

RSPB Brexit Progress Assessment across UK and Four Countries

| 1. Maintain or enhance high environmental standards in all four countries of the UK | | | PROGRESS: PARTLY MET |
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| <p>UK</p> <p>Despite numerous commitments across the four countries to protect nature as the UK leaves the EU and, in many instances, to be world leaders on the environment, thus far this has not resulted in legal binding commitments prohibiting regression in environmental standards and protections. The Trade and Cooperation Agreement (TCA) signed by the UK and EU contains commitments “not to weaken or reduce” existing environmental standards in a way that affects trade or investment. This is enforceable as part of the “level playing field” provisions but it is not clear how strong a mechanism this will be, how high a threshold it will involve, and does not provide the equivalent to a broad and binding non-regression clause. The TCA also commits both parties to “continue to strive to increase their respective environmental levels of protection”. Where failure to match increased protections by one party has brought “material impacts” on trade and investment, the other party has recourse to propose and implement “rebalancing” measures to address the negative impacts of such discrepancies. This will not have the effect of raising standards directly but may create a disincentive to remain at a lower level. The common frameworks processes that would establish shared approaches to standards and managing divergence across the four countries (with varying degrees of statutory basis) have been slow-moving and lacking in transparency, with few fully completed by the end of 2020. While existing standards have been largely transposed from EU into domestic law (‘retained EU law’), the absence of a common, legally enforceable floor means these standards are not even protected, let alone accompanied by requirements for upwards progress. UK Government provisions in the UK Internal Market Bill could well have the effect of “chilling” environmental ambition – either by limiting governments’ ability to regulate the products that can be sold in their markets or through the uncertainty of establishing an untested legal framework. In December 2020, the UK Government announced that its “Business Impact Target” - namely the measure through which it would assess its success in removing regulatory red tape in the interests of business – would be zero for the remainder of this parliament and until a review of the measure could be completed. While this does not formally or legally rule out deregulatory measures, it may serve as an indication of current intent.</p> | | | |
| <p>England</p> <p>The Environment Bill currently progressing through the Westminster Parliament will establish a legally-binding environmental target-setting framework. While positive, this needs improvement to ensure interim targets are also legally binding and to ensure progress is made towards achieving the long-term targets. While the Bill contains clauses requiring ministers to make statements as to if and how new laws reduce environmental protection and to report on developments in international environmental protection law, neither amounts to a legal “non-regression” commitment.</p> | <p>Northern Ireland</p> <p>The provisions in the NI Protocol mean that Northern Ireland will continue to apply European rules in a number of areas, including several related to the environment. Other than the Protocol, there is no legal provision in NI for “non-regression” on environment and nature protection. There is cross-party agreement among Westminster NI MPs not to lower standards. The target-setting framework in the UK Environment Bill does not apply to NI. There is commitment within the ‘New Decade New Approach’ Deal to targets and action on Climate Change, with cross-party support, being actioned through a departmental consultation on a Climate Change Bill. A draft Environment Strategy for NI is expected in March, followed by an updated biodiversity strategy after CBD 2020, providing further opportunity to incorporate targets in law. The lack of non-regression</p> | <p>Scotland</p> <p>The UK Withdrawal from the European Union (Continuity) (Scotland) Bill was passed in December 2020 by the Scottish Parliament. The Act will include a ‘keeping pace power’, which will enable Scotland to match EU standards in the future. The powers do not legally oblige the government to do so or commit to non-regression but there is a ‘purpose clause’ to which Scottish Ministers must have due regard when exercising the powers. The purpose is, among other things, to contribute to maintaining and advancing standards relating to the environment and rights. A policy statement will set out further detail about use of the powers and interpretation of the purpose. The Act places the 2020 Environment Strategy in law and requires it to aim for a high level of environmental protection. It must be revised from time to time and reported on to Parliament. However, there is no target-</p> | <p>Wales</p> <p>The Environment (Wales) Act for the sustainable management of natural resources was passed in 2016, prior to the referendum. This is a promising start but it needs to be bolstered with legally binding nature recovery targets to drive change at the scale and pace needed to tackle the nature emergency. The Government has committed to maintaining and enhancing standards after Brexit but has not yet committed to introducing statutory nature targets. The run up to the general election gives all political parties the chance to commit to this. The Welsh government has resisted legal commitment to “non-regression” as an environmental principle (see governance update below) on the grounds that it implies standing still. This reasoning is partly informed by the impact that trade policy, as a UK reserved function, would have on the ability of Wales to meet such a commitment.</p> |

