



# The **UK** in a **Changing Europe**

## **WALES AND THE EU ENVIRONMENTAL LAW AND POLICY**



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**This report is one of a series examining the implications of EU membership for Wales, and the legal and policy considerations presented by the EU referendum vote. The full set can be found at <http://sites.cardiff.ac.uk/wgc/eu/>**

**This report was produced by**

**[DR JAYNE WOOLFORD](#) (lead author)**

**Research Associate, WGC, Cardiff School of Law and Politics**

**[DR JO HUNT](#)**

**Senior Fellow, UK in a Changing Europe, and Cardiff School of Law and Politics**

**Cardiff, June 2016.**

# ENVIRONMENTAL LAW AND POLICY

The referendum on 23<sup>rd</sup> June 2016 will determine whether the UK remains a member of the European Union (EU). This is one of a series of briefs which outline the current division of power between the EU, UK and Wales, and the possible implications of a vote to leave or to remain, across a range of policy areas. This brief looks at environmental policy, an area which has been devolved to Wales. It complements the brief on Agriculture.

## IN BRIEF

- Environmental legislation was first enacted by the EU in response to concerns that different levels of environmental protection in different Member States would interfere with the functioning of the Single Market and fair competition, as the costs on businesses would differ from one country to another.
- EU environmental legislation is now considered the most influential and widely applied body of environmental law in the world. It aims at the establishment of minimum standards of environmental protection across the EU rather than harmonization, and increasingly can take account of regional differences.
- EU environmental law has driven up standards on such things as water quality, air quality, waste disposal, car emissions and beach cleanliness, and has given people the opportunity to know and be consulted about environmentally risky projects in their area. However, complying with environmental standards can impose significant costs, and in some cases, it is argued that compliance costs may be out of proportion with the environmental benefits achieved.
- Environmental protection is a shared competence between the EU and Member States meaning both have the power to make laws – but national law should comply with EU law. In Wales the environment is a devolved matter, and the Welsh Ministers may pass laws to implement EU law in this area themselves, or allow the UK Government to extend legislation to cover Wales.
- The EU also has external competence in the field of the environment meaning it can represent the Member States externally and negotiate and conclude agreements with third countries and international organisations in specific situations e.g. to achieve EU treaty objectives.

- Since devolution, differences across the UK in policy implementation, enforcement, legal substance, structures and policy have become increasingly pronounced. The National Assembly has made use of its power to legislate for Wales on environmental measures. Nevertheless, the framework provided by EU law has prevented further policy and legislative fragmentation across the constituent parts of the UK.
- EU environmental law interconnects with UK and Welsh law as well as international legal obligations to which the UK is party, meaning that if the UK leaves the EU, there would still be international obligations for it to comply with. In addition, future alternative trading relationships with the EU along the lines of EEA/EFTA would likely require compliance with EU environmental standards.
- If the UK leaves the EU, the devolved competence that Wales has in this area may permit it to continue to give effect to EU level standards, though there may be deregulation at UK level.
- If the UK remains in the EU, it may see the burden of environmental regulation reduced, in line with the Commission's current approach and the 'enhancing competitiveness' strand of the agreement reached by David Cameron with the other Member States in February 2016.

## **WHAT DOES THE EU DO IN THIS AREA?**

The original 1957 Treaty of Rome did not contain any references to environmental protection but today EU legislation covers almost every aspect of the environment. These include: air quality, water quality, nature and bio-diversity, waste management, noise, soil, marine protection and climate change adaptation and mitigation. The primary intention of EU environmental law is not the harmonization of standards across the EU but rather the establishment of a minimum threshold of environmental protection common to all Member States.

Legislation can only be adopted by the EU institutions when it has been given the legal power (competence) to do so under the Treaties (the Treaty on European Union and the Treaty on the Functioning of the European Union). The original 1957 Treaty did

not contain any reference to the environment, however, legislation was enacted on the basis of a single market justification – as different levels of environmental protection in different Member States would interfere with competition and the Community’s objective of economic development. Since Treaty changes in 1987, a body of law has developed with a focus on environmental protection, sustainability and the challenge of climate change, with the EU considered to have developed the most influential and widely applied body of environmental law in the world.

