



February 2024 / REPORT

Divergence in UK/EU environmental policy: The state of play



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Key Findings

A gradual divergence...

- A gradual divergence on environment and climate law and policy has been taking place, both relative to the EU and across the four UK nations. This is often not clearly visible; it is often technical and complex in nature and difficult to assess.
- Generally speaking, the EU is forging ahead with a higher level of ambition by expanding and deepening its environmental policy and laws.
- Despite some progressive actions, the UK's level of ambition has not matched the EU's ambition since leaving the bloc. It has tended to move more slowly and taken a less stringent approach to regulation.

Divergent levels of ambition

- EU environmental law and policy has continued to evolve since Brexit. It has expanded into new areas, tackling some emerging issues as well as revising and deepening existing laws and policies to tighten up its response to environment and climate challenges. This is despite action being tempered at times by stiff opposition within the European Parliament and Council, leading to compromise on the resulting regulations and Directives, especially over the last six months.
- The European Green Deal has provided a stimulus both towards Net Zero – a distinctly climate orientated objective, but also towards a more comprehensive and complete package of environmental measures. The most active themes are on climate (e.g. emissions trading) and energy (including energy efficiency), circular economy and waste, and nature protection.
- With a few exceptions, the UK's level of ambition has tended to be lower than that of the EU – its approach to tackling commodity driven deforestation being a case in point. The UK has also tended to move more slowly and has taken a less stringent approach to regulation, particularly on chemicals and pesticides.
- There have been some encouraging signs however in a few different policy areas that buck this trend; for example, on biodiversity net gain, growth in the deployment of renewable energy, the banning of trade in shark fins and the use of peat in horticultural products.
- The UK is making a particular effort to keep in step and broadly in line with the EU on certain major pieces of climate legislation, e.g., the carbon border adjustment mechanism, albeit with a time lag between the EU making changes and the UK catching up at a later date.
- However, an array of significant and consequential changes in EU environmental law and policy are expected in 2024, specifically on water, circular economy, nature and industrial pollution policy and it does not appear the UK is planning on following suit any time soon.

‘Flirting’ with regression

- The UK has ‘flirted’ with regressing from the environment and climate rules inherited after Brexit. From nutrient neutrality to the water framework directive to air pollution policy. The UK Government has shown a willingness to test the boundaries of cases of regression as opposed to mere divergence in policy. There has been regression in the protection of hedgerows on farmland which may be closed in forthcoming legislation which is behind schedule.

The need for change

- Why does this matter? Divergence often, but not always, has costs. Divergence in environmental policy can lead to increased friction and distortions to trade. Different types of standards, but mainly environmentally driven product standards, often lead to costs to business or the economy as a whole.
- Differences between the four UK nations are significant and the Scottish government’s intent to keep broadly in step with the EU is notable, although corresponding action has been more limited.
- The UK is in danger of complacency or, at best, being a ‘rule-taker’ two steps behind EU policy developments. The environmental case for broadly keeping pace with EU law while taking advantage of opportunities to innovate, move faster and use flexibility in creative forward-looking ways is a strong one. Now is the time for a more strategic and explicit government policy on divergence.

1. Introduction

Three years on from the end of the Transition Period, the laws and policy that once united the UK and the EU around the environment and climate¹, have been quietly diverging from one another. As an oft stated aim of Brexit for some UK based politicians was to be ‘free’ to make one’s own laws, this is perhaps no surprise. How far and how fast this has been happening and to what level of significance however is of considerable debate. Many of the changes that have taken place are technical, complex and difficult to assess. There are also **limited sources of government published information** in which to make it easier for stakeholders to assess these changes for themselves².

Yet, on the whole, what we are seeing since the UK left the EU, is the **EU moving ahead with a higher level of ambition**, expanding and deepening its environmental policy and laws, albeit with a few blips along the way, especially recently. The UK on the other hand has kept pace or moved faster in some policy areas though largely shows less ambition and in some key areas, like on nutrient neutrality, a dangerous willingness to flirt with regression from the laws inherited at the point of Brexit.

2023 was a significant year for EU/UK divergence in environmental policy because of the sheer number of initiatives, mostly on the EU side, and even though not all are as yet enacted and in law, what they do is highlight the **gulf in ambition** between the EU and UK. 2024 is a key year too. A General Election in the UK and European Parliament elections plus a new European Commission mean potentially new policy direction and new leadership. Will the EU’s higher level of ambition be sustained amidst challenges, mostly from the centre-right European People’s Party group and far-right political parties who seek to undermine and weaken the green agenda? Will there be a shift in direction or emphasis in the UK too on green policy?

IEEP UK has been tracking and assessing divergence in EU/UK and intra-UK environmental policy since 2021. This briefing is part of a series based on this evidence and summarises the changes that have taken place in 2023 as well as highlighting the key ongoing developments – areas of *potential* divergence, that we should be looking out for in the year ahead, or at least up until the European elections due in the summer of 2024.

¹ Throughout this paper I refer only to ‘environmental’ policy. However please note that I consider climate policy, elements of transport, energy and agriculture policy too within the realm of ‘environmental’ policy. It is a little subjective of course but laws relating to energy efficiency, carbon trading, CO2 emission performance in cars, for example are all closely linked with the environment and so I treat them as such. Similarly, agriculture policy and its impact on water bodies, emissions to air (e.g., methane) and soil impacts are all considered as environmental. I invite the reader to bear this in mind throughout.

² Perhaps a notable exception are the publication of Foreign, Commonwealth & Development Office, *Explanatory Memoranda*, <https://www.gov.uk/government/collections/explanatory-memoranda-on-eu-documents>

This paper does not focus on the developing extent of intra-UK divergence (divergence between England, Northern Ireland, Scotland and Wales) though recognises that this is an increasingly important topic and area of study.

