

Dear Gareth,

Please find attached a set of amendments to the EU (Withdrawal) Bill which the RSPB has worked on pulling together as part of the Greener UK coalition – a group of 13 major environmental organisations who are working together to maintain and strengthen the UK's environmental protections and climate leadership as we leave the EU.

Greener UK believes that, no matter what the outcome of the Brexit negotiations, the people of Wales, England, Scotland, and Northern Ireland deserve a world class environment with clean air and water, a stable climate, healthy seas, beautiful landscapes, and thriving wildlife in the places we love. However, as currently drafted, the bill contains flaws that will leave our natural environment less well protected than it is now.

In particular, the bill needs to:

1. Convert the entire body of European environmental law into domestic law, including fundamental principles of international and EU environmental law.
2. Provide for new governance arrangements, so that there is effective implementation of environmental standards, whatever the UK's future relationship with EU institutions.
3. Restrict the use of secondary legislation, before and after Brexit, and create processes for robust parliamentary scrutiny of any changes made through secondary legislation during the conversion of EU law

We are asking for the Welsh Government's help to support these amendments - which are in line with and support implementation of the Well-being of Future Generations (Wales) Act 2015 - and promote them to Westminster Government during discussions on the Bill.

I would be grateful if you could pass these amendments onto the Constitutional and Legislative Affairs Committee and ask them to push Welsh Government to raise them with the UK Government in order to highlight the importance of getting the Bill right for the benefit of the environment across the UK. We would be happy to provide more information if required.

If you have any queries please don't hesitate to contact me.

Kind Regards

Jess

**Jess Chappell**

	<b>Proposed amendment</b>	<b>Justification</b>
1	<p>To move the following Clause—</p> <p><b>Scope of delegated powers</b></p> <p>Subject to clauses 8 and 9 and paragraphs 13 and 21 of Schedule 2, any power to make, confirm or approve subordinate legislation conferred or modified under this Act and its Schedules must be used, and may only be used, insofar as is necessary to ensure that retained EU law continues to operate with equivalent scope, purpose and effect following the United Kingdom’s exit from the EU</p>	<p>The stated purpose of the EU (Withdrawal) Bill is to transfer existing EU law into the UK statute book as seamlessly as possible on exit day. The purpose of this amendment is to ensure that the very broad powers to create secondary legislation given to ministers by the Bill (for example in clause 7 to “prevent, remedy or mitigate... deficiencies in retained EU law arising from withdrawal”) can only be used in pursuit of the overall statutory purpose, namely to allow retained EU law to continue to operate effectively after exit day. This clause thus gives effect to commitments already made by ministers.</p> <p>The EU (Withdrawal) Bill contains very broad powers for ministers to amend retained EU law by secondary legislation. The scope of the powers must be clearly limited and the use of such powers restricted to only “functional” amendments that ensure retained EU law continues to operate with the same scope, purpose and effect following Brexit. The Bill also provides for secondary legislation to be used to implement the terms of any withdrawal agreement with the EU. However, this framing is too broad and it is arguable that ministers could use secondary legislation to reverse certain environmental protections existing as a result of the UK’s membership of the EU if they were not required by such withdrawal agreement. Such powers should only be used to implement obligations on the UK arising from the withdrawal agreement, and not used to remove pre-existing standards, protections and rights resulting from EU membership.</p>
2	<p>Clause 4, page 2, line 45, leave out—</p> <p><i>“(b) are enforced, allowed and followed accordingly,”</i></p>	<p>This amendment simply deletes clause 4(1)(b) of the Bill. Clause 4(1)(b) adds an unnecessary extra criterion that must be satisfied before citizens can rely on existing rights. The test set out at clause 4(1)(a) - that such rights are available in domestic law immediately before exit day - is sufficient for those rights to continue to be available following the UK’s exit from the EU. This is consistent with the overall purpose of the Bill – the seamless transfer of existing EU law (including existing case law) into UK law. The additional requirement in clause 4(1)(b) that such rights are</p>