The basis for EU environmental policy is set out in Articles 191-193 of the TFEU. The EU will preserve, protect and improve the quality of the environment, protect human health, pursue a prudent and rational use of natural resources and promote international measures for worldwide environmental or climate change problems. It aims at the highest level of protection whilst taking into account the diversity of regional environmental conditions and economic and social development across the EU. Member States are not prevented from taking ‘more stringent protective measures’ as long as they are compatible with the Treaties and notified to the Commission.<sup>1</sup>

Environmental policy is an area of shared competence between the EU and the Member States, i.e. legislative power can be exercised at EU or national level. Where there is EU legislation the Member State must act in accordance with it and enforce it; where none exists, the Member State can exercise its own power as long as it is compatible with the Treaties. In nearly all areas, EU environmental law is established through the ordinary legislative procedure<sup>2</sup> - agreed by the Council (Member State governments) by Qualified Majority Voting<sup>3</sup> and by the European Parliament (directly elected members, including 4 Welsh MEPs) as co-legislators. However, the Treaty provides that each State will, on certain matters, have a veto in decision making. On provisions of a fiscal nature, measures affecting town and country planning, land use, water resource management and national energy supply choices, the Council acts by unanimity and consultation with the EP is required under a ‘special legislative procedure’. The Economic and Social Committee and the Committee of the Regions, which include Welsh stakeholders, are consulted in both decision-making procedures.

Action at EU level is also limited in accordance with the principles of **subsidiarity and proportionality** – the Union can only act in so far as the objectives cannot be achieved at Member State level, and shall not exceed what is necessary to achieve the objectives of the Treaties. Nevertheless, as much of environmental policy concerns

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<sup>1</sup> The UK Climate Change Act 2008 for example has more ambitious targets than EU legislation in this area. In Wales, obligations on the Welsh Government to ensure the reduction of greenhouse gas emissions are now contained in the devolved Environment (Wales) Act 2016.

<sup>2</sup> For an explanation of the institutions and law making process see <http://ukandeu.ac.uk/explainers/the-european-union-the-institutional-system-explained/>

<sup>3</sup> it must secure the support of 16 of the 28 member states, representing at least 65 per cent of the EU population

transboundary matters, the policy area is considered fairly 'subsidiarity-proof'.<sup>4</sup> EU environmental policy is based on the precautionary principle (preventative action should be taken) and the polluter pays principle (environmental damage should be rectified at source).<sup>5</sup>

As well as (shared) competence in the area of environmental protection, other areas of EU law are also engaged by the general environmental obligations that stem from the Treaties. Environmental protection and the objective of sustainable development is included in Article 3(3) of the Treaty on European Union (TEU) which establishes that the Union shall 'work for the sustainable development of Europe...and a high level of protection and improvement of the quality of the environment'. The 'integration principle' i.e. that environmental concerns should be incorporated into policy-making in all areas is outlined in Article 11 of the TFEU. It provides for the integration of 'environmental protection requirements' in the 'definition and implementation of the Union policies and activities', particularly with a view to promoting sustainable development.

The EU also enjoys **external competence** in the field of the environment. This means it is able to represent the 28 Member States on matters of EU competence externally in relations with non-EU countries and in international organisations and **conclude international agreements** which are legally binding on the EU and its Member States. It can negotiate and implement Multilateral Environmental Agreements (MEAs) with non-EU third countries and international organisations in order to achieve an EU treaty objective, where it will affect common rules, or where provided for by a legally binding Union act (Article 216 TFEU). In most cases EU Member States will not have a representational role in the negotiations but can make complementary statements to those of the EU.

Where competence is shared with Member States (the majority of areas, for example, the United Nations Framework Convention on Climate Change and the Kyoto Protocol) the Member States negotiate together as a team based on a position agreed by consensus in the Council. Even in MEAs in areas of exclusive EU competence, such as the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, Member States have retained certain competences. The process for

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<sup>4</sup> Scott, J Domestic Law and Legal Procedures, in Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart (2016) *The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?* available at: [http://ukandeu.ac.uk/wp-content/uploads/2016/04/Expert-Review\\_EU-referendum-UK-environment.pdf](http://ukandeu.ac.uk/wp-content/uploads/2016/04/Expert-Review_EU-referendum-UK-environment.pdf)

<sup>5</sup> The 'precautionary principle' allows for protective action (or rather denies the possibility of postponing cost-effective measures to prevent environmental degradation) in the absence of scientific certainty. 'Polluter pays' is a principle of environmental responsibility – the polluter bears the cost of carrying out measures decided by public authorities to ensure the environment is in an acceptable state. It is based on the assumption that the polluter will reduce pollution as soon as the costs (s)he has to bear are higher than the benefits from continuing to pollute.

the negotiation of 'mixed agreements' where both Member States and the EU have competence is outlined in Article 218 TFEU. The negotiating objectives and position are recommended and represented by the European Commission, but only following agreement by the Council (Member State governments in this case agreeing by Qualified Majority) and the European Parliament (directly elected representatives).

