

Book: The New Relationship between the United Kingdom and the European Union

Chapter: Environmental Cooperation in the Post-Brexit Era: Enhancing Collaborative Approaches for Environmental Protection and Conservation

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1 Introduction: Brexit and its Implications for Environmental Law

The United Kingdom's withdrawal from the European Union (commonly referred to as Brexit) has resulted in substantial impacts on the country's environmental legislation.¹ At the time of the departure from the EU, UK environmental legislation was mostly EU legislation. While one of the main Brexit claims was that the UK could craft its own policies without being bound to observe the European Union's regulatory framework, British environmental law continues to be influenced by EU law in a number of areas.

Several important considerations arise then in the context of the UK-EU relations on environmental protection after Brexit. Drawing on scholarly research, one significant aspect to note is the introduction of the Retained EU Legislation (Revocation and Reform) Act² and of the sunset clause, which aims to modify and retain EU law within the UK legal framework.³ The key provisions are primarily concentrated in the initial three clauses, focusing on the retention of direct EU legislation.⁴ Another significant element is the potential extension of the sunset clause, which pertains to Parliament's powers to modify legislation under a particular section.⁵ This modification of the policy landscape introduces concerns of a potential "cliff edge" scenario where legislation could abruptly cease to apply. Certainly, the Retained EU Legislation Revocation and Reform Act plays a crucial role in shaping the overall dynamics of the UK's environmental policy landscape after Brexit.⁶

During the Brexit negotiations, environmental protection and climate change issues emerged as crucial points of contention in the post-Brexit scenario. The concept of "dynamic alignment"

¹ Eloise Scotford & Megan Bowman (2016) Brexit and Environmental Law: Challenges and Opportunities, King's Law Journal, 27:3, 416-419, DOI: 10.1080/09615768.2016.1258779. See, also, Jacquelyn MacLennan and Genevra Forwood, Environmental law after Brexit, 9 March 2021, available at <https://www.whitecase.com/insight-alert/environmental-law-after-brexit> (last accessed 31/01/2024) and Client Earth, Environmental Law & Governance Post-Brexit, available at <https://www.clientearth.org/latest/documents/environmental-law-governance-post-brexit> (last accessed 31/01/2024).

² Retained EU Law (Revocation and Reform) Bill, 8 June 2023, available at <https://bills.parliament.uk/bills/3340> (last accessed 31/01/2024).

³ 'Retained EU law' is a concept created by the European Union (Withdrawal) Act 2018. This act took a 'snapshot' of EU law as it applied to the UK at the end of the Brexit transition period on 31 December 2020 and provided for it to continue to apply in domestic law, available at <https://www.lawsociety.org.uk/topics/brexit/retained-eu-law> (last accessed 31/01/2024).

⁴ Additionally, the scheduled revocation set for the year 2023, the Retained EU Law (Revocation and Reform) Act received Royal Assent on 29 June 2023, marking the end of the legislation by the year's conclusion.

⁵ L. Cater, "A post-Brexit regulatory 'bonfire' could scorch UK environmental protections. The UK's environmental regulations are in peril three years after it quit the EU", Politico, 1st February 2023 <https://www.politico.eu/article/post-brexit-regulation-uk-environmental-protection-eu/> (last accessed 31/01/2024).

⁶ Graeme Cowie, Research Briefing, Retained EU Law (Revocation and Reform) Act 2023, 28 July 2023.

proposed by the European Union faced resistance from the United Kingdom, which sought to disengage from EU environmental standards following its withdrawal from the Union. Moreover, concerns were raised regarding the potential weakening of robust environmental standards in the absence of the oversight provided by the Court of Justice of the European Union (CJEU). During the time of the EU membership, the UK had frequently faced infringement proceedings in the area of environmental protection.⁷ Now, due to these changes, there are asymmetries or divergent applications of environmental law.

The EU-UK Trade and Cooperation Agreement (TCA) marked a significant milestone in establishing a more constructive relationship and ushering in a new era of bilateral cooperation. As the specific provisions of the TCA were negotiated and finalized, particular attention was given to the intricate details of the new legal framework. Among the contentious issues were the inclusion of a “non-regression” clause, which aimed to prevent a decline in the level of environmental protection by the UK after the end of the transition period, with the commitment to maintain EU binding targets, and the adoption of re-balancing measures, among other significant aspects.

Furthermore, Title XXI of the UK-EU Agreement on the Level-Playing Field incorporates environmental law principles that the UK should respect and that are relevant to the application of environmental provisions, including the polluter pays principle and the precautionary principle. In other areas, such as the import and export of chemicals, there are specific TCA provisions on regulatory cooperation and transparency concerning, for instance, the classification of substances.

Cooperation in the realm of environmental governance manifests itself in various ways, encompassing bilateral relations facilitated by committees and the inclusion of specific provisions in the legislation, such as sunset clauses. Notably, the Department for Environment, Food and Rural Affairs (DEFRA) and devolution issues have prompted discussions on enhancing environmental ambitions within the devolved administrations.⁸ Particularly in Scotland, there is a pronounced drive for heightened environmental aspirations. Given the post-Brexit landscape, there arises a necessity to recalibrate inter-governmental relations within the United Kingdom to adapt to the new context.⁹

Amidst the implementation of post-Brexit legislations, apprehensions arose regarding the potential impact of the legislation and the imminent sunset date on environmental protection in the UK. The limited timeframe poses a significant challenge for parliament to adequately review, replace, or reiterate the extensive body of EU-derived environmental laws. This raises concerns about ensuring equivalent levels of environmental protection and conservation, which

⁷ House of Lords - Brexit: environment and climate change - European Union Committee, House of Lords, Brexit: environment and climate change, <https://publications.parliament.uk/pa/ld201617/ldselect/ldcom/109/10903.htm> (last accessed 31/01/2024).

⁸ Department for Environment, Food and Rural Affairs: Policy paper 19 August 2020: Environment Bill - environmental targets, available at <https://www.gov.uk/government/publications/environment-bill-2020/august-2020-environment-bill-environmental-targets#:~:text=Target%20framework&text=It%20requires%20government%20to%20set,forward%20by%2031%20October%202022> (last accessed 31/01/2024).

⁹ **Title XI. Level Playing Field for Open and Fair Competition and Sustainable Development. Article 305. Principles and objectives.**

the UK is presently obligated to uphold.¹⁰ The impending environmental legislation at the time of writing is supposed to help achieve the targets set out in the 25-Year Environmental Plan established in 2018 aimed at enhancing the natural environment.¹¹

In turn, the Environment Act 2021 (EA) was finally enacted embodying the UK's new framework of environmental protection. This would help dissipate the potential risk of de-harmonization, i.e. of being subject to uneven standards. In terms of enforcement, the newly designed environmental policy after the adoption of the EA will fill a gap in this regard.

