#">Marine Strategy Part 1: UK initial assessment and GES</a> <a href="#">Marine Strategy Part 2: UK marine monitoring programme</a> <a href="#">Marine Strategy Part 3: UK programme of measures</a> <a href="#">Biodiversity Strategy for Northern Ireland</a> to 2020 considers sustainable fisheries in territorial waters, including inshore.	July 2016 Dec 2012 Aug 2014 Dec 2015 2015
Protecting and improving global environment	UK OT biodiversity strategy update UK OT biodiversity strategy	May 2014 May 2011 Due 2018

	UK national adaptation programme update	
Cross-theme strategies	Clean Growth Strategy (not relevant for fisheries) <a href="#">Industrial Strategy</a> Bio-economy Strategy	Nov 2017 Nov 2017 Due 2018

### Seafood 2040 Strategy

In May 2016, the UK Government appointed a Seafood Industry Expert Working Group to develop Seafood 2040. Seafood 2040 is a strategic fisheries framework for England that sets out industries collective vision of a thriving seafood industry with verifiably sustainable sourcing.

Our vision for the seafood value chain in 2040:

- Seafood consumption doubled to reach recommended >two portions (one oil-rich fish), per person, per week, fuelling economic growth, health gains and cost savings for the UK.
- Wild catch fisheries are verifiably sustainable and flourishing: a new data framework has ensured all stocks are well managed, fuelling an increase in demand for a wider range of species, which is fully exploited by the enhanced role of Producer Organisations.
- The aquaculture sector has seen significant growth, with a leadership group formed to provide guidance and support for the sector to thrive in a safe regulatory framework.
- Business growth will be enabled by infrastructure improvements and ensuring potential is maximised across ports, transport, skills, recruitment, efficiency and waste reduction.
- Increased production volumes and opportunities for exporting sustainable seafood at the heart of the 2020 Export Drive, growing the volume and value of sales, and extending market reach.
- Access to international markets for responsibly sourced raw seafood has been assured, with favourable trade and tariff agreements in place with all seafood producing nations.

### *Foundation of collaboration, science and best practise*

To deliver a sustainable increase in seafood consumption we will use collaboration, science and innovation, and best practise to maximise sustainable wild catch opportunities, grow a sustainable aquaculture sector and enable business growth. We aim to do this by establishing an industry-led English Seafood Industry Leadership Group, establish a multi-stakeholder Seafood Science and Innovation Group and develop a sustainable seafood best practise programme.

### *Priority 1 - Double seafood consumption*

Seafood consumption needs to double to meet the UK Government recommendation of more than two portions per person/per week, including one portion of oil-rich fish. The Seafood Marketing Optimisation Group has been created by Seafish to get people to eat more fish. The development of markets for underused UK-caught species and the creation of links between fishing, tourism and heritage sectors can promote investment and growth in coastal communities (15).

The group aim to increase seafood consumption by establishing validated nutrition for all UK seafood, review the environmental credentials for English and UK seafood production, quantify the socio-economic impacts of two seafood a week consumption, understand the barriers and opportunities around seafood consumption, deliver sustained industry-wide generic seafood consumer campaigns with shared messages on key benefits and create domestic demand for more English-caught species.



#### *Priority 2 - Maximise sustainable wild catch*

The group aim to grow the onshore value of English-caught seafood, increase the range of species available and enhance the role of Producer Organisations. Proposed methods include amending vessel licenses and improving the infrastructure of UK ports, funding stock assessments for non-commercial species and continued funding for international fish stocks, incentives for fishermen that provide catch data towards stock assessments and digital investment in <12m ship VMS. The group also state that Producer Organisations have a crucial role to play in maximising wild catch opportunities and state that consideration should be given to how their role could be strengthened after EU exit.

#### *Priority 3 - Grow a sustainable aquaculture sector*

Seafood consumption of two a week could double aquaculture production values and provide growth in rural and coastal communities. Species that could be increasingly used include mussels, scallops, oysters, trout, seaweed and new species (i.e. abalone, fin fish species, sea urchins and clams).

The major constraints to growth are regulation, water quality and licensing. The creation of Prioritised Aquaculture Areas may enable agencies to approve cultivation sites and streamlining regulatory frameworks and consenting processes will reduce barriers to growth. However, aquaculture is still regarded as a high-risk investment. Government support and a clear commitment to making changes will allow the sector to grow. Improved access to finance for businesses looking to start-up or grow and the backing of institutions that can catalyse private sector equity investment will drive growth. Local Enterprise Partnerships can also leverage regional funding opportunities.

#### *Priority 4 - Enable business growth*

Seafood consumption of two a week could improve infrastructure, generating thousands of jobs for the English fleet, aquaculture and processing sectors. To do this, the sector needs to build better infrastructure, attract, retain and develop skills for growth, and maximise the use and value of seafood (through sustainable exploitation of underused species and improvements in supply chain logistics). The industry could also benefit from increased research and investment to ensure long-term and sustained investment in innovation, engineering, IT/digital technologies.

#### *Priority 5 - Ensure Access to international marketplace*

The working group aim to ensure that seafood is fully factored in to the Government's export growth activities by establishing a Seafood Exporter's Group, reviewing English seafood products to assess whether any could benefit from Protected Geographical Indication status, establishing seafood friendly trade hubs with streamlined logistics, ensuring adequate resource is provided by UK Government to facilitate favourable international free trade and preferential tariff agreements, establishing mechanisms to ensure that national raw material commodity needs are accurately calculated and translated into tariff quotas, and reviewing customs processes to expedite efficient logistics and tariff relief recovery.

### *Marine Strategy*

#### *Part 1: Initial assessment and GES*

The UK Government have developed the Marine Strategy part 1 to outline how will achieve Good Environmental Status in UK seas by 2020. Member States must apply an ecosystem-based approach to managing human activities to ensure that GES will be achieved and that marine ecosystem resilience is not compromised, whilst enabling sustainable use.

The Marine Strategy Framework Directive stated that the UK Government must develop a plan to achieve Good Environmental Status (GES) by 2020. The UK Government has done this through the Marine Strategy part 1. GES is defined using 11 descriptors and undergoes six-yearly reporting.

Member States are required to assess progress towards these descriptors using detailed sets of characteristics that are underpinned by targets and indicators. The aims of MSFD to “*Protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems*” are consistent with the UK Government and Devolved Administrations’ objectives of “*clean, healthy, safe, productive and biologically diverse oceans and seas*”, as well as the commitments made in the UK Government’s Natural Environment White Paper “*to be the first generation to leave the natural environment...in a better state*”. Charting Progress 2 recognised that although many aspects of the UK’s marine environment are improving (i.e. chemical pollution) other aspects (e.g. seafloor habitats and fish populations) are degraded.

GES is ‘*the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations*’.

The GES descriptors relevant to fisheries are 1, 3, 4 and 6:

1. Biodiversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions;
3. Populations of all commercially exploited fish and shellfish are in safe biological limits, exhibiting a population age and size distribution that is indicative of a healthy stock;
4. All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity and levels capable of ensuring the long-term abundance of the species and the retention of their full reproductive capacity; and
6. Sea floor integrity ensures that the structure and functions of the ecosystems are safeguarded and benthic ecosystems, in particular, are not adversely affected.

One key requirement of the Directive is that Member States work together to implement the directive to ensure comparability. However, in the North East Atlantic we coordinate with the other Member States through OSPAR. The UK’s proposals for most Descriptors are relatively well aligned with other countries (i.e. eutrophication, contaminants and commercial fisheries). However, for other Descriptors the targets and indicators vary. OSPAR has planned to agree a common set of indicators across OSPAR by 2018. As a party to OSPAR, theoretically this cooperative approach through OSPAR could continue post-EU exit.

#### Key findings of the UK Initial Assessment relating to fisheries

- **40. Fish** - Marine fish have been impacted by human activities and improvements in status have been in response to reduced fishing pressure. Most commercial fish stocks are nowhere near sustainable, with particular concerns about threatened species (sharks, skates and rays and deep-sea species), especially vulnerable to fishing, as well as diadromous fish. More data is needed on the cause of decline in diadromous and highly migratory fish, such as oceanic sharks.
- **41. Cetaceans** - Main pressure is commercial fishery by-catch (dolphin and harbour porpoise).
- **43. Seabirds** - Substantial declines have been seen in inshore (herring gull and arctic skua) and offshore (black-legged kittiwakes) feeding species. These trends have been linked to cumulative pressures (i.e. climate change, fishing prey species and non-native mammals at breeding sites).
- **45. Seabed habitats** - Impacts are widespread and their composition has been altered over large areas. Sediments are more extensively degraded than rocky habitats. Subtidal habitats inshore are impacted by more diverse pressures than offshore. The areas most impacted by human activities and associated pressures, are the Southern North Sea, the Western Channel/Celtic Sea



and the Irish Sea. For most activities, the intensity of pressures has been relatively stable over the past ten years; however, the distribution of some pressures may have changed.

- **46. Pelagic habitats** - Plankton are considered healthy and subject to few direct anthropogenic pressures. Plankton composition change due to rising temperatures may have consequences for other species (i.e. fish, cephalopods, birds) but it is not clear to what extent natural variability, climate change, ocean acidification and cascading effects from fishing contribute.
- **48. Commercial fish stocks** - Increase in the number of fish stocks harvested sustainably 2000-2011. However, a significant proportion of indicator stocks (>60%) continue to be harvested unsustainably. Reductions in fishing pressure on half of UK stocks is needed to ensure sustainability. Lack of stock assessment of shellfish due to no data available at regional level.

The Government and Devolved Administrations have committed to measures which will improve the UK's marine environment through national and European MPA legislation, the Water Framework Directive and the EIA Directive. However, these measures alone are unlikely to be sufficient to achieve GES and additional measures are needed to reduce the impacts of fisheries. In some cases, GES may not be able to be met so the UK is looking to claim exception for disproportionate cost.

#### Common Fisheries Policy

Fisheries are considered to have a significant negative impact on the marine environment, through over exploitation of commercial stocks and through the wider impact that fisheries gears can have on seafloor habitats. Appropriate fisheries management will be critical to achieve GES targets for descriptors 1 (biodiversity), 3 (commercial fisheries), 4 (food-webs) and 6 (sea-floor integrity).

Until 2020, the CFP is the principal legal mechanism for managing fish stocks in EU waters. After this date, the reformed CFP in combination with the UK equivalent will play a critical role in supporting the achievement of GES across European waters, promoting sustainable stocks and fishing practices. The kinds of measures which might be necessary to achieve this include technical measures on gear selectivity, eliminating discards, spatial restrictions and limits on landings. These measures will be focussed on achieving Maximum Sustainable Yield in commercial fisheries and account for the complexity of mixed fisheries and interactions between stocks. Stocks outside the CFP (i.e. most shellfish) will be considered as part of GES. For many species there are no agreed exploitation rates due to limited availability of data on stocks. It is possible that some additional national or local measures may need to be taken to protect non-CFP stocks, including shellfish (excluding nephrops). Additional measures would be delivered through relevant policies and local byelaws.

#### Marine planning and licensing

The UK marine planning system was set up under the UK Marine and Coastal Access Act 2009 and the Marine (Scotland) Act (2010) to ensure the sustainable development of marine resources - this includes applying an ecosystem-based approach to the management of human activities. Marine plans ensure that the pressures from activities do not compromise the marine ecosystem, to enable the sustainable use of the marine environment. This is consistent with MSFD, which explicitly acknowledges the importance of wider socioeconomics and calls for the sustainable use of our seas.

Marine plans are informed by the Marine Policy Statement that clarifies UK marine policies and reflects European and international commitments to achieving sustainable development. Marine planning is being implemented in a phased approach by 2021, led by the MMO, Marine Scotland, the Welsh Government and DAERA respectively. Marine Plans will contribute towards GES by clarifying objectives and priorities, and direct regulators to evidence-based decision making for sustainable resource use. Marine plans will be subject to the EIA Directive. Marine licensing decisions made

under the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 must be compliant with the EIA Directive and existing nature conservation regimes. Nationally significant infrastructure applications (large ports and renewable energy projects) in England will be decided under the National Policy Statement, subject to exceptions, regarding the Marine Policy Statement.

#### Marine Protected Areas

The UKs network of Marine Protected Areas (MPAs) will partially achieve targets set for descriptor 1 (biodiversity) and 6 (sea-floor integrity). The MPA network includes Natura 2000 sites designated under the Birds and Habitats Directives, and national legislation. These sites protect predominant and special, habitats and species. This meets the directive's requirements for spatial protection measures that contribute to a coherent and representative network of MPAs. However, it is difficult to say what contribution the network will make towards the achievement of GES because the network is being finalised and management measures are yet to be put in place.

#### Birds and Habitats Directives

The spatial protection these directives provide has been implemented using MPAs, but the directives also set conservation objectives for particular species and habitats. For example, the Habitats Directive is designed to achieve Favourable Conservation Status (FCS) for threatened or declining species and habitats listed, whereas the Birds Directive conserves all naturally occurring wild birds. Due to the strong links between MSFD and these directives it is likely that management measures in place to achieve the Birds and Habitats Directives will play a significant role in achieving the GES targets for descriptors 1 (biodiversity), 4 (food webs) and 6 (sea-floor integrity). Additional measures may be needed to achieve GES targets for species and habitats not covered by the two directives.

#### Additional management measures to achieve GES

For GES targets and indicators for species (birds, fish and mammals) and seafloor habitats (namely sediment habitats) additional management may be needed to reduce fisheries impacts. The GES targets for commercial fish are based on the approach taken to stock assessment in the CFP and require fishing rates to be at levels which can produce MSY in all commercial fisheries by 2020.

#### Part 2: UK Monitoring Strategy

This section summarises the UK monitoring programmes for the GES descriptors relevant to fisheries (descriptors 1, 3 and 4) to monitor progress at MSFD sub-region scale.

#### Monitoring descriptors 1 and 4: Fish

The criteria used to assess these descriptors are 1. species distribution, 2. abundance and population condition and 3. ecosystem structure, with their respective targets and indicators below:

1. **Target** Distribution of sensitive fish is not significantly impacted by human activities: the geographic and depth distribution of sensitive fish should meet individual indicator targets in a statistically significant proportion of species monitored.  
**Indicators** Distributional range and pattern.
2. **Target** Populations of sensitive fish species are not significantly impacted by human activities: the population abundance density and population biomass density of sensitive species should meet individual targets for recovery in a statistically significant proportion of species monitored.  
**Indicators** Population abundance, biomass and demographic.
3. **Target** The size composition of fish communities should not be impacted by human activity such as to indicate adverse changes in trophic function within the community: A specified proportion (by weight) of fish in any defined marine region should exceed a stipulated length threshold.



**Indicators** Composition and relative proportion of ecosystem components, large fish by weight and abundance trend of functional important species.

The monitoring programmes used to assess progress of these descriptors to GES are ICES IBTS, English Beam trawl, Herring Acoustic Surveys and MSS deep water trawl survey, as well as regional efforts across the nine nations to survey the North Sea. The UK, will continue to participate within OSPAR and the Intersessional Group on Coordination of Biodiversity Assessment and Monitoring (ICG-COBAM) and its Expert Groups for Fish and Food Webs, to ensure a coordinated approach. Collaborative surveys efforts will be further maintained through the North East Atlantic Geographical Intercalibration Group and interactions with the Republic of Ireland.

Gaps and issues:

- Deep-water and coastal fish species, and cephalopods do not have indicators. Although datasets from surveys of small areas exist, there are no regional-scale efforts.
- Certain fish communities and populations may be slow to respond to management measures.
- Monitoring confined to offshore waters as IBTS otter trawl surveys do not sample within 6nm, beam trawl surveys do not operate in water <16m and rocky reefs <50m deep are excluded.
- In the UK, work is underway to develop targets and indicators for inshore fish, the status of deep-water fish based on existing surveys and cephalopods. There is also work ongoing to develop research to investigate how coastal and deep-water fish could be monitored, develop regional surveys for the Celtic Seas region based on existing surveys; evaluate populations of threatened and uncertain elasmobranch stocks, and investigate using existing freshwater monitoring to assess offshore diadromous species.

**Monitoring descriptor 3: Commercially exploited fish and shellfish**

The UK initial assessment advice states that 64% of North Sea stocks assessed met GES for fishing mortality and 91% met GES for reproductive capacity. Of the four (out of nine) Nephrops stocks assessed 25% met GES for fishing mortality and 75% met GES for reproductive capacity. In the Celtic Sea, 61% of assessed stocks met GES for fishing mortality and 72% met GES for reproductive capacity, with seven (out of eight) Nephrops stocks assessed 70% met GES for fishing mortality and all met GES for reproductive capacity. The most recent stock assessments for crab and lobster around the English and Scottish coasts show they are being fished at or above MSY.

The criteria used to assess this descriptor are 1. level of pressure of the fishing activity, and 2. reproductive capacity, with their respective targets and indicators below:

1. **Target** The exploitation rate of each stock is either at or below Fisheries Mortality Rate - Maximum Sustainable Yield (FMSY), or within the range of plausible fishing mortalities consistent with FMSY. Where data does not allow FMSY, or FMSY proxies, to be calculated exploitation of each stock will be based on the precautionary approach with limits defined by agreed proxies for sustainable exploitation.  
**Indicators** Fishing mortality and the ratio between catch and biomass index.
2. **Target** The reproductive capacity of the stock shall be maintained at, or above levels that will support the long-term exploitation of stocks at FMSY, as indicated by spawning stock biomass of all stocks being above Biomass.

**Indicators** Spawning stock biomass and biomass indices.

The monitoring programmes used to assess progress of this descriptor are CFP monitoring (includes commercial stocks covered by TAC, quotas and that the UK provides data for under the Data Collection Framework (DCF), multi-annual plans, and sampling from research surveys, at-sea

sampling of catches and sampling of landings. Commercially exploited shellfish are monitored in England by Cefas and the IFCA's (whelks, cockles and mussels), in Northern Ireland by AFBI (lobsters, crabs, scallops, cockles and mussels), in Wales by Welsh Government (all commercially exploited shellfish will be sampled at-sea and intertidally for cockle and mussel fisheries), and in Scotland by Marine Scotland Science (for brown and velvet crabs, lobsters tri-annually and King scallops biannually: The scallop assessment also uses data collected during three research vessel surveys each year). Regional coordination is coordinated under DCF.

Gaps and issues:

- Work on 'data-limited' stock assessment methods is ongoing;
- Existing monitoring programmes for crab and lobster stocks directly feed stock assessment methods to evaluate stock against fishing mortality and reproductive capacity. However, the spawning stock biomass estimates provided are relative not absolute values;
- The effectiveness of management on species will take time due to their slow growth rate;
- DCF data are considered insufficient for monitoring scallops. A national monitoring programme was devised but the programme did not achieve its target for the number of samples collected so further work will consider alternative data collection methods; and
- Defra is exploring whether additional shellfish species (i.e. whelks and cuttlefish) should be considered. There are no targets for population age and size distribution as there is no consensus. Work in the UK and ICES is ongoing to determine indicators to classify the stocks in this way, especially for shellfish where this may be more relevant.

### Part 3: UK programme of measures

Part 3 of the Marine Strategy sets out the UK's programme of measures to meet targets for GES. This section summarises the measures associated with descriptors 1, 3 and 4 relevant to marine fisheries. All characteristics, targets and indicators are provided at MSFD sub-regional scale.

#### Measures for descriptors 1 and 4: Fish

The characteristics set for descriptor 1 and 4 are that biodiversity loss is halted and restoration underway, and that populations of key species have a sustainable age and size structure to ensure long-term sustainability of the marine ecosystem.

Gaps and issues:

- Species assessed were identified as the 33% most sensitive species caught in surveys that had enough data for statistical analysis (rare species not routinely caught were excluded).
- The main pressure on fish is commercial fishing through removal of target fish and non-target fish (that are predators, prey or competitors) and by physically impacting habitats.
- Concerns remain over the status of threatened and vulnerable species, such as sharks, skates and rays, deep-sea species, and diadromous fish species (European eel and salmon).

The measures needed to achieve GES for descriptor 1 and 4: fish are:

- managed through the reformed EU Common Fisheries Policy (CFP; 1380/2013): multiannual plans, landing obligations, changes to technical regulations, marine protected area network expansion, fishery management in MPAs and move towards and ecosystem-based approach;
- managing stocks (setting TAC and quota's) at MSY by 2020;
- introduce the EU access regime for deep-sea fisheries;
- minimum catch sizes and selective gear (see Northern Ireland's [guidance](#));
- catch quota schemes to incentivise fishermen to count uptake at point of capture;
- real time, seasonal, juvenile real-time and live closed areas, and commercial impact zones (see [English](#), [Scottish](#) and [Welsh](#) waters);

- byelaws and fishing orders for fisheries (within 6 and 12 nm respectively), i.e. minimum conservation reference sizes;
- Shark, Skate and Ray conservation plan to ensure sustainable catches, collect data, promote conservation and support education (i.e. [MMO shark, skate and ray guidance](#), Shark By-Watch 2, NEPTUNE, the Spurdog alignment plan.);
- Council Regulation (EC) No 1185/2003 removal of fins of sharks on vessels;
- The Convention on Migratory Species Shark Memorandum of Understanding;
- The Wildlife (Northern Ireland) Order 1985 (as amended) protects angel sharks and common skate in 6 nm making it an offence to deliberately take, kill or injure these species;
- The Sharks, Skates and Rays (Prohibition of Fishing, Trans-shipment and Landing) (Scotland) Order 2012 (SSI 2012/63) prohibits fishing for Tope shark other than by rod and line or hand-line, its trans-shipment, and along with other species of sharks, skates and rays its landing;
- Regional Fisheries Management Organisations manage sharks caught in high seas fisheries.

#### Measures for descriptor 3: Commercially exploited fish

The characteristics set for descriptor 3 are that stock mortality generated by fishing activity are capable of producing MSY and that the spawning stock biomass is in safe biological limits.

##### Gaps and issues:

- Achievement of MSY is dependent on the success of management under the reformed CFP;
- Only commercial stocks covered by TACs and Quota Regulations and that the UK has an obligation to provide data on will be used to assess progress against the targets;
- a separate programme of measures identifies management measures for UK commercially exploited shellfish species (i.e. edible crabs, lobsters and scallops).

The measures needed to achieve GES for descriptor 3: commercially exploited fish are:

- managed through the reformed EU Common Fisheries Policy (CFP; 1380/2013): multiannual plans, landings obligation, changes to technical regulations, using the precautionary principle; TAC and quota's, EU deep-sea access regime and regional decision-making;
- technical measures include, but are not limited to, minimum conservation reference sizes, mesh sizes by fishery and seasonal closed areas.
- catch quota schemes to incentivise fishermen to count at point of capture, use Remote Electronic Monitoring to ensure catches are fully documented, introduce highly selective gears into fisheries with high discards and a system of real-time closures;
- European Maritime and Fisheries Fund will be used to support delivery measures (including support for more selectivity), monitoring, enforcement and data collection.
- Welsh Government are reviewing Welsh fisheries management legislation to develop management plans for regional management strategies (for bass, skates and rays); and
- Celtic Seas Partnership Project working to improve relationships within the fishing industry, and between the fishing industry, Scottish Government (Marine Scotland) and eNGOs.

#### Measures for descriptor 3: Commercially exploited shellfish

The characteristics set for descriptor 3 are that stock mortality generated by fishing activity are capable of producing MSY and that the spawning stock biomass is in safe biological limits.

##### Gaps and issues:

- the shellfish programme of measures covers UK commercially exploited non-quota species: edible crabs (*Cancer pagarus*), lobsters (*Homarus gammarus*) and scallops (*Pecten maximus*).
- several stocks are fished at above MSY. The monitoring programme will evaluate if measures are sufficient to reach GES targets and develop further fishery management measures.



- Crab, scallop and lobster fisheries are unlikely to achieve GES by 2020 due to slow recovery.
- insufficient data to undertake scallop stock assessments in English waters and MSY reference points have to be agreed for stocks in Scotland, therefore it is difficult to determine whether stocks are fished at MSY and if additional measures are required.

The measures needed to achieve GES for descriptor 3: commercially exploited shellfish are:

- Shellfish Licensing Scheme 2004 for lobsters (*Homarus gammarus*), crabs (*Cancer pagurus*, *Liocarcinus puber*, *Maia squinado*, *Carcinus maenas*) and crawfish (*Palinurus spp.*). Vessels involved can land >5 lobsters or crawfish and 25 crabs per day.
- Scallop entitlements to limit the fishing of king scallops (*Pecten maximus*) including the use of mechanical dredging gear towed by over 10 m vessels.
- Western Waters Efforts Regime (EC Regulation 1954/2004) limits effort on edible/spider crab and king/queen scallop stocks in Western Waters for vessels at or >15 m long. The MMO is responsible for monitoring and managing this. UK legislation can impose technical, temporal and spatial restrictions to manage commercial scallop dredging in specified areas to limit the catching capacity of vessels operating in the area, and prohibit types of attachments to reduce discards. Legislation: The Scallop Fishing (England) Order 2012 the Prohibition of Fishing for Scallops (Scotland) Order 2003; The Scallop Fishery (Wales) (No 2) Order 2010 and 2011; and the Conservation of Scallops Regulations (Northern Ireland) 2008.
- English IFCAs can introduce byelaws for inshore shellfish to 6 nm to restrict fishing shellfish through permits, maximum vessel length, closures, restrictions on gear and pot limitations.
- Scottish Inshore Fisheries Groups develop local management plans (out to 6 nm) and give commercial fishermen a voice. Marine Scotland can introduce measures through statutory instruments using Inshore Fishing (Scotland) Act 1984. The Shetland Islands Regulated Fishery (Scotland) Order 2012 confers management responsibility to the Shetland Shellfish Management Organisations and covers local management of crab, lobster and scallops.
- Welsh Inshore Fisheries and Marine Fisheries Advisory Groups advise Welsh Government on fisheries management to 12 nm and set byelaws to control shellfishing.
- EC Regulation 850/98 on technical measures protect juveniles through minimum landing sizes (for crabs, lobsters and scallops), restricting the proportion of crab landings with detached claws and only allowing lobsters to be landed whole.
- Undersized Edible Crabs Order 2000: The EU size limits are superseded by UK legislation in the Western Channel and Celtic Sea for edible crabs, setting a higher MLS for male crabs.
- Sea Fisheries (Shellfish) Act 1967 prohibits the landing of soft-shelled and berried crabs in England, Scotland and Wales. Shellfish Orders can be introduced under this act which grant exclusive fishing or management rights in a designated area.
- Legislation protects breeding lobsters from being fished (Lobsters and Crawfish (Prohibition of Fishing and Landing) Order 2000; Lobsters and Crawfish (Prohibition of fishing and Landing) (Scotland) Order 1999 (Scottish Statutory Instrument No.88); and Lobsters and Crawfish (Prohibition of fishing and Landing) (Wales) Order 2002.
- Defra ministers have agreed a stock-specific fishery management approach to improve sustainability of edible crab and lobster fisheries in English waters. Defra will prioritise stocks that require intervention to improve their status.
- Defra commissioned a monitoring regime for scallops and review the Scallop Order to ensure it is 'fit for purpose' and contributing to sustainable exploitation. The ICES working

group on scallops will inform assessment and reference points. Marine Scotland will continue to assess scallop stocks in Scottish waters and implement measures to ensure Scottish stocks are exploited sustainably and achieve GES targets. Additional work to improve our understanding of the Welsh stocks and the impacts of fisheries is ongoing.

### Industrial Strategy

The Industrial Strategy sets how the UK Government plan to help businesses create better, higher-paying jobs with investment in the skills needed for industry and infrastructure. This focusses heavily on research and development (AI, analysis, genetics and biotechnology) to provide clean growth, boost productivity and develop technology to address the 'Grand Challenges'.

The strategy sets out the UK Government's aims to: maximise the marine economy of the Highlands & Islands using aquaculture, wave and tidal energy and marine biotechnology (page 86), and move the UK towards a regenerative circular economy transforming food production (i.e. a *"new Food and Drink Sector Council will lead the work to secure the UK's position as a global leader in sustainable, affordable, safe and high-quality food and drink..."* page 188).

The paper also mentions that the UK needs to:

- Take on more apprenticeships;
- Tackle regional disparities in education and skill levels;
- Ensure everyone has an opportunity to progress at work or through the education system;
- Continue to remain a global, outward looking nation, home to the brightest and best;
- Ensure our future migration system supports our Industrial Strategy; and
- Workers should be treated well.

### Annex 3: International commitments

The UK is party to international agreements that protect or improve the environment (see below).

#### Environmental Impact Assessment/access to justice

- 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context and its 2003 Kyiv Protocol on Strategic Environmental Assessment, requires Parties to evaluate the environmental consequences of their official draft plans and programmes.
- Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Biodiversity / Species

- 1973 Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its amendments (Bonn 1979; Gabarone 1983)
- 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats (No 104, Council of Europe) and its amendments
- 1979 Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) and its daughter agreements:
  - 1991 Agreement on the Conservation of Populations of European Bats (EUROBATS)
  - 1992 Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas and 1 amendment (2003)
  - 1996 Agreement on the Conservation of African-Eurasian Migratory Waterbirds
  - 2001 Agreement on the Conservation of Albatrosses and Petrels (ACAP)
- 1992 Convention on Biological Diversity and its associated protocols:

- 2000 Cartagena protocol on biosafety,
- 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, and
- 2010 Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol (\*)
- 1997 Convention-The UN Convention on the Law of the Non-Navigational Uses of International Watercourses

#### Marine

- 1946 International Convention for the Regulation of Whaling (IWC)
- 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) and its 1996 London Protocol
- 1973 International Convention for the Prevention of Pollution from Ships (MARPOL)
- 1980 Convention on the conservation of Antarctic marine living resources (CCAMLR)
- 1983 Bonn Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances and 1 amendment
- 1984 United Nations Convention on the Law of the Sea (UNCLOS)
- 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) and 2 amendments (1998, 2007)
- 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea

#### Fisheries regional agreements

- 1949 Convention for Establishment of an Inter-American Tropical Tuna Commission (IATTC)
- 1949 Agreement establishing the General Fisheries Commission for the Mediterranean (GFCM), amended in 1963, 1976 and 1997
- 1966 International Convention for the Conservation of Atlantic Tunas (ICCAT Convention)
- 1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)
- 1980 Convention on future multilateral cooperation in North-East Atlantic fisheries (NEAFC) and Amendments to the Convention allowing for the establishment of dispute settlement procedures, the extension of the scope of the Convention and a review of the objectives of the Convention (\*)
- 1982 Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO)
- 1993 Convention for the Conservation of Southern Bluefin Tuna
- 1993 Agreement for the establishment of the Indian Ocean Tuna Commission (IOTC)
- 1993 Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas
- 1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP)
- 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
- 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- 2001 Convention on the Conservation and Management of Fisheries in the South-East Atlantic
- 2004 Convention for the strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention)
- 2006 Southern Indian Ocean Fisheries Agreement (SIOFA)



- 2009 Convention on the Conservation and Management of High Seas Fisheries Resources in the Southern Pacific Ocean (SPRFMO)
- 2009 Agreement on Port State measures to prevent, deter, and eliminate Illegal, Unreported and Unregulated fishing (\*)

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	Date	24/08/2018	
	Business Area	contact	comments
Placemaking for People and Nature	Funding - Improvement- Public Access(IPA)	Bridget Jones	
	Funding - Improvement- Public Access(IPA)	ERDF Fiona Strachan/Gillian MacDonald	
Communications	EU Exit Stakeholder engagement plan	Alison Shields	
	Updating Website materials	Alison Shields	
Protected Areas and Surveillance	European Protected Sites & Habitat Appraisal Regulations	John Kerr & Greg Mudge	
	Designations	John Kerr	
	Environmental Framework Agreements Governance	John Kerr	
	Issues	Greg Mudge	
	SPA Review	Nigel Buxton	
Coastal and Marine	Future Fishing Review	David Donnan	
	Marine Environment Policy	Katie Gillham/ Cathy tilbrook	
	Funding	David Donnan	
Biodiversity Leadership and Co-ordination			
	Reporting duties	Ed Mackay	
Natural Resource Management	Agri-environment Schemes	Tracy Robinson / Claudia Rowse	Too early to discuss (TR)
	Funding	Claudia Rowse / Gillian MacDonald	
Supporting Good Development	EIA and SEA Planning Advice, Responding to Statutory Planning Consultations	Fiona Rice	
Wildlife Management	Wildlife Licencing	Ben Ross	
Enabling our People	Immigration controls and recruitment	Alison MacDonald	
	Learning & Development	Maggie Cochrane	email to all on list requesting input to this plan
Strengthening Performance	Procurement	Marian Brown	In summary no real change to public sector procurement, just that we won't be bound to the EU directives, how we purchase won't change as we'll still have to adhere to the regulations, principles and boundaries of public procurement.
Enhancing Our Performance	Information Management programme	Kenny MacLean	



## Brexit Day 1 Readiness

## Learning Needs Analysis

[illegible]

# Brexit Day 1 Readiness Learning Needs Analysis

[illegible]

### **Additional Resources for EU Exit D1 Readiness**

SNH were asked by Scottish Government to bid for funds for Day 1 Readiness and subsequently requested 4.8 fte at E Grade – equivalent to £307K. This bid has been approved and SNH has been asked to move forward with plans to recruit these additional resources.

Table 1 below shows the proposed additional resources allocated to each outcome. How those resources are used to deliver the Day 1 readiness tasks will be the responsibility of the Director.

Annex 1 contains the detail from the D1 Readiness plan on the required tasks that have been identified to date.

Table 1 – Summary of Activities and additional resources allocated.

<b>Outcome</b>	<b>Amount of additional resource</b>	<b>Cash</b>
<b>Outcome 1 - More people enjoying and benefitting from Nature</b>	<b>Equivalent of 0.5 fte at D Grade</b>	<b>£26k</b>
Activity – Placemaking for People and Nature		
Activity – Managing Nature Reserves		
Activity - Communications		
<b>Outcome 2 - The health and resilience of Scotland's Nature is improved</b>	<b>Equivalent of 0.5 fte at E Grade &amp; 0.8 at D Grade</b>	<b>£100k</b>
Activity – Protected Areas and Surveillance		
Activity - Coastal and Marine Management		
Activity – Biodiversity and Geodiversity		
<b>Outcome 3 - More investment in the management of Scotland's Natural Capital (includes EU Exit co-ordination role)</b>	<b>Equivalent of 1 fte at E Grade and 1.6 fte at D Grade</b>	<b>£149k</b>
Activity - Natural Resource Management		
Activity - Supporting Good Development		
Activity - Wildlife Management		
<b>Outcome 4 - We have transformed the way we work</b>	<b>Equivalent of 0.5 fte at D grade</b>	<b>£26k</b>
Activity - Enabling our people		
Activity - Transforming our Workplaces		
Activity – Enhancing our Information		
Activity – Leveraging Digital and Technological Services		
		<b>£301K</b>

\*Salary costs for 1 fte at D Grade = £52K, Salary costs for 1 fte at E Grade = £65K

## Additional Resources for EU Exit D1 Readiness

Outcome 1 - More people enjoying and benefitting from Nature			
Activity – Placemaking for People and Nature			
Action	Must Do/Minimum Operating Capability	Activity Lead	Task Lead
Funding - Improving Public Access (IPA)	<ul style="list-style-type: none"> <li>Support SG with developing any replacement for ESIF.</li> <li>This is linked to work on agri-environment schemes under Outcome 3.</li> </ul>	Pete Rawcliffe	Bridget Jones  ERDF – Fiona Strachan/Gillian Macdonald
Activity – Managing Nature Reserves			
No action identified at present			
Activity - Communications			
EU Exit Stakeholder Engagement Plan	<ul style="list-style-type: none"> <li>Create and roll-out a Stakeholder Engagement Communication Plan to keep staff and partners informed of the impact of the EU Exit for SNH and actions that need to be taken.</li> </ul>	Emma Keenan	Alison Shields
Updating website material	<ul style="list-style-type: none"> <li>Our digital communications will need to reflect changes as a result of the EU Exit.</li> </ul>	Emma Keenan	Alison Shields
Outcome 2 - The health and resilience of Scotland's Nature is improved			
Activity – Protected Areas and Surveillance			
European Protected Sites & Habitat Appraisal Regulations	<ul style="list-style-type: none"> <li>Review process and update any internal and external guidance including replacement of links to EC documentation</li> </ul>	Vacant	John Kerr & Greg Mudge
Designations	<ul style="list-style-type: none"> <li>Consider timeline for any designation cases where they will straddle EU Exit date.</li> </ul>	Vacant	John Kerr

	<ul style="list-style-type: none"> <li>Agree revised process for SACs where the EU would normally be involved</li> </ul>		
Environmental Framework Agreements	<ul style="list-style-type: none"> <li>Input into the development of Framework agreements as required.</li> </ul>	Vacant	John Kerr
Governance Issues	<ul style="list-style-type: none"> <li>Input into Environmental Governance solution in Scotland</li> </ul>	Vacant	Greg Mudge
SPA Review		Vacant	Nigel Buxton
<b>Activity - Coastal and Marine Management</b>			
Future Fishing Review	<ul style="list-style-type: none"> <li>Provide input to Review by Marine Scotland</li> </ul>	Cathy Tilbrook & Katie Gilham	David Donnan
Marine Environmental Policy		Cathy Tilbrook & Katie Gilham	Katie Gillham / Cathy Tilbrook
Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing any replacement scheme for EMFF</li> </ul>	Cathy Tilbrook & Katie Gilham	David Donnan
<b>Activity – Biodiversity and Geodiversity</b>			
Reporting Duties		Kath Leys	
<b>Outcome 3 - More investment in the management of Scotland's Natural Capital (includes the EU Exit Co-ordination role)</b>			
<b>Activity - Natural Resource Management</b>			



Agri-Environment Schemes	<ul style="list-style-type: none"> <li>• Review any changes required to associated guidance and templates to ensure correct reference in regulatory requirements and procedures</li> <li>• Clarify and confirm legal status of agreements with individual customers and make whatever formal updates are required to maintain agreement validity</li> <li>• Ensure adequate transition arrangements in place between closure of current SRDP and opening of post EU Exit agri-environment measures</li> </ul>	Claudia Rowse	Tracey Robinson/ Claudia Rowse
Funding	<ul style="list-style-type: none"> <li>• Participate with lead partners in developing replacement scheme for AECS</li> <li>• Participate with lead partners in developing any replacement scheme for LIFE+</li> </ul>	Claudia Rowse	Claudia Rowse Gillian Macdonald
Reporting	<ul style="list-style-type: none"> <li>• Understand the full range of international reporting requirements including necessary changes to Article 17 Reporting</li> </ul>	Claudia Rowse	David O'Brien
<b>Activity - Supporting Good Development</b>			
EIA and SEA – Planning Advice, Responses to Statutory Planning Consultations	<ul style="list-style-type: none"> <li>• Review any changes required to associated guidance and templates</li> </ul>	Peter Hutchison	Fiona Rice
<b>Activity - Wildlife Management</b>			
Wildlife Licensing	<ul style="list-style-type: none"> <li>• Review and update documentation including external guidance, and licensing documentation</li> <li>• Assess reporting changes e.g. Annual Birds Directive Reporting and biennial Habitats Directive Reporting</li> <li>• Ensure that the EU Invasive Alien Species</li> </ul>	Robbie Kernahan	Ben Ross

	Regulation legislation is incorporated into any guidance etc.		
<b>Outcome 4 - We have transformed the way we work</b>			
<b>Activity - Enabling our people</b>			
Immigration controls and recruitment	<ul style="list-style-type: none"> <li>Ensure that SNH is compliant in the way it treats existing staff from EU countries and how it deals with recruitment of staff and volunteers from non-uk countries post the EU Exit.</li> </ul>	Vacant	Alison Macdonald
Learning and Development	<ul style="list-style-type: none"> <li>Create a training plan to ensure that relevant staff involved with areas such as licencing have sufficient knowledge to advise customers on any changes being introduced</li> </ul>	Vacant	Maggie Cochrane
<b>Activity - Strengthening our performance</b>			
Procurement	<ul style="list-style-type: none"> <li>Ensure SNH adheres to any new rules put in place for procurement post the EU Exit.</li> </ul>	Elaine Ward	Marian Brown
<b>Activity - Transforming our Workplaces</b>			
No action identified at present		Carole Wells	
<b>Activity – Enhancing our Information</b>			
Information Management Programme	<ul style="list-style-type: none"> <li>Ensure data sharing with other nations can continue – INSPIRE directive</li> </ul>	Kenny Maclean	
<b>Activity – Leveraging Digital and Technological Services</b>			
Linked to above	<ul style="list-style-type: none"> <li>Ensure our publically available information is accurate and available on Day 1.</li> </ul>	Mark Robson	

## **EU Exit – Day 1 Readiness**

### **Summary**

This paper presents a summary the impact on SNH's work from the UK's decision to leave the EU on the 29<sup>th</sup> March 2019. Initial conclusions indicate that for activities where there is a strong relationship with current EU legislation or funding that these will need a growing level of investment and focus to adequately prepare us for Day 1 Readiness. However, due to on-going uncertainties about the terms of the EU Exit and what arrangements need to be put in place and when, it remains difficult to clearly articulate the level of resource we require to manage the transition, but this will become clearer in the coming months.

### **Purpose**

The purpose of this paper is to set out the requirements for Day 1 Readiness to ensure that SNH has identified the actions required to ensure the organisation continues to operate in a way which is: legally compliant; maintains environmental outcomes; and, avoids uncertainty and legal risk for SNH and its customers.

### **Scope**

This analysis covers the full scope of SNH's work including our support functions but with a particular focus on the impact from any legislative changes for protected areas and species as well as planning to replace funding currently received from the EU.

### **Approach**

It is proposed that the approach to managing the impact of the EU Exit is to distinguish between what changes are imperative to complete for Day 1 and what further changes/work which should be completed in the longer term. The primary focus will be on amending critical public-facing guidance, advice and services, and managing any legal risk for the organisation and its customers. Other changes, such as amendments to internal guidance, will be identified and scoped in our plan, but will be afforded less priority, on the basis that they should not cause systems to fail or pose unacceptable legal risk on Day 1.

To note: Currently, there are two Day 1 scenarios - 30 March 2019 or if the current transition agreement between the UK and EU is implemented, it will be 1 January 2021. The plan below is based on the exit being 31 December 2020.

### **Assumptions**

- Roll forward on all EU legislation – the key assumption is that all EU-derived legislation will roll forward with only minimal necessary amendments to ensure operability as set out in the UK Withdrawal from the European Union Bill or the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, if the Scottish Parliament fails to give legislative consent to the UK Withdrawal Bill.
- Existing Obligations met – the UK Government commitment to continue to meet its obligations under multi-lateral environmental agreements is maintained, and until we leave the EU, existing obligations will continue to be met.
- Environmental Protection maintained – the UK Government will remain committed to maintaining environmental protection
- Funding – that the UK Government's commitment to underwriting the following areas:
  - all structural and investment fund projects, including agri-env. schemes signed up to the point of EU exit
  - all direct competitively bid projects signed directly with the EC up to the point of EU exit (including LIFE+).

There is some uncertainty over these last points at present.

## **Results and Analysis**

Analysis is based on an initial review of the impact on delivery of the Activity Key Deliverables ([A2476054](#)). Actions required under each of our four outcomes are brought together in Annex A. These actions were reviewed by the leads in May 2018 to ensure we have captured all the Day 1 actions and these have been brigaded under the four organisational outcomes. The plan will be reviewed regularly and will allow the organisation to identify areas where resources will need to be deployed.

## **Governance**

A programme board will be set up to oversee the development of the Day 1 readiness work and to make key decisions on resourcing. The Board will be a sub-committee of SLT and will meet bimonthly to review progress and take decisions on the allocation of resources to particular areas of the business to support Day 1 readiness.

## **Risks**

A risk on Day 1 readiness has been added to SNHCorporate risk register.

- As a result of inadequate preparation for the immediate implications of the UK withdrawal from the EU, known as Day 1 readiness, there is a risk that we fail to implement the necessary changes to our guidance, operating procedures and funding mechanisms, which could result in a failure to achieve our outcomes, have a negative impact on the natural heritage, breach legislation and harm the organisation's reputation.

There are however, several other risks to Day 1 readiness work, which are out with our direct control:

- The UK fails to reach agreement over the withdrawal from the EU, which results in the UK leaving the EU on 29 March 2019 with no transition period in place.
- The process for putting in place UK Frameworks is not seen as fair and equitable resulting in Frameworks being put in place which will have significant impact on the environment in Scotland and do not take account of our differing circumstances.

## **Annex A – Summary of Day 1 Ready (D1R) Needs**

### **Review of Guidance Material**

All relevant guidance will need to be reviewed in order to ensure that it cites correct legal references and reflects any essential process changes required as a consequence of how the UK Withdrawal Bill/Scottish Continuity Bill handles essential operability changes. Priority will be given to ensuring that external guidance is ready although any internal guidance will also need to be brought up to date.

### **Review of Licences**

Whilst there will be a transposition of European legislation into UK legislation we need to ensure that customers are not legally exposed by any inaccurate documentation that we may provide to them. As such we need to review all relevant documentation to ensure that proper legal references are made.

### **Agri-Environment**

Understanding and implementing what we need to do to prepare for the future funding of the management of protected areas will be one of our most significant activities for D1R. This needs to include how any future AECS scheme (particularly the 2019 AECS application round) will operate and what transitional arrangements need to be in place.

### **EU Strands of Funding**

Alongside the AECS and other SRDP-related funding schemes we need to engage in any discussions on transitional and future arrangements for replacing other current EU-related strands of funding. This is relevant to LIFE+, ESIF structural funds and EMFF funding. Whilst some funds have been guaranteed beyond March 2019 we need to understand any implications for managing existing contracts/funded projects that straddle the exit date.

### **Review and amendment of External Legal Documentation**

Along with our guidance we need to ensure that any external legal documentation reflects any new nomenclature and legal references.

### **Revisions to Fisheries Legislation**

We need to understand and amend approaches to marine environment advice to reflect revisions to fisheries legislation. This includes providing input to the 'Future Fishing' review by Marine Scotland and our engagement with wider aspects of post-EU Exit marine environmental policy.

### **Revisions and amendment to processes on Natura Designation**

It is intended that Natura designations will remain after the EU Exit and there are provisions likely to be put in place to ensure that we maintain similar environmental standards to Europe and keep pace with any changes that are made. We shall also need to understand the future intentions with regard to the ongoing SPA Review process and the implications of the timeline.

### **Support Functions – HR, IS, Finance & Procurement**

- Ensure that any practices around procurement reflect any changes to current procedures.
- Ensure that we support all non-UK National staff and our recruitment procedures adhere to new arrangements for employing non-UK National staff.
- Ensure that our ability to share information and data with other nations can continue.