2. A strategic outlook

The **European Green Deal**, with its broad and strategic outlook has been set at the centre of the EU's policy making machine under the current European Commission President, Von der Leyen. This has stimulated and guided a raft of policy and legislative initiatives from the Commission, some that have become legislation and some that are currently in the pipeline and are being debated by the Council and Parliament and are likely to come into law in 2024.

The UK has no equivalent overarching strategy. One might argue that the Environmental Improvement Plans (EIP)³ set in place by the 2021 Environment Act are an equivalent in England but this would be wrong. The Environment Act is not at the centre of UK Government policy like the European Green Deal is for the EU. For one thing, it largely only applies to England. There is no thrusting and driving force, say in the Cabinet Office, to push all manner of policy – not just environment and climate – but where these issues sit with policy for industry and business, transport and energy, health and wellbeing too, within a wider strategic framework. Whether or not Von Der Leyen returns for a second mandate after 2024's European elections, and despite criticisms for not going far enough, the shadow the European Green Deal casts only makes the lack of an equivalent in the UK that much starker.

³ The document "A green future: our 25-year plan to improve the environment" published by Government on 11 January 2018 was the first EIP. A second EIP was published on 31 January 2023, <https://www.gov.uk/government/publications/environmental-improvement-plan>

3. Diverging ambition

IEEP UK has been tracking divergence in EU/UK environmental law and policy since the UK left the EU. Not only following individual changes in legislation, but also publishing papers outlining a [typology](#) and the [motivations](#) behind divergence as a way to understand the changes and why they matter.

Since 2021, the EU has demonstrated its high level of ambition by moving forward and initiating changes to existing legislation (to greater or lesser extents) such as the Waste Framework Directive or by introducing wholly new laws and policy such as on a Carbon Border Adjustment Mechanism (CBAM). **Only in a small number of cases has the UK decided to keep in step with the EU** and where it has there has usually been a time lag between changes made in the EU and those being made in the UK – the introduction of the EU CBAM and then later a proposed UK CBAM and the widening of scope of the Emissions Trading Scheme (ETS) to include aviation and maritime emissions are classic examples of this. There is reason to believe that a part of the motivation for aligning with the EU was to avoid economic penalties that UK industry may have faced in not having broadly equivalent rules.

Furthermore, the EU has demonstrated its high level of ambition by its willingness to use ‘regulations’ as opposed to ‘directives’ where there is less room for manoeuvre in terms of their application by the member states – the new Batteries regulation being a prime example. The UK has perhaps predictably tended towards using voluntary rather than mandatory approaches to regulation. Its approach to tackling methane emissions or improving energy efficiency are good examples.

Assuming the party in Government in the UK has a majority, it can usually pass its legislative agenda reasonably quickly and without too many changes. In the EU, it is different. The European Commission, whose role it is to initiate proposals, does not have anything like the same level of power over the European Parliament and Council who have to approve, amend or reject those proposals. Over the last 12 months or so in particular, the Commission has encountered stiff opposition from elements within the Council and Parliament and so, despite some high levels of ambition in parts of the EU’s legislative machinery, not all agree. In fact, some recent proposals have been weakened significantly (e.g., amending thresholds for cattle, pigs and poultry within a revised Industrial Emissions Directive) and even defeated such as the proposed Sustainable Use of Pesticides regulation. It is highly likely that not all elements of the European Commission’s Green Deal will get through in full and as originally intended.

The UK in contrast has tended towards having a lower level of ambition (tackling commodity driven deforestation is a good case in point), to move more slowly and has taken a less stringent

approach to regulation - the approach to chemicals and pesticides regulation being prime examples⁴.

There are however pockets of UK policy where it would appear to challenge the conclusion that the UK has lowered its ambition since leaving the EU. For example, the UK's work on banning the trade in shark fins is a notable exception and actually shows that where there is the will, the UK can and does move much more quickly than the European Union. Similarly, the UK announced a ban on the use of peat in horticulture in England and though the Government announced a delay to this expected ban from 2024 to 2026 in 2023 for professional horticulture businesses, would still, if enacted, mean the UK had moved ahead of the EU as a bloc.

Furthermore, **the UK is far from being a laggard when it comes to the deployment of renewable energy technologies**. Though there are some individual Member States that outperform the UK, most do not and the 2023, revised Renewable Energy Directive only requires a 42.5% renewable energy commitment by 2030 – the UK already regularly exceeds that, so much so that the Labour Party have expressed confidence that the UK could reach 100% clean power⁵ by 2030 should they get into office⁶.

As mentioned above, the UK has also made a particular effort to keep in step with many major elements of EU climate policy such as CBAM and on ETS, both of which are particularly noteworthy and consequential in their environmental impact. However, there are significant legislative developments being initiated by the EU where it is less obvious that the UK will keep in step. The introduction of a Nature Restoration Law is a significant and consequential change, as are amendments to laws governing water quality (note the proposed changes to the Urban Wastewater Treatment, the Water Framework, Groundwater and Environmental Quality Standards Directives), waste and circular economy (particularly on packaging and packaging waste) and industrial pollution.

⁴ Pesticide Action Network UK, 'UK falling behind EU pesticide standards', <https://www.pan-uk.org/post-brexit-pesticide-divergence/>, accessed 30 January 2024.

⁵ 'Clean power' includes nuclear energy generation.

⁶ UK Labour Party, 'Labour's missions for Britain', <https://labour.org.uk/missions/>, accessed 16 January 2024.

4. Testing the boundaries – flirting with regression

Worryingly, there are indications that the UK can and will **regress** from the high levels of environmental protection that the UK inherited from the EU upon its departure. Using the Retained EU Law Act, the current Government has removed Articles 9 and 10 of the UK National Emissions Ceiling regulations and then attempted to weaken nutrient neutrality rules in England⁷ by introducing amendments to its own Levelling up and Regeneration Act in the latter stages of its passage through Parliament in 2023⁸. In both cases, the Government has denied that what it was doing was leading to a regression from high environmental standards. There has also been discussion of amending the Water Framework Directive, particularly with regard to the ‘one out, all out’ rule, that has concerned environmental NGO’s. On 1 January 2024, EU-era cross compliance rules relating to the protection of hedgerows came to an end in England without corresponding indigenous legislation or protections to replace it. It appears that the Government will seek to put in place secondary legislation to protect hedgerows ‘when parliamentary time allows’⁹ and so this would most likely remain a temporary regression however it does mean that it is likely that some or all of the 2024 bird nesting season is at risk.

