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Environmental policy risks and opportunities of different outcomes from the Brexit negotiations

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1 Executive summary

This report identifies and then looks further at the currently most prominent options (as at the start of February 2019) for the UK's departure from the EU. In particular it considers the current Withdrawal Agreement reached between the EU and the UK, together with the associated Political Declaration; and some of the alternatives, notably "no deal", and choosing to remain in the EU.

Over the short term, the negotiations could follow a number of different pathways. Some choices influence the options available for the long term relationship between the UK and the EU. We argue that under all scenarios (except remaining in the EU), negotiations of some form on the future relationship between the UK are likely to continue. The terms of the UK's departure should therefore be considered as part of a dynamic process of negotiation rather than as an end point.

The options for the long-term future relationship are, unless there is a radical change in the position of the EU and its negotiators (at Member State and EU level), broadly:

- a close, Norway-like relationship;
- a looser, Canada-style relationship;
- no free trade agreement, with the UK treating the EU on the same terms as it treats all other WTO members;
- Remaining in the EU.

The report outlines the short and longer term risks and benefits we identify for environmental policy, and outcomes, associated with those scenarios. There are considerable uncertainties associated with all scenarios. However, a range of structural, institutional and economic characteristics of the different pathways have implications for environmental policy over the next decade or more, as well as for other policies with environmental consequences, including agriculture and trade.

Several forms of policy impact are considered in the analysis, including the likely development of policy and legislation in the UK over time, based on the scope and incentives for changing environmental policies under the different conditions arising from the departure options. Some pathways seem more likely to be associated with a higher level of environmental ambition than others.

In addition to the environmental ambition and substance of the legislation and policies in place, the potential level of compliance with legislation and the broader system of environmental governance under different departure options also needs to be taken into account. This can have a significant bearing on a wide range of environmental outcomes. Options that are associated with more robust governance systems have considerable environmental benefits, other factors being equal.

Some economic developments with direct environmental consequences can be anticipated from certain post Brexit options, for example a change in the pattern of imports and exports. These are not the focus of our analysis, and are difficult to predict or elaborate in any detail, but would need to be factored in to the overall assessment of environmental impacts.

The environmental strengths and weaknesses of the departure options are examined in the report in relation to four key benchmarks published by the Greener UK coalition of environmental organisations, together with one further, more specific test related to the future of legislation on environmental impact assessment in the UK, as an example affecting a wide range of developments.

The conclusions are summarised in tabular form in Chapter 3. These suggest that a closer relationship with the EU is likely to reduce the risks to UK environmental policymaking and environmental outcomes. There are significant environmental downsides to the "no deal" option.

2 The possible outcomes

2.1 Current position of negotiations; the EU and UK ratification processes

Since the 2016 referendum, research and analysis of potential Brexit outcomes has been bedevilled by the relative speed of developments, by the lack of clarity on UK Government objectives, and by the unprecedented nature of the process. It therefore is essential to explain that the current report was written in early February 2019 with the appropriate caveats on the context it describes. At this point a significant number of initiatives were in play, including an exchange of letters between the Prime Minister and the Leader of the Opposition¹. The timetable and outcome of Parliamentary votes related to Brexit later in February remained uncertain and further developments beyond this even more cloudy.

A Withdrawal Agreement² was reached, in principle, between the UK and the EU 27 at the European Council on 25-26 November 2018, accompanied by a political declaration³ on the framework for the future relationship between the EU and the UK. It is now, in theory, subject to a process of ratification in both the EU 27 and the UK.

While ratification by the EU side in the negotiation seems highly likely, the UK position remains much less certain. Under the terms of the EU Withdrawal Act⁴, the Withdrawal Agreement may not be ratified by the Government unless both it and the framework for the future relationship have been approved by a resolution of the House of Commons on a Government motion.

The Government was heavily defeated in a Commons vote on the Withdrawal Agreement on 15 January. Following a process of further consultation, it brought a neutral motion before the Commons on 29 January, which was amended (with Government support) to include a demand for “the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border”. At the point of finalisation of this paper, the Government is, in theory, trying to negotiate such changes with the EU27, although there were prompt reactions from key negotiators on the EU side ruling out a renegotiation of the Withdrawal Agreement.

At some point, the Withdrawal Agreement is likely to be brought back to the Commons for a further vote, with or without the changes requested, and with or without modifications to the accompanying political declaration. As before, in the event of the House of Commons failing to endorse the Withdrawal Agreement, a number of options are possible; including either an extension of Article 50, or a new referendum. In formal terms, under the Withdrawal Act, the Government must make a statement setting out how it plans to proceed within 21 days of losing a vote; and table a motion in

¹ The Corbyn letter of 6 February is available at: <https://labour.org.uk/press/jeremy-corbyn-lays-labours-five-brexit-demands-letter-theresa-may/>. The Prime Minister’s reply of 10 February does not appear to be available on the Government website, but can be found at: <https://www.politicshome.com/news/uk/foreign-affairs/brexit/news/101747/read-full-theresa-mays-brexit-letter-jeremy-corbyn>

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018. Available at <https://www.gov.uk/government/publications/withdrawal-agreement-and-political-declaration>

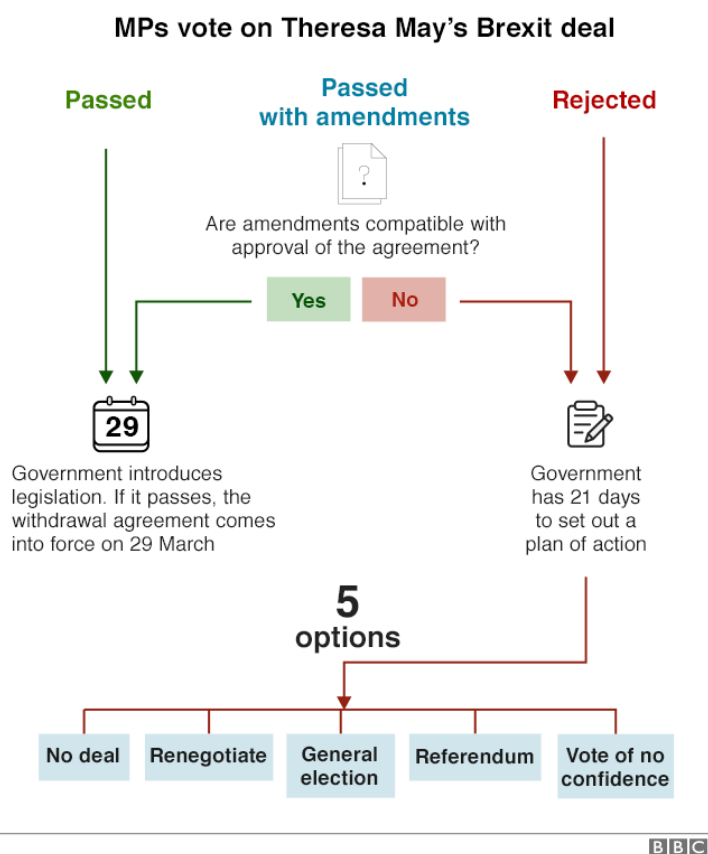
³ Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, adopted at the special meeting of the European Council on 25 November 2018, and available at the same link.