**Annex B – Areas of Business with Likely D1R Need**

<b>Outcome 1 - More people enjoying and benefitting from Nature</b>					
<b>Activity – Placemaking for People and Nature</b>					
<b>Action</b>	<b>Must Do/Minimum Operating Capability</b>	<b>Lead Person</b>	<b>Resource Requirement</b>	<b>Comments/Progress</b>	
Funding - Improving Public Access (IPA)	<ul style="list-style-type: none"> <li>Support SG with developing any replacement for ESIF.</li> <li>This is linked to work on agri-environment schemes under Outcome 3.</li> </ul>	Bridget Jones  ERDF – Fiona Strachan/Gillian Macdonald	2018/19 0.3 fte  2019/20 0.7 fte	<ul style="list-style-type: none"> <li>Participating in discussions in this area with additional resources being deployed</li> </ul>	
<b>Activity – Managing Nature Reserves</b>					
No action identified at present					
<b>Activity - Communications</b>					
EU Exit Stakeholder Engagement Plan	<ul style="list-style-type: none"> <li>Create and roll-out a Stakeholder Engagement Communication Plan to keep staff and partners informed of the impact of the EU Exit for SNH and actions that need to be taken.</li> </ul>	Alison Shields		<ul style="list-style-type: none"> <li>Work alongside EELG on external stakeholder engagement</li> </ul>	
Updating website material	<ul style="list-style-type: none"> <li>Our digital communications will need to reflect changes as a result of the EU Exit.</li> </ul>	Alison Shields	2018/19 0.1 fte  2019/20 0.2 fte	<ul style="list-style-type: none"> <li>Ensure content managers are prepared and capacity in internal comms to oversee changes required.</li> </ul>	

**Outcome 2 - The health and resilience of Scotland's Nature is improved****Activity – Protected Areas and Surveillance**

European Protected Sites & Habitat Appraisal Regulations	<ul style="list-style-type: none"> <li>Review process and update any internal and external guidance including replacement of links to EC documentation</li> </ul>	John Kerr & Greg Mudge	2018/19 0.2 fte  2019/20 0.2 fte	<ul style="list-style-type: none"> <li>Contributing to review of existing legislation and sizing task of internal documentation that requires updating.</li> </ul>	
Designations	<ul style="list-style-type: none"> <li>Consider timeline for any designation cases where they will straddle EU Exit date.</li> <li>Agree revised process for SACs where the EU would normally be involved</li> </ul>	John Kerr	2018/19 0.1 fte  2019/20 0.2 fte	<ul style="list-style-type: none"> <li>Reviewing cases</li> </ul>	
Environmental Framework Agreements	<ul style="list-style-type: none"> <li>Input into the development of Framework agreements as required.</li> </ul>	John Kerr	2018/19 1.2 fte  2019/20 2 fte	<ul style="list-style-type: none"> <li>Fed into SG request on UKG assessment of framework requirements.</li> </ul>	
Governance Issues	<ul style="list-style-type: none"> <li>Input into Environmental Governance solution in Scotland</li> </ul>	Greg Mudge	2018/19 0.5 fte  2019/20 0.5 fte	<ul style="list-style-type: none"> <li>Fed in to discussions on future Governance.</li> </ul>	
SPA Review		Nigel Buxton			

**Activity - Coastal and Marine Management**

Future Fishing Review	<ul style="list-style-type: none"> <li>Provide input to Review by Marine Scotland</li> </ul>	David Donnan		<ul style="list-style-type: none"> <li>Discussions taking place with partner bodies. Specific actions to be</li> </ul>	
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				confirmed.	
Marine Environmental Policy		Katie Gillham / Cathy Tilbrook		<ul style="list-style-type: none"> <li>Discussions taking place with partner bodies. Specific actions to be confirmed.</li> </ul>	
Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing any replacement scheme for EMFF</li> </ul>	David Donnan			
<b>Activity – Biodiversity Leadership and Co-ordination</b>					
Reporting Duties	<ul style="list-style-type: none"> <li>Participate in discussions with partners on implications of the EU Exit and contribute to the development of a future approach for Scotland.</li> </ul>	Ed Mackey		<ul style="list-style-type: none"> <li>Contributing to discussions with partners to develop a future approach.</li> </ul>	
<b>Outcome 3 - More investment in the management of Scotland's Natural Capital</b>					
<b>Activity - Natural Resource Management</b>					
Agri-Environment Schemes	<ul style="list-style-type: none"> <li>Review any changes required to associated guidance and templates to ensure correct reference in regulatory requirements and procedures</li> <li>Clarify and confirm legal status of agreements with individual customers and make whatever formal updates are required to maintain agreement validity</li> <li>Ensure adequate transition arrangements in place between closure of current SRDP and opening of post EU Exit agri-environment measures</li> </ul>	Tracey Robinson/ Claudia Rowse	2018/19 0.5 fte  2019/20 1 fte	<ul style="list-style-type: none"> <li>Participating in discussions in this area with additional resources being deployed.</li> </ul>	

Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing replacement scheme for AECS</li> <li>Participate with lead partners in developing any replacement scheme for LIFE+</li> </ul>	Claudia Rowse  Gillian Macdonald		<ul style="list-style-type: none"> <li>Participating in discussions in this area with additional resources being deployed.</li> </ul>	
<b>Activity - Supporting Good Development</b>					
EIA and SEA – Planning Advice, Responses to Statutory Planning Consultations	<ul style="list-style-type: none"> <li>Review any changes required to associated guidance and templates</li> </ul>	Fiona Rice	2018/19 0.5 fte  2019/20 0.5 fte	<ul style="list-style-type: none"> <li>Discussions ongoing about the requirement here.</li> </ul>	
<b>Activity - Wildlife Management</b>					
Wildlife Licensing	<ul style="list-style-type: none"> <li>Review and update documentation including external guidance, and licensing documentation</li> <li>Assess reporting changes e.g. Annual Birds Directive Reporting and biennial Habitats Directive Reporting</li> <li>Ensure that the EU Invasive Alien Species Regulation legislation is incorporated into any guidance etc.</li> </ul>	Ben Ross	2018/19 0.2 fte  2019/20 0.3 fte	<ul style="list-style-type: none"> <li>Participating in discussions in this area with additional resources being deployed.</li> </ul>	
<b>Outcome 4 - We have transformed the way we work</b>					
<b>Activity - Enabling our people</b>					
Immigration controls and recruitment	<ul style="list-style-type: none"> <li>Ensure that SNH is compliant in the way it treats existing staff from EU countries and how it deals with recruitment of staff and volunteers from non-uk countries post the EU Exit.</li> </ul>	Alison Macdonald	2018/19 0.1 fte  2019/20 0.1 fte	<ul style="list-style-type: none"> <li>Contributed to SG request on workforce planning.</li> </ul>	



Learning and Development	<ul style="list-style-type: none"> <li>Create a training plan to ensure that relevant staff involved with areas such as licencing have sufficient knowledge to advise customers on any changes being introduced</li> </ul>	Maggie Cochrane		<ul style="list-style-type: none"> <li>TBC</li> </ul>	
<b>Activity - Strengthening our performance</b>					
Procurement	<ul style="list-style-type: none"> <li>Ensure SNH adheres to any new rules put in place for procurement post the EU Exit.</li> </ul>	Marian Brown	2018/19 0.1 fte  2019/20 0.1 fte	<ul style="list-style-type: none"> <li>No action identified as yet, but we are discussing EU Exit issues with partners.</li> </ul>	
<b>Activity - Transforming our Workplaces</b>					
No action identified at present					
<b>Activity – Enhancing our performance</b>					
Information Management Programme	<ul style="list-style-type: none"> <li>Ensure our publically available information is accurate and available on Day 1.</li> <li>Ensure data sharing with other nations can continue – INSPIRE directive</li> </ul>	Mark Robson	2018/19 0.2 fte  2019/20 0.5 fte	<ul style="list-style-type: none"> <li>Contributed to SG request on information management – no major actions identified at present.</li> </ul>	



**EU EXIT PREPARATION FUNDING: TEMPLATE FOR RETURNS (please return by close Friday 1 June)**

<b>Scenario 1</b> – EU exit preparation work (based on central assumption of negotiated Free Trade Agreement between UK/ EU with a transition period to <b>31 December 2020</b> )							
Description of essential EU exit preparation work to guarantee future delivery  (e.g. IT system change, guidance, redesign of policy delivery/ project & programme support, changes to monitoring, work with SG on policy solutions)	Policy area this relates to (e.g. water quality)	Why work is required	Key risks of not doing this work	Headline costs for work  2018/19  2019/20 (where known)	Associated staff costs, and FTE  2018/19  2019/20 (where known)	Split of staff costs between current and new (short –term) recruits	Any specific expertise required for this work
Developing a replacement funding mechanism for ESIF	Funding	To ensure continued investment in public access to Scotland nature and landscapes	Impact on the health of Scotland's people if access routes are not developed allowing access to green spaces in and around towns and the wider countryside	2018/19 Not known at present  2019/20 (where known)  Not known at present	2018/19 0.3 FTE  2019/20 (where known) 0.7 FTE	Current (60%) + additional resource (40%)	Knowledge of current funding arrangements and development of new schemes.
Review process and update any internal and external guidance including replacement of links to EC documentation	European Protected Sites & Habitat Appraisal Regulations	To ensure that documentation is updated and sets out the new position post EU Exit.	Potential challenges on relevance of documentation.	2018/19 Not known at present  2019/20 (where known)	2018/19 0.2 FTE  2019/20 (where known) 0.2 FTE	Current (100%)	Knowledge of SNH documentation and what the new arrangements are.

				Not known at present			
Input into the development of Framework agreements as required.	Environmental Framework Agreements	To help develop proposals that will deliver SG's environmental outcomes	Potential loss of biodiversity, leading to decline in Scotland's prosperity and standing in Europe and beyond as being a leader in looking after our natural resources.	Not known at present	2018/19 1.2 FTE  2019/20 (where known) 2 FTE	Current (50%) + additional resource (50%)	Knowledge of current EU legislation and directives
Consider the timeline for any designation cases where they will straddle EU Exit date. Agree revised process for SACs where the EU would normally be involved Designations	Designated Sites	To ensure that SNH remains compliant with legislation and we are able to maintain environmental standards going forward after the EU Exit.	Declining environmental standards, falling behind other EU nations.	2018/19 Not known at present  2019/20 (where known) Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.2 FTE	Current (100%)	Knowledge of Hab Directive
Input into Environmental Governance solution in Scotland	Governance	To ensure that there is a suitable environmental governance body in place post EU Exit	Ensure environmental outcomes are maintained.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 0.5 FTE	Current (60%) + additional resource (40%)	Knowledge of current arrangements and outcomes for the future.
Work with Marine Scotland on future fishing policy and future EMFF	Fisheries Management	To ensure our sustainable management of our seas	Declining marine environment standards and sustainable economic development	2018/19  Not known at present  2019/20 (where known)	2018/19 0.5 FTE  2019/20 (where known) 1 FTE	Current (50%)+ additional resource (50%)	Knowledge of CFP & EMFF and what needs to come afterwards.

				Not known at present			
Agri-environment schemes - Review any changes required to associated guidance and templates, advice customers on transition arrangements	Manage existing agri-environment agreements over the EU Exit period.	To ensure existing agreements are honoured and help support land managers in the transition period.	Confusion and frustration if there is lack of clarity leading to a mistrust in future schemes that are put in place. Ultimately leading to a decline in land being managed for biodiversity benefits.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 1 FTE	Current (100%)	Knowledge of current agri-env schemes – AECS & Life +
Assist in the development of a future Agri-environment scheme	Future Agri-environment scheme	To provide a mechanism to encourage land managers to manage the land to benefit biodiversity	Decline in biodiversity if no incentives to manage land are put in place.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 2 FTE  2019/20 (where known) 2.5 FTE	Current (50%) + additional resource (50%)	Knowledge of current agri-env schemes and what outcomes we want to achieve for biodiversity in Scotland.
Developing future of domestic and international biodiversity arrangements	Biodiversity Duties	To ensure Scotland maintains high biodiversity standards in line with existing and future international agreements	Decline in biodiversity and loss of international reputation	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 2 FTE  2019/20 (where known) 2.5 FTE	Current (60%) + additional resource (40%)	Biodiversity duties and international conventions.
Future arrangements for Climate Change to ensure progress on emissions reductions	Climate Change	To ensure Scotland can continue to meet its Climate Change targets	Impact on nature and landscapes and reputational loss.	2018/19  Not known at present	2018/19 1 FTE  2019/20 (where	Current (50%) + additional (50%)	Climate Change and Adaptation

and adaptation work.		and has access to work on adaptation		2019/20 (where known)  Not known at present	known) 1.5 FTE		
Understand the implications for International reporting requirements	Reporting Duties	To ensure SNH is aware of new reporting duties and what rules will apply following the EU Exit.	Incomplete data being available for species and habitats	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.2 FTE	Current (80%) + additional (20%)	Knowledge of current reporting duties and new arrangements.
SEA/EIA - Review any changes required to associated guidance and templates	EIA/SEA & Planning Advice	To ensure our guidance reflects the position post EU Exit	Misleading/confusing information for our customers	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 0.5 FTE	Current (50%) + additional (50%)	Knowledge of existing legislation and the new arrangements
Licensing functions - Review and update documentation including external guidance, and licensing documentation	Wildlife Licensing	Ensure our guidance reflects the post EU Exit position.	Misleading/confusing information for our customers	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.2 FTE  2019/20 (where known) 0.3 FTE	Current (50%) + additional resource (50%)	Knowledge of current documentation and the changes required
Update employment policies	Immigration rules and recruitment	Ensure SNH is compliant in how	Non compliance	2018/19	2018/19 0.1 FTE	Current (100%)	Current employment

		it treats its employees and future applicants for roles.		Not known at present 2019/20 (where known) Not known at present	2019/20 (where known) 0.1 FTE		law
Ensure SNH adheres to any new rules put in place for procurement post the EU Exit.	Procurement policy	Ensure SNH abides by any new rules put in place following EU Exit	Non compliance	2018/19 Not known at present 2019/20 (where known) Not known at present	2018/19 0.1 FTE 2019/20 (where known) 0.1 FTE	Current (100%)	Current procurement law and practice
Ensure our publically available information is accurate and available on Day 1. Ensure data sharing with other nations can continue	Information Management	Ensure SNH is compliant and continues to share information for the benefit to others across the world.	Non compliance	2018/19 Not known at present 2019/20 (where known) Not known at present	2018/19 0.2 FTE 2019/20 (where known) 0.5 FTE	Current (60%) + additional resource (40%)	Information management
Updating digital content on SNH internet/intranet and other social media platforms	Internal and External communications platforms	Ensure that all SNH's guidance both internal and external is updated to reflect the changes as a result of the EU EXit	Misleading/confusing information for our customers	2018/19 Not known at present 2019/20 (where known) Not known at present	2018/19 0.1 FTE 2019/20 (where known) 0.2 FTE	Current (40%) + additional resource (60%)	Digital comms skills



Co-ordination of SNH's EU Exit Activity to ensure SNH is day 1 ready and that resources are allocated according to priorities during the EU Exit.	Co-ordination of EU Exit Activities	An important role to ensure that SNH is ready for the EU Exit and is able to contribute to the development of future arrangements following the withdrawal.	SNH is non-compliant and is not able to support the SG with future arrangements.	2018/19 Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 0.5 FTE	Additional (100%)	Knowledge of EU Exit and SNH's outcomes and activities.
Oversee the Day 1 readiness plan and ensure SNH is involved in relevant discussions for future arrangements	Oversee EU Exit work for SLT and Board.	Ensure SNH prioritises its resources effectively during the EU Exit.	SNH fails to support SG adequately during the EU Exit or is unable to carry out its priority activities due resource requirements of EU Exit.	2018/19 Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 0.5 FTE	Current (80%) + Additional (20%)	Knowledge of EU exit and its implications.
<b>Total Costs 2018/19</b>					<del>£0.7M (11 FTE)</del> £307K (4.8 FTE)		
<b>Total Costs 2019/20</b>					<del>£1.1M (17 FTE)</del> £435k (6.8 FTE)		
<b>Total Costs</b>					<del>£1.8M</del> £742K		
<b>Scenario 2 –EU exit preparation work required if EU exit takes place on 31 March 2019 in a 'no deal scenario' i.e. there is no agreed transition period and no agreement on the future relationship between the UK and the EU27.</b>							
Description of essential EU exit contingency work or accelerated preparation work required to ensure continuity of essential 'business as usual' functions							

Developing a replacement funding mechanism for ESIF	Funding	To ensure continued investment in public access to Scotland nature and landscapes	Impact on the health of Scotland's people if access routes are not developed allowing access to green spaces in and around towns and the wider countryside	2018/19 Not known at present  2019/20 (where known)  Not known at present	2018/19 0.3 FTE  2019/20 (where known) 1 FTE	Current (50%) + additional resource (50%)	Knowledge of current funding arrangements and development of new schemes.
Review process and update any internal and external guidance including replacement of links to EC documentation	European Protected Sites & Habitat Appraisal Regulations	To ensure that documentation is updated and sets out the new position post EU Exit.	Potential challenges on relevance of documentation.	2018/19 Not known at present  2019/20 (where known)  Not known at present	2018/19 0.2 FTE  2019/20 (where known) 0.5 FTE	Current (60%) + additional (40%)	Knowledge of SNH documentation and what the new arrangements are.
Input into the development of Framework agreements as required.	Environmental Framework Agreements	To help develop proposals that will deliver SG's environmental outcomes	Potential loss of biodiversity, leading to decline in Scotland's prosperity and standing in Europe and beyond as being a leader in looking after our natural resources.	Not known at present	2018/19 1.0 FTE  2019/20 (where known) 2.5 FTE	Current (40%) + additional resource (60%)	Knowledge of current EU legislation and directives
Consider the timeline for any designation cases where they will straddle EU Exit date. Agree revised process for SACs where the EU would normally be involved Designations	Designated Sites	To ensure that SNH remains compliant with legislation and we are able to maintain environmental standards going	Declining environmental standards, falling behind other EU nations.	2018/19 Not known at present  2019/20 (where known) Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.3 FTE	Current (60%) + additional (40%)	Knowledge of Hab Directive

		forward after the EU Exit.					
Input into Environmental Governance solution in Scotland	Governance	To ensure that there is a suitable environmental governance body in place post EU Exit	Ensure environmental outcomes are maintained.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 0.5 FTE	Current (40%) + additional resource (60%)	Knowledge of current arrangements and outcomes for the future.
Work with Marine Scotland on future fishing policy and future EMFF	Fisheries Management	To ensure our sustainable management of our seas	Declining marine environment standards and sustainable economic development	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 1.5 FTE	Current (50%)+ additional resource (50%)	Knowledge of CFP & EMFF and what needs to come afterwards.
Agri-environment schemes - Review any changes required to associated guidance and templates, advice customers on transition arrangements	Manage existing agri-environment agreements over the EU Exit period.	To ensure existing agreements are honoured and help support land managers in the transition period.	Confusion and frustration if there is lack of clarity leading to a mistrust in future schemes that are put in place. Ultimately leading to a decline in land being managed for biodiversity benefits.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.5 FTE  2019/20 (where known) 1.5 FTE	Current (40%) + additional resource (60%)	Knowledge of current agri-env schemes – AECS & Life +
Assist in the development of a future Agri-environment scheme	Future Agri-environment scheme	To provide a mechanism to encourage land managers to manage the land	Decline in biodiversity if no incentives to manage land are put in place.	2018/19  Not known at present	2018/19 2 FTE  2019/20 (where known)	Current (50%)+ additional resource (50%)	Knowledge of current agri-env schemes and what outcomes we

		to benefit biodiversity		2019/20 (where known)  Not known at present	4.5 FTE		want to achieve for biodiversity in Scotland.
Developing future of domestic and international biodiversity arrangements	Biodiversity Duties	To ensure Scotland maintains high biodiversity standards in line with existing and future international agreements	Decline in biodiversity and loss of international reputation	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 2 FTE  2019/20 (where known) 4.5 FTE	Current (50%) + additional resource (50%)	Biodiversity duties and international conventions.
Future arrangements for Climate Change to ensure progress on emissions reductions and adaptation work.	Climate Change	To ensure Scotland can continue to meet its Climate Change targets and has access to work on adaptation	Impact on nature and landscapes and reputational loss.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 1 FTE  2019/20 (where known) 2.5 FTE	Current (50%) + additional resource (50%)	Climate Change and Adaptation
Understand the implications for International reporting requirements	Reporting Duties	To ensure SNH is aware of new reporting duties and what rules will apply following the EU Exit.	Incomplete data being available for species and habitats	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.5 FTE	Current (60%) + additional resource (40%)	Knowledge of current reporting duties and new arrangements.
SEA/EIA - Review any changes required to associated guidance	EIA/SEA & Planning Advice	To ensure our guidance reflects the position post	Misleading/confusing information for our customers	2018/19  Not known at	2018/19 0.5 FTE	Current (60%) + additional resource (40%)	Knowledge of existing legislation and

and templates		EU Exit		present  2019/20 (where known)  Not known at present	2019/20 (where known) 1.5 FTE		the new arrangements
Licensing functions - Review and update documentation including external guidance, and licensing documentation	Wildlife Licensing	Ensure our guidance reflects the post EU Exit position.	Misleading/confusing information for our customers	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.2 FTE  2019/20 (where known) 0.5 FTE	Current (60%) + additional resource (40%)	Knowledge of current documentation and the changes required
Update employment policies	Immigration rules and recruitment	Ensure SNH is compliant in how it treats its employees and future applicants for roles.	Non compliance	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.2 FTE	Current (100%)	Current employment law
Ensure SNH adheres to any new rules put in place for procurement post the EU Exit.	Procurement policy	Ensure SNH abides by any new rules put in place following EU Exit	Non compliance	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.3 FTE	Current (100%)	Current procurement law and practice



Ensure our publically available information is accurate and available on Day 1. Ensure data sharing with other nations can continue	Information Management	Ensure SNH is compliant and continues to share information for the benefit to others across the world.	Non compliance	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.2 FTE  2019/20 (where known) 0.8 FTE	Current (60%) + additional resource (40%)	Information management
Updating digital content on SNH internet/intranet and other social media platforms	Internal and External communications platforms	Ensure that all SNH's guidance both internal and external is updated to reflect the changes as a result of the EU EXit	Misleading/confusing information for our customers	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 0.1 FTE  2019/20 (where known) 0.5 FTE	Current (40%) + additional resource (60%)	Digital comms skills
Co-ordination of SNH's EU Exit Activity to ensure SNH is day 1 ready and that resources are allocated according to priorities during and after the EU Exit.	Co-ordination of EU Exit Activities	An important role to ensure that SNH is ready for the EU Exit and is able to contribute to the development of future arrangements following the withdrawal.	SNH is non-compliant and is not able to support the SG with future arrangements.	2018/19  Not known at present  2019/20 (where known)  Not known at present	2018/19 1 FTE  2019/20 (where known) 1.5 FTE	Additional (100%)	Knowledge of EU Exit and SNH's outcomes and activities.
Oversee the Day 1 readiness plan and ensure SNH is involved in relevant discussions for future arrangements	Input into EU Exit work at SLT and Board level.	Ensure SNH prioritises its resources effectively during the EU Exit.	SNH fails to support SG adequately during the EU Exit or is unable to carry out its priority activities due resource requirements of EU Exit.	2018/19  Not known at present  2019/20 (where known)	2018/19 1 FTE  2019/20 (where known) 1 FTE	Current (60%) + Additional (40%)	Knowledge of EU exit and its implications.

				Not known at present			
Total Costs 2018/19					<del>£0.75 M (12 FTE)</del> £358K (5.6 FTE)		
Total Costs 2019/20					<del>£1.9 M (29.5 FTE)</del> £774K (12.1 FTE)		
Total Costs					<del>£2.65 M</del> £1.132M		

**EU Exit Project Board Minutes  
Tuesday 21 August 2018**

**In attendance:**

Nick Halfhide – Chair  
Eileen Stuart  
Jane Macdonald  
Alison Shields  
Alex Mackay – temp Project Manager  
Helen Taylor – new Project Manager

**Meeting Notes:**

This was the first meeting of the project board.

**1. Day 1R Planning**

It was agreed that the individual activity leads will be required to manage the tasks within the plan. They will be responsible for feeding back progress to Outcome Managers and keeping the project manager and project board updated on any risks or issues that arise.

**AP01: Alex/Helen to let activity leads know what their responsibilities are in terms of managing and reporting on Day 1R tasks.**

**AP02: Helen to work with Activity Leads to add in timescales for Day 1R work to ensure that progress can be tracked.**

**AP03: Alison to ask Emma to ensure that the content manager work is progressed so that any updating of the website can be shared rather than Communications picking up all the editing work at the last minute.**

**2. Resources**

The project board discussed the £307K allocation from Scottish Government for Day 1 Readiness work.

Outcome 1 & 2 – work is continuing to look at how the allocation will be managed. It is expected that the work will be managed within the suggested allocation split, with the breakdown of how it will be managed to follow shortly.

Outcome 3 – [costed plan](#) includes the EU Exit Coordinator, 2 E grade and 1 D grade for transition for SRDP and future agri environment schemes and 1 E grade and 1 D grade for Marine work.

Outcome 4 – 0.5 D business partner and 0.5 HR administrator

Funds spent will need to be tracked through the business planning system.

**AP04: Helen to work with Finance to make sure that the business planning system is set up correctly to capture the required information.**

**3. Internal Communications**

It was agreed that we need to increase the profile of the EU Exit work across SNH.

Guest blogs by some of the staff who are already working on EU Exit related work e.g. John, Stan and Tracey were suggested. As the Cycle for Nature is drawing to a close, it was suggested that this intranet space could be allocated to EU Exit work. Providing an update on EU Exit to the TUS was also suggested.

**AP05: Helen to put together a plan for internal communications and speak to key staff about providing material.**

**AP06: Helen to attend a future TUS meeting to update them on preparations on EU Exit.**

#### **4. Stakeholder Engagement**

Communications Team will prepare a Stakeholder engagement plan with help from Eileen. The plan will be informed by guidance from SG. Comms will lead on Stakeholder engagement but work closely with Helen as EU Exit co-ordinator.

The Project Board discussed the planned Brussels event on 5 November and highlighted the need for progress to be made on the planning of this high profile event as a priority. Alison said that Emma would lead on the event as she has a lot of experience of managing events like this for SG.

**AP07: Nick/Alex to ask SG when we should receive their EU Exit guidance for frontline staff.**

**AP08: Alex to draft a Stakeholder engagement plan, in conjunction with others in Comms and Eileen.**

**AP09: Alison to speak to Emma to ask her to put a planning team together to pull the event together.**

#### **5. Role of the Project Board**

The group agreed to meet regularly with monthly meetings planned into the diary. The project board will receive updates from the project manager and will review any new risks and issues that have arisen in the interim from the Day 1 Readiness work.

**AP10: Helen to arrange a series of project board meetings.**

Title: **SLT Approval of Q1 Reports to Board**

Date: **24 July 2018**

<b>Paper Type:</b>	For decision
<b>Summary:</b>	<p>This paper seeks SLT approval of the draft Q1 reports to Board on Performance, Finance, Corporate Risk, and People.</p> <p>The structure of the performance report has been revised to reflect our new Corporate Plan and its four Outcomes. The Lead Directors' summary of overall progress on each Outcome is followed by a supporting narrative from the relevant Outcome Manager on the associated 2018/19 Business Plan Commitments.</p> <p><b>Headlines</b> – SLT are asked to confirm the selected headlines capture the key achievements/issues for the Board's attention.</p> <p><b>Director's Reports</b> - A slight difference in style has been adopted between Directors reports. SLT are asked to confirm whether these should follow a similar format and if so whether this should be in narrative or bullet point style.</p> <p><b>Progress on Commitments</b> - Progress on each Commitment is structured by sub-headings to reflect its various contributions. However, SLT may consider the level of detail too much for the Board and are requested to confirm whether some of the information requires to be condensed down into more succinct narratives.</p>
<b>Relevant to Corporate Priorities:</b>	Provides progress on delivery of our corporate priorities.
<b>Fits with Government Priorities:</b>	Provides progress on our support with government priorities.
<b>Risks:</b>	See accompanying corporate risk report.
<b>Resource/ Staffing:</b>	The resourcing and staffing implications are covered by the report.
<b>Implications:</b>	We are broadly on track to achieve our long-term Outcomes and actions are being taken to address slippage where this occurs
<b>Recommendations:</b>	Endorsement of the Q1 Report to Board subject to any changes required.
<b>Paper Author(s):</b>	Authors – Directors, Outcomes Managers & Planning & Performance Team
<b>Sponsor:</b>	Sponsor – Alan Hampson



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## Purpose

1. This paper presents SNH's performance for the first quarter of 2018/19. It addresses progress towards achieving the 21 Commitments set out in *Making Connections: Year 1*, SNH's Business Plan for 2018/19. These Commitments support delivery of our Corporate Plan 2018-22 *Connecting People and Nature* and its four long-term Outcomes and this report is structured accordingly.

## Summary

2. [REDACTED]

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**Outcome 2 – The Health & Resilience of Scotland's Nature is Improved****Progress against our commitments**

	Q1	Q2	Q3	Q4
■ [REDACTED]	■			
■ [REDACTED]	■			
8. Enhance the stewardship of the environment through clearer priorities for land and sea, in light of EU Exit.	●			
■ [REDACTED]	■			
■ [REDACTED]	●			

**Director Summary**

[REDACTED]

[REDACTED]

We are contributing to EU exit transition work relating to Natura at both a Scottish and UK level to help ensure our most important nature sites are safeguarded. This work raises broader issues and we will bring a paper to the Board in October to discuss how new approaches to Protected Areas that reflect Connecting People and Nature and the work of the Protected Areas Review Group. The advice we have given on Protected Marine Features is critical in supporting the wider health of our seas and we have also been working towards a Marine Natural Capital Asset Index.

**Risks & Issues and Forward Look**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

<p>8. Enhance stewardship of the environment through clearer priorities for land and sea, including protected areas, in light of EU Exit.</p>		<div data-bbox="507 114 1474 322" data-label="Text"> <p>[REDACTED]</p> </div> <div data-bbox="507 349 1474 551" data-label="Text"> <p><b>Advising SG on EC Directives and EU Exit</b>  We have recently reviewed our immediate and longer term resource commitments regarding BREXIT, although some areas of work are difficult to scope. We are standing by to advise on and respond to changes to the Natura legislation and we have extended an offer to assist Scottish Government in preparing legislative changes.</p> </div>
<p>[REDACTED]</p>		<div data-bbox="507 640 1474 987" data-label="Text"> <p>[REDACTED]</p> </div>
<p>[REDACTED]</p>		<div data-bbox="507 1037 1474 1211" data-label="Text"> <p>[REDACTED]</p> </div> <div data-bbox="507 1238 1474 1413" data-label="Text"> <p>[REDACTED]</p> </div> <div data-bbox="507 1440 1474 1682" data-label="Text"> <p>[REDACTED]</p> </div> <div data-bbox="507 1709 1474 1883" data-label="Text"> <p>[REDACTED]</p> </div>



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#### Risks & Issues and Forward Look

EU Exit remains an area of significant uncertainty both in terms of direct implications and the effort required to address these. We have therefore identified a new Corporate Risk in relation to Day One Readiness. In order to ensure we are as prepared as we can be, a bid for an additional £300k (4.8FTE at E grade) for 2018/19 to support Day 1 readiness was submitted to and accepted by SG. Directors are identifying priority areas of EU Exit related work which can utilise these funds.

[REDACTED]

[REDACTED]

[REDACTED]





## Outcome 4 – We have transformed how we Work

<p>17. Ensure we have plans in place so that we continue to operate effectively and legally as we exit the EU.</p>		<p><b>EU Exit</b></p> <p>We have stepped up preparation for EU Exit although this remains an area of considerable uncertainty reflected in the RAG rating.</p> <p>The CEO and SLT lead continue to feed into wider co-ordination mechanisms including the EELG EU Exit network which shares SG thinking; and UK agencies EU Exit Network (Chaired by Nick Halfhide) which offers a UK wide perspective. Both groups meet on a 6-8 week cycle.</p> <p>The Day 1 readiness plan has been updated to reflect the four outcomes and activities, and an EU exit co-ordination role has been advertised with a view to filling the post in Q2. This will provide us with additional dedicated capacity to address issues as they emerge. SNH has already had significant influence on the consultation document on the future of agri-environment funding and transition arrangements.</p>

463 - Lack of preparation for EU Exit - Day 1 readiness				Risk Owner: Alex Mackay
As a result of inadequate preparation for the immediate implications of the UK withdrawal from the EU, known as Day 1 readiness, there is a risk that we fail to implement the necessary changes to our guidance, operating procedures and funding mechanisms. This could result in a failure to achieve our outcomes, have a negative impact on the natural heritage, breach legislation and harm the organisation's reputation				
Controls	Impact	Likelihood	Score	Update
<ul style="list-style-type: none"> <li>* Day 1 readiness plan reviewed and updated on a monthly basis</li> <li>* Project board established to oversee progress on delivery of the actions required to be Day 1 ready.</li> <li>* Lead staff nominated for each area of action identified</li> <li>* Additional resource requirement identified and provided to SG</li> <li>* Activities cross-checked with SNH Business Plan to identify potential gaps</li> <li>* Outcome Managers to prioritise resources to support activities through the Project board.</li> </ul>	3	3	Medium (new)	<p><b>Risk Owner Comment:</b> This risk has been escalated to SLT by the risk manager for consideration as a new corporate risk. This reflects recent comments by the Board who sought confirmation that we were managing the risks to 'Day 1 Readiness' on leaving the EU.</p> <p><b>Comment for ARC</b> This risk was escalated as a new corporate risk in order to provide oversight that adequate actions were in place to ensure that we will be prepared for the UK leaving the EU in March 2019. A project board is co-ordinating actions to manage this risk with support from the Outcome Delivery Group. At the moment the risk is rated Medium.</p>

## De-escalated Risks

SLT are requested to confirm if the following two risks can be de-escalated and overseen by the Project Board for the 'Brexit – Day 1 Readiness' in light of the escalation of Risk 463

306 - Misdirection of Resources following EU Referendum				Risk Owner: Stuart MacQuarrie
As a result of the future policy, funding and legislative framework being unclear following the EU Referendum, there is a risk that we misdirect our resources thereby leading to negative impacts on the natural environment.				
Controls	Impact	Likelihood	Score	Update
<ul style="list-style-type: none"> <li>*Quarterly liaison with SG sponsor hub to ensure we are in line with latest thinking</li> <li>*Ministerial approval of corporate plan and resourcing plans</li> <li>*Quarterly meetings with EU hub to ensure our plans continue to be aligned</li> <li>*Regular liaison with partner agencies</li> <li>*Regular Directorate Management group briefings on progress</li> <li>*Direct liaison between CEO and Ian Jardine in his Special Advisor role.</li> </ul>	3	2	Medium ↔	<p><b>Risk Owner Comment:</b> We continue to engage with Scottish Government colleagues and also other key contacts within the environment sector. As a result we have a good current awareness of the Scottish Government position and are in a strong position to support discussions and the decision making processes here-on-in. This quarter we have been asked to review resource requirements to support ongoing EU Exit work.</p>

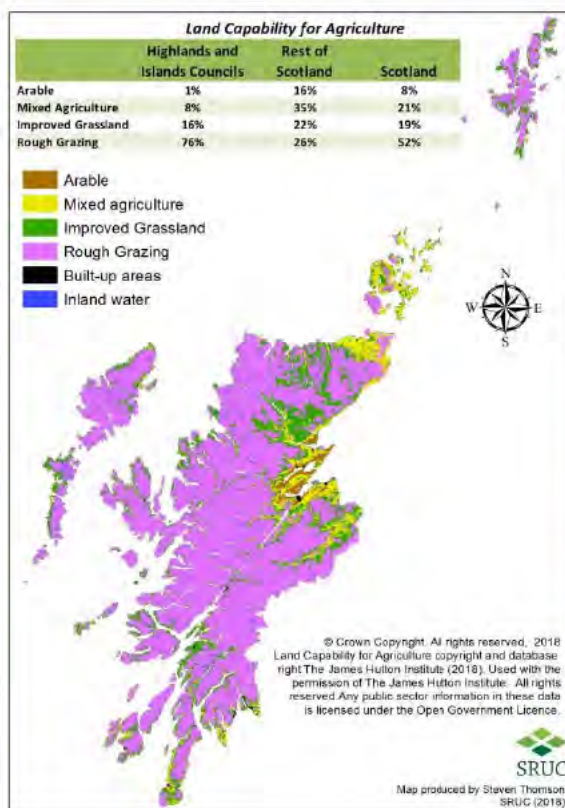
307 - Unclear Messages to Stakeholders following EU Referendum				Risk Owner: Stuart MacQuarrie
As a result of the future policy, funding and legislative framework being unclear following the EU Referendum, there is a risk that SNH gives confusing messages to staff and stakeholders, leading to negative impacts on the natural environment and the reputation.				
Controls	Impact	Likelihood	Score	Update
<ul style="list-style-type: none"> <li>*Monthly refresh of key documents added to intranet site</li> <li>*Regular reference to key decision points in CEO blog</li> <li>*Establish an internal EU Briefing Note summarising key document contents</li> <li>*Establish clear lines on our current position and update in discussion with Greener Comms and the EU Hub</li> </ul>	3	2	Medium ↔	<p><b>Risk Owner Comment:</b> We continue to hold the SG line of there being no diminution of environmental protections in Scotland following exit from the EU. We have also consolidated our internal staff communications on the intranet which help provide an overview of next steps.</p>



# Post-Brexit implications for Agriculture, Crofting & Related Land Use in the Highlands and Islands

Steven Thomson (SRUC) and Andrew Moxey (Pareto Consulting)

Report commissioned by the Highlands & Islands Agricultural Support Group



**Diversity of Production:** Agriculture across the Highlands & Islands is **incredibly diverse**, ranging from: productive **arable** lands of the Black Isle; **intensive beef grazing** in Caithness and Orkney; the **productive dairy fields** of Argyll & Bute; the **extensive hill sheep and suckler cow systems** across much of the Highlands and Argyll; and, small-scale, and often part-time **crofting systems** in much of the west-coast and islands.



**Challenging but Important Agriculture:** Agriculture across much of the Highlands & Islands remains **challenging** compared to other parts of Scotland, and the rest of the UK due to the **bio-physical constraints** faced - in

particular: poor quality land, elevation, slope, rainfall, temperatures, and considerable peripherality - that means for most farmers and crofters **low intensity production is the norm**. The large areas of

**unproductive rough grazing** across the region means that often only low numbers of animals can be kept per hectare and **production choices are often extremely limited**. Compared to many other parts of Scotland farmers and crofters across much of Highlands and Islands have **limited ability to produce enough winter feed** to maintain their livestock, let-alone finish animals.

	Highland	Na h-Eileanan Siar	Argyll & Bute	Shetland	Orkney	Highlands & Islands	Rest of Scotland
Grazing land	89%	98%	88%	100%	94%	89%	73%
Ewes per Cow	6.2	19.7	5.8	54.6	1.3	6	3
Beef Cows (% of total cows)	96%	98%	73%	81%	92%	89%	66%
HNV Farmland	56%	77%	63%	→ 49% ←	59%	59%	28%
Livestock density (livestock units/Ha)	0.09	0.06	0.18	0.21	0.72	0.12	0.57
Output per hectare (average standard output/Ha)	£72	£44	£121	£111	£502	£91	£691
People involved (all) (workers/occupiers/spouses)	9,676	3,975	2,532	1,984	1,899	20,066	45,292
% People part-time	75%	93%	61%	87%	62%	77%	56%



## Active Agricultural Communities:

Over 20,000 people are engaged in agriculture in the Highlands and Islands contributing to the economies and social fabric of dispersed rural communities. Many farm and croft households are integrated into the wider economy and community through **non-agricultural employment and diversified businesses** - particularly with the tourism

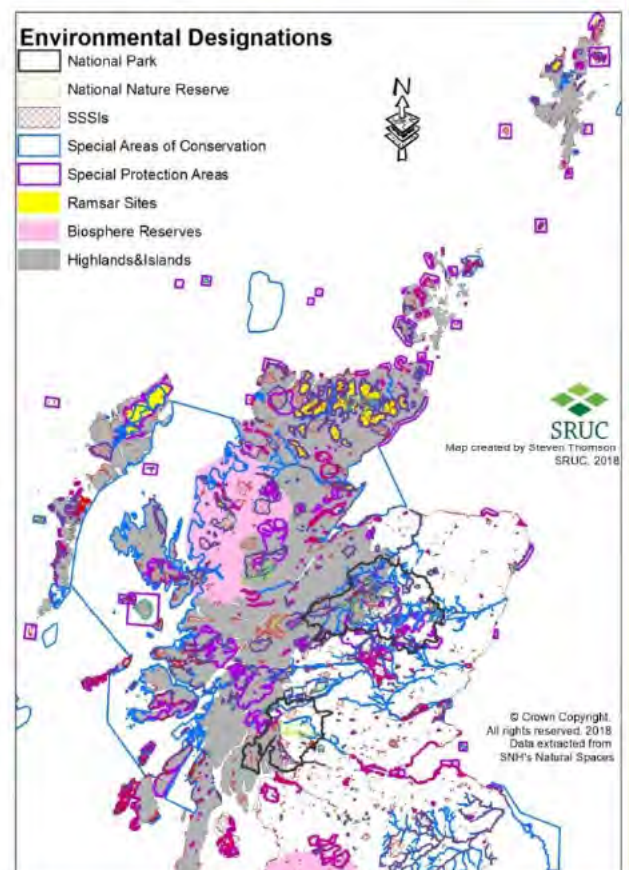


sector. Ensuring a positive Brexit outcome for the Highlands & Islands is essential to maintaining this unique cultural mix of crofting and farming and the **management of fragile and publicly valued landscapes**.

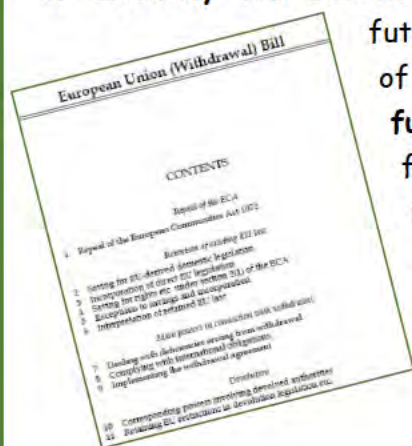
**Farming and Crofting - a valued landscape?** Whilst most farmland in the Highlands & Islands gives rise to some form of **production constraint**, the land, and the way it is managed, has given rise to **areas of significant public importance regarding species, habitats and landscapes** - including nationally important **carbon sinks**. The region contains **40% of the UK's 1,150 priority species** and over **three quarters of the UK's 65 priority habitats**. On top of that the UK contains 13% of the **world's blanket bog** (one of the world's rarest habitats) with most of this located in the Highland & Islands.



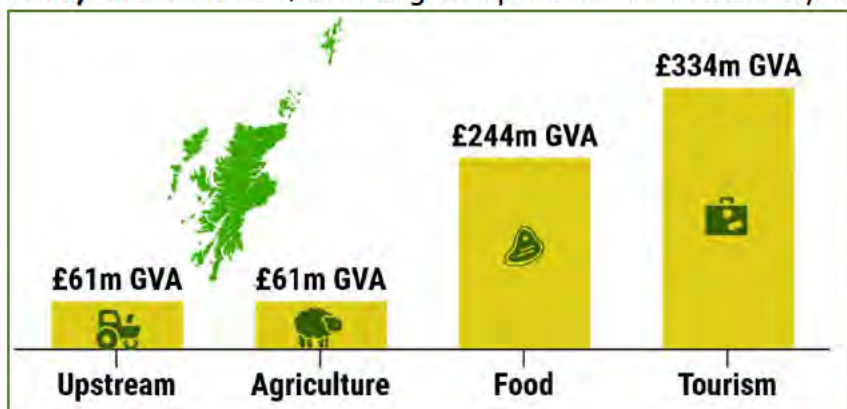
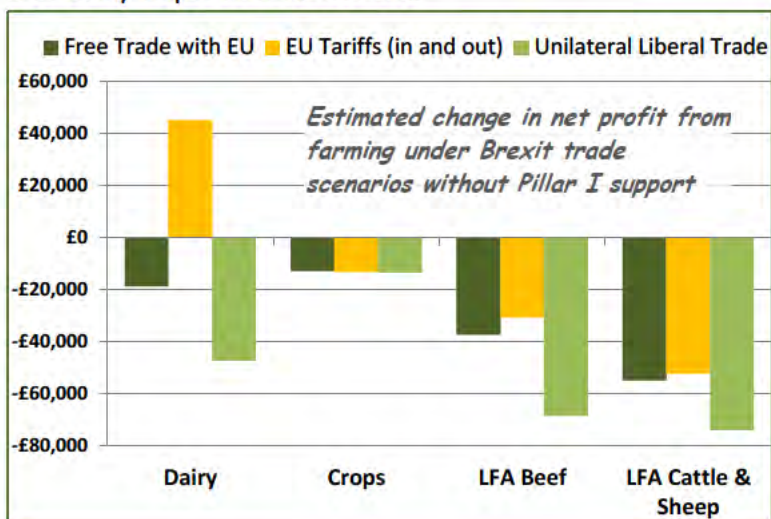
**Restrictions on Land-use:** It is often forgotten that farmers and crofters are regularly **restricted in their potential management and development options**. This extends to their opportunities to deliver public goods relating to **renewable energy and woodland cover that can be restricted** to the nature of the ground (in particular deep peat), the presence of nationally or internationally important habitats or species, or through landscape designations. The historic production oriented support provided through the **Common Agricultural Policy did not effectively reward the public goods** that the region's farmers and crofter deliver - although there has been increased emphasis on supporting woodland and the environment through Pillar II of the CAP in the last 15 to 20 years. There is an opportunity for **post-Brexit agricultural policy to focus greater attention on supporting these fragile and important lands**.







**Potential Brexit Impacts:** Modelling analysis shows that extensive livestock farming systems are particularly **vulnerable to potential post-Brexit agricultural policy changes** as well as potential trade outcomes. Any significant change to Pillar I-type support, including coupled beef and sheep support, or LFASS, could lead to many farmers and crofters in the region being **unable to return profits** for their business that could lead to **land abandonment or structural change with economic, environmental and social impacts**. Existing trends of fewer livestock, reduced agricultural activity, land abandonment and a shrinking farm workforce will likely be reinforced by Brexit. **Multiplier effects** of this will ripple back **along supply-chains** and into the wider economy, risking economic activity and employment both **upstream** (e.g. input suppliers, marts, hauliers) and **downstream** (e.g. in Food & Drink and Sustainable Tourism businesses, both of which are priority growth sectors). Downstream linkages reflect **agriculture's role in sustaining a range of ecosystem services**, including the provision of commodity outputs to processors but also **aesthetic**

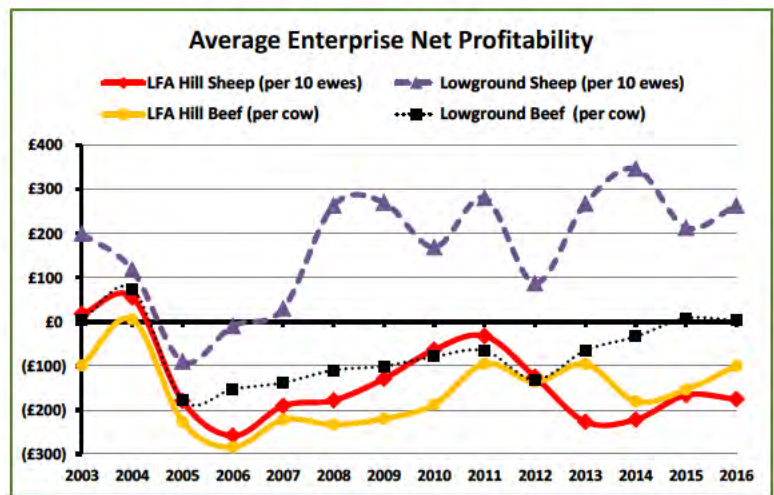


and cultural experiences that underpin many tourism activities: scenery and landscapes are cited by over 85% of tourists as a reason for visiting. Much of the land managed with positive environmental outcomes is at risk from abandonment if a positive Brexit outcome for the region is not delivered.



## Mitigating Brexit Impacts:

The potential threats posed by Brexit could be **mitigated** in a number of ways. For example, there is some scope to **improve agricultural productivity** or adopt different land use (e.g. forestry) or diversify the business through **improved management and innovation**, supported through **targeted information, advice, training and capital investments**. However, poor land quality, remoteness and infrastructure limit potential gains. Moreover, a focus on agricultural productivity alone **neglects wider ecosystem services linked to management of natural capital**. These are not valued by markets, but do have economic value and provide a **recognised rationale for support**: "*public funding for public goods*." Reliance on a network of resident of land managers with personal and cultural ties to the land suggests a **need for continued income support alongside more targeted agri-environment payments**.



### Examples of agricultural public goods:

- Landscapes, biodiversity, air quality, water quality, soil quality, fire & flood resilience, cultural heritage, community resilience, food security, animal health & welfare

The WTO Agreement on Agriculture - Annex 2, Article 12 states that on environmental support:

*"The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme"*

*"Unless we can continue support for hill and upland farming, it will be under serious threat and thousands of hill farmers and crofters will stop, there will be land abandonment and we have seen that already in some cases, the hillside we take for granted which is so beloved by our tourists changes into something which is not pleasant to look at and the environmental terms become degraded very quickly."*

**Cabinet Secretary for Rural Economy and Connectivity, Fergus Ewing MSP.**

(The Scottish Farmer 3<sup>rd</sup> February 2018)

**Focused Policy Need for the Highlands and Islands:** The distinctive environmental and cultural characteristics of the H&I region, together with the exposure of its dominant agricultural land use to Brexit-induced pressures, provide a **compelling case for distinctive and targeted policy interventions**. However, many of the challenges are not new, merely thrown into **starker relief by Brexit**. The extent to which appropriate support is forthcoming will be a **test of political commitments to the economic, environmental and social conditions of the region**, but also of how well the case can be made to the public for **discretionary expenditure on agriculture** (no longer CAP ring-fenced) and associated public goods rather than on other competing demands. The vulnerability of H&I farming and risks to public goods merit a higher share of funding. The nature of support also needs to evolve, to better meet policy objectives and may involve tapered and capped payments, with changes ideally phased-in over a transition period to reduce disruption.



