

**Devolution and Exiting the EU**  
**Written evidence by Greener UK and Environment Links UK**  
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Greener UK is a group of 13 major environmental organisations united in the belief that leaving the EU is a pivotal moment to restore and enhance the UK's environment. Environment Links UK brings together environment and animal protection organisations to advocate for the conservation and protection of wildlife, countryside and the marine environment. The network comprises the combined memberships of Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and Northern Ireland Environment Link. Together, Greener UK and Environment Links UK members have the support of over eight million people.

This submission is based on a joint position paper adopted by the Greener UK & Environment Links UK 'Brexit and Devolution' group and addresses the issue of common frameworks for intra-UK environmental governance post-Brexit.

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### **Background**

1. Powers relating to most environmental matters, including agriculture, fisheries, and aspects of energy policy, are currently devolved to Scotland, Wales and Northern Ireland. To date, these powers have been exercised in the context of the UK's membership of the EU, which has shared competence for such matters.<sup>1</sup>
2. Given the importance of a co-ordinated approach, based on minimum common standards, for the effective protection of the environment and the prevention of competitive deregulation, these areas are strongly governed by EU policy and legislation.
3. Currently, an estimated 80% of domestic environmental legislation is shaped by EU law<sup>2</sup>, leading the chair of the House of Commons Environmental Audit Committee to state that "*there are few areas...where the decision to leave the EU will have a more widespread impact.*"<sup>3</sup> In fact, of all the policies areas where EU powers intersect with devolved competences, the greatest number relate to the environment.<sup>4</sup>

### **Common frameworks for environmental protection as we leave the EU**

4. Operating within common EU frameworks for environmental protection, with oversight by EU institutions, has helped to address transboundary environmental challenges such as the conservation of species and ensure a more level playing field for economic operators.<sup>5</sup> For example, it has helped to:
  - ensure coherent and consistent approaches to environmental protection across the four nations, such as the establishment of a common set of standards for the designation and management of protected Natura 2000 sites and the conservation of key habitats and species;
  - support the integrity of the UK's internal market and prevent unfair regulatory competition; for example, by requiring minimum standards to be met across all of the UK's jurisdictions, it has reduced the risk of any one jurisdiction seeking to gain a short term competitive advantage by unilaterally lowering its own environmental standards;
  - facilitate cross-border trade and cross-border environmental co-operation on the island of Ireland; and,
  - underpin compliance with the UK's international environmental commitments and obligations.

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<sup>1</sup> Shared competence between the EU and the member states applies in relation to a range of areas, including agriculture, fisheries (with the exception of marine biological resources under the Common Fisheries Policy, which is an exclusive competence of the EU), energy and the environment. The exercise of the EU's competences in these matters is governed by the general EU principles of subsidiarity and proportionality.

<sup>2</sup> House of Commons Environmental Audit Committee (2017) *The Future of the Natural Environment after the EU Referendum Sixth Report of Session 2016–17*

<sup>3</sup> <https://www.parliament.uk/documents/commons-committees/environmental-audit/correspondence/160720-Mary-Creagh-to-David-Davis-EAC-EU-letter.pdf>

<sup>4</sup> <https://www.instituteforgovernment.org.uk/explainers/brexit-devolution-and-common-frameworks>

<sup>5</sup> HM Government (2014) *Review of the Balance of Competences between the United Kingdom and the European Union: Environment and Climate Change*

5. For the effective protection of the environment, there are strong reasons for retaining these common frameworks in domestic law post-Brexit. Indeed, the principles justifying EU-level co-operation and regulatory alignment on environmental matters apply equally, if not more strongly, to intra-UK co-operation and regulatory alignment, as well as to co-operation and regulatory alignment on the island of Ireland.
6. The loss of these common frameworks would risk significant regulatory divergence and a less co-ordinated approach to environmental governance, to the detriment of the UK's shared natural heritage. In addition, it could lead to an environmentally damaging process of competitive deregulation across the UK's different jurisdictions.
7. To respect the devolution settlements, it will be essential for the UK and devolved governments to work closely and constructively together to agree on how to embed all existing EU environmental law in domestic law, thereby maintaining common standards across the four nations.
8. All four governments will also need to work together to address the post-Brexit governance gap by designing new domestic governance arrangements to replace functions currently carried out by EU institutions in securing compliance with common standards across the four nations. Our early thinking is that a new high level body or set of co-ordinated bodies (ie one for each of the four nations) should be jointly established to oversee implementation, with responsibility for roles such as compliance checking, monitoring, supervision and information provision, and with the power to initiate action through the courts.
9. Environmental progress across the four nations should be built on this common baseline, with any post-Brexit changes jointly agreed and subject to an appropriate level of scrutiny by each of the relevant legislatures. Nevertheless, each nation should retain the freedom to develop more ambitious approaches as is currently the case under EU law.
10. When it comes to reaching agreement on the development of any new common frameworks post-Brexit, such as in relation to aspects of future agriculture and fisheries policies, it is essential that discussions are underpinned by a clear and agreed framework of guiding principles.

In particular, any new common frameworks should:

- be based on a robust and transparent assessment of environmental impacts under a range of plausible scenarios;
  - maintain ambitious common standards that are at least as high as those set out in existing EU law, at the same time as retaining an appropriate degree of flexibility to allow implementation tailored to the specific environmental context in each nation;
  - prevent competitive deregulation within the UK by setting a minimum common baseline but not prevent any nation from introducing higher standards;<sup>6</sup>
  - be developed alongside a new set of fair and transparent environmental funding arrangements, based on objective environmental criteria and the delivery of public benefit, to replace the loss of EU funding streams and enable effective implementation;
  - include shared governance arrangements, as set out above, to replace the current set of processes by which EU institutions ensure that all the UK's jurisdictions are acting in accordance with their obligations under EU law; and,
  - take into account the need to preserve cross-border environmental co-operation on the island of Ireland.
11. In order to achieve this, the UK and devolved governments will need to agree and establish new and/or improved mechanisms for inter-governmental working at both ministerial and official levels.

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<sup>6</sup> Article 193 of the Treaty on the Functioning of the EU states that protective environmental measures adopted by the EU “shall not prevent any Member State from maintaining or introducing more stringent protective measures” subject to compatibility with the Treaties.

12. In addition, wider stakeholder involvement and consultation should also be a core part of this process, something that was notably absent from the recent Joint Ministerial Committee (EU Negotiations) communiqué on common frameworks. Transparency should also be enhanced to allow for constructive and meaningful dialogue.