⁴ European Union Withdrawal Act 2018, available at: http://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpga_20180016_en.pdf. See Section 13

neutral terms. Following a procedural vote lost by the Government on 4 December⁵, the normal rules applying to motions couched in neutral terms are disapplied for the purposes of the relevant votes under the Withdrawal Act, and the motions will be amendable. In principle this creates a possibility for the House of Commons to instruct the Government on the approach to adopt, including either an extension of Article 50, or a new referendum. However, it is not clear that a majority exists in the Commons for any meaningful course of action; and in the event of a UK request for an extension of the Article 50 process, the EU 27 could be expected to consider whether there was a significant chance that allowing more time would make it more likely that an agreement could be reached. An extension is not automatic, and would require unanimity among the 27 other Member States.

2.1.1 Our approach to identifying possible outcomes

A number of commentators and organisations have tried to map out the Parliamentary and other options available – we provide a simplified example below.



For the purposes of this paper, we will largely ignore the “General Election” and “Vote of no Confidence” outcomes, which are relevant to the shape and nature of the UK Government, but do not significantly alter the choices open to a Government of whatever party. Instead, we focus on the “no deal” and “referendum” outcomes, alongside the option of ratification of the current Withdrawal Agreement. The “referendum” outcome, in turn, would lead to a choice of options, potentially including a version of the Withdrawal Agreement, leaving with no deal, or remaining in the EU.

Similarly, we do not propose to focus on the option of “renegotiation” of the Withdrawal Agreement. In the first place, the Article 50 European Council has stated clearly that it is “not open for

⁵ Hansard, 4 December 2018, column 740

renegotiation”. And while it could come to a different view if that would facilitate an agreement which remained within the EU 27 negotiating objectives, it is unlikely that a radically different agreement could be reached in the short term. Moreover, Commission negotiators and the European Council are wary about offering any signal of a willingness to negotiate without greater clarity from the UK side about what, precisely, the UK wants as “alternative arrangements”, and what concessions might offer a prospect of the Commons endorsing the Withdrawal Agreement. Finally, there appear to be serious questions about whether the yet to be specified “alternative arrangements” referred to in the Brady amendment of 28 January could be negotiated in the time available. The most plausible option for change to win UK political agreement (albeit at some cost to the EU’s negotiating position) seems to be some form of enhanced scope for the UK to end the Backstop unilaterally; which, for the purposes of our analysis would not have a significant impact on the operation of the Withdrawal Agreement itself (although it would have some impact on the dynamic for negotiations on the future relationship).

One further variant of the options available is for the UK to seek an extension of the Article 50 process. This would require an affirmative resolution of both houses of Parliament⁶, and would then need to be agreed unanimously by the EU27. As noted above, it is likely that the EU partners would want to be confident that there was a significant chance of any delay leading to a different outcome. The EU27 are also thought to be reluctant to accept an extension which goes beyond both the European Parliament elections at the end of May and the convocation of the new Parliament in July, in order to avoid either the need to run the elections in the UK, or revisiting the agreed post-Brexit reallocation of seats amongst the remaining Member States. Whilst it is possible that there could be a short-term extension of the process leading to a Withdrawal Agreement, it seems less likely that the resulting agreement would be significantly different to the one on the table. For example, while it might be possible to introduce further clarity into the political declaration on the future relationship, such clarity is likely to boil down to a clearer choice of the Canada or Norway options available. Given these uncertainties we have not elaborated further on the consequences of a possible extension, although this could increase the probability of a departure from the present text of the Withdrawal Agreement and the Political Declaration.

Finally, we have not focused in detail on the official Opposition’s preferred outcome from the Brexit negotiations, which (broadly) is to place “a strong emphasis on retaining the benefits of the Single Market and the Customs Union”. It does include a welcome specific commitment to the protection of environmental standards, suggesting what seems to be a form of “dynamic alignment” whereby EU and UK standards relating to labour rights and the environment would stay in step after the UK’s departure from the EU, while “allowing the UK to lead the way”. The Prime Minister wrote a letter in response on February 10th suggesting no formal commitment to alignment but that Parliament would be asked whether it wanted to follow suit each time an EU standard was changed. It is too soon to assess the longer term significance, if any, of this development.

However, in essence, we interpret the overall Labour Party approach at present as pointing towards the “Norway” model of EEA membership, or an outcome similar in effect. One handicap to securing such an outcome would be the Labour leader’s desire to renegotiate state aid rules⁷ – an issue which has been repeatedly identified by the EU 27 as a key concern in relation to fair competition post-Brexit.

⁶It looks as if it would be possible for the Government to seek an extension, and be granted one, and for the UK to continue to be a Member State under EU law; but (in the absence of an approved Statutory Instrument) for it no longer to have powers to implement EU legislation. But in all cases, the Government would need to act for an extension to be sought.

⁷ See the report “[Corbyn: Brexit would go ahead even if Labour won snap election](#)”, the Guardian newspaper, 21/12/18

2.2 A dynamic set of possible outcomes

A key issue to bear in mind – and which itself generates some of the economic uncertainty associated with Brexit – is that, regardless of the short-term outcome, it will take some time to reach a predictable end-point to the process. All of the possible short-term outcomes (with the exception of remaining a member of the EU on the current terms) have a range of possible next-stage outcomes and endpoints. Our analysis therefore addresses both the short-term implications (including the risk of environmental impacts during the process of negotiation), and what the option implies for the further stages, in particular the possible endpoints that the option either facilitates or rules out.

The figure below attempts to put the two processes together.

The **first stage** identifies (in simplified form⁸) the UK political process:

If a Commons vote under section 13 of the EU Withdrawal Act approves the Withdrawal Agreement and the Political Declaration, then it is highly likely that the UK would leave on Brexit day under the terms of that Agreement. The Commons vote in favour could be either on the first occasion it is tabled; or it could follow from a further negotiation with the EU (whether successful or unsuccessful) or even from approval of the Withdrawal Agreement in a referendum.

If the Commons continues to reject motions on the Withdrawal Agreement, then a number of options, not all mutually exclusive, are possible. It would be possible to continue to try to renegotiate – although the time available for significant change to be secured is rapidly diminishing, even if the Article 50 process is extended to July. However, if the UK had a clear and plausible proposal, and the EU felt confident that a concession would secure agreement, something could be achieved. It would also be possible to continue to submit the current Agreement again for approval, in the hope that close scrutiny of the impact of a no deal outcome would persuade more MPs to vote in favour.