March 2016

## **The potential policy and environmental consequences for the UK of a departure from the European Union**

Prepared by:

**Institute for European Environmental Policy**

In collaboration with:



Protecting  
wildlife for  
the future



giving  
nature  
a home



## **ACKNOWLEDGEMENTS:**

This report has been funded and supported by a group of organisations comprising: WWF UK; RSPB; and The Wildlife Trusts. The report has benefited greatly from helpful comments on the text by several individuals both from within these organisations and externally. We are grateful to all of them for their contributions, while the responsibility for errors and matters of judgement remain with the authors.

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**Cover Image:** Shutterstock standard license, 2015.

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## **Summary of the report**

This report considers the potential consequences for the environment and for environmental policy of the UK choosing to withdraw from the EU, based on different scenarios for the UK's future relationship with its neighbours. The assessment identifies potential influences on the decisions to be made in a future outside the EU, including international agreements, the changing context and already established UK policy positions. It builds on an overview of the EU's record, particularly in developing and applying environmental policies, but also in relation to agriculture and fisheries policy.

### **EU policies affecting the environment**

Although the environment was not accorded much consideration in the early years of the EU's development, this has changed dramatically. A comprehensive set of policies has been established, forming what is now one of the most influential bodies of environmental law in the world.

This transition was brought about only with the active engagement and explicit agreement of European governments, including the UK, through a legislative process that requires the agreement of a substantial majority of countries. Indeed, the UK has been among the most influential Member States in the shaping of EU policies. There is now close integration between UK, EU and international environmental law. Separating them would be a considerable challenge and a source of significant uncertainty.

Beyond this are other EU policies which have a significant environmental impact, including those on agriculture, fisheries, research and development, trade, overseas development and foreign affairs. Two of these – the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP) – are of particular relevance in the Referendum debate, and are therefore assessed in more detail in this report. Both would cease to apply in the UK if it were to leave the EU, regardless of the scenario for its future international relationships. Immediate questions about the environmental consequences would arise.

### **The EU's role in environmental policy**

The development of environmental policy in the EU took place over several decades starting from the 1970s, and continues today; it has revealed some of the strengths and weaknesses of adopting a common EU approach. It is based on the logic that many environmental issues are cross-border in character or impact, and are better addressed by co-operative action than unilaterally. Being part of a strong unified bloc has allowed the EU to have an influential voice within international negotiations on global environmental issues. In parallel, the growing importance of the single market has provided impetus to create common EU rules, particularly for product standards, permitting and target setting procedures. This helps to avoid problematic differences in national rules as well as distortions in competition.

The relatively demanding process for agreeing measures within the EU can extend over many years, especially when the issues in question are complex, and compromises between different visions for environmental protection are often necessary. Once agreed, however, the broad geographical scope of the measures can have a major impact. Several of the most important measures (on water quality, climate, waste, etc.), involve requirements to meet medium- or long-term targets. This approach provides a clear sense of direction and momentum and, in many countries, it facilitates a more ambitious approach than they might feel able to adopt if they were acting on their own.

The EU's expansion to 28 countries has created a wider diversity of conditions, interests and views, and added to the complexity of negotiations. National concerns need to be accommodated where possible to take account of existing regulatory traditions, and to reflect the specificity of the policy issues within each Member State. It is also necessary in order to respect the important legal principle of "subsidiarity", which seeks to ensure that the EU only acts when it is clearly preferable for action to be taken at EU level.

The process for developing legislation can be lengthy, partly because it is much more open to the checks and balances of democratic processes at national and European level than the media portrayal of the EU often recognises. Once agreed, however, measures are changed rather infrequently, creating considerable confidence in the underlying legal framework and the long-term policy direction. This helps both public authorities and private investors to plan ahead with greater confidence. A record of relative consistency, backed up by a system of strategic forward-planning based on periodic reviews of future challenges, has proved one of the benefits of acting at EU level.

These political and economic considerations have been underpinned by the cross-cutting references to environmental principles in the EU Treaty, and by the formal overall goal of sustainable development, which has no direct counterpart in UK legislation.

The adoption of common rules for products, and of relatively consistent processes and standards in all Member States, is intended to avoid distortions to competition and to prevent governments from lowering national standards to benefit their own industries. Many businesses have benefitted from the establishment of these common rules and from a more harmonised approach. High common standards have created a new and sizeable market on a predictable timescale for a wide range of greener products, ranging from more efficient electrical white goods through to cars and household goods with fewer toxic chemicals.

Whilst rising standards have generated some costs, particularly in some established industries where investment in cleaner production systems has been required, they have also created new markets and business opportunities. There have been both positive and negative effects on employment, which are difficult to quantify for EU environmental policy as a whole. However, "green" industries now account for a significant proportion of new investment and employment in the UK, and the emerging EU initiative to build a "circular economy" could expand this market considerably further.

### **Overview of key environmental achievements of the EU**

The following are some of the key environmental achievements of EU countries working together within a common legislative framework that would have not occurred at the same level if they had acted alone:

- A substantial decline in most industrial sources of air and water pollution, particularly in improving urban air quality and in tackling diffuse water pollution, for example from farming.
- A fall in greenhouse gas emissions and rapid recent growth in the deployment of renewable energy.
- Significant reductions in the pressures on human health from environmental pollution.
- A significantly improved system of protection for species and habitats.
- A transformation in waste management, with a major increase in recycling rates and the first steps towards the creation of a more circular economy.
- The establishment of a thorough system for the review of the safety of chemicals that can be expected to lead to the future withdrawal and substitution of various toxic substances.
- The foundations for addressing the mounting pressures on the marine environment in the form of a legislative framework which is starting to have an effect.
- Improvements on access to information, public participation and access to justice in environmental matters at EU level.

- The wide application of environmental impact assessment and strategic environmental assessment procedures (also adapted and used by the European Investment Bank as conditions for all infrastructure investment decisions inside and outside the EU).

### Future scenarios

There is significant uncertainty about the nature of the UK's future relationship with the EU following a vote to leave. The wide range of potential scenarios can, however, obscure the debate on the impacts to be expected. In order to clarify the potential environmental consequences, we identify the two primary options that appear open to the UK. These are based on whether the UK retains access to the EU's internal market or not.

The first scenario represents an arrangement whereby the UK retains access to the internal market through membership of the European Economic Area (Scenario 1 '*inside the EEA*'). This is broadly the status that Norway currently enjoys. In the second scenario, the UK would position itself outside both the EU and the other principal European Agreements (ie the EEA and EFTA). Therefore, this scenario includes the alternatives where the UK has no preferential access to the internal market and no representation within the EU decision-making process (Scenario 2 '*entirely outside*').

Some of the key policy implications are summarised in the table below.

	Membership of the European Union	Inside the EEA Brexit Scenario 1	Entirely outside Brexit Scenario 2
Does the UK retain access to the EU Single Market?	Yes	Yes	No, all access to be negotiated
Does it contribute to EU budget?	Yes	Yes (budget contribution would probably fall, however)	No, unless negotiated as part of an access deal
Do the CAP and CFP apply?	Yes	No	No
Do EU environmental laws continue to apply to the UK?	Yes	Most of them will, with some exceptions e.g. the nature directives and Bathing Water Directive.	No, but UK exporters will need to comply to export into the EU
Does the UK have a say in the formulation and amendment of EU policy on the environment?	Yes	EEA countries are only consulted during the preparation process for legislation. They do not take part in the formal negotiations, and cannot vote; and they have no MEPs to influence legislative outcomes through the European Parliament.	No
Would the UK continue to be subject to mechanisms to ensure compliance and penalties for non-compliance?	Yes	Yes, the European Commission retains enforcement powers and fines can be imposed for non-compliance.	No
Would it be necessary to negotiate new trade arrangements which could have impacts on environmental standards?	No	In some areas, yes, including in relation to agriculture and fisheries.	Yes, across a wide front.

<b>Could a future UK government lower current environmental standards in the UK?</b>	Only by means of an agreement at EU level	Not in the majority of cases where they are covered by EU obligations.	Yes; although UK exporters would need to abide by EU product standards, as well as face tariffs in many sectors
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Under Scenario 1 (“inside the EEA”), most EU environmental law would continue to apply to the UK with some important exceptions, notably the nature (Birds and Habitats) and Bathing Water Directives. A future government would have the scope to weaken the level of environmental protection in the UK in those excepted areas. This represents a risk that is not balanced at present by any clear evidence of strong ambition by UK governments, for example, to pursue all the goals of EU nature conservation legislation. The CAP and the CFP would cease to apply, almost certainly giving rise to changes in policy, expenditure and environmental outcomes. At the same time, the UK would be excluded from decision-making over EU policy and from participating as part of the EU in international negotiations on a range of environmental agreements. Nor would the UK be likely to significant exercise influence over the EU’s position in those negotiations. This appears an unequivocal drawback of departure. Meanwhile, the UK would continue to contribute substantially to the EU budget.

Under Scenario 2 (“entirely outside”), future UK governments would in principle have the scope to adopt either stronger or weaker environmental standards than at present. Judging by UK government responses to a range of environmental proposals from the European Commission in recent years, it seems more likely that the current government, and possibly its successors, would opt for a less ambitious approach than that adopted by the EU in a number of areas, including air pollution, recycling, and aspects of nature conservation. There is a risk that a future government might seek to use arguments claiming that in order to maximise UK competitiveness, it would be necessary to lower standards, including environmental ones. Such an approach, and even the perceived risk of it being adopted, can be expected to create increased uncertainty for business investments in general, and for green businesses in particular.

Finally, if the UK remains in the EU, it remains bound by existing environmental legislation and can play a significant role in future decisions, including the adoption of new measures and the amendment of existing ones. Equally, it can influence the future of the CAP, the CFP and other policies affecting the environment, including trade (the UK is an active supporter of TTIP). Within the EU, it will be in a position to contribute to the shaping of a series of important decisions, for example on climate and energy policy (with major proposals due in 2016), the future of the “Better Regulation” agenda, and the development of a “circular economy” – a key EU project for the next decade or more.

### **Analysis of different policy areas**

This report explores the implications of departure from the EU in a series of chapters covering different themes. The main conclusions from each chapter are outlined below, followed by a set of overarching conclusions on the environmental impact of the choice to be put before the UK electorate in the referendum in June 2016.

#### ***Environmental Quality***

The establishment of more stringent environmental standards within the EU single market has had significant environmental and health benefits in the UK. Decades of EU air protection legislation, as well as water and waste management policy in the EU, have resulted in better air quality for the UK, dramatic improvements in waste recycling, and much higher quality of bathing waters and rivers and coasts with far lower pollution levels than before. During the last four decades, the UK has shown a strong record of providing scientific and policy advice to the development of EU legislation regarding



environmental quality. However, many of the initiatives to improve environmental quality in the UK would not have taken place, or would not have been pursued as effectively, without the legal pressure arising from EU legislation and the benefits to citizens and businesses would not have been realised.

Although there are differences between the different policy areas, most of EU legislation regarding environmental quality would still apply if the UK were to remain within the EEA (Scenario 1). That is particularly true for air quality legislation, most of the Water Framework Directive, the three main legal mechanisms controlling pollution emissions, and the Waste Framework Directive. However, under this scenario, the UK would not be part of the official decision making processes, and thus would not be able to argue to adapt future legislation to the specific interests of UK citizens. Under Scenario 2 (entirely outside), most of environment legislation would no longer apply, and the UK would be free to relax and lower environmental standards, creating as a result a scenario with real and uncertain environmental and health risks.

### ***Nature Protection***

EU legislation on nature conservation has significantly benefited both terrestrial and marine wildlife in the UK by requiring wide-ranging action that otherwise probably would not have been required. The role of EU legislation is likely to continue to be particularly important given, for example, cross-border threats to biodiversity, such as invasive alien species and climate change. To continue working together with the long-term approach adopted in the EU will be essential in order to achieve the target of halting the decline of habitats and species.

The risks of withdrawing from the EU are significant for nature. Regardless of the departure scenario, the Birds and Habitats Directives – policies that are the backbone of conservation in the EU and both of which have generated significant improvement for species and habitats – would no longer apply. Instead, the UK government would be at liberty to change this legislation and the processes in place to deliver it. International environmental law, notably the Bern Convention would continue to apply; however, it does not offer the level of protection nor the enforcement measures provided by the nature Directives and EU membership. In terms of marine nature conservation policy, if the UK becomes part of the EEA following departure from the EU (Scenario 1), the Marine Strategy Framework Directive (MSFD) would continue to apply, and the UK would remain bound by this Directive's ambitious targets without being able to influence its development. Under Scenario 2, the MSFD would not apply and the UK government would be free to loosen the provisions over time.

### ***Climate Policy***

The UK has, over recent decades, exercised significant influence over the development of EU climate and energy policy, and over the levels of ambition the EU brings to international negotiations. The consensus among the main UK political parties in favour of a relatively ambitious approach to climate mitigation targets, which has held through a succession of General Elections, has thus been capable of being pursued in a European context, with relatively limited impact on competitiveness of UK firms vis à vis their competitors in other EU member states. Were the UK to leave the EU, it would face a combination of greater risks to its own, current, domestic decarbonisation ambitions; reduced influence over international negotiations on climate; and a likely reduced level of ambition in EU policy on climate change. It would no longer be possible to exert the same level of influence over decision-making at European level, and thus on the constraints facing UK industry's competitors in other EU member states.

This assessment in part reflects the necessarily international nature of delivering climate mitigation objectives; in contrast, an alternative policy of significantly reduced UK ambition on climate mitigation would be easier to deliver from outside the EU's legislative framework. While such a shift

in policy would remain unlikely even in the event of a “Leave” vote, the added policy risk for low carbon investment would have an impact on the costs and effectiveness of UK mitigation policy.

### ***Agricultural Policy***

The CAP has been a force for maintaining production in Europe and keeping it higher than it is likely to have been under free market conditions, or under the more liberal policy regime generally favoured by UK governments. This has created pressures on the environment from enhanced production and input use whilst also helping to maintain more traditional low-input and high-nature-value farms. The CAP cuts both ways. Indeed, there is no simple relationship between the level of subsidy and the extent of environmental pressure from farming, as is often assumed. Some of the most intensive and potentially polluting sectors, such as pigs and poultry, receive the least subsidy from the CAP or none at all. Since the 1990s, the CAP has been subject to a series of reforms which have helped to increase its environmental orientation, sharply reduced production subsidies and their harmful impacts. Payments for environmental management on farmland have grown sharply. Nonetheless, considerable distance remains between the present model and a truly ‘green’ agriculture policy, and there are major concerns about the current “greening” provisions.

It is far from clear whether the UK environment would be better served by a new set of national agriculture policies, which would follow from Brexit. Major variations between England, Northern Ireland, Scotland and Wales are likely. However, established UK policy, strongly supported by the Treasury, is to cut expenditure on agriculture. Consequently, there are major questions about how far a future government would maintain funding for managing the rural environment as well as for agriculture. The majority of experts on the topic are sceptical and expect significant cuts. Incentives for greener farming could decline, and there are also concerns about the extent to which governments would be willing to impose environmental obligations on a sector subject to competition from more subsidised counterparts in the remaining EU Member States. All in all, there would certainly be significant environmental risks associated with departure.

### ***Fisheries Policy***

Fisheries and the EU Common Fisheries Policy (CFP) are frequently mentioned by critics as an important reason why the UK should leave the EU. During the evolution of the CFP, the performance of the policy in environmental terms has been unsatisfactory in many respects and much further progress is required. Other transnational fisheries management regimes have suffered from similar weaknesses. However, the recently reformed CFP is now steering in the right direction in terms of reducing the environmental burden imposed by industrial-scale fishing in the EU. Meanwhile, whilst it is an important driver, the influence of the CFP in the long decline of the UK fishing fleet should not be overstated.

It is relatively certain that no matter what the Brexit scenario, the CFP would cease to apply in the UK and establishing a new policy regime would likely involve a considerable number of difficult negotiations. This would include politically sensitive discussions between the devolved British jurisdictions, as well as negotiating new fishing agreements with other states, as most stocks in UK waters migrate to and from neighbouring waters and British fishermen today operate also in other states’ waters. There are no grounds for confidence that Brexit would lead to closer alignment of “Total Allowable Catch” levels for fish in UK waters to scientific advice, nor that an immediate “greening” of British fisheries subsidies would follow. Overall, this assessment makes it clear that – compared to any foreseeable alternative – cooperative management of fisheries within the EU policy framework is relatively beneficial for the sustainability of stocks. Departure from the CFP would instead introduce several unwanted risks and great caution needs to be exercised in forecasting what could be achieved unilaterally. The fact that international marine law does not provide the means to ensure compliance is, for example, a very substantial weakness.

## Horizontal Conclusions

The bulk of the analysis in this report is subject-specific, and the key elements of each chapter of our analysis are set out above. It is also possible to identify some over-arching, horizontal conclusions:

- Membership of the EU has had, and continues to have, a significant positive impact on environmental outcomes in the UK as well as other parts of Europe, with cleaner air, water and oceans than otherwise could be expected.
- This is because of a range of legislative, funding and other measures with the potential to work in combination. EU environmental legislation is backed up by a hard legal implementation requirement of a kind that is rarely present in international agreements on the environment; and which is more convincingly long-lasting, and less subject to policy risk, than national legislation.
- Complete departure from the EU (Brexit Scenario 2) would create identifiable and substantial risks to future UK environmental ambition and outcomes. It would exclude the UK from decision making on EU law and there would be a risk that environmental standards could be lowered to seek competitive advantage outside the EU trading bloc.
- Departure from the EU whilst retaining membership of the EEA (Brexit Scenario 1) would lessen these risks, as most EU environmental law would continue to apply. However, there would be significant concerns related to nature conservation and bathing water, as well as to agriculture and fisheries policy. In addition, the UK would lose most of its influence on EU environment and climate policies.
- Under both exit scenarios, significant tensions would be created in relation to areas of policymaking where responsibility is devolved to the governments in Scotland, Wales, and Northern Ireland, but where a broadly similar approach has been required as a result of EU membership, including environmental protection, agriculture, and fisheries.
- The uncertainty and period of prolonged negotiation on many fronts caused by a UK decision to leave would, itself, create significant risks both for environmental standards and for the green investment needed to improve the UK's long-term environmental performance.

In conclusion, it is likely that a UK departure from the EU would leave the British environment in a more vulnerable and uncertain position than if the country were to remain as a member of the EU. A future government could either have to accept decisions others will make for them, with a more limited opportunity to pursue goals or influence legislation in ways that are relevant for the British people; or could be relatively unconstrained in its ability to act independently, including through the option of lowering environmental standards in a race for competitive advantage. While these risks differ in character and scale, they are substantial on all the plausible scenarios considered here. These risks apply to over four decades of legislation with a broadly successful track record in protecting the UK's health and environment.

## 1 Introduction and Context

Following a commitment made by David Cameron in 2013<sup>1</sup>, and repeated in the Conservative Party's 2015 Election Manifesto, the UK Government is to hold a referendum about the UK membership of the European Union. The "In-Out" referendum will be held on June 23<sup>rd</sup> 2016<sup>2</sup>, following the completion of negotiations about a series of UK requests (see Box 1-1) for EU reform in order to seek a "new settlement", resulting in a more "flexible" EU.

### Box 1-1 A new settlement for the United Kingdom in a reformed European Union

On February 18 and 19 2016, the European Council agreed a series of reforms within the EU that will become effective on the date the British Government informs the Council that the UK has decided to remain a member of the EU<sup>3</sup>. The series of agreed changes aims to respond to the concerns raised by David Cameron in a letter sent on November 10 2015 to the European Council President Donald Tusk<sup>4</sup>. These do not refer to environmental policy or the environment at all. The reforms are centred in four main areas (economic governance, competitiveness, sovereignty, and migration). Within this group, those aiming to cut the total burden of EU legislation on business can be identified as the most relevant for environmental policy which includes a significant body of legislation. Mr. Cameron clarified the preferred direction of travel in a recent speech in the House of Commons "[the EU has] *agreed there will now be targets to cut the total burden of EU regulation on business. This builds on the progress we have already made – with the Commission already cutting the number of new initiatives by 80% and it means that the cost of EU red tape will be going down, not up*"<sup>5</sup>.

While the agreed reforms do not include measures with specific references to the environment, the statements on competitiveness reinforce the recently extended European Council and Commission agenda of regulatory simplification, and include a commitment to look at 'feasible burden reduction targets in key sectors'<sup>6</sup>. There does not have to be a conflict between reducing administrative burdens on business and pursuing high environmental standards in an efficient way. However, such initiatives can also open the door to more explicitly deregulatory agendas. Concerns have been expressed that this reduction of burden on business might result in the lowering of EU environmental standards over a period of time<sup>7</sup>. There are many facets to the debate about red tape and better regulation, a topic which arises not infrequently in the history of EU policy within and beyond the environment. How far this current political initiative will impinge on environmental policy in the future is far from clear but to date there has never been a repeal of a substantive EU environmental measure because they have widespread support.

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<sup>1</sup> Cameron, David. *Bloomberg speech as summarised in FAC Report The future of the European Union: UK Government policy*, 21 May 2013

<sup>2</sup> Cameron, David. Statement following Cabinet meeting on EU settlement: 20 February 2016

<sup>3</sup> European Council. Conclusions adopted by the European Council at the EC meeting 18 and 19 February 2016

<sup>4</sup> Cameron, David. Speech at Chatham House The Future of Britain's Relationship with the European Union, 10 November 2015

<sup>5</sup> Cameron, David. Statement in the House of Commons on the UK's new special status in the EU and the in-out referendum on 23 June, 22 February 2016

<sup>6</sup> European Council. Conclusions adopted by the European Council at the EC meeting 18 and 19 February 2016

<sup>7</sup> "EEB Reaction to UK Proposals for EU Reform." EEB. November 10, 2015. Accessed December 9, 2015. <http://www.eeb.org/index.cfm/news-events/news/eeb-reaction-to-uk-proposals-for-eu-reform/>.

This report offers an overview of the EU's record on the environment, particularly in developing and applying policy on a range of environmental themes, including nature conservation, air and water pollution, climate and waste. Two separate areas of EU policy with a significant impact on the environment are addressed as well: agriculture and fisheries. The report considers the potential consequences for the environment of the UK choosing to withdraw from the EU, with reference to different scenarios for the alternatives. Potential influences on the decisions that could be made by UK governments in a future outside the EU are identified, including international agreements and established UK policy positions.



## 2 The EU record: strengths and weaknesses as an environmental actor

### 2.1 Establishing an EU Environmental Policy

Over the last four decades, the EU has developed probably the most complete and influential body of environmental law and policy in the world (IEEP, 2013). Today, the measures together constitute the so-called *environmental acquis*<sup>8</sup>, and apply to all twenty-eight Member States (MS). The acquis is focused on delivering an improved environment for all European citizens. The reach of EU environmental policy goes beyond its own borders. Neighbouring countries within the EEA or EFTA also have to apply or are otherwise influenced by large parts of EU environmental law, and a substantial body of law applies to producers from outside the EU exporting products to the EU (Haigh, 2016).

EU environmental policy initially focused on the most apparent transboundary issues within Europe, mostly addressing specific types of pollution or setting standards for the removal of trade barriers within the common internal market (IEEP, 2013). Many policy measures originated in response to political pressure following serious environmental incidents (eg the Seveso Directive), or the need to implement international agreements (eg the Habitats Directive as a measure to implement the Council of Europe's Bern Convention)<sup>9</sup>, or in response to specific public and political support on individual issues (eg the Birds Directive gained support from northern Member States, particularly the UK) (Haigh, 2016).

This diverse and sometimes reactive pattern evolved during the mid-to-late eighties when the EU began to take a more comprehensive approach to introducing legislation, particularly in response to relatively new and often more global environmental topics (eg the thinning of the ozone layer, acid rain, and climate change) (Haigh, 2016). A series of explicit principles were included in the EU Treaties, such as the Precautionary Principle and the Polluter Pays Principle, progressively strengthening the legal and structural underpinnings of EU environmental policy (EU, 2012).

In contrast to most individual countries, environmental policy has been given a systematic, forward looking framework, in the form of "Environmental Action Programmes", usually updated every seven years. These programmes, adopted following negotiation in Council and Parliament, offer an analysis of the challenges and map a way forward that aims to add coherence and a sense of shared direction to a wide ranging policy domain. The current programme (EC, 2015), which runs to 2020, provides a summary of the environmental challenges lying ahead and indicates that the body of EU environmental law has now reached a stage of maturity with few gaps in coverage. It suggests that the main focus should in the coming period be on some key challenges, notably climate change, and on improving implementation of existing legislation.

Despite its apparent level of maturity, the process of addressing environmental challenges on the European scale is far from complete. Many existing standards are going to need to be

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<sup>8</sup> This is the body of European Union environmental law, legal acts and associated court decisions.

<sup>9</sup> Although since in most cases the EU has been a leading instigator of the international agreement itself, it is perhaps more accurate to see the international agreement as being driven by a desire to legislate internally, rather than vice versa.

tightened over time in light of new evidence (eg air quality, climate change). New environmental issues are going to emerge, some of which are going to require a regulatory response (eg chemicals policy is one of the most recent). Future natural resource scarcities are likely to require international responses in the form of new governance mechanisms (treaties and conventions), for instance in global marine protection or in management of the Arctic. The contribution of the global sustainable development discussion eg SDGs and Agenda 2030 will in due course demand a response from Europe beyond the current status quo.

The EU has a strong record in agreeing a common approach to a wide range of environmental issues. This has raised environmental standards throughout Europe, as explored in subsequent chapters. It has also revealed some of the strengths and weaknesses of adopting a common EU approach. A potential UK departure from the EU would have implications for the future of both the UK and EU environment policy. Consequently, it is important to assess these strengths and weaknesses and to identify the inherent qualities of the EU process in developing environmental policy, focusing on the present and future prospects as much as on the EU's impressive historical record on the environment.

## **2.2 The EU's Strengths as an Environmental Actor**

There are several advantages to addressing a broad range of environmental issues at the European level, which explain why Member States have pooled sovereignty in this policy domain. Some of these advantages, which were summarised in IEEP's 2013 Report on the influence of EU policies on the environment (IEEP, 2013), are:

- The trans-boundary and sometimes global nature of many environmental issues means that a collective approach is either more efficient or is essential to address them effectively. Examples include the protection of migratory birds, and cross-border air pollution. Being part of a strong unified bloc also allows the EU to have an influential voice within international negotiations on global environmental issues.
- Developing policy within the Single Market framework allows and sometimes obliges the EU to set common environmental, technical and financial standards. Negotiating common standards can allow a degree of environmental ambition which often would not be available to individual governments acting alone because of fears about short-term impacts on competitiveness. Common standards also inhibit the possibility of economic advantages accruing to those countries with lower environmental standards on issues like air quality or water pollution from industrial facilities.
- Due in part to the economic importance of the Single Market, the EU can be and has been a highly influential driver for the setting of high environmental health and safety standards around the world. This is particularly true regarding technical, sanitary and phytosanitary standards as any country wanting to export to the EU is required to fulfil the standards of the Single Market.
- By sharing certain resources and costs and some of the benefits of action, the EU Member States have the potential to establish and implement a greater range of

successful initiatives between them. The large scale at which the EU operates also allows faster and lower cost development of technology and its diffusion on a larger scale. The use of economic instruments such as carbon trading can be more comprehensive and more effective.

- The EU has established a long term approach, supported by action programmes, timetabled targets etc. Many environmental objectives can be reached only by sustained action over an extended period, with a clear sense of direction to help guide social, political and economic adjustment and to provide sufficient confidence for investors. The EU has the mechanisms and political culture to pursue this approach. Moreover, the EU provides a sense of direction and momentum, increasing ambition in many Member States in policy areas previously neglected or blocked by special interests, and where action at the national level has therefore been limited. As exemplified by the Water and the Waste Framework Directives, the EU can set long-term targets and frameworks that allow national governments as well as other actors to prioritise and plan systematically for those issues over an extended period knowing others are doing the same.
- The EU relies on a rules-based approach. European environmental legislation mainly consists of obligations imposed on Member States through directives. In order to ensure consistent and demonstrable application of the requirements without excessive staffing at an EU level, EU legislation usually involves greater precision than that adopted by individual governments. This contrasts with those countries (for example the UK) that have a regulatory culture based on approval processes operating through national or local level regulators exercising wide discretion. While this rules-based approach reduces the scope for exercise of judgement on a case-by-case basis, it has the advantage of providing greater clarity to businesses or other interested parties over what is permissible.
- The EU has several institutional advantages that other international fora lack. First, EU institutions make decisions on a democratic basis (through the process of debate and adoption by both the European Parliament and the Council) and have the authority to monitor and enforce binding legislation (ie through the CJEU). This creates accountability for Member States and provides an imperative to act that is absent in most international environmental agreements and sometimes in domestic legislation as well. The Member States, including the UK, are under direct pressure to meet their obligations in a way that does not necessarily apply within the changing political priorities and expenditure plans of national governments. Second, there are provisions to ensure that national interests are taken into account in EU levels processes<sup>10</sup>.
- The EU's policymaking benefits from a wide pool of experience and is the result of extensive negotiating processes. Although some Member States have proposed EU

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<sup>10</sup> The principle of subsidiarity rules out Union intervention when an issue can be dealt with effectively by Member States at central, regional or local level. Source: Article 5(3) of the Treaty on European Union (TEU)

legislation based on their own<sup>11</sup>, once adopted the legislation is rarely, if ever, an exact copy of national legislation. For example, the 'environmental impact assessment (EIA) Directive (85/337) differs not only from the American ideas that inspired it but also from the widely varied planning consent procedures that existed in the Member States. EU legislation also benefits from its originality, an example being the Large Combustion Plants (LCP) Directive (88/609) which, in its original form prior to amendment in 2001, introduced the idea of 'burden sharing' under which different Member States agreed differentiated reductions in sulphur emissions depending on their circumstances. The important 'burden sharing' concept then became a key to EU climate policy and subsequently to the international climate convention.

- Finally, decision-making within the EU is generally deliberative and slow and once legislation is approved it is often difficult to change, not least because there can be a reluctance to imperil a hard won consensus. While this has some disadvantages, which we address below, this stability is often helpful when addressing the sort of long term progress which is often required for to secure environmental protection. In addition, it allows for greater investment certainty and a consistent business environment for private sector actors aiming to respond to or deliver EU policy objectives.

### **2.3 The EU's Weaknesses as an Environmental Actor**

Alongside the potential advantages of countries acting together in the environmental sphere and the structural elements that are in place within the EU to facilitate this, there are also drawbacks to this approach. Pooling sovereignty within the EU involves compromise and trade-offs and transaction costs of various kinds. Some of these processes and elements can result in unsatisfactory debates, negotiations and outcomes when addressing environmental issues. Some of these weaknesses include:

- The increased number of jurisdictions with different national, political and physical realities shaping and being subjected to EU environmental policy has added complexity to the EU's decision-making processes and mechanisms. Although the recent enlargement of the EU has helped to strengthen its economic and political coherence and importance in the world, the priorities of some Member States differ from others and may be in conflict with the preferred approach in the UK and other individual countries. An example of this is the common approach sometimes taken by the Central-Eastern European bloc, led by the Visegrad Group<sup>12</sup>, which has resulted in the granting of concessions and special arrangements in certain areas such as emission reduction targets (Haigh, 2016).

The need to balance the diversity of national interests within EU policy slows down the pace at which agreements are reached and often results in compromises, which are not always expressed with full legal clarity. For example, Member States

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<sup>11</sup> The 'large combustion plants (LCP)' Directive 88/609 initiated by Germany, and the 'integrated pollution prevention and control' (IPPC) Directive 96/61 which was based initially on UK regulatory policy.

<sup>12</sup> The Visegrad Group consists of Poland, Hungary and the Czech and Slovak Republics.

collectively struggled to identify the full extent of certain of their obligations arising from the Nitrates Directive, or from the Habitats Directive, leading to a lengthy process of clarification through CJEU jurisprudence<sup>13</sup>, and consequent delays in implementation (Born et al. 2014).

- The negotiation process between the EU institutions does not always produce clear policy or satisfactorily formulated legislation on the environment. An example of this is the EU definition of ‘waste’ which leaves many questions open, creating both uncertainty and unequal obligations on business in different countries. Moreover, approved EU legislation can be slow to adapt to new circumstances. An example of the latter has been the Emissions Trading System where there has been difficulty in securing support for action to reduce the over-supply of allowances and allow carbon prices to rise to a level where they would be more effective in influencing business decisions, in line with the initial policy objectives.
- Although the EU has had a clear positive impact in most areas of the environment, improvements in some areas have been less obvious. As discussed in greater detail in successive chapters below, while there has been significant progress to address the worst failures of the policy, the process of ‘greening’ the Common Agricultural Policy is still far from complete; and more effective protection and management of the marine environment under the Common Fisheries Policy and the Marine Strategy Framework Directive (MSFD) remains one of the key challenges for the future. There can also be tensions between the pursuit of environmental objectives and the powerful drive within the EU to liberalise markets, as illustrated by the current debate over the Transatlantic Trade and Investment Partnership (TTIP).

## 2.4 Current and future influences on EU policy

In the last decade, and particularly after the expansion of the EU and economic recession of 2008, there has been a change in the overall emphasis of the EU’s environmental policy. Fewer major new proposals have been put forward by the Commission and there is a renewed focus on examining measures already in place. By improving the existing *environmental acquis* and the way it is implemented the EU aims to achieve more robust results. This involves improved implementation of current measures and the filling of gaps (mainly technical) within existing legislation. This policy shift has also been characterised by a retreat from binding legislation in favour of long-term environmental strategies<sup>14</sup>. Several of these are based on more cooperative, self-regulatory approaches, an emphasis on the sharing of information and resources, and the use of non-binding economic instruments (Volkery et al, 2012). In addition there has been a push towards pursuing the ‘green

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<sup>13</sup> See for example the updated booklet produced compiling the most important rulings of the European Court of Justice related to Article 6 of the Habitats Directive. Link: [http://ec.europa.eu/environment/nature/info/pubs/docs/others/ECJ\\_rulings%20Art\\_%206%20-%20Final%20Sept%202014-2.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/others/ECJ_rulings%20Art_%206%20-%20Final%20Sept%202014-2.pdf)

<sup>14</sup> Some examples include: the Roadmap to a low carbon Economy in 2050 [COM(2011)122]; the EU Biodiversity Strategy to 2020 [COM(2011)0244]; the Roadmap to a resource-efficient Europe [COM(2011)0244]; and the Europe 2020 Strategy [COM(2010)2020].



economy' with the support of measures that deploy clean technologies and promote the growth of green jobs (Haigh, 2016).

The new emphasis within EU's environmental policy is visible within the Seventh Environmental Action Plan (EAP) (Decision 1386/2013), the current overarching framework governing the EU's approach to environmental policy from 2013 to 2020 (See Box 2-1).

#### **Box 2-1 The EU's 7<sup>th</sup> Environmental Action Programme Objectives**

The Programme entered into force in January 2014 under the title "Living well, within the limits of the planet" providing a long-term vision of what the EU wants to be by 2050 with the aim of guiding its environmental policy until 2020. The Programme identifies the following key priorities:

- 'to protect, conserve and enhance the Union's **natural capital**;
- to turn the Union into a **resource-efficient**, green, and competitive low-carbon **economy**;
- to **safeguard** the Union's citizens from **environment-related pressures** and risks to health and wellbeing;
- to **make** the Union's **cities more sustainable**; and
- to help the Union **address international environmental and climate challenges more effectively**.' (EC, 2015)

How far this vision is guiding the current Juncker Commission, in office since late 2014, is less clear. The Commission has emphasised its focus on 10 political priorities, which do not refer to wider environmental issues (climate action is emphasised in the context of energy policy) but focus particularly on the creation of jobs, competitiveness and securing economic growth. There is a strong emphasis on the "big things" than can be achieved within the EU and avoiding administrative burden. This was exemplified with the launch of the 'Better Regulation' package (COM(2014)368); a set of proposals focusing on the aim that all EU policies and laws (including the environmental acquis) are fit for purpose. This has given added impetus to the review of existing policy under the 'Fitness Checks' process currently being applied to the nature directives as well as several other EU measures.

It is too early to assess the potential impact of the new approach being taken by the Commission. Undoubtedly, there is a change in both political focus and in tone and a pronounced disinclination to advance new regulatory measures for the environment and most other policy domains. This reflects a new climate for policy making, including concern about regulatory burdens and a stronger instinct for liberalisation, which originates in part from the UK.

At the same time there is little likelihood of a reversal in the substance of EU environmental policy, or a removal of the requirements on Member States to comply. Few EU environment ministers have argued for the removal of any existing legislation. Long term targets once put in place are not lightly removed, even if there is some elasticity in the real timetable for compliance. The Commission is committed to moving forward a package of measures on the Circular Economy in the coming years and will introduce a major package of legislation on climate and energy policy in 2016. The impetus within the system is more muted but certainly still present.

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### 3 Brexit and its consequences

In principle there are several options or variations on different alternative scenarios that could arise following a UK departure, from the EU<sup>1</sup>. All of these are subject to the caveat that they involve negotiation with 27 other Member States and a range of other parties. . As the UK Government pointed out in a response to the House of Commons Foreign Affairs Committee: 'In Europe's current institutional architecture, any decision as to whether the UK should remain in the EU would to a significant extent be a decision about whether the UK should remain in the Single Market' (House of Commons, 2013a). Therefore, and to simplify a rather complex position with various possible permutations of different trading relationships, we focus here on the two primary options that appear open to the UK. These revolve from whether the UK retains access to the EU's internal market or not. We then use them to identify the consequences for the environment.

Since the Prime Minister has made a point that in his view the single market is the most important characteristic of the EU from the UK perspective, it is useful to consider the implications for environment policy of a potential exit scenario where the UK remains within a European grouping and retains access to the internal market. This scenario will be referred to as the '*inside the EEA Option*', as it represents the departure arrangement whereby the UK retains access to the internal market through membership of the European Economic Area (Scenario 1). This is the position of Norway.

As an alternative, we also consider a scenario where the UK positions itself outside both the EU and the other principal European Agreements (ie the EEA and EFTA). This scenario will be referred to as the '*entirely outside Option*' and includes the alternatives where the UK has no preferential access to the internal market and no representation within the EU decision-making process (Scenario 2).

This chapter will first introduce the potential consequences of the UK choosing to withdraw from the EU and then continue examining the two alternatives to EU membership.

#### 3.1 The departure of the UK would have effects at several levels:

##### **Impacts on the UK (and its constituent parts):**

If the British people choose to leave the EU in the referendum, the UK would embark on a series of multilevel negotiations that will be lengthy and will unavoidably create a high degree of uncertainty. First, the UK would have to agree with the EU-27 Member States on both the conditions for departure and on future relations with the EU, with both issues running in parallel. Unanimity is required amongst the remaining 27 Member States so this would not be a simple negotiation and enthusiasm for accommodating UK preferences cannot be assured (Open Europe, 2015). A formal departure would have to be negotiated, almost certainly using Article 50 of the Treaty on European Union (TEU) (House of Commons, 2013a). At the same time, the UK would have to initiate negotiations with third countries to establish a maximum of continuity for present and future relations. These

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<sup>1</sup> Some of the most mentioned potential scenarios include: European Economic Area membership, Swiss-style trade and bilateral agreements, Turkish-style customs union; FTA-based approach, MFN-based approach, or WTO going all alone. Source: Global Counsel, 2015

include negotiations with countries with which the UK trades (eg U.S., China, etc) as well as international organisations, membership of which the UK might want to pursue (eg EFTA, EEA, etc.).

If a decision to leave the EU is made, then the policymaking, tactical and strategic demands on Whitehall Departments, and on policymakers in the devolved administrations potentially gaining new flexibility over areas such as agriculture, fisheries and environment policy, will be unprecedented. This will be happening at a time when administrations are coping with significant reductions in manpower and a loss of expertise in key areas; and, initially, while the UK prepares for and then takes on the Presidency of the EU in the second half of 2017. If the UK positions itself outside both the EU and the other principal European Agreements, it would also require a significantly higher level of policymaking attention to bilateral negotiations on trade, including aspects of trade relevant to the environment, requiring the civil service to develop and broaden trade policy skills and expertise rather rapidly. While the risks associated with these challenges extend beyond environment policy, they are unlikely to be very conducive to carefully-considered policymaking on key areas of environmental protection.

Due to the high degree of integration that now exists between legislation in the UK and the EU, and regardless of the legal and political route to EU withdrawal, there would be significant implications for a variety of policy areas, including environmental protection and other policies of particular relevance to the environment such as agriculture, trade and fisheries. The Government would need to reach transitional arrangements for dealing with rights and obligations acquired under the Treaty before withdrawal (eg rights acquired under the CAP, CFP and other EU funding schemes) (House of Commons, 2013a). The repeal and amendment of current laws and Acts, as well as the enactment of new laws and Acts, are bound to be the centre of rather intense and time consuming political negotiations and associated legal work (Open Europe, 2015). Finally, in the event of withdrawal, the UK would lose access to the main EU institutions. Access to some EU agencies relevant to the environment would only be guaranteed if the UK remained in the EEA (eg the European Chemicals Agency).

Since the distribution of competences between the UK and the devolved administrations in Scotland, Wales and Northern Ireland is governed by a UK statutory framework, a potential UK departure would not, in principle, imply the need for any decisions on which level of Government has responsibility for which policy area (House of Commons, 2013a). However, withdrawal would have some implications for relations between the UK and the devolved administrations. The removal of the overall framework of EU law would allow the devolved administrations to implement their own policies in areas now dominated by EU legislation, creating the scope for greater fragmentation of sectoral policies within the UK such as agriculture, animal health and welfare, food standards, and the environment. This fragmentation could potentially lead to the elimination of common EU standards that have been implemented in order to safeguard rights and freedoms of trade and movement. Although the Westminster Parliament could, theoretically, pull back powers from the devolved nations (House of Commons, 2013a), this would be politically highly controversial, and would increase the political tensions that some of the devolved administrations have

already raised regarding the referendum<sup>2</sup>. In any event, the pattern of environmental regulation and levels of investment in restoring ecosystems and wildlife populations can be expected to vary with the political mood of each country.

Regional policy also would be affected. Although the UK as a whole is a net contributor to the EU Budget, a departure would have effects on those nations within the UK which are significant beneficiaries from the EU budget (particularly Northern Ireland and Wales)<sup>3</sup>, or where EU receipts are an important political issue (Scotland). The Government could either allocate national funds in place of those received from the EU or reduce the level of such regional spending, perhaps buffered by transitional arrangements.

In economic terms, a potential UK departure creates a level of uncertainty regarding forward planning and investment because of the scale of change. If there is a decision to leave, the degree of impact would be highly dependent on many factors including the trading arrangements negotiated between the UK, the rest of the EU and other countries. However, the outcome of those negotiations will itself be uncertain and difficult to know in advance. Investors may delay their investment decisions due to the uncertainties that will arise prior to the referendum and, in the event of a “Leave” vote, up to the end of the EU-UK negotiations, and potentially beyond, especially if the implications of the outcome are considered hard to predict. For example, some businesses are sensitive to the extent to which the UK would choose to roll back established EU rules or standards in different policy areas and there are controversies about the impact on the financial services industry in the UK which contribute more than 3 per cent of GDP ( S and P 2015).

While these broader financial and economic impacts are outside the scope of this report, they do have implications for the environment. Both the level of public and private funds available for green investment and the delivery of environmental objectives (for example, through agri-environment schemes) and the level of political focus on environmental issues, would be influenced significantly by the extent of economic disruption that many believe could follow a “Leave” vote<sup>4</sup>.

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<sup>2</sup> Some voices in the SNP have already indicated that a Brexit would probably lead to a second vote on independence from the rest of the UK and, given the expected support in Scotland for remaining in the EU, there is a chance that there would be a vote to leave the UK and Scotland would subsequently apply to join the EU in its own right. Source: BBC (2016): Sturgeon: EU exit could trigger demand for Scottish independence referendum. Access here: <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-35625067>

<sup>3</sup> Although the UK is a net contributor to the EU Budget (£48 per capita, 2008/2009) these contributions vary when disaggregated by UK constituent nations between net contributors, England (£72 per capita) and Scotland (£2 per capita), and net recipients, Wales (-£74 per capita) and Northern Ireland (-£106 per capita). Source: See : House of Commons, 2013a.

<sup>4</sup> In the Financial Times’ annual poll of more than 100 leading thinkers, all of them thought a vote for Brexit would damage UK growth in 2016, and almost three-quarters thought leaving the EU would damage the country’s medium-term outlook. Source: <http://www.ft.com/cms/s/0/1a86ab36-afbe-11e5-b955-1a1d298b6250.html#axzz3zZqbl5qL>



## **Wider impacts on the EU**

Looking beyond the domestic ramifications of a UK departure, it seems reasonable to assume that existing EU policy and law would remain in place. However, Brexit would change the internal political, economic and environmental balance of the EU as a whole and affect its stance on certain issues. For example, some have said it would represent a significant change in the balance of power between EU's more "Protectionist" and more "Free Trade" leaning blocs (Open Europe, 2015). In environmental terms there could be a range of impacts on EU positions and decisions. For example, in the EU without the UK there could be reduced environmental ambition in relation to setting certain standards, particularly climate targets, and reforming the CAP; but more willingness to accept regulatory solutions, for example in promoting a more circular economy (Oberthür, 2015).

An EU without the UK would lose some weight within the global community and there would be consequences of various kinds in different spheres, such as international trade, climate negotiations, and multilateral environmental agreements. These could be significant but are difficult to forecast. The EU would have to make expenditure adjustments in order to adapt to the loss of the UK's net contribution to the EU budget but it would also be able to remove the complex burden of the UK's rebate arrangements. At a broader level, some analysts have argued that the EU might choose to move faster towards greater political integration and perhaps more coherent external representation without the UK (CER, 2014) as a member. While this report is concerned only with the impacts on the environment in the UK and areas that it is responsible for, it is important to acknowledge that there would also be wider ramifications of significance for the environment as a whole, both in Europe and globally. This is a topic that requires further investigation.

### **3.2 Examining some alternatives to EU membership**

There is no clear and undisputed alternative to membership of the EU and considerable scope for negotiation in a number of areas. Nonetheless, for the purposes of this report there are two broad scenarios that facilitate an analysis of the environmental consequences. These are described below.

#### **3.2.1 *Scenario 1 – Retaining access to the internal market through membership of the EEA ('the inside the EEA Option')***

If the UK wanted to retain in existing access to the internal market outside the EU, first it would have to apply to re-join the European Free Trade Association (EFTA). The EFTA Convention (see

Box 3-1) does not grant direct access to the EU internal market but is the necessary step in order then to be able to join the European Economic Area (EEA)<sup>5</sup>, which does permit access.

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<sup>5</sup> Article 128 EEA Agreement: Any European State becoming a member of the Community shall, and the Swiss Confederation or any European State becoming a member of EFTA may, apply to become a party to this Agreement.

### Box 3-1 The European Free Trade Association (EFTA)

The EFTA is an intergovernmental organisation set up in 1960 to promote free trade and closer economic cooperation among its members, of which there are currently four. These are Norway, Iceland, Lichtenstein and Switzerland. The EFTA seeks to promote free trade between its members; with the EU (through the EEA agreement and bilateral agreements between EU and Switzerland); and with third countries (ie Mexico, Canada, Singapore, Chile and the Republic of Korea).

The EFTA Convention governs the trade relations between its members, covering aspects relating to trade in goods and services, investment and the movement of people. It refers to the need for mutually supportive trade and environmental policies in order to achieve the objective of sustainable development and allows for prohibitions or restrictions on trade between the Member States for the protection of, inter alia, the health of the environment. However, this should not constitute a means of arbitrary discrimination or a disguised restriction.

The Convention does not grant direct access to the internal market for its signatories. Current EFTA countries have gained access to the internal market through becoming members of the European Economic Area (Norway, Iceland, and Lichtenstein) or signing a series of bilateral trade agreements with the EU (Switzerland). Under these two routes there are different provisions governing the various requirements that products need to meet on safety, consumer protection, health and environmental grounds

Sources: EFTA, 2010; IEEP, 2013.