		currently “enforced, allowed and followed” is unnecessary and raises potential arguments that rights available but not currently enforced in domestic law, will be lost on the UK leaving the EU. Such a position would be unacceptable and amendment 2 deals with this by removing 4(1)(b).
3	<p>Clause 4, page 3, leave out subclause (2)(b) and after subclause (3) insert—</p> <p>(...) Where, following the United Kingdom’s exit from the EU, no specific provision has been made in respect of an aspect of EU law applying to the United Kingdom or any part of the United Kingdom immediately prior to the United Kingdom’s exit from the EU, that aspect of EU law shall continue to be effective and enforceable in the United Kingdom with equivalent scope, purpose and effect as immediately before exit day.</p> <p>(...) Where, following the United Kingdom’s exit from the EU, retained EU law is found to incorrectly or incompletely transpose the requirements of EU legislation in force on exit day, a Minister of the Crown shall make regulations made subject to an enhanced scrutiny procedure so as to ensure full transposition of the EU legislation.</p>	<p>Clause 4, subsection 1 provides that, amongst other things, people’s rights available in the UK as a result of the UK’s membership of the EU will continue after the UK leaves the EU. However clause 4(2)(b) excludes rights arising under EU directives which are not recognised by the courts. Clause 4(2)(b) should be removed so that rights arising under EU directives (but not yet adjudicated on by the courts) are protected and continue to be available in UK courts.</p> <p>New sub –clause (3) deals with a situation where the UK has incorrectly implemented a directive as there is no guarantee that all EU directives will have been correctly implemented in domestic law prior to exit day. In cases of incorrect implementation, reliance on the EU directive may still be necessary.</p> <p>New sub clause (4) ensures that where the UK has not correctly or completely implemented EU law, such as a directive, prior to exit day, there will be a statutory obligation on Ministers to modify UK law to ensure that the relevant EU legislation is correctly and fully implemented. This power is particularly important because some requirements of EU directives currently (and correctly) exist only within the text of the directive and have not been transposed into domestic law. Many reporting and reviewing requirements fall into this category.</p>
4	<p>Clause 7, page 6, line 18, at end insert—</p> <p>(g) limit the scope or weaken standards of environmental protection.</p>	<p>Clauses 7, 8, 9 and 17 of the EU (Withdrawal) Bill grants ministers very wide powers to legislate (and amend existing legislation) by way of regulations (which have the effect of primary legislation). . Amendments 4 to 7 will ensure that these regulation-making powers may not be</p>
5	<p>Clause 8, page 6, line 38, at end insert—</p> <p>(e) limit the scope or weaken standards of environmental protection.</p>	

6	<p>Clause 9, page 7, line 8, at end insert—</p> <p>(e) limit the scope or weaken standards of environmental protection.</p>	
7	<p>Clause 17, page 14, line 13, at end insert—</p> <p>(8) Regulations under this section may not limit the scope or weaken standards of environmental protection.</p> <p>(9) No regulations may be made under this section after the end of the period of two years beginning with exit day.</p>	<p>New sub clause (9) supplements the more limited restriction on exercise of the consequential amendment power in sub clause (3) of the Bill, so as to ensure consistency with the other main regulation making powers in the Bill.</p>
8	<p>Schedule 1, page 15, line 17, delete paragraph 2 and insert—</p> <p>2. (1) Any general principle of EU law will remain part of domestic law on or after exit day if:</p> <p>(a) it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case);</p> <p>(b) it was recognised as a general principle of EU law in the EU Treaties immediately before exit day;</p> <p>(c) it was recognised as a general principle of EU law by any direct EU legislation (as defined in section 3(2) of this Act) operative immediately before exit day; or</p> <p>(d) it was recognised as a general principle of EU law by an EU directive that was in force immediately before exit day.</p> <p>(2) Without prejudice to the generality of sub-paragraph (1), the principles set out in Article 191 of the Treaty on the Functioning of the European Union shall be considered to be general principles for the purposes of that sub-paragraph.</p>	<p>Paragraph 2 of Schedule 1 currently limits the retention of “general principles” of existing EU law after exit day to principles which have been recognised by the European Court in case law. This is an odd criterion given that it risks excluding, for example, principles included in the EU treaties that have not been the subject of litigation in the European Court.</p> <p>Amendment 8 therefore clarifies that all the existing principles of EU law will be retained within domestic law whether they originate in the case law of the European Court, the EU treaties, direct EU legislation or EU directives. This is consistent with the overall purpose of the Bill – the seamless transfer of existing EU law into the UK statute book on exit day.</p> <p>It also makes clear that the key environmental law principles in Article 191 of the Treaty are retained, since the use of the term “general” in Schedule 1(2) has created uncertainty as to whether principles of this kind are “general” and would be retained after exit day.</p>