We have, as a simplification, assumed that if a House of Commons “Meaningful Vote” under the EU Withdrawal Act is passed, then there is highly likely to be a majority for the further primary legislation necessary to give effect to the Withdrawal Agreement⁹; although it should be noted that there is a risk of amendments being incorporated into any such legislation which are considered by the EU as being incompatible with the Withdrawal Agreement (for example, a sunset clause for the Irish border Backstop). Similarly, in the event of a referendum being held, and endorsing the Withdrawal Agreement, it is highly likely either that subsequent legislation would be passed by Parliament to give effect to the agreement (even if the referendum legislation itself did not provide the necessary enabling powers on a conditional basis).

In the event of the Withdrawal Agreement not being agreed, there are two alternative outcomes for Brexit Day (whether on March 29 or on a delayed date following an extension of Article 50). The default position in both EU and UK law is that the UK would leave without an agreement. The alternative is that, either through a referendum, or (less plausibly) as a result of legislation repealing the Withdrawal Act and other legislation, and the UK withdrawing its Article 50 notification, the UK could decide to remain in the EU.

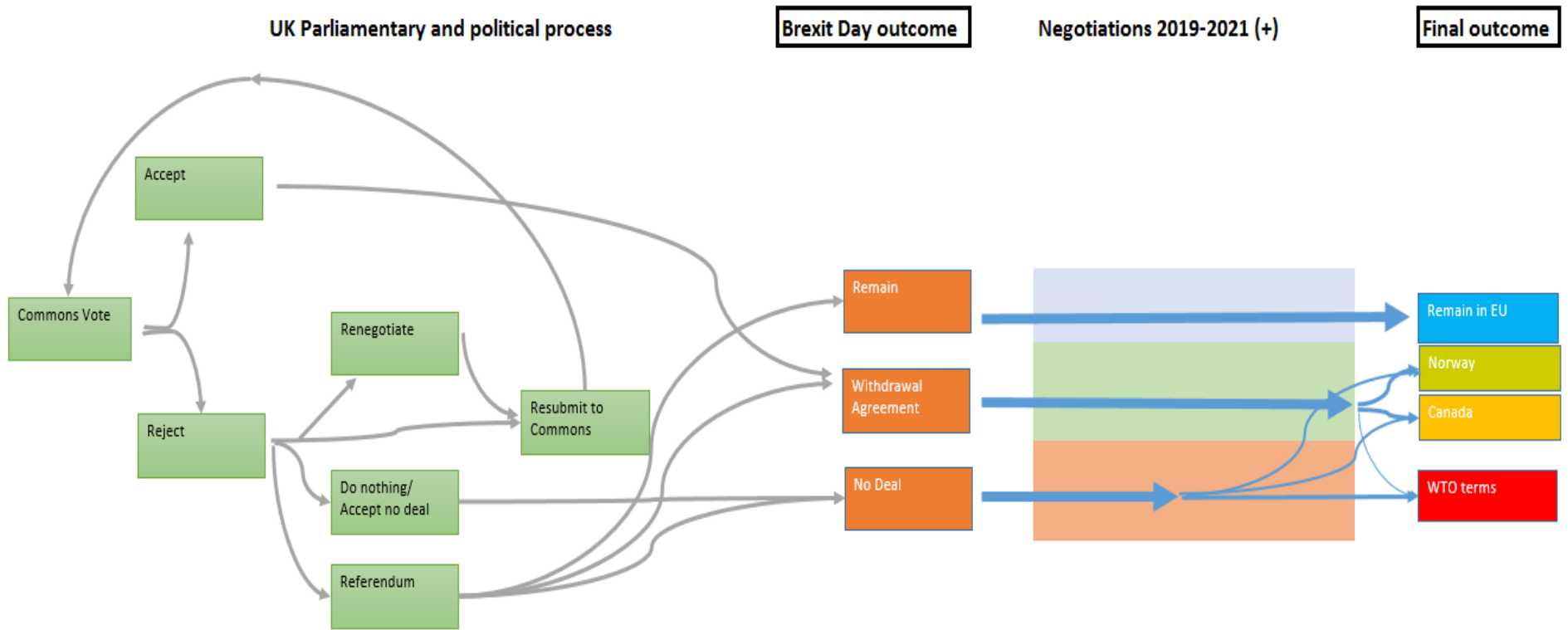
⁸ For a more detailed flowchart of the Parliamentary process, the Commons Library’s briefing at <https://commonslibrary.parliament.uk/parliament-and-elections/parliament/brexit-and-the-meaningful-vote-the-final-countdown/> is helpful.

⁹ Article 9 (1) of the European Union (Withdrawal) Act 2018 says that the powers to make orders to implement a Withdrawal Agreement is “subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the EU..

The **second phase** addresses the continuing process of EU/UK negotiation following the Brexit Day outcome. The key point to note here is that the Brexit Day outcome has implications for (i) the conditions applying to the UK during the process of negotiation and (ii) the likelihood – and in some cases even the possibility – of ending up with specific long-term outcomes. Thus, being within the Withdrawal Agreement makes a negotiated outcome along the lines of either the Norway or the Canada model more likely (or, through the continued application to the whole of the UK of the Withdrawal Agreement Backstop arrangements, effectively a step towards the Norway model on an ongoing theoretically temporary basis). However, it does not entirely rule out the possibility of a failure to reach agreement, and going forward on WTO terms (with Northern Ireland remaining within the Backstop arrangement). Nor does a no deal outcome on Brexit Day rule out further negotiations with the EU on the future relationship (indeed, it could be argued that the economic shock associated with a no deal outcome would make it more likely that those negotiations would reach a Norway or Canada style end-point more swiftly), but it would create a greater likelihood of the UK not achieving a negotiated outcome in the longer term. The Remain option is, of course, comparatively straightforward- although this ignores the impact on domestic UK politics.

The next sections outline the implications of the various Brexit Day end points, and the paths towards possible longer-term environmental outcomes, against the Greener UK coalition benchmarks established for this purpose and some additional criteria on environmental impact assessment legislation.

Figure 1: Simplified structure of the short-term outcomes, and implications for the final outcome



2.3 The short-term options

Based on the analysis above, we will focus on the two most plausible outcomes – the Withdrawal Agreement and accompanying Political Declaration, largely or entirely unchanged, and a no deal outcome. We also briefly discuss the option of remaining in the EU, which – given the respective positions of the Government and the official Opposition – is currently less likely, but which remains possible and is the first choice of a significant proportion of voters

2.3.1 Current Withdrawal Agreement

The Withdrawal Agreement includes the ‘Backstop’ provisions for maintaining frictionless trade across the Irish border. There has now been a limited further political clarification of its meaning and of the intentions of the EU; and there is also a possibility of the UK legislation to implement the Agreement creating specific Parliamentary hurdles for the implementation of the Backstop. However, the Withdrawal Agreement is drafted as having direct effect; and the UK is required under it to ensure that direct effect is achieved through its domestic primary legislation. Our assumption is that no substantive changes will occur.