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| | provisions and common frameworks is particularly concerning with regards to the single biogeographic nature of the island of Ireland. | setting framework and there are currently no commitments from the Scottish Government to develop binding Nature Recovery Targets. Scotland's Biodiversity Strategy is set to be updated after the CBD 2020, so may provide an opportunity to incorporate targets | |
| 2. Secure political commitment to co-operative mechanisms including multilateral and bilateral agreements including across the biogeographical area of Great Britain and Ireland | | | PROGRESS: MET |
| UK | | | |
| <p>The UK Government has made a number of clear commitments to cooperative mechanisms, including ahead of both the Convention on Biodiversity and COP26, which will be hosted in Glasgow. These include ambitious commitments to at least a 68% reduction in greenhouse gas emissions by 2030 and 30% of UK land to be protected for nature by 2030. The UK has continued to affirm its commitment to the Good Friday/Belfast Agreement through the "New Decade, New Approach" (which contains commitments to north-south cooperation and environmental protection on the island of Ireland) and in agreement through the Joint Committee on the Northern Ireland Protocol. However, it has also been criticised for the inclusion of clauses in the UK Internal Market Bill (subsequently removed) that would serve to break international law in a "specific and limited way". The TCA underlines several areas for continued bilateral and international cooperation on trade and environmental matters, including climate change, biodiversity, forests, fisheries, MEAs, and responsible supply chain management. It is unclear whether the UK Government wishes or will be able to continue its involvement in relevant European-level environmental organisations, such as the European Environment Agency, but this remains a possibility. The Joint Ministerial Committee (between the four governments of the UK) has been functioning poorly and lacking transparency, while the review of such intergovernmental processes appears to have stalled.</p> | | | |
| 3. Bolster the legislative base for nature protection and other mechanisms such as strategic environmental assessment | | | PROGRESS: PARTLY MET |
| England | Northern Ireland | Scotland | Wales |
| <p>The Environment Bill introduces provisions for the establishment of various measures to improve environmental protections, including enhanced biodiversity and reporting duties, local nature recovery strategies, biodiversity net gain, and conservation covenants, species conservation strategies, and protected site strategies. It will also put the Government's 25 Year Environment Plan on a statutory footing as the first Environmental Improvement Plan. At the same time, the Government has proposed major planning reforms through its planning white paper. This</p> | <p>With a three-year pause in Stormont sitting, the impact of the Coronavirus pandemic and continuing uncertainty around the Protocol, there has been little time to progress legislation for environmental protection beyond the provisions in the Westminster Environment Bill. The current Assembly has shown commitment to nature protection in the form of a Climate Emergency Motion, but Executive action has been slow. Nevertheless, a Climate Change Act is expected next year. A Programme of Government is in development and is expected to be adopted in April and to run across the next assembly until 2027.</p> | <p>The Scottish Government recently announced plans to legislate to license driven grouse shooting to prevent illegal raptor persecution, and to ban burning on peatlands and regulate all muirburn. In June, the Scottish Parliament voted to extend special protection to mountain hares under the Wildlife and Countryside Act. Ministers have also recently announced plans to protect 30 per cent of terrestrial land by 2030 and a new biodiversity strategy. This must be accompanied by action for designated sites, including a significant uplift in funding, and a strategic programme to get all sites into favourable condition. Nature based solutions,</p> | <p>The Senedd passed key legislation prior to the referendum, including the Well-being of Future Generations Act in 2015 and the Environment (Wales) Act in 2016. The former places a sustainable development duty on all public bodies and includes "a biodiverse natural environment" among its seven "Well-being Goals". The latter sets a framework for the Sustainable Management of Natural Resources, with an enhanced biodiversity and resilience of ecosystems duty. This framework has helped shape positive policy development and the Welsh Government is showing better focus on integrating nature, such as by convening an internal biodiversity task force. The Welsh</p> |