The EEA comprises two “pillars”: the EU pillar (28 EU Member States) and the EFTA<sup>6</sup> pillar (Norway, Iceland and Lichtenstein). It was established in 1994 and allows EFTA countries to participate in the EU’s single market, known as the ‘internal market’. The Agreement on the EEA (OJ No L 1, 3.1.1994) aims to facilitate trade and economic cooperation, covering EU legislation relating to the four freedoms - the free movement of goods, services, capital and people. It also allows for cooperation on certain ‘flanking and horizontal’ policies which are relevant to the four freedoms, including research and development, social policy, consumer protection and the environment.

The Agreement does not cover some EU policies, including the Common Agriculture and Fisheries Policies, the Customs Union, Common Trade Policy, Common Foreign and Security Policy, Justice and Home Affairs, and the Monetary Union (EFTA, 2013a). Although the CAP and CFP are not part of the EEA Agreement, it includes provisions for certain aspects of trade in agricultural and fisheries products (see Chapter 7).

EFTA EEA countries are expected to adopt the full body of EU law (the *acquis communautaire*) relating to the internal market in their national law (European Council, 2008). The objectives relating to the environment in the EEA Agreement (Article 73) mirror those set out in the Treaty<sup>7</sup> (with the exception of objectives relating to measures at the international level which are included in Article 191 of the EU Treaty (TFEU)). Specific measures relating to the environment are set out in Annex XX of the EEA Agreement (EFTA, 2016) and include cross-

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<sup>6</sup> Switzerland is a member of the EFTA but not a signatory of the EEA Agreement. See

Box 3-1

<sup>7</sup> Action by the Contracting Parties relating to the environment shall have the following objectives: (a) to preserve, protect and improve the quality of the environment; (b) to contribute towards protecting human health; (c) to ensure a prudent and rational utilization of natural resources. Source: EEA Agreement Article 73.

cutting EU legislation. However, a smaller number of extremely important EU environmental measures are not incorporated in the EEA Agreement, eg the Birds, Habitats, and Bathing Water Directives (see Box 3-2).

**Box 3-2 Selection of EU environmental legislation included in the EEA agreement**

Future status of important environmental legislation if the UK left the EU and stayed in the EEA	
Would continue to apply	Would no longer apply
Urban Waste Water Directive Treatment Directive Nitrates Directive Groundwater Directive Priority Substances Directive Air Framework Directive (and daughters) Industrial Emissions Directive Emissions Trading Directive Directive on Carbon Capture and Storage Seveso Directive Directives on contained use and deliberate release of GMOs Waste Framework Directive Sewage Sludge Directive Waste Shipment Regulation Landfill Directive End of Life Vehicles Directive WEEE Directive Mining Waste Directive REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Ambient Noise Directive Water Framework Directive <sup>8</sup>	Birds Directive Habitats Directive Bathing Water Directive

When new EU legislation classified as “EEA relevant” has been formally adopted, the EEA Joint Commission starts the process of incorporation into the EEA Agreement "with a view to permitting a simultaneous application" of legislation in the two pillars (EFTA, 2016).

**Governance issues**

EEA membership does grant participation in the EU internal market, and so is the closest relationship to the EU in most respects. However, one of its biggest disadvantages is that EFTA EEA countries have no representation or voting power in EU institutions such as the European Commission, the Parliament or the Council. They have no judges or other representation at the European Court of Justice, and have limited opportunities to influence the EU decision-making process (Open Europe, 2015), particularly the process of negotiation in Council and Parliament on new, co-decided, Directives and Regulations. However, they are not completely excluded, as the EEA agreement includes provisions for the input of experts from non-EU EEA countries in the preparation of relevant EU delegated legislation. This can take the form of participation by representatives in expert groups and committee

<sup>8</sup> Three community acts are not incorporated into the EEA Agreement: 1) Council Directive 79/923/EEC on the quality required of shellfish waters; 2) Council Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life; and 3) Council Decision 77/795/EEC establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community. Source: EEA, 2007

meetings in specific areas (EFTA, 2007), the submission of comments on proposals, and the adoption of resolutions in response to Commission initiatives.

Although EFTA EEA countries are consulted during the preparation process for delegated legislation, they are excluded from the final decisions, which are taken only by EU members, usually in the form of national government experts who receive direct instructions from their capitals. Therefore, EFTA EEA members participate in the 'decision-shaping' rather than decision-making processes of EU legislation (see Box 3-3).

### **Box 3-3 National room for manoeuvre within the EEA**

During the process of incorporation of EU legislation into the EEA Agreement, EFTA EEA states can use three mechanisms in order to contest its incorporation. First, non-EU members can suggest amendments to the new legislation, which the European Commission can then accept or reject. Second, EFTA EEA states can contest whether the new legislation is 'EEA relevant' and therefore should be part of the EEA Agreement. Finally, EFTA EEA states have the right to veto the integration of new EU legislation into the EEA Agreement. If, despite attempts to find a negotiated solution, a state finds it necessary to exercise its right of veto, the affected part of the annex to the EEA Agreement to which the new legislation in question belongs is regarded as provisionally suspended between the EFTA pillar affecting all EFTA countries and the EU, with the negative consequences for trade for all EFTA countries that this might entail. The right to veto has not been yet exercised by any EFTA EEA state. Therefore, even though EFTA EEA states have recourse to these control mechanisms, the overall power to influence EU legislation is minimal and has decreased since they entered the EEA.

Finally, in the last two decades the decision-making process within the EU has changed. The European Council has begun to play a more active role in broader areas of EU cooperation, implementing an increasing number of measures that lie outside the scope of the EEA Agreement but which have implications for the internal market. Since EFTA EEA states' power to influence EU legislation is limited to that considered as EEA relevant, its ability to have a say about these broader, cross-sectoral initiatives that impact the internal market is clearly constrained

Sources: EFTA, 2007; Norway, 2016; IEEP, 2013.

Compliance with EU derived legislation within the EEA is monitored by the EFTA Surveillance Authority (ESA) and handled by the EFTA Court. These authorities act as the equivalent to the European Commission and the European Court of Justice, respectively (EEA EFTA, 2015).

### **Budget Contributions**

EEA members provide financial contributions to the EU Budget in two respects. One is a payment in return for their participation in EU programmes, actions, services and agencies such as the Horizon 2020 Framework Programme for Research and Innovation (EFTA, 2013). This contribution to the EU Programme budget covers both operational and administrative costs and is negotiated individually on an annual basis. It is provided both financially and in kind (EFTA, 2013b).

Secondly, in addition to the contributions to EU programmes, EEA EFTA states also make financial contributions towards EU regional policy goals such as economic and social cohesion in the Union.

The potential UK contribution to the EU budget in the event of becoming an EFTA EEA country would be a matter for serious negotiations but can be assessed to some degree by considering Norway's current contributions. In 2011 Norway provided £524m (or £106 per capita) to the EU budget, compared to the UK's net budget contribution of £8.1bn, or £128 per capita (House of Commons, 2013b). According to recent publications, if the UK joins the EEA its net overall contribution to the EU budget (ie comparing its future contribution with the current net contribution after application of the UK's rebate) would fall only by between 9-17% (Global Counsel, 2015).

However, it is important to note that there would be a significant redistribution in who pays and who benefits within the UK. The new contribution would be a simple transfer from the Treasury to the EU; while the current net contribution represents a much larger Treasury payment, followed by a significant inflow to the UK of receipts in the form of CAP payments to individuals and individual farm businesses, structural funds expenditure in the regions, and other receipts, including to universities and others from the EU research budget. There would thus be scope for the UK Government to maximise the net benefit to the UK's public finances by significantly reducing payments in the form of CAP subsidies including agri-environment schemes, and in the form of regional spending (House of Commons, 2016).

*An alternative option: Bilateral agreement ('the Swiss option')*

If the UK does not want to pursue the EEA option, one alternative is to try to follow Switzerland's path to access the internal market. This is a looser and less predictable arrangement than the relatively established EEA model.

The basis of Switzerland's economic and trade relations with the EU are governed by a free trade agreement signed in 1972, supplemented by additional Bilateral agreements<sup>9</sup> signed following the rejection of Swiss membership of the EEA in a referendum in 1992 (see Box 3-4).

**Box 3-4 Switzerland's access to the internal market through Bilateral Agreements**

Switzerland's access to the internal market is based either on the principle of mutual recognition of the equivalence of legislation (eg agreements on technical barriers to public procurement markets) or, in some cases, on the adoption in Switzerland of the EU *acquis communautaire* (eg in the case of the Civil Aviation Agreement and, vary significantly, the Schengen Agreement). Switzerland has adopted a policy of 'voluntary adaptation' whereby Swiss law is aligned with the EU's *acquis communautaire* in order to make its economy more compatible with that of its main trading partner. The numerous Bilateral Agreements, together with this policy of voluntary adaptation, 'have led to Switzerland being much more deeply integrated with the EU than suggested by its formal status as a non-member. Indeed, in certain respects such integration is deeper than that of EU members such as the UK, as the case of Schengen shows' (House of Commons, 2013a).

Bilateral Agreements are less predictable than the more systematic and legally secure EEA model. Compliance and enforcement of legislation within the bilateral agreements is left to courts and authorities of the EU and Switzerland. As noted within a recent report by Policy Network 'as there are no joint legal institutions (but only political ones), there is no certainty that they will enforce them in the same way, which reduces the extent to which there is a reliable single market between

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<sup>9</sup> Over the years this bilateral relationship has developed into a complex and cumbersome affair with around 100 bilateral agreements currently in place between Switzerland and the EU (DG Trade, 2013).



the EU and Switzerland' (Policy Network, 2015).

Switzerland is also entitled to provide financial contributions to the EU budget in a similar way to the EFTA/EEA countries. Switzerland's overall annual contribution to the EU budget in recent years was around £420m (or £53 per capita) (House of Commons, 2013b). Therefore, if the UK were to enjoy similar conditions, its contribution to the EU budget would fall by 55-60% (Global Counsel, 2015). However, budget contributions help cover the costs associated with the development and compliance of the freedoms in the Treaty, 'as well as flanking measures such as the Common Foreign and Security Policy' (Policy Network, 2015). As stated in a recent policy report, 'neutral Switzerland has much more limited ambition as regards security measures than the UK, and has no bilateral agreement with the EU on services and capital – all key issues from a UK perspective' (Policy Network, 2015).

While the EU traditionally has been relatively accommodating in its approach to relations with Switzerland, in 2010 the European Council concluded that the system has reached its limits and should be changed (IEEP, 2013). The Council considers it necessary to establish a suitable framework for all existing and future agreements with Switzerland to provide a legally binding mechanism for the adaptation of agreements to the evolving EU *acquis*, as well as mechanisms for surveillance and judicial control (European Council, 2012). According to a recent assessment made by Open Europe, 'if the proposals discussed become reality, Switzerland would find itself in an increasingly identical institutional position to that of the EEA states' (Open Europe, 2015).

In short although some proponents of a "Leave" vote consider that the 'Swiss alternative' provides a model for the UK under a potential Brexit scenario, Switzerland's access to the internal market is more limited (CER, 2014) and the mechanism to resolve disputes is less flexible (Open Europe, 2015). The EU has publicly expressed its dissatisfaction with this kind of arrangement and is aiming to reform it so that it replicates the institutional position to that of the EEA states. This is one of the reasons why certain recent policy reports argue that 'the current Swiss model is broken' and it is highly unlikely to be accepted again by the EU (CER, 2016). This is particularly the case given that the Commission and key Member States will be concerned about creating precedents for similarly complex and *à la carte* arrangements in the event of other Member States choosing to leave the EU in future. Any revamped version that the EU and Switzerland may one day agree upon is unlikely to be an appealing model to the sovereignty-conscious UK (CER, 2016). Therefore, and for the purpose of this analysis, the scenario adopted to represent the Brexit option while retaining access to the EU's internal market will be one where the focus is on gaining membership of the EEA – not the Swiss model.

### **3.2.2 Scenario 2: No access to the internal market ('the entirely outside Option')**

Amongst those advocating a UK departure from the EU, there are also supporters of the UK positioning itself outside both the EU and its internal market. This would avoid the strong influence exerted by the EU in the EEA and EFTA countries and represent a much more decisive step away from the obligations set out in EU legislation. Supporters of this option believe that none of the alternatives to EU membership which involve staying within the internal market would address the reasons for the UK wanting to leave the EU, particularly since the UK would still have to adopt a significant part of the *acquis communautaire* while losing the power to influence it as a member (Global Counsel, 2015).

There are several options within this scenario (eg sign a Free Trade Agreement with the EU, perhaps on the Canadian model, or trade simply under the widely applicable rules of the World Trade Organisation, or declare a unilateral free trade regime, or promote further development of the Anglosphere<sup>10</sup>). All would involve extensive negotiation with a rather unpredictable outcome. It is only to be expected that the EU would be wary of conceding advantageous trade arrangements with the UK if the expectation was that the Government planned a deregulatory pathway, which could mean applying lower standards within the EU. For the purpose of this analysis we will define this scenario as the one where the UK has no preferential access to the internal market and no representation within the EU decision-making process. As a result, EU regulations and standards would no longer apply to the UK as a matter of course, although some would need to be taken into account in practice or even adopted formally if UK exports were to gain access to EU markets, given that nearly all EU product standards apply equally to domestic and imported products. In this scenario the UK would be completely detached from common EU policies and political structures although negotiations on some issues would need to take place (Open Europe, 2015).

### Governance Issues

The implications for the UK environment under this scenario would be complex and difficult to assess. Since the UK would no longer have to adopt the full body of the *acquis communautaire* (EU legislation) relating to the internal market in national law, new UK legislation will be required once EU Regulations cease to apply at the moment of withdrawal. Obligations in EU Directives that have already been embodied in domestic implementing legislation (ie the Birds Directive, Air Quality Framework Directive) would continue to apply until they are repealed or amended by the government. The direction that new legislation might take is hard to predict and would depend on whether a future government is willing to continue applying a similar approach to the way it legislates on environmental issues or decides to take on a new pathway.

In the event of withdrawal, the UK would lose access to EU institutions and funding for research programmes. Access to some EU agencies such as the European Environmental Agency would still be an option as it occurs with other countries positioned outside the internal market<sup>11</sup>. Moreover, and although the UK will not be required to make any contribution to the EU budget, the full costs of this would not be saved by the Government. For areas like agriculture, regional policy, and research, a future UK Government would need to allocate national funds in place of those received from the EU or reduce the level of such spending.

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<sup>10</sup> Some who advocate UK withdrawal envisage the potential further development of the so-called Anglosphere, meaning closer relations with other English-speaking countries, such as the US, Canada, Australia and New Zealand. Others propose a much larger grouping to include India, Ireland, the Caribbean and the Pacific islands Source: House of Commons, 2013.

<sup>11</sup> The European Environmental Agency has 33 member countries, including the 28 European Union Member States together with Iceland, Liechtenstein, Norway, Switzerland and Turkey. The six West Balkan countries are cooperating countries. The EEA also engages in extensive international cooperation beyond its own member countries. Source: EEA, 2015

The EU record to date on environmental issues and consequences of Brexit are explored below in a sequence of “stand alone Chapters” covering the main themes. In each case we consider what the consequences of Brexit might be under the two different scenarios outlines here.

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## **4 Environmental quality: pollution control, wastes and chemicals**

### **4.1 Introduction**

The early objective of EU environmental law was to deliver an improved environment for Europe's citizens and this has remained its focus, extending over time to cover many different aspects of the protection of air and water quality, waste management, and control of chemicals. These different areas of law interact, both in relation to the environmental media being protected and in the activities they regulate.

Many of these issues have a transboundary dimension which has been an important influence on the rationale and design of the legislation that has been put in place. In legal terms the great majority of the measures are in the form of directives which need to be transposed into national legislation, allowing some flexibility in the approach to fit national conditions and preferences. This creates an interplay between EU standards and national implementation within which there is considerable scope for national parliaments, administrations, NGOs and industry stakeholders to play an important role. UK stakeholders are amongst the most active and influential in Europe.

Much of EU environmental law covering these issues is adopted under the Environment Article of the Treaty, but there are several important areas where measures are adopted under the internal market provisions of the Treaty<sup>1</sup>. The economic logic of establishing a relatively consistent framework of environmental standards within the single market has been a significant driver of policy alongside the more fundamental pursuit of a better environment. This is an important principle for governments.

Whilst this might have resulted in standards being driven down to a lowest common denominator in Europe, in practice this has occurred rarely and the dynamic has been to push standards up to a relatively high level. This has created considerable pressure on certain industries to invest in new plant and processes and cut pollution; at the same time it has provided a predictable and relatively level playing field in which investment takes place. This is why many industrial stakeholders support EU legislation and common standards even if it is relatively demanding for them.

### **4.2 Air quality**

EU air quality legislation establishes strong protection objectives for human health. Since the 1970s, it has set binding air quality objectives and progressively these have been modernised and consolidated. Today, the Ambient Air Quality Directive 2008/50/EC brings together binding limit values with requirements to monitor air quality. This places obligations on governments to develop management plans with measures to tackle air quality problems where these occur, as well as requirements to keep the public informed. This has led, across the EU, to reductions in some pollutants (such as SO<sub>2</sub> and some NO<sub>x</sub> and

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<sup>1</sup> Under the Treaty on the Functioning of the European Union, Article 114 allows for adoption of measures for the approximation of laws in Member States which have as their object the establishment and functioning of the internal market. For measures relating to meeting the environmental objectives of the Treaty, legislation is adopted under Article 192.



particulate sources), as well as better understanding of the problem by governments and citizens alike.

There is no question that EU air protection legislation has over many years, and still very much continues to, affect measures taken in the UK, leading to air quality improvements. Initial measures for the protection of the air in Britain were adopted primarily in response to severe smog events that caused a significant increase in deaths (POST, 2002). Major pollutants such as black smoke (particulates) and SO<sub>2</sub> were already being reduced by domestic action before the UK joined the EU, but further action was driven by EU membership. Although addressing serious health concerns was already one of the objectives for early actions in the UK, these actions were not on a sufficient scale to address them satisfactorily.

The setting of a limited number of air quality standards in the UK in the decade up to the mid-1990s was entirely the result of action at EC level. Until the passage of the Environmental Protection Act 1990, no specific powers existed for the fixing of statutory air quality standards. Those relating to smoke and sulphur dioxide, lead and nitrogen dioxide (in Directives 80/779, 82/884 and 85/203) were eventually given statutory force through regulations made under the general provisions of the European Communities Act 1972.

Proposals for a comprehensive new framework for improving air quality in the UK were outlined in a discussion paper, *Improving Air Quality*, issued by the Department of the Environment in March 1994 (Defra, 1994), with several subsequent revisions. Then a significant step towards realisation of a more detailed air quality strategy was achieved through the provisions of the Environment Act 1995, which required the Secretary of State to prepare a National Air Quality Strategy, including standards and objectives for air quality, and measures to be taken by local authorities. This mirrored developments with the first EU Air Quality Framework Directive adopted in 1996.

The major difference between domestic legislation in this area and that which has been underpinned by EU law, is that UK air quality standards were not binding, but could help guide regulatory decision making. As a result, the pressure to address major problems, such as road transport pollution was relatively limited within the UK policy framework, and standards rose faster once EU legislation came to apply, with real benefits in terms of reduced emissions.

Despite significant improvements in this area, certain contemporary EU air quality standards are proving difficult to meet in several parts of the UK, particularly for two pollutants - PM10 and nitrogen dioxide. Although Member States may seek derogations from the Commission (ie exemptions from meeting particular objectives in the law or agreed delays to meeting objectives), some requests for these from the UK have not been successful (see European Commission, undated), with London's persistent air quality problems as a good example of these challenges. Although pressure to meet EU legal obligations has been a key reason why London authorities have adopted several measures (congestion charging, low emission zone for HGVs, replacement strategies for the bus fleet, cycle hire, etc.), there are still many areas within the city where standards are not met. It seems unlikely that many (or even all) of

these initiatives would have taken place without this legal pressure and such legal pressure would not have been exerted by UK standards purely on their own.

#### **4.2.1 Air Quality following a UK departure**

Under Brexit Scenario 1 (UK becoming a member of the EEA), air quality legislation would continue to apply, but the UK would not have a vote in the processes for altering or augmenting the legislation (see section 3.2.1 for more explanation of EFTA EEA states' governance issues).

Alternatively, if the UK were to be outside the EEA (Scenario 2), the legislation would no longer apply, creating as a result a scenario with real and uncertain environmental and health risks. In recent decades, the UK has tended to be more cautious than many Member States about tightening air quality standards. Outside of the EU and EEA, the UK might well be inclined either to relax them or fail to improve them if the Government was free to do so, representing therefore a significant risk to the health of UK citizens in major urban areas where meeting EU standards is currently a problem. Even though the economic benefits of the health improvements are considered in many studies to outweigh the cost of measures<sup>2</sup>, the pressure to avoid specific measures on grounds of costs which has been evident in recent years would, at the very least, risk delaying their introduction and problematic hot spots may remain unaddressed.

As EU law has impacts on possible new developments in the country which might affect air quality, a potential UK departure could influence the approval of controversial future developments in the UK. An example of this is the debate over Heathrow<sup>3</sup>, where a proposed expansion presents a risk to air quality in west London. Under Scenario 2, with no requirement to implement EU law, the approval of these kinds of developments could leave populations at risk of increased exposure in the future.

There is ongoing debate concerning the future revision of EU standards and whether it is necessary. This is due, in part, to the fact that the standards are not thresholds for health impacts and that, although further reductions in exposure do deliver health benefits, meeting tighter standards involves incurring sometimes significant cost. Further, the WHO continues to expand its research on the issue and its advice is now in advance of the older EU law. Either by being outside the decision-making table (EEA) or by being completely out of any European membership group, the two Brexit scenarios would mean that the considerable UK experience on this issue would not be taken into account in any revision or development of EU law as it is now. One consequence would be that any specific circumstances for London or other problematic areas would be less likely to be addressed in the design of revised provisions.

In conclusion, the UK has had a strong track record of providing scientific and policy advice (as well as opinion) to the development of EU air quality law, and that law has delivered improvements in the UK environment with resulting health benefits that almost certainly

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<sup>2</sup> See 2005 European Commission Impact Assessment of The Communication on Thematic Strategy on Air Pollution and the Directive on "Ambient Air Quality and Cleaner Air for Europe". SEC (2005) 1133, 21.9.2005.

<sup>3</sup> For the latest information about Heathrow air quality data and its comparison with EU air limit values see: <http://www.heathrowairwatch.org.uk/>

would not have occurred within a UK system on its own. UK membership of the EU has, therefore, delivered benefits to both parties. Certain important air quality objectives still remain to be met, both in the UK and in other Member States, and there is a clear reluctance to meet the expenditure involved. However, the evidence on the health consequences of continuing high levels of pollution is very strong so any reduction in willingness to act following a departure from the EU would be significant in environmental terms.

### **4.3 Water quality and management**

The approach to water management in the EU is centred on the Water Framework Directive 2000/60. This legislation requires an integrated approach to river basin management and covers lakes, rivers, estuaries, coastal waters and ground waters. It sets objectives based on ecology, water quality and water quantity for all water bodies. Member States have to produce management plans for each river basin, setting out objectives, identifying problems preventing the achievement of those objectives and measures to tackle those problems. The plans have to be reviewed and updated every six years. This comprehensive legal framework is supplemented by additional legislation setting quality objectives for specific substances. There are also additional directives to control discharges, such as those from waste water plants and for specific standards such as for bathing water. Across the Europe, EU water law has had dramatic impacts in controlling dangerous pollutants, improving waste water treatment and providing a major integration of ecological thinking into practical water management. However, significant challenges remain, such as controlling over-abstraction and tackling agricultural pollution.

The impact of EU water legislation on the UK has been highly significant. The most dramatic change over recent decades has been on waste water treatment. The UK was slow to implement EU law, but has gradually done so, resulting in a much higher quality of bathing waters and rivers and coasts with far lower pollution levels than before. For example, the effect on bathing waters has been dramatic, changing from less than half of waters being compliant with EU law in 1994, to around 80 per cent today (see figure below).

The Water Framework Directive continues to drive improvements. The new super sewer in London is an example of this – the now much cleaner River Thames being an exemplar of the benefits of pollution control measures under older EU law and further improvements are to be expected. This Directive has also influenced the UK Government in investing state funds in catchment management initiatives involving more sensitive farming to reduce diffuse pollution.

**Figure 4-1 Compliance of UK bathing water with the standards in the EC Bathing Water Directive (expressed in UK Guidelines): 1994-2011. (Defra, 2013)**

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The management approach, which was introduced by the Framework Directive, builds on, rather than revolutionises, established UK practice of catchment management. However, it has expanded it, not only in the objectives that are set, but in driving forward measures and enhancing stakeholder engagement.

The UK played an important role in the negotiations leading to the adoption of the EU Framework Directive and much of the text still reflects the key revisions developed under the UK Council Presidency of the time. Nonetheless, the UK has often been resistant to implementing EU law on water protection, demonstrating that the environmental benefits now apparent in cleaner and safer UK waters would not have been achieved without EU pressure.

It is also important to note that the management of water flows and quantities is influenced by the Floods Directive as well. This takes a preventative approach and sets out requirements to assess flood risks and develop management plans which are likely to be increasingly important in the UK and elsewhere. However, it does not set out obligations regarding particular levels of flood protection. Poor interpretation of these requirements in the press has caused the Water Framework Directive to be the focus of unjustified criticism after a series of recent events in the UK (see Box 4-1).

#### **Box 4-1 The Water Framework Directive and appropriate flood management in the UK**

Since the floods in the Somerset Levels in winter 2014-15 and the floods in several areas December 2015, statements have appeared in the press that the requirements of the Water Framework Directive prevent activities (notably dredging) which are necessary for flood management. This is not the case. While the Directive sets out ambitious water management objectives, it clearly states (Article 4.7):

“Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of *new* modifications to the *physical* characteristics of a surface water body or alterations to the level of bodies of groundwater, or

[...] and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan [..];

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.”

Therefore, where physical modifications are made to channels or water bodies (eg dredging) to maintain human safety, including flood prevention, this is allowed by the Directive (assuming that there is not a better alternative). The inclination to blame the Directive illustrates how easy it is to cause confusion about the underlying causes of environmental management problems and sometimes to portray EU legislation as the source of the problem when it is clearly not.

#### **4.3.1 Water quality following UK departure**

Much EU water legislation applies to the EEA and, therefore, Brexit under Scenario 1 would mean that it would still apply. Within the EEA, the UK could continue to contribute to policy debates, but would not be part of official decision making, such as occurs on a regular basis in formal Committees, which represent an important forum in framing the future detailed application of this legislation. One exception in the EEA agreement is the absence of the Bathing Water Directive from the list of EU measures that apply (see Section 3.2.1). While Brexit could have an impact on UK application of this directive with a number of beaches still not compliant on a broader scale, this is less likely to be the case in future that it was in the past. This is because (after much argument and much investment) the UK is now compliant on the great majority of beaches. Apart from environmental concerns the tourism industry would not welcome bathing water standards falling back and poor comparisons being made with beaches in the EU (which already are a challenge to compete with). Nonetheless, pressure from the EU standards is a significant force in maintaining standards along the more than 630 identified bathing waters in the UK.



It is important to note that although the Water Framework Directive is included within the EEA Agreement, some aspects of the Directive are excluded and would therefore not apply under Scenario 1. This omission concerns the Art. 4 requirements on protected areas, which state that river basin management planning must ensure that the objectives of protected areas are fully addressed. However, such areas include bathing waters and Natura 2000 sites, both designated under EU laws that would not apply outside the EU. The rest of the Water Framework Directive would remain applicable to the UK if it remained in the EEA.

Full compliance with the Directive still requires further effort and some expense, not least in reducing more diffusive pollution in rural areas, originating from agriculture and other sources. For example, recent analysis found that there was no significant change in the overall number of water bodies at high or good surface water status between 2008 and 2012. Furthermore, in 2012, only 23% of surface water bodies assessed under the WFD in England were in high or good status (Defra, 2014). Under Brexit (Scenario 2), outside the EEA there could be a retreat from the tough objectives of this directive. Moreover, this scenario would undoubtedly lead to pressure to relax implementation of the Water Framework Directive (assuming its basic framework remains in EU law). This is because compliance would entail costs and there is no question that implementation will require further action by many farmers. The Government can be expected to be reluctant to take such action against this sector even if the benefits outweigh the costs. It is also important to note that major investment in sewage treatment is undertaken (in England and Wales) in the context of the periodic spending and price review of the water companies. Part of the negotiation with Ofwat<sup>4</sup> is in relation to investment to meet EU objectives (one example being the London super sewer). Being outside the EEA could remove this legal obligation and, therefore, change the spending and investment decisions of the water industry to the detriment of UK water quality.

#### **4.4 Controlling pollution emissions**

EU environmental law has a long history of preventing and reducing pollution emissions to air and water. The range of legal mechanisms most used includes:

- controls on discharges or emissions from specific sources,
- legal frameworks for the regulation of industrial emissions;
- controls on the application of pollutants to land; and
- setting emission ceilings for total emissions of pollutants from certain types of industry or from countries as a whole.

While controls on individual pollution sources historically have formed one part of EU policy, it is a broad industrial pollution control system today. The Industrial Emissions Directive (IED) 2010/15/EC, inherits an integrated pollution prevention and control approach that was introduced in 1996. It sets a regulatory decision system for industrial installations that fall within its ambit whereby each requires a permit that contains specific limits on pollutant emissions based on the plant's operation to best available techniques (BAT).

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<sup>4</sup> Ofwat: the Water Services Regulation Authority. It is the body responsible for economic regulation of the privatised water and sewerage industry in England and Wales.

This approach draws heavily on the system that the UK introduced in the 1990 Environmental Protection Act. This was Integrated Pollution Control based on permits and the concept of “best available techniques not entailing excessive costs”, which built on recommendations from the Royal Commission on Environmental Pollution (RCEP, 1988). This was an example of UK thought leadership. The EU system is not the same as the older UK one, but the approach introduced by the EU in 1996 differed strongly from those in some other Member States, such as Germany, where a system of standard operating requirements applied. This flexible, but forward looking approach, exemplifies the regulatory model that the UK had developed, with considerable impact on EU policy development.

By contrast, controls on applications of potentially polluting substances to land are limited in EU law to certain specific issues. The most important of these are controls on the application of biocides (eg spraying of pesticides, controls on sheep-dip). However, application of solid waste in the form of manure is controlled by the Nitrates Directive 91/676/EEC and of sewage sludge by the Sewage Sludge Directive 86/278/EEC. These controls aim at protecting both human health and the natural environment, eg by avoiding or reducing pollution by toxic substances (to water or entering foodstuffs) or reducing eutrophication of water.

The UK has had its own approaches to address and regulate application of polluting substances to land, such as controls on pesticides and aspects of nitrate application. However, there are differences to the EU approach. For example, for nitrates, under the previous UK system, farmers could be compensated for measures to reduce pollution, but this is not allowed under EU law, as this would conflict with the Polluter Pays Principle.

One approach to pollution control that has been widely used in EU policy, but had no roots in the UK, has been the fixing of ceilings on total emissions for individual countries (ie a control on overall volumes of pollutants). The earliest versions of this approach at EU level set total reduction objectives for large combustion plants emitting SO<sub>2</sub> and NO<sub>x</sub> in order to tackle acid rain including that falling on Scandinavia from sources in neighbouring countries (the UK particularly). The UK was not supportive of ‘arbitrary’ cuts in emissions. Instead, during the 1980s, the UK promoted an ‘effects-based approach’, which was consolidated as the basis of UK policy under the last Conservative government in the 1990 Environment White Paper. This policy, in a nutshell, stated that emission reductions should be focused on emissions that cause the most harm, rather than pursuing across the board cuts

The setting of national limits for the release of pollutants was first developed for Europe at United Nations level (UNECE) and agreements reached within UN negotiations were taken into EU law. This did not change the obligations on the UK, but provided a mechanism for their enforcement, giving them more weight. Subsequently, the EU has expanded its analysis of air pollution problems and the use of the national ceilings approach. In both the UN and EU contexts, an effects-based approach is now the basis for determining country-level obligations (alongside economic models and other considerations<sup>5</sup>). Thus the UK policy

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<sup>5</sup> For information about the GAINS model see:

<http://www.iiasa.ac.at/web/home/research/researchPrograms/GAINS.en.html>

initiative has coloured the approach taken in Europe more widely. The setting of ceilings for specific pollutants now applies to Member States as a whole under the National Emissions Ceilings Directive (NECD), revisions to which currently are being negotiated.

#### **4.4.1 Controlling emissions following a UK departure**

On the scenario whereby the UK remained within the EEA, the IED would still apply. Indeed, even outside the EEA (Scenario 2), it might be assumed that the UK would still retain a version of the IED given its close character to the former UK approach. The UK has played a key role in policy development in this area, for example in the policy review that led to the IED and to technical discussions on how the concept of BAT should be interpreted. However, under Scenario 2 the UK would be completely removed as an active participant in this debate for the EU.

All the EU controls on land pollution apply to the EEA, so under Scenario 1 all of these would remain in place. However, EEA membership would remove direct influence on the future of the legislation while leaving it in force<sup>6</sup>. Since the UK has had a long history of problematic implementation of, for example, the Nitrates Directive, under Scenario 2 the UK might seek to alter the approach, particularly by relaxing standards.

Finally, the National Emissions Ceilings Directive would also still apply to the UK under Scenario 1, as the EEA countries have separately agreed emission reduction levels through a decision of the EEA Agreement. Although Brexit outside the EEA would not exempt the UK from this system of controls as it would still be subject to the UN Convention approach, there would be a risk that the drive for greater control of damaging air pollutants would weaken.

#### **4.5 Waste management**

Waste management is a further area of EU environmental law which has caused major positive changes throughout Europe, including in the UK, while sometimes proving challenging to implement. EU waste law includes different elements:

- an overall framework for waste management, including a waste management hierarchy;
- objectives to reduce landfilling of waste;
- Directives promoting recycling of specific types of products, placing responsibilities on producers; and
- measures on the quality of products to allow for their recycling.

Prior to the introduction of EU law, the approach to waste management in the UK generally consisted of little more than the collection and landfilling of the waste in often poor facilities, resulting in both a loss of resources because of low levels of recycling, significant water and air pollution from landfill sites and considerable loss of amenity for many communities close to landfill sites. A series of EU measures has played a central role in changing both the physical processes and the accompanying culture. Particularly important

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<sup>6</sup> See for example National Audit Office (2010). Tackling diffuse water pollution in England. <https://www.nao.org.uk/wp-content/uploads/2010/07/1011188es.pdf>

directives have been: the Waste Framework Directive (75/442/EEC and 2006/12/EC) which includes targets for recycling as well as other provision; the Landfill Directive 1999/31/EC, which has driven reductions in the amount of waste sent to landfill; and directives on specific waste streams (end-of-life vehicles, waste electrical and electronic goods, batteries, packaging) which have radically enhanced recycling rates.

Initially waste management practice in the UK reacted slowly to EU requirements, but today nearly all landfills are maintained to generally high standards, recycling rates are dramatically improved, citizens accept separate collection of different wastes and the UK has introduced additional domestic measures to achieve this, and meet EU targets. National initiatives include the landfill tax, introduced in 1996, specifically to help meet the targets of the Landfill Directive.

In considering how far UK waste management policy has been led by EU policy or possibly would have happened in any case, it is worth examining the views of two reports by House of Commons Select Committees. In 2001 the Environment Select Committee published a report "Delivering Sustainable Waste Management" (Environment Select Committee, 2001). This was highly critical of the then government's waste strategy, stating that it was guilty of 'planning without ambition' and 'thinking without imagination'. However, the Committee further stated "...it is difficult to fully express our disappointment with the continuing inertia and low level of expectation which characterise waste management in this country... the clear implication is that those developing waste policy are merely responding to the thrust of policy at European level without a concept of where the UK should be heading."

In May 2003, the House of Commons Environment, Food and Rural Affairs Committee produced its report *The Future of Waste Management* (House of Commons, 2003), which concluded that government policy was too timid, that Defra and the Environment Agency had too limited resources, and that the UK relied too heavily on the landfill tax to deliver the waste hierarchy. Furthermore, it questioned Defra's ability to negotiate and implement EU legislation to the best advantage of the UK.

As this illustrates, the UK government failed to be ambitious in tackling waste management over a long period and it has been EU law that has been critical to driving far reaching improvements in the UK. Not only has the overall management of waste been improved by broad EU policy measures, but also there are directives aimed at reducing waste and recycling for individual waste streams – vehicles, electrical equipment, paper, batteries, etc. Although the only major UK initiative within this policy landscape has been the landfill tax, the overall effect has been a very substantial change. An example of this is represented by the dramatic increase in the overall household recycling rate in England (Figure 4-2). A recent publication by Defra indicated how England was likely to meet the EU Landfill Directive target of reducing biodegradable municipal waste in 2020 to 35% of 1995 levels. In comparison with earlier challenges of improving UK waste management, this illustrates progress (although there is still much to do).

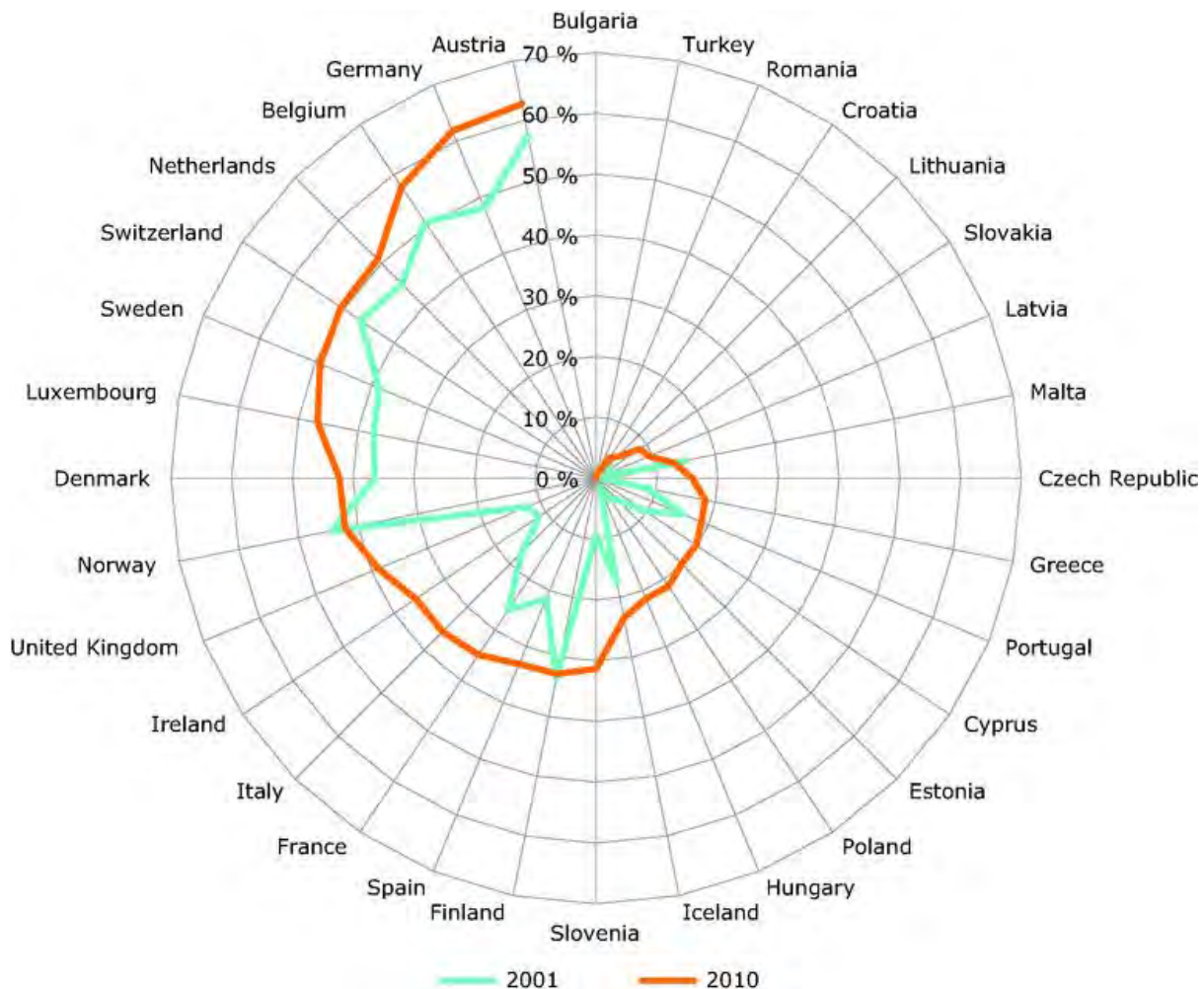
**Figure 4-2 Household recycling rates in England 2000-2012 (Defra, 2013b).**

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Figure 4-3 provides a further perspective on relative changes in household recycling in the UK and across the EU. It provides comparative data for 2001 and 2012 and shows the dramatic improvement in the UK over this time. All Member States have made improvements in response to EU law, but those in the UK (and Ireland) have been the most dramatic. However, the UK still ranks tenth in the EU. This illustrates both the effect that EU law has had on the UK, but also that further improvement still needs to be made. The Waste Framework Directive sets a target for recycling of 50% of household waste by 2020. Although the UK achieved a recycling rate of 43.2% in 2012/13, the House of Commons Select Committee on Environment, Food and Rural Affairs agreed (Environment Select Committee, 2014) with most witnesses to its recent inquiry that England will miss the 2020 target unless some significant additional Government interventions are made.



Figure 4-3 Recycling rates in all EU Member States for 2001 and 2010 (EEA, 2013)



#### 4.5.1 Waste management following a UK departure

There is a clear single market dimension to much of EU waste management law, consequently making it EEA relevant. An example of this is legislation on specific waste streams, as this both affects product quality and the responsibility of producers. Access to the single market is dependent upon these requirements being implemented and there are also common administrative provisions to permit access for those external suppliers importing goods to the EU which are subject to these provisions (eg under the revised Waste Electrical and Electronic Equipment (WEEE) Directive 2012/19/EU). Any substantive change to these rules in the UK would likely to be considered detrimental to parties on both sides of the trade flows. Consequently, there would be an argument to retain this legislation on either Brexit Scenario 1 or Scenario 2 although the element of uncertainty would remain.

More uncertainty and the greater challenge outside the EU would relate to meeting EU targets under the Waste Framework Directive and the proposed revision (EC, 2015) of those

targets following the release of the Circular Economy Package by the European Commission<sup>7</sup> on 2 December 2015. In the scenario of Brexit within the EEA, this legislation would continue to drive UK policy and practice. As noted above, the UK has improved its performance in recent years, but there is concern about further improvements and Brexit outside of the EEA would be likely to take off a major source of pressure to improve UK waste management further and would reduce the level of confidence in local authorities and the waste and recycling based industries about the direction of travel and the merits of future investment. This would not only be bad for the environment, but also for the recycling industry in the UK and other businesses which would benefit from a more resource efficient UK economy.

#### **4.6 The use of single market measures under the EU Treaty**

It is important to stress that some important EU laws directed at improving environmental quality or standards have been adopted as single market measures under the EU Treaty. The reason for this is that the legal provisions to protect the environment focus upon the way the product is produced and/or marketed in order to achieve the desired outcome. Products are traded freely across the EU, so there has to be a single minimum quality requirement for those products. Measures adopted under the Environment Article of the Treaty also contribute to avoidance or reduction in distortion of competition between companies across the EU. However, this section considers briefly those measures specifically concerned with traded products.

Examples of EU legislation that are designed to protect health and the environment and which have been classified as single market in character include those concerned with:

- Vehicle emission and performance standards: since the 1970s binding standards have been set for emissions of individual pollutants or particular engine performance. Standards have been adopted for different types of vehicles, applying to all sold in the EU, resulting in major reductions in emissions. These need to be taken considerably further and the legal structure for this is now firmly established at EU level where it will remain.
- Chemicals: many years of legislative development, culminating in the REACH Regulation No (EC) 1907/2006 and the related Classification, Labelling and Packaging Regulation (EC) No 1272/2008 control the testing of chemicals being placed on the market, their labelling, and other key sectors. Many of the substances are toxic and ensuring the environmental and health impacts are fully understood and their use is tailored to this understanding is critical to their entry into the single market.
- Fuel quality: the quality (eg the sulphur content) of fuels sold on the EU market is controlled to reduce emissions.
- Restricting hazardous substances: the content of hazardous substances is restricted in electrical products on sale in the EU.
- Product noise levels: selected products are subject to maximum noise levels.

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<sup>7</sup> For further information on the package see: [http://ec.europa.eu/environment/circular-economy/index\\_en.htm](http://ec.europa.eu/environment/circular-economy/index_en.htm)

In many cases EU single market measures set minimum quality requirements for products including measures relating to environmental performance, hazardous content, etc. Within these measures there is usually nothing to prevent a manufacturer from going beyond the minimum requirement. However, it is usually not possible for a Member State to require manufacturers to do so, or to require that products on the market in that country meet additional standards. Doing this would impede the free access of products from other Member States to that country's market and be contrary to Treaty objectives for the single market.

If the UK were to remain part of the EEA (Scenario 1), these requirements would continue to apply to the UK itself. Even in the event of Brexit under Scenario 2, any UK products seeking to enter the EU market would have to comply with these minimum requirements. The importance of these product standards can be seen in that they drive manufacturing standards in their countries of origin beyond the simple requirement of their export to the EU. However, and regardless of the outcome scenario, Brexit would mean that the UK would no longer contribute to the determination of these standards. In particular, British governments have had a strong input into the development of a range of legislation concerning vehicle emission standards, fuel quality and chemicals, where UK industry has strong interests. Brexit would mean this would not be the case in future.

#### **4.7 Conclusions**

The establishment of more stringent environmental standards within the EU single market has had significant environmental and health benefits in the UK.

EU air protection legislation, as well as water and waste management policy in the EU, have resulted in a cleaner atmosphere for the UK, dramatic improvements in waste recycling, and much higher quality of bathing waters and rivers and coasts with far lower pollution levels than before.

During the last four decades, the UK has showed a strong record of providing scientific and policy advice to the development of EU legislation regarding environmental quality, demonstrating important UK influence at EU level. However, many of the initiatives to improve environmental quality in the UK would have not taken place without the EU's legal pressure and the benefits to citizens and businesses would not have been realised.

Although EU law on air, water and waste is now mature, there is still much to do to ensure countries, including the UK, fully implement it. Therefore, the next few years probably will not see major additions or changes to law, but a concentration on making sure its benefits are delivered to citizens, in line with the position successive UK governments have taken on this legislation.

Although there are differences between policy areas, most EU legislation regarding environmental quality would still apply if the UK remains within the EEA (Scenario 1). That is particularly true for air quality legislation, most of the Water Framework Directive, the three main legal mechanisms controlling pollution emissions, and the Waste Framework Directive.

However, under this scenario the UK would not be part of the official decision making and thus will not be able to argue to adapt future legislation to its national interests.

Under Scenario 2 (entirely outside), most of environment legislation would no longer apply, and the UK would be free to relax and lower environmental standards, creating as a result a scenario with real and uncertain environmental and health risks.

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## 5 Nature protection

### 5.1 Introduction

The EU has developed a nature conservation policy framework that is relatively comprehensive and ambitious compared with many other parts of the world. It has been a driving force for establishing and strengthening nature conservation measures in the UK.

At the heart of the EU nature conservation policy framework lies the Birds Directive<sup>1</sup> and the Habitats Directive<sup>2</sup>. These directives provide the legislation for the general protection of wildlife in the EU, in particular through the protection of sites that are of specific importance for selected species and habitats – creating the ‘Natura 2000 network’<sup>3</sup>. They reflect agreement that international co-operation is essential in order to tackle the transboundary issues that arise in addressing biodiversity – including the conservation of migrating species and mobile species in the marine environment. To a large extent, the Habitats Directive was developed to meet the requirements of the 1982 Council of Europe Bern Convention<sup>4</sup>. The directives are complemented by other measures such as the recent Regulation on Invasive Alien Species.