The Withdrawal Agreement introduces a transition period, during which negotiations on a more permanent relationship will take place, and during which period the UK will remain bound by EU law (with minor exceptions), but with no voice in its development.

If the Withdrawal Agreement (WA) were to come into effect in its present form, both the non regression provisions and associated environmental governance provisions (Annex 4 of the Protocol on Ireland/Northern Ireland, Articles 2 and 3), would apply under the Backstop. These are more far reaching in environmental terms than have been applied in any previous trade agreements by the EU, and more ambitious than would be expected in new agreements that the UK might enter into with third countries; reflecting as they do the EU’s view that particular attention is required to address risks of unfair competition given the high level of integration of the UK and EU economies, geographical proximity, and opportunity afforded by the high current level of regulatory alignment.

The duration of the Backstop, were it to apply, is uncertain. It is a form of transition arrangement and not designed to be permanent. The domestic political pressure on the UK side to limit its lifetime would be great. However experience shows that the negotiation of trade agreements with the EU has previously taken more than five years and more than ten in some cases. So caution about predicting any particular timescale for the Backstop is prudent.

The significance of its environmental provisions is probably more that they represent the baseline model for the treatment of environmental and other level playing field issues that the EU is likely to pursue under a permanent trade agreement with the UK. This is suggested in the political declaration accompanying the Withdrawal Agreement and has been confirmed to us on an informal basis by EC officials. So the Withdrawal Agreement model for environmental issues is taken here as potentially having longer term application in a future post Brexit agreement. As noted above, the chances of significant change to the Withdrawal Agreement appear slim; and in any case, the environmental provisions of the Backstop have not been a focus of criticism in Parliament for being too onerous, so can be expected to remain in place. It is possible that they could be strengthened or amplified by national law or policy in the UK, not least in the aftermath of the recent Opposition/Government exchange of letters mentioned at the end of Section 2.1.

The nonregression obligation would require both parties to maintain the level of environmental standards applying at the time the Backstop entered into force, ie potentially in a few years’ time. It applies to almost the whole spectrum of environmental law including climate measures in a specified but not detailed list. Significantly, this includes the nature directives. The omissions include noise and forestry measures.

Importantly, and unlike in most previous trade agreements, it is not necessary to establish that a failure to maintain a standard has adverse competitiveness impacts on the other party in order to establish a breach. The non regression obligation is not qualified in this respect – in line with the approach argued for by Greener UK, and set out in earlier IEEP work¹⁰.

The provisions also cover the implementation of the standards in practice, notably the obligation to maintain effective compliance. (This does not necessarily require perfect compliance, a goal not yet reached, but presumably at least the current level). There is a requirement on the UK to establish one or more independent bodies to oversee compliance: since the EU side is assumed to be able to rely on the EC and ECJ for this purpose there is no parallel requirement for them.

A key element of the Withdrawal Agreement is a requirement on the UK to set up a domestic compliance assurance system incorporating independent bodies with sufficient powers. These must cover the whole country and have climate change within their remit. In this respect it provides stronger environmental assurances than would apply in its absence. The bod(ies) would need to have sufficient legal standing to challenge failures to comply, and to have a means of securing necessary remedies. Depending on its interpretation, this element of the WA sets a bar below which the new UK governance arrangements must not fall.

This contrasts with the current proposal for the new body in England, the Office of Environmental Protection (OEP), as set out in the draft Environment (Principles and Governance) Bill¹¹ published in December 2018. For example, the OEP would not be responsible for compliance with climate change law. Furthermore the new bodies would need to cover the whole of the UK. The present proposals are limited to England; although consultations on similar mechanisms have taken place recently in Scotland and Wales.

If the Withdrawal Agreement model is adopted in a future trade agreement, it provides more assurance that current environmental standards in the UK will be maintained than would apply without it – as, for example, in the no deal scenario. In certain restricted areas of environmental law relating to pollution, notably the National Emissions Ceiling Directive, there is an obligation on the UK to engage with the EU, and vice versa, in the development of new standards. However, this is the exception and in other areas the UK can diverge from future EU standards as it wishes. It can choose to be more ambitious or less so compared with the future EU approach and can also adopt more diverse standards within the four UK countries; provided that the non-regression commitment is observed.

The preliminary view of the Greener UK experts that have examined the recent draft Environment Bill is that the powers proposed for the OEP do not meet those required in the WA text (see for example evidence¹² submitted to the House of Commons Scrutiny of the draft Environment Bill inquiry by the Environment, Food and Rural Affairs and Environmental Audit Committees). The Withdrawal Agreement therefore may be a lever for strengthening the OEP's powers as well as extending them to

¹⁰ Nesbit and Baldock, October 2018, "Non-regression and environmental legislation in the future EU-UK relationship", available at: <https://ieep.eu/publications/brexit-and-the-environment-avoiding-deregulatory-pressures>

¹¹ Defra, Draft Environment (Principles and Governance) Bill, 2018, available at: <https://www.gov.uk/government/publications/draft-environment-principles-and-governance-bill-2018>

¹² See Greener UK, Written Evidence to House of Commons Scrutiny of the draft Environment (Principles and Governance) Bill inquiry, 30 January 2019, available at: https://greeneruk.org/sites/default/files/download/2019-02/GreenerUK_WrittenEvidence_DraftEnvBillEnquiry_Jan2019.pdf

climate change. Similar arguments may apply to the governance arrangements in other parts of the UK once detailed proposals for these emerge.

The current proposal for an OEP is modelled on a relatively conventional NDPB with members appointed by the Secretary of State, and no budgetary provisions to separate it from the conventional spending review process. Recent discussions within Greener UK, and discussion at a UKELA conference, suggest that this limited independence is seen as insufficient and will be challenged by civil society on several grounds, including that of compliance with the Withdrawal Agreement. Since these provisions have direct effect this seems possible. With or without such a challenge, amendments to the legislation in Parliament may well occur and could affect the OEP's powers and independence.

The Withdrawal Agreement's provisions for direct state to state dispute settlement are relatively weak – as is nearly inevitable in state-to-state mechanisms without supranational enforcement mechanisms - and it is not clear how much authority the Joint Committee set up by the Withdrawal Agreement would have, or whether it would be capable in practice of reaching agreement on controversial issues. It is uncertain if the European Commission would in future challenge the UK's level of compliance with the Withdrawal Agreement's environmental requirements unless circumstances were exceptional. There would be considerable reliance on the EU side on the robustness of the OEP; and the shortcomings in the OEP model as outlined in the draft Environment Bill might well be challenged by the EU because of their strategic significance.

In short, the Withdrawal Agreement offers some support for upholding environmental standards within the UK but is subject to considerable limitations, and depends for its effectiveness on the remit and credibility in practice of the independent enforcement bod(ies) it calls for.

2.3.1.1 Implications for the future relationship

Negotiations following a successful conclusion of the Withdrawal Agreement are more likely to lead to a settled future relationship with relatively close trading (and legislative) elements than is likely in a no deal scenario; and are more likely to take the Withdrawal Agreement's environmental provisions as a model for the future, as intended by the EU27, and as set out in the Political Declaration.