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| <p>proposes a zonal planning system for England and represents major changes to how development takes place and the provision for nature protection, including reforms to environmental assessment. While the legislation is yet to be laid, there are major uncertainties in what this means for nature protection in England.</p> | | <p>such as woodland and peatland restoration, are expected to feature prominently in the government's updated Climate Change Plan and there is a commitment to £250m over 10 years for peatland restoration. However, there is a lack of commitment to new environmental legislation which would include nature recovery targets and the 2021 Scottish Parliament elections provides an opportunity for parties to commit to this.</p> | <p>Minister signed the Edinburgh Declaration calling for transformative change to reverse biodiversity decline, and Welsh Government officials have confirmed it is backing a 30x30 target. The absence of legally binding nature recovery targets remains a clear need for Wales.</p> |
| <p>4. Secure effective systems of enforcement of environmental law, public accountability and civil society's ability to challenge decisions</p> | | | <p>PROGRESS: NOT YET MET</p> |
| <p>UK</p> <p>The EU Commission will have an additional 4 years to deal with existing complaints and infringement cases. However, political and financial barriers may make it difficult for progress to be made and it is currently unclear how they can be transferred to the OEP, ESS or any Welsh governance body. Current complaints include crucial issues for the future of nature protection, such as regarding peat burning and water pollution. Although all four countries will have interim governance measures and arrangements in place from January 2021, their effectiveness remains uncertain. Importantly, there is currently no requirement in place for governance bodies to communicate and cooperate with each, although the Continuity Bill in Scotland does include provisions to enable this. Therefore, the ability to provide a strategic, UK-wide review function is in question and, with the lack of functioning common frameworks in many crucial environmental areas, there is significant risk to the ability to properly protect and conserve the UK's natural environment. The TCA makes explicit reference to the need for both parties (UK and EU) to have adequate systems in place for the effective enforcement of environmental law, including the need to enforce environmental law as a part of commitments not to reduce or weaken environmental protections. It places a burden on the parties to ensure competent and funded domestic authorities are in place, as well as administrative and/or judicial processes to enable public and civil society access to environmental justice. These provisions in the TCA are likely enforceable in a similar mode to those related to non-regression, which can involve (where impacting trade and investment) consultation, arbitration and potentially the introduction of measures to rectify or compensate the impact on the other party.</p> | | | |
| <p>England</p> <p>The Environment Bill introduces provisions for the creation of the Office for Environmental Protection, which is intended to replace the role of the EU Commission in monitoring and enforcing environmental law, including the CJEU when necessary. However, to adequately and effectively achieve this, it requires greater independence from government, given that it will be holding government to account. At time of writing, Government amendments to the Bill seek to limit the proposed watchdog's powers and independence further. The planned OEP already lacked adequate enforcement powers, including the condition that any</p> | <p>Northern Ireland</p> <p>Subject to Assembly approval, the OEP will have jurisdiction to monitor and enforce environmental law in Northern Ireland. The limitations of the body are therefore also relevant to NI, with the added concerns that there is no clarity of how the OEP will be resourced in NI. Delays mean OEP commencement in July is unlikely and Government amendments are seeking to give the DAERA Minister powers to issue guidance. While it is positive that NI is included in the Interim Environmental Governance Secretariat, there may be an additional governance gap later in 2021. The NI Executive and Assembly have committed to the creation of an NI Environmental Protection Agency (being the</p> | <p>Scotland</p> <p>The UK Withdrawal from the European Union (Continuity) (Scotland) Bill was passed on in December 2020 by the Scottish Parliament. The Act will establish a new environmental governance body, Environmental Standards Scotland (ESS). The body will have powers to receive and investigate public complaints, to monitor the effectiveness of environmental law and to assess data on the state of the environment in Scotland. Members of the body will be appointed by Scottish Ministers, who will also appoint its CEO with approval by the Scottish Parliament. Its enforcement capacity is limited by the fact that individual decisions are exempt from most of its powers. Judicial Review will also be the ultimate backstop for compliance issues, meaning</p> | <p>Wales</p> <p>The Welsh Government has not yet brought legislation to address the governance gap arising from January and will not do so during the current Senedd term. Wales will rely on interim governance measures for a protracted period. An Interim Assessor will be appointed, and citizens will be able to raise their concerns about the implementation of environmental law but there will be no independent body that can investigate or enforce instances of breaches. The Interim Assessor will be able to examine how well environmental law functions and advise Ministers. These are helpful but do not present a complete solution, meaning Wales faces an extended governance gap and no clear timetable to fix it. The Minister recently accepted recommendations from a stakeholder task group</p> |

