

# Parliamentary Briefing

## *The Great Repeal Bill*



The UK's membership of the European Union has resulted in a shared body of environmental legislation and associated governance arrangements. These are relied on to protect our environment, in line with national and international commitments to environmental quality, public health, sustainable development and biodiversity conservation. For instance, internationally-important sites such as the New Forest and the coral reefs of Lyme Bay are but two of many special wild places that have benefited from EU-derived environmental laws. Securing and building on these firm, well-tested foundations will be vital for the nation's long-term well-being and prosperity, whatever our future relationship with the EU.

The UK Government has proposed a 'Great Repeal Bill' to help ensure that there is still a functioning statute book once the UK has left the EU. To meet the government's aspiration for the UK to lead the world in environmental protection and leave the environment in a better condition than we inherited it, the Repeal Bill must:

- 1) **Bring over the whole body of EU environmental law and related laws required to be coherent with environmental law (including the relevant parts of the Common Agricultural Policy and Common Fisheries Policy).** This means:
  - a) effectively converting all existing EU environmental law (including preambles, principles and jurisprudence) into domestic law;
  - b) ensuring that UK laws made through secondary legislation to implement EU obligations are saved.
- 2) **Allow no opportunity for gaps in UK environmental protections to open up without full parliamentary scrutiny.** This means:
  - a) confining any delegated powers to the purpose of faithful conversion by putting time limits and appropriate parliamentary scrutiny on such powers, ensuring any non-technical changes are made by primary legislation only, and giving a full and proper role to the relevant legislatures in each of the four nations;
  - b) once faithfully converted into UK law, the entirety of the UK's EU-derived environment laws should be granted a status equivalent to statute (primary legislation), that can be amended or repealed only by an Act of Parliament.
- 3) **Make sure the law is properly implemented and enforced.** This means:
  - a) introducing new domestic governance arrangements to ensure equivalent, or more robust, provision of the regulatory, monitoring, oversight, accountability, enforcement and other functions currently provided by EU institutions.

But even before the EU referendum, we believed that there needed to be more ambition for restoring our environment. **The Repeal Bill should therefore be followed immediately by an ambitious new Environment Act and associated regulation, incentive and enforcement.** In this way the expected Repeal Act, Fisheries Act and Agriculture Act will sit in a framework designed to make the UK a world leader in environmental restoration.

### KEY INFORMATION

## 80%

- **Estimated percentage of UK environmental policies shaped by EU law.**

*(House of Lords EU Committee, The Future of the Natural Environment after the EU Referendum Sixth Report of Session 2016–17)*

- **Percentage of adults in the UK that think we need the same or stronger levels of environmental protection after we leave the EU.**

*(38% think we should have the same environmental protection after it leaves the EU, 42% think it should be stronger. Online survey by YouGov of 1,578 adults (18+), 29-30 Nov 2016)*

## >800

**Number of sites in the UK's contribution to Natura2000, a European-wide network of sites protected under EU nature laws.**

*(The Wildlife Trusts 2016 report, 'It's Our Nature')*

**"The importance of the role of the EU institutions in ensuring effective enforcement of environmental protection and standards...cannot be over-stated".**

*(House of Lords EU Committee inquiry report 'Brexit: Environment and Climate Change')*

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## Questions and answers

### Will the Repeal Bill convert all EU environmental law in domestic law?

The UK Government's Repeal Bill white paper states that it will only convert EU law into domestic law 'wherever practical and sensible'. Clarification on this is urgently needed with regards to environmental law. The Wildlife Trusts believe that effectively converting **all** EU environmental law is vital, as well as bringing across environmental principles which underpin this legislation, such as: the goals of sustainable development; the precautionary principle (where if in doubt about the impact on wildlife of a new development or new pesticide, for example, we do not proceed); the polluter pays principle (which means for example if a factory releases a toxic chemical into a river the responsibility to clean this up should lie with that factory not the taxpayer). Additionally, the Government has not stated what its approach will be regarding EU Directives that have been incorrectly or incompletely transposed into UK law.

### What legislative scrutiny procedures are required in the Repeal Bill?

It is unlikely that a single scrutiny procedure will be sufficient to provide the necessary oversight for converting EU law into domestic law. The Repeal Bill should therefore outline a scrutiny procedure of converted legislation that includes:

- 1) a requirement to carrying out a public consultation on any new proposals and changes, including the draft changes to the relevant legislation themselves;
- 2) a requirement to lay supporting documents before parliament, including an explanation of the existing function of the law and the reason why corrections are necessary;
- 3) power for a relevant committee to block or amend any proposals before they are laid before parliament;
- 4) power to call for further debate and approval by the appropriate legislature (given that much environmental policy is devolved).

### Why are new domestic environmental governance arrangements needed?

Currently, the European Commission carries out an important function in overseeing the

compliance of all member states with the EU's set of common environmental standards. If member states do not act in compliance with EU requirements, they risk legal proceedings via the Court of Justice of the European Union (CJEU). The white paper makes it clear that the Repeal Bill will bring an end to the jurisdiction of the CJEU in the UK. However, it does not make it clear what, if any, domestic governance arrangements will replace this. Proposals must be presented to set out how this gap will be addressed to ensure no erosion of environmental protections after the UK leaves the EU. Parliament should have the opportunity to approve or reject ministerial proposals for substituting current EU institutions, bodies and agencies with domestic institutions during the conversion process.

### How will the Repeal Bill impact current devolution settlements?

Politically, environmental matters are largely devolved, but environmental processes do not respect borders. To date, EU environmental law has provided a common framework, leading to similar approaches and standards across all the UK's jurisdictions. It is unclear whether, and in what ways, the proposed Repeal Bill will affect current devolution settlements. It will, therefore, be important for the national and devolved governments to work collaboratively to maintain high standards of environmental protection and address cross-border environmental issues effectively, in line with the UK's international obligations

### Will existing EU case law still be relevant in the UK?

The white paper confirms that historic case law of the European Court of Justice (CJEU) will have the same status in our courts as that of the Supreme Court (unless and until altered in future by the Supreme Court). However, the government needs to confirm whether UK courts will be obliged to take account of future CJEU case law in relation to the environment. This is likely to be required to ensure minimal divergence and to maintain legal clarity and certainty.

*The Wildlife Trusts  
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There are 47 individual Wildlife Trusts covering the whole of the UK. All are working for an environment rich in wildlife for everyone. They manage more than 90,000 hectares of land in the UK and provide around 5,000 days of land management advice to others every year. We have more than 800,000 members including 150,000 members of our junior branch Wildlife Watch. Our vision is to create A Living Landscape and secure Living Seas. Each Wildlife Trust is working within its local communities to inspire people about the future of their area: their own Living Landscapes and Living Seas.

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