⁷ Research briefing, House of Commons, ‘*Nutrient neutrality and housing development*’, 2023, <https://commonslibrary.parliament.uk/research-briefings/cbp-9850/#:~:text=It%20tabled%20an%20amendment%20to,not%20added%20to%20the%20bill>, accessed 16 January 2024.

⁸ The attempt to amend nutrient neutrality rules as part of the Levelling up and Regeneration Act failed.

⁹ Hansard, ‘*Hedgerows: Legal protection*’, Rebecca Pow, 2024, <https://hansard.parliament.uk/commons/2024-01-24/debates/9BA05C1F-7FCA-43D4-9935-65FB42A95A5D/HedgerowsLegalProtection>, accessed 30 January 2024.

5. ‘Divergence, so what! Why does it matter?’

Managing transboundary pollution and reducing competitive friction and distortions to trade are the two key drivers as to why countries cooperate with one another on environmental policy. Divergence usually (but not always) comes with costs.

This is particularly true when considering changes in environmental law that have a **trade dimension** to them. Standards for traded products are a clear and obvious example and recent changes in legislation by the EU relating to batteries, which introduce more stringent requirements will significantly affect UK manufacturers exporting into the EU. However operational, procedural and quality standards relating to the environment as well as standards remote from the EU single market all can distort competition to greater or lesser extents¹⁰. As the UK and EU have signed a trade agreement based on the principle that both sides would not regress on their commitment to high environmental standards then the EU has a clear stake in holding the UK to account for fear of losing trade and investment to a country that is willing to loosen its environmental rulebook.

With regard to product standards in particular, **the economic reality is that these EU standards have a much wider reach globally than those only applicable in the UK**. Nearly all such product standards in the UK are based on EU law and so potentially could be changed by future governments. This might be to pursue anticipated economic or perhaps environmental advantage or be motivated by a general preference for regulatory autonomy now that the UK is outside the EU decision-making process. Where companies wish to export to the EU or third countries and where EU standards prevail, there is the cost of having to comply with two sets of standards and possibly have two different production lines for different markets, such duplication being the greatest concern for many companies. Setting up and operating domestic regulatory bodies to monitor and intervene also comes at a cost¹¹, the establishment of a parallel chemicals regulatory framework in the UK is a classic example here.

In environmental terms, the scope for separate UK standards should not be completely dismissed, however. They could be beneficial in some cases, for example, where addressing purely domestic issues, or applying scientific principles more rigorously or moving ahead of the

¹⁰ Nigel Haigh OBE, ‘*Motives for and against divergence by the UK from EU environmental laws*’, 2023, <https://ieep.uk/publications/ieep-uk-motives-for-and-against-divergence-by-the-uk-from-eu-environmental-laws/>

¹¹ National Audit Office, ‘*Regulating after EU Exit*’, 2022, <https://www.nao.org.uk/reports/regulating-after-eu-exit/>

EU in addressing an issue such as prohibiting the inclusion of peat, as mentioned above, in horticultural products.

6. Conclusion

Legislative developments in the EU in 2023 have highlighted a gap in the levels of thinking between the EU and UK on environmental policy. There are now a large number of EU proposals that are already in the legislative pipeline and are expected to become adopted law in the coming months. The expected changes to water, nature, waste and circular economy and industrial pollution law are all significant and would lead to consequential levels of divergence with the UK. Not all will affect trade between the UK and EU for example but what they do add to the sense that the UK, and England in particular, now has a lower level of ambition for several aspects of its environmental policy. The EU, or the EEC as it was then, acted as a stimulus to the UK before its entry into the Union in the 1970's and one can easily be forgiven for thinking that the UK is reverting back to a habit developed before membership of complacency and 'muddling along relying on its long practical experience'¹².

None of this is to say that the EU's environment and climate frameworks are perfect. Member States still struggle with implementation of rules and regulations and especially enforcement and when the UK was a member of the EU, it was by no means at the bottom of the 'league table'.

However, the UK is in danger of **complacency** or, at best, being a 'rule-taker' two steps behind EU policy developments. The environmental case for broadly keeping pace with EU law while taking advantage of opportunities to innovate, move faster and use flexibility in creative forward-looking ways is a strong one. Now is the time for a more strategic and explicit government policy on divergence.

¹² Nigel Haigh OBE, Keynote Address, '*IEEP UK's Autumn Reception*', 2023, <https://ieep.uk/publications/keynote-address-nigel-haigh-obe-at-ieep-uks-autumn-reception/>

7. Key developments

The information below is a summary of key legislative developments in both the UK and EU on environmental policy throughout 2023 and highlights both **potential** and **actual** divergence. The items below are not exhaustive but capture most of the consequential changes that have taken place.

Waste & Circular Economy

The European Union has been particularly active in developing legislation in the broad topic area of waste and circular economy. In August 2023, a major piece of legislation related to **Batteries** came into force. An upgrade from a Directive¹³, this new [regulation](#) aims to lower the carbon footprint of batteries, reduce the associated use of harmful substances, shorten raw material supply chains, and set targets for recycling efficiency, material recovery and battery recycled content. It also sets out plans to make it easier for consumers to be able to remove and replace the portable batteries in their electronic products.

Previous EU batteries legislation dates from 2006, when the UK was a member of the EU (the UK's implementing legislation dates from [2008](#), [2012](#) and [2015](#)) meaning that this new 2023 legislation opens up a new case of *legal* divergence.