In principle, the Withdrawal Agreement in itself does not limit the potential outcomes from negotiations on the future relationship between the EU and the UK. It would, for example, be compatible with either the Norway or Canada options; with a Facilitated Customs Arrangement, were such a construct capable of being negotiated; and with the broad approach that the Labour party has outlined as its preferred model.

The WA model does not offer a set of mechanisms for establishing an active and effective cooperation on the environment after Brexit. It does not incorporate membership of the EEA but nor does it exclude it. Generally it is compatible with further cooperation with EU partners on the environment. Cooperation itself would depend on a mutual willingness and goodwill which is more likely to be associated with the WA model than any version of no deal.

2.3.2 Leaving with no deal

A no deal outcome is inherently less predictable, both in terms of its formal impacts and the response from the real economy, which in turn would have environmental implications. In simple terms, the environmental provisions of the Withdrawal Agreement provisions would not apply; and the UK would rely on domestic policy drivers for environmental governance legislation (which are likely to be less powerful). Our analysis also focuses on two other aspects: the short-term real economy impacts; and the trade policy adopted by the UK.

On the former, UK (and EU) short-term legislation is likely to be adopted with the aim of minimising disruption to trade, while remaining consistent with, on the UK's side, WTO obligations, and, on the EU's side, integrity of the Single Market and the Customs Union. However, systems for border checks will be slow to reach full effectiveness, and are likely to lead to significant delays and unpredictability, with potentially major short-term and medium-term disruption to supply chains. While it is beyond the scope of this report to estimate the likely scale and effects of the disruption, there is clear potential for environmental impacts such as:

- A downturn in economic activity, leading to a likely downturn in emissions and resource consumption, but also major uncertainty leading to delay to the investment necessary for eg infrastructure associated with decarbonisation;
- Significantly less efficient logistics, leading to increased waste and transport emissions;
- Major disruption to supply chains, leading to short-term sourcing from potentially unverified suppliers, and significantly lower effectiveness of efforts by manufacturers and retailers to improve sustainability and environmental performance of supply chains;
- Impacts on the viability of farm businesses dependent on exports (and potential windfall profits for businesses significantly exposed to competition from EU imports).

On the latter issue (trade policy), decisions by the UK are likely to be affected by political uncertainty, with time taken for a clear and consistent policy to emerge, particularly given the current absence of a clear Parliamentary majority. One immediate issue which potentially creates concern is the risk of the UK choosing to disapply customs checks on safety or environmental standards, on the grounds that it has insufficient capacity to do this for EU imports, and therefore (under the Most Favoured Nation requirement) would feel constrained to treat other importers similarly.

In the medium term, the Government would be likely both to want to resume negotiations with the EU on a potential free trade agreement (with a much higher likelihood than under the Withdrawal Agreement scenario of those negotiations not being successful; and a UK preference for a Canada rather than a Norway outcome); but also, and simultaneously, to open negotiations with other potential trading partners. The latter could lead to pressure for the UK to accept (lower) product standards (or the absence of standards) from other major trading partners, particularly the US. There is also potential for domestic political pressure for deregulation; while the Prime Minister has emphasised (including in her letter of 10 February to Jeremy Corbyn) that “Brexit should not be at the expense of ... environmental protections”, the economic circumstances of a no-deal outcome could weaken that commitment; and there are many voices in the Conservative Party which would support the idea of using greater regulatory autonomy to remove or simplify significant areas of the environmental, social, and consumer protection acquis.

2.3.2.1 Implications for the future relationship

Leaving without a Withdrawal Agreement does not, in principle, limit the scope for the future relationship (although the disruption of such an outcome will have immediate and direct effects). It would be possible for the current or a future Government to prioritise any one of the models, including the relatively close Norway model. However, the likelihood is that the Government would, at least in the short term, pursue a WTO-based approach, focusing on developing trading relations with other economies, and with a relatively low level of ambition for EU negotiations (perhaps focused on extending temporary legislative provisions adopted to manage disruption).

The economic and political disruption likely to be associated with this interim outcome might, though, have the impact either of bringing about a change in government, or of convincing UK politicians more widely of the importance of open trading relations with the EU. The UK's negotiating leverage with

the EU in such circumstances could be expected to be significantly lower than now, and the pressure to accept relatively stringent terms on issues such as environment and labour standards consequently higher. Set against that, however, is the risk that significant deregulatory pressures in the short term (from domestic economic pressures, and pressure from third party trade negotiators) would mean that the UK's environmental starting point in any resumed negotiations is no longer as closely aligned with the EU's.

2.3.3 Remain

The option of the UK revoking its Article 50 notification and choosing to remain part of the EU appears to be receding in its probability as the deadline approaches, and as the political conditions for such an approach remain elusive. However, there are conditions within which a choice could be made to remain within the EU, for example following a second referendum, an alternative which a number of MPs and parties other than the Conservatives and Labour are advocating.

It is worth noting that a Remain outcome would involve a return to the status quo, potentially with a reinvigorated UK commitment to full engagement in policy debate at EU level. UK environmental policy would continue to develop in tandem with EU policy, with UK governments in a position to influence the outcome, implementing legislation as required. The oversight of the European Commission and other EU institutions would continue to apply to the implementation of EU derived environmental policy in the UK, with these institutions able to exercise powers currently not available to the OEP. The UK would be able to argue within the EU for improved European ambition on areas of priority, such as climate change, and for better integration of environmental considerations into the Common Agricultural Policy and the Common Fisheries Policy. The greater understanding of the EU system resulting from the Brexit negotiations might create an opportunity to revisit the policy of recent Governments (who have chosen not to go beyond EU environmental requirements, despite the flexibility the Treaties provide), and to "take back control" by pursuing greater ambition.

However, the UK would lose the opportunity for a radical refocusing of agricultural payments given the reduced but still significant constraints continuing to apply within the Common Agricultural Policy. The impetus for improved domestic governance arrangements would be removed (although the UK would benefit from the EU's relatively effective governance and enforcement mechanisms).

Levels of economic and political certainty would be greater over the medium term, with positive implications for the investment climate according to many voices in industry. However this would be offset to some extent by a substantial part of the British political landscape continuing to campaign for the UK to leave the EU, and to commit to departure if it came to power.

2.4 The Greener UK environmental benchmarks and the short-term policy outcomes

Key issues in relation to the Greener UK benchmarks for assessing the environmental consequences of different post referendum scenarios are set out below.

2.4.1 "Higher environmental standards..."

... in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for back-sliding"

Standards would not be propelled upwards by the **Withdrawal Agreement** (not surprisingly given that this is not its purpose). But it would be compatible with higher standards if future governments chose to adopt them. In all parts of the UK, administrations have talked about higher standards than now and some initial steps have been taken or are planned, as in the case of the 25 year plan, principally for England.