In terms of the implementation of international environmental agreements, it has been significantly affected by the repercussions of Brexit, leading to substantial transformations in the legal and institutional frameworks governing environmental governance in the United Kingdom in different sectoral areas.

In what regards access to environmental information, the Aarhus on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, was initially incorporated into the UK legal system through the adoption of EU legislation.¹² However, following the UK's withdrawal from the European Union, it no longer falls directly under the jurisdiction of the European Court of Justice, which previously played a pivotal role in the interpretation and enforcement of the Aarhus Convention. As a consequence, the UK has undertaken the task of establishing new domestic mechanisms and processes to guarantee adherence to the Convention's provisions.

Likewise, the UK's departure from the EU has had ramifications for the transboundary dimensions of environmental decision-making and cooperation, necessitating the renegotiation of agreements and frameworks to sustain the effective implementation of the Aarhus Convention in the post-Brexit context. Scholars, such as Lee, have indicated that Brexit has eroded public participation under the Aarhus Convention.¹³

The implications of Brexit on UK environmental legislation have resulted in multifaceted consequences that warrant closer examination. Primarily, the withdrawal from the European Union has necessitated substantive alterations to EU-derived legislation within the UK's legal framework. To ensure regulatory continuity, the government has undertaken the task of amending or enacting new laws to address domains previously governed by EU regulations, such as air and water quality, waste management, and wildlife protection.

Moreover, the UK government has unequivocally expressed its steadfast commitment to upholding existing environmental standards following Brexit. It has articulated its intention to safeguard a high level of protection for both the environment and public health. In light of this commitment, the government has proposed the establishment of an independent watchdog (the

¹⁰ J. Jones, The Retained EU Law (Revocation and Reform) Bill & The Environment, available at <https://www.msbsolicitors.co.uk/the-retained-eu-law-revocation-and-reform-bill-the-environment/> (last accessed 31/01/2024).

¹¹ Office for Environmental Protection, Progress in improving the natural environment in England (2021/2022), updated on 19 January 2023, available at <https://www.theoep.org.uk/report/progress-improving-natural-environment-england-20212022> (last accessed 31/01/2024).

¹² The Aarhus Convention, an international accord was signed by the UK on xx and entered into force on xx. The Aarhus Convention was signed by the United Kingdom (UK) on the 25th of June 1998 and ratified on 23 February 2005.

¹³ See, M. Lee (2023), The Aarhus Convention 1998 and the Environment Act 2021: Eroding Public Participation. *Mod Law Rev.*, 86: 756-784, <https://doi.org/10.1111/1468-2230.12789>.

Office for the Environment) endowed with the responsibility of overseeing and monitoring environmental regulatory practices, thus ensuring compliance with these robust standards.

Concurrently, the negotiation of new trade agreements by the UK subsequent to its departure from the EU introduces an additional dimension that could significantly impact environmental legislation. To maintain parity, the government has taken a firm stance, affirming its non-negotiable position of not compromising on environmental standards during trade negotiations.¹⁴ The UK government seeks to establish and uphold a level playing field to prevent any potential dilution of environmental safeguards. In this regard, the Environment, Food and Rural Affairs Committee has emphasised that the government should formally commit to upholding animal welfare and environmental standards in all post-Brexit trade deals.

Furthermore, the UK's separation from the EU has resulted in the loss of access to certain EU funding streams that previously supported a range of environmental initiatives. In response, the UK government has proactively initiated the creation of new domestic funding mechanisms, which are designed to provide financial support for crucial environmental projects and initiatives, ensuring the continuity of environmental progress.

Lastly, the ramifications of Brexit extend to the recalibration of the UK's relationship with international environmental organizations. Notably, the UK's participation in the framework of other relevant international environmental treaties, such as the United Nations Framework Convention on Climate Change has necessitated a reassessment. The UK government, cognizant of the importance of global cooperation in addressing pressing environmental challenges, has underscored its unwavering commitment to continued collaboration on a global scale. Precisely, the collaboration between the UK and the EU will also extend to include participation in several Multilateral Environmental Agreements (MEAs). Globally, the importance of unified EU-UK leadership in addressing the climate crisis has been elevated within the context of international negotiations aimed at mitigating the most severe impacts of the climate emergency.

In an overall appraisal of the influence of Brexit on UK environmental legislation, one can say that the post-Brexit period in what concerns environmental protection is characterized by a comprehensive array of factors, encompassing legislative adjustments, the preservation of environmental standards, trade considerations, domestic funding mechanisms, and international cooperation. These facets collectively shape the landscape of UK environmental policy in the post-Brexit era, warranting rigorous analysis and evaluation.

Overall, the impact of Brexit on UK environmental legislation is still unfolding, and the full extent of the changes may not be apparent for some time. However, the UK government has signalled its commitment to maintaining environmental standards and protecting public health and has taken steps to ensure continuity in the regulation of key issues.

Against this backdrop, this chapter addresses the question of environmental protection in a post-Brexit context, from a multi-layered perspective, contemplating other areas of law with a bearing on environmental protection, such as trade and the environment. Within the analytical framework of this chapter, we embark on a comprehensive exploration of the prospective UK-EU dynamics in the post-Brexit landscape. This investigation is purposefully structured around

¹⁴ See, for instance, the reports on the Free Trade Agreement with Australia.

the multifaceted environmental issues of convergence, divergence, and harmonization of norms. These elements serve as essential focal points, enabling us to discern and elucidate the intricate dimensions of environmental governance and cooperation between the United Kingdom and the European Union, as they navigate the challenges and opportunities arising in the aftermath of Brexit.

2. Unravelling Brexit: Assessing the Impact on the Legal Landscape of UK Environmental Law

Following the withdrawal of the United Kingdom from the European Union, there has been a concerted effort to preserve and uphold environmental laws and regulations that were previously governed by EU membership.¹⁵ To this end, the UK government has implemented a series of legislative measures aimed at replacing and modernizing the environmental regulations previously established under EU law. One noteworthy example is the Environment Bill, which has undergone parliamentary scrutiny and introduced new initiatives to safeguard the environment.¹⁶ These include setting targets for air quality improvement, addressing the issue of plastic pollution, mandating biodiversity net gain, redefining the contours of the energy policy, and defining strategic priorities to counteract the climate emergency. Ensuring compliance with retained EU legislation remains a significant priority during the post-Brexit era.¹⁷

The post-Brexit regulatory landscape in the UK encompasses several key areas. In the wake of Brexit, a discernible array of notable distinctions and modifications has emerged in the realm of environmental legislation when juxtaposed with the pre-existing European Union framework. These disparities can be observed in various areas.