Despite these measures, biodiversity remains under acute pressure in the UK and the EU with many species and habitats in decline, not least because of developments in agriculture and fisheries, as well as urban development and climate change ((Burns et al, 2013; Oliver et al, 2015) and elsewhere in the EU (EEA, 2010; European Commission, 2015). Accordingly, the EU’s biodiversity policy objectives are now broader and more ambitious than those encapsulated in the two nature directives alone. The EU has adopted a Biodiversity Strategy with a key headline target of ‘*Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss.*’<sup>5</sup> To achieve this will not be easy and will rely not only on implementing the nature directives effectively and marshalling adequate budgets, but also utilising other EU environmental legislation and policies, such as the Water Framework Directive (WFD).

### 5.2 Relevant nature conservation policy in the EU

#### The Birds and Habitats Directives

*The Birds and Habitats Directives* aim to contribute to conserving biodiversity in the EU by maintaining certain vulnerable species and habitat types at levels which correspond to “favourable conservation status”, according to a number of criteria<sup>6</sup>. While the network of Natura 2000 sites only legally protects the species and habitats listed in annexes to the Directives, they also have a protective “umbrella effect” for a number of other species.

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<sup>1</sup> Directive on the conservation of wild birds (2009/147/EC, which is a codified version of the original Directive 79/409/EEC)

<sup>2</sup> Directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC)

<sup>3</sup> Which comprise Special Protection Areas (SPAs) designated under the Birds Directive and Special Areas of Conservation (SACs) designated under the Habitats Directive.

<sup>4</sup> Bern Convention on the Conservation of European Wildlife and Natural Habitats

<sup>5</sup> The target was endorsed by the European Council on 26 March 2010.

<sup>6</sup> This is the aim of the Habitats Directive, but case law has confirmed that the aims of the Birds Directive are broadly analogous.



The two directives introduced a systematic pan-European approach to the identification and protection of species and habitats of European conservation interest, as well as monitoring and reporting on their conservation status, adding ambition to previous national law in an approach which has not been replicated in any other part of the world (Crofts, 2014; Romão, 2015). This enables progress to be objectively assessed and Member States held to account, if necessary. The important biogeographical regions approach to conservation has meant that habitats and species relatively common in one country, but of wider EU conservation concern, are now subject to protection measures which were rarely in place previously. Also the selection of sites for the Natura 2000 network takes into account biogeographical, rather than national, requirements. This helps to ensure its international coherence, ie that all sites that are necessary to achieve the aims of the Directives are included.

The nature directives are currently being reviewed in detail by the European Commission in a process known as a “Fitness Check”. This has resulted in a considerable amount of scrutiny of the measures and their implementation and given rise to a greater volume of evidence and stakeholder views than is usually available for an EU measure<sup>7</sup>. The evidence reviewed by the Fitness Check has clearly shown that the nature directives have had a leading role in driving nature protection efforts in EU Member States and that, although initially slow, substantial progress is being made towards their objectives. In particular the terrestrial Natura 2000 network is now virtually complete and covers some 18% of the EU’s land area and, after significant delays; it is currently being extended in the marine environment. This has led to a substantial increase in the extent of protected areas in most Member States, including the UK (EEA, 2012) (Underwood et al, 2014).

The responses of stakeholders to the Fitness Check<sup>8</sup> also indicate that there is wide agreement amongst conservation organisations (including BirdLife International) that in all Member States, current conservation problems related to bird and mammal hunting are much lower than before the Nature Directives came into force. This is a result of the measures within the Directives and related Commission guidance and cooperation amongst stakeholders (Hirschfeld and Heyd, 2005). In the UK, the directives have provided additional incentives to protect not only sites, but also species that require protection in the wider environment (Langton, 2009; Wilkinson, 2011).

As with any other EU environmental law, it is difficult to be certain about what would have occurred if the nature legislation had not been introduced. Nevertheless, it is clear that the nature directives have considerably increased the level of protection for biodiversity across Europe compared to the policies that were in place in most Member States prior to their adoption. In the case of the conservation of birds, there is some relevant scientific analysis which points to the impact of EU legislation in relation to what has happened to the same species in countries, or in periods where they have not been subject to the protection measures introduced by the Birds Directive (see Box 5-1).

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<sup>7</sup> Over 500,000 people responded to the public consultation to the “Fitness Check” – the highest number of responses ever received.

<sup>8</sup> The Fitness Check of the EU Nature Directives is still ongoing at time of writing, with [preliminary findings](#) presented in Brussels, 20 November 2015.

### Box 5-1 The fate of birds under different protection regimes

A study by Donald et al. (2007) compared bird trend data over two time-periods (1970-1990 and 1990-2000) from the EU-15 and elsewhere across Europe, and found that:

- The population trends of species in the EU-15 that are the focus of protection measures – ie listed on Annex 1 of the Birds Directive – were more favourable compared to non-Annex 1 species. There was no such difference elsewhere in Europe.
- The positive impacts of Annex 1 listing were most apparent for the species that had been on Annex 1 for the longest (ie had the most time to benefit from conservation measures).
- There was a positive correlation across the EU-15 between the population trend of species and the proportion of land designated as SPAs.

Consequently, the authors conclude that “the data are therefore consistent with the hypothesis that the Birds Directive has brought demonstrable benefits to bird populations in the EU”.

Donald et al.’s study was repeated in 2015 using a more up to date data set comprising both long-term (1980-2012) and short-term (2001-2012) trends in the populations of all breeding bird species occurring naturally in the EU. The study found that the positive impacts of the Birds Directive on Annex 1 species noted in the previous study appear to be consistent over time and over the entire EU (Sanderson et al., 2015).

The directives have had a number of other impacts. These include the creation of a more consistent approach to nature conservation in Europe, establishing a more level “playing field” – welcomed by many businesses. It has also generated a huge increase in scientific research which has resulted in the conservation status of most European protected habitats and species<sup>9</sup>.

It is worth noting that some key pieces of UK legislation were driven, directly or indirectly, by the EU nature directives. The 1981 Wildlife & Countryside Act is one example. Whilst domestic calls for comprehensive legislation of this kind had been growing, the new Birds Directive provided the direct political impetus. The standard of protection from potentially damaging development projects that is applied to solely nationally protected areas (SSSIs and ASSIs) under current national legislation remains lower than that afforded to Natura 2000 sites under the Birds and Habitats Directives. This has been illustrated by a number of cases where potentially damaging developments on (non-Natura 2000) SSSIs have been permitted under circumstances that would not have complied with Natura 2000 requirements. Furthermore, national authorities are more motivated to take the necessary steps to protect Natura 2000 sites than those with solely national designations because of the pressure to comply from the European Commission and ultimately the risk of penalties for non-compliance.

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<sup>9</sup> Refers to all wild birds that naturally occur in the EU, and habitats and species of Community interest that are listed in Annexes 1 and 2 of the Habitats Directive.

As shown from the results of the recent State of Nature in the EU report (2015), considerable challenges still remain if the EU is to meet its 2020 target to halt the loss of biodiversity. There is widespread consensus that full implementation of the nature directives will be essential to achieving this target (and this is specified as one of the key actions in the biodiversity strategy). The preliminary findings of the 'Fitness Check' suggest that key challenges include a lack of funding for conservation measures and the negative impacts on many species and habitats associated with land management, some of which could be partly addressed through other policies like the CAP. In terms of the issue of efficiency, the findings suggest that in the small number of cases where unnecessary costs are being imposed on businesses, the problems stem much less from the provisions of the Directives than from the implementation choices that have been made by individual Member States (Milieu, IEEP, ICF & Ecosystems Ltd., 2015).

### **Trade related measures**

Measures to regulate trade and traffic in endangered species (notably the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and imports of tropical forest products) are another important part of the policy machinery for conserving biodiversity globally. The EU has exclusive legal competence over trade matters and so has played a role in regulating trade on a continental scale alongside the efforts of individual Member States. In principle, this improves the consistency and transparency of regulation in this area. The EC Wildlife Trade Regulation 338/97, which implements CITES, is more stringent than the standard regime laid down in the Convention.

A significant recent development in this policy field is EU Regulation 1143/2014 on Invasive Alien Species (IAS), which entered into force on 1 January 2015 and aims to address the introduction and expansion of invasive alien species in Europe and thereby the impact these have on domestic species and ecosystems. It is too early to assess its effectiveness but the logic of addressing this increasingly important issue at a European rather than purely national level is clear. Member States have some flexibility to produce a list of species of national concern and the UK government has been an advocate of collective EU action on this issue (the Great Britain Invasive Non-native Species Strategy, 2015).

### **Marine focused measures**

Another relatively recent policy development in the EU is the introduction of several measures aiming to improve the biological status of marine species and ecosystems. This follows a global trend, arising from the increasingly complex and intensive anthropogenic use of many seas and oceans, and the negative impacts that this has imposed on the marine environment. In response, countries and regions around the world are adopting "integrated ocean policies" embodying more coordinated and cross-sectoral approaches to marine management (Markus et al., 2011), especially as different marine impacts are not easily attributable to specific activities or actors. In the EU, the Integrated Maritime Policy (IMP) has been agreed to seek a management framework that goes beyond national borders. The IMP covers for example "Blue Growth" and spatial planning in the maritime environment

The environmental “pillar” of the IMP is the Marine Strategy Framework Directive (MSFD), which legally binds Member States to achieve good environmental status<sup>10</sup> of their waters by 2020. There is considerable ambition in the MSFD, bringing some of the principles that have been applied to the terrestrial and freshwater environment to bear on the marine world, which has received far less attention until recently. Furthermore, it has introduced a legal obligation to apply certain environmental principles, such as an ecosystem-based management approach and application of the precautionary principle. The MSFD explicitly obliges coastal Member States to adopt spatial protection measures in their marine waters in order to contribute to coherent and representative networks of marine protected areas (MPAs) in Europe. Together with a precedential ruling in the European Court of Justice in 2005 on the marine application of the Natura 2000 network<sup>11</sup>, the MSFD has provided a strong legal imperative for Member States to review and improve their protection of marine areas which will have a significant impact in the UK<sup>12</sup>. This is driving forward policy and practical conservation measures in a realm which has been relatively neglected in conservation terms.

In all other respects, the choice of policy measures to best achieve the ambitious MSFD targets is flexible to suit different national contexts and the European Commission does not seem to be trying to force the pace of implementation beyond the level at which Member States, including the UK, are comfortable. Nevertheless, the goals will not be achieved without some cost and administrative effort. Importantly, conservation measures between 12 and 200 nautical miles (nm) that could have an effect on the fishing interests of other Member States have to be adopted by the Commission, according to the revised the Common Fisheries Policy (CFP) (2014). Although this results in more complicated administrative and political processes for adopting conservation measures beyond 12 nm, the CFP must take the principles of protection of the environment and sustainable development into account, as they are enshrined in the EU Treaties so environmental objectives are in principle protected.

The need for active co-operation between states seems particularly clear in the marine environment and the EU legislation provides a helpful framework for achieving this. It complements rather than replaces international law, particularly the Convention for the Protection of the Marine Environment of the North-East Atlantic (the “OSPAR Convention”), which has also been a significant influence on marine management and conservation, in the UK and elsewhere. The UK has been a key player in OSPAR, acting as a member of the EU.

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<sup>10</sup> The definition of Good Environmental Status provided in MSFD, Article 3 says: “The environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive”. For a more elaborate definition, see [http://ec.europa.eu/environment/marine/good-environmental-status/index\\_en.htm](http://ec.europa.eu/environment/marine/good-environmental-status/index_en.htm)

<sup>11</sup> In 2005, the European Court of Justice addressed a legal dispute between the UK and the European Commission (*Commission v UK*), ruling that the UK had failed to fulfil its obligations under the Habitats Directive for refusing to establish marine Natura 2000 areas in their Exclusive Economic Zone (EEZ). This ruling became a precedent in the EU for the application of Natura 2000 in EEZs and therefore an important step forward in terms of marine nature conservation in the EU.

<sup>12</sup> The European Commission guiding document on the links between the MSFD and the Habitats and Birds Directives (2012) states that “achieving GES is likely to require additional substantive measures outside and inside the Natura 2000 network” (para. 38). In terms of the objectives of the MSFD and the Habitats and Birds Directives, the two “are not necessarily equivalent but can be mutually supportive” (EC, 2012, para. 30).

When spatial nature conservation began in the UK in the 1940s, the perspective was primarily terrestrial. Some protected areas included parts of the coast, although primarily for ornithological reasons<sup>13</sup>. In the 1970s, the need to protect the marine environment for its biological values was increasingly recognised by the international community, including for example the Ramsar Convention in 1971 and the UNESCO World Heritage Convention in 1972. In the UK, the Wildlife and Countryside Act was introduced in 1981, which included a provision for designating Marine Nature Reserves (MNR) in areas close to and away from the coast. However, the Act has only managed to bring about the establishment of three MNRs over the course of 30 years. In 2004, less than 2% of British waters were protected as MPAs (the Parliamentary Office of Science and Technology, 2004), despite the 1981 Act and the provisions under the EU Directives.

Following the rulings in *Commission v UK* (2005) mentioned above, the government worked to identify sites for protection away from the coast. In addition, in 2009, the UK established the Marine and Coastal Access Act (MCAA), enabling designation of a new type of MPA – Marine Conservation Zones (MCZs) – in the territorial waters adjacent to England and Wales and UK offshore waters (JNCC, 2010)<sup>14</sup>. MCZs can be designated to protect nationally important marine wildlife, habitats, geology and geomorphology. The MCAA paraphrases article 13.4 of the MSFD on mandatory spatial protection measures. The MSFD was transposed into UK law through the 2010 Marine Strategy Regulations, which also “stick closely to the wording of the Directive and do not go beyond the requirements it sets out” (Explanatory Memorandum to the Marine Strategy Regulations 2010, 4.2).

Taken together, all the different types of British marine designations now create a network of MPAs currently covering about 17% of UK waters (JNCC, 2016). It should be noted that some of the MCZs overlap to a greater or lesser degree with Natura 2000 designations.

### 5.3 Policy scenarios for nature conservation following Brexit

The two Brexit scenarios (as laid out in Chapter 3) will have rather different outcomes in the area of nature conservation policy:

- **The UK within the EEA (Scenario 1):** The Birds and Habitats Directives would no longer apply, as they are outside the EEA agreement. Trade-related measures as well as the MSFD would continue to apply.
- **Outside the internal market (Scenario 2):** As in other areas of environmental policy, EU environmental law would cease to be binding on the UK. Alongside national legislation, the UK would rely primarily on international agreements on nature conservation, including the Bern Convention. It would also retain the Aichi targets within the Convention on Biological Diversity (CBD). It is likely that the UK would

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<sup>13</sup> Important documents: *Conservation of Nature in England and Wales* (1947) and *the National Parks and Access to the Countryside Act* (1949).

<sup>14</sup> Note, the Scottish equivalent is Nature Conservation Marine Protected Areas under the Marine (Scotland) Act (2009).



seek agreements with the EU and other states on a more voluntary basis for example in relation to aspects of the marine environment and fisheries.

## **5.4 Implications of EU departure for nature conservation**

### **5.4.1 *The Birds and Habitats Directives***

Regardless of Brexit scenario, the Birds and Habitats Directives would no longer apply to the UK. However, both directives have been transposed into UK domestic legislation and this law would continue to be in place. The immediate difference would be that a future government would be free to change this legislation and the processes in place to deliver it. The pressure for enforcement and to achieve favourable conservation status arising from EU membership would cease.

It is impossible to be certain whether future British governments would seek greater flexibility in the approach to site and species conservation if the pressures imposed via the Directives were released. However, on the one hand, this seems a distinct possibility given the history of government concerns about aspects of the Directives and potentially increased pressure from developers seeking greater flexibility. On the other hand, the government study that was set up to investigate these concerns concluded that ‘in the large majority of cases the implementation of the Directives is working well’ (HM Government, 2012). Furthermore, it is notable that at the 2015 December 15<sup>th</sup> Council meeting, the Minister made clear that the UK would not be seeking to open the text of the directives for change – a possibility now on the table because of the Fitness Check.

In principle, any relaxation of the nature directives’ requirements translated into UK legislation could take a variety of forms. It may be motivated by a desire to make site- and species protection requirements less stringent for example, or it could aim simply at improving procedures in some areas without relaxing standards. However, no recent British governments have expressed a clear desire to step up the conservation effort in concrete terms. Therefore, there is a distinct risk that more flexibility in this case could weaken the conservation effort.

In the absence of the directives, the UK’s obligation under the Bern Convention would remain since it has been ratified by the UK as well as the EU. However, the EU Habitats Directive provides for substantially stronger species protection measures, particularly by virtue of EU enforcement mechanisms. Evidence of this comes from the analysis of bird trends described in Box 5-1 above. Another example comes from a comparison of wolf numbers and densities, which are significantly higher, and trends, ie significantly more positive, in Member States where both the Bern Convention and the Nature Directives apply (eg France, Germany, Italy, Sweden), than they are in non-EU European states where only the Convention applies (eg Switzerland and Norway) (Fleurke and Trouwborst, 2014). The Directives have also stimulated a large increase in funding for nature conservation from EU sources through the dedicated EU LIFE programme and their influence on the allocation of CAP Rural Development programme budgets and other EU funding instruments (Kettunen et al, 2011). There is no equivalent funding mechanism via the Bern Convention. Across a broad front, the Directives are now clearly the driving force for conservation in Europe; for example, the Bern Convention’s Emerald Network is directly based on the Natura 2000

network (Epstein, 2014), and all Natura 2000 sites are automatically part of the Emerald Network (Evans et al., 2013).

Outside the Directives, a UK government could loosen current requirements. For example it could relax the protection of Natura 2000 sites by no longer requiring developments to have “no significant impacts” on the site. Furthermore, under current national legislation there is no requirement to compensate for (to “offset”) negative impacts on a protected area, although this of course could change.

It would also be possible for a future government to reduce protection levels on species, and to choose which species to protect within Natura 2000 sites and in the wider environment. For example, it could remove some species from the lists requiring strict protection, including relatively common species such as the Great Crested Newt, the protection of which has been controversial. Decisions on which species require protection would need to take into account the requirements of the Bern Convention and the UN Convention on Migratory Species (CMS), as provided for under the Wildlife and Countryside Act. However, these and other international obligations regarding nature conservation carry less weight with governments than the need to comply with EU law. Pressure for compliance is much weaker – even with no major legislative changes there could be pressure to make certain processes less demanding and enforcement less rigorous. If a deregulatory agenda was more pronounced after a referendum, there would be a strong temptation to make at least some domestic provisions weaker, especially given the lack of enforceable international commitment. The risk of a weakening of some aspects of the current domestic legislation is therefore significant.

Finally, and from a wider perspective, for the UK to have no further role in the way in which the Directives are implemented, or to provide insights to management, would be a significant loss in an area where it has historically been active and widely respected.

#### **5.4.2 *Marine nature conservation policy***

As noted above, the Marine Strategy Framework Directive (MSFD) and the Birds and Habitats Directives are critical measures. Without the influence of the EU nature directives in particular, the development of marine protected areas in the UK would lose its most important legal driving force. It is likely that a few of the existing marine Natura 2000 sites would remain, to the extent they overlap with domestic Marine Conservation Zones (MCZs), although this is difficult to say. It seems likely, however, that the pressure to manage these for conservation would be significantly reduced. Meanwhile, the degree of protection applied to the domestic MCZs is much weaker than for Natura 2000, especially in terms of preventing development impacts.

In principle, the UK could proceed with certain aspects of marine management on its own, but the merits of a properly designed and implemented European approach are widely accepted and the benefits of some national action could be undermined by a lack of collaboration by other maritime states. As in other areas, the presence of these European goals sets a direction and an insurance policy against short termism by Governments elected every 5 years and who are subject to periodically intense pressures to allow inappropriate economic development.

If the UK becomes part of the EEA following Brexit (Scenario 1), and the MSFD therefore continues to apply, the UK would remain bound by the Directive's ambitious targets without having a part in influencing the development of the Directive. The MSFD could evolve significantly given its scope and importance, particularly after 2020. If the UK instead decides to be outside the EU's internal market (Scenario 2), it will lose the impact of the MSFD. The transposed version of the MSFD (in the Marine Strategy Regulation and the MCAA) would still remain, although without external pressure or enforcement to actually deliver on the relatively ambitious targets. Again, there will be a temptation to loosen the provisions over time if future governments want to prioritise development.

The UK could continue in its role in international law, such as OSPAR, as an independent voice following Brexit. Establishment of the MCZ network was partly a result of trying to meet OSPAR commitments as these are binding on signatories. However, OSPAR like most international law, provides no means for enforcement so there is a risk that the drive to establish MCZs may falter in the face of other priorities and calls on public money.

Regardless of which Brexit scenario applies, the Government would still be committed to manage and conserve the resources in its EEZ in accordance with the requirements of the United Nations Convention on the Law of the Sea (UNCLOS) although like OSPAR there is no means of enforcement. In addition, as most other European countries deal with these issues within EU processes, including the CFP, they are likely to be reluctant to invest heavily in other fora. The baseline in marine management is shifting as well. There is a clear logic for managing increasingly industrialised scale fisheries and the wider marine environment within the same arena, seeking alignment with an ecosystem approach as now required within the CFP. EU policy provides this arena and pursuing an independent approach outside it would introduce new uncertainties and risks for the environment (see Chapter 8).

### **5.4.3 *International – impacts outside the UK***

Efforts to protect habitats and species often need to be collaborations between different states, reflecting for example the cross-boundary nature of many of the pressures threatening species and habitats, the conservation implications of international trade and the fact that many species are migratory and move across borders. The EU system does not hinder Member States from entering voluntary agreements with other states, or distributing aid to international conservation efforts, for example to protect endangered species in Africa. Nor does it prevent Member States introducing domestic schemes of their own. Equally, following Brexit and regardless of scenario, international cooperation on nature conservation can proceed by existing agreements<sup>15</sup> and potentially new voluntary initiatives. However, such agreements are not legally binding or subject to enforcement in the way that EU legislation is. Meanwhile, because the UK's neighbours follow EU law, they are likely to be less tempted to join any additional agreement with the UK, however worthwhile.

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<sup>15</sup> For example, the UK has four legally binding CMS Agreements: the Agreement on the Conservation of Populations of European Bats (EUROBATS); the African-Eurasian Migratory Waterbird Agreement (AEWA); and the Agreement on the Conservation of Small Cetaceans in the Baltic, North-East Atlantic, Irish and North Seas (ASCOBANS), and the Agreement on the Conservation of Albatrosses and Petrels (ACAP). It has also ratified two less formal Memoranda of Understanding of direct relevance to the UK.

It is difficult to assess whether the EU would adapt significantly different decisions with partners in international negotiations if the UK were not a member. At the same time, the UK could act alone as a party to international agreements, such as the CBD, promoting its own priorities. However, it would lose the capacity to help shape the overall EU position which often is highly influential given the overall political and economic weight of the Union. The net effects of these changes could be significant, although they are, by their very nature, difficult to forecast. In recent evidence to a House of Commons Committee (2015), the RSPB argued that “Acting as part of an EU bloc has strengthened the UK’s hand in international negotiations and enabled the UK Government to be more ambitious in its targets for environmental protection”. In addition, environmental NGOs based in the UK are a vigorous force in the nature conservation debate in the EU and offer not only their views but also a supply of evidence and practical experience, not to mention periodic funding. If this stream were to cease, undoubtedly it would be noticed.

## **5.5 Conclusions**

Whereas some pressures on the natural environment are local, others cross borders and sometimes even continents. Policy responses to these issues therefore need to be introduced at all these levels collectively. The European level has clearly added considerable value in recent decades. The binding nature of the EU legislation has been the single most important factor in delivering outcomes on the ground, compared with other approaches, such as the Bern Convention.

EU legislation on nature conservation has had a significant benefit for wildlife in the UK by requiring wide-ranging action in both terrestrial and marine environments that otherwise probably would not have taken place. The role of EU legislation is likely to continue to be particularly important given ongoing or growing threats to biodiversity, such as invasive alien species and climate change that are cross-border in nature.

There has been some controversy within the UK about aspects of the EU nature directives because of the particular processes that have been adopted to implement them, but alternatives appear possible. Effective measures of this kind unavoidably will create some tensions with those affected, eg developers, and it is not clear that the processes required by the directives add disproportionately to those required by any system which does control development.

The risks of withdrawing from the EU are significant for nature. Although, in theory, a highly committed future UK government could adopt effective national measures if it chose, it would be much harder to coordinate action to address the cross-border threats faced by many UK species and there is very little to indicate that this is likely to happen. UK influence on nature conservation in Europe as a whole would be reduced, following withdrawal from the EU, not least because of the diminished role of UK based NGOs as well as public authorities and scientists.

The results of EU policy and its uneven and often incomplete implementation by governments are disappointing in the sense that the decline of habitats and species in Europe continues, as it does in many other parts of the world. However, there is good evidence that what has been achieved in the EU in terms of nature conservation policy is increasingly effective where it is being properly implemented and it provides the conditions

for extending the conservation effect into the marine environment where it has lagged behind. The long-term approach adopted in the EU seems appropriate and probably unavoidable given the scale of the challenge to support the recovery of nature.

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## 6 Climate and energy

This chapter addresses climate change mitigation policy, including those areas of energy policy which are most closely linked to the delivery of climate mitigation<sup>1</sup>. It sets out the process by which climate policy developed at EU level from the late 1980s onwards in response to policy demands from the UK and like-minded Member States, and how this led to the current architecture of climate mitigation policy, and to energy sector policies on renewables and energy efficiency. It then considers the potential impact of our two scenarios for a UK departure on the development of climate policy and relevant areas of energy policy, in terms of ambition and delivery, both in the UK and in the wider EU.

### 6.1 Climate policy in the EU

European policy on climate change has grown hand-in-hand with UN negotiations on the subject, beginning with the run-up to the Rio conference in 1992. While the EU has consistently been among the most ambitious parties within the UN Framework Convention on Climate Change adopted at Rio, tensions have always been visible between the positions of those Member States keen to make rapid progress on mitigation, and those which are more reluctant; and between on the one hand the Commission and those Member States which are keen to see a greater EU role and legal competence in international negotiations, and those who prefer to retain their own competence. These tensions have complicated Europe's impact on the international negotiations themselves, and the development of internal policy on both climate and energy.

The EU's complex governance is a source of frustration to other parties in UNFCCC negotiations, with EU coordination meetings becoming in effect a negotiation within a negotiation; and the perceived inconsistency between the EU's demands for ambition from other parties, and its own willingness to allow individual, reluctant Member States more generous targets appears to weaken collective credibility.

The UK has consistently been among the Member States most committed to ambition on climate change; but has rarely been as enthusiastic about the sector or technology-specific measures seen by the Commission and many other Member States as being necessary to enable the delivery of climate targets across the EU. It has been sceptical about binding targets for renewable energy supply for example.

The UK has thus both influenced and been influenced by EU climate policy over the last two decades. For example, the UK was a firm supporter of a market-based approach to delivery of the EU's targets, and was therefore a key part of the majority in Council which ensured adoption of the EU Emissions Trading System legislation<sup>2</sup>; and, indeed, had developed its own, voluntary, emissions trading system in order to test the concept, and gain practical experience in some of the registry and market-making.

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<sup>1</sup> We do not deal with issues related to policy on adaptation to climate change, which is both less developed at EU level, and less directly concerned with the delivery of environmental outcomes; nor have we addressed the subject of regulation of nuclear energy.

<sup>2</sup> [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](#)

### 6.1.1 *The UK's influence on development of the EU's Emissions Trading System*

The UK's influence on emissions trading has continued, even as policymaking and administrative control has become increasingly centralised at European level. Phase I of the ETS allowed Member States effectively to set their own caps and approaches to allocation of allowances; Phase II, from 2008-2012 (the first Kyoto Protocol commitment period), involved a greater degree of Commission power to approve or reject Member States' caps and allocation plans; and a single cap has been set centrally since 2013. This increased centralisation has increased the UK's ability to influence the overall level of ambition across the EU, and thus the carbon price applying in the UK. This process began with the negotiations over the level of caps for the 2008-2012 period, when, with a few like-minded Member States the UK took a relatively ambitious approach to cap-setting which then helped the Commission to exercise downward pressure on the generous allocation plans of Member States such as Poland, and deliver a Phase II cap which led to an increased carbon price. However, the subsequent collapse in economic activity as a result of the international downturn left a substantial surplus of allowances on the market, and a persistently weak carbon price. Commission efforts to correct this included proposals for delaying the availability of allowances, and a proposal for a Market Stability Reserve, enabling allowances to be taken off the market at times of significant surplus. The UK was, again, among a group of Member States pressing for ambitious implementation of these measures. In the absence of the UK, and of the influence of UK MEPs in the European Parliament, it is doubtful whether these improvements in the ETS would have been adopted, or adopted with as much ambition.

#### **Box 6-1 Norway and Iceland's relationship with EU climate policy**

##### **Norway and Iceland's relationship with EU climate policy**

Both Norway and Iceland follow EU climate policy closely, and participate in large parts of it, but without exerting significant influence on its development and direction.

**Norway** participates in the EU ETS. The ETS was always intended to link to other trading systems, with an ultimate intention of helping to create a global carbon price. Norway established a parallel trading system with the intention of linking to the EU ETS. Initially, it was only able to do so through a one-way voluntary acceptance of EU ETS allowances to meet its own trading system's obligations, but joined fully in 2008, once the European Commission had accepted its proposals for a cap and allocation of allowances. Its participation in the ETS continues to allow it the flexibility of a wider carbon market; but it has no influence on the carbon price applied, or the level of ambition set for the ETS. This would be the position of the UK if it were an EEA member outside the EU.

**Iceland** has less need of an emissions trading mechanism, since its domestic energy supply is 100% renewable; but has been part of the EU's wider emissions target since the EU and Iceland jointly ratified the Kyoto Protocol. Its contribution to the Paris Agreement is aligned with the EU's, although it had no voice in European Council discussions on the targets, and (like Norway with the ETS), its only choice in implementation is either to accept EU rules, or to comply separately without the flexibility allowed by the European "bubble".

### **6.1.2 The Effort Sharing Decision**

The agreement on “burden sharing” among the EU 15 for the Kyoto Protocol first commitment period was set out formally in the 2002 Council decision approving the Protocol on behalf of the EU. In the run-up to the Copenhagen Conference of the Parties in 2009, and following the accession of the EU-12, decisions were needed on the EU27’s contribution to mitigation in future periods. The European Council set out in March 2007 a commitment to a 20% unconditional offer of emissions reductions by 2020, with a 30% reduction put forward in the event of a binding global deal. Once the Commission had put forward the idea of a centralised approach to cap-setting under the Emissions Trading System, as referred to above, a new approach was needed to dealing with national targets – which were now only of relevance to the part of the economy not covered by the ETS (including significant sectors such as transport and agriculture, and much of the emissions from heating). It put forward, alongside the proposal for revisions and cap setting for the ETS, and as part of its “20-20-20” climate and energy package (reductions of 20% in emissions and energy efficiency, and a 20% share for renewables) an approach to the allocation of responsibility for mitigation among Member States which it now described as an “Effort Sharing Decision”. This was in due course adopted, and essentially imposes an annual cap on emissions from each Member State’s non-ETS economic sectors, declining steadily towards the 2020 level, with Member States having responsibility for implementing additional policies and measures to achieve their targets. Targets were determined on the basis of GDP per capita; poorer Member States were allowed to increase emissions slightly, with the main reductions focused on richer Member States; the Decision also allows for the limited use of carbon credits from outside the EU, and of trading among Member States. In practice, as with the ETS, the economic downturn made the targets significantly easier to achieve, and there has thus far been no need for trading between Member States.

As Box 6-1 explains, EU climate mitigation instruments have been open to participation by non-EU countries, particularly members of the European Economic Area; although, as with other areas of EEA participation in environmental legislation, the scope for those countries to exercise influence over outcomes is very limited.

### **6.1.3 Climate at the centre of European policy priorities**

Climate policy has become over time the centrepiece of EU environment policy, partly because of its links to and impact on energy and wider industrial policy, and partly because of its central role in the public debate on environment issues. Integration with the objectives of other sectors and the broader economy is being put in place. It has, for example, been incorporated into the process for measuring progress towards the EU’s key priorities, through the Europe 2020 targets, and Member State reporting against them under the so-called Semester process – alongside policies on growth, the economy, and fiscal balances. It has also been made a specific focus of the European budget for the 2014-2020 period, with a commitment<sup>3</sup> to ensure that at least 20% of the budget is devoted to delivering climate policy objectives. The weight that climate policy had acquired in EU policy led to the creation of a separate climate policy DG in the second Barroso Commission (2010-

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<sup>3</sup> See, for example, the European Council (2013) Conclusions (Multiannual Financial framework) 7/8 February, EUCO 37/13, Brussels, which state that: “Climate action objectives will represent at least 20% of EU spending in the period 2014-2020”.

2014); and was also reflected by it being the sole environmental issue identified in the political priorities set out by president Juncker on his election in 2014<sup>4</sup>. This has meant that EU climate policy has, at least in theory, exerted an influence beyond the energy supply sector and affected the trajectory of economic development in Europe in a way that could not have been achieved by Member States acting alone. In practice, however, the economic downturn meant that Member States collectively have not yet found delivery of the emissions reduction targets particularly challenging; and it is thus difficult to identify to what extent emissions are significantly lower than they would otherwise have been as a result of EU targets. However, it seems reasonable to conclude that the targets have exercised some influence, particularly on the development of mitigation policies at national level; and they have also driven the adoption of product standards at EU level, for example for energy-using products.

#### **6.1.4 *Climate-related aspects of energy policy***

As EU ambition and international commitments on climate development have developed, they have required a coordinated policy response in respect of energy, the main source of EU greenhouse gas emissions. Climate mitigation ambitions have driven the development of legislation on renewable sources, and on energy efficiency; and are now a core component of future energy policy, including the development of an “Energy Union”.

Legislation on renewable energy has kept pace with developments in international climate commitments. For example, legislation to support renewable energy was adopted in 1993 in response to the policies endorsed in the run-up to the Rio Convention. However, this was confined to providing financial support from the EU budget, and avoided any constraining measures. The subsequent development of renewables policy at EU level has centred around the question of whether Member States should be set targets for the development of renewable energy sources, and whether those targets should be binding. The current legislative framework – the second Renewables Directive – sets binding targets for the share of renewables in each Member State to 2020, following agreement to this approach by then Prime Minister Blair at the March 2007 European Council, notwithstanding a strong UK policy preference for a “technology neutral” approach to climate mitigation policy, and concerns over the downward pressure renewables targets would exert over the carbon price in the Emissions Trading System. The UK’s agreement to national targets was, in part, seen as necessary to secure a relatively ambitious EU approach to the overall mitigation targets for the Copenhagen climate negotiations).<sup>5</sup> However, the initial guidance from heads of government meeting in the European Council in October 2014 has been that the subsequent 2021-2030 energy targets should not involve binding targets at Member State level, a decision reached largely as a result of pressure from the UK and a few other Member States keen to reassert national sovereignty over energy policy. The European

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<sup>4</sup> See [“A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change”](#), President Juncker’s statement to the European Parliament of October 2014, which says: “I want the European Union to lead the fight against global warming ahead of the United Nations Paris meeting in 2015 and beyond, in line with the objective of limiting any temperature increase to a maximum of 2 degrees Celsius above pre-industrial levels”

<sup>5</sup> And, arguably, it was difficult for Prime Minister Blair to appear unambitious on energy policy, given that his earlier October 2005 speech to the European Parliament had called for the development of an EU energy policy, albeit one largely focused on single market ambitions.



Council called instead for a 27% overall target for renewables, which would be “binding at EU level”; although there has been widespread scepticism among commentators on what, if anything, “binding at EU level” means in practice<sup>6</sup>, since it is unclear who would take action against whom to enforce such a target.

Legislation on energy efficiency has been both more detailed, in particular in relation to product standards, and on subjects such as the need for public buildings to play an exemplar role; but at the same time less ambitious, in terms of the targets allocated to individual Member States, with (as yet) no binding targets. Since the adoption of the Energy Efficiency Directive in 2006<sup>7</sup> Member States have been required to set indicative national targets (but with wide discretion over both the level of ambition, and how those targets are expressed), to prepare and submit National Energy Efficiency Action Plans, and to encourage or require energy distributors to provide energy efficiency advice and support to their customers.

European policy on energy in recent times has been dominated by the concept of an Energy Union<sup>8</sup>. The Energy Union concept now covers a broad range of topics, all of which have been (to a greater or lesser degree) elements of EU energy strategy for more than a decade: energy security; the internal energy market; energy efficiency; decarbonising energy supply; and research and innovation. The ambition to take a more holistic approach to the subject of energy looks likely to lead to a more integrated approach to Member State reporting and strategy preparation, which should have the benefit of improving the strategic value of Member States plans. However, the current European Council preference for not setting binding or even indicative targets at Member State level on either renewable energy or energy efficiency may significantly weaken the decarbonisation impetus provided by the current legislative framework.

## 6.2 Future policy impacts

The impact of a UK departure from the EU on climate outcomes would depend on the nature of the UK’s continuing relationship with the EU – whether entirely out (Scenario 2), or remaining involved with the EU in a Norway-like EEA arrangement (Scenario 1). We look at potential impacts first in relation to the UK’s influence on international negotiations; then in respect of EU climate policy; and then in respect of climate-related aspects of energy policy, and of cross-cutting policies such as the EU budget.

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<sup>6</sup> See, for example, Wyns T et al “EU Governance of Renewable Energy post-2020: Risks and Options”, Heinrich Böll Stiftung, December 2014

<sup>7</sup> [Directive 2006/32/EC](#), subsequently repealed and replaced by [Directive 2012/27/EU](#)

<sup>8</sup> Initially put forward by Poland, under then Prime Minister Donald Tusk, and largely a response to geopolitical concerns about Russia and the exposure, particularly of the Central and Eastern European Member States, to Russian control over gas exports to the EU, it became an important element in discussions over the new European Commission appointed in 2014, with the June European Council which selected Jean-Claude Juncker as president emphasising, in its conclusions, the importance of climate and energy policies, in particular security of supply. The political guidelines presented by President Juncker to the European Parliament included a commitment to “A Resilient Energy Union with a Forward - Looking Climate Change Policy”, and he created a new Vice Presidency portfolio responsibility for Energy Union. The Energy Union concept – loose though it remains – has been endorsed further at the December 2014 and March 2015 European Councils, and explained in more detail in the Commission’s February 2015 Energy Union communication.

### **6.2.1 *International negotiations***

Regardless of the Brexit scenario, the impact on the UK's negotiating status within the UNFCCC, as with other multilateral environmental agreements, would involve both a greater degree of independence in formal in status, but a likely significant practical diminution in relevance. While the UK would, provided it were able to retain an experienced and engaged team of negotiators at a time of public expenditure cuts, be able to exercise some influence behind the scenes, including through advice and support to other negotiators, its key importance comes from its perceived ability to influence the position of the EU. While, arguably, the EU's own relevance as a key negotiator in climate talks has itself waned in recent years, as both the US and China demonstrate increased ambition, there will be a continuing need for the EU to ensure that global commitments, both on mitigation and on climate finance, are sufficiently ambitious. The opportunity afforded by the Paris agreement, and its inclusion of a process of regular review and (ideally) more ambitious revision of the targets set by Parties for their own emissions, has implications both for the process for deciding on Europe's own level of future ambition, and the scope for using an increased level of ambition to leverage new commitments from other parties. Without the UK's voice, the balance of opinion within the EU is likely to shift away from climate ambition, with potentially negative impacts on global outcomes. UK negotiators have often played key roles on behalf of the EU in UNFCCC discussions; this contribution (and the influence that comes with it) would not be possible in the event of the UK leaving the EU.

### **6.2.2 *Future EU and UK climate policy***

There are three main factors to consider in terms of the impact of a UK departure from the EU on domestic climate policy (both within the UK, and more widely across Europe, which is more important to emissions reductions globally). The first is the likely impact on the dynamics of EU policy. The second is the impact on the UK's ability to control its own opportunities for mitigation. The third is the likely impact on investment conditions for green technology, including renewables, in the UK.

The impact on EU climate policy dynamics is likely to be negative. While the UK has been reluctant on some low-carbon energy policies, particularly where these conflicts with what Treasury orthodoxy has seen as an economically logical, technology-neutral approach, it has been a consistent voice in favour of overall climate ambition, both generally and in relation to the Emissions Trading System in particular. The UK was, for example, able to exercise influence against the development of a blocking minority in 2014 on measures to improve the credibility of the ETS through the creation of a Market Stability Reserve. In the absence of the UK, the potential for the Visegrad group<sup>9</sup> and other relatively climate-sceptic Member States to be able to achieve a blocking minority in Council would be greater; and could in turn exercise a chilling effect on the level of ambition in Commission proposals. UK MEPs, with the exception of the climate-sceptic members of the EDD group, are also often an important factor in securing an ambitious majority in Parliament. Therefore, and regardless of the Brexit scenario, EU policy could be expected to be less ambitious than would otherwise have been the case, with a weaker carbon price, and less stringent caps applying to emissions in the rest of the EU economy.

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<sup>9</sup> Poland, Hungary, the Czech Republic and Slovakia, which have cooperated formally on European issues since the early 1990s.

As far as the impact on **domestic UK climate policy** is concerned, this would reflect the degree of continuing engagement of the UK with the EU process – whether as part of the EEA (Scenario 1), or entirely outside the EU framework (Scenario 2). In either case, policymakers in the UK are likely to continue to want to see links between emissions trading schemes, as a means of moving towards a global carbon price, and of securing least-cost emissions reductions at regional and global level. However, the UK’s ability to influence the carbon price would appear to be significantly lower.

On the one hand, it would have no voice in the setting of the EU cap for the ETS, as noted above; and would therefore be likely to face a weaker carbon price domestically. On the other hand, it would either (if as part of the EEA) have little or no influence over the cap set within a wider European trading system; or, if outside the EEA, would have scope to set a lower cap (for example, in order to meet more demanding targets under the domestic Climate Act), but in the knowledge that the carbon price impact of such a lower cap would be dissipated by the greater availability of EU allowances. At the same time, the higher revenues which in principle should accrue to Government from the sale of allowances under an ambitious cap would be dissipated, with the continuing EU member states gaining from the price impact of relatively high UK ambition. The alternative of developing an entirely separate trading system is unlikely to be attractive. The likelihood is that, faced with these difficulties in making a more ambitious climate policy have an effect within the UK, decision-makers would mimic the possible reduced level of climate ambition at EU level, notwithstanding that this would make meeting Climate Change Act targets unlikely.

While there would be greater scope for more ambitious policy-making within the sectors not covered by the ETS, notably heating, transport and agriculture, this would be tempered by concerns that those sectors – particularly agriculture – which are exposed to competition from the remaining EU member states should not have significantly greater demands placed on them than their competitors. A move towards greater electrification of both transport and heating, which the Committee on Climate Change identifies as being necessary to meet Climate Change Act targets, would in any case diminish the relevance of the non-ETS parts of the economy within the UK’s future emissions total.

More significant risks apply in the event of a current or future UK government deciding to move away from an ambitious climate policy (either by proposing the repeal of the Climate Act, or, more plausibly, by maintaining the formal long-term targets but reducing the level of policy and financial investment in meeting them), and instead free-ride on the mitigation efforts of other economies. It would, under such circumstances, be reasonably straightforward to remove the regulatory underpinning of the Emissions Trading System, if the UK were also outside the EEA. This increased level of policy risk, in turn, could undermine investors’ confidence in the carbon price signals applied in the short term, and this – particularly if coupled with the current Government’s sharp dislike of technology-specific subsidies outside the nuclear sector – could in turn lead to a shortfall in the investment necessary in the short term to deliver medium- to long-term decarbonisation of the UK economy. Thus, even if the UK political consensus in favour of climate ambition is maintained, which seems the more likely outcome, investors’ perception of an increased level of policy risk could itself damage the delivery of UK mitigation targets.

### **6.2.3 Future climate-relevant areas of EU energy policy**

A UK departure would be likely to lead to a less market-focused, and less technology-neutral, approach to the delivery of climate mitigation through **future EU energy policy**. On the one hand, this would potentially create the scope within the EU for more ambitious approaches to legislation on renewable energy and energy efficiency (at the expense, potentially, of driving down the carbon price within the ETS). On the other hand, this could come at the expense of competition and at the expense of a wider and a more efficient European market for low-carbon innovation. The UK's capacity to influence European policy-making to ensure that issues relevant to UK generating capacity, UK consumption, and UK connectivity is adequately considered in decisions on grid development and investment would be likely to be lower. However, it is also likely that pragmatic instincts among grid operators would to some extent mitigate those risks.

Since legislation on energy-using products is adopted under single market rules, the UK would continue to be required to implement its rules if it joins the EEA following Brexit. Even under a scenario outside the internal market, this legislation would continue to affect UK consumers and manufacturers; in practice, manufacturers operating in the wider European market would follow EU requirements, without bothering to produce different models to a more relaxed specification for the UK market. Arguably, there would be reduced scope for ensuring, through UK influence on the legislative process, that the interests of emerging low carbon sectors in the UK – for example, the batteries sector – were protected and the prospects for such sectors enhanced, although the extent to which the UK has been successful in exploiting that scope in the past is debatable.

The renewables legislation to be adopted by the EU for the 2020-2030 period would almost certainly have some application to the UK under Scenario 1 (EEA membership); EEA countries currently comply with the requirement to produce National Renewable Energy Action Plans, and with elements of the legislation which have direct single market relevance, such as rules on sustainability requirements for biofuels, and rules on guarantee of origin certificates for renewable energy. However, the targets for renewable energy they set in their national plans are not set out in the renewables directive, but are determined nationally; and, as noted above, individual Member State targets are in any case not the most likely outcome of the negotiations on the next renewables directive.

As noted in section 3.1, a UK departure from the EU is likely to result in significant uncertainty regarding forward planning and investment in many sectors of the economy. Low carbon investment in the UK would be likely to be significantly harmed by a decision to leave the EU. In the first place, the period of uncertainty while the UK tries to negotiate the nature of its future relationship with the EU would create a degree of political risk making it very difficult to finance the sort of long-term investment decisions required for decarbonisation of energy systems. Even when the likely long-term relationship of the UK with the EU were determined, however, the EU underpinning to UK commitments on emissions reductions and on the phasing out of fossil fuels would be removed, creating (as noted above) a greater level of policy risk, similar to those (also noted above) for the carbon price.

#### **6.2.4 *Future of other climate-related policies***

Among the impacts likely to accompany a lack of UK influence on climate policy at European level are impacts on broader EU policy instruments – for example, the semester process, underpinning delivery of broad EU policy objectives; the EU budget; and EU investments in science and innovation. The UK has, in line with its relatively ambitious stance on climate mitigation objectives, been a force behind the integration of climate policy considerations into all three areas. In the case of the budget, in particular, the UK's stance in favour of a smaller but more focused EU budget has led it to argue (in relation to the Common Agricultural Policy and Cohesion Policy) for climate objectives to guide expenditure. If the UK were to become a member of the EEA (Scenario 1) it is likely, as noted in section 3.2.1, that it would continue to have to contribute to EU Cohesion Policy; but with little or no ability to influence either its objectives or the detailed rules governing its expenditure.

### **6.3 Conclusions**

The UK has, over recent decades, exercised significant influence over the development of EU climate and energy policy, and over the levels of ambition the EU brings to international negotiations. The consensus among the main UK political parties in favour of a relatively ambitious approach to climate mitigation targets, which has held through a succession of General Elections, has thus been capable of being pursued in a European context, with relatively limited impact on competitiveness of UK firms vis a vis their competitors in other EU member states. Were the UK to leave the EU, it would face a combination of greater risks to its own, current, domestic decarbonisation ambitions; reduced influence over international negotiations on climate; and a likely reduced level of ambition in EU policy on climate change. It would no longer be possible to exert the same level of influence over decision-making at European level, and thus on the constraints facing UK industry's competitors in other EU member states.

This assessment in part reflects the necessarily international nature of delivering climate mitigation objectives; in contrast, an alternative policy of significantly reduced UK ambition on climate mitigation would be easier to deliver from outside the EU's legislative framework. While such a shift in policy would remain unlikely even in the event of a "Leave" vote, the added policy risk for low carbon investment would have an impact on the costs and effectiveness of UK mitigation policy.



## 7 Agriculture and the environment

The way in which land is managed for agriculture is important not only for food production but also for the landscape and biodiversity. Beyond this, it also affects the environment in a multiplicity of ways such as the pollution level in water, the storage and release of carbon and the health of soils. Agriculture both creates pressure on the environment and helps to protect elements of the countryside. It occupies about 70 per cent of the UK land area.