The potential for backsliding would be considerably curbed by the non-regression and associated environmental governance requirements in the Backstop provisions of the Withdrawal Agreement, which the political declaration signals should also be the starting point for the environment and *level playing field* provisions in the future relationship. The ability of the EU to enforce non-regression in practice under the Backstop would be limited; much of the defence against backsliding would rest on future UK environmental governance. But during the transition period, which could be lengthy, the constraints on backsliding would be greater.

Relative to the status quo within the EU, the support offered for higher standards by the Treaty environmental principles would be weakened, since these are stronger than the current domestic proposals re principles in the draft Environment Bill. However, the Bill is not yet an Act. The existing proposals, while far from ideal environmentally, would be preferable to the absence of any principles of this kind, which seems more probable under a No Deal scenario.

Looking ahead, the Norway style variant would lock the UK into most EU environmental legislation, under rules similar to those applying to the EEA countries; and would also require the UK to mirror new environmental legislation and standards. There are strong arguments for adding the nature directives to the list of legislation to be complied with; although the UK's absence from decision-making structures will weaken the role and influence of UK environmental NGOs, and the tailoring of decisions to UK habitats.

The Canada variant would offer no equivalent propulsion or constraints on domestic standards. Backsliding would be constrained somewhat by a non-regression provision, but enforcement of this would be more difficult than under Norway and during the Transition. There could be scope for the UK to weaken or modify some aspects of environmental standards in order to secure trade deals with other partners.

A **no deal outcome** creates significantly greater scope for a reduction in environmental standards. The extent to which that scope is then followed by a reduction in standards in practice depends to some extent on the political salience of environmental issues (at a time of potentially significant economic downturn and disruption). However, earlier work¹³ on potential environmental impacts of Brexit suggested that, even if the Government maintains a headline commitment to environmental delivery, there may also be several further factors at play militating in favour of weaker standards:

- A keenness to demonstrate a deregulatory benefit from Brexit (while, probably, arguing that environmental ambition and outcomes are not being harmed) could lead to a significant weakening of the process elements of environmental standards.
- Reduced effectiveness of the enforcement of environmental requirements (this is addressed below in section 3.2)
- Pressures to adopt a trade deal could lead to willingness to accede to demands by negotiating partners for weaker product standards.

¹³ See e.g. IEEP (2016), "The potential policy and environmental consequences for the UK of a departure from the European Union", available at: https://ieep.eu/archive_uploads/2000/IEEP_Brexit_2016.pdf; and Nesbit M and Baldock D (2018), "[Non-regression and environmental legislation in the future EU-UK relationship](#)".

2.4.2 *“Effective systems of enforcement of environmental law...*

... fulfilling people’s rights to environmental information, public participation, access to justice and substantive remedies.”

The **Withdrawal Agreement** requires the UK to ensure effective enforcement of environmental legislation during the transitional period, and also (assuming the Backstop comes into operation) of the relevant provisions on the environment in the text and of ‘its laws, regulations and practices reflecting those common standards’. However, the effectiveness of enforcement is likely to depend on the domestic arrangements put in place. In this sense it is weaker than the present EU governance.

The Draft Environment (Principles and Governance) Bill published in December 2018 sets out what arrangements could apply in England; there is less certainty what might be adopted elsewhere in the UK. The draft represents an advance on current domestic arrangements, but falls considerably short of the effectiveness of the current EU derived systems. These shortfalls and accompanying uncertainties relate to the independence of the proposed “Office for Environmental Protection” (OEP), its resources, scope of action, ability to initiate enquiries of its own and to take action before the courts, and to the restriction of its mandate to ‘serious’ failure to comply with environmental law. There is scope for the Bill to be strengthened; which appears more likely in a Withdrawal Agreement context than under a No Deal outcome, given the need to demonstrate compliance with it.

There is less certainty about arrangements in Northern Ireland, Scotland and Wales. The prospect of a jointly designed and accountable body covering the whole of the UK, which potentially could have enhanced its independence and effectiveness, seems to have receded.

In terms of the longer-term outcomes, under a Norway model, enforcement processes would be more rigorous than under the draft Bill as they would essentially be similar to those in the EU, but without the scope for fines. Under a Canada style model, the external enforcement pressures are likely to be weaker. The Commission’s aim in negotiations will probably be to replicate the environmental governance requirements of the Withdrawal Agreement, although we could expect this to be resisted by UK negotiators.

Under a **no deal outcome**, mechanisms to strengthen environmental governance arrangements would be heavily dependent on the political commitment of the Government of the day, of the Cabinet minister responsible (and there is an expectation that such a short-term outcome would be accompanied by a degree of political volatility), and on the political and regulatory stance of devolved administrations. In addition, the underpinning through EU legislation of access to environmental information, public participation in respect of decision-making affecting the environment (including through the Environmental Impact Assessment and the Strategic Environmental Assessment Directives) would no longer apply. While the UK would still, in principle, be bound by its Aarhus Convention obligations, the effectiveness in practice of the compliance mechanisms of the Convention is relatively limited.

2.4.3 *“Mechanisms for effective co-operation...*

... on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.”

Under the **Withdrawal Agreement**, effective co-operation on the environment can be expected to depend both on the closeness of the future relationship between the UK and the EU and the good will

and enthusiasm resulting from the negotiation process. Again, we expect closer cooperation under a Norway destination, and looser arrangements under a Canada arrangement.

While the transitional period under the Withdrawal Agreement applies, the UK will not be involved in the formal EU decision-making processes (other than in the specific case of fisheries, where it will be consulted); if a Norway type of agreement is the outcome of the negotiations, we would expect a formal right of consultation on all legislation. Specifically on climate issues, the political declaration on the future relationship reaffirms the two sides' commitment to international agreements (no such reaffirmation is made on Multilateral Environmental Agreements more broadly), and foreshadows a link between a putative UK Emissions Trading System and the EU ETS. Stakeholders have expressed concern regarding the lack of any explicit reference to continued cooperation on biodiversity conservation in particular.

One so far unresolved determinant of the extent of future cooperation on environmental policy will be whether the UK retains membership of the European Environment Agency. Under the transition period in the Withdrawal Agreement, the UK would be obliged to report to the EEA in the same way as Member States currently do; and would, through its contribution to the EU budget, effectively be contributing to its running costs. Beyond this, the UK could apply for membership, which is not restricted to EU Member States. Further options for cementing the UK's continuing engagement with the EEA should be pursued, and would help to lay the groundwork for cooperation with the EU.

The political dynamic around a **No Deal outcome** clearly would be less conducive to cooperation on environmental issues, including in the spheres of data exchange and joint research. Steps to mitigate against this could include pressing for the UK to maintain (and therefore pay for) membership of the European Environment Agency.

2.4.4 “Trade policy that promotes high environmental standards...

... minimises the UK's global environmental footprint and is responsive to engagement by civil society.”