Without delving into details, areas for enhanced regulation after Brexit include the regulation of chemicals and genetically modified organisms under the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (EU Exit) Regulations 2019.¹⁸ These regulations establish a comprehensive framework for ensuring the safe and responsible handling of such substances within the UK. Additionally, the UK Emissions Trading Scheme has been introduced as a replacement for the country's participation in the EU Emissions Trading System.¹⁹ Designed to support the UK in achieving its carbon reduction targets, this scheme plays a crucial role in addressing climate change. Furthermore, the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 have been implemented to update the UK's regulations for the protection of habitats and species, aligning them with the country's new post-Brexit realities.²⁰ Lastly, the Air Quality (Amendment) (EU Exit)

¹⁵ R. G. Lee, Always Keep a Hold of Nurse: British Environmental Law and Exit from the European Union, *Journal of Environmental Law*, Volume 29, Issue 1, March 2017, pages 155–164, <https://doi.org/10.1093/jel/eqx004>

¹⁶ Elizabeth Fisher, “Executive Environmental Law”, Volume 83, Issue 1, January 2020, pages 163–189.

¹⁷ <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted> (last accessed 31/01/2024).

¹⁸ Burns, C., Carter, N., Cowell, R., Eckersley, P., Farstad, F., Gravey, V., Jordan, A., Moore, B. and Reid, C., 2018. Environmental policy in a devolved United Kingdom: challenges and opportunities after Brexit. London: UK in a Changing Europe.

¹⁹ UK Government, *Participating in the UK-ETS*, 17 April 2023, available at <https://www.gov.uk/government/publications/participating-in-the-uk-ets/participating-in-the-uk-ets> (last accessed 31/01/2024).

²⁰ UK Government, The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, available at <https://www.legislation.gov.uk/ukdsi/2019/9780111176573> (accessed 9 June 2023).

Regulations 2019 have been enacted to ensure that the UK's air quality regulations remain up to date, and effective following its departure from the EU.²¹ These measures collectively reflect the UK's commitment to maintaining robust environmental standards and addressing key environmental challenges in a post-Brexit context.

In terms of legislative autonomy, which was at the heart of the Brexit claims. With the UK's withdrawal from the European Union, the UK has gained the ability to develop and amend its environmental laws independently. Although the UK government now has the authority to create domestic legislation tailored to its specific environmental priorities and challenges, a certain level of alignment is expected.²²

With regard to the regulatory alignment; while the UK has retained many EU environmental laws through the European Union (Withdrawal) Act 2018, there have been certain modifications and adjustments to align them with the country's new regulatory framework. After that, the UK government has the freedom to adapt and refine environmental regulations to suit national circumstances and objectives. While certain regulatory mechanisms have been replicated by the UK, a comprehensive environmental policy strategy remained largely absent until the introduction of the Retained EU law (Revocation and Reform) Act, which aims to repeal all EU legislation by the conclusion of 2023.²³

As a result of Brexit, the UK no longer falls under the jurisdiction of the European Court of Justice (ECJ), which previously played a role in interpreting and enforcing EU environmental laws. The CJEU has exerted a significant influence on the environmental policies the UK as a member state, historically dubbed as “Dirty man of Europe”. The UK has replaced the monitoring of the CJEU by a new system. Instead, the UK has established its own legal mechanisms and institutions to oversee environmental governance and ensure compliance with domestic regulations.

The issue surrounding the preservation of environmental standards has been a subject of considerable contention and debate within scholarly discourse. The UK government has committed to maintaining high environmental standards post-Brexit. It has set out its own policies and frameworks to address issues such as air and water quality, waste management, biodiversity conservation, and climate change mitigation. While some standards may remain aligned with EU regulations, others may undergo modifications or diverge from the EU approach.

Some scholars argue that, in the post-Brexit area, we are witnessing a de-Europeisation of environmental law and policies. Drawing on empirical evidence, Burn et al. claim the concept of de-Europeanization as an analytical framework to identify the drivers and impediments of

²¹ UK Government, The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019, available at [\(https://www.legislation.gov.uk/ukxi/2019/74/made#:~:text=Environmental%20Protection-,The%20Air%20Quality%20\(Amendment%20of%20Domestic,\)%20\(EU%20Exit\)%20Regulations%202019&text=The%20Secretary%20of%20State%20makes,%20Act%202018\(2\)\)](https://www.legislation.gov.uk/ukxi/2019/74/made#:~:text=Environmental%20Protection-,The%20Air%20Quality%20(Amendment%20of%20Domestic,)%20(EU%20Exit)%20Regulations%202019&text=The%20Secretary%20of%20State%20makes,%20Act%202018(2)) (last accessed 31/01/2024).

²² See Markus Gehring and Freedom-Kai Phillips, Brexit: The International Legal Implications | Paper No. 15 — February 2018, Brexit and Environmental Law: The Rocky Road Ahead, available at https://www.cigionline.org/sites/default/files/documents/Brexit%20Series%20Paper%20no.15_3.pdf (last accessed 31/01/2024).

²³ David Baldock, Environmental Regulation in the UK After Brexit Where Runs the River?, available at https://www.anothereurope.org/wp-content/uploads/2022/12/221214_Brexit_Spotlight_Analysis_final_online.pdf (last accessed 31/01/2024).

processes that entail moving away from European influence, suggesting that the insights garnered from this study may have broader applicability in diverse contexts. They posit that Brexit is more likely to result in disengagement and policy stasis in the environmental realm, with capacity emerging as a central explanatory factor.²⁴

As for international environmental cooperation, Brexit has prompted a reassessment of the UK's international environmental commitments and collaborations. The UK now negotiates its own international agreements and partnerships in areas such as climate change, wildlife conservation, and sustainable development. This is perceived as an opportunity for the UK to shape its own environmental agenda and forge new alliances outside of the EU framework.

In a closely related area, trade and environment, as the UK establishes new trade relationships, considerations regarding environmental standards and regulations become crucial. The UK government aims to uphold environmental protections in trade agreements and maintain a level playing field to prevent potential environmental degradation resulting from increased trade activities.

On the flip side, the UK's departure from the EU has led to changes in access to funding programs and initiatives that previously supported environmental projects and research. The government has introduced new domestic funding mechanisms and frameworks to compensate for the loss of EU funding, ensuring continued support for environmental initiatives.

It is important to note that these differences between legal systems are subject to ongoing developments and may evolve further as the UK's environmental policies and regulations continue to shape the post-Brexit landscape.

One of the distinctive features of post-Brexit UK environmental law is the increasing importance of international environmental law for the United Kingdom. The UK is a party to many MEAs, and this remains unchanged in the face of Brexit.