Meanwhile, the UK recently closed a [call for evidence](#) (28 September 2023) for a [new battery strategy](#), focusing on their design, development, manufacturing, and recycling to help meet UK net zero objectives. In many respects, the call for evidence mirrors many parts of the new EU regulation; for example, it attempts to tackle shortages of critical raw materials. However, it is unclear whether new legislation will emerge out of the call for evidence or whether it will involve the setting of targets such as on minimum levels of recycled content (for cobalt, lead, lithium and nickel) in batteries.

Other significant pieces of proposed EU legislation that are currently in the legislative pipeline, that are best described as a source of *potential* divergence are:

- A proposal to revise the Packaging and Packaging Waste Directive has continued its legislative journey throughout 2023 after having been initiated in 2022. It's high ambition marks it out for relevance because it aims for all packaging on the EU market to be recyclable in an 'economically viable way' by 2030 and to enable more high-quality recycled plastics (and thus

¹³ An 'upgrade' from a Directive to a Regulation is significant because it indicates the seriousness and political will the EU takes the issue of making legislation provision for batteries. A Regulation means that it is directly applicable in the Member States whereas a Directive is not directly applicable; it must first be transposed into national law, they set out the goals that the Member State must achieve but give a degree of discretion on how to reach those goals.

reducing the use of virgin materials). A European Parliament vote in November 2023 weakened the original Commission proposal but discussions with the Member States and the Commission will continue into 2024.

- A European Commission proposal for a new regulation focused on securing a future supply of Critical Raw Materials (CRM) for the EU took a step further in November. The proposal will be to tag 34 metals, minerals and natural materials as CRMs (such as phosphorous, strontium and beryllium) and 17 of these as ‘strategic raw materials’ (SRMs) e.g., nickel, lithium and cobalt used in car batteries. The Commission is attempting to de-risk global supply chains as the EU implements its green economy transition. (See here for some [excellent infographics](#)). With negotiations nearing their conclusion, it is now likely that this regulation will enter the Official Journal and thus into law in early 2024.
- A proposed revision to the Waste Framework Directive focusing on textiles and food waste was published on 5 July 2023. It aims to tackle the growing trend towards ‘fast fashion’ by adding in Extended Producer Responsibility (EPR) rules to the textiles sector, set lower EPR fees for those that design-in future eco-design standards (such as recyclability, repairability and reusability), and clarify rules for exports of textiles outside of the EU. On food waste, binding targets are proposed for Member States: a 10% reduction for upstream processing and manufacturing and 30% for restaurants, retail and householders by 2030 (based on 2020 levels). It would also require Member States to introduce national food waste prevention programmes including public information campaigns. In contrast, England’s 2018 waste and resources strategy promised a consultation on textiles by the end of 2025 and a consultation on legal powers to introduce mandatory targets for food waste prevention. These consultations have not yet launched, and it is unclear whether they will be.
- A political agreement in November 2023 on a revision to the EU regulation on transboundary waste shipments (due to come into force in early 2024) was significant because it puts in place specific provisions to tackle shipments of plastic waste from the EU to non-OECD countries, with such shipments only being possible 5 years after entry into force of the regulation if strict environmental conditions are met in the receiving country. Implementing obligations under the Basel Convention on the Control of Transboundary Movements of Waste and Their Disposal, the regulation would also establish a cross-EU data hub and create of a new waste shipment enforcement group to aid prevention and detection of illegal shipments. Under the terms of the regulation, the enforcement group is not open to third countries so it seems unlikely that the UK will be able to participate in this mechanism, although cooperation would continue under the auspices of the Basel Convention.

Climate & Energy

The EU's [regulation](#) for a **Carbon Border Adjustment Mechanism** (CBAM) came into force in 2023, aiming to address the risk of 'carbon leakage' to other countries as a result of higher climate ambition arising from EU policies relative to those in many countries exporting to the EU. Beginning on 1 October, the CBAM applies to carbon intensive industries deemed at risk of carbon leakage: cement, iron and steel, aluminium, fertilisers, electricity and hydrogen and aims to capture 50% of emissions covered by the EU ETS when implemented. Importers of goods will begin by reporting on embedded greenhouse gases in their imports using their own methodology to begin with, and a set methodology from 2025. From January 2026, importers will have to surrender CBAM certificates equivalent to the embedded GHG amounts involved and this will be based on the EU ETS carbon price. The phasing out of EU ETS free allocations will happen at the same time as the phasing in of CBAM.

The introduction of the EU CBAM has opened up legal divergence with the UK. However, this is only likely to be temporary. In December, the UK announced it would establish its own version of a CBAM which will come into force from 2027 – a short time lag after the EU's introduction. It is unclear when legislation will be laid in Parliament to close this gap. Whilst the cement, iron and steel, aluminium, fertiliser and hydrogen sectors are the same as those covered in the EU's CBAM, the UK CBAM has chosen to add ceramics and glass in addition but remove the electricity sector for now from the list of industries included.

Like the CBAM, there was a slight time lag between the EU and UK on developments to the **Emissions Trading Schemes** (ETS). In May 2023, the EU [legislated](#) for the gradual phase out of free allocations for the airline industry by 2026 and for the expansion of ETS to incorporate the domestic [maritime](#) sector for vessels over 5,000 gross tonnage. Under those plans, a phased approach to surrendering allowances will be introduced leading to all domestic maritime voyages, half of extra-EU voyages and emissions from ships at berth in EU ports being affected by 2026. The UK followed suit on 3 July 2023 following a consultation by announcing broadly the same changes though formal legislation is still to be published.

The EU legislated in 2023 to add 'upstream fuel suppliers' to the ETS. Though officially a separate system to the ETS, instead labelled as '**ETS 2**', it will begin in 2027 and focuses on fuel combustion in buildings, road transport and some other small industries not covered by the existing ETS. The UK ETS applies only to energy intensive activities, power generation and aviation and thus this is a legal divergence.