Under the **Withdrawal Agreement**, the UK will be seeking a free trade agreement with the EU while at the same time it is required to re-negotiate third party agreements which it participates in now by virtue of its EU membership. It will be able to seek new trade agreements with third parties, but this ability is fettered during the transition by aspects of the Withdrawal Agreement, notably in relation to trade in goods. (Most of the more environmentally sensitive trade flows relate to goods, including wastes and recoverable resources, so this strand of trade is of greatest interest here.)

The key difference between the Withdrawal Agreement route and a **No Deal outcome** is the urgency with which the UK would approach trade negotiations (assuming that the final destination does not involve a GB-EU customs union, and hence the UK is free to vary its tariff schedules in future). Developing deals in time to apply from the end of the transition period is a significantly more relaxed proposition than trying to negotiate deals in order to open up trade flows immediately. While there would be some time pressure under the Withdrawal Agreement, it would be less immediate; and the simultaneous negotiations with the EU would constrain the UK's ability to know what sort of scope it would have to enter into agreements with third parties which had the potential to weaken its environmental protection.

In terms of the longer-term outcome from EU negotiations, a Norway option would result in the UK having access to the Single Market and being tied to much EU legislation (about 5000 EU laws apply in the EEA; there would also be strong arguments for adding the nature directives to the list). Therefore it would have much more limited capacity to give concessions on regulation in negotiating individual

trade deals. The Canada option would result in a much less constrained trade policy for the UK, with attendant risks for the ambition of environmental regulation (which would also depend on the extent of any non-regression commitments).

As noted above, the UK would face significantly greater time pressure under a **No deal outcome** to cut trade deals, and would have significantly greater freedom to reduce regulatory standards on products in order to do so; both factors would be well understood by negotiators in other countries. The potential environmentally unfavourable approaches could include accepting imports of a lower environmental standard than currently permitted, as with GMOs from the US, or less willingness to impose environmental standards or other conditions on potential partners. The EU, for example, is seeking to impose conditions on Australia in relation to the Paris Agreement as part of its negotiations on an FTA; it is difficult to imagine the UK enjoying similar leverage.

One risk arising from leaving the EU is that there is currently little governance in place in the UK to allow satisfactory parliamentary and stakeholder participation in the process of assessing and negotiating trade agreements, or to allow devolved administrations to protect their regulatory choices. The Government has recognised that new processes are needed, but stakeholders have been concerned that these are likely to be insufficient; and that the need for internal process will come up against pressures for rapid progress to secure agreements on a tight timescale. The EU has developed mechanisms to provide some civil society input into trade policy and negotiations, such as the publication of impact assessments. More broadly it has shown a certain level of responsiveness to civil society demands for openness in trade talks, notably on TTIP, and indeed on the Brexit negotiations themselves. No similar openness has yet been demonstrated by the UK; but UK negotiators could be encouraged to adopt, and improve on, current EU good practice.

2.4.5 Other issues, including legislation on environmental impact assessment.

The **Withdrawal Agreement** does not require the UK to keep in step with developments in EU environmental policy or vice versa. However there will be some pressure to align closely in certain specified areas. These are the regulation of atmospheric pollutants covered by the National Emissions Ceiling directive, the sulphur content of marine fuels and those air pollutants covered by the BAT approach within the industrial emissions directive.

There is no such provision for the environmental impact assessment (EIA) directives. However, the EIA directives are explicitly mentioned on the list of areas of environmental policy to be covered under the non-regression component of the Withdrawal Agreement. It was not obvious that this would be the case but it does presumably reflect a judgement that they are relevant to the question of the level playing field between the EU and the UK. This means that there would be grounds to challenge any effective weakening of the EIA legislation in any of the UK countries. Initially that challenge would be expected to come from the OEP or its equivalents outside England. In principle, however, there could be pressure from the EU side under the terms of the Withdrawal Agreement, although almost certainly only in the case of a serious weakening.

In the event of the UK **leaving the EU without a deal**, the future of EIA and related strategic environmental assessment legislation would be in doubt. The fact that in England policy on both is run from the Ministry of Housing, Communities and Local Government, rather than from Defra, means that the political drivers faced by decision-makers are less environmental, and more reflective of broader efficiency objectives of the planning system. The temptation to push for a redesign of the legislation is likely to be high in the medium term; and while the political cost of reducing public involvement would be high, the requirement for detailed analysis of environmental issues as part of

the planning process is perhaps less likely to be a priority; and there would in particular be a risk that carve-outs from any domestic legislation for infrastructure projects of national interest, or cases of urgency, would be adopted.

2.5 Long-term outcomes

Our view remains that the most plausible long-term models available to the UK outside the EU are:

- (i) a relatively high level of integration, through participation in the Single Market, or the Customs Union, or both – essentially a variant of the “Norway” model;
- (ii) a looser trading arrangement, similar to (but with some important differences from) the Comprehensive Economic and Trade Agreement between the EU and Canada – the “Canada” model; and
- (iii) a failure of negotiations on a future trading arrangement, with the UK operating in future under the same tariffs and non-tariff barriers with the EU as with other WTO parties.

Each of the three long-term outcomes can be reached from either the Withdrawal Agreement or the no deal interim outcome.

We have not analysed in detail the Facilitated Customs Arrangement put forward by the UK at an earlier stage in the negotiations, because it has yet to be formulated very precisely and has achieved limited traction with the EU negotiators to date. It has been questioned by most informed observers¹⁴, and appears to have a number of flaws which make it difficult to achieve – except, in some limited respects, as a variant on either the Norway or Canada models.

More generally, a repeated message from EU Member State leaders and the EU institutions is that the EU will not want to make changes to the EU’s internal model in order to accommodate a new relationship with the UK; and we expect this view to continue beyond the withdrawal negotiations and into the negotiations on the future relationship. Thus, a formal voice for the UK (beyond consultative rights of the kind enjoyed by Norway and other EFTA members of the EEA) either in the development of legislation, or in negotiation of future EU trade agreements with third parties, seems rather unlikely.

2.5.1 Long-term trade agreement: Norway model

The Norway model is, broadly, the sort of outcome that the UK could be expected to push for in the event of a Labour administration. It would potentially be more conducive to a higher level of cooperation with the EU because it is closer, involves more participation in joint processes and would be likely to feature future UK contributions to expenditure in the EU. Currently cooperation between Norway and the EU is relatively high and includes participation in EU research programmes, for example. The UK would be obliged to continue to implement EU legislation and law, and (subject to consultation) to adopt future EU legislation in policy areas, including the environment, which are regarded as relevant to the level playing field. It is highly likely that the Withdrawal Agreement’s level playing field provisions on environment, including the environmental governance and enforcement requirements, would be maintained or strengthened. Particular risks and opportunities to be addressed by UK environmental stakeholders include:

¹⁴ As an example, the description of it by former UK Permanent Representative to the EU Sir Ivan Rogers as “the bizarre – and total non-starter – Schroedinger’s Customs Union FCA proposal of the PM whereby we got all the benefits of staying in a CU whilst leaving it to have a fully sovereign trade policy” appears to be representative of the response of current EU negotiators. (Source: Speech to the University of Liverpool’s Heseltine Institute for Public Policy, Practice and Place, December 2018).