3. Retaining EU Environmental Legislation in the UK: A Critical Analysis of Legal Mechanisms

Following Brexit, disparities in environmental laws and policies between the EU and the UK encompass not only divergent sectoral approaches but also variations in compliance mechanisms and enforcement strategies. These differences in compliance practices further contribute to the distinctiveness between the two regulatory frameworks in ensuring adherence to environmental standards and objectives. As the UK is no longer bound by the EU's environmental laws and policies, compliance monitoring takes place according to the UK rules.

In the post-Brexit period, one of the main objectives was to roll over as much EU environmental law legislation after Brexit. One of the areas of concern is the maintenance of environmental standards, as the EU is renowned for its stringent environmental regulations and Brexit removes the monitoring by the CJEU over compliance. While the UK has established its own set of environmental standards, there is uncertainty regarding its level of rigour compared to the EU's. The question of compliance arises, as it is essential to ensure that these standards are

²⁴ Charlotte Burns, Viviane Gravey, Andrew Jordan & Anthony Zito (2019), "De-Europeanising or disengaging? EU environmental policy and Brexit", *Environmental Politics*, 28:2, 271-292, DOI:10.1080/09644016.2019.1549774

effectively implemented and adhered to. Divergencies are observed across the various sectoral areas.

In terms of climate change, the EU has made a commitment to achieving net-zero greenhouse gas emissions by 2050 and has implemented binding targets for emission reduction across its Member States. The UK has also made similar commitments, but there is a lack of clarity regarding binding targets beyond 2030, which raises concerns about the long-term trajectory of climate action.²⁵ Although there is the intention to maintain the level of ambition, the lack of a strict monitoring system could water down the commitments.²⁶

Regarding nature and biodiversity conservation, the UK participated in the Natura 2000 network, encompassing a significant portion of its land area, to safeguard natural habitats and biodiversity. After Brexit, SACs and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network.²⁷ Accordingly, The main points and processes of the 2019 Regulations, which amend the Habitats Regulations 2017 transpose the Habitats and Wild Birds Directives, to make them operable from 1 January 2021.²⁸ While the UK has developed its own system of protected areas, it remains uncertain whether it will match the scale and effectiveness of the EU's conservation efforts.²⁹

In the domain of waste and recycling, the EU has set specific targets for waste reduction and increased recycling rates. Although the UK has comparable targets, there is a potential challenge in meeting them without the regulatory oversight previously provided by the EU. Plastic pollution remains at the centre of concerns.

Additionally, the regulation of chemicals poses another area of divergence. The EU's comprehensive chemical regulation system, known as REACH, covers the entire life cycle of chemicals.³⁰ The UK has established its own regulatory framework, but its comprehensiveness in comparison to REACH is yet to be determined.

In summary, the future development of the UK's environmental laws and policies remains uncertain, and it is crucial to monitor their effectiveness in safeguarding the environment. The level of compliance and the ability to uphold high environmental standards will play a vital role in determining the success of the UK's environmental efforts post-Brexit as specifically discussed in the next sections.

²⁵ HM Government, Carbon Budget Delivery Plan, UK's sixth Carbon Budget, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147369/carbon-budget-delivery-plan.pdf (last accessed 31/01/2024).

²⁶ UK enshrines new target in law to slash emissions by 78% by 2035, available at <https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-by-2035> (last accessed 31/01/2024).

²⁷ CIEEM, Brexit changes to the Habitats Regulations for England and Wales, 4th January 2021, <https://cieem.net/brexit-changes-to-the-habitats-regulations/> (last accessed 31/01/2024).

²⁸ Department for Environment, Food & Rural Affairs, Changes to the Habitats Regulations 2017, 1 January 2021 <https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017> <https://cieem.net/brexit-changes-to-the-habitats-regulations/> (last accessed 31/01/2024).

²⁹ Wildlife and Countryside Link (2021): Achieving 30x30 Land and Sea, available at: https://www.wcl.org.uk/docs/WCL_Achieving_30x30_Land_and_Sea_Report.pdf (last accessed 31/01/2024).

³⁰ Department for Environment, Food and Rural Affairs (DEFRA) (2022c): UK REACH Extending data submission deadline, available at: https://consult.defra.gov.uk/reach-policy/consultation-on-extending-the-uk-reach-submission/supporting_documents/Impact%20Assessment%20IA.pdf (last accessed 31/01/2024).

4. Challenges and obligations faced by the UK in complying with environmental regulations post-Brexit

After Brexit, the UK government has established new systems to monitor compliance with environmental laws and regulations. A key legal instrument for the post-Brexit era, the UK Environmental Act sets out the “environmental principles” currently found in EU law; introducing Environmental Improvement Plans and creating the New Office for Environmental Protection (OEP), endowed with scrutiny and advice functions.³¹ The Office for Environmental Protection was created by the need to respond to the need to update environmental legislation and, at the same time, to provide a stable framework. As part of its enforcement functions, the OEP deals with complaints and judicial review. In order to monitor compliance with environmental regulations after Brexit, the United Kingdom has implemented several mechanisms.

4.1. Landscape of compliance with environmental law in the UK

Firstly, the UK government has enacted new domestic legislation to ensure adherence to environmental laws and regulations previously enforced by the European Union. Various government agencies have been subsequently tasked with enforcement, such as the UK Border Force, the Food Standards Agency, and the Health and Safety Executive.

Additionally, the UK government has introduced stricter border checks on goods entering the country. This includes verifying compliance with regulations related to food safety standards and product labelling requirements.³²

To oversee compliance within specific sectors, the UK government has established new regulatory bodies.³³ Regular audits and inspections are conducted by the UK government to ensure compliance with laws and regulations. Businesses, such as food manufacturers and farms, are subject to inspections to verify their compliance with food safety standards.

Furthermore, on the international level, the UK government actively engages in information sharing with other countries and international organizations to enhance compliance. This includes sharing information on imports, exports, and potential non-compliant entities, thereby fostering collaboration in upholding regulations. Overall, the UK government has established new systems and processes to monitor compliance with laws and regulations after Brexit. These include domestic legislation, border checks, regulatory bodies, auditing and inspections, and information sharing.

Against this backdrop, in the UK the OEP plays an important role in protecting and promoting the country's natural environment. It is a governmental body responsible for ensuring that policies and practices related to the environment are effective, efficient, and consistent with the country's legal obligations and commitments.

³¹ In 2021, the Environmental Act, as a newly enacted legal framework came into force, serving as the United Kingdom's updated architecture for environmental safeguarding, see <https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted> (last accessed 31/01/2024).

³² To facilitate the monitoring of goods movement across borders, the government has implemented the Goods Vehicle Movement Service (GVMS), a system designed to track and monitor the movement of goods.

³³ One example is the Medicines and Healthcare products Regulatory Agency (MHRA), which is responsible for regulating medicines and medical devices.

