

Briefing paper on the legal implications of the
UK Referendum on EU membership for
corporate accountability work in the UK

Prepared for the CORE Coalition

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Important note: This briefing paper is not intended to be, and cannot be taken as, legal advice.

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Briefing paper on the legal implications of the UK Referendum on EU membership for corporate accountability work in the UK

Executive Summary

This paper considers the legal implications of Brexit for corporate accountability work in the UK. There are an estimated 13,000 pieces of regulation that will be impacted by Brexit. Of course, not all of these are relevant to corporate accountability. However, many EU laws are designed to raise standards of corporate behaviour and provide strong protections for workers, consumers, and the environment.

A “hard” Brexit”, following which the UK would not continue to trade as a participant in the EU single market, potentially poses greater risks to corporate accountability than a “soft Brexit”. A “hard Brexit” exposes legal regimes to greater risk of unpicking over time, as well as regulatory and behavioural challenges arising from UK companies being subject to a changed set of competitive pressures; whereas a “soft Brexit” (which sees the UK remaining, in one form or another, as a participant in the EU’s single market) is more likely to maintain the status quo. At this juncture, it is unclear which option the government intends to pursue. However, since the beginning of 2017, a “hard Brexit” has been looking increasingly likely.

This paper sets out the findings of a research project commissioned by CORE in September 2017. The authors were asked to identify and analyse EU laws, policies and regulations relevant to corporate accountability, with a view to developing “a better shared understanding for CORE members of the challenges and opportunities of the result of the June [2016] referendum for advocacy and campaigning in the UK on corporate accountability for human rights and environmental impact”.

The research was carried out in two stages. The first phase involved gathering information relating to a broad sweep of regulatory areas relevant, in one way or another, to corporate accountability work. A brief summary of this initial work appears in Annex 3 to this paper. As a thorough investigation of all of these different regulatory areas would be impossible in the desired time frame, a workshop was convened in November 2016, attended by representatives of CORE members, to discuss the outcomes of phase one and narrow the “long list” of regulatory areas to five “focus areas” for exploration in phase 2.

The five “focus areas” identified for further exploration at the conclusion of these discussions were:

- trade
- environment
- workers’ rights
- access to remedy
- The Great Repeal Bill

Stage 2 of the work took the form of further legal research and analysis together with a series of stakeholder interviews to clarify, as far as was possible for each focus area, (a) the government’s aims and approach (b) key decisions yet to be taken by government (c) the risks and opportunities presented by different options and scenarios and (d) the likely time frame for the emergence of these different risks and opportunities.

As will be clear from this report the political situation remains, at the time of writing, in a state of flux. While the Prime Minister's position seems to be hardening in favour of a "hard Brexit" there are many, many decisions still to be taken and, even then, many of these issues will be up for negotiation in the UK-EU talks. Crucial among these unresolved issues will be whether or not there will be a transition deal (or "implementation period" to use the terminology preferred by the government). This will obviously have a bearing on the time frame within which the various risks and opportunities emerge.

I. Trade

Trade between the UK and other countries is one of the main areas impacted by Brexit and this has knock-on effects on other legal areas, such as environmental protection and workers' rights. There are various scenarios linked to a "soft Brexit" that could see the UK being a full participant in the single market, or being a member of the customs union alone, for example. Were the UK to pursue the former, the UK would need to uphold EU laws as well as freedom of movement, whereas in the case of membership of the customs union alone, the UK would not be required to harmonise areas including labour, environment or consumer rights to such a degree. However, any subsequent trading deal with the EU is likely to require some degree of "regulatory equivalence" between the UK and the EU on these issues and would almost certainly require UK companies to respect EU standards on product safety and labelling.

One of the key advantages of the "hard Brexit" scenario, from the UK government's perspective, is the ability to cut trade deals with third, non-EU states. However, trade deals of this kind can take many years to negotiate. Under the "hard Brexit" scenario, unless a transition deal can be agreed with the EU, the UK would initially revert to WTO rules for its trading relationships until such time as it negotiates new deals with other countries.

CETA and TTIP are expected to be the models for any future trading relationships for the UK (both with the EU and with other, non-EU states). However, from a corporate accountability perspective, these models have a number of weaknesses and controversial features, including the much-criticised mechanisms for the resolution of investor-dispute disputes. Moreover, under the "hard Brexit" scenario, developing countries would no longer have preferential access to UK markets, unless new preferential arrangements can be agreed between the UK and its developing country trading partners.

Campaigning by civil society, in this context, would need to focus on new opportunities to bring about trade justice and stronger corporate accountability, for example, by calling for trade deals to properly embed the UN Guiding Principles on Business and Human Rights.

II. Environment

Since the 1970s, the EU has promulgated over 400 pieces of environmental legislation covering matters such as pollution, air quality, water quality, use of toxic chemicals, preservation of habitats, waste management, noise, environmental assessment and renewables. Many of these seek to regulate corporate standards and behaviour (e.g. the Reach Directive, or the laws to protect the water environment), and, as such, are directly relevant to corporate accountability.