- (i) Seeking to ensure that UK and devolved legislation in areas where it is more ambitious (for example, on plastic bags or single use plastics) is protected from the risk of weakening through future EU single market legislation;
- (ii) Ensuring that the nature directives are included in the legislation to which the UK is required to remain aligned.

2.5.2 Long-term trade agreement: Canada model

The Canada model is the more likely destination under current Government policy. Under the Canada model, the UK would have more restricted access to the EU market; there would be less of a requirement for maintaining dynamic alignment with the EU, and more scope for different approaches to environmental legislation to be adopted. It is likely that the EU negotiators would press for the non-regression and environmental governance clauses of the Backstop to be taken as the starting point for similar clauses in the new trade agreement; but also that UK negotiators will resist this. Our expectation is that it might therefore be more difficult to secure protection for the nature directives in this scenario, and more difficult to make effective use of the trade agreement to reinforce domestic environmental governance arrangements.

Scope for cooperation between the UK and the EU in future international environmental agreements would be looser, since they would not be as closely aligned and would have to be developed on a case-by-case basis. The scope for the UK to make changes to environmental and food safety legislation in response to pressure from third party trade negotiators is significantly higher.

There are some grounds for believing that the UK would have greater flexibility to innovate in environmental legislation, particularly on products, under a Canada model, since it would not be obliged to comply with single market legislation (which in some cases, for example on packaging, effectively limits the scope for ambitious domestic policies in order to ensure that there are no barriers to trade in the internal market). However, the likelihood of such flexibility being made use of would be limited by the UK's likely enthusiasm for an open trading approach with other parties and the need to access the EU market in many product areas.

2.5.3 No long-term trade deal: UK operates on "WTO terms".

The benefits of the environmental elements of the Withdrawal Agreement would, by definition, no longer be available. There would be significantly greater risk of future governments reducing levels of protection provided by environmental legislation, or choosing not to enforce it effectively, including through concessions in trade agreements with other parties. In real economy terms, supply chain links with EU member states would be less favoured than at present, leading to greater use of products and components from other (potentially less environmentally regulated) economies, and consequently the risk of a greater negative environmental impact of supply chains to the UK.

Potential environmental benefits would accrue (as with both the "Norway" and "Canada" models) from the scope for a more environmentally focused system of agricultural payments; and, as with the "Canada" option, from the scope for product legislation to go beyond single market requirements (were a future government to develop a more ambitious approach to product legislation). However, countervailing pressures on government expenditure from the broader economic costs of losing favourable trading relations with the EU would limit the scope for environmental payments, and the disruption to trade in agricultural goods would place significant pressure on some producers, particularly in the livestock sector, and on high nature value farmland. And, in the case of product standards, it is likely that UK policy in this scenario would favour developing trade agreements with other economies relatively quickly, which would limit the scope for introducing regulatory non-tariff barriers.

3 Conclusions

We set out in the table below an initial summary, based on the analysis in this report, of the direct impacts and policy risks, both in the short and in the longer term, of the outcomes considered. Broadly, our view is that both policy risks and real environmental impacts are significantly greater in the no deal and WTO scenarios; and are progressively lower in line with the degree of closeness in regulatory and trading terms or the UK’s future relationship with the EU.

Outcome	Short-term direct impacts	Short-term policy risk /opportunity	Long-term direct impact	Long-term policy risk /opportunity
Short-term outcomes				
Withdrawal Agreement (with Political Declaration)	Positive impact of opportunity for more environmentally-focused agriculture subsidies.	<p>Positive impact on proposed governance legislation within the UK, with a clear justification for improving to ensure compliance with the Withdrawal Agreement</p> <p>Positive impact on continuity and predictability of environmental standards, non-regression, and environmental governance obligations.</p> <p>Negative impact of removing UK from EU policymaking on, CAP, aspects of CFP, climate.</p>	Dependent on policy risks, in both short- and long-term.	Positive impact through likelihood of environmental elements of WA inspiring environment and level playing field elements of future relationship.
No Deal	Negative impact on efficiency of logistic operations, leading to excess emissions.	Negative impact on Government commitment to credible environmental governance legislation.	Dependent on impacts on scope for different outcomes in the longer term (see below).	Negative impact of reducing likelihood of robust environmental provisions in a future deal with the EU.

	<p>Negative impacts of supply chain and infrastructure disruption.</p> <p>Negative impacts on investment for decarbonisation and other environmental objectives.</p> <p>Negative impact of shortage of funding for environmental protection.</p> <p>Positive impact (as with WA) from flexibility on agriculture subsidies, mitigated by squeeze on public finances.</p>	<p>Negative risk of pressure for deregulation as a response to economic downturn, lack of EU constraint.</p> <p>Significant risk of short-term efforts to secure trade agreements with non-EU partners, with exposure to deregulatory demands, weaker standards, etc.</p>		<p>Negative impact on likelihood of less risky, broadly beneficial longer-term outcomes.</p>
Remain	<p>Positive impact on continuity and predictability of legislation and governance.</p> <p>Positive impact on investment in decarbonisation and long term environmental technology where sensitive to policy uncertainty.</p> <p>Less positive impact due to reduced opportunity to redesign agriculture payment systems.</p>	<p>Positive impact through UK engagement in future EU policymaking</p> <p>Possible scope for revisiting recent Government policy against so-called “goldplating” of EU standards</p>		<p>Significant political stability risks, eg future administrations deciding to re-activate Article 50</p>
Long-term outcomes				
Norway			<p>Positive impact on decarbonisation etc investment, with</p>	<p>Positive impact on credible dynamic alignment commitments.</p>

			<p>predictable and stable regulatory framework.</p> <p>Positive impact on future possibility of designing better agriculture payment systems.</p> <p>Stronger compliance pressures compared to more detached options</p>	<p>Some risk that nature legislation is excluded from dynamic alignment commitments</p>
Canada			<p>Neutral impact on investment.</p> <p>Positive impact on future possibility of designing better agriculture payment systems.</p>	<p>Scope for weaker environmental provisions/ commitments.</p> <p>Some risk that nature legislation is excluded from non-regression commitments.</p> <p>Greater risk of trade deals with partners such as US including weaker product standards, etc.</p>
WTO-only	<p>Reduced incentive for government to strengthen environmental governance and increase environmental ambition in the UK.</p>		<p>Negative impact of continued inefficiency of logistics systems, with non-EU goods relatively favoured, greater food miles, etc.</p>	<p>Negative impact of future bilateral trade agreements, with UK having little scope for imposing environmental/ sustainability requirements, and vulnerable to deregulatory demands.</p>