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| <p>enforcement action would need to rely on principles of judicial review, limited to consideration of procedure and not the substance of complaints. However, the government has recently added provision for the Secretary of State to issue guidance to the OEP on its enforcement policy and functions and for the OEP to have regard to it. This would severely undermine the OEP's independence further, especially if action is needed against that Secretary of State. Due to delays, the OEP will not be fully up and running by the end of the transition period, leaving a gap in environmental governance. Its provisions do include mechanisms for citizen complaint procedures. Defra will have interim measures in place by January 2020, including for civil society to submit complaints and initial reviews and monitoring of compliance with environmental law and the 25 Year Environment Plan in England. While this is welcome, the potential to escalate serious cases remains unclear and it is not a certainty that the OEP will be fully functioning by July. The OEP Chair has been confirmed as Dame Glenys Stacey</p> | <p>only one of the four countries without one) and will need adequate funding and scope. Stormont may move towards an independent NI OEP in the future, but this will depend on political will and funding. The European Commission and Court of Justice will continue to have jurisdictional responsibility for the enforcement of environmental rules as they relate to the Northern Ireland Protocol. It is unknown how other aspects of the Protocol, such as Article 16, allowing for unilateral action to be taken in instances of social, economic, or environmental difficulties, will be enforced.</p> | <p>there are considerable issues for access to justice on environmental matters in Scotland. The Act requires the government to provide sufficient resources to the watchdog. However, the Act also requires a further consultation on environmental governance after the ESS has been set up, including on whether Scotland should have a dedicated Environmental Court or Tribunal.</p> | <p>calling for an independent Environment Commission for Wales, accountable to the Assembly rather than Government. Functions would include investigating breaches in environmental law by public bodies and a citizen complaint mechanism. The Commission would seek to address issues and agree corrective action directly with public bodies and would have recourse to enforcement via the courts. Given the shared judicial system with England, it is likely to be aligned with provisions in the Westminster Environment Bill. The Commission could also offer strategic advice on the effectiveness of environmental laws. The Minister also agreed in principle with the recommendation to legislate for the application of the core environmental principles in Wales. But there is not enough time to bring forward legislation in the current Senedd.</p> |
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| <p>5. Improve the environmental sustainability of land and marine management</p> | <p>PROGRESS: NOT YET MET</p> |
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The Fisheries Act (2020) provides a framework legislation for the management of UK fisheries. As the RSPB has stated, this represents an improvement on previously proposed legislation, includes welcome objectives on climate change and ecosystems, and offers continuity with existing approaches. However, the legislation contains potential loopholes and insufficient legal obligations, and will fall short of driving the reforms needed for ocean recovery. The impact on the sustainability of UK fisheries will depend on the detail of Joint Fisheries Statements between the four UK countries, individual Fisheries Management Plans, and the policies and legislation developed by devolved governments and parliaments. On fisheries, the TCA largely provides a continuation of the status quo for at least five years of an "adjustment period" and will see a phasing in of new quota shares, while overall fishing levels (total allowable catch) will be determined by advice from ICES and other factors. The agreement includes shared objectives and principles of good management for the recovery of fish stocks and nature at sea, largely reiterating the approach in the Common Fisheries Policy and the UK Fisheries Act, including the principle of maximum sustainable yield. The deal does prevent unilateral action that could have led to overfishing and does not preclude actions by either Party for conservation and sustainable exploitation if measures taken are based on scientific evidence, are in pursuance of legitimate goals, are non-discriminatory in nature and affected vessels and parties are notified and given opportunity to seek clarifications. It remains to be seen how and if the UK will use its new "independent coastal state" rights to protect the environment.