International commitments entered into by the EU and Member States are then implemented in many cases through secondary EU environmental legislation. Breaches of EU environmental legislation by Member States are enforced by infraction proceedings before the Court of Justice of the European Union, and may also give rise to actions before national courts.

Member States are able to enter into international agreements independently where there is no impact on common EU rules i.e. where the EU has laid down internal harmonizing rules relating to environmental protection.

Finally, of relevance in relation to climate change mitigation, the EU and Member States have had shared competence in most areas of energy policy since the Lisbon Treaty in 2009. Member States do however maintain their right to 'determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'.<sup>6</sup> Key drivers in the development of policy in this area have been concerns over market liberalization and integration, energy security, the promotion of environmental protection and the need to tackle climate change.<sup>7</sup>

## WHAT POWERS DO THE UK AND WALES HAVE IN THIS AREA?

As area of **shared competence**, Member States retain the power to lawfully legislate independently to achieve environmental protection objectives, as long the EU has not already passed legislation on that matter, and as long as it is in compliance with broader EU obligations.

In the case of UK, the devolution settlements see **legislative power shared with the devolved nations**. Both the UK authorities and the devolved administrations may have the responsibility to implement EU environmental law. The Welsh Ministers have been designated as having the power to implement EU law in specific areas, in line with section 2(2) of the European Communities Act 1972.<sup>8</sup> The Welsh Assembly has legislative competence in the area of the environment<sup>9</sup> and were the UK to leave the

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<sup>6</sup> Article 194 TFEU

<sup>7</sup> <https://www.gov.uk/government/consultations/energy-review-of-the-balance-of-competences>

<sup>8</sup> As foreseen in Section 59 GOWA 2006.

<sup>9</sup> Schedule 7 GOWA 2006.

EU, powers currently exercised within the framework of EU membership would revert to Wales.

Furthermore, there is a statutory duty upon Welsh Ministers to promote sustainable development in all their business and ensure a scheme for its implementation under section 79(1) of the Government of Wales Act 2006 and Section 80 of the Climate Change Act 2008. It is enhanced through the Wellbeing Power at s60(1) of GOWA 2006 which authorizes Welsh Ministers to do anything they consider appropriate to promote or improve the 'economic, social and environmental wellbeing of Wales' and the Wellbeing of Future Generations (Wales) Act 2015 which outlines 7 wellbeing goals for public bodies.

Much EU environmental law is contained in Directives, which are binding on the Member State as to the results to be achieved but not on the means to the end, and need to be transposed through national legal acts for them to take effect. EU environmental law can therefore be transposed at either UK or Wales level depending on whether the Devolved Administration decides to implement the obligation separately or allow the UK Government to extend legislation to cover them.<sup>10</sup> Whilst differences of approach (administration/procedure, timing and even substance) are possible across the Devolved Administrations within the framework of EU law,<sup>11</sup> the UK Government seeks to achieve consistency of effect.<sup>12</sup> In some cases EU environmental law has been jointly implemented across with the UK in order to ensure coherence, that the UK meets national targets and standards, and for political or resource reasons.<sup>13</sup> Nonetheless, a distinctively Welsh approach has emerged in a number of areas, with Welsh implementation of EU measures differing from that undertaken elsewhere in the UK, on such matters as elements of waste legislation,<sup>14</sup> and nitrate pollution.<sup>15</sup>

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<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316157/MoU\\_between\\_the\\_UK\\_and\\_the\\_Devolved\\_Administrations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf);  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/229763/bis-13-775-transposition-guidance-how-to-implement-european-directives-effectively-revised.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229763/bis-13-775-transposition-guidance-how-to-implement-european-directives-effectively-revised.pdf) [accessed 24.05.16];

<sup>11</sup> A Ross and H Nash (2009) 'European Union environmental law – who legislates for whom in a devolved Great Britain' *Public Law* 564; V Jenkins (2005) 'Environmental law in Wales' 17 *Journal of Environmental Law* 207. Elen Stokes, (2013) *Made in Wales: Devolving and evolving environmental policy-making*, in Bishop, P and Stallworthy, M, *Environmental Law and Policy in Wales*, University of Wales Press.