Governments in all European and many other countries, including the US and Canada intervene in agriculture in a number of ways and provide subsidies on a considerable scale. In the EU these are designed within the CAP and financed largely from the EU budget. In this sense it is a truly Common Policy but with considerable discretion for national governments. Unlike environmental policy, the majority of regulations and rules are concerned with the delivery of the subsidies and the conditions attached to them rather than laying down standards and prescriptions, although some do have this function.

The Common Agricultural Policy (CAP) and accompanying policies including those on trade, animal health and welfare are an important, although by no means the only, influence on farm management decisions throughout the EU. They can have significant environmental consequences.

A common agricultural policy was first established to introduce a reasonably consistent approach inside the single market and avoid disruptive differences in policy and levels of subsidy in farming between countries.

The key elements of the contemporary CAP include:

- Financial support from the CAP budget for safety net intervention to stop prices crashing too low in certain agricultural markets e.g. milk products.
- Financial support for farm incomes, paid directly to farmers on an annual basis, subject to certain conditions (direct payments)
- Financial support for a wide range of activities in rural areas, particularly in agriculture and forestry, including environmental management, farming in mountainous and other agriculturally "less favoured" areas and organic farming.

In addition, there is a range of EU standards applying to aspects of agriculture, such as farm animal welfare, production of certain traditional, local and quality foods, (including organic products), marketing standards for a variety of foods and some influential regulations on food hygiene applying right through the food chain from the farm onwards. These regulations are important but they do not have the same influence on the way in which farmland is used and managed as the CAP. Consequently, the focus in this chapter is on the CAP itself. If the UK were to leave the EU there would be impacts on the family of accompanying regulations referred to here, some of which would apply to any UK agricultural exports to the EU and so remain either in force or be very influential. As with most EU environmental legislation, the UK would cease to have a role in the making or amending of these measures in the future.

The CAP itself is frequently the topic of environmental critique, not least by commentators in the UK. This chapter addresses three questions. What is the record of EU agricultural policy, particularly the CAP, in relation to the environment? How might agricultural policy in

the UK change post withdrawal from the EU? What could be the environmental impacts of such a change?

## 7.1 The policy record

The UK, and especially England, has relatively small areas of forestry and virtually no wilderness; agriculture occupies a very high proportion of the land area. Agricultural practices therefore have a profound impact on the rural environment. For much of the period during which the UK has been a member of the EU there have been technological and structural changes towards a generally more intensive and specialised agriculture in all developed countries and in most of Europe. These have been associated with substantial and well-documented<sup>1</sup> negative environmental impacts on biodiversity, soil quality, water and air pollution.

At the same time, the character of the rural landscape in significant parts of the countryside and the status of a number of species of wildlife depends on sympathetic, often more traditional, farming techniques. Many of the farms utilising these techniques, particularly low intensity livestock systems in the hills, are struggling to survive financially and are heavily dependent on subsidies.

It is not straightforward to assign responsibility for driving these developments to policy rather than other forces and the role of the CAP should be dissected carefully and kept in perspective for the following reasons.

- First, although EU agriculture is amongst the most intensive in the world, qualitatively much the same technical and structural changes in agriculture are seen in most of the developed world under significantly different agricultural policies (Buckwell, 2014).
- Second, the sectors of agriculture that receive the least direct funding from the CAP (i.e. pigs, poultry and horticulture), have become the most intensive of all.
- Third, the CAP itself has evolved steadily, and was subject to a series of important reforms between 1992 and 2003. It changed from a predominantly agricultural commodity market protection policy to a complex mix of direct aids and rural development support. In this new architecture, environmental concerns have moved from the periphery to be one of the three main objectives, although resources and effective policy measures on a scale to match this ambition have not yet materialised.
- Fourth, the implementation of many aspects of the CAP, including detailed rules on several environmentally critical issues, is heavily influenced by national decisions. These vary greatly between countries in the level of priority given to the environment.

What then has been the effect of the CAP on the UK environment, and how is it performing currently and prospectively? There is no simple answer to these questions. The relatively high prices for agricultural products brought about by CAP interventions through the 1960s into the 1980s undoubtedly encouraged an over-expansion of many sectors (including cereals, oilseeds, milk, beef, sheep) and some of this was associated with observed environmental damage<sup>2</sup> for example from over-stocking. However, since EU prices have

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<sup>1</sup> Baldock, D., 2015 Twisted together: European agriculture, environment and the Common Agricultural Policy 125, Research Handbook on EU Agriculture Law, Edward Elgar, Edited by J. A. McMahon & M. N Cardwell.

<sup>2</sup> Brouwer, F., & Lowe, P. (1998). *CAP and the rural environment in transition: a panorama of national perspectives*. Wageningen Pers.

been better aligned with world market prices from the 1990s, the surpluses are no longer endemic and over-protected sectors have shrunk somewhat. For example, the numbers of sheep and cattle have fallen. Since the mid-1990s, support for production *per se* has been scaled back and, with periodically strong intellectual and political support from the UK, there have been successive attempts to integrate more environmental concerns into CAP support measures for farmers. In terms of the areas engaged and resources deployed the principal expression of this policy change has been in three policy tools.

- First, starting in the late 1980s, the introduction of agri-environmental, and more recently climate, measures, whereby farmers enter contracts to adopt practices aimed to reduce environmental harm and provide environmental public goods in return for annual payments.
- Second, since 2004 the receipt of direct payments from the CAP to farmers has been linked to respect for certain environmental rules and regulations (cross-compliance).
- Third, to provide additional support to farms in geographically more challenging areas, often in the hills and mountains. Many of these farms are engaged in less intensive pastoral agriculture, although the financial support that they receive is not tied explicitly to any environmental outcomes, rather to the continuation of farming (rather than forestry for example).

Over the last two decades there have been reductions in cattle and sheep numbers and fertiliser (Defra, 2015) and significant changes in pesticide use (FERA, 2012). Net greenhouse gas emissions from agriculture and from land use, land use change and forestry have fallen. Water quality has improved, and efforts to reduce the rate of biodiversity loss have intensified, with varying success. The role of the CAP, and other EU policies (including the nitrates, birds and habitats, water framework and sustainable use of pesticide directives) on driving these on-the-ground developments are difficult to tease out and distinguish clearly. Other factors, especially developments in market prices and conditions, have played a part. However it is reasonable to conclude that the 1992 to 2007 reforms of the CAP have been environmentally beneficial, building in provisions that were not there previously, greatly increasing expenditure aimed at environmental objectives and contributing to a broader effort to stem environmental decline and environmentally damaging structural changes within agriculture. At the same time, environmental pressure, particularly from more intensive and often specialised forms of production, has continued.

The current CAP was put in place by the (relatively recent) 2013 reform, and continues until the end of 2020. It was planned to be a significant further step towards the integration of environmental concerns into agricultural policy whilst also providing a rationale for substantial expenditure on the CAP. A key part of this reform is the decision that 30 per cent of the direct payments to farmers, which themselves account for 75 per cent of the CAP budget, are allocated to support practices ‘beneficial to climate and the environment’ – the so-called greening payments. They are concerned with the protection of permanent grassland, the diversity of arable crops (fewer monocultures) and aiming to create more space on farmland for ecological priorities (Hart, 2015).

The three greening measures are in the process of being implemented in all Member States, including the UK, but already are subject to criticism from both environmental and farming stakeholders. Some environmental NGOs have little confidence that the measures will produce significant environmental benefit, especially in relation to the considerable

resources deployed. Many farmers view the measures as highly bureaucratic and some argue that they serve no useful purpose. This poses several challenges. The need to reduce GHG emissions and reliance on large-scale monocultures and give space for biodiversity on farms is not universally accepted but is clear from analysis by the European Environment Agency and others (European Environment Agency 2015). The best means of reaching these goals is also controversial; measures to guide environmentally sensitive management need to be well targeted without being too bureaucratic and significantly sensitive to practical farming realities whilst still delivering better environmental results. Effective ways of achieving better outcomes need to be in place even if they are not universally popular. It would be premature to dismiss the potential of the greening measures but it is clear that they do not command widespread support and so the trajectory towards a greener CAP is subject to considerable uncertainty at this point.

## **7.2 Potential changes to UK agricultural policy post withdrawal and the environmental implications**

The most critical factors that would shape agricultural development after a UK departure from the EU would be the decisions taken on trade policy, on the regulatory standards adopted and enforced for food and agriculture, and most of all, the replacement for the CAP, especially any new supports to farmers paid for by UK authorities. Exit from the EU implies exit from the CAP on both scenarios considered in this report with implications for production, trade, farm livelihoods and the environment. Indeed for some of those advocating exit this would be a significant advantage of departure.

On either Scenario 1 or 2, formulating both alternative trade and agricultural policy arrangements are two of the key tasks that would have to be settled during the two-year or more withdrawal negotiation period. These policies would affect agriculture in a variety of ways explained below, for example the profitability, the number and size of farms, and the types of crop grown and livestock raised and the practices adopted. These in turn have environmental impacts to be weighed up alongside more direct policy effects from potential changes in the rules and funding for environmental schemes on farmland. Some effects would be fairly immediate, others longer term. This will be a time of great uncertainty for farmers and other organisations involved and there will be active debate about the nature and duration of transitional arrangements from the CAP to whatever succeeds it. Given agriculture is currently in a state of recession with low dairy, cereal and meat prices the shock of a Leave vote in the referendum would almost certainly undermine confidence, could reduce rents and could freeze lending to the sector until the replacement policies became clear<sup>3</sup>.

### **7.2.1 New Trade Relationships**

In negotiations to withdraw from the EU a future UK government is likely to aim to create least disturbance to UK exporters' access to the EU single market. Through whichever route this is achieved via membership of EEA, EFTA, or negotiation of a new bilateral Free Trade Agreement (FTA), UK agricultural and food producers will wish to continue to have the same access to the EU market as now, and correspondingly EU producers will want to continue to

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<sup>3</sup> See Buckwell A (2016) for a discussion of the agricultural implications of Brexit which teases these issues out at some length.

have free access to the UK<sup>4</sup>. As far as trading relationships with the rest of the world are concerned, guided by the long history of the UK trade stance since the 19<sup>th</sup> Century, the presumption is that the UK will choose to be less protectionist than the EU, with few tariffs on agricultural products. How, and how soon, this is given effect is unclear. The UK could seek to replace existing EU regional and bilateral free trade agreements with its own bilateral agreements having similar terms and effects, or it could, country by country, negotiate new FTAs with a more open approach. The latter would take many years to accomplish and would face opposition from the farming community who would be likely to be exposed to a further drop in prices<sup>5</sup>.

Decisions on trade outside the EU would have to take account of a new domestic strategy towards agriculture that might be developed at the UK level or, more likely, by the constituent countries. Perspectives are likely to be different in England from other parts of the UK. The critical decision is the extent to which the UK or its constituent countries will arrive at reasons, as the EU does, for agricultural exceptions to the broader principle of free trade.

Given the tradability of agricultural produce, differing policy supports in adjacent territories give rise to great concern about un-level playing fields, i.e. unfair competition. Many of the CAP measures in both pillars offer financial support to agriculture and they will be available to farmers in the remaining EU 27 Member States, many of which have an interest in the UK market. The terms of trade effects between farmers within the UK regions and between them and the rest of the EU are therefore highly sensitive issues.

If the UK adopts a liberal stance and therefore seeks essentially free trade with third countries including the Americas, Australia and New Zealand, this will certainly expose many sectors of domestic agriculture to strong competition and affect the structure, scale of and footprint of UK agriculture and, without strong environmental and social measures in place, on the rural environment and cultural landscapes too. A smaller number of generally larger and highly cost conscious farms could be created with larger field sizes and fewer grazing livestock for example. The extent to which current environmental regulations are maintained would also be important in determining the consequences of leaving the EU. These are more predictable if the UK stays within the EEA, where the majority of EU regulations applying to agriculture, with the exception of the nature directives, stay in place (see chapter 4).

### **7.2.2 *New domestic policies***

Because it will take considerable legislative time to change regulatory and trade policies and many existing EU environmental regulations might continue to apply at least for a time on either scenario, the most important short run policy changes would be those associated with the domestic agricultural policies which replace the CAP. There are many who are keen to escape the Common Agricultural Policy and its associated bureaucracy and budget cost (currently 36 per cent of the EU budget). It must therefore be presumed that on exit from the EU the CAP will be replaced by British agricultural policies (BAPs) which are

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<sup>4</sup> Of course if none of these mentioned options materialises and the UK finds it trades with the EU on WTO market access terms then UK exporters will face significant tariffs on exports to the EU.

<sup>5</sup> These UK choices of third country trade stance is of more than passing interest to the rest of the EU which will be concerned about the ability of rules of origin to prevent flows of imports to the EU via the UK. This is not a problem likely to arise with other EEA/EFTA members because they are more protectionist than the EU.



intended to be simpler and less costly to the public purse<sup>6</sup>. The plural is used because implementation of the CAP is already a devolved matter for the four UK territories. They already have significant differences in the way CAP measures are used – for example the Scottish Government makes use of coupled direct payments which are virtually anathema in English administrations, and the regions make different use of rural development measures including different approaches towards agri-environment schemes. Post exit, variations in policy could widen – although not very far before intra-UK trade is affected. These will heighten the difficulty and tensions in determining the new agricultural policies (see Grant et al 2016).

There is a large list of measures currently available and used in the UK territories under the CAP<sup>7</sup>. The two “pillars” of the CAP offer measures dealing with all of the following: farm income; risk management; emergency market support; young, small & organic farmers; farmers in “areas with natural constraints” (previously “less favoured areas”), innovation & competitiveness, processing & marketing, “quality products”, cooperation, skills & training, economic diversification, rural infrastructure, forestry, renewable energy, rural institutions, and of course environmental management of agricultural land. The future for each one of these will be of very considerable concern, particularly to farmers, but also to other stakeholders, including environmental agencies, NGOs and other sectors of the rural economy.

It should be noted that the CAP itself may change post-UK exit. Agricultural support levels in real terms have been falling for some time and this would be expected to continue, not least if the EU loses its second largest net contributor. However, pushing in the opposite direction the loss of one of the strongest pro-reform members might well slow adjustments to the CAP and increase potential support for payments that are coupled directly to production.

There is a deeply held, and probably correct, belief – at least amongst farming organisations - that there has been, and probably still is, a greater willingness to support farming in Continental Europe than in the UK (Buckwell 2016). Thus if, after departure from the EU, the UK seeks to maintain close-to-status-quo access to large parts of the EU market and simultaneously operates a less protectionist agricultural policy and more open third country trade policy, this would significantly increase competitive pressures on UK agriculture, causing a chain of adjustments with impacts on the natural environment.

There is no space to examine all the facets of the CAP and their fate after a UK departure from the EU. The analysis focusses on two key high level issues for an independent policy regime in the UK countries with perhaps the greatest potential long run environmental impacts: (1) the future of income support for farmers, including mechanisms such as direct payments, and (2) the willingness of governments to support explicitly environmental forms of management on agricultural land.

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<sup>6</sup> It is noted immediately that although some will suggest that the UK returns to its pre-EEC agricultural policy based on guaranteed prices and deficiency payments this will be a non-runner as it does not respect the WTO principles for non production and trade distorting supports.

<sup>7</sup> See the tables in Hart (2015) which list the CAP support implementation choices selected by the devolved territories of the UK. The list serves to illustrate both the numerous facets of agricultural policy the future of which will have to be discussed and decided, and also how differently these matters are treated in the four territories of the UK.

### Implications of changes in support payments

Perhaps the key question will be the fate of the direct payments and other annual payments that are now received by most UK farmers as the principal subsidy for income under the CAP. These made up 68% of total Income from farming in the UK over the five years 2010 to 2014, ranging from 80% in 2010 to 52% in 2014<sup>8</sup>. Averages disguise a wide range of farmers' dependence on direct payments by region and type of farm. Cereals, beef and sheep farms have highest dependence, with EU payments accounting for well over 100 per cent for cattle and sheep farms, especially in the marginal areas, which are widespread in the uplands<sup>9</sup>.

Past UK governments have taken a relatively consistent approach to this topic. The general UK stance on the CAP as expressed by governments of nearly all parties and held by many academics and stakeholders – although with strong qualifications by farmers' organisations – was exemplified by the 2005 Treasury/Defra's vision for the Common Agricultural Policy. (HM Treasury / Defra, 2005). This has not been superseded by a newer approach although it probably no longer represents the view of agricultural ministers in parts of the UK outside England, who are more inclined to protect agricultural production and interests (Grant et al 2016).

The established Treasury view suggests that direct payments should be seen as transitional compensation which is phased out over a reasonable adjustment period. The residual core of agricultural policy is then seen principally as the kinds of measures found in the Rural Development, second pillar of the CAP. This logic suggests the basic payments<sup>10</sup> are phased down, and possibly out. Critical questions would be how fast this is done<sup>11</sup>, and whether phasing would be uniform for all payments or if there would be a progressive reduction in the largest payments on a faster timetable. Whilst both Labour and Conservative governments have strongly resisted disproportionately reducing the scale of payments to larger holdings when EU funds were heavily involved, they might take a different position when they are nationally funded.

Structural change involving a drop in farm numbers, accompanied by amalgamations and potentially some withdrawal of land from farming could follow a sustained reduction of direct payments under national agricultural regimes and the associated fall in profitability. On either of the scenarios considered here the post withdrawal administrations in the UK will encounter strong pressure from agricultural interests to provide support to compensate for the loss of CAP direct payments. Following the approach in CAP negotiations, the request is likely to be for minimal environmental conditions to be attached to such aid, given that producers will be facing direct competition from their counterparts on the continent and in the Irish Republic. Such requests will be most forceful if the borders with the EU remain open and direct financial support to UK farmers is substantially cut, even if the cuts are phased over time and modulated.

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<sup>8</sup> Subsidy values in pounds vary with the €/£ exchange rate. Source: Defra (2015) Agriculture in the UK 2014, Table 4.1, HMSO, London.

<sup>9</sup> That is, for these types of farm the commercial operations are run at a loss so the farm family live on an amount which is less than their direct payments. Source: Gardner (2015) Preparing for Brexit. What UK withdrawal for the EU would mean for the agri-food industry, Fig 5.3, p52 Agra Informa, London, and Buckwell (2016).

<sup>10</sup> And probably top up payments earmarked the young farmers, small farmers, and possibly those in geographically challenging zones as well.

<sup>11</sup> There are plenty of precedents for phasing such changes over five to seven years.

The likely response from a future government is a matter of conjecture. For example, one policy option is that some of the resources saved from CAP direct payments could be directed at a more limited form of support for agriculture on an entirely new model. This could comprise a “modern” strategy of investment in higher productivity, innovation and, perhaps, greater sustainability more akin to the approach to support in other sectors of the economy. It is possible however that escaping the confines of the EU would trigger moves towards an overtly liberalising model, driving structural change in agriculture and a less ‘precautionary’ approach to regulating crop protection products and new biotechnology<sup>12</sup>. A more widespread planting of GMOs could occur on this scenario. A smaller number of larger and more corporate farms could emerge, as occurs in the US where support levels are generally lower. It may be argued that if British agriculture has to face competition from the Americas then it must be allowed to compete on equal terms. What seems highly unlikely is that national administrations would opt for a system of more generous support for agriculture and smaller producers on the Norwegian model, although in principle this would be possible (Gardner 2015).

#### Implications of changes to support environmental management

At present support for environmentally sensitive farming, including organic production is funded together with other activities (such as support for forest management and aspects of food processing) with a large proportion of aid from the rural development pillar (Pillar 2) of the CAP. The agri-environment and climate measures under Pillar 2 of the CAP are one of the largest and most important sources of funding for the environment in the UK. Expenditure over the period 2014-2022 is expected to be nearly £3 billion, of which over two thirds is funded by the CAP.

The objectives of this part of the CAP are similar to those of the UK administrations and are probably not controversial. Major changes in objectives seem unlikely under either of the Brexit scenarios. Measures on the ground may not change dramatically but could vary more between countries. However, the escape from some of the CAP Pillar 2 rules, particularly with respect to control and verification could, given the political will, provide an opportunity for a new generation of more creatively designed and effective rural, environmental and social policy measures in the UK. There is substantial support for this group of measures from most civil society groups in Britain. Whilst farming organisations naturally pay more attention to the much larger CAP direct payments, their attitude towards environmental and social payments to farmers and other organisations in the rural economy might be different if they account for a larger proportion of future support post Brexit.

The key would be the level of resources that the government was willing to commit to pay for land-based public environmental services and protecting the marginal, especially high nature value, farming areas. There is risk that budgets could be reduced significantly, particularly in the light of the recent heavy cuts to DEFRA expenditure. It is worth noting that there are stark differences at present in the willingness to support the marginal farming areas as between England and the other devolved territories, with more enthusiasm in the latter. Agri-environmental payments schemes probably will continue to be run based on the principle amount of income forgone and payment for direct costs. The costs for the government might not be very different in the ‘out’ scenarios. But, to be effective, in the

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<sup>12</sup> This was certainly the tone of a presentation by former Defra Secretary of State Owen Paterson to the 2016 Oxford Farming conference.

absence of support akin to CAP direct payments, the costs of support for farming in the marginal and high nature value areas would have to change (that is, rise) from the current position where (pillar 2) payments for areas with “natural constraints” are essentially top-ups to the (pillar 1) basic payments. There is considerable knowledge, experience and will in the UK to design and run such schemes. Their effectiveness would therefore depend heavily on the resources allocated to them in the different countries within the UK and the attitude of farmers in the new context.

### **7.3 What are the environmental impacts of such scenarios?**

Most of the policy changes expected with a UK departure from the EU would be negotiated after the referendum during the two-year period before exit, and phased in over a number of years. The response is likely to vary within the UK, with distinctive policies emerging in Scotland, Wales, Northern Ireland and England, given different conditions and political priorities. At a minimum this will create uncertainty, although it could lead to better targeted policies over the long term. Buckwell (2016) adduced many political statements from which he concluded that direct payments to farmers would probably not be abolished overnight. In parallel, changes in regulatory standards may well occur but this is considerably more likely under Scenario 2.

More rapid change cannot be ruled out, however. If the exit strategy is Scenario 2, to move outside the EU single market, and if the wider trade policy stance is to move towards a freer trade regime without acceptance of a special case for agriculture, then there would be sectors in which UK farmers would lose their tariff free access to the EU, affecting lamb for example, and thus many livestock grazing areas. The competition for most other sectors could increase too, with those particularly affected by reduced profitability and output potentially including milk, beef and sheep producers. If, however, the strategic choice is scenario 1 with more or less continued access to the single market and if trade relations beyond the EU were to change little, at least initially, then there would be less disturbance to UK agricultural market conditions. The impacts of Brexit would then be largely settled by the domestic agricultural policies which emerge. Farming practices and intensity will adjust as the new policies are rolled out and implemented and the environmental impacts will then appear, some rapidly, others over a longer period.

The decisions taken on these issues would have significant, and regionally distinct, impacts on the environment. The more livestock oriented farming systems in Wales and Scotland for example could suffer more from a more liberal trade regime with less generous payments unless compensation was put in place. This could lead to greater concentration of livestock on more viable farms and grazing over a smaller area. A further outflow of labour from agriculture could encourage greater mechanisation and might also imperil the capacity to perform some more labour intensive environmental management work on farms and increase the abandonment of farmland with a variety of environmental consequences, such as the growth of scrub and, in some places, afforestation.

At the same time, environmental authorities, civil society organisations and some farmers could be expected to make the case that the principal market failures surrounding land management concern the rural environment and society. First, if agricultural payments are phased down and perhaps out, then the leverage of environmental conditionality attached to those payments is diminished and perhaps lost. Cross compliance may disappear and this element of environmental protection would be weakened.

In terms of agricultural adjustment and land management, outcomes will depend considerably on the degree of severity with which agriculture has its current financial support curtailed, any steps taken to restrain EU imports from displacing UK production, and to what degree UK farming is more exposed to greater competition from lower cost suppliers globally such as Brazil and New Zealand. Assuming a reduction in support, it is unclear whether the same proportion of total spending would be earmarked for environmental objectives as under the CAP (ie 30 per cent of direct payments and a large proportion of the UK rural development programme). The risk is that the “green” component might well shrink given anticipated pressures on government expenditure and the level of pressure to support farming incomes. In turn this could lead to a reduction in agri-environment scheme budgets affecting most elements of the rural environment including biodiversity, water quality, climate mitigation and conversion to organic production. In parallel, there could be reductions in budgets for other land support measures including aspects of woodland management and investment in food processing.

There are also questions about how far climate, environmental, animal health and welfare, food safety, worker safety and plant and animal health regulatory standards or ambitions will be affected by an EU exit. It is difficult to imagine them being strengthened given the history of UK policy in this area and more likely that they could be weakened, especially in Scenario 2 where EU constraints are more limited.

Given the probable level of political support for most of these standards, major changes in regulation are perhaps unlikely. However, some change can be expected. For example, UK governments have been more favourable to the adoption of GMOs in agriculture than many other EU Member States and have been less inclined to regulate certain pesticides on the basis of hazard, notably neonicotinoids. On any scenario there is likely to be pressure on agriculture to contribute to climate mitigation goals as UK authorities work towards meeting commitments in domestic carbon budgets. Forms of intervention may change as well, with a tendency to draw back from regulatory approaches which many associate with the EU. For example, there could be more reliance on trust and responsibility to meet desired objectives through voluntary approaches for farmers, as has been the case for pesticides, and for private certification and standards. Conceivably the quid pro quo for such an approach might be stronger sanctions when infringements are detected, but this is conjectural as well.

Assuming significant changes, the adjustment process, which may take a decade to work through, will mean protracted uncertainty for UK farming and for those who supply it with goods and services. This will probably not be a climate of confidence and investment. At least in the short to medium run, the uncertainties and dampening effects of the withdrawal and prospect of further withdrawal of significant financial support may inhibit major intensification projects with some environmental benefits. However, at the same time there is likely to be sustained pressure on farmers to cut costs which is likely to cause a cut back in labour along with a motive to reduce expenditure on “non-essential” environmental management. Those high tech farming systems offering cost savings may be attractive if the regulatory climate towards them is also more sympathetic.

In such circumstances, those nationally-funded agri-environment schemes, which continue to be available would provide some income surety for a section of farmers, assuming that payment levels are adequate. Nonetheless the level of farmers’ confidence in the continued availability of these payments, including those for maintaining organic farming, may diminish given their reliance on UK political priorities, including Treasury support. This could



well be perceived as less predictable than the CAP. The willingness of farmers to commit to environmental practices which require relatively long-term public sector support may be significantly tempered by such concerns.

If there were to be very significant cuts in farm support payments, and strong competition from imports acute difficulty could be experienced by those who have substantial borrowings, or have bid high rents to acquire or expand their holdings, and those highly dependent on hired labour. There could be a spate of business collapses that puts land onto the market for purchase or lease under duress. This would certainly reverse the still continuing trends of rising land rents. Such a farming recession is likely to further encourage the long-established process of farm consolidation, with smaller farms being absorbed into larger holdings at a faster rate than now. On balance, this is likely to have adverse consequences for the landscape and biodiversity as it is often accompanied by the enlargement of field sizes, more specialisation and sometimes the removal of field boundaries and other natural features. The more the changes are signalled ahead, and the slower the cuts in direct payments, the less dramatic these effects. As a side effect, lower prices could provide land acquisition opportunities for those not dependent on farming income or whose interest is in more environmentally sensitive land management.

Briefly considering the major farm types, for **arable farming**, already concentrated in relatively large scale units, there is little reason to expect further intensification in the sense of more fertilisers and pesticide applications per hectare as price ratios will not signal this; indeed they may signal the reverse. But, the likely harsher economic climate may encourage larger scale production, larger field sizes more use of contractors and perhaps more efficiency in the use of purchased inputs such as fertilisers through precision agriculture. There could be bankruptcies in this sector, but generally land is unlikely to go out of cereals unless there are strong local alternatives or the crop is ill suited to the land. Investment in hedges and field margins, buffer strips and small-scale habitats is likely to be even more dependent on agri-environment payments than it is now, and pressure for crop diversification introduced under the CAP is likely to be removed

As noted earlier, it is the **grazing livestock sector** that is most likely to face economic pressure and to adjust, especially, but not only, those farms located in remoter and marginal areas. From an environmental perspective, the greatest concern here is the capacity to sustain the management of areas of High Nature Value farmland which is concentrated in these areas. There is a danger that their current decline will accelerate. Much will depend on the decisions taken in the constituent countries of the UK on any offsetting environmental or social payments if CAP style direct payments are phased out. This is the group of farms most dependent on direct payments for whom almost any cuts will drive some out of business and holdings to be merged. The outcome may be fewer farms and also lower livestock numbers with a mixture of both environmental benefits, from reduced methane emissions for example<sup>13</sup>, and environmental costs in the form of the withdrawal of grazing from some sensitive habitats. Some of the land will be driven out of agricultural production, some may revert unmanaged, to scrub and eventually woodland.

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<sup>13</sup> Lower emissions from livestock in the UK contribute to global climate mitigation only if they are not replaced by emissions elsewhere. These can arise from additional livestock in other countries which export to the UK market (unless the net emissions of the adjusted food chain are lower.)

However, particularly if appropriate incentives were available for environmentally sensitive afforestation there could be an opportunity to increase the woodland area in a beneficial way. Other areas of land will be attached to surviving farms with larger holdings emerging in many parts of the country. The social and environmental consequences will vary by region and by the counter measures offered in each region. The main danger is that measures to counter the environmental costs of adjustment will not be sufficiently funded.

For the **dairy sector** already, tightly stretched by low prices, a great deal will depend on the willingness and ability of major retailers of liquid milk to negotiate sufficiently remunerative contracts to keep sufficient production capacity in business. Consolidation of dairying is likely to continue and this could be expected to reinforce the existing trend towards intensification.

**Intensive livestock production and horticulture** are least helped by the CAP. If lower feed costs materialised this would help the pig and poultry sectors in economic terms while exposure to more competition from outside the EU could be damaging. Again, further consolidation might be expected and the role of regulation then becomes more important in containing pressure on the environment. Weaker regulation on water quality under Scenario 2 could be a major concern for example.

Specialised contractors may play an even more pronounced role in farming under both scenarios. This could have a mixture of impacts. Environmental benefits could arise if it brings more knowledge-intensive precision arable and livestock farming. But the opposite could be true if instead it means more consolidated and specialised farm businesses that are even more sensitive to any environmental regulation which is seen as imposing costs.

## **7.4 Conclusions**

The classic, commodity-based, CAP supported environmentally destructive agriculture until the mid-1990s. For two decades the move towards decoupled direct payments and expansion of rural development measures have been in a preferred direction for the environment. Yet the CAP is still far from a well-conceived and executed policy for the environment; support payments are not sufficiently linked to the provision of environmental public goods. Relatively high levels of support for farming under the CAP have held back some labour outflow and structural change and contributed to a more diverse patchwork of farms including substantial areas of HNV farmland, not least in the UK. However, the expansion of rural development spending has been halted and the potentially bold concept of greening Pillar 1, taking 30 per cent of the main CAP budget, is not being implemented in the way that the Commission originally intended. Its 'green' status is very actively questioned.

Outside the EU the CAP would cease to apply and it is likely that a new regime in the UK would include a greater diversity of approaches in the different countries than exists now. Nearly all commentators agree that levels of government support for agriculture would fall, both because of well-established UK positions on agricultural policy (particularly the CAP) and the sharp pressures on the budgets of Defra and its equivalents. Economic pressures on farms are likely to increase, triggering structural change towards fewer and larger farming units with immediate environmental consequences.

The scale of adjustment will depend on many factors including ruling market prices and the willingness of national administrations to provide farmers with support and protection from

competition, not least from exporting EU countries. There must be a concern that national funds devoted to agricultural support will be focused more on economic survival, particularly in the livestock sector, than on promoting environmental management or the survival of hill farms and HNV farming systems. Funds for agri-environment measures could well be reduced, perhaps substantially. In parallel, the leverage to encourage good environmental practice provided through cross compliance would lose considerable force if annual support payments fell heavily.

As the UK was one of the pioneers of agri-environment schemes it would be surprising if the new national policies did not include significant provision for such schemes. However, their impacts will depend mostly on the generosity of funding, the corresponding commitment to effective implementation, as well as farmers' willingness to engage in such schemes. The latter is difficult to predict.

The importance of environmental regulation and its enforcement would grow in a less protected, more 'free market', agriculture. Under Scenario 2, there is a significantly higher probability that regulations would be withdrawn, including those with environmental objectives. Much would then depend on the resources and will for better regulatory enforcement.

Given the resource constraints, entirely domestic agricultural policies could be worse for the environment than the CAP; especially if funding for agri-environment schemes was cut or not increased significantly to meet the enhanced challenges, which seems a significant risk. There could be a heightened tension between agricultural production and the environment in the medium term if a less protectionist more technologically focused government were elected and pursued agricultural policy accordingly.

The green element of the current CAP sends an important new message that 30 per cent of support should be tied to environmental delivery. This is a step forward but the mechanisms for implementing this and the scope which it gives to governments, including the UK, to avoid more substantive environmental commitments are causing many to question what will be achieved (Hart et al., 2015). Aspects of the CAP, such as the draconian penalties for minor auditing errors, are a barrier to greening support for agriculture in an effective way. Whether these can be changed is unclear. However, UK withdrawal is likely to lead to less financial support for environmentally sensitive farming and a more free market approach, introducing new environmental pressures unless balanced by appropriate regulation and expanded expenditure on farm environmental management. Most experienced observers are sceptical that this would occur.

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## 8 Fisheries policy

### 8.1 Introduction

Britain has a long history as a fishing nation and its waters are some of the most productive in Europe. Today, however, the British fishing industry is a shadow of what it once was – both in terms of number of fishermen and in economic terms<sup>1</sup>, although, its political influence remains strong. In the current “Brexit” debate, critics often blame the decline of the UK fishing industry on the EU Common Fisheries Policy (CFP), which has bound the UK, like other coastal EU Member States, since its accession in 1973 (Annex A – Annex to Chapter 8 provides a background to the CFP and the establishment of equal access to marine fisheries in the EU). Undoubtedly, the evolution of the CFP has been complicated and controversial and its reputation is poor in environmental circles. However, the policy has undergone significant changes in its most recent reform and care needs to be taken to distinguish the impacts of the policy itself (particularly the consequences of past policy) from those of rapid technical and economic change in the industry as a whole. This chapter explores the implications of a UK departure from the EU for the sustainability of fisheries both in the UK and in the EU overall. Regardless of Brexit scenario (see Chapter 3), it is unlikely that the UK would be bound by the CFP if leaving the EU<sup>2</sup>.

### 8.2 The track record of CFP and the environment

It is widely acknowledged that the CFP has not been able to ensure sustainable fishing in the EU – neither from an ecological nor economic perspective (see eg Froese and Proelß, 2010)<sup>3</sup>. A fleet capacity that is too large and use of harmful gear have contributed to only 12% of assessed stocks being in good environmental status in terms of both fishing mortality and reproductive capacity (EEA, 2015). Of assessed stocks in the Northeast Atlantic, 39% were overfished in 2013; 88% in the Mediterranean and Black Sea (EC, 2013a). At particular risk are migratory and straddling<sup>4</sup> stocks as they are exposed to fishing pressure at different life stages, as well as species and habitats on which there is limited scientific knowledge. In fact, 40% of commercially targeted stocks remain unassessed (EEA, 2015). Nonetheless, fisheries issues cannot be dealt with in isolation as marine ecosystems are interconnected and targeted species are dependent on the state of their surroundings.

The general view is that the new CFP is a big step in the right direction, albeit less ambitious than environmental organisations had pushed and hoped for. Table 8-1 outlines some of the major environmental concerns regarding the CFP prior to 2013 and how these have been addressed in the most recent reform. These are important to be clear about, as some issues

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<sup>1</sup> The British fleet has shrunk by 75% since 1938. A majority of the catch is landed by the Scottish fleet while there is also a politically important English inshore sector comprising smaller boats (MMO, 2014). Meanwhile, British aquaculture production has increased steadily over the past 30 years (Ellis et al., 2015).

<sup>2</sup> The UK implementation of the CFP is a devolved issue. In case of Brexit, potential impacts on devolved policies will be an internal matter for the UK, but one can assume a high level of further devolution to occur.

<sup>3</sup> In 2010, the EU was still far from achieving its commitments made to the World Summit on Sustainable Development of maintaining or restoring stocks to levels capable of producing Maximum Sustainable Yield by 2015, where possible.

<sup>4</sup> The United Nations defines “straddling stocks” as: *stocks of fish such as pollock, which migrate between, or occur in both, the economic exclusive zone (EEZ) of one or more States and the high seas* (UNEP, 2015).

that have in fact been addressed are sometimes still used as arguments for why Britain should leave the EU.

**Table 8-1 Steps to address major concerns about the CFP – the 2013 reform**

Major CFP concerns	Changes introduced in 2013
<p>The EU has provided some of the world’s highest subsidies to its fishing industry (European Court of Auditors, 2011). Originally intended to make the EU fleet more competitive; this financial support has led to major overcapacity and overfishing of many stocks. There is widespread criticism that EU tax payers are paying millions to maintain an unsustainable private industry which operates in a competitive market (Lagares and Ordaz, 2014), and it is estimated that, in many Member States, the costs of fishing are a greater burden to the public budget than the total value of the catches (EC, 2009b). This is exacerbated by extensive fuel tax exemptions for fishing vessels across the EU (Borrello et al., 2013).</p>	<p>The new European Maritime and Fisheries Fund (EMFF) introduces a substantial increase in funding for data collection, control and enforcement. This has been widely supported by environmental groups. The 2002 CFP reform achieved significant reduction of capacity-enhancing subsidies. The new policy also includes obligations to adjust fleet capacity to fishing opportunities over time, report on this progress annually and take measures on identified overcapacity.</p>
<p>Annual scientific advice on sustainable TAC levels has been exceeded by EU decision makers by on average 33%, influenced by a strong industry lobby. TACs are often set in relation to fleet capacity or historic shares rather than from the perspective of a sustainable future of the industry (O’Leary et al., 2011). Importantly, however, when stocks decline, it is the distribution of fish that is reduced rather than the density of fish. Scientists generally chose study sites randomly to maximise representability of their results, whereas fishermen actively search out stocks as their ambition is to fill their quota. Fishermen’s data may therefore give a rather different view than scientific results.</p>	<p>An obligation to set TACs in accordance with maximum sustainable yield (MSY), forcing politicians to listen to scientific recommendations of catch limits. Although this is yet to solidify in practice, and political tension can be expected to increase as the MSY constraint becomes more binding (cfp-reformwatch.eu, 2015), the introduction of the concept into the legislation is important progress.</p>
<p>EU rules have long compelled fishermen to discard catch that they do not have quota for – partly a result of quota being assessed based on landings rather than catch. This unsustainable practice, probably amounting to between 10 and 60% of catches (EC, 2008), has been criticised by international organisations and fishermen alike (see Box 8.1).</p>	<p>A ban on discards will be gradually implemented from 2015 to 2019 (see Box 8.1).</p>
<p>Fisheries Partnership Agreements (FPAs) between the EU and other nations have enabled industrial European fleets to fish in the EEZs of several developing nations (including Mauritania and Morocco). This has caused criticism for its impacts on local communities, their livelihoods and their marine environments.</p>	<p>A requirement that future FPAs are to be “sustainable” and only allow fishing of surplus stock. Resource conservation and environmental sustainability is part of the aim.</p>
<p>There has been recurring criticism of the CFP generating too much centralisation of decision-making to Brussels. It is argued that, in the area of fisheries especially, formulation of regulation is better kept closer to practitioners.</p>	<p>Increased regionalisation of governance in order to avoid micro-management (Salomon et al., 2014). One example is management plans being shifted increasingly towards regional and national scale.</p>

Application of the reform is far from straightforward but, recent trends indicate that the most economically valuable stocks in the EU and generally the most intensely managed, are



showing signs of improving<sup>5</sup>. The majority of these stocks have been managed under the CFP and under annual Total Allowable Catch (TAC) limits. Fishing pressure across EU waters appears to have reduced, especially following the 2002 CFP reform (Fernandes and Cook, 2013). While this certainly is a positive development, it is important to acknowledge that intensively managed stocks only represent about 25% of all EU stocks and are mainly located in the North Sea. Less economically important stocks that are not allocated TACs – to the extent their status is assessed – do not seem to be improving. For example, 91% of monitored stocks in the Mediterranean are still fished above a level where they can produce Maximum Sustainable Yield (MSY) (EC, 2013b). The state of stocks that are not managed at all and species which are not commercially targeted is still largely unknown.

A sufficient level of integration between fisheries management and environmental conservation is yet to be achieved in the EU. Nonetheless, the EU has gradually managed to legally enforce environmental principles that are still merely an aspiration in international law (see Section 8.4). The new CFP includes, for instance, acknowledgement of the marine environment at large (which is also reflected in financial aid via the new European Maritime and Fisheries Fund, see 1.3.3 and 1.3.5), the concept of ecosystem-based management and a legal obligation to protect the marine environment and apply a precautionary approach to fisheries management (CFP, Art. 2(2)). It also states that its implementation should contribute to achieving good environmental status of marine and coastal areas in the EU by 2020 under the EU Marine Strategy Framework Directive (MSFD) (CFP, Art. 2(5)(j)). In parallel, the MSFD includes a provision that all populations of commercially exploited fish and shellfish are to be kept within safe biological limits by 2020, and exhibit a population age and size distribution that is indicative of a healthy stock. Both pieces of legislation encourage regional cooperation to achieve this ambitious target, in view of the interconnectedness of European waters and the mobility of fish stocks. With these explicit references to environmental concerns in the new CFP and the MSFD, there is a reasonable chance that these principles may in time give rise to environmentally more demanding standards, which may have influence beyond the EU through trade in marine species between the EU and other markets<sup>6</sup>.

The new CFP also sets out to boost the growth of the EU aquaculture sector, which has grown less than in other parts of the world in recent years. Ambitions include, for instance, reducing administrative burdens, facilitating access to suitable locations and improving overall competitiveness. To achieve this, an Aquaculture Advisory Council is being established as a consultative body that will enable cooperation among relevant stakeholders and sharing of best practice (Dubolino, 2013).

### **8.2.1 Britain and the CFP**

The UK has been an important player in the development of the CFP, not least in the latest reform. UK Ministers argued in particular for the importance of a science-based approach, a regionalised system of fisheries management allowing greater scope for Member State

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<sup>5</sup> According to Fernandes and Cook (2013), 70% of assessed stocks in the EU showed either decreasing fishing rates or an increasing stock abundance in 2011. See also Cardinale et al. (2013); Hilborn and Ovando (2014); and Beddington et al. (2007).

<sup>6</sup> For example, the EU is currently trying to influence Thailand to combat illegal fishing by warning the Thai government that it might impose trade bans on Thai fisheries products into the EU.

cooperative decision-making, and (partly in response to media concerns) the issue of discards (see Box 8-1). Prime Minister David Cameron argued in the House of Commons that the recent development of the CFP demonstrated that reform could be achieved in the EU from positive engagement (Gov.uk, 2014).

For different reasons, the UK has often raised concerns that, for example, the EU systems of shared access and way of allocating fishing rights have been unfair to British fishermen (see Section 8.3.2 and Annex A – Annex to Chapter 8). In the current debate, fisheries and the CFP are often used as key arguments for why the UK would be better off outside the EU, pointing to the fishing industries in Norway and Iceland as inspiration (HM Government, 2014b). Not surprisingly, matters are not that simple.

Three points are particularly worth clarifying:

***Point 1 – Claims are often made that the CFP has been responsible for the decline of the British fishing fleet, but actually this decline is mirrored elsewhere.*** The CFP has indeed imposed pressures on the UK that may otherwise not have been present, eg greater competition, cumbersome governance processes, and little regionalisation until recently. Since British accession, the number of people employed in UK fisheries has decreased by about 46%. Notably, however, between the first records of statistics from 1938 and the early 1970s, the number of UK fishermen decreased by 55% (Marine Management Organisation (MMO), 2014). According to the Scientific, Technical and Economic Committee for Fisheries (STECF) (2015), the drop in employment between 2008 and 2013 was primarily caused by a continued substitution of capital for labour and a declining number of fishing vessels. The drop in the number of vessels in the UK is attributed to technological development and new more effective vessels replacing old ones. Significantly, fishing industries have shrunk also in other European states over this time (STECF, 2015; Baker, 2015)<sup>7</sup>, also due to eg technological development and structural challenges. For instance, the number of Norwegian fishermen has dropped over 85% since the 1940s. In the period of 2000–2011 alone, the number of registered Norwegian vessels fell from 13,000 to 6,250<sup>8</sup> (FAO, 2011).

***Point 2 – Managing your own stocks does not necessarily lead to more fish.*** To blame the decline of British catches on the CFP alone is incorrect. For example, Thurstan et al. (2010) present an analysis of 118 years of statistics, showing that most of the decline of the important demersal fish stocks around the UK in fact occurred prior to the CFP and that stocks have been relatively stable since. Globally, stocks harvested for human use have dropped by half in the last 40 years (WWF, 2015). The FAO (2015) points out that nations that have achieved a relatively sustainable fisheries management (eg New Zealand, Australia and the USA) owe their achievement to 20 to 40 years of effort and adjustment. All these countries have sole jurisdiction of their EEZs, but they are also geographically isolated in relation to other nations' waters. In Europe, coastal states' waters neighbour one another and most of the stocks found in UK waters, for example, move between administrative borders to other EU states, to Norway and the Faroes. Attempts to manage fisheries in one

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<sup>7</sup> Between 1973 and 2009, UK catch fell by 47%. EU-15 average was a 42% decline (Baker, 2015).

<sup>8</sup> In parallel, the number of Norwegian fish farmers (involved in aquaculture of various species) increased from about 4,300 in 2000 to 5,800 in 2011 (FAO, 2011).

EEZ would inevitably affect other fisheries (see Section 8.3.4). This should be acknowledged when considering how long it is taking the EU to establish a successful management regime.

One issue that has caused particular concern in the UK has been the mismatch between political decisions on the allocation of quota and the development of European Court of Justice case law which has made it clear that there should be no restrictions on the European nationality of fishing vessel owners either locating or landing catch in EU waters. One common complaint is that this has led to British quota being used by Spanish-owned vessels – sometimes called “quota-hopping”. However, Spanish companies in this case exercise their freedom of establishment and set up companies in the UK, which then allows them to acquire British fishing vessels and apply for a UK quota (see, eg rulings in the *Factortame* cases, Case C-213/89). The primary allocation of fishing opportunities in EU EEZs is primarily based on historic catch shares, as agreed by Member States in 1983 (see Annex A – Annex to Chapter 8), a method that is a common approach for quota setting. It is also worth noting that the UK fleet operates in other States’ EEZs (MMO, 2015b).

***Point 3 – Britain’s previous priorities do not necessarily indicate that the British marine environment would benefit from being outside the CFP.*** In theory, the UK could pursue more environmentally sustainable fisheries management than current EU management. The UK has generally been uncomfortable with the CFP and often a leading critic. On many issues, especially recently, it has in principle been in favour of a more environmentally sustainable approach. However, it has not always been active in the vanguard of leading players on issues that would have potential effects on its main fleets. Furthermore, there is sometimes confusion between the role of politicians and the role of civil society and the British media in driving the environmental credentials of domestic and EU fisheries (see Box 8-1). For example, in the latest CFP reform, the UK Government has been criticised for having missed several chances of being more proactive in the negotiations (HM Government, 2014a).

#### **Box 8-1 Banning of discards – a bottom-up approach**

Discarding fish catch – throwing unwanted or excessive catch over board dead or dying – is an unsustainable and wasteful practice which, until the 2013 reform, was effectively compulsory under the CFP. This was a result of different aspects of the policy’s design, such as quota being assessed based on landings, meaning that catch that fishermen did not have quota for would have to be thrown back. The same applied if fishermen had exceeded their quota or did not use sufficiently selective fishing gear (EC, 2013). An average 23% of catches in EU fisheries were thrown back dead into the ocean (EC, 2011) – figures varying widely, from 1.4% in some fisheries and as high as 90% in others (Kelleher, 2005).