The OEP's main responsibilities include providing advice and guidance to government ministers on environmental policy, monitoring the implementation of environmental policies, and carrying out research to support evidence-based decision-making. The OEP also works closely with other governmental bodies, such as the Environment Agency and Natural England, to coordinate environmental policy and enforcement.

In addition to these responsibilities, the OEP also works to engage with and educate the public on environmental issues. This includes providing information on how individuals and businesses can reduce their environmental impact, as well as promoting awareness of environmental challenges and opportunities.

Overall, the OEP plays a critical role in ensuring that the UK's natural environment is protected, preserved, and enhanced for the benefit of both current and future generations. Section 23(1) outlines its primary objective as follows: (1) The foremost aim of the OEP in the execution of its duties is to make contributions towards (a) safeguarding the environment and (b) the enhancement of the natural environment.

The report titled "Taking Stock: Protecting, Restoring, and Improving the Environment in England" presents a structured framework articulated by the OEP, consisting of six crucial building blocks. These building blocks encompass a spectrum of foundational elements essential for effective environmental management and conservation.³⁴ They include understanding the drivers and pressures impacting the environment, crafting a cohesive vision that guides future endeavors, establishing clear and measurable targets to gauge progress, formulating coherent strategies and policies that align with overarching goals, ensuring robust governance structures to oversee implementation and compliance, and instituting mechanisms for continuous monitoring, assessment, and transparent reporting of environmental outcomes. Together, these building blocks provide a strategic roadmap for advancing environmental sustainability and resilience across England.

It is noteworthy, however, that the OEP does not assume direct responsibilities for matters pertaining to environmental protection, such as environmental permitting, flood defense, or planning oversight. These functions continue to be vested within the purview of the relevant established public bodies or regulators. Instead, the OEP is entrusted with two overarching categories of functions: "Scrutiny and advisory functions" as delineated in sections 28-30 and "Enforcement functions" as delineated in sections 31-41.³⁵

4.2. Proposals for reinforcing compliance with environmental law in the post-Brexit era

The creation of a dedicated forum for environmental EU-UK cooperation, or re-joining the EEA, could present steps towards robust maintenance of environmental standards on both sides of the channel.

As regards devolution, bearing in mind that environmental regulation is a devolved power in the UK, the prospective "shadowing" announced by some of the countries, may lead to

³⁴ OEP, Taking stock: protecting, restoring and improving the environment in England, available at <https://www.theoep.org.uk/report/taking-stock-protecting-restoring-and-improving-environment-england> (last accessed 31/01/2024).

³⁵ Office for Environmental Protection- OEP (theoep.org.uk).

different frameworks, adding another dimension and calling for reinforced cooperation and coordination in the post-Brexit context.

While Scotland has announced its intention to closely align with EU regulations, Northern Ireland, due to its formal alignment with the European Single Market in specific domains, has obligated itself to mirror certain facets of European environmental legislation.³⁶ The establishment of a specialized platform for fostering EU-UK environmental collaboration, or the prospect of re-engaging with the European Economic Area (EEA), could represent viable measures aimed at fortifying the preservation of environmental standards across both shores of the English Channel.

In the realm of prioritization of environmental issues, stipulated within the framework of the Environment Act, the mandate compelled the Government to formulate, no later than the 31st of October 2022, a minimum of one quantifiable objective within each of the four designated priority domains: specifically, air quality, biodiversity, water quality, and the optimization of resource employment coupled with waste reduction. Additionally, specific goals concerning crucial environmental areas are also encompassed within this ambit.

These objectives do not remain in isolation but are to be bolstered by an arrangement of intermediate milestones, structured to span five-year intervals. The purpose of these interim targets is to chart a coherent trajectory towards the ultimate realization of the longer-term goals. Through this strategic arrangement, a continuous and systematic appraisal will be conducted, evaluating the extent to which the governmental endeavours align with its overarching aspirations for sustainable progress.

5. Autonomy or deregulation: Has Brexit led to a paradigm shift in the approach to environmental law in the UK?

Delving into the main areas where the impact of Brexit on sectoral UK environmental legislation, there have been changes to the UK's environmental laws in light of Brexit. Although a significant portion of previous EU legislation has been preserved or substituted by new domestic legislation, new legislation enacted across UK nations has introduced nuanced changes. This is more appreciable in the fields of biodiversity, climate change targets, and energy transition.

Numerous challenges manifest in the absence of adherence to European Union (EU) principles, compounded by deregulation in some areas. Notwithstanding the implementation of the Environment Act 2021, an observable phenomenon of “regulatory environmental chill” has permeated various sectors.

Although the enactment of the Environment Act 2021 has provided a new legal framework post-Brexit in England and other UK nations, the implementation of environmental legislation in specific areas rests on the adoption of more detailed norms developing the framework legislation. As Macrory points out, “[i]n common with much of modern legislation, a number of the core provisions in the Act only provide a very broad framework, leaving the substantial detail to be found in subsequent regulations to be made by the Government. Examples include

³⁶Devolution after Brexit Managing the environment, agriculture and fisheries, <https://www.instituteforgovernment.org.uk/sites/default/files/publications/IFGJ6070-Devolution-After-Brexit-180413-FINAL-WEB.pdf> (last accessed 31/01/2024).

producer responsibility obligations (s 50), electronic waste tracking (s 58), hazardous waste (s 60), environmental recall of vehicles (s 74), amendment of water quality regulations (s 89), and amendment of Habitats Regulations (s 112)".³⁷

Within the realm of secondary legislation, nuanced intricacies are embedded, particularly within air pollution regulations, which play a crucial role in delineating permissible thresholds. Such legislative frameworks encompass high-level commitments and serve as pivotal oversight mechanisms to ensure adherence and accountability. The autonomy is veiled within technical intricacies, often manifested through indirect measures. In the context of international obligations, the United Kingdom's adherence to EU law was more stringent, given its heightened binding nature. In contrast, international obligations tend to exhibit a degree of ambiguity, often leaning toward aspirational goals, coupled with comparatively weaker enforcement mechanisms.

An overall assessment of the environmental legislation adopted indicates that the UK is lagging behind the EU across a broad spectrum of environmental regulation, with the EU bolstering its legislation while the UK opts for weakening measures. In certain instances, environmental protections derived from EU law are removed.

The impending removal of EU-derived air pollution laws under the retained EU legislation, alongside the continued availability of numerous chemicals and pesticides banned within the EU but permitted in the UK, underscores a widening regulatory disparity between the two environmental law regimes. While the EU presses forward with initiatives such as carbon pricing and compensation schemes to ease the burden of transitioning to sustainable practices, the UK lags behind in implementing comparable measures. Moreover, the EU's stringent regulations on battery recycling contrast starkly with the UK's more lenient framework. Additionally, as the EU moves to address deforestation within supply chains, the UK's proposed scheme appears less rigorous and is scheduled for implementation a year later. This growing divergence between UK and EU environmental regulations raises concerns among businesses and environmental groups, exacerbated by the absence of a government body tasked with tracking and addressing these discrepancies.