9	Schedule 1, page 15, line 28, leave out paragraph 4	The rule in Francovich that individuals can claim damages against a state for failure to implement EU legislation correctly should be maintained to the extent that EU legislation continues to apply to the UK. There is no reason why the UK courts should not be able to award damages against the Government for failure to implement correctly EU legislation that was in force immediately prior to exit day. This is consistent with the overall purpose of the Bill – the seamless transfer of existing EU law – including existing rights arising under EU law - into the UK statute book on exit day. It is an important (financial) incentive to ensure government complies with the law (by way of implementation).
10	<p>To move the following Clause—</p> <p><b>Treatment of retained law</b></p> <ol style="list-style-type: none"> <li>(1) Following the commencement of this Act, no modification may be made to retained EU law save by primary legislation, or by subordinate legislation made under this Act.</li> <li>(2) By regulation, the Minister may establish a Schedule listing technical provisions of retained EU law that may be amended by subordinate legislation.</li> <li>(3) Regulations made under subsection (2) will be subject to an enhanced scrutiny procedure including consultation with the public and relevant stakeholders.</li> <li>(4) Regulations may only be made under subsection (2) to the extent that they will have no detrimental impact on the UK environment.</li> <li>(5) Delegated powers may only be used to modify provisions of retained EU law listed in any Schedule made under subsection (2) to the extent that such modification will not limit the scope or weaken standards of environmental protection.</li> </ol>	<p>Most EU Regulations and Directives have undergone a full democratic process via the European Parliament and Council before becoming law. It is therefore appropriate that substantive changes to these important laws can only be made through the full democratic process provided by the UK's parliaments. Otherwise, a democratic deficit will open up and important environmental safeguards will be vulnerable to modification without the proper scrutiny.</p> <p>We accept that there may be elements of retained EU law that it would be more appropriate to be amended by subordinate legislation even after the 2 year sunset clause for secondary legislation under the EU (Withdrawal) Bill expires. Amendment 10 provides a mechanism for ministers to establish a list of technical provisions of retained EU law that may be amended by subordinate legislation outside of the time restrictions of the EU (Withdrawal) Bill.</p>
11	Schedule 8, page 50, leave out paragraphs (3) and (5)	This amendment deletes paragraphs 3 and 5 of Schedule 8 in their entirety. Paragraph 3 provides that a power to modify retained direct EU legislation will be “read in” to <i>any</i> existing power to make subordinate

		<p>legislate conferred prior to exit day. This power is unnecessary given the breadth of the powers conferred by the main part of the Bill.</p> <p>Paragraph 5 purports to “read in” the power to modify retained direct EU legislation into any powers to make subordinate legislation made after exit day. Neither of these paragraphs is necessary and, in the case of paragraph 5, the effect would appear to be unconstitutional (Parliament should not in this Bill seek to pre-empt any decision Parliament may take in the future about the appropriate scope of a proposed power to make subordinate legislation).</p> <p>In any event clause 7 of the Bill gives ministers ample powers to correct deficiencies in retained EU law by regulation. Importantly clause 7 is subject to a sunset provision that could be circumvented if paragraphs 3 and 5 of Schedule 8 were enacted.</p>
12	<p>To move the following Clause—</p> <p><b>Scrutiny of statutory instruments</b></p> <p>(1) A Parliamentary Committee shall determine the form and duration of parliamentary and public scrutiny for every statutory instrument proposed to be made under this Act.</p> <p>(2) Where the relevant Committee decides that the statutory instrument will be subject to enhanced parliamentary scrutiny the Committee shall have the power—</p> <ul style="list-style-type: none"> <li>(a) to require a draft of the proposed statutory instrument be laid before Parliament;</li> <li>(b) to require the relevant Minister to provide further evidence or explanation as to the purpose and necessity of the proposed instrument;</li> <li>(c) to make recommendations to the relevant Minister in relation to the text of the draft statutory instrument;</li> <li>(d) to recommend to the House that “no further proceedings be taken” in relation to the draft statutory instrument.</li> </ul>	<p>The Bill as currently drafted provides that all regulations made under the Act will be subject to the existing standard scrutiny procedures (either negative or affirmative – see, for example, Schedule 7, paragraphs 1, 5 and 6).</p> <p>This amendment recognises that the Government is likely to have to bring forward a very large number of regulations in a relatively short period of time in order to ensure that the statute book operates effectively from exit day onwards and accepts that the negative or affirmative scrutiny procedures may well be appropriate for many of those regulations (especially for those making purely technical changes rather than establishing matters of policy or principle).</p> <p>This amendment sets up a Parliamentary Committee to assess the level of scrutiny necessary for statutory instruments proposed under the Bill. In this way, uncontroversial statutory instruments can be processed quickly, but the Committee can require some statutory instruments be subjected to enhanced scrutiny</p>

