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CLIMATE ENFORCEMENT THE INCLUSION OF CLIMATE POLICY UNDER THE PROPOSED UK GREEN WATCHDOG

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The EU Commission has enforcement powers they can use if Member States do not fulfil their climate change obligations as set out in EU law. If these enforcement powers are not recreated in the UK post-Brexit, it will represent a weakening of the UK's climate regime, thereby contravening the UK's commitment to non-regression on environmental policy as set out in the UK Brexit White Paper.

Background:

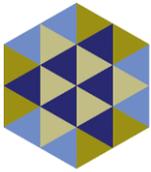
1. In May 2018 Defra launched a consultation on a new 'environmental watchdog' to "hold government to account on our environmental ambitions and obligations". The Government initially proposed not to include any role for the watchdog to oversee climate policy. However, having received pushback that it was unjustifiable to enforce environment but not climate law, it is now reconsidering its position.
2. At a high level, when considering what climate policies, the Green Watchdog should cover, the Government should follow the principle that the UK's climate regime should not be weakened as a result of Brexit. But what does this mean in practice?
3. The logical place to start is to look at the key EU climate laws that the EU Commission currently has enforcement powers over. The EU has emission targets for 2020, 2030 and 2050. To meet these targets the EU divides the economy up into three sectors: the traded sector (covered by the EU Emissions Trading System), the non-traded sector (covered by the Effort Share Regulation) and Land Use, Land Use Change and Forestry (LULUCF). Member States are required to meet targets under these sectors. The Commission enforces these targets and has the power to penalise Member States that don't meet them. For the UK, enforcement against these targets acts as a backstop for the emission targets set out in the UK Climate Change Act.



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4. In addition to these emission targets, the EU also requires Member States to achieve specific targets for renewable energy and energy efficiency by 2020 (2030 RE & EE targets are for the EU as a whole). It also sets out **targets for reducing CO2 emissions from cars**, reducing F-Gas emissions, and sets requirements for Industrial facilities to reduce emissions through the **Industrial Emissions Directive**. Most recently the EU has been working on the **Clean Energy Package**, which is due to be completed this year. This will include further requirements for energy performance in buildings, renewable energy, energy efficiency and preparation of energy and climate plans.
 5. The UK Withdrawal Act will require all of the UK's obligations under these EU laws to be transposed into UK law. But it is equally important that the enforcement regimes in these directives are also recreated, otherwise the policies will be substantially weakened.

Options:

6. A minimalist approach would be for the UK to recreate the EU's enforcement regime to cover those pieces of EU climate legislation that will be transposed into UK law under the Withdrawal Act. However, this would only capture the enforcement of a snapshot of EU climate regulations that are presently agreed. If we only enforce a snapshot of targets as they exist today, but don't allow for the enforcement of future targets as they develop, over time our climate regime will be weakened, compared to what it would be if we remained in the EU. Over time the mix of transposed ex-EU law, and pre-existing UK law may also be reconciled to create a single logical whole. For example, it remains to be seen how a transposed Effort Share Regulation target would sit alongside the Climate Change Act, or how EU vehicle emission standards will sit alongside UK standards.
7. An alternative approach would be for the Watchdog's climate powers to apply to the various sectoral targets that EU and UK climate law addresses, whether for renewables, energy efficiency, vehicle emission standards and so on. This would match the existing approach that the Commission applies. However, it would reduce the Government's incentive for setting stretch targets for specific sectors, and the UK Government has no obligation to set further targets for these sectors and might be reluctant to do so if there were penalties for not meeting them.
8. A higher-level option would be for the enforcement powers to cover ex-EU law and the carbon budgets. This would give the Government more flexibility in how they meet their targets and would provide enforcement for emission targets beyond the 2030 target, thereby replacing EU enforcement for future as well as existing targets. In the long term there is a significant benefit in the existence of enforcement powers to hold the Government accountable for meeting the carbon budgets. Relying on political will and the Committee on Climate Change's soft power to achieve the challenging emission reductions in the 2030-2050 period



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may well be optimistic. However, there are likely to be political challenges in adopting enforcement processes for near-term carbon budgets.

9. A more politically feasible approach would be for the enforcement body to cover ex-EU law, clause 13 of the Climate Change Act, that requires the Government to set out proposals and policies for meeting the carbon budgets (but not cover the budgets themselves) and then to cover carbon budgets from 2030 onwards. The case for enforcing carbon budgets beyond 2030, is that currently the EU legislation on the Effort Share Regulation and EU ETS only goes up to 2030. Whilst the EU has agreed targets for 2050 and milestones for 2040, these are captured in Council Conclusions and Commission communications, but not in EU legislation. Hence this is the point when the power to enforce ex-EU legislation would fall away.
10. There is then a separate question regarding whether the enforcement powers for climate policy should sit under the new Green Watchdog, or whether they should be added to the responsibilities of the Committee on Climate Change. On the one hand the CCC is a well-respected body and has built a high level of expertise that would allow it to hit the ground running. On the other hand, having a distinction between the CCC's role as advisor and monitor of emission targets, and the role for enforcement would allow the CCC to maintain its close relationship with Government, whilst the Watchdog would have an implicit threat of fines if the Government doesn't meet its commitments.
11. Careful consideration will also need to be given to the specific enforcement powers that are required. There are a range of options including:
 - > Binding notices requiring the Government to provide information
 - > Binding notices requiring the Government to amend policy
 - > Merits review powers that allow the enforcement body to mandate specific policy changes to bring the Government back in line with the law.
 - > Fines
12. Finally, the Green Watchdog's non-climate environmental enforcement role will need to consider the potential climate-related impacts of its enforcement decisions to avoid any perverse outcomes. For example, mandating the Government to improve air quality standards by supporting a switch to gas-powered power generation, may support compliance with air quality standards, but may undermine GHG emission targets.

Recommendations:

13. On balance there is a greater benefit in separating climate advice and enforcement, and as such enforcement of climate regulation should be overseen by the Green Watchdog.



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14. The Watchdog's powers on climate change should maintain the strength of the climate regime the UK currently enjoys. As such the Watchdog should cover all ex-EU law that is being transposed through the Withdrawal Act. However, to avoid weakening the UK's climate regime the watchdog should cover future as well as existing targets. The most politically feasible way of doing this would be, in the short term to give it powers to enforce clause 13 of the Climate Change Act through binding notices requiring the government to amend existing proposals and provide the Watchdog with information and analysis, and then in the longer term to enforce carbon budgets from 2030 onwards with fines for missing them.

 15. Finally, the Green Watchdog will need to ensure that their evaluation of non-climate environmental policy takes into consideration the climate implications of its enforcement actions to avoid perverse incentives.

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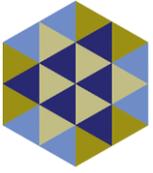
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