Though the OEP is tasked with monitoring powers it does not possess the same level of independence as the European Commission. Hence the absence of a dedicated governmental body tasked with monitoring and assessing the divergence between the environmental regulations of the European Union (EU) and the United Kingdom (UK) leaves stakeholders, including citizens, industries, and environmental advocacy groups, uninformed about the magnitude of regulatory disparities.

Practically speaking, this regulatory disconnect translates into several concerning implications: firstly, the quality of water in the UK is anticipated to deteriorate compared to that of the EU; secondly, the levels of pesticides in British soil are expected to surpass those permissible under EU standards; thirdly, companies operating in the UK may produce and distribute products containing chemicals that have been deemed hazardous and restricted by EU regulations.

Moreover, the regulatory landscape has undergone significant alterations, exacerbating the gap between the environmental policies of the EU and the UK. Key policy changes include the

³⁷ Christopher Badger and Richard Macrory, *Environment Act 2021: Text, Guide and Analysis* (Bloomsbury 2022).

elimination of EU-derived air pollution laws under the retained EU law bill, the continued availability of numerous chemicals banned within the EU for use in the UK, the legality of thirty-six pesticides in the UK that are prohibited in the EU, and the UK's lagging progress in reducing carbon emissions compared to the EU's implementation of carbon pricing measures. Additionally, the absence of financial assistance in the UK for individuals struggling to transition to environmentally friendly practices contrasts with the support provided by the EU. Furthermore, while the EU enforces stricter regulations on battery recycling, the UK's approach remains comparatively lenient. Lastly, while the EU moves to eliminate deforestation from its supply chain, the UK's proposed scheme is less stringent and delayed by a year, potentially leading to adverse environmental consequences.

5.1. Biodiversity, conservation, and protection of nature after Brexit

Assessing the direct impact of Brexit on biodiversity in the UK is challenging due to its complexity, as this sector is influenced by a multitude of factors.³⁸ However, some potential impacts can be considered in a preliminary appraisal.

Precisely, one of the main concerns is the impact of Brexit on conservation efforts and environmental regulations. The UK was previously subject to EU environmental policies and regulations, such as the Birds and Habitats Directives, which aimed to protect biodiversity and habitat.³⁹ Following Brexit, the UK is no longer bound by these regulations, and it remains to be seen whether new policies will provide equivalent levels of protection. Areas that intersect with conservation, such as marine protection could be potentially at risk due to reduced levels of environmental protection.⁴⁰

The UK has sustained a consistent commitment to protect biodiversity and has actively participated in various international forums, including the G7 and the Conference of Parties for the Biodiversity Convention.⁴¹ The UK played a pivotal role in endorsing the “Leaders’ Pledge for Nature”, which was launched in September 2020, and all four UK nations have pledged their commitment to safeguarding 30 percent of land and marine areas for biodiversity preservation by 2030.⁴² Nevertheless, there remain doubts regarding the precise means by which this target will be achieved, particularly in England, and whether the requisite policies and financial allocations will be established to support this endeavour.

The UK Environmental Act 2021 introduces a ground-breaking framework for achieving net biodiversity gains, both domestically and internationally. Under this legislation, conservation efforts will extend beyond national borders, fostering biodiversity enhancements on shores and abroad.

³⁸ Gavin Lord, Biodiversity after Brexit: Agri-environmental policy in England after Brexit and private investment in ecosystem services, available at <https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8947290&fileId=8947294> (last accessed 31/01/2024).

³⁹ Charlotte Burns, Viviane Gravey, Andrew Jordan & Anthony Zito (2019) De-Europeanising or disengaging? EU environmental policy and Brexit, *Environmental Politics*, 28:2, 271-292.

⁴⁰ Thomas Appleby and James Harrison, “Taking the Pulse of Environmental and Fisheries Law: The Common Fisheries Policy, the Habitats Directive, and Brexit”, *Journal of Environmental Law*, 2019, 1–22.

⁴¹ UN Biodiversity Conference (COP 15), Conference documents, available at <https://www.cbd.int/conferences/2021-2022/cp-mop-10/documents> (last accessed 31/01/2024).

⁴² See <https://www.leaderspledgefornature.org/> (last accessed 31/01/2024).

A credit system, detailed in forthcoming regulations, will enable the offsetting of environmental impacts while facilitating on-site gains. This innovative approach envisions a market for these credits, whereby landowners can generate gains that are tradable commodities. Planning authorities will assume the role of brokers in this broad-based market, marking an exciting development in environmental management.

Statutory credits, earmarked for specified environmental purposes, promise to inject funds into conservation initiatives. Unlike traditional cap and trade systems, this framework allows for a more flexible approach, with a 10% provision for gains on the same site.

The envisaged statutory credits system, akin to carbon trading schemes, signals a significant shift towards incentivizing environmental stewardship while fostering biodiversity enhancements. This innovative market mechanism is poised to revolutionize biodiversity conservation efforts, aligning financial incentives with ecological imperatives.

Brexit also raises questions about the future of funding for conservation efforts. The EU has previously provided funding for a range of conservation projects in the UK, and the loss of this funding could have a significant impact on conservation efforts. Additionally, Brexit has the potential to affect migratory species that pass through the UK. Many migratory species rely on protected habitats in the UK, and any disruption to these habitats could harm their populations. Overall, the impact of Brexit on biodiversity in the UK is likely to be complex and varied, and it will take time to fully understand the effects. However, there is a need for continued investment in conservation efforts and a commitment to protecting biodiversity in the UK.

On the international level, the UK continues to be bound by the Convention on Biodiversity, which provides a specific framework setting out obligations for the contracting parties. The same considerations apply to the UK's participation in other biodiversity-related MEAs such as the Ramsar Convention.⁴³

In other biodiversity-related areas, the UK has pioneered the adoption of new legislation. The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2019, which establish a framework for the regulation of chemicals and genetically modified organisms in the UK after Brexit.⁴⁴ The UK Emissions Trading Scheme replaces the UK's participation in the EU Emissions Trading System and aims to help the UK achieve its carbon reduction targets. In turn, the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 update the UK's regulations for the protection of habitats and species in line with Brexit.

An interesting development is the adoption of a more comprehensive legal framework for the protection of nature in the EU.⁴⁵ In comparison to this, the UK is attempting to develop a strategy that revolves around the net gain strategy and through setting new targets for conservation.⁴⁶

⁴³ Ramsar Sites in the UK and the UK's Overseas Territories & Crown Dependencies, available at <https://jncc.gov.uk/our-work/ramsar-sites/> (last accessed 31/01/2024).