	<p>(3) Where an instrument is subject to enhanced scrutiny, the relevant Minister must have regard to any recommendations made by the Parliamentary Committee pursuant to subparagraph (c) above before laying a revised draft instrument before each House of Parliament.</p> <p>(4) Where an instrument is subject to public consultation, the relevant Minister must have regard to the results of the consultation before laying a revised draft instrument before each House of Parliament or making a Written Statement explaining why no revision is necessary.</p>	<p>As such, this amendment seeks to ensure:</p> <ol style="list-style-type: none"> <li>1) that a Parliamentary Committee rather than ministers should decide what is the appropriate level of scrutiny for regulations made under the Act;</li> <li>2) that the Parliamentary Committee has the power to require enhanced scrutiny in relation to regulations that it considers to be particularly significant or contentious.</li> </ol> <p>This amendment is intended to achieve a sensible balance between the need for Parliament to scrutinise effectively particularly significant and contentious regulations while allowing ministers to make regulations dealing with largely technical or non-contentious matters without undue delays.</p>
13		

14	<p>To move the following Clause—</p> <p><b>Institutional arrangements</b></p> <p>(1) Before exit day a Minister of the Crown must make provision that all powers and functions relating to the environment or environmental protection that were exercisable by EU entities or other public authorities anywhere in the United Kingdom before exit day which do not cease to have effect as a result of the withdrawal agreement (“relevant powers and functions”) will—</p> <ul style="list-style-type: none"> <li>(a) continue to be carried out by an EU entity or public authority;</li> <li>(b) be carried out by an appropriate existing or newly established entity or public authority in the United Kingdom; or</li> <li>(c) be carried out by an appropriate international entity or public authority.</li> </ul> <p>(2) For the purposes of this section, relevant powers and functions relating to the UK exercisable by an EU entity or public authority include, but are not limited to—</p> <ul style="list-style-type: none"> <li>(a) monitoring and measuring compliance with legal requirements,</li> <li>(b) reviewing and reporting on compliance with legal requirements,</li> <li>(c) enforcement of legal requirements,</li> <li>(d) setting standards or targets,</li> <li>(e) co-ordinating action,</li> <li>(f) publicising information including regarding compliance with environmental standards.</li> </ul> <p>(3) Within 12 months of exit day, the Government shall consult on and bring forward proposals for the creation by primary legislation of—</p> <ul style="list-style-type: none"> <li>(a) a new independent body or bodies with powers and functions at least equivalent to those of EU entities and</li> </ul>	<p>As noted by the House of Lords EU committee last year: “the importance of the role of the EU institutions in ensuring effective enforcement of environmental protection and standards... cannot be over-stated”. EU institutions perform vital governance functions for the UK that must either be maintained or replicated after Brexit. They have brought the letter of the law to life through monitoring, oversight, implementation and enforcement. For example, the European Commission carries out an important watchdog function in ensuring member states comply with common environmental standards and requirements.</p> <p>Our current domestic arrangements and institutions are not able to fulfil all of these functions in a comparable way to the existing system. The government has said that the UK’s judicial review and parliamentary processes would be enough to enforce environmental law, but (leaving aside the argument in favour of a specialist environmental tribunal to deal with environmental claims and the shortcomings of current judicial review rules) this response does not answer concerns about the non-judicial functions currently carried out at EU level – for example, monitoring and reporting on compliance and the setting of standards and targets. .</p> <p>While the precise role of EU or other bodies in overseeing future relationships between the UK and EU will depend on the outcome of the negotiations, we already know that the UK will have to replace some key oversight functions with new domestic arrangements. Post-Brexit, UK governance institutions must have (i) adequate resources (ii) full independence (iii) relevant expertise and (iv) sufficient legal powers to uphold and enforce environmental protections.</p> <p>Amendment 14 places an obligation on the Government to consult on and bring forward new domestic governance proposals within 12 months of exit day to ensure there is no “governance gap” following the UK’s exit from the EU and that the Government’s long-term proposals for</p>
----	---	---