A discard ban was discussed already in the 1992 reform, following the banning of discards for certain fisheries by Norway in the late 1980s (Norwegian Ministry of Fisheries and Coastal Affairs, 2009). This had resulted in discards becoming prohibited north of latitude 62°N, the border to Norwegian waters, but compulsory south of it (in EU waters). However, the Commission concluded that a ban was not feasible in EU waters at the time (European Commission, 1992). Interim measures have since been in place at the Norwegian and EU borders (Clucas, 1997). In 2012, European fisheries ministers addressed the issue again and eventually agreed on the Commission’s proposal which included a gradual ban on discards in EU waters. The process was encouraged by recent public outrage and extensive viral protests of the practice, such as the British Fish Fight petition with over 870,000 signatures. Maria Damanaki, EU Fisheries Minister at the time, stated that “We need effective campaigns like Hugh’s Fish Fight to wake up people to support change” (EC, 2015). The particularly UK heritage of the discard ban was thereby largely derived by advocacy from campaigners, media coverage and NGOs, rather than British politicians. The UK fishing industry considered the proposal too prescriptive and difficult to enforce. The final provision agreed on was a gradual implementation of a landing obligation which is not as ambitious as initially proposed. In the final vote on the formulation of the CFP discard ban, the UK stepped down from its leading position and only

Sweden voted for a more progressive obligation.

A British fisheries regime outside of the CFP would likely include a ban on discards, considering that both the EU and Norway now ban this practice. Also, the UK is in a good place to implement a ban following extensive British research and exploration of fishing techniques with better selectivity and substantial reductions have been made in some fisheries (80-90% in the North Sea roundfish fishery over 20 years) (Reeves, 2013).

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## 8.3 The effects of leaving the EU on fisheries

In whichever relationships the UK would resurface following Brexit – as an EFTA/EEA member or entirely detached – the CFP would likely have to be replaced by national policy as the CFP is not covered under the EEA Agreement. The UK would need to develop a management body to develop the new legislation and take the decisions that the EU currently takes. It is safe to say that this process would involve extensive negotiations, both regarding the practicalities of leaving the EU institutions and schemes related to the CFP, as well as trying to establish a new domestic system in collaboration with the devolved British jurisdictions. Political tension between central and devolved administrations is likely, especially reflecting the large differences in the relative importance of the fishing industry between the devolved nations. Scotland, with its heavy economic dependence on demersal and shellfish fisheries, its EU markets and its robust support for EU membership, is critical in this regard.

It is impossible to predict the outcomes of any of these negotiations; however, the complexity of the related scientific issues; the high number of relevant stakeholders and the cross-sectoral nature of fisheries management indicate that negotiations would be difficult and lengthy. CFP departure will generate an immediate high level of uncertainty. For example, fishing rights are allocated on an annual basis following EU-wide negotiations (deep-sea stocks every two years). While the UK could base its allocation on the scientific advice provided by ICES, it would not be able to simply maintain EU rules waiting for a domestic alternative, which puts significant time pressure on domestic and international negotiations following Brexit.

Brexit would involve compromise on many issues and the UK would be under pressure to be cooperative, especially in areas that more directly affect other EU states. Commercial fisheries are a typical example. On the one hand, it is therefore likely that the UK would aim to adopt a “collaborative neighbour” approach, seeking to develop a shared stock management framework with states with neighbouring fishing waters. Norway and its arrangement with the EU is the most appropriate comparator here (see Annex A – Annex to Chapter 8). It is also possible that, given the size of the UK EEZ and its relevance in fisheries



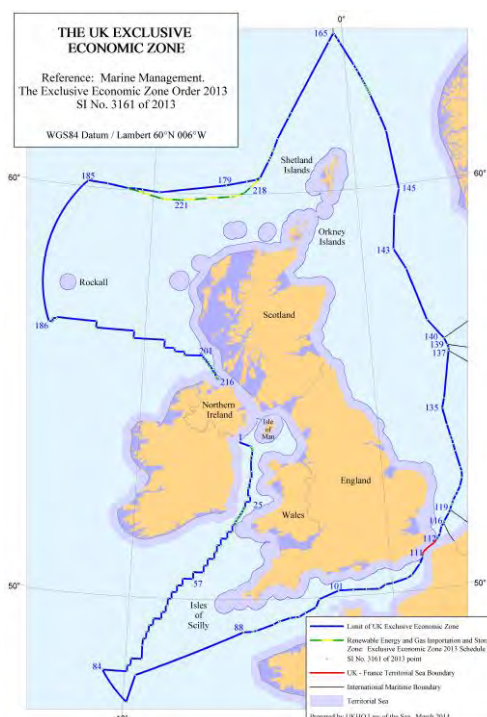
terms to other Member States, that agreement on access to UK fisheries would become an issue in any negotiations to join the EEA. The UK could be expected to re-apply for membership of important international bodies, such as the regional fisheries management organisation (RFMO) North East Atlantic Fisheries Commission, in which it plays a leading part already, but as a member of the EU. The UK would have to be a member of the relevant RFMO in order to retain access to high seas fisheries.

On the other hand, one could envisage a more strictly autonomous approach by the UK outside the EU, the outcomes of which are even more difficult to foresee. This approach may be appealing, not least to demonstrate a robust national stance, although a combination of science and experience suggest that considerable cooperation is essential when it comes to fisheries management as stocks know no national boundaries. In addition, the access that UK fishermen get to other EU Member State waters means greater diversity of fishing opportunities for the UK. Respondents to the Review of the Balance of Competences between the UK and the EU related to fisheries overwhelmingly support some form of supranational cooperation for successful management (HM Government, 2014a).

Ultimately, the environmental credentials of post-Brexit UK fisheries management would depend on whether the assigned UK management body was able to resist short-term political pressure to allow fishing above sustainable levels (unlike the EU in the past), the quality of decision-making in shared management bodies, and the degree of compliance by UK fishermen with management measures (R. Churchill, personal communication, 25 January, 2016). Several key issues would need to be confronted following departure from the CFP in order to create an effective and sustainable management regime. Some of the aspects which seem relevant to making a reasonable judgement about the potential implications are outlined in the following sections.

### 8.3.1 Total Allowable Catch (TAC)

Currently, setting of TACs and allocating shares to individual states is the prerogative of the Council<sup>9</sup>. Outside the CFP and the equal access principle, the UK would gain sovereign right to access marine resources in its EEZs. Excluding other nations' vessels would theoretically give British fishermen access to stocks of which they currently land only parts (Fernandes and Stewart, 2015)<sup>10</sup>. Importantly,



**Figure 8-1 The UK Exclusive Economic Zone (EEZ) (MMO, 2013)**

<sup>9</sup> TACs are based on scientific information from the International Council for the Exploration of the Sea (ICES). Certain stocks are negotiated together with Norway and Iceland.

<sup>10</sup> Bilateral fishing agreements made prior to UK accession in 1973 may remain in force, meaning that some resource sharing will continue. However, because the United Nations Convention on the Law of the Sea (UNCLOS) and other relevant pieces of international law have been put in place since 1973, it could be assumed that all previous agreements would need to be renegotiated.

for geographical reasons, the UK's EEZ only extends out to 200 nm in a few places (see Figure 8-1). The most valuable commercial fish species for British fishermen (including mackerel, herring, haddock, cod and plaice) spend parts of their lives in the EEZs of other countries (Fernandes and Stewart, 2015). It is therefore a fair assumption that the UK would partake in negotiations with the EU for TACs of stocks which are currently fished by several nations.

Business for Britain (2015) argues that, alone, the UK would have *a greater incentive to reach realistic quotas based on scientific advice and genuine community assessments of where stocks currently lie (geographically and numerically)* (p.442). However, the New Economics Foundation (NEF) has recently shown that the UK has one of the highest average tonnages above scientific advice among the studied cohort of 15 Member States. Meanwhile: *While published data does not allow for a full comparison, TACs that involved non-Member States such as Norway, the Faroes and Iceland are even more likely to exceed scientific advice* (NEF, 2015, page 3). In the 2014 TAC negotiations – the first time that the new stricter CFP rules applied – UK representatives negotiated, for example, for a considerable reduction of the quota cuts for Celtic Sea cod advised by scientists. The scientific proposal to cut quotas by 64% to allow the population to recover was reduced to a 26% cut. Both these stocks have previously been severely overfished and still need time to recover (ICES, 2015).

If the UK leaves the EU, it might need to negotiate individual TACs with each other state sharing that particular fishery. With the UK negotiating as a non-member state and given its track record of priorities, and particularly given the likely impact of devolved decision-making on the conduct of those negotiations, Brexit will not necessarily lead to closer alignment of TACs to scientific advice. This could prove detrimental to stocks and to the recent positive progression of the CFP. NEF (2015) shows that, although TACs have exceeded scientific advice by on average 20% between 2001 and 2015, this has fallen from 37% at the beginning of the period to 11% at the end. Meanwhile, the amount by which the annual advice has been exceeded has decreased from 69 to 21%. Although still a formidable problem, these trends illustrate that the efforts to pursue more sustainable EU fisheries are starting to have effect.

### **8.3.2 Quota allocation**

Allocation of TAC shares to individual fishermen is a Member State competence and will not be directly influenced by Brexit. Yet, it is important to mention as it may explain some of the British fishing industry's discontent. In fact, allocation of quota has been controversial and disputed in the UK for decades (see Annex A – Annex to Chapter 8). In April 2015, Greenpeace received permission from the High Court to take the UK Government to court for potentially not adhering to the new CFP provision stating that Member States must allocate fishing opportunities based on, for example, environmental and social criteria (Greenpeace, 2015). Leaving the CFP would not necessarily bring an end to the internal controversy. Brexit may instead complicate the quota allocation system further as it would bring a period of uncertainty for industry as well as investors. It is likely that, following Brexit, the industry will expect a more generous approach to quota, which could add to the political pressures working against conservation objectives. There may be larger quota to allocate for certain fisheries in the British EEZ, and depending on how quota allocation is



executed; the UK market for quota may be flooded initially leading to a drop in quota value. This could affect those who have secured bank loans using quota as collateral as well as those hoping to enter the market. From an environmental perspective, turmoil and uncertainty about who gets to fish what is not optimal. If nothing else, it could distort monitoring of fishing pressure and thereby the important assessments of how stocks are doing.

Whether Brexit would make more fish available for UK fishermen depends on how the UK would establish catch limits post-Brexit (as discussed above) and how fishing opportunities would be allocated. It is not clear whether quota-hopping between Member States would end following Brexit, as it would depend on the terms agreed in any subsequent agreement between the UK and the EU, particularly with regard to the degree of access that EU fishermen would continue to have to UK waters and vice versa (R. Churchill, personal communication, 25 January, 2016). Importantly, freedom of establishment is included under the EEA agreement (Art. 31), meaning that quota-hopping might continue to some degree if the UK joins the EEA following Brexit.

### **8.3.3 Monitoring and control**

Internationally, failure to manage fisheries has in many cases been a result of lack of implementation and enforcement (Beddington et al., 2007). Enforcement of the CFP is indeed an issue, partly because Member States have extensive legal competence in this area (HM Government, 2014a). According to the OECD (2003), enforcement services constitute the largest share of total costs of fisheries management in the most advanced fishing nations (about 40%). The USA, New Zealand and Iceland had the highest total fisheries management costs per vessel in a 2003 OECD assessment<sup>11</sup>. It is probably safe to say that pursuing sustainable UK fisheries as a single nation would require substantive resources, not least for enforcement.

As fishing opportunities are shared among EU Member States, so is the effort of monitoring and controlling landings to some extent<sup>12</sup>. Outside the CFP, the UK would need to independently police its EEZs to ensure that both national fleets and fleets under any bilateral agreements comply with catch limits, new domestic regulations and international law. This certainly may have an impact on the effectiveness of control. The long-term survival of marine fish stocks and therefore of the fishing industry would be closely linked to the ability of the British Government to impose and enforce strict provisions ensuring the environmental quality of the industry. This would need to be a priority for the Government at a time of substantial cuts in the Defra budget. Furthermore, under the new European Maritime and Fisheries Fund (EMFF), a significant part of the budget received needs to be spent on monitoring and control, and only a 10% match from Member States is required for this share. Although the UK Treasury would save on gross EU contributions, Brexit would result in a loss of access to this budget for monitoring and control.

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<sup>11</sup> This is also reflecting (with the exception of the USA) the relatively small fleets of these countries (OECD, 2003).

<sup>12</sup> In order to harmonise CFP enforcement among Member States, the EU Control Regulation (No. 1224/2009), which entered into force in January 2010, gave EU inspectors stronger authority.

### 8.3.4 *Bilateral fisheries agreements*

Regardless of the Brexit scenario, the UK will have to decide whether or not to allow foreign vessels to operate in the British EEZs (House of Commons Library, 2013). Post Brexit, UK fishermen would lose access to EU waters as well as non-Member State waters (including Faroese and Norwegian waters). The UK would need to renegotiate and/or establish new bilateral fisheries agreements with states whose waters are of interest to UK fishermen. Norway has, as mentioned, bilateral fishing agreements with the EU, but also trilateral agreements with Sweden and Denmark and one neighbour agreement with Sweden (Regeringen.no, 2014). The UK is surrounded by a higher number of neighbouring coastal states with strong fishing interests in British waters<sup>13</sup>, and the British fleets have interests to continue fishing also beyond UK waters. In addition, a number of EU countries (Netherlands, Belgium, France, Germany, and Ireland) have specific access to fishing rights in the 6–12 nm zone of UK waters under historic agreements. Brexit would potentially invoke difficulties over negotiating reciprocal fishing access and quota allocation between the UK and the waters of these countries. A multitude of different agreements may therefore be necessary. The British Angling Trust points out that: *The current ongoing dispute between the UK, Iceland and the Faroe Islands over access to mackerel quota has highlighted the fragility of these third party agreements and the exposure to changing climatic conditions.* These so-called “mackerel wars” have been difficult and lengthy – starting in the mid-2000s and still only partially resolved (see Annex A – Annex to Chapter 8).

### 8.3.5 *Subsidies and funding*

In the period of 2007–2013, the UK received €138 million from the European Fisheries Fund (EFF) (now EMFF), or 3.20% of the total EFF funds for this period (Lagares and Ordaz, 2014). Britain also has access to other EU funds for broader marine application. As the UK provides more money to the EMFF EU budget as a whole than it gets back, some British EU critics argue that this money would be better directed straight to the British fleets. Others point out that the UK Government’s wider funding priorities would indicate that this money might not remain available to the fishing industry in case of Brexit (HM Government, 2014a). Brexit would allow the UK to set its own subsidies and chances are these will be lower, and especially more unpredictable, than the current EU scheme. In addition, the industry would have to make its own case to the Government for why it should receive funds. Interestingly, a study by STECF (2015) has shown that the gross profit margin of the UK large scale fleet has increased from 15% in 2008 to almost 39% in 2014 – the third highest in the EU and the net profit margin is also the third highest in the EU. The Treasury would be aware of this.

If the most environmentally harmful subsidies, such as funds for capacity-enhancing upgrades, were removed, the least viable fisheries might be pushed out of the market which could relieve pressure on stocks. In a favourable political climate, financial support would focus on assisting the transition to more sustainable operations. However, the largest share of UK’s EMFF funds are currently dedicated to helping fishermen improve and modernise their vessels (MMO, 2015a). An immediate “greening” of British fisheries subsidies following Brexit seems rather unlikely.

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<sup>13</sup> British waters are important for many Member States, including Spain, Denmark and the Netherlands.

### **8.3.6 The Single Market**

Access to the single market is crucial to the British fishing industry in terms of exports. France and the Netherlands are by far the two largest recipients of UK fish and seafood exports (76 and 74 thousand tonnes respectively in 2014). Meanwhile, about 75% of fish consumed in the UK is imported, much of it from the EU (MMO, 2014). The UK is furthermore the largest (2012) aquaculture producer in the EU by value (and third by production tonnage), with Scotland representing the bulk of production (Ellis et al., 2015). In fact, farmed salmon is Scotland's most valuable food export, sent to 55 countries around the world in 2012 (the Scottish Government, 2015). If the UK leaves, its relationship to the EU market would change with a range of implications and it would lose access to the new Advisory Council for Aquaculture and any opportunities this might bring.

## **8.4 International fisheries management**

Outside the CFP, UK policy would primarily be constrained by elements of international marine law to which the UK is a signatory. According to Business for Britain (2015), the international institutions available for management of migratory and at-risk stocks, including the FAO, ICES, and the Regional Fisheries Management Organisations (RFMOs), make the CFP redundant. However – a central point in this context – this type of analogy fails to appreciate several things.

Firstly, the regulatory instruments under these institutions are voluntary and only apply to those states that have chosen to become parties to them. FAO measures, such as the International Plans for Actions, are not legally binding at all. Secondly, attempts in the international fora to address harmful fishing subsidies (notably under the WTO Agreement on Subsidies and Countervailing Measures) have stalled. Thirdly, there is little integration and collaboration between the different international regimes, resulting in controversies, inertia and potentially sub-optimal outcomes. They are also very different types of instruments with varying applicability to UK waters – FAO tools are global measures, ICES is a purely scientific advisory body and the RFMOs apply primarily to the high seas. There is also significant overlap between different self-standing international fisheries legislation, such as the United Nations Convention on the Law of the Sea (UNCLOS), CITES, and regional fisheries organisations, an example of what is known as 'fragmentation of international law' (Young, 2009). This complex web of legislation often creates uncertainty in litigations (see eg the *Southern Bluefin Tuna Case*, 2000), and is arguably a significant hurdle in trying to address fisheries issues in the international arena. Most importantly, however, none of these international agreements and bodies have the enforcement power that EU membership entails. For example, there is heavy reliance on RFMOs in international fisheries management, which have been criticised for deficiencies especially in terms of implementation, monitoring and sanctioning (see eg Ceo et al., 2012).

In terms of the environmental performance of fisheries, international agreements and pieces of soft law are relatively weak. The main piece of international legislation – the United Nations Convention on the Law of the Sea (UNCLOS) – is widely acknowledged to have failed to reduce negative impacts on fish stocks and the marine environment. The conservation obligations of UNCLOS are often loose and aspirational and its wording promotes "optimum utilization" of living marine resources which is a narrative focused on use and not one centred to conservation (UNCLOS, Art. 62(1)). In fact, many of the

international institutions related to fisheries are commercially led organisations with an interest in industrial-scale fishing and with marginalised attention to holistic management of the marine environment. As mentioned in Section 8.2, the CFP has a, comparatively, strong legal basis for conservation and ecological consideration. The UK's alignment with the CFP obliges it to apply and transpose this strong environmental legislation. Brexit would be at serious risk of weakening this influence, given the current deregulatory climate in the UK administration. Importantly, Brexit would remove the UK's influence on the continued formulation of marine and fisheries policy in the EU, with the likely effect that the balance of power in Council would swing further away from those Member States willing to place some priority on sustainability issues.

Brexit would give the UK a single vote in negotiations on relevant pieces of international legislation, soft law and in RFMO discussions. On the one hand, this could give the UK greater direct influence (HM Government, 2014a), similar to that which Norway is experiencing (North, 2013). On the other hand, it would arguably reduce the UK's bargaining power compared to the current situation where the EU negotiates on behalf of Member States (HM Government, 2014b). This could prove especially evident for fisheries issues, as the EU's status as the world's largest market gives it a decisive role in international fora. Negotiations might also become more complicated and lengthy as a larger number of single negotiators with a strong stake in the issue can create stalemate, illustrated for example by the lengthy disputes over mackerel catches in the north-east Atlantic mentioned earlier (HM Government, 2014a). The climate for agreeing on international protocols is currently not ideal due to concerns about national sovereignty and arguments over the right to development. It may therefore not be the preferable route to resolve sensitive issues. It is difficult to forecast the direction in which the UK would drive environmental objectives in these fora.

## **8.5 Conclusions**

Fisheries and the EU Common Fisheries Policy (CFP) are frequently mentioned by critics as an important reason why the UK should leave the EU, and it is relatively certain that no matter what the Brexit scenario, the CFP would cease to apply in the UK.

Fishing industries both within and outside the EU have been transformed in the past century and fleets diminished following rapid technological and economic change – not only in the UK but also elsewhere, including Norway. Whilst an important driver; the influence of the CFP should not be overstated. The evolution of the CFP since the early 1970s has been complicated and controversial. The performance of the policy in environmental terms has been unsatisfactory in many respects and much further progress is required. Nevertheless, the policy is slowly starting to steer in the right direction in terms of reducing the environmental burden imposed by industrial-scale fishing in the EU. A number of important problems with the established policy have been addressed in the most recent reform of the CFP. The relatively high environmental ambition of the new CFP compared to international law, for example, in combination with on-going implementation of the Marine Strategy Framework Directive (MSFD), means that we can expect to see a continuation of ongoing improvements in coming years.

This assessment makes it clear that – compared to any foreseeable alternative – cooperative management of fisheries within the EU policy framework is relatively beneficial for the sustainability of stocks. Departure from the CFP would introduce several unwanted risks. Regardless of Brexit scenario,

- ...the UK would need to develop new domestic legislation, replace EU funding streams and take the management decisions that the EU currently takes. This is likely to involve difficult negotiations, including politically tense discussions between the devolved British jurisdictions as well as taking other EU states into account. The need to reach agreements would be urgent.
- ...it is probably safe to say that a considerable number of extended negotiations would also be required concerning fishing agreements with other states, including non-EU states. Most stocks in UK waters migrate to and from neighbouring waters, for example, and the UK is likely to aim to develop a shared stock management framework post-Brexit.
- ...there are no grounds for confidence that it would lead to closer alignment of TAC levels in UK waters to scientific advice. Furthermore, the immediate and undesirable turmoil about how to establish and allocate domestic fishing rights would create a high level of uncertainty for policy makers and industry alike.
- ...considering current UK priorities for financial support to the fishing industry, an immediate “greening” of British fisheries subsidies following Brexit seems rather unlikely.
- ...international marine law and governance arrangements to which the UK is a signatory would continue to apply, although the UK may have to reapply to those organisations where its current membership is as an EU Member State. This process would not necessarily be straightforward. Furthermore, the fact that international governance is horizontal and does not provide means to ensure compliance is a very substantial weakness.
- ...the history of policy in this area does not suggest that drastic reform in favour of sustainable fisheries and ecosystem-based fisheries management in the UK would be more likely outside the CFP.

Governing industrial-scale fisheries is complex and those nations that have achieved a relatively sustainable fisheries management have spent 20–40 years testing different approaches. They have also generally had sole jurisdiction of their EEZs and are relatively isolated in relation to other nations’ waters. These conditions do not apply to the UK so caution needs to be exercised in forecasting what could be achieved unilaterally.

While there are serious issues left to address in EU fisheries governance, particularly regarding its environmental credentials, Brexit would introduce significant risks and does not immediately appear to be a desirable alternative. Meanwhile, the EU will retain its strong leverage in influencing international development on fisheries and aquaculture thanks to its position as the world’s largest market – a mechanism which the UK would lose its influence over.

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Before: Mr Justice Cranston.  
*R (Factortame Ltd) v Secretary of State for Transport*, (1992) Case C-213/89 (*Factortame* cases).

## Conclusions

Although, in principle, there are several scenarios and variations on them that could arise following a UK departure from the EU, our analysis focuses on the two primary scenarios that emerge from whether or not the UK retains access to the EU's single market.

- In Scenario 1 (*"inside the EEA"*), the UK remains inside the European Economic Area. Under this scenario, the UK would remain bound by most EU environmental laws and still make significant contributions to the EU budget. However, it would have no voice within the EU decision-making processes.
- In Scenario 2 (*"entirely outside"*), the UK decides to position itself outside any European grouping, thus losing privileged access to the single market. This option represents a much more decisive step away from the obligations set out in EU legislation – and involves much greater uncertainty about the future.

It is difficult to forecast the results of the negotiations that would follow a vote to leave the EU. However, there must be doubts that the EU 27 would wish to agree to any arrangement that granted the UK privileged access to the single market without requiring compliance with many of the obligations that apply to EU members. Consequently, intermediate scenarios are likely to involve compliance with a large body of EU environmental law, if not the full suite applying within the EEA. On the other hand, Scenario 2 where the UK stands more defiantly alone, negotiating fresh agreements with a multiplicity of partners, suggests that liberalisation could be a central tenet of policy in future governments. The temptation to lower standards and lighten compliance procedures would be very considerable in these circumstances, even if that was not the intention at the outset. Environmental standards that impinged on economic interests could be most at risk in the race for competitive advantage over other countries.

From an environmental perspective we can be fairly confident that the challenges for the coming decade or more will include:

- Implementing the Paris Accord, implying a progressive escalation in climate mitigation efforts and tighter targets;
- Making further efforts to halt and reverse the continuing decline in biodiversity, responding to the requirements of the Convention on Biodiversity, not to mention EU targets;
- Putting in place a more circular economy, including a reduction in waste, and built in obsolesce, reducing Europe and the UK's level of natural resource consumption;
- Managing the seas and oceans in ways that address pollution, degradation and over exploitation of resources; and
- Building a more sustainable agriculture and food system that incorporates better soil management, reduced environmental impacts, more space for nature and less wastage.

This agenda will require action at a variety of levels from the global to the local. However, most require an enhanced degree of cooperation and coherence; governments working together as much as businesses in a supply chain. The European framework and the machinery offered by the EU, despite its imperfections, fills some of the requirements for

accelerating cooperation in ways that increasingly are necessary. The setting of ambitious targets and negotiation of compromises along the way, as occurs in the EU, will be required for many different issues. If the UK intends to be a significant actor in this sphere it is not the most obvious time to step back from Europe.

In conclusion, it is likely that a potential UK departure from the EU would leave the British environment in a more vulnerable and uncertain position than if it were to remain as a member of the EU. A future government might either have to accept decisions others will make for them, or be relatively unconstrained in its ability to act independently, including the option of lowering environmental standards, in a race for competitive advantage. While these risks differ in character and scale, they are substantial on all the plausible scenarios considered here. These risks apply to over four decades of legislation aiming to protect the UK's health and environment.

## Annex A – Annex to Chapter 8

### Background of the CFP

*“If we were not members of the Common Market and were able to decide our fishing policy for ourselves, we would be in an extremely happy position”*

Bruce Millan

Former Scottish Secretary and future European Commissioner  
(HC Deb 09 Dec. 1981)

Fisheries were strategically important in the early formulations of European collaboration. In 1970, shortly before the potential accession to the European Economic Community (EEC) of some of the primary fishing nations in Europe – the UK, Norway, Denmark and Ireland – the existing six Member States agreed that fisheries should be shared and accessed equally. The “equal access” principle was introduced as a basic component of the first CFP, which was still being drafted, allowing any Member State access to fish in any EEC waters (House of Commons Library, 2013; CFP preamble (18)). Notably, it had recently been agreed that any new applicant for EEC membership must accept the existing EEC legislation at time of accession. Not surprisingly, the new provisions were anything but popular among the four aspiring applicants in the early 1970s, as their fisheries resources and interests far exceeded those of the existing Member States (Churchill and Owen, 2010). During the subsequent negotiations of the first CFP in the 1970s, the UK was therefore primarily concerned with weighing the potential costs of equal access to British waters with the benefits of the British fleet accessing other Member States’ waters (the UK was especially interested in the potential of accessing Norwegian and Danish waters, the latter surrounding the Faroe Islands and Greenland) (O’Neill and Hannay, 2000). By 1973, it was clear that Norwegian waters would not become part of EEC waters (although Greenlandic waters would), and in 1975 it was clear that neither would Faroese waters<sup>83</sup>. The UK then found itself deprived of the possibilities it had calculated and hoped for (HC Deb, 1981) – a notion that has persisted all through to today’s political negotiations.

In parallel to the developments in Europe, the United Nations (UN) established an international regime for management of marine resources. Following nine years of difficult negotiations, the United Nations Convention on the Law of the Sea (UNCLOS) was finally adopted in 1982. One of UNCLOS’ fundamental provisions was the establishment of Exclusive Economic Zones (EEZ), giving coastal states sovereign rights to explore, exploit, conserve and manage the natural resources of waters out to 200 nautical miles (nm). As over 90 % of the world’s fishing occurs within the ecologically productive 200 nm off land, this new regime was a substantial gain for coastal states and a loss for those states who until then had been fishing in other nations’ EEZs.

The introduction of EEZs in 1982 certainly influenced the formulation of a CFP in Europe and the negotiations for designing one of its key policy mechanisms, the Total Allowable Catch

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<sup>83</sup> *The fisheries provisions of the Act of Accession are widely believed to have been a leading factor in the decision by a majority of Norwegians to vote against EC membership in a referendum. Norway did not therefore join Denmark, Ireland, and the UK when they became members of the EC on 1 January 1973. (Churchill and Owen, 2010, page 6).*

(TAC) system and the system for allocating fishing opportunities, or “quotas”. Already by the mid-70s, it was clear that EEZs were to be established as part of UNCLOS and Norway and Iceland decided, in 1977 and 1975 respectively, to unilaterally extend their fisheries jurisdictions from the existing 12 nautical miles to the new limits (Churchill and Owen, 2010). Distant-water vessels that had previously fished these waters were now likely to turn to fish in EEC waters instead, increasing the pressure on already heavily exploited stocks.

Following seven years of negotiations, the first CFP was formally established in 1983 and entered into force. While the EC Treaty Article 32(1) in 1983 included “products of /.../ fisheries” in the definition of agricultural products to be covered by the common market, EU competence in relation to fisheries policy was not explicitly incorporated into the Treaty until the Treaty of Lisbon (2007), in Article 3 of the Treaty of the Functioning of the European Union.

In 1983, Member States of the EEC agreed to share fishing opportunities in the new EEZs on the basis of “relative stability” based mainly on historic catches (EC, 2009a). Essentially, this limited the rights of all coastal states in their newly expanded waters. The UK argued that the recently forgone fishing opportunities should be taken into account and a preferential allocation of catch allowances was introduced for British fishermen – the appropriateness and factual benefits of which have been debated ever since. In addition, Spain and Portugal were preparing to enter the EEC in 1986 – two countries with huge fleets but little stock resources of their own. Their accession therefore led to little increase of the EEC TAC ceiling but to an almost doubling of the EEC fleet (Cardwell, 2012).

The EU agreement with Norway allows Norwegian vessels to fish in EEC waters and vice versa, while the parties are obliged to cooperate to manage and conserve marine resources. The EU and Norway are jointly negotiating annual TACs for stocks which they both have access to (Regeringen.no, 2014). Norway has otherwise retained control over stocks in its EEZs, although 90 % of its fisheries are conducted on stocks which are shared with other nations. International cooperation is consequently a central aspect of the Norwegian fisheries management model.

### **The Mackerel Wars**

One example of how difficult international cooperation on fisheries can be is currently taking place in the North East Atlantic. These protracted events originated after Iceland and the Faroe Islands drastically increased their quota of mackerel in the mid-2000s. Mackerel is a high value species of great importance for the Scottish fishing fleet. The total fishing pressure on these stocks consequently rose dramatically, far exceeding the scientific advice provided by the International Council for the Exploration of the Seas (ICES). A dispute followed between Iceland and the Faroes and the UK, who was backed by the EU and Norway. A trilateral deal was eventually met in 2014 between the EU, Norway and the Faroes, resulting in restricted access for Scottish (EU) fishermen and new mutual quota arrangements. Iceland remains outside the agreements and we are yet to see the last of this dispute.



### **The UK quota allocation system**

Fixed Quota Allocations (FQAs) were introduced in 1999 to simplify the quota management system. In parallel, the British fleet had gradually transformed into one largely comprising vessels under ten meters (MMO, 2014), as these did not have to record landings or stick to catch limits according to EU regulations. Commodification of quota continued among larger vessels, although in a more restricted manner, and fishermen were able to use FQAs as loan collateral with banks to build their capacity further. Taken together, this created a highly polarised British fishing industry. When the 2002 CFP reform significantly reduced TACs to address falling stocks, the British Ministry of Agriculture, Fisheries and Food (MAFF; later DEFRA) started to gradually tighten the requirements for under ten meter vessels including introducing catch limits for this part of the industry. The details of this process have been highly controversial among small-scale fishermen; especially regarding the number of quotas allocated not reflecting their actual catches. Years of domestic debate followed with, for example, a controversial decommissioning of the under-ten fleet to better match quota. In 2011, the Government decided to reallocate quota from the English over-ten fleet to the important under-ten fleet. This in turn was met by considerable opposition from over-ten vessels arguing unfair treatment considering the investments made and the use of quota as loan collateral. Events culminated in the High Court of Justice in 2013 where the UK Association of Fish Producers Organisations lost its case about reallocation of FQAs against the Government (*UK Association of Fish Producer Organisations -v- Secretary of State for Environment, Food and Rural Affairs*, 2013).



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## **SNH Board paper: Implications of Brexit for Agriculture and the Environment**

Date: 16 November 2017

<b>For Information, Decision or Discussion</b>	For decision
<b>Summary:</b>	<p>This paper discusses the implications of Brexit on future agricultural support payments, and the potential impact of these on environmental outcomes.</p> <p>It summarises our current role in delivering the Agri Environment Climate Scheme (AECS) in partnership with Scottish Government. It provides initial analysis of some of the weaknesses of the current system and identifies opportunities for change.</p> <p>It seeks a strategic steer on how we can most effectively influence the successor to the Common Agricultural Policy so that environmental outcomes have prominence in future farm support arrangements.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To work closely with Scottish Government to make best use of our expertise so that environmental outcomes can be addressed effectively in future farm support arrangements.</li> <li>2. To support the underpinning principles that farmers are more clearly rewarded for the provision of public goods and environmental outcomes including safeguarding and restoring natural capital, supporting protected and iconic species, and reducing climate emissions from agriculture.</li> <li>3. To play a leading role in working with key stakeholders to help to build a stronger case for environmental support.</li> <li>4. To continue to work with Scottish Government to ensure funding for biodiversity and other environmental priorities during any transition period from 2019 onwards.</li> <li>5. To continue to promote the need for evidenced-based findings to ensure the strongest scientific basis for taking future decisions about the natural heritage.</li> <li>6. To engage the Board further in the development of our position on future agricultural support either through a workshop, or through named individuals contributing to the work.</li> <li>7. To return to the Board in six months to set out more detailed direction and role as the policy position becomes clearer.</li> </ol>



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<b>Relevant to Corporate Priorities:</b>	<p>Strong relevance to Corporate Plan outcome to improve health and resilience of nature; and to develop support mechanisms for land stewardship that deliver multiple public benefits in place of existing EU-funded programmes. Agri environment schemes are the key mechanism for delivering much of the Scottish Biodiversity Strategy and for supporting management of protected areas into favourable condition.</p>
<b>Fits with Government Priorities:</b>	<p>Preparing for Brexit and the future of rural support is identified as a priority in the Government's Programme for Scotland, referring specifically to the challenges of Brexit for agriculture, and the need to continue investment through the SRDP to protect and improve the natural environment.</p> <p>Supports delivery of National Performance Framework including contribution to increasing the abundance of terrestrial breeding birds, increasing natural capital and improving the condition of protected nature sites.</p>
<b>Risks:</b>	<p>There are a number of risks associated with Brexit and future support for agriculture. The main risks for the environment are covered below:</p> <ul style="list-style-type: none"> <li>a) <b>Strategic change of farming and land use</b> – as a result of Brexit, some farmers may intensify production or decide to stop farming. This could have significant impacts on farmland biodiversity particularly farming practices more reliant on subsidy such as hill farms and crofts.</li> <li>b) <b>Environmental outcomes</b> – many environmental outcomes rely on traditional farm management which tend to support high biodiversity.</li> <li>c) <b>Funding</b> – With no guarantee of funding for agri-environment schemes from 2019 onwards, there is a risk that environmental outcomes that have been secured through investment over the last decade are lost.</li> <li>d) <b>Uncertainty around Brexit</b> – while negotiations are underway between UK and EU, it is unclear where and when decisions will be made that could have implications for Scottish agriculture.</li> <li>e) <b>Stakeholder views</b> – while there is considerable alignment amongst key stakeholders, gaps may widen as policy choices emerge with hardening opposing views.</li> </ul>



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	f) <b>Evidence Base</b> – as a result of gaps in the evidence base, resistance to taking account of the evidence, or an inability to communicate evidence effectively, future policy may not be based on the best available evidence.
<b>Resource/Staffing:</b>	No significant additional resource implications at this stage
<b>Implications:</b>	If these recommendations are supported, we will work closely with SG to ensure our work contributes to SG policy development and our external engagement is choreographed carefully with SG input. New policy liaison meetings between SNH and SG are in hand, and this will be an early topic for discussion.
<b>Report Author(s): Sponsor:</b>	Claudia Rowse (with comments from Jenny Johnson) Eileen Stuart
<b>Appendices:</b>	Annex 1: Environmental principles for a new agricultural framework post 2020
<b>Any other issues to note:</b>	None

## Purpose

1. This paper has been prepared because of the need to consider the policy implications of Brexit on future agricultural support payments, and the impact for future environmental outcomes. Agriculture is the dominant land use in Scotland, covering over 70% of land use. This means that it has a massive influence on the environment, on water quality, soils, biodiversity and landscape.
2. When the UK leaves the EU, Scottish farmers will no longer receive CAP support payments. Most are heavily reliant on these payments for their profitability. The First Minister has referred to Brexit as the biggest challenge to farming in Scotland for a generation.
3. There are many reasons why Brexit matters for Scottish agriculture including, most significantly, the impact of leaving the EU on imports and exports of agricultural products, the withdrawal of CAP support payments and the implications for the wider rural economy. This paper does not attempt to cover the impact of future trading scenarios or the impact on the rural economy; instead it focuses solely on the impact of withdrawal from the CAP. However, it does acknowledge that the status of future trading arrangements may be the most significant factor that affects land use as Brexit is implemented. For example, Scotland currently has tariff free access to the European single market, exporting over £100 million of agriculture, forestry and fishing products to the EU every year.



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4. This paper focuses on the longer term agricultural support that might replace the Common Agricultural Policy. There is an additional, short term and urgent issue which relates to the uncertainty of agri-environment support from 2019 onwards.

## **Background**

### **Summary of current agricultural support**

5. The Common Agricultural Policy (CAP) is a European Union (EU) policy that provides financial support to farmers in member states. It is a vital support mechanism for most farmers in Scotland (and Europe) exerting a huge influence on land management.
6. It is made up of two pillars. Pillar 1 provides direct payments to farmers based on the size of their land-holding and is fully financed by the EU. Pillar 1 payments provide over £430 million of support every year to Scottish farmers and crofters, with a total budget of £3.3 billion for 2014 – 2020.
7. Pillar 2 supports a range of wider rural development outcomes and is jointly funded by the EU and national governments. The second pillar of the CAP is delivered through the Scottish Rural Development Programme (SRDP). The SRDP is made up of over ten schemes, worth a total of £1.3 billion for 2014 - 2020. The main schemes, by value, delivered through the SRDP are LFASS (Less Favoured Area Support Scheme) (£459 million), Agri Environment Climate Scheme (AECS) (£350 million) and the Forestry Grant Scheme (£252 million). Other schemes include support for crofting, new entrants, broadband, food processing, knowledge transfer, farm advice and the LEADER programme for rural community development.
8. The UK Government confirmed that agricultural funding would continue until March 2022. This commitment relates clearly to continuation of the Pillar 1 Basic Payment Scheme and clarification is being sought on whether it extends to all schemes within the CAP.
9. There is no guaranteed funding for new agri environment contracts after March 2019. This means that for 2019 and 2020, and possibly up to 2022, there is a potential lack of agri-environment funding in Scotland. Transition planning is underway and we will wish to ensure that agri environment support continues to be made available.



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### **Summary of our role**

10. SNH is a formal partner with Scottish Government Rural Payments and Inspections Division (RPID) in delivering the Agri Environment Climate Scheme (including Improving Public Access (IPA) scheme) in Scotland. This involves SNH staff processing and administering a subset of AECS applications which most closely relate to core natural heritage priorities including protected areas, peatland restoration, deer management and public access.
11. Approximately 1500 AECS contracts have been issued since the scheme became operational, investing over £100 million in environmental outcomes. We have administered around one third of these agreements using the equivalent of about 30 full-time staff annually to support this process.
12. In addition to our role as a delivery partner, we support Scottish Government in delivering other SRDP Schemes including the Farm Advisory Service, Knowledge Transfer and Innovation Scheme and input to the wider LEADER programme. We are represented on all relevant Scottish Government internal and external groups that oversee the governance arrangements for delivering agricultural policy and SRDP, and provide evidence and advice on the impacts of different policy approaches on the natural heritage.

### **Summary of key weaknesses in the current support system**

13. There is an inherent tension in the architecture of the current CAP with Pillar 1 criticised for incentivising farm intensification while Pillar 2 pays for action to improve the environment.
14. While farmers voluntarily enter into agri environment schemes, the schemes have become increasingly complex partially in response to regulatory audit and compliance issues. This has acted as a disincentive for some farmers and crofters to apply.
15. In order to comply with demanding EU regulations, the Scottish Government introduced a new IT programme to manage the payments made through CAP. The programme has been complex and challenging to implement. It has caused delays to payments for farmers, substantial administrative issues for RPID and knock-on effects for SNH staff in administering agri environment agreements.
16. The competitive nature of agri-environment schemes means that not all land managers who want to carry out positive management for the environment will be supported financially to do so. A related issue is the availability of overall funding to support environmental outcomes.





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17. The lack of sufficient monitoring of the natural heritage means that in some cases the evidence base for developing schemes that deliver more successful outcomes either does not exist or is insufficiently robust to identify the relationship between a specific management intervention and its outcome in the wider countryside.
18. Current agricultural policy is solely targeted to supporting agricultural activity and is poorly integrated with support for other land use such as forestry and sporting estates, and with issues relating to the wider rural economy. It also has a weak connection to the wider policy issues on food and health.

### **Opportunities for influencing future framework of support**

19. Michael Gove MP and Minister for the Environment described Brexit as an opportunity to deliver a green future. His speech earlier in the year was influential in setting out a rationale that future farm subsidies would have to be earned in future, with farmers only getting payments if they agreed to protect the environment and enhance rural life.
20. Once the UK leaves the EU, it is unclear whether there will be a single UK agricultural framework and what aspects of agricultural policy will be determined in Scotland. As a result, it will be necessary for us to engage at the UK level as this may be where some of the critical decisions are made about the architecture and focus of future support. We currently have some engagement at the UK level through LUPG (the Land Use Policy Group) made up of representatives from the UK statutory conservation, countryside and environment agencies. For example, our recent research report looked at the 'Potential Implications of leaving the EU for UK agriculture and the rural environment.'
21. As a member of the EU, our support schemes have to comply with demanding and complex EU regulations. Once the UK leaves, there may be an opportunity to simplify some of the scheme rules and regulatory requirements.
22. The EU Hub within Scottish Government's Environment and Forestry Directorate is leading the development of a new policy framework for the support of agriculture. We have well established ways of working between SG and ourselves, and will look to work closely with SG colleagues so that our contribution adds value to their work. In addition, our previous Chief Executive, Ian Jardine, has been seconded to the Scottish Government to work as National Adviser on the Environment.
23. Many organisations have a strong interest in the future of farming in Scotland and have begun to set out their thinking on future support. There is much consensus



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at a strategic level between many of these organisations. Looking for alignment with these stakeholders could help to build a stronger case for environmental support. We are actively engaged with key stakeholders including NFUS, Game and Wildlife Conservation Trust, Scottish Land & Estates, Scottish Wildlife Trust, RSPB and others.

24. Engagement with farmers and crofters who manage the land will be essential for developing future support mechanisms that are attractive to land managers, make full use of their knowledge and experience, and can be delivered in a practical and effective way as part of the day to day running of their businesses. In conjunction with the range of Scottish Government stakeholder groups, we are looking at ways of more directly engaging farmers and crofters in the design and implementation of agri environment schemes, and also learning from approaches to farmer-led schemes in Ireland and England.
25. We have successfully acted as a delivery partner for the current SRDP, and we have demonstrated that we can deliver other funding schemes such as the Green Infrastructure Fund and Peatland Action. Depending on the shape and framework of future agricultural support, there is an opportunity for us to play an increasing role in delivering future agri-environment support.

## **Recommendations**

26. To work closely with Scottish Government to make best use of our expertise so that environmental outcomes can be addressed effectively in future farm support arrangements.
27. To support the underpinning principles that farmers are more clearly rewarded for the provision of public goods and environmental outcomes including safeguarding and restoring natural capital, supporting protected and iconic species, and reducing climate emissions from agriculture.
28. To play a leading role in working with key stakeholders to help to build a stronger case for environmental support.
29. To continue to work with Scottish Government to identify environmental priorities that require annual support, and to seek to make arguments for funding biodiversity and other environmental priorities during any transition period and from 2019 onwards.
30. To continue to promote the need for evidenced-based findings to ensure the strongest scientific basis for taking future decisions about the natural heritage.



31. To engage the Board further in the development of our position on future agricultural support either through a workshop, or through named individuals contributing to the work.
32. To return to the Board in six months to set out more detailed direction and role as the policy position becomes clearer.



## Annex 1

### Environmental principles for a new agricultural framework post 2020

We have begun to develop our thinking about setting out the key principles that could address the long term sustainability of future agricultural support alongside improved environmental outcomes. Environmental principles for future support include:

- a. **Outcomes based** – a move away from top down prescriptive approaches.
- b. **Greater farmer engagement** – more farmer-led approaches with increased farmer engagement to allow for innovation.
- c. **Landscape scale** – a move away from site specific agreements at the individual unit level, with increased emphasis on collaboration and landscape scale approaches.
- d. **Regional differentiation** – a stronger approach to regional differentiation recognising that what is required in Orkney, for example, is different to what is required in the Borders.
- e. **Conditionality** - to ensure those in receipt of public funds deliver basic environmental conditions and benefits.
- f. **Advisory support** – strong support for advisory services so that land managers have the skills to implement environmental outcomes based on a sound knowledge and evidence base.
- g. **Stronger alignment with Land Use Strategy principles** - including integration with other land uses such as forestry, to improve resilience of farm businesses and improved stewardship of natural resources.



## SNH Board paper: Update on future of agricultural support

Date: 28 August 2018

<b>For Information, Decision or Discussion</b>	For information.
<b>Summary:</b>	<p>This paper updates the Board on the implications of Brexit on future agricultural support payments, and how we are engaging in the debate.</p> <p>It follows our previous paper to the Board in November 2017 when the Board asked us to return in six months' time with an update.</p> <p>In summary, our ideas are achieving greater traction and we are influencing more widely including through the more traditional players such as NFUS and the agriculture departments of Scottish Government.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To return to the Board with a substantive discussion on the future direction of agriculture policy when the over-arching context has become clearer.</li> <li>2. To note progress with taking forward previous Board recommendations.</li> </ol>
<b>Relevant to Corporate Priorities:</b>	<p>There is a strong relevance to our Corporate Plan outcome to improve the health and resilience of nature; and to develop support mechanisms for land stewardship that deliver multiple public benefits in place of existing EU-funded programmes.</p> <p>Agri environment schemes are the key mechanism for delivering much of the Scottish Biodiversity Strategy and for supporting management of protected areas into favourable condition.</p>
<b>Fits with Government Priorities:</b>	<p>Preparing for Brexit and the future of rural support is identified as a priority in the Government's Programme for Scotland, referring specifically to the challenges of Brexit for agriculture, and the need to continue investment through the SRDP to protect and improve the natural environment.</p> <p>It also supports delivery of the National Performance Framework including contribution to increasing the abundance of terrestrial</p>

	<p>breeding birds, increasing natural capital and improving the condition of protected nature sites.</p> <p>Scottish Government's Developing an Environment Strategy for Scotland identifies a key role for agriculture (and forestry) in shaping landscapes and ecosystems.</p>
<b>Risks:</b>	<p>There are a number of risks associated with Brexit and future support for agriculture. The main risks for the environment are covered below:</p> <ul style="list-style-type: none"> <li>a) <b>Funding</b> – With no guarantee of funding for agri-environment schemes from 2019 onwards, there is a risk that funding for environmental outcomes is not maintained at least at current EU levels.</li> <li>b) <b>Uncertainty around Brexit</b> – while negotiations are underway between UK and EU, it is unclear where, when and what decisions will be made that could have implications for Scottish agriculture.</li> <li>c) <b>Stakeholder views</b> – while there is considerable alignment amongst key stakeholders, gaps may widen as policy choices emerge with hardening opposing views.</li> <li>d) <b>Scottish Government capacity</b> – there is a risk that as a result of Scottish Government's priority to focus on Pillar 1 payments, that insufficient time is allocated within SG to address agri-environmental issues.</li> </ul>
<b>Resource/Staffing:</b>	Preparing for future post Brexit agricultural support alongside delivering business as usual and providing transitional arrangements will require some additional staff resource (scoped at 1 FTE at E Grade)
<b>Implications:</b>	To continue to work closely with Scottish Government in developing future short-term transitional arrangements, and preparing for longer term approaches to agricultural support.
<b>Report Author(s):</b> <b>Sponsor:</b>	Claudia Rowse Eileen Stuart
<b>Appendices:</b>	<p>Annex A: Summary of recommendations from November 2017 Board paper on Implications of Brexit on agriculture and the environment</p> <p>Annex B: ENCA Summary on delivering environmental and biodiversity objectives through the CAP 2021 - 2027</p>
<b>Any other issues to note:</b>	None

## Purpose

1. This paper updates the Board on the latest policy developments on agriculture, and our role in engaging on this issue.