⁴⁴ Available at <https://www.legislation.gov.uk/ukdsi/2019/9780111181539/contents> (last accessed 31/01/2024).

⁴⁵ EU Commission (2022): Proposal for a Regulation on nature restoration available at https://environment.ec.europa.eu/publications/nature-restoration-law_en (last accessed 31/01/2024).

⁴⁶ Department for Environment, Food and Rural Affairs (DEFRA) (2022b): Nature Recovery Green Paper, available at <https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/> (last accessed 31/01/2024).

Accordingly, among the recent domestic legislative developments, one of the most notable pieces of environmental legislation is the incorporation of Biodiversity Net Gain within the purview of the Environment Act 2021, concomitant with the fortification of the legal obligation on public entities for the preservation and augmentation of biodiversity.⁴⁷ Upon its anticipated obligatory enforcement, potentially in November 2023, a substantial majority of planning permissions granted in England will necessitate the provision of a biodiversity net gain of not less than 10 percent, secured through enduring commitments spanning at least three decades. This alteration has engendered the introduction of a novel biodiversity metric designed to quantify net gain. Additionally, the Act puts forward a novel framework for conservation covenants and mandates the formulation of Local Nature Recovery Strategies, which are spatial strategies that pertain to nature - an innovation that elicited fervent advocacy from environmental non-governmental organizations.

Simultaneously, the progression toward the adoption of a fresh set of domestic targets remains underway. Among the most pivotal of these forthcoming benchmarks are the legally binding, long-term environmental biodiversity targets specifically designated for England. These targets are part of a broader set of environmental objectives as stipulated by the provisions of the Environment Act 2021. Nonetheless, it is anticipated that once these targets are endorsed, they are likely to bear resemblance to the terrestrial and marine biodiversity propositions advanced by Defra during a consultative exercise in March 2022, including one of the most pioneering propositions that entails a commitment to increase species by 10 percent by the year 2042.⁴⁸

5.2. Climate change law and policy after Brexit

Brexit has had a significant impact on UK climate change policy and legislation. Before Brexit, as a member of the European Union (EU), the UK had a range of climate change policies and targets that member states were required to adhere to. The existing legislation, the Climate Change Act 2008 dates back to that EU era.

One of the biggest impacts of Brexit on UK climate change policy has been the loss of access to EU funding for climate-related projects. The EU provided significant funding for research and development in areas such as renewable energy, energy efficiency, and carbon capture and storage, which has been crucial in advancing the UK's efforts to address climate change.

Brexit has also led to changes in the UK's domestic climate change policy. High expectations were set around climate change targets. In 2019, the UK announced the adoption of a binding objective to achieve net-zero greenhouse gas emissions by 2050. In 2019, the UK government set a legally binding target of net zero greenhouse gas emissions by 2050. This target is more ambitious than the target set by the EU, which is for a 40% reduction in greenhouse gas emissions by 2030. Public participation and consultation are at the heart of this new era of environmental law and policy in the UK.

This landmark development foreshadowed a series of progressive climate policies, particularly in the lead-up to COP26 in Glasgow in November 2021. Chief among these initiatives was the

⁴⁷ Tom Graham, *The Environment Act 2021: A Guide for Planners and Developers* (Bath Publishing 2021).

⁴⁸ DEFRA 2022. Biodiversity Terrestrial and Freshwater Targets. Detailed Evidence report. 28th April 2022, available at https://consult.defra.gov.uk/natural-environment-policy/consultation-on-environmental-targets/supporting_documents/Biodiversity%20terrestrial%20and%20freshwater%20targets%20%20Detailed%20evidence%20report.pdf (last accessed 31/01/2024).

release of the “Net Zero Strategy: Build Back Greener”, outlining a roadmap for decarbonising the UK economy by 2050, with a pronounced focus on actions to be taken by 2037.⁴⁹ While this strategy showcased leadership in certain aspects, such as the ambition to phase out fossil-fuelled heating systems by 2035 and halt the sale of new petrol and diesel vehicles by 2030, it was not without its critiques, particularly those coming from civil society and environmental NGOs due to the UK’s reliance on unproven emission reduction technologies like carbon capture and storage plants.⁵⁰

Whereas some of the previous climate change institutions survived Brexit, such as the independent Climate Change Committee, which represents the continuity in environmental policy established under the Climate Change Act 2008 and acknowledges the UK’s alignment with the long-term temperature goal of the Paris Agreement, there is a significant stall in progress. The progress review submitted to Parliament in June 2022, it underscores the sluggish pace of advancement across several domains, noting that “tangible progress is lagging policy ambition”, primarily due to various policy gaps. The report accentuates the imperative of closing these gaps, especially in areas like land use, potentially facilitated by new environmental legislation and the energy efficiency of buildings. Furthermore, it highlights the necessity for comprehensive strategies and detailed plans in waste management, land use, agriculture, and achieving complete electricity decarbonization by 2035.

There is the perception that Brexit has also allowed the UK government to have greater control over its own climate change policy, as it is no longer subject to EU regulations and directives. This has allowed the government to introduce policies that are more tailored to the UK’s specific needs and priorities, such as the Green Industrial Revolution, which aims to create green jobs and accelerate the transition to a low-carbon economy.

However, Brexit has also created some uncertainties around the UK’s future relationship with the EU on climate change. The EU is currently developing a new climate law, which includes a target of net zero greenhouse gas emissions by 2050, and it is unclear whether the UK will align with this target or develop its own separate target.

Equally important, the Strategy also faced scrutiny from a coalition of environmental NGOs, who questioned its legal compliance with the Climate Change Act. Specifically, the coalition pressed for detailed climate policies that would elucidate how the UK’s legally binding carbon budgets would be fulfilled, including quantitative targets. Following a favourable ruling by the High Court in July 2022, the Government is obliged to amend the Strategy and provide clarity on how the proposed policies will effectuate the necessary changes to meet these targets.⁵¹

Overall, Brexit has had a significant impact on UK climate change policy and legislation, both in terms of the opportunities it has created and the challenges it has presented. The long-term effects of Brexit on the UK’s ability to address climate change will depend on a range of factors,

⁴⁹ Department for Energy Security and Net Zero and Department for Business, Energy & Industrial Strategy, Net Zero Strategy: Build Back Greener (19 October 2021), available at <https://www.gov.uk/government/publications/net-zero-strategy> (last accessed 31/01/2024).

⁵⁰ ClientEarth 2021, The “Greenwashing Files”, available at <https://www.clientearth.org/projects/the-greenwashing-files/drax/> (last accessed 31/01/2024).