<sup>12</sup> The Court of Justice acknowledges that EU directives and regulations may lawfully be implemented differently within the same country without giving rise to unjustifiable discrimination between citizens of that country – see *Horvath* [2009] ECR I-6355, see Cardwell, M. and Hunt, J (2010) 'Public Rights of Way and Level Playing Fields: *Horvath v Secretary of State for Environment, Food and Rural Affairs*' *Environmental Law Review* 12 (4) pp. 291-300.

<sup>13</sup> E.g. Waste Electrical and Electronic Equipment Regulations 2013 SI 2013/3113, implementing Directive 2012/19/EU

<sup>14</sup> For example, Landfill Allowances Scheme (Wales) Regulations 2004, SI 2004/1490 (W.155), implementing Directive 99/31/EC.

<sup>15</sup> Nitrate Pollution Prevention (Wales) Regulations 2008, SI 2008/3143 (W. 2780 implementing Directive 91/676/EC.



# WHERE WOULD POWER AND RESPONSIBILITY FOR ENVIRONMENTAL POLICY RETURN TO IN THE EVENT OF BREXIT?

In the event of Brexit, it may be expected that any future EU environment policy and legislation could cease to apply to the UK, in accordance with any relevant provisions of the withdrawal agreement reached between the UK and the EU. As environment policy is devolved to Wales, under the current UK devolution settlement, responsibility for this area would return to Wales. With UK environmental protection and climate change law and policy largely deriving from requirements set at EU level, a withdrawal from the EU may suggest that significant deregulation may be possible. Should the UK decide to roll back EU derived environmental measures, Wales may have the legislative scope to choose to maintain existing laws, and voluntarily incorporate future laws coming from the EU.

However, as is currently the case, the Westminster Parliament would still have powers to legislate for Wales, subject to the Sewel Convention – the convention that Westminster will not normally legislate for the devolved administrations without their consent.<sup>16</sup> There may be a case to revisit the current distribution of devolved competences in the case of a Brexit, which may result in more formalised, possibly restrictive rules on when devolved powers can be exercised. This reflects the fact that whilst differences across the UK in policy implementation, enforcement, legal substance, structures and policy have become increasingly pronounced since devolution, the framework provided by EU law has prevented further fragmentation. The Devolved Administrations have to date been restricted in their legislative room for manoeuvre by the EU framework.<sup>17</sup> Whilst the UK's continuing international commitments may provide a framework for action, and set the outer limits of legislative options, steps may be envisaged domestically to promote a common approach. There are after all a number of negative consequences associated with too much diversity or divergence from neighbouring jurisdictions in the area of environmental policy, whether at UK level or between the Devolved Administrations. For example, at EU level energy policy could be problematic in the case of Brexit due to the interconnections across different national markets.

Undoubtedly, any withdrawal from the EU's legislative requirements in this sphere would be extremely complex. However, it seems likely that much of the content of EU environmental law would remain in place regardless of any change in the UK-EU

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<sup>16</sup> Unlike in Scotland, the Sewel Convention is not yet on a statutory footing in Wales.

<sup>17</sup> Morrow, K (2013) *Debatable Ground: the devolution settlement and environmental law* in Bishop, P and Stallworthy, M. *Supra*.

relationship for a number of reasons. First, it is unlikely that the UK could retreat too far from EU standards of environmental protection as compliance may be necessary for access to the EU's single market. Secondly, a number of requirements within this field of law stem from other international legal obligations to which the UK is party. The UK and Wales' freedom of action would be constrained by obligations arising from international law, as seen below.<sup>18</sup>

<b>Area of EU law</b>	<b>Treaty to which the UK is party</b>
Air pollution	Long-range Transboundary Air Pollution Convention and protocols (SOX, NOX, VOCs, POPs, O <sub>3</sub> , heavy metals); Montreal Protocol on Substances that deplete the Ozone Layer
Marine pollution	OSPAR Convention (Convention for the Protection of the Marine Environment of the North-East Atlantic)
Nature conservation	Bern Convention on the Conservation of European Wildlife and Natural Habitats; Convention on the Conservation of Migratory Species; Convention on Biological Diversity; OSPAR Convention; Convention on the International Trade in Endangered Species
Regulation of Chemicals	Rotterdam Convention on Prior Informed Consent; Stockholm Convention on Persistent Organic Pollutants
Environmental Impact Assessment	Espoo Convention on Environmental Impact Assessment in a Transboundary Context
Access to environmental information	Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