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| <p>England</p> <p>The Agriculture Act (2020) represents a significant step towards the environmental sustainability of farming in England. It introduces powers to create an Environmental Land Management scheme (ELMS) that will reward farmers and land managers for the environmental public goods they provide. ELMS policy details have been slowly emerging, providing a direction of travelling, but further detail is still needed to ensure the system will work effectively and fairly, for nature, climate and farmers. Long-term funding commitments are also still needed, alongside clarity in how different policy mechanisms will coherently align. Improvements in regulatory enforcements are also still needed to ensure the success of any ELM scheme. Part 2 of the UK Marine Strategy has been delayed from December 2020. Government intends to update part 3 of the strategy (programme of measures and actions for good environmental status) in 2021. While the 25 YEP progress report suggested the UK had made "good progress towards achieving 'good environmental status'", of the 15 areas covered, Good Environmental Status had been achieved in 4, was partial in 5 and was not met in 6. In June 2020, the Benyon Review into Highly Protected Areas was published and it is now for Defra to decide if and how to respond and/or implement the report's 25 recommendations.</p> | <p>Northern Ireland</p> <p>The Northern Ireland Schedule in the UK Agriculture Act (2020) allows the continuation of existing payment schemes (Basic Payments and Rural Development Programme) for the foreseeable future. There is no clear timeframe for Northern Ireland to develop domestic agricultural policy or legislation. Despite the extended absence of the Assembly, DAERA has undertaken work on future agricultural policy framework for NI, based on the principles of environmental sustainability, resilience, productivity and supply chain functionality. The Minister recently announced that this will progress in 2021. However, there is no clear indication of a timeframe for implementation or processes for policy development. There has been no commitment to further agri-environment schemes after 2021, representing a real risk that many farmers could fall out of land management agreements. There is a need for an NI Agriculture Bill, based on the principle of public money for public goods to set a clear mandate for change. The Fisheries Act and Joint Fisheries Statement will challenge NI to deliver on the 8 fisheries objectives. The Fisheries Act (Northern Ireland) 1966 may need significant amendment to be made fit for purpose and we have been advocating for this, including the call for consultation on Remote Electronic Monitoring on vessels. No official commitments have been made to take this action. NI is currently consulting on fisheries management options alongside the Marine Protected Areas Management and Monitoring Programme, aiming to deliver a suit of management plans for NI MPAs. Gaps remain in the NI MPA network.</p> | <p>Scotland</p> <p>The Agriculture (Retained EU Law and Data) (Scotland) Act was passed in 2020 but was a technical piece of legislation to ensure continuity with existing arrangements and payments, in line with the 'Stability and Simplicity' approach adopted by the Scottish Government. This means existing CAP schemes and payments continue for the next few years, with Scottish Government having the power to improve or simplify relevant regulations. One critical issue is that, while direct payments to farmers have been guaranteed, there is nothing similar for the Agri-Environment-Climate Scheme. Decisions for what happens from 2021 are with Ministers. With no clarity on the direction, timescales or process for developing a new rural policy and subsidy scheme set out, Scotland is falling behind other countries in the UK in this regard. The Scottish Government published a new fisheries strategy on 17 December, but we do not anticipate it will herald the shift toward recovery and resilience of marine ecosystems required. The Scottish Government have recently designated a large deep-sea reserve and 12 new marine SPAs. This is good progress but will only be meaningful if followed up with investment and action to secure effective management and monitoring of all these sites. While Marine Protected Area coverage is now 37% of Scottish waters, very few sites have adequate management or monitoring in place.</p> | <p>Wales</p> <p>The Welsh Government has launched its Agriculture (Wales) White Paper consultation, which aims to reform how farming is supported over the next 20 years. The Government's objectives for agriculture include sustainable food production, responding to the climate emergency and reversing declines in biodiversity. Future farming support will be based on the principle of public money for public goods, with a Sustainable Farming Scheme being introduced to reward farmers appropriately for environmental benefits such as improving soil health, providing clean air and water, improved biodiversity and tackling climate change. The Government intends to introduce the Bill at the end of Summer 2022, with secondary legislation to follow. The Welsh Government is contributing to the policy outputs that underpin the UK Fisheries Act. It has committed to the development of a Welsh Fisheries Bill and Future Fisheries Policy but these have yet to come to fruition.</p> |
| <p>6. Provide adequate funding for nature conservation across the UK and in the UK Overseas Territories</p> | | | <p>PROGRESS: NOT MET</p> |