Revenues from the auctioning of emission allowances from ETS 2 will go towards a **Social Climate Fund** (SCF) in the EU. Legislation establishing the SCF came into force in 2023 and is designed to provide funding for vulnerable households for energy efficiency measures (e.g., home insulation, heat pumps, solar panels, and electric mobility) but also aid Member States

with investments that reduce emissions in the road transport and buildings sectors. There is no equivalent mechanism planned in the UK to ring fence and disperse revenues.

The incorporation of the ‘energy efficiency first’ principle [into law in September 2023](#) was a significant moment for the proponents of **Energy Efficiency (EE)**. A revised EE directive also introduces a new 11.7% reduction requirement for consumption of energy by 2030 (compared to 2020). UK *policy* was to reduce total energy demand by 15% from 2021 levels by 2030. The UK’s energy efficiency taskforce was disbanded on 25 September 2023, and it is unclear where this policy stands at present.

A. A legislative approach to tackling methane emissions

A [draft regulation](#) on **methane emissions** reduction in the energy sector gained political agreement by the European Parliament and Council on 15 November 2023. Though best described as *potential* divergence, at present passage in 2024 would open up a legal divergence with the UK’s approach to tackling methane emissions.

Methane, which is a far more powerful greenhouse gas, and has a global warming potential of 28 times that of carbon dioxide over 100 years¹⁴, is emitted from several main sources: agriculture, fossil fuel production, and waste.

The new EU regulation focuses on the oil, gas and coal sectors and, amongst several things, requires the monitoring and reporting of methane emissions, the prevention and minimisation of methane emissions from fossil fuel operations, a requirement to plan for detecting leaks and to make repairs immediately after detection; and prohibit (in most circumstances) venting and routine flaring. Unfortunately, the EU’s regulation doesn’t include the agriculture sector (something that [IEEP has written about previously](#)), a huge contributor to methane emissions.

Whilst the UK does not have equivalent legislation, a [UK methane memorandum](#) sets out what the UK is doing to minimise methane emissions from the major sources mentioned above. It also points for example to [OGUK’s 2021 Methane Action Plan](#) which sets out commitments to achieve the World Bank’s ‘Zero Routine Flaring before 2030’ initiative to measure and validate ‘where practicable’ methane emissions.

Though the UK and EU both have similar aims and objectives with regard to methane reductions, the key divergence appears to be the EU’s willingness to *legislate* whereas the UK relies on memoranda and action plans which are not legally binding.

¹⁴ See Explanatory Memorandum, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52021PC0805>

Nature & Biodiversity

In late June, the [Shark Fins Act](#) passed into UK law banning the **international trade in shark fins**. It includes the import and export of detached shark fins and the ban on products containing shark fins (such as tinned soup). The ‘finning’ of sharks has been banned since 2003 by the UK and EU. A [‘Stop finning – Stop the trade’](#) citizens’ initiative has called for an end to the trade of loose shark fins in the EU as well but this has yet to occur. The UK primary legislation has opened up an area of legal divergence with the EU as the EU has promised to examine legislative measures and to carry out an impact assessment on the environmental, social and economic consequences of a ‘fins naturally attached’ policy.

In another progressive move, the UK Government announced back in 2022 that it would **ban the use of peat in the retail horticultural sector**, which would apply in England. This had been due to come into force in 2024. However in March 2023 was [pushed back](#) so that a phased would begin in 2024 in the retail sector, extending further in 2026 with a complete ban by 2030. There is no similar ban at the EU level though some individual member states are making progress in this area.

A highly significant piece of EU [legislation](#) on tackling [commodity driven deforestation](#) passed into law in 2023. Imports of ‘everyday’ products into Europe have led to large areas of deforestation around the world and associated declines in biodiversity and species numbers. The new EU law targets various commodities known to cause deforestation and forest degradation, namely cattle, cocoa, coffee, oil palm, rubber, soya and wood and requires operators or traders to prove that their products do not originate from recently deforested land or have contributed to forest degradation. The UK Government has committed to tackling deforestation through explicit new powers granted to it via the Environment Act in 2021 but as yet no secondary legislation to create the necessary rules has been tabled. The scope of commodities to be included within any secondary legislation will be non-dairy cattle products (beef and leather), cocoa, palm, and soy¹⁵, therefore it will be narrower in scope compared to the EU’s legislation which also includes rubber, coffee and wood products.

Critically, a key difference between the UK and EU approaches is the emphasis on **legal** or only **illegal deforestation**. Unlike the EU model, the UK approach would permit commodities to continue to be traded with the UK, even where they are linked to deforestation if that is permissible under local legislation. This emphasis on the legality of commodity driven deforestation overly relies on good governance and enforcement capabilities in countries of origin, which is not assured in all cases. Furthermore, concern has been expressed that it may

¹⁵ UK Government, ‘*Supermarket essentials will no longer be linked to illegal deforestation*’, 2023, <https://www.gov.uk/government/news/supermarket-essentials-will-no-longer-be-linked-to-illegal-deforestation> accessed 16 January 2024.

create a 'perverse incentive' for local laws protecting areas of forest to be removed¹⁶. The EU has instead taken a broader approach and requires that producers and traders confirm that production of the commodities concerned has not been subject to recent deforestation activities – whether legally or illegally.

Departures by the UK from the EU's approach to regulating **pesticides** and the authorisation of specific products have been amongst some of the most visible aspects of divergence affecting the environment in recent years. One strand of this has been the UK's decision to adopt a new licensing regime whereby all pesticides that had licences due to expire before the end of December 2023 should be the subject of three-year extensions¹⁷. Certain neonicotinoids such as thiamethoxam that have been phased out in the EU continue to be used in the UK. The Pesticide Action Network-UK reported in September¹⁸ that 36 pesticides are permitted for use in the UK but not the EU.