## Update



2. Over the last six months, we have made progress on all of the recommendations agreed by the Board in November 2017. The following provides a brief update on each of these.
3. **Contributing evidence.** We have worked closely with Scottish Government (SG) in contributing evidence and advice on environmental priorities over the transition period and the future long term support for agriculture. We successfully intervened to ensure that environmental interests were included as part of the Scottish Government consultation on the future support for agriculture; we have engaged fully on making the case for ongoing investment in environmental priorities as part of the budget submissions to the Cabinet Secretary on future options for SRDP (Scotland's Rural Development Programme), and we have engaged fully in the many SG governance groups associated with agriculture as well as using ad-hoc influencing opportunities with senior staff.
4. We received strong support from Scottish Government senior policy colleagues at a workshop we organised for them on innovative approaches to future agri-environment schemes. This has a strong fit with the future policy direction around simplification, and focused on what an 'outcomes based' or 'results based approach' might mean. Following SG support, we are setting out a plan for how to develop a trial for outcomes based approaches in Scotland. Our work on this topic has helped to develop a major change in stance to move away from current prescription based approaches.
5. **Stakeholder engagement.** We are actively engaged in working with key environmental stakeholders, in particular in playing a role in bringing them together to develop a coherent view on environmental priorities. We were instrumental in setting up and supporting an Environment LINK Stakeholder Event on agriculture and the future of rural funding, which we hosted at Battleby in June 2018.
6. We continue to engage other key stakeholders including NFUS (National Farming Union of Scotland) with high level meetings between our Chief Executive, Head of Policy & Advice and the Director and Vice-President of NFUS. We have given headline talks to NFUS Regional meetings on the future of agriculture, and we have been commended by the NFUS on our more sensitive understanding of working with farmers as custodians of the countryside.
7. We have engaged the Board's expertise in contributing to our thinking, namely through Ian Gillies who chaired our successful Sharing Good Practice Event in May on Farming and Nature – promoting success and looking ahead.
8. In recognition of the quality of our advice and the contribution we can make, we have been invited to be a member of a new Agri Tech Group that the Cabinet Secretary Mr Ewing has established. The creation of the Group was one of the commitments made within the agriculture chapter of the Climate Change Plan laid before the Scottish Parliament earlier this year. The Group has been asked to identify opportunities for helping farmers maximise farm efficiency in a way that brings economic and environmental benefits. This recognises the work we have been promoting on the value of mainstreaming agro-ecological approaches and positions us as having something to offer across farming types and sectors.

9. We contributed to a senior ENCA (European Nature Conservation Agency Heads Network) meeting in Tallinn, Estonia including giving a presentation on agriculture in Scotland. In addition, we contributed to an assessment produced by ENCA on delivering environmental and biodiversity objectives through CAP (Common Agricultural Policy) 2021 - 2027. This has been submitted to the European Commissioner and is intended to contribute to informing the decision-making process on the future of the CAP 2021-27. The summary in Annex B identifies the substantial environmental and biodiversity challenges remaining across Europe. We have included this as it summarises the main issues that we will be looking to ensure are addressed in future agricultural support mechanisms.
10. It has not been possible to come back to the Board for a substantive discussion on the future direction of agricultural support at this time, as the debate has not been clarified significantly around the parameters of future support.

### **Next steps**

11. There are two strategic Scottish Government consultations that have a bearing on the future of agricultural support. These are the consultation on the future of rural funding called Stability and Simplicity issued by Cabinet Secretary Mr Ewing; and the consultation on the future of rural areas issued by the National Council of Rural Advisers.
12. The SG consultation focuses on immediate issues relating to rural funding, and how to provide stability over a transition period of approximately five years to 2024. It mainly looks for suggestions on simplifying how CAP payments are made, in particular around the audit and inspection burdens that accompany CAP. There is a tension around the short-term, transitional support for agriculture and to what extent this should evolve into a longer-term approach.
13. In addition, the Agriculture Champions published their final report setting out recommendations for a future strategy for Scottish agriculture. This has a key theme around enhancing natural capital; and presents strong arguments that 'no change is not an option.'
14. We had a productive meeting with Alison Milne, co-Chair of the National Council Rural Advisers (NCRA) as part of our input to their consultation on the future of rural Scotland 'A Rural Conversation – Together We Can, Together We Will.' That document sets out the growing importance of natural capital and how it contributes to the prosperity of rural areas. We will seek to build on our links with the NCRA to develop effective champions for the environment, particularly around making the case for investment in natural capital.
15. We plan to include Board members in the next phase of our work including, for example, in follow up discussion trialling an outcomes based approach, and to develop a Sharing Good Practice event next year in conjunction with NFUS.

### **Issues**

16. There is ongoing lack of clarity around the precise extent of the UK Government commitment to support future agricultural funding until March 2022. This commitment relates clearly to continuation of the Pillar 1 Basic Payment Scheme and clarification is being sought on whether it extends to all schemes within the CAP.
17. It is unclear whether there will be a funding round for the agri-environment climate scheme (AECS) in 2019. This scheme provides essential funding for natural habitats and species and is the main mechanism for achieving our biodiversity aims in the wider countryside. We are awaiting direction from the Cabinet Secretary but it would represent a major environmental issue if there were to be no funding. We are working with Scottish Government on a contingency arrangement of extending existing contracts by a year if possible which will provide some level of cover and funding. If there is no AECS round in 2019, this will attract serious criticism from environmental stakeholders. There is a potential lack of agri-environment funding in Scotland for 2019 and 2020, and possibly up to 2022. We will wish to ensure that agri environment support continues to be made available.

### **Recommendations**

18. To return to the Board with a substantive discussion on future direction of agriculture policy when the over-arching context has become clearer.
19. To note progress with taking forward previous Board recommendations.

**Annex A: Summary of Board recommendations from November 2017 Board paper**

The Board recommendations from the November 2017 Board paper were:

- a) To work closely with Scottish Government to make best use of our expertise so that environmental outcomes can be addressed effectively in future farm support arrangements.
- b) To support the underpinning principles that farmers are more clearly rewarded for the provision of public goods and environmental outcomes including safeguarding and restoring natural capital, supporting protected and iconic species, and reducing climate emissions from agriculture.
- c) To play a leading role in working with key stakeholders to help to build a stronger case for environmental support.
- d) To continue to work with Scottish Government to ensure funding for biodiversity and other environmental priorities during any transition period from 2019 onwards.
- e) To continue to promote the need for evidenced-based findings to ensure the strongest scientific basis for taking future decisions about the natural heritage.
- f) To engage the Board further in the development of our position on future agricultural support either through a workshop, or through named individuals contributing to the work.
- g) To return to the Board in six months to set out more detailed direction and role as the policy position becomes clearer.

## **Annex B: Delivering environmental and biodiversity objectives through the CAP 2021-27: A synthesis of evidence by ENCA**

### **Summary and Key messages**

The publication of the Commission's legislative proposals for the next CAP has prompted ENCA to review the evidence behind the environmental and biodiversity challenges facing the CAP, draw on ENCA members' experiences with the current CAP, and reflect on the Commission's proposals.

#### **Evidence reveals that substantial environmental and biodiversity challenges remain across Europe:**

- European Union (EU) Member States have experienced a major decline in biodiversity associated with agro-ecosystems and grasslands and much of the remaining biodiversity is in unfavourable condition.
- Almost all grassland habitat types (86%) assessed in the 2013 reporting under Article 17 of the EU Habitats Directive have an unfavourable conservation status.
- Species associated with both croplands and grasslands generally have unfavourable conservation status. Populations of common farmland birds and grassland butterflies have declined by about a third between 1990 and 2014/2015 in EU countries.
- Nitrogen use per hectare and total consumption of phosphorus are both increasing after reaching a low point in 2009. Similarly, pesticide consumption remains high across the EU.
- Agricultural greenhouse gas emission trends compare unfavourably with other sectors. The downward trend in UK agricultural emissions ceased in 2011.
- Observed direct and indirect impacts of climate change are increasing.

#### **Analysis of what CAP has delivered reveals:**

- Compliance with basic standards (cross-compliance) has played a key role in the protection of environmental features, but is not sufficient to maintain a minimum level of biodiversity in intensively managed regions.
- Research in some Member States reveals that greening has had little, or even no significant impact on biodiversity.
- EFA's have the potential to provide biodiversity benefits. To prevent continued biodiversity decline, a minimum of 5% of farmland area needs to be dedicated to biodiversity, or less intensive use where farming systems are more intensive.
- According to delegated regulation 640/2014 some areas remain ineligible for direct payments due to the number of trees and presence of habitat features. This leads to discrimination against HNV agriculture and livestock grazing systems.
- Agri-environmental measures, both entry and higher level, are crucial to obtain and maintain favourable conservation status for habitat and species in agricultural landscapes. They also have an important role to play in delivering environmental and biodiversity benefits across the wider countryside and promoting more sustainable practices.
- Funding for AECM remains a critical issue to achieve progress in environmental and biodiversity targets. For example, research by BfN in Germany shows a continuing funding gap for biodiversity, i.e. implementation of Natura 2000.
- Current agri-environment schemes are delivering for climate change but evidence suggests they have a variable capacity to deliver climate adaptation measures.
- The area of farmland under organic management continues to increase, by 18.7% between 2012 and 2016, but the level of commitment and costs involved require support.
- Agro-ecological approaches that rely on the use of ecological knowledge and principles for the management of farmland have the potential to make agriculture systems more resilient and

encourage circularity in the use of natural resources in agriculture. More diverse and HNMF systems will already provide this heterogeneity at a basic level.

- Information and guidance for farmers is important to increase their motivation for biodiversity promoting management measure and to foster sharing of knowledge;
- Cooperation between government agencies, nature conservation departments and farmers and land managers is vital for the acceptance of measures, uptake, and to develop new working cultures.
- To achieve transformational change at a landscape scale a proportion of the direct income payments needs to be related to biodiversity, with voluntary measures and capital funds available to support more specific outcomes.
- Experience from ENCA members shows that to move towards farming practices that foster biodiversity and produce ecosystem services while minimizing environmental harm, conditions need to be embedded in the support system through a reliance on a combination of voluntary and compulsory measures / standards.

#### **Reflections on the CAP legislative proposals:**

- Cuts to CAP funding fall disproportionately on Pillar 2 and will further exacerbate the inadequacy of funding for Natura implementation. This is inconsistent with the intention for better targeting, EU added value and a focus on the rural environment.
- Several of the proposals fall short on delivering the aim for a higher level of environmental and climate ambition, an aim which reflects current trends. There is no intention to apply the 30% ring fencing of Pillar 1, currently assigned to greening, to the proposed eco-schemes. The proposed minimum share of 30% for environment / climate in EAFRD is inadequate to deliver environmental objectives and an effective 'no backsliding' safeguard needs to be introduced.
- The intention for greater subsidiarity in the new delivery model is potentially a bold move. However, it requires robust accountability mechanisms if historic precedents are not to be repeated. To comply with a common market, common basic standards for maintaining biodiversity and to ensure a healthy environment are crucial.
- Expanding the existing cross-compliance requirements to form the basis of the new 'Conditionality' is a positive development. However, risks of downgrading arise from the responsibility, being given to Member States for determining the specific standards and requirements.
- To ensure the shift in focus to performance is successful, and to ensure a reliable assessment of the effectiveness of the CAP regarding protection of the environment, the depth and quality of data and monitoring systems will need to be strengthened. In particular, reporting on the HNV-Farmland indicator is essential and should be carried on.



## **EU Exit – Day 1 Readiness**

### Summary

This paper presents a summary of preliminary investigations into the impact on SNH's work from the UK's decision to leave the EU on the 29<sup>th</sup> March 2019. Initial conclusions indicate that for areas where there is a strong relationship with current EU legislation or funding that these will need a growing level of investment and focus to adequately prepare us for Day 1 Readiness. However, due to on-going uncertainties about Brexit and the dependencies on others to lead on areas of work, the ability to clearly articulate how much resources we require to manage this will take time to develop.

### Purpose

The purpose of this paper is to scope out the requirements for Day 1 Readiness to ensure that we are sufficiently prepared to continue to operate in a way which is: legally compliant; maintains environmental outcomes; and, avoids uncertainty and legal risk for SNH and its customers.

### Scope

This analysis covers the full scope of SNH's work with a particular focus on the impact from any legislative changes for protected nature sites and species as well as from current funding received from the EU.

### Approach

It is proposed that the approach to managing the impact of Brexit is to distinguish between what changes are imperative to complete for Day 1 and what further changes/work which should be completed in the longer term. The primary focus will be on amending critical public-facing guidance, advice and services, and managing any legal risk for the organisation and its customers. Other changes, such as amendments to internal guidance, will be identified and scoped in our plan, but will be afforded less priority, on the basis that they should not cause systems to fail or pose unacceptable legal risk on Day 1.

### Assumptions

- Roll forward on all EU legislation – the key assumption is that all EU-derived legislation will roll forward with only minimal necessary amendments to ensure operability under the Great Repeal Bill.
- Existing Obligations met – the government commitment to continue to meet its obligations under multi-lateral environmental agreements is maintained, and until we leave the EU, existing obligations will continue to be met.
- Environmental Protection Maintained – the government will remain committed to maintaining environmental protection

- Funding – that the HMT commitment to underwriting the following remains:
  - all structural and investment fund projects, including agri-env. schemes signed up to the point of EU exit
  - all direct competitively bid projects signed directly with the EC up to the point of EU exit (including LIFE+).

## **Results and Analysis**

Analysis is based on an initial review of the impact on delivery of the Activity Key Deliverables ([A2476054](#)). This will be followed-up with more analysis on the different themed areas which are at higher risk to understand their minimum requirements to ensure continuity of operations. Annex A provides a summary by themes of the results of this scoping work and Annex B provides a breakdown of the activities which are likely to be required. Both the summaries and breakdown will be followed up with the Activity Leads to ensure that these adequately cover the breadth of work required for Day 1 Readiness.

## **Governance**

The governance for taking this work forward regarding its management and scope will need to be confirmed to ensure that there is adequate co-ordination across the organisation.

## **Risks**

There are currently two high-level corporate risks identified for SNH from the UK's decision to leave the EU:

Risk No 306 Misdirection of Resources following EU Referendum – As a result of the future policy, funding and legislative framework being unclear following the EU Referendum, there is a risk that we misdirect our resources thereby leading to negative impacts on the natural environment.

Risk No 307 – Unclear Messages to Stakeholders following EU Referendum – As a result of the future policy, funding and legislative framework being unclear following the EU Referendum, there is a risk that SNH gives confusing messages to staff and stakeholders, leading to negative impacts on the natural environment and the reputation of SNH.

We have identified three lower-level risks:

Lack of Preparation for Day 1 Readiness – As a result of any lack of preparation by SNH for putting in place the measures required for leaving the EU there is a risk that we may not be ready by March 2019. This could result in a lack of compliance with any relevant new legislation, inability to provide correct advice to stakeholders and an inability to correctly implement any replacement funding mechanisms.

Delays in Policy Decisions – As a result of any delays in decisions being taken on future policies there is a risk that we may have insufficient time to make any relevant changes to our processes, guidance etc. This could result in a lack of compliance with the new policies and its consequential impact.

Dispute with Repeal Bill by Scottish Government – As a result of any dispute by the Scottish Government with the Repeal Bill there is a risk that decisions on where applicable powers may reside will not be decided by March 2019. This could result in some uncertainty whether we refer to the UK or Scottish Governments for advice and guidance, potentially leading to delays with implementing any relevant actions which are required.

## **Annex A – Summary of Day 1 Ready (D1R) Needs**

### Review of Guidance Material

All relevant guidance will need to be reviewed in order to ensure that it cites correct legal references and reflects any essential process changes required as a consequence of how the Great Repeal Bill handles essential operability changes. This may be complicated if the Scottish Government decides that it won't grant legislative consent for the bill such as on agriculture if such legal powers are not devolved to Scotland.

Priority will be given to ensuring that external guidance is ready although any internal guidance will also need to be brought up to date. Work may also be required to reflect how the [REFIT Action Plan](#) on the Birds and Habitats Directives may be applied post exit.

### Review of Licences

Whilst there will be a transposition of European legislation into UK legislation we need to ensure that customers are not legally exposed by any inaccurate documentation that we may provide to them. As such we need to review all relevant documentation to ensure that proper legal references are made.

### Agri-Environment

Understanding and implementing what we need to do to prepare for the future funding of the management of protected areas will be one of our most significant activities for D1R. This needs to include how any future AECS scheme (particularly the 2019 AECS application round) will operate and what transitional arrangements need to be in place.

### EU Strands of Funding

Alongside the AECS and other SRDP-related funding schemes we need to engage in any discussions on transitional and future arrangements for replacing other current EU-related strands of funding. This is relevant to LIFE+, ESIF structural funds and EMFF funding. Whilst some funds have been guaranteed beyond March 2019 we need to understand any implications for managing existing contracts/funded projects that straddle the exit date.

### Review and amendment of External Legal Documentation such as Conservation Objectives

Along with our guidance we need to ensure that any external legal documentation reflects any new nomenclature and legal references. We also need to understand the government's position on the status of European Sites in the context of other international obligations such as Ramsar, OSPAR etc.

### Revisions to Fisheries Legislation

We need to understand and amend approaches to marine environment advice to reflect revisions to fisheries legislation. This includes providing input to the 'Future Fishing' review by Marine Scotland and our engagement with wider aspects of post-Brexit marine environmental policy.

### Revisions and amendment to processes on Natura Designation

In the short-term we will need some clarity from SG on future Natura designation work and what this will mean for SNH in preparation for any potential expansion or maintenance of the current suite of sites. This includes both terrestrial and marine sites and covers wider aspects such as monitoring. We shall also need to understand the future intentions with regard to the ongoing SPA Review process and the implications of the timeline.

### General and Business as Usual Work

- Ensure that any practices around procurement reflect any changes to current procedures
- Ensure that we support all non-UK National staff during the transition period

**Annex B – Areas of Business with Likely D1R Needs**

<b>Business Area</b>	<b>Must Do/Minimum Operating Capability</b>	<b>Lead Person</b>	<b>Vol of Work</b>	<b>Will do in due course/Optimum Operating Capability</b>	<b>Vol of Work</b>
<b>Terrestrial Protected Areas, Protected Habitats and Protected Species</b>					
European Protected Sites	<ul style="list-style-type: none"> <li>Review and possibly amend SSSI citations, subject to decisions about nomenclature</li> <li>Review and amend published Conservation Objectives and Supplementary Advice packages</li> <li>Update any external guidance including replacement of links to EC documentation</li> </ul>	Greg Mudge			
Agri-Environment Schemes	<ul style="list-style-type: none"> <li>Review any changes required to associated guidance and templates to ensure correct reference in regulatory requirements and procedures</li> <li>Clarify and confirm legal status of agreements with individual customers and make whatever formal updates are required to maintain agreement validity</li> <li>Ensure adequate transition arrangements in place between closure of current SRDP and opening of post Brexit agri environment measures</li> </ul>	Roddy Fairley		<ul style="list-style-type: none"> <li>Internal guidance updates and any associated training</li> </ul>	
Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing replacement scheme for AECS</li> <li>Participate with lead partners in developing any replacement scheme for LIFE+</li> </ul>	Claudia Rowse  Gillian Macdonald			
Reporting	<ul style="list-style-type: none"> <li>Understand the full range of international reporting requirements including necessary changes to Article 17 Reporting</li> </ul>	David O'Brien			



Designations	<ul style="list-style-type: none"> <li>• Review SSSI Selection Guidelines which contain multiple references to European legislation</li> <li>• Consider timeline for any designation cases where they will straddle Brexit date.</li> <li>• Agree revised process for SAC where EU would normally be involved and any necessary processes for</li> </ul>	John Kerr			
Habitat Regulations Appraisal	<ul style="list-style-type: none"> <li>• Review process and update any documentation templates (once terminology is clear)</li> <li>• Review and update of external guidance for EU references and any changes in interpretation</li> </ul>	Greg Mudge		<ul style="list-style-type: none"> <li>• Internal Guidance</li> </ul>	
SPA Review	<ul style="list-style-type: none"> <li>•</li> </ul>	Nigel Buxton		<ul style="list-style-type: none"> <li>• Determine the rationale for implementation in line with analysis of international obligations</li> </ul>	
EIA and SEA – Planning Advice, Responses to Statutory Planning Consultations	<ul style="list-style-type: none"> <li>• Review any changes required to associated guidance and templates</li> </ul>	Fiona Rice		<ul style="list-style-type: none"> <li>• Internal guidance updates and any associated training</li> </ul>	
Wildlife Licensing	<ul style="list-style-type: none"> <li>• Review and update documentation including external guidance, particularly for European Protected Species (EPS), reviewing General and Class Licence wording</li> <li>• Address any individual licences that are 'live' at the point of departure from the EU</li> <li>• Review current IT system to ensure that it can manage changes to templates</li> <li>• Assess reporting changes e.g. Annual Birds</li> </ul>	Ben Ross		<ul style="list-style-type: none"> <li>• Update application forms which cite the legislation under which it is made</li> <li>• Review compliance and enforcement position</li> <li>• Review and update internal guidance wrt EPS</li> </ul>	

	Directive Reporting and biennial Habitats Directive Reporting <ul style="list-style-type: none"> <li>• Ensure that the EU Invasive Alien Species Regulation legislation is incorporated into any guidance etc.</li> </ul>				
<b>Marine Protected Areas, Protected Habitats</b>					
Future Fishing Review	<ul style="list-style-type: none"> <li>• Provide input to Review by MS</li> </ul>	David Donnan		Work with JNCC to prepare a joint paper on environmental objectives for future Scottish fisheries policy	
Marine Environmental Policy	<ul style="list-style-type: none"> <li>• Provide input to a review by MS on marine designations and monitoring</li> </ul>	Katie Gillham / Cathy Tilbrook		We are not aware that this review is planned at present.	
Funding	<ul style="list-style-type: none"> <li>• Participate with lead partners in developing any replacement scheme for EMFF</li> </ul>	David Donnan		As required	
<b>Creating Better Places</b>					
Funding	<ul style="list-style-type: none"> <li>• Support SG with developing any replacement for ESIF etc.</li> </ul>	SRDP (Access Funding) - Bridget Jones  ERDF – Fiona Strachan			
<b>General</b>					
Communications	<ul style="list-style-type: none"> <li>• Create and roll-out a Stakeholder Communication Plan to keep everyone informed of the impact of Brexit for SNH and what we are doing to manage this</li> </ul>	Anna Marriott (tbc)			
Learning & Development	<ul style="list-style-type: none"> <li>• Create a training plan to ensure that relevant staff involved with areas such as licencing have sufficient knowledge to</li> </ul>	Ali Macdonald (tbc)			

	advise customers on any changes being introduced				
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**Guide:**

	Critical/Significant volume of work, we are either taking the lead role or making a substantial contribution towards its preparation
	Major volume of work, we are either taking the lead role of making an important contribution towards its preparation
	Minor volume of work required , we may need to take the lead role or react to others as requested

**Additional areas that may be of interest?:**

We are on the board of the CABB project (Co-operation Across Borders for Biodiversity) – this is INTERREG project partly funded by the European Regional Development Fund (ERDF) – this is supporting peatland restoration at Muirkirk and North Lowther SPA. We are also supporting the CANN project (Co-operation Across Natura Network).

## **EU Exit – Day 1 Readiness**

### **Summary**

This paper presents a summary the impact on SNH's work from the UK's decision to leave the EU on the 29<sup>th</sup> March 2019. Initial conclusions indicate that for activities where there is a strong relationship with current EU legislation or funding that these will need a growing level of investment and focus to adequately prepare us for Day 1 Readiness. However, due to on-going uncertainties about the terms of the EU Exit and what arrangements need to be put in place and when, it remains difficult to clearly articulate the level of resource we require to manage the transition, but this will become clearer in the coming months.

### **Purpose**

The purpose of this paper is to set out the requirements for Day 1 Readiness to ensure that SNH has identified the actions required to ensure the organisation continues to operate in a way which is: legally compliant; maintains environmental outcomes; and, avoids uncertainty and legal risk for SNH and its customers.

### **Scope**

This analysis covers the full scope of SNH's work including our support functions but with a particular focus on the impact from any legislative changes for protected areas and species as well as planning to replace funding currently received from the EU.

### **Approach**

It is proposed that the approach to managing the impact of the EU Exit is to distinguish between what changes are imperative to complete for Day 1 and what further changes/work which should be completed in the longer term. The primary focus will be on amending critical public-facing guidance, advice and services, and managing any legal risk for the organisation and its customers. Other changes, such as amendments to internal guidance, will be identified and scoped in our plan, but will be afforded less priority, on the basis that they should not cause systems to fail or pose unacceptable legal risk on Day 1.

To note: Currently, there are two Day 1 scenarios - 30 March 2019 or if the current transition agreement between the UK and EU is implemented, it will be 1 January 2021. The plan below is based on the exit being 31 December 2020.

### **Assumptions**

- Roll forward on all EU legislation – the key assumption is that all EU-derived legislation will roll forward with only minimal necessary amendments to ensure operability as set out in the UK Withdrawal from the European Union Bill or the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, if the Scottish Parliament fails to give legislative consent to the UK Withdrawal Bill.
- Existing Obligations met – the UK Government commitment to continue to meet its obligations under multi-lateral environmental agreements is maintained, and until we leave the EU, existing obligations will continue to be met.
- Environmental Protection maintained – the UK Government will remain committed to maintaining environmental protection
- Funding – that the UK Government's commitment to underwriting the following areas:
  - all structural and investment fund projects, including agri-env. schemes signed up to the point of EU exit
  - all direct competitively bid projects signed directly with the EC up to the point of EU exit (including LIFE+).

There is some uncertainty over these last points at present.

## **Results and Analysis**

Analysis is based on an initial review of the impact on delivery of the Activity Key Deliverables ([A2476054](#)). Actions required under each of our four outcomes are brought together in Annex A. These actions were reviewed by the leads in May 2018 to ensure we have captured all the Day 1 actions and these have been brigaded under the four organisational outcomes. The plan will be reviewed regularly and will allow the organisation to identify areas where resources will need to be deployed.

## **Governance**

A programme board will be set up to oversee the development of the Day 1 readiness work and to make key decisions on resourcing. The Board will be a sub-committee of SLT and will meet bimonthly to review progress and take decisions on the allocation of resources to particular areas of the business to support Day 1 readiness.

## **Risks**

A risk on Day 1 readiness has been added to SNHCorporate risk register.

- As a result of inadequate preparation for the immediate implications of the UK withdrawal from the EU, known as Day 1 readiness, there is a risk that we fail to implement the necessary changes to our guidance, operating procedures and funding mechanisms, which could result in a failure to achieve our outcomes, have a negative impact on the natural heritage, breach legislation and harm the organisation's reputation.

There are however, several other risks to Day 1 readiness work, which are out with our direct control:

- The UK fails to reach agreement over the withdrawal from the EU, which results in the UK leaving the EU on 29 March 2019 with no transition period in place – i.e. Day 1 is 30 March 2019.
- The process for putting in place UK Frameworks is not seen as fair and equitable resulting in Frameworks being put in place which will have significant impact on the environment in Scotland and do not take account of our differing circumstances.

## **Annex A – Summary of Day 1 Ready (D1R) Needs**

### **Review of Guidance Material**

All relevant guidance will need to be reviewed in order to ensure that it cites correct legal references and reflects any essential process changes required as a consequence of how the UK Withdrawal Bill/Scottish Continuity Bill handles essential operability changes. Priority will be given to ensuring that external guidance is ready although any internal guidance will also need to be brought up to date. Work may also be required to reflect how the [REFIT Action Plan](#) on the Birds and Habitats Directives may be applied post exit.

### **Review of Licences**

Whilst there will be a transposition of European legislation into UK legislation we need to ensure that customers are not legally exposed by any inaccurate documentation that we may provide to them. As such we need to review all relevant documentation to ensure that proper legal references are made.

### **Agri-Environment**

Understanding and implementing what we need to do to prepare for the future funding of the management of protected areas will be one of our most significant activities for D1R. This needs to include how any future AECS scheme (particularly the 2019 AECS application round) will operate and what transitional arrangements need to be in place.

### **EU Strands of Funding**

Alongside the AECS and other SRDP-related funding schemes we need to engage in any discussions on transitional and future arrangements for replacing other current EU-related strands of funding. This is relevant to LIFE+, ESIF structural funds and EMFF funding. Whilst some funds have been guaranteed beyond March 2019 we need to understand any implications for managing existing contracts/funded projects that straddle the exit date.

### **Review and amendment of External Legal Documentation**

Along with our guidance we need to ensure that any external legal documentation reflects any new nomenclature and legal references.

### **Revisions to Fisheries Legislation**

We need to understand and amend approaches to marine environment advice to reflect revisions to fisheries legislation. This includes providing input to the 'Future Fishing' review by Marine Scotland and our engagement with wider aspects of post-EU Exit marine environmental policy.

### **Revisions and amendment to processes on Natura Designation**

It is intended that Natura designations will remain after the EU Exit and there are provisions likely to be put in place to ensure that we maintain similar environmental standards to Europe and keep pace with any changes that are made. We shall also need to understand the future intentions with regard to the ongoing SPA Review process and the implications of the timeline.

### **Support Functions – HR, IS, Finance & Procurement**

- Ensure that any practices around procurement reflect any changes to current procedures.
- Ensure that we support all non-UK National staff and our recruitment procedures adhere to new arrangements for employing non-UK National staff.
- Ensure that our ability to share information and data with other nations can continue.



**Annex B – Areas of Business with Likely D1R Need**

<b>Outcome 1 - More people enjoying and benefitting from Nature</b>					
<b>Activity – Placemaking for People and Nature</b>					
<b>Action</b>	<b>Must Do/Minimum Operating Capability</b>	<b>Lead Person</b>	<b>Resource Requirement</b>	<b>Will do in due course/Optimum Operating Capability</b>	<b>Resource Requirement</b>
Funding - Improving Public Access (IPA)	<ul style="list-style-type: none"> <li>Support SG with developing any replacement for ESIF.</li> <li>This is linked to work on agri-environment schemes under Outcome 3.</li> </ul>	Bridget Jones  ERDF – Fiona Strachan/Gillian Macdonald	2018/19 0.3 fte  2019/20 0.7 fte		
<b>Activity – Managing Nature Reserves</b>					
No action identified at present					
<b>Activity - Communications</b>					
EU Exit Stakeholder Engagement Plan	<ul style="list-style-type: none"> <li>Create and roll-out a Stakeholder Engagement Communication Plan to keep staff and partners informed of the impact of the EU Exit for SNH and actions that need to be taken.</li> </ul>	Alison Shields			
Updating website material	<ul style="list-style-type: none"> <li>Our digital communications will need to reflect changes as a result of the EU Exit.</li> </ul>	Alison Shields	2018/19 0.1 fte  2019/20 0.2 fte		

<b>Outcome 2 - The health and resilience of Scotland's Nature is improved</b>					
<b>Activity – Protected Areas and Surveillance</b>					
European Protected Sites & Habitat Appraisal Regulations	<ul style="list-style-type: none"> <li>Review process and update any internal and external guidance including replacement of links to EC documentation</li> </ul>	John Kerr & Greg Mudge	2018/19 0.2 fte  2019/20 0.2 fte		
Designations	<ul style="list-style-type: none"> <li>Consider timeline for any designation cases where they will straddle EU Exit date.</li> <li>Agree revised process for SACs where the EU would normally be involved</li> </ul>	John Kerr	2018/19 0.1 fte  2019/20 0.2 fte		
Environmental Framework Agreements	<ul style="list-style-type: none"> <li>Input into the development of Framework agreements as required.</li> </ul>	John Kerr	2018/19 1.2 fte  2019/20 2 fte		
Governance Issues	<ul style="list-style-type: none"> <li>Input into Environmental Governance solution in Scotland</li> </ul>	Greg Mudge	2018/19 0.5 fte  2019/20 0.5 fte		
SPA Review		Nigel Buxton		Determine the rationale for implementation in line with analysis of international obligations	
<b>Activity - Coastal and Marine Management</b>					
Future Fishing Review	<ul style="list-style-type: none"> <li>Provide input to Review by Marine</li> </ul>	David		Work with JNCC to prepare a joint paper on environmental	

	Scotland	Donnan		objectives for future Scottish fisheries policy	
Marine Environmental Policy		Katie Gillham / Cathy Tilbrook			
Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing any replacement scheme for EMFF</li> </ul>	David Donnan		<ul style="list-style-type: none"> <li>As required</li> </ul>	
<b>Activity – Biodiversity Leadership and Co-ordination</b>					
Reporting Duties					
<b>Outcome 3 - More investment in the management of Scotland's Natural Capital</b>					
<b>Activity - Natural Resource Management</b>					
Agri-Environment Schemes	<ul style="list-style-type: none"> <li>Review any changes required to associated guidance and templates to ensure correct reference in regulatory requirements and procedures</li> <li>Clarify and confirm legal status of agreements with individual customers and make whatever formal updates are required to maintain agreement validity</li> <li>Ensure adequate transition arrangements in place between closure of current SRDP and opening of post EU Exit agri-environment measures</li> </ul>	Tracey Robinson/ Claudia Rowse	2018/19 0.5 fte  2019/20 1 fte	<ul style="list-style-type: none"> <li>Internal guidance updates and any associated training</li> </ul>	
Funding	<ul style="list-style-type: none"> <li>Participate with lead partners in developing replacement scheme for</li> </ul>	Claudia			

	AECS <ul style="list-style-type: none"> <li>Participate with lead partners in developing any replacement scheme for LIFE+</li> </ul>	Rowse  Gillian Macdonald			
Reporting	<ul style="list-style-type: none"> <li>Understand the full range of international reporting requirements including necessary changes to Article 17 Reporting</li> </ul>	David O'Brien	2018/19 0.1 fte  2019/20 0.2 fte		
<b>Activity - Supporting Good Development</b>					
EIA and SEA – Planning Advice, Responses to Statutory Planning Consultations	<ul style="list-style-type: none"> <li>Review any changes required to associated guidance and templates</li> </ul>	Fiona Rice	2018/19 0.5 fte  2019/20 0.5 fte	<ul style="list-style-type: none"> <li>Internal guidance updates and any associated training</li> </ul>	
<b>Activity - Wildlife Management</b>					
Wildlife Licensing	<ul style="list-style-type: none"> <li>Review and update documentation including external guidance, and licensing documentation</li> <li>Assess reporting changes e.g. Annual Birds Directive Reporting and biennial Habitats Directive Reporting</li> <li>Ensure that the EU Invasive Alien Species Regulation legislation is incorporated into any guidance etc.</li> </ul>	Ben Ross	2018/19 0.2 fte  2019/20 0.3 fte		
<b>Outcome 4 - We have transformed the way we work</b>					
<b>Activity - Enabling our people</b>					
Immigration controls and recruitment	<ul style="list-style-type: none"> <li>Ensure that SNH is compliant in the way it treats existing staff from EU countries and</li> </ul>	Alison Macdonald	2018/19 0.1 fte		

	how it deals with recruitment of staff and volunteers from non-uk countries post the EU Exit.		2019/20 0.1 fte		
Learning and Development	<ul style="list-style-type: none"> <li>Create a training plan to ensure that relevant staff involved with areas such as licencing have sufficient knowledge to advise customers on any changes being introduced</li> </ul>	Maggie Cochrane			
<b>Activity - Strengthening our performance</b>					
Procurement	<ul style="list-style-type: none"> <li>Ensure SNH adheres to any new rules put in place for procurement post the EU Exit.</li> </ul>	Marian Brown	2018/19 0.1 fte  2019/20 0.1 fte		
<b>Activity - Transforming our Workplaces</b>					
No action identified at present					
<b>Activity – Enhancing our performance</b>					
Information Management Programme	<ul style="list-style-type: none"> <li>Ensure our publically available information is accurate and available on Day 1.</li> <li>Ensure data sharing with other nations can continue – INSPIRE directive</li> </ul>	Mark Robson	2018/19 0.2 fte  2019/20 0.5 fte		

Ian Jardine (Chair)  
Nick Halfhide  
Andrew Bachell  
Joe Moore  
Jane Macdonald  
Ross Johnston

Stuart MacQuarrie (Head of SMU)  
Alison Bell (Head of Communications) (present for Items 1 & 2)  
Katie Eardley (Minutes)  
Patrick Haston (Item 3)

Eileen Stuart

[illegible]

4. Nick Halfhide introduced this paper exploring the implications of the EU Referendum result, explaining it was held in the closed session to explore issues



in preparation for further discussion with Board to then be clear and consistent on the wider communication messages that would follow.

5. Stuart MacQuarrie highlighted the quickly changing and emerging issues along with the political and public sector initiatives with timescales running parallel.
6. MT discussed the current and future legislative landscape and how it could affect our areas of work along with the challenges and opportunities it may provide. MT noted that Scotland would most likely leave the EU in 2019. If Scotland intended to re-join it was likely to continue to comply with EU Directives throughout the intervening years.
7. The following key points were noted when considering the recommendations along with communication required, including future information that may be requested by SG;
  - a) A feature of our communication and the advice we might provide would be to help internal and external stakeholders understand and deal with uncertainty.
  - b) There was some cross over with the Strategic Development 'commissions' action plan, particularly in regard to planned work on protected places issues through our leadership and responsibilities for reporting under the Scottish Biodiversity strategy, Common Standards Monitoring and reporting against the National Performance Framework.
  - c) Along with Marine Scotland Science and JNCC, SNH is one of the key contributors to the evidence base for reporting under OSPAR and the Marine Strategy Framework Directive.
  - d) There was a need for one point of contact for messages to staff along with a communications plan to ensure consistency of message, focusing on official lines and avoiding speculation during the period of uncertainty about the future legislative landscape and how it might impact on our key areas of work.

**AP45/17: Stuart MacQuarrie - Intranet messages (EU Referendum - Implications) to be passed via Stuart to ensure consistency of message**

**AP46/17: Stuart MacQuarrie and Alison Bell to refine a communications plan (EU Referendum - Implications) as things develop**

8. Focusing discussion towards the paragraphs containing recommendations MT agreed the following;
  - a) Paragraph 20: would be replaced by an action for Nick to commission a short assessment of the benefits of the EU (Natura) Directives in maintaining, protecting and enhancing our natural heritage.

**AP47/17: Nick Halfhide to commission a short assessment of the benefits of EU (Natura) Directives in 'maintaining, protecting and enhancing our environment' (timeline end of March)**

**AP48/17: Nick Halfhide to consider changes to Protected Places action within the Strategic Development action plan in relation to work being undertaken to assess EU Referendum implications (timeline end of March)**

- b) Paragraph 21: It would be important to develop an overview of non EU-international marine commitments which could support contributions to any future discussions around Common Fisheries Policy.

**AP49/17: Andrew Bachell to commission an overview of non-EU international marine commitments applicable to Scotland in partnership with Marine Scotland Science (timeline end of March)**

- c) Paragraph 22: MT noted that there was an opportunity to explore a wide range of issues during the development of the future Agriculture Strategy and Environment Strategy. Along with incentivising land managers through the rural development programme, broader issues included access, rural communities, infrastructure, ecosystem services and community empowerment. MT requested a scoping exercise to ensure our Activities within our Portfolio structure retained sight of the rapidly changing issues.

**AP50/17 Ross Johnston – Claudia Rowse to scope out work required to focus effort on influencing the principles underpinning the agricultural elements and broader issues (of the EU Referendum implications) and to determine the Activity Team which this would sit with.**

- d) Paragraph 23: We should continue to seek close working, engaging directly with the EU Hub as a means of ensuring our own planning and prioritisation is in step with the likely resource requirements ahead. MT recommended we should try to respond positively to any requests for support or possibly secondment as strategy moves on to design and delivery.
- e) Paragraph 24: The current corporate risk should be reviewed to reflect risks for SNH around being prepared for the change ahead and the communication challenges around uncertainty and change management.

**AP51/17 – Nick Halfhide – Stuart MacQuarrie to review the corporate risk ‘ As a result of uncertainty following the outcome of the referendum on EU....’ to encompass SNH being prepared for changes ahead and communications around uncertainty and managing change.**

- 9. MT agreed that this forward plan and commissioned work should be outlined in a discussion paper to be taken to the Board/MT Strategic discussion meeting 9 March 2017. This would also seek Board views on the risks and possible controls prior to review of the current corporate risk.

## **CONFIRMED MINUTES OF THE MANAGEMENT TEAM MEETING ON TUESDAY 21 March 2017 – CLOSED SESSION**

### **Present:**

Ian Jardine (Chair)  
Nick Halfhide  
Andrew Bachell  
Joe Moore  
Jane Macdonald  
Ross Johnston

### **In attendance:**

Stuart MacQuarrie (Head of SMU)  
Katie Eardley (Minutes)

### **Apologies:**

Eileen Stuart

## **ITEM 1: MINUTES, ACTION POINTS AND MATTERS ARISING**

1. The minutes of the Management Team (MT) meeting on 28 February 2017 subject to minor amendments to AP54/17 for clarity, were agreed as an accurate record.
2. Updates to ongoing action points would be noted on the Action Points List. The following action points were updated at the meeting:

### **MT Meeting 28 February 2017**

**AP50/17 Ross Johnston – Claudia Rowse** to scope out work required to focus effort on influencing the principles underpinning the agricultural elements and broader issues (of the EU Referendum implications) and to determine the Activity Team which this would sit with.

#### **Ongoing**

3. Work on this action point continued. MT noted the increasing concerns around lack of opportunity for SNH to influence the principles for future agricultural schemes and the broader issues resulting from the implications of the EU Referendum outcome.

### **MT Meeting 28 February 2017**

**AP51/17 – Nick Halfhide – Stuart MacQuarrie** to review the corporate risk 'As a result of uncertainty following the outcome of the referendum on EU....' to encompass SNH being prepared for changes ahead and communications around uncertainty and managing change.

MT 21/03/2017, Work was currently underway, with advice from PO, on two risks to replace the current corporate risk in time for the Q4 Performance Report.

#### **Ongoing**

**MT Meeting 28 February 2017**

**AP47/17: Nick Halfhide** to commission a short assessment of the benefits of EU (Natura) Directives in 'maintaining, protecting and enhancing our environment' (~~timeline end of March~~) (timeline end of April)

MT 21/03/2017: Timeline extended to end of April

**Ongoing**

**MT Meeting 28 February 2017**

**AP48/17: Nick Halfhide** to consider changes to Protected Places action within the Strategic Development action plan in relation to work being undertaken to assess EU Referendum implications (~~timeline end of March~~) (timeline end of April)

MT 21/03/2017: Timeline extended to end of April - on MT agenda for 18 April

**Ongoing**

[REDACTED]

[REDACTED]  
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**MT Meeting 28 February 2017**

**AP45/17: Stuart MacQuarrie** - Intranet messages (EU Referendum - Implications) to be passed via Stuart to ensure consistency of message

**Discharged**

**Matters Arising**

4. There were no matters arising from the minute.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

## OFFICIAL-SENSITIVE - CONFIRMED MINUTES OF THE MANAGEMENT TEAM MEETING ON THURSDAY 25 MAY 2017– CLOSED SESSION

### Present:

Nick Halfhide (Chair)  
Joe Moore  
Eileen Stuart  
Jane Macdonald

### In attendance:

Stuart MacQuarrie (Head of SMU)  
Katie Eardley (Minutes)

### Apologies:

Ian Jardine  
Andrew Bachell  
Ross Johnston

### ITEM 1: Minutes, Action Points and Matters Arising

1. The minutes of the closed session of the Management Team (MT) meeting on 18 April 2017, were agreed as an accurate record.
2. Updates to ongoing action points would be noted on the Action Points List. The following action points were discharged or updated at the meeting:

#### MT Meeting 28 February 2017

**AP46/17: Stuart MacQuarrie and Alison Bell** to refine a communications plan (EU Referendum - Implications) as things develop

MT 25/05/2017: Stuart reported that Alison had advised that now with the corporate risks and controls in place an additional specific communications plan was not required for this topic.

**Discharged**

#### MT Meeting 28 February 2017

**AP47/17: Nick Halfhide** to commission a short assessment of the benefits of EU (Natura) Directives in 'maintaining, protecting and enhancing our environment' (timeline end of March).

*Update 10/04/2017; we extended deadline to end of April at last MT meeting*

MT 25/05/2017: Extended to mid-June

**Ongoing**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## OFFICIAL-SENSITIVE - CONFIRMED MINUTES OF THE MANAGEMENT TEAM MEETING ON TUESDAY 20 JUNE 2017– CLOSED SESSION

### Present:

Ian Jardine (Chair)  
Nick Halfhide  
Joe Moore  
Eileen Stuart  
Jane Macdonald  
Ross Johnston

### In attendance:

Stuart MacQuarrie (Head of SMU)  
Katie Eardley (Minutes)

### ITEM 1: Minutes, Action Points and Matters Arising

1. The minutes of the closed session of the Management Team (MT) meeting on 25 May 2017, were agreed as an accurate record.
2. Updates to ongoing action points would be noted on the Action Points List. The following action points were discharged or updated at the meeting:

#### MT Meeting 28 February 2017

**AP47/17: Nick Halfhide** to commission a short assessment of the benefits of EU (Natura) Directives in 'maintaining, protecting and enhancing our environment' (timeline end of March).

*Update 10/04/2017; we extended deadline to end of April at last MT meeting.*

*MT 25/05/2017: Extended to mid-June*

*MT 21/06/2017: Extended to end June – to be based on UK response to the Fitness Check.*

#### **Ongoing**

#### MT Meeting 18 April 2017

**AP01/18: Eileen Stuart** (approaching David Barnes, Chief Agricultural Officer, Scottish Government) to seek our inclusion in current discussions around the principles underpinning the agricultural elements and broader issues of the EU Referendum implications.

*Update 17/05: ONGOING - Discussions are ongoing with SG about how best we can feed into the design of the future of agriculture policy and we have been encouraged to develop thinking about how sustainable land management measures can be built into the foundations of future support systems. We are instigating discussions on this work with colleagues in the National Parks, SEPA and the Crofters Commission so we can present some common principles to David Barnes to inform their policy thinking.*

#### **Discharged**

3. MT noted that a meeting was scheduled for August between Eileen and David Barnes. MT requested an update on the emerging plans for our engagement with



Scottish Government (SG) thinking on agriculture policy be provided by Eileen August.

**AP12/18: Eileen Stuart to provide update to MT on plans for our engagement with SG policy thinking on agriculture policy and support systems.**

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## CONFIRMED MINUTES OF THE MANAGEMENT TEAM MEETING ON TUESDAY 25 JULY 2017 – CLOSED SESSION

### Present:

Ian Jardine  
Andrew Bachell  
Joe Moore  
Nick Halfhide  
Ross Johnston  
Eileen Stuart  
Jane Macdonald

### In attendance:

Katie Eardley (Board/MT Co-ordinator)

### ITEM 1: Minutes, action points, matters arising

1. The minutes of the Management Team (MT) meeting closed session on 20 June 2017 were confirmed subject to minor amendments for accuracy.

### Action Points

2. Updates to ongoing action points would be noted on the Action Points List. The following action points, were updated at the meeting:

### MT Meeting 28 February 2017

**AP47/17: Nick Halfhide** to commission a short assessment of the benefits of EU (Natura) Directives in ‘maintaining, protecting and enhancing our environment’ (timeline end of March).

*Update 10/04/2017; we extended deadline to end of April at last MT meeting.*

*MT 25/05/2017: Extended to mid-June*

*MT 21/06/2017: Extended to end June – to be based on UK response to the Fitness Check.*

### Discharged

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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