UK

UK replacements of (or continued involvement in) LIFE and BEST programmes have suffered from postponement and it is not yet clear how and to what extent these gaps in existing funding will be met after the transition period ends. This not only inhibits future action but also conservation efforts needed now, due to the uncertainty of planning programmes of work over multiple years. Funding for statutory nature conservation organisations remains threateningly low, with the Chair of Natural England stating its current funding is below the level needed for it to deliver its statutory duties to a good standard. Based on analysis updated in 2010, estimated costs of delivering the UK’s Biodiversity Action Plans significantly outstripped the actual funds spent on nature conservation between 2010 and 2019. Those estimates did not account for subsequently more ambitious targets announced at global, European, UK and country levels (including the 25 Year Environment Plan, largely focused on England), meaning that the gap was probably even larger. With further political commitments from all the UK countries to reversing nature’s declines hoped for and expected around the CBD next year, without significant increases in spending, that spending gap will likely widen further. The UK Government has made some welcome commitments to spending on nature, including the creation of a £670 million Climate for Nature Fund but this will not fund all aspects of nature conservation, is a single pot (not a multi-annual commitment) and falls short of the estimated £615 million annual capital investment needed to drive the restoration of nature and creation of habitats. Commitment is needed to ensure CAP funds are adequately replaced across the UK, with an estimated £2.9 billion needed annually for environmental land management. Further detail is required on plans for a “UK Shared Prosperity Fund” to replace EU Structural Funds and the extent to which this will support sustainability and actions for nature across the UK. Similarly, funding formulas for nature conservation across the UK need to be structured according to needs and fairness. The UK Government has also made a welcome commitment to end public direct finance to fossil fuel companies abroad.

7. Develop trade policy that promotes high environmental standards, minimises our global environmental footprint and is open to engagement by civil society

PROGRESS: NOT YET MET

UK

The UK’s overall trade policy and approach to negotiations remains largely unclear, with often contending principles and priorities promoted in different contexts. While the UK Government has frequently stated its commitments not to lower environmental standards through free trade agreements, it has thus far failed to incorporate that commitment into primary legislation (despite the opportunity presented by both the Trade Bill and Agriculture Act). Provisions in the UK Internal Market Act do not establish adequate derogations from the “market access principles” for reasons of environmental protection, making it unclear how UK trade policy will align with high environmental ambition. Trade focused legislation, including the Trade Bill (which has not yet received Royal Assent) has failed to provide adequate transparency and parliamentary scrutiny on current or future free trade agreement priorities, negotiations or texts. The UK Government has made some concessions towards scrutiny through the establishment of a Trade and Agriculture Commission to monitor and advise the implementation of UK trade policy, specifically around food and farming, but this is an insufficient replacement for proper public and parliamentary scrutiny. Similarly, there has been insufficient involvement of devolved governments or civil society in establishing priorities and mandates for negotiations involving the UK to ensure that provisions do not serve to undermine high environmental standards in the UK or abroad. The UK Government has made welcome progress in including provision in the Westminster Environment Bill for a legal due diligence mechanism, creating an obligation for larger companies to ensure their supply chains do not involve illegally or unsustainably produced or sourced commodities. As a trade agreement, the TCA with the EU does go beyond virtually any other existing trade deal in the extent to which it assures a level playing field on environmental matters. As one of the first new and full trade agreements completed by the UK outside of the EU (following UK-Japan and various rollover deals), this offers a potentially valuable precedent and model for how the UK can seek to enshrine environment, climate and nature in future negotiations and deals. The TCA contains welcome provision for the inclusion of both domestic advisory groups and a civil society forum.