The Commission proposed a bold but contentious **Sustainable Use of Pesticides regulation** (SUR) in 2022. It was designed to establish legally binding targets at EU level to reduce by 50% the overall use and the (estimated) risk of chemical pesticides as well as the use of the more hazardous pesticides by 2030. However, in late November the proposal suffered a series of blows to weaken it¹⁹ and subsequently there was a vote against it in the European Parliament. Whether it will be retained as a proposal or dropped entirely remains to be seen.

An EU [proposal](#) for a new **Nature Restoration Law** (NRL) was narrowly approved by a majority of MEPs in 2023 but had already undergone several major modifications. One of the largest and most significant pieces of nature legislation in recent times, the NRL has been hotly contested for many months. EU Council, Commission and Parliament negotiations are ongoing, but a final text is expected shortly.

¹⁶ UK Parliament, '*The UK's contribution to tackling global deforestation*', 2024, <https://publications.parliament.uk/pa/cm5804/cmselect/cmenvaud/405/summary.html#:~:text=The%20UK%20proposes%20to%20reduce,forest%2Drisk%20commodity%20supply%20chains>, accessed 13 January 2024.

¹⁷ PAN UK's report in September 2023 is a useful illustration of this divergence: <https://www.pan-uk.org/post-brexite-pesticide-divergence/> accessed 13 January 2024.

¹⁸ PAN-UK, '*UK falling behind EU pesticide standards*', 2023, <https://www.pan-uk.org/post-brexite-pesticide-divergence/> accessed 13 January 2024.

¹⁹ IEEP UK Divergence Newsletter #4, 2023, https://ieep.uk/incubator/wp-content/uploads/2023/12/4.-IEEP-UK-Divergence-Newsletter_November.pdf

B. Intra-UK Divergence and Agriculture Policy

Whilst this paper focuses on the levels of divergence between the UK and EU on environmental policy, divergence within the UK – **intra-UK divergence** - has grown too since leaving the EU.

While it is true that devolution pre-dated Brexit – meaning that Scotland, Wales and Northern Ireland had responsibility for their own environment, agriculture and fisheries policy – the nations worked within the binding, and in parts very specific, framework that the EU provided.

And without that framework, the four nations can now go their separate ways in most respects.

It is within **agriculture policy** where this can be seen most clearly. The policy direction has already been set in England where changes mean that the various Environment Land Management Schemes will continue to be rolled out in 2024 with the aim of delivering ‘public money for public goods’ - a concept championed early on by IEEP²⁰. Meanwhile, direct payments are being phased out progressively by the end of 2027. In Wales, a new sustainable farming scheme is being developed and is scheduled from 2025, whereas in Scotland and Northern Ireland there is less impetus to remove direct payments. Related to this, it is hoped that a long-awaited land use framework in England will generate significant debate about, but perhaps not concrete steps towards, changing land use to address the climate crisis. This follows a land use strategy already in place in Scotland.

Each of the four nations have different levels of ambition, Scotland for example has expressed its intention to ‘stay aligned (where possible and meaningful to do so)’ with EU legislation. The four nations have varying priorities and levels of capacity, but all are affected by the rules of the UK internal market, and this imposes some limits on divergence. The Internal Market Act is a constraint on all four nations’ ability to diverge and grants significant powers to the UK government in its application. In practice, the constraints have been felt most keenly in Scotland, as in the case of the regulation of single use plastics and the drawn-out deposit return scheme saga played out in 2023.

²⁰ Cooper, T., Hart, K. and Baldock, D. (2009) ‘*The Provision of Public Goods Through Agriculture in the European Union*’, Report prepared for DG Agriculture and Rural Development, Institute for European Environmental Policy London, <https://ieep.eu/publications/the-provision-of-public-goods-through-agriculture-in-the-european-union/>, accessed 30 January 2024.

Industry, Air & Chemicals

The regulation of chemicals, like pesticides, has been one of the areas of most visible EU/UK divergence so far. The EU's more visible and pro-active approach has contrasted with the UK's relatively slower approach to chemicals regulation.

The UK's departure from EU REACH and the establishment of UK REACH in itself is a classic example of divergence. However, it is the work being done by the Health and Safety Executive (HSE) through UK REACH since Brexit that highlights this gap most as it does not match the pace and scale of EU REACH. Since leaving the EU, the HSE through UK REACH has initiated two restrictions – on lead ammunition and harmful substances in tattoo ink respectively, (both of which are not yet in force and do not appear to be as robust as their EU equivalents)²¹. In contrast, the European Chemicals Agency has adopted 8 restrictions, some of which are significant and consequential, such as on intentionally added microplastics and formaldehyde, whilst a further 17 more substance restrictions have been initiated. It is a similar story when considering substances added to the 'Substances of Very High Concern' list; the EU has added 26 since Brexit, and the UK has not added any. Looking ahead, full implementation of the EU's Restrictions Roadmap would lead to thousands of widely used chemicals of concern being banned, something that would open up a 'chasm' in the protective gap between the EU and UK²².

C. Geopolitics and Divergence

The [decision](#) by the HSE in August 2023 not to classify three lithium compounds (**lithium carbonate, chloride and hydroxide**) as toxic – they are key elements in the manufacturing of electric car batteries – diverges, at least temporarily, from the position taken by the European Chemicals Agency, (ECHA). ECHA has classified these compounds as 'reproductive toxicants' that may cause harm to exposed workers as well as breast fed children and unborn children²³. This however may be a temporary delay because the European Commission has asked ECHA to revisit²⁴ its opinion and a decision is due in June 2024.

²¹ ChemTrust, 'Will the UK's ban on tattoo inks and permanent make-up be as protective as the EU's?', 2023, <https://chemtrust.org/uktattooinkrestriction/> accessed 16 January 2024.

²² ChemTrust, 'UK/EU divergence table: differences in numbers of substances considered for regulatory control', 2024, <https://chemtrust.org/divergence-table/>, accessed 16 January 2024.