<sup>18</sup> Further written evidence submitted by Prof Colin T. Reid, University of Dundee to the House of Commons Environmental Audit Committee Assessment of EU/UK environmental policy inquiry; January 2016, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/environmental-audit-committee/assessment-of-euuk-environmental-policy/written/26795.html>;

# ISSUES FOR WALES IN RELATION TO REMAINING OR LEAVING THE EU

Under the Coalition Government, a wholesale review was undertaken of the allocation of powers between the UK and the EU – the Balance of Competences Review. Whilst the Government itself drew no formal conclusions from the exercise, the report on the Environment and Climate Change reports that ‘a large number of organizations representing all sectors consider it is in the UK’s national interest for the EU to have a degree of competence’.<sup>19</sup> Concerns were raised about appropriate respect for the principles of subsidiarity and proportionality, and the regulatory burdens placed on small and medium enterprises especially. More recently, a 2015 inquiry by the Environmental Audit Committee of the House of Commons on EU and UK environment policy saw a Government Minister (Rory Stewart) offer as the current Government’s position that ‘we have not concluded that we need to return competences from the EU’.<sup>20</sup> The Inquiry Report notes ‘none of the witnesses to our inquiry, even those who made criticisms, made an environmental case for leaving the European Union’.<sup>21</sup> Concerns over the possible implications of a vote to leave the EU on environmental standards have been expressed in some quarters,<sup>22</sup> however, environmental considerations have had little traction in the referendum campaigning.

If there is a vote for the UK to leave, the extent to which EU law would continue to apply to the UK would depend on the terms of any new agreement with the EU. If the UK joins the EEA, it would remain bound by the majority of EU environmental legislation, both current and prospective (though the UK would not have the same degree of involvement in any EU decision making). Non-EEA EFTA countries (i.e. Switzerland) or Association countries (i.e. Turkey) do not have to apply the EU environmental acquis in full although they do have to agree to some measures on a bilateral basis, again without full participation in EU decision-making processes. Outside of these alternative models, it is likely that the UK would have to align with at least some EU standards in order to trade with EU Member States, and activity would continue to be constrained by wider international commitments such as the UN and the UNECE (UN Economic Commission for Europe).

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<sup>19</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf) [accessed 19.02.2016]

<sup>20</sup> <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmenvaud/537/53705.htm#footnote-168-backlink>

<sup>21</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2015/eu-uk-environmental-policy-report-published-15-16/>

<sup>22</sup> E.g. Institute for European Environmental Policy, The potential policy and environmental consequences for the UK of a departure from the European Union, March 2016  
[http://www.ieep.eu/assets/2000/IEEP\\_Brexit\\_2016.pdf](http://www.ieep.eu/assets/2000/IEEP_Brexit_2016.pdf)

If the decision is to remain meanwhile, regulatory activity will be taking place within a policy context which emphasizes competitiveness and the reduction of regulatory burden.

## ENVIRONMENTAL CONSEQUENCES

There is wide agreement that EU competence has encouraged improved environmental standards and environmental performance, specifically in areas such as water quality, air quality, waste and wildlife protection and habitats. The Welsh Government has submitted that without EU action today's relatively high environmental conditions might have been more difficult to achieve.<sup>23</sup> More specifically, it highlights the contribution of EU measures to the dramatic rise in UK recycling rates, and that it would not have the same level of protection for biodiversity and nature conservation were it not for the Birds and Habitats Directives.<sup>24</sup> That said, gaps remain in terms of environmental performance, and the UK has particular problems with complying with air pollution rules. EU law provides mechanisms framework for these obligations to be effectively enforced, which are less developed under international legal frameworks.

## REGULATORY CONSEQUENCES

The Balance of Competences Review noted the regulatory burden of EU environmental law and its implications for business competitiveness, economic growth and development. In some areas EU regulation was seen not to have found the correct balance between costs and benefits – in the areas of wildlife protection and waste, for example, the costs or socio-economic impact were considered disproportionate to the (low) level of environmental benefit that resulted. The burden additionally falls disproportionately on SMEs, and is also cumulative, with the collective impact of complying with requirements from several different legislative acts becoming onerous.