⁵¹ ClientEarth, “We’ve won our case against the UK Government’s inadequate net zero strategy”, 19th July 2022, <https://www.clientearth.org/latest/latest-updates/news/clientearth-are-suing-the-uk-government-over-its-net-zero-strategy/> (last accessed 31/01/2024).

including the government's commitment to achieving its net zero target and its ability to develop effective policies to support this goal.

5.3. Green deal and the just transition agenda

After Brexit, the EU Green Deal and the UK Green Deal further differentiated as two separate initiatives aimed at addressing environmental challenges. The progressive departure of the UK coincided with the organisation of the COP26 in Glasgow which, up to a certain extent, shaped the future of the relations in what respect climate change.

The EU Green Deal is a comprehensive plan introduced by the European Commission in December 2019 to make the EU's economy sustainable and carbon-neutral by 2050. The plan includes a wide range of policy measures and investments to transform the EU's energy, transport, and agricultural systems, as well as initiatives to protect biodiversity and reduce pollution. The EU Green Deal is focused on the entire European Union and its member states, with the European Commission leading the effort to implement the plans.

On the other hand, the UK Green Deal was conceptualised as a policy framework introduced by the UK government in 2011 aimed at reducing carbon emissions and promoting sustainable growth. However, the UK Green Deal is no longer in operation, having been superseded by more recent policies and initiatives such as the Ten Point Plan for a Green Industrial Revolution, which was announced by the UK government in November 2020.⁵² This plan includes measures such as investing in renewable energy, accelerating the transition to zero-emission vehicles, and upgrading buildings to improve energy efficiency. The Air Quality (Amendment) (EU Exit) Regulations 2019, updated the UK's air quality regulations to reflect its departure from the EU.

In the related area of energy efficiency, the UK's lag in energy efficiency compared to the European Union is exacerbating the ongoing cost-of-living predicament. Household electricity costs in the UK surpass those in several neighbouring EU nations by a considerable margin, exceeding at least 30 percent. This discrepancy can be attributed to the substantial reliance on gas as a primary energy source within the UK. Nonetheless, regulatory initiatives aimed at enhancing residential insulation and achieving heightened energy efficiency significantly trail behind the benchmarks set by the EU's Directive on the Energy Performance of Buildings. This EU directive has a specific goal of doubling the annual rate of building energy renovations by 2030, a milestone that the UK is notably behind in achieving.

In sum, whereas the EU Green Deal is a current, wide-reaching plan for transforming the EU economy to become carbon-neutral by 2050, at the moment, the UK Green Deal can be deemed as an almost defunct policy framework aimed at reducing carbon emissions and promoting sustainable growth, and the original proposal has been superseded by more recent policies such as the UK's Ten Point Plan.

5.4. Divergences in other environmental areas

⁵² Department for Business, Energy and Industrial Strategy (BEIS) (2021): Net Zero Strategy: Build Back Greener, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf (last accessed 31/01/2024).

At the same time, the UK government has expressed a clear intent to diverge from EU-based environmental regulations, citing concerns over their perceived restrictiveness and administrative burdens (red tapes). This divergence manifests in several key areas, what could be narrowed down into three central domains.

With regard to environmental assessments, England is, in particular, moving away from EU-derived regulations governing Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) for development projects. This proposed shift is outlined in the Levelling Up and Regeneration Bill, and aims to replace existing procedures with a more flexible “results-based” approach while ensuring continued assessments for select environmentally impactful projects.⁵³ This could result in an erosion of the level of protection pre-Brexit with the aim of attracting investments and facilitating projects.

In terms of Gene Editing and GMOs, the UK has already chosen to deviate from the EU in regulating gene editing and genetically modified organisms (GMOs). New legislation, such as the Genetic Technology (Precision Breeding) Bill, seeks to create a lighter regulatory framework for precision breeding techniques, including gene editing. This move is expected to attract investment, accelerate food development, and yield global benefits, but it faces opposition from various quarters.

Finally, in the area of chemical regulation, the UK’s decision to depart from the EU’s comprehensive chemical regulation regime, known as REACH, and establish an alternative domestic system under the Health and Safety Executive, represents a significant regulatory departure. This UK-based regime operates on a smaller scale and has limited resources and data access, potentially incurring governmental and industrial costs. The decision appears driven by ideological motives to disengage from EU institutions.

Through these divergences the UK seems to underscore the shift away from EU environmental norms, raising questions about their economic, administrative, and environmental implications, as well as potential consequences for future alignment with EU regulations.

6. Conclusions: It takes two to tango, UK and environmental law after Brexit

After the United Kingdom’s departure from the European Union, many of the environmental laws and regulations that were previously in place through EU membership have been retained in UK law.

The UK government has enacted a series of legislative measures aimed at supplanting or modernizing environmental regulations that were formerly governed by EU legislation. Among these measures, the Environment Act endeavours to usher in novel provisions designed to fortify environmental protection. These provisions encompass objectives encompassing air quality enhancement, strategies for mitigating plastic pollution, and mandates for achieving biodiversity net gain. Overall, while some changes have been made to UK environmental legislation as a result of Brexit, much of the previous EU legislation has been retained or replaced by new UK laws.

⁵³ Levelling-up and Regeneration Act, <https://www.legislation.gov.uk/ukpga/2023/55/enacted> (last accessed 31/01/2024).

In the aftermath of Brexit, the landscape of environmental law has displayed a discernible lack of substantial deregulation, exhibiting varied trajectories contingent upon sectoral legislation. While certain measures have been undertaken, such as the UK's disengagement from the European Environment Agency and the regulatory framework of REACH pertaining to chemicals, the overarching trend signifies a limited scope of deregulatory initiatives. Notably, the United Kingdom's energy efficiency standards are comparably deficient vis-à-vis European counterparts, thereby exerting upward pressure on consumer pricing, and the palpable advancement towards the 2050 net-zero emissions target exhibits perceptible laggardness.

The trend toward deregulation gained momentum upon the unveiling of the Retained EU law (Revocation and Reform) Act, propounding an objective of expunging all EU legislation from the corpus of British statutes by the conclusion of 2023. This envisioned rollback of certain aspects within the domain of environmental law, particularly concerning developmental oversight, biodiversity preservation, and foundational environmental safeguards intertwined with agricultural and fisheries policies, stands as a pivotal departure from established policy paradigms. The forthcoming trajectory hinges upon the decisive interlude of 2025, coinciding with the prospective renegotiation of the Trade and Cooperation Agreement. This juncture portends the potential for introspection, encompassing a comprehensive re-evaluation of environmental repercussions stemming from the Agreement's provisions and, by extension, the broader ramifications of the Brexit phenomenon upon the legislative landscape governing environmental concerns.