²³ European Chemicals Agency, 'Registry of CLH intentions until outcome: lithium carbonate; lithium chloride; lithium hydroxide', 2022, <https://echa.europa.eu/registry-of-clh-intentions-until-outcome/-/dislist/details/0b0236e18270066e>, accessed 28 January 2024.

²⁴ Enhesa Chemical Watch and Insight, 'Metals sector welcomes request for EU committee to revisit proposed lithium classification', 2023, <https://product.enhesa.com/749243/metals-sector-welcomes-request-for-eu-committee-to-revisit-proposed-lithium-classification>, accessed 28 January 2024

The context is important because of the European Commission's concerns about the EU's place in a global electric car market that is increasingly competitive. Sales of Chinese made cars with electric batteries using lithium and other critical raw materials are on the rise in Europe, so much so that the Commission has opened up an investigation into what they claim are unfair state subsidies for the Chinese car industry²⁵ which are adversely affecting European carmakers.

If the decision to reverse the classification of these lithium compounds as a reproductive toxicant is made, it could be seen as an attempt by the EU to make itself more competitive with its geopolitical rivals, not just China but the UK included.

The UK government decided in 2023 to exercise powers under the Retained EU Law Act to revoke two Articles within the UK's **National Emissions Ceiling regulations** that derive from an EU directive on this topic. Environmental NGOs and Defra disagree on the significance of these UK regulations, which effectively require that government produces a national air pollution control programme and then consults on it. These changes came into force on 31 December 2023 and there is therefore a UK-led divergence from EU law.

In April 2023, Regulation (EU) 2023/851 was adopted, strengthening the **CO2 emission performance standards for new passenger cars and new light commercial vehicles** and setting a 100% reduction target for both cars and vans from 2035 onwards. In practice this means that new internal combustion cars and vans will be banned from entering the EU's internal market from that point on. The current Conservative Government led by Prime Minister Sunak announced in the autumn of 2023 that a decision by a previous Conservative Prime Minister (Boris Johnson) to bring forward the date for banning new petrol and diesel engines on Britain's roads to 2030, would be returned to the 'original' planned date of 2035, keeping this in line with the plans of the EU. The [legislation setting out the approach](#) taken by the UK Government came into force on 01 January 2024.

There are several other significant EU legislative initiatives to watch out for in 2024. Some are due to be completed and passed into law before European elections in the summer whilst others may be delayed and have to wait until the second half of the year.

- A revision to the EU's 2010 Industrial Emissions Directive was proposed in 2022. This is significant because it tightens current rules in several respects and extends the scope of the Directive to a larger number of pig and poultry (but not cattle) farms.
- The European Commission has proposed to revise the Ambient Air Quality Directives. Started

²⁵ European Commission, 'Commission launches investigation on subsidised electric cars from China', 2023 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4752

in 2022, negotiations continued in 2023 and are likely to conclude in 2024.

- Similarly, proposals²⁶ to amend and tighten regulations relating to ozone depleting substances and F-Gases were also proposed in 2022 and are likely to be passed into law in 2024. Northern Ireland, under the terms of the Withdrawal Agreement between the EU and UK, will continue to implement existing regulations relating to F-Gases. In Great Britain, a 2022 UK government report identified the need to make some changes to existing policy. The changes identified would, in essence bring GB into alignment with the EU (and NI) were the EU's F-Gases amendments to be passed.
- A politically significant proposal by the European Commission for a Net Zero Industry Act²⁷, was announced in March 2023. Essentially this is designed to combat the United States' Inflation Reduction Act and arguably China's Belt and Road Initiative as well and speed up the deployment of clean, green technologies. The proposal would mean the on-shoring of the manufacturing capacity for strategic net-zero technologies and if passed would introduce a 40% domestic production target within the EU by 2030. Not only is it designed to provide access to funding and capital, and confidence to investors to invest in long term projects like carbon capture and storage and battery technologies within the EU; it also aims to 'streamline' permitting procedures (for solar, wind and geothermal energy projects, etc.) whilst also developing sustainability and resilience criteria for public procurement auctions.
- Back in 2022, the European Commission proposed a new set of standards for emissions from motor vehicles called Euro 7 standards with the aim of improving air quality. Political agreement was reached between the Parliament and Council in late December 2023 meaning that the new regulation will likely come into force in 2024 next year and begin to apply 30 months after its entry into force for cars and vans, and 48 months for buses, trucks and trailers.
- The EU has been attempting to tackle pollution caused by microplastics. A regulation to phase in a ban on intentionally added microplastics (starting with loose glitter and microbeads before moving onto other products like cosmetics, detergents and granular infill material from artificial sport pitches) would begin soon after its adoption. This sits alongside a separate proposed regulation to tackle pellet losses. The UK on the other hand, after banning microbeads in products in 2018 has not gone further. The adoption of these EU restrictions would go beyond the UK in its level of ambition.

D. Northern Ireland and the Environment

²⁶ For Ozone depleting substances proposal see: https://climate.ec.europa.eu/system/files/2022-04/ods_proposal_en.pdf

For F-gases see: [https://www.europarl.europa.eu/RegData/commissions/envi/inag/2023/10-18/ENVI_AG\(2023\)754894_EN.pdf](https://www.europarl.europa.eu/RegData/commissions/envi/inag/2023/10-18/ENVI_AG(2023)754894_EN.pdf)

²⁷ In actuality, the use of the term, 'Act' in means a *Regulation*. The term appears to have been creeping into EU legislative parlance in recent years.

The **Windsor Framework** agreement in early 2023 between the UK and EU about the interpretation of the Northern Ireland Protocol and, especially, trading arrangements with the rest of the UK, helped to reset damaged EU/UK diplomatic relations.