The Review also raises questions about the effective application of the principles of subsidiarity and proportionality and whether the EU should act at all in areas where there may be considered to be little transboundary effect, on such matters as noise, soil protection, and environmental crime. Clearly, transboundary effects are generally lower in the UK due to its lack of land borders, but they are far from absent.

That said, a number of respondents to the Review claimed the responsibility for much of the regulatory burden was not necessarily created by the EU. Over-implementation of obligations, or 'goldplating' sometimes occurs. This is suggested in the evidence provided by the Welsh Government to the Balance of Competence Review on the

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<sup>23</sup> BoC Review Environment Report, Evidence, p 856.

<sup>24</sup> Ibid, p 861.

Habitats Directive for example, where it suggests it could ‘reconsider the way in which we implement...the key ‘balancing’ mechanism in the Directive’ rather than seeing protected sites ‘as absolute no-go areas’.<sup>25</sup>

Greater flexibility in regulatory techniques is a feature of some regulatory interventions in this area, with a move away from prescriptive approaches- a move the Welsh Government welcomes in its evidence, whilst recognizing that too great a degree of flexibility can lead to differential levels of protection across the EU and a challenge to the objectives of EU environmental law – raising environmental standards and creating a level playing field for competition.

Finally, in common with the move to ‘Better Regulation’ approaches seen in the UK, the European Commission launched its own Regulatory Fitness and Performance Programme (REFIT) in 2012 to review EU legislation and identify burdens and inconsistencies through a ‘fitness check’ on the basis of effectiveness, efficiency, coherence, relevance and EU added value.<sup>26</sup> If the UK remains in the EU, the current regulatory burden and any future proposals will be considered within this context, which has seen further emphasis through the agreement reached between Prime Minister Cameron and the other EU leaders in February 2016 which highlights commitment to regulatory competitiveness. If a rolling back of existing minimum legislative standards takes place, the space for greater diversity within the UK may increase, as Scotland and Wales may decide to maintain existing levels of protection.

## ECONOMIC CONSEQUENCES

Whilst a reduction in levels of environmental protection may reduce costs and enable UK and Welsh companies to better compete on the international stage, the Welsh Government in its evidence is clear that the environment and the economy should not be seen as in competition, as ‘the economy in the long term depends on a healthy environment’. Welsh policy prioritizing sustainable and inclusive economic growth is seen as being aligned with EU policy; the EU can provide investment for sustainability projects and support for Wales green growth agenda.

Nevertheless, the stability provided by a policy framework covering a market of such a substantial size is perceived to provide greater certainty for investors and a level playing field. EU standards have led to the development of the environmental products and goods sectors, innovation and economic growth and provide UK business with a competitive advantage globally. In the UK the green economy accounts for 8% of GDP, employs around 938,000 people, and in 2012 over a third of the UK’s economic growth

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<sup>25</sup> Ibid, p 862.

<sup>26</sup> For example, the Habitats and Birds Directives are currently being reviewed, see: [http://ec.europa.eu/environment/nature/legislation/fitness\\_check/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm) [accessed 02.06.16]

came from the green sector. Commentators predict a lack of investment in these areas in the case of a Brexit until legislative and policy uncertainties have been settled.

Whilst EU legislation around climate change mitigation i.e. the promotion of renewables and energy efficiency has led to greater progress in the deployment of these technologies across the 28 Member States, this has had a negative impact on energy prices.<sup>27</sup> The steel, aluminium and concrete industries are particularly affected by this, leading to relocation of some activities outside the EU and resultant 'carbon leakage' - increased pollution in new locations with laxer emissions standards.

## FOREIGN POLICY CONSEQUENCES

The EU is a leader in international environmental policy and agreement and coordination has been mutually beneficial for the EU and its Member States according to most evidence. EU environmental product standards have global influence as a result of the size of Europe's market with other countries copying or emulating EU environmental legislation. Wales and the UK's participation in the EU enable them to feed into international standard setting. In its evidence, the Welsh Government said 'we are able to speak with a more powerful voice on the global stage, driving the development of international standards for the protection of the environment'.<sup>28</sup>

On the other hand, should the UK leave the EU, it would again be able to represent itself in certain international fora where it would no longer have to follow the EU common position e.g. in the International Whaling Commission and CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora).

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<sup>27</sup> <https://www.gov.uk/government/consultations/energy-review-of-the-balance-of-competences>

<sup>28</sup> BoC Report – Environment, Evidence p 857.