	<p>public authorities in Member States in relation to the environment; and</p> <p>(b) a new domestic framework for environmental protection and improvement.</p> <p>(4) Responsibility for any functions or obligations arising from retained EU law for which no specific provision has been made immediately after commencement of this Act will belong to the relevant Minister until such a time as specific provision for those functions or obligations has been made.</p> <p>Clause 7, page 6, line 6, at end insert—</p> <p>(c) A public authority established under this Section will be abolished after 2 years.</p>	<p>environmental protection and improvement are placed on a sound legislative footing and subjected to rigorous parliamentary scrutiny.</p> <p>The amendment also ensures that any new public authorities established by secondary legislation under the Bill to exercise functions currently exercised by EU institutions are placed on a sound footing of primary legislation within two years of their establishment.</p> <p>Whilst we appreciate that temporary measures in relation to governance and enforcement may need to be put in place on the UK leaving the EU, public authorities set up by ministers should only be a temporary measure and a full proper process should eventually be gone through, with proper consultation, to establish lasting public authorities. As such, public authorities set up by ministers using delegated powers under the EU (Withdrawal) Bill, should have a limited life span and be required to be replaced after 2 years.</p> <p>If the Government fails to replace these authorities then those public authorities will be abolished, but that is not the desired outcome of this amendment. The intention is to provide a positive incentive for the Government to bring forward primary legislation within 12 months of exit day.</p>
15	Schedule 1, page 15, line 21, leave out paragraph 3	<p>This amendment deletes paragraph 3 of Schedule 1. This paragraph states <i>“There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law.”</i> Once the general principles have been retained and converted into domestic law they should, as with the majority of other UK laws, be enforceable by UK courts. The law has little strength if it cannot be enforced by those who rely on it.</p> <p>The amendment is consistent with the overall purpose of the Bill – the seamless transfer of existing EU law into the UK statute book on exit day.</p> <p>If paragraph 3 remains in the Bill it would be likely to deprive UK citizens of rights they currently enjoy under EU law. That is plainly inconsistent with the stated purpose of the Bill.</p>

16	<p>To move the following Clause—</p> <p><b>General Environmental Principles</b></p> <p>(1) In carrying out their duties and functions, public authorities must have regard to and apply the principles set out in this section.</p> <p>(2) Any duty or function conferred on a public authority must be construed and have effect in a way that is compatible with the principles in this Section and the aim of achieving a high level of environmental protection and improvement of the quality of the environment.</p> <p>(3) The principles in this section are—</p> <ul style="list-style-type: none"> <li>(a) the need to promote sustainable development in the UK and overseas;</li> <li>(b) the need to contribute to preserving, protecting and improving the environment;</li> <li>(c) the need to contribute to prudent and rational utilisation of natural resources;</li> <li>(d) the need to promote measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change;</li> <li>(e) the precautionary principle as it relates to the environment;</li> <li>(f) the principle that preventive action should be taken to avert environmental damage;</li> <li>(g) the principle that environmental damage should as a priority be rectified at source;</li> <li>(h) the polluter pays principle;</li> <li>(i) the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities, in particular with a view to promoting sustainable development;</li> </ul>	<p>This amendment address the failure of the Bill to adequately define “general principles of EU law” to include the environmental principles and ensures that all public authorities must, in carrying out their duties and functions, have regard to certain key principles of environmental protection currently enshrined in EU law.</p> <p>This is consistent both with the stated purpose of the Bill and with the Government’s declared intention that exit from the EU should not lead to any weakening of environmental protection. The amendment seeks to ensure that the core principles on which EU environmental law is based are firmly entrenched within UK public law after exit day.</p>

<p>(j) the need to guarantee participatory rights including access to information, public participation in decision making and access to justice in relation to environmental matters.</p> <p>(together the “environmental principles”).</p> <p>(4) In carrying out their duties and functions, public authorities shall take account of—</p> <p>(a) available scientific and technical data;</p> <p>(b) environmental benefits and costs of action or lack of action; and</p> <p>(c) economic and social development.</p> <p>(5) Public authorities, shall when making proposals concerning health, safety, environmental protection and consumer protection policy, take as a base a high level of protection, taking account in particular of any new development based on scientific facts.</p> <p>(6) Subsection (7) applies in any proceedings in which a court or tribunal determines whether a provision of primary or subordinate legislation is compatible with the environmental principles.</p> <p>(7) If the court is satisfied that the provision is incompatible with the environmental principles, it may make a declaration of that incompatibility.</p> <p>(8) In formulating and implementing agriculture, fisheries, transport, research and technological development and space policies, public authorities shall pay full regard to the welfare requirements of animals as sentient beings, while respecting the administrative provisions and customs relating in particular to religious rites, cultural traditions and regional heritage.</p>	
---	--

**Contact**

Paul McNamee

Head of politics, Green Alliance

e: [pmcnamee@green-alliance.org.uk](mailto:pmcnamee@green-alliance.org.uk)

t: 02076304529 m: 07738585103