Under the Protocol, **Northern Ireland continues to be subject to some EU environmental law**, most notably on chemicals (e.g., NI is part of EU REACH), legislation relating to maximum residue levels of pesticides, packaging and packaging waste, invasive alien species, F-gas regulations and ozone depleting substances, energy labelling and trade in timber and timber related products²⁸. In other areas it is free to take a different approach provided this does not give rise to regression.

Progress on environmental law in Northern Ireland has been held back by the lack of a functioning Executive, a [long term] Environmental Strategy that has been proposed but not yet ratified and an Environmental Principles Policy Statement that has been drafted but not yet approved for use.

Should the EU add or amend laws in areas that fall within scope of the Withdrawal Agreement, then these would automatically apply to Northern Ireland as well, a process sometimes referred to as '**dynamic alignment**'. Good examples of these relate to changes to the EU [F-Gases regulation](#) and potential changes to packaging and packaging waste rules which are currently at an advanced stage in the EU's legislative process. However, one current, and somewhat debated example concerns legislation on [commodity driven deforestation](#). With the passing of recent EU legislation on deforestation, it is yet to be decided whether this falls within scope of the agreement or not and officials in the EU-UK Joint Committee set up by the Withdrawal Agreement, will have to decide whether Northern Ireland will follow EU or UK rules on deforestation.

Water

In October 2022, the European Commission [proposed an update](#) to the 1991 (and the 1998 amending directive) on **Urban Wastewater Treatment**. If this is legally adopted, and the UK does not follow, this would open up legal divergence between the EU and UK because the proposal introduces, amongst other things, new requirements such as the monitoring of microplastics in wastewater and introducing Extended Producer Responsibility targeting pharmaceuticals and cosmetic products.

²⁸ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 'PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 5(4)', Annex 2, <https://www.legislation.gov.uk/eut/withdrawal-agreement/attachment/1/adopted>

In early October 2023 the European Parliament agreed its first reading position and so the legislative baton moves to the Council for agreement there. This is significant because a great deal of public and political scrutiny has been given to water and sewerage undertakers in England and Wales in recent years, with high levels of concern about sewage entering rivers and coastal regions. Practice allowing untreated sewage into the environment on a large scale has been mistakenly attributed to legal changes since Brexit and as IEEP UK clearly showed in a recent report²⁹ the domestic legislation relating to sewage discharges remains largely the same as when the UK was a member of the EU. Nonetheless, the proposed change to EU legislation mentioned above would indeed mark a significant divergence between the UK and EU approach to managing its urban wastewaters.

First proposed in 2022, and undergoing scrutiny in the European institutions in 2023, a proposed revision to the important EU **Water Framework, Groundwater and Environmental Quality Standards Directives** would, if adopted amount to a significant source of UK/EU divergence that is likely to emerge in 2024. In particular, an update to the list of groundwater and surface water pollutants in the legislation and the addition of 25 new substances to the list would mean the EU was requiring the monitoring of a wider range of chemicals that are dangerous and harmful to human health. They include the topical *PFAS* group ('forever chemicals' used in cookware and clothing for instance), some pesticides, bisphenol A and pharmaceuticals.

Other areas of sustainability policy and legislative divergence

The control of '**Greenwashing**', the practice of making misleading or false claims for products and services is a growing area of interest for environmental policy. Legislation has been around for a long time³⁰ to support consumers in the UK for instance but the focus on greenwashing has become more prominent recently. The Financial Conduct Authority carried out a consultation on Sustainability Disclosures (see below) and the Competition and Markets Authority produced [draft guidance](#) in early 2023 on environmental claims. On the EU side, two proposals were brought forward together in March 2023, the first on [Green Claims](#) and the other on [empowering consumers in the green transition](#). Designed to help consumers have confidence in what they are being sold, it would establish criteria for environmental claims made by sellers and enhance labelling requirements.

The EU **Corporate Sustainability Reporting Directive** [came into force in January 2023](#) with a [key delegated regulation](#) on reporting standards coming into force late on in the year. It requires large companies with more than 500 employees to disclose a range of environmental, social and governance related matters. This law updates earlier bits of CSR legislation (amending

²⁹ IEEP UK, '*Sewage Discharges: Interaction between UK and EU Law continues post-Brexit*', 2024, <https://ieep.uk/publications/sewage-discharges-interaction-between-uk-and-eu-law-continues-post-brexit/>, accessed 12 January 2024.

³⁰ The Consumer Protection from Unfair Trading Regulations 2008, <https://www.legislation.gov.uk/ukxi/2008/1277/contents>

regulation EU No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU) that the UK had implemented when a member of the EU. The UK is currently considering its own Sustainability Disclosure Standards based on standards issued by the International Sustainability Standards Board and has indicated that these may form part of UK legislation in future³¹.

The **Levelling Up and Regeneration Act** passed into law in the autumn of 2023 and with it brought reforms to the **environmental impact assessment** and **strategic impact assessment** regime in England (and projects at a UK level). These regimes are to be replaced with “environmental outcome reports” instead but at the time of writing, secondary legislation detailing the changes is yet to be revealed. It is possible that some form of divergence with the EU (as well as with the approach taken in Northern Ireland, Scotland and Wales) but it is unclear as yet as to the significance and extent of that divergence.

³¹ UK Government, ‘*Guidance: UK Sustainability Disclosure Standards*’, 2 August 2023
<https://www.gov.uk/guidance/uk-sustainability-disclosure-standards> , accessed 9 January 2024.



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**THE REPORT SHOULD
BE CITED AS FOLLOWS:**

Nicholson, M. (2024) 'Divergence in UK/EU Policy: The State of Play', Report, Institute for European Environmental Policy, UK.

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ACKNOWLEDGEMENTS:

The author gratefully acknowledges helpful contributions from IEEP UK colleagues, chiefly David Baldock, and also Nigel Haigh, Ben Reynolds, and Nicolas Woo-Canal. Also, Clare Hamilton (Tallavey Sustainability), Chloe Alexander (ChemTrust) & Jonathan Little.