The House of Commons Environmental Audit Committee (EAC), amongst others, has expressed concerns that these may be at risk. However, the degree of risk depends both on

the nature of our future trading relationship with the EU, as well as the provisions of the Great Repeal Bill (see below). If we were to continue as participants in the single market, current regimes would need to be maintained. However, with a “hard Brexit” scenario, the future of these standards is more uncertain. While many EU environmental regimes have been implemented in the UK in such a way that they are already monitored and enforced by UK regulatory bodies, a number rely on cooperative arrangements or EU institutions for their enforcement, which means they cannot be so easily disentangled from the EU “mother” regimes. Concerned about the prospect of “orphan” legislation post-Brexit (i.e. where there is legislation on the statute books but no-one to oversee or enforce it), the EAC has called for a new Environmental Protection Act to be introduced, to put environmental protection in the UK on a firm statutory footing and to provide clarity on regime structure and enforcement responsibilities when the UK does depart from these many interconnected, and often complex, regimes.

Other regulatory schemes may also be at risk following Brexit. For instance, the future participation of UK companies in EU wide CO2 emissions trading schemes is now uncertain. Regimes requiring companies to monitor and report on environmental risks may also be at risk, although in the field of corporate transparency it is worth noting that the UK government has to date been a leader within the EU rather than a follower.

III. Workers’ rights

EU law has had a profound influence on the development of UK labour law, not only in the shaping of underlying principles, but also in the articulation of highly technical regimes, such as regimes on the protection of agency workers and the protection of workers’ rights upon the transfer of undertakings (the “TUPE” regime). However, the UK has also, independently of the EU, been a positive force for workers’ rights with respect to vulnerable workers in particular, for example, by introducing modern slavery legislation and controls on “gangmasters”. It has also been a leader within the EU with respect to the development of equality law and policy.

As a result of recent scandals – such as Sports Direct, or treatment of workers in the “gig” economy, there seems to be little appetite to dilute workers’ rights. The government’s corporate governance reform green paper and its statements on the “new industrial policy” both allude to this. Nonetheless, the TUC has expressed concerns about the future of workers’ rights in the UK following Brexit. There are risks that, if the UK aims to expand its trading relationships outside the EU, it could seek to water down standards at home, while failing to uphold them abroad. Furthermore, Brexit has impacted the value of the pound, which is already having an effect in terms of rising consumer prices. This is likely to exacerbate pressures on companies to reduce supply chain costs where possible, which poses obvious risks to the workplace standards and job security of workers in those supply chains, both in the UK and overseas.

IV. Access to Remedy (civil)

People who have suffered harm as a result of business activities (e.g. personal injuries as a result of workplace practices, or injuries and losses as a result of environmental damage) need to be able to seek legal remedies through the courts. All States have a legal duty to ensure access to remedy as part of their duties to protect human rights.

Following Brexit, there is a risk that access to justice by claimants in cross-border cases could become even more complex and expensive than it is currently. Efforts by the EU to

harmonise rules on jurisdiction, choice of law and enforcement of judgments have broadly helped to smooth out some of the complexities of cross-border litigation, and to remove potential for prevarication and delay by corporate defendants. Outside this harmonised and reciprocal system, there is a risk that these complexities and inconsistencies will return, making cross-border cases even more complex and costly for claimants.

Questions have arisen about whether or not the UK can continue to be part of harmonised regimes for judicial cooperation across EU member states and whether or not past ECJ decisions relevant to access to justice issues will remain as part of UK common law, especially under a “hard Brexit” scenario. The House of Lords and House of Commons are both currently undertaking investigations into these matters and will be reporting shortly.

Legal practitioners (and plaintiff and public interest lawyers in particular) have expressed alarm at the present lack of clarity from the government with respect to these issues, as well as the apparent lack of planning for the changes that will take place upon Brexit. The publication of a White Paper on Brexit (announced on 25 January 2017) will provide an opportunity for public consultation and comment on these issues. However, at the time of writing this report, the timetable for the publication of the White Paper (and how this process will relate to and inform the development and the publication of the Great Repeal Bill – see below) is unclear.

V. Great Repeal Bill

The Great Repeal Bill could be introduced into Parliament as early as May 2017. It intends for primary and secondary EU legislation to continue as is currently the case. This would see, at least initially, EU legislation “rolled over” into UK law, with powers conferred on Ministers to make further adjustments to legal regimes over time.

Depending on how the bill is drafted it could have significant impact on corporate accountability. The idea that it could give “Henry VIII” powers to Ministers to allow them to repeal Acts of Parliament by executive order (instead of going back to Parliament), would make Ministers very vulnerable to excessive corporate lobbying and undue influence in seeking to water down social or environmental protections.

Legal experts have made a number of criticisms of the government’s published proposals for the Great Repeal Bill. Some doubt that the Great Repeal Bill, of itself, will be sufficient to ensure that existing legal protections (e.g. environmental, worker and consumer protections) are able to carry on post-Brexit. As the EAC has pointed out, there are a number of UK legislative regimes that are tied to cooperative regimes, or which are presently enforced at EU level, which will need further disentangling if they are to make sense in the post-Brexit legal environment. Furthermore, the proposals are still unclear as to the future status of ECJ judgments (past and future) in UK common law (i.e. the extent to which judges will be entitled or required to refer to them in the context of post-Brexit regimes), creating the risk of “gaps” opening up in existing legal regimes with no ready means of filling them.

The Multilateral environment

In a post-Brexit environment, the multilateral environment – such as the WTO or the ILO – become more important vehicles to further corporate accountability because the UK will have a more direct relationship with such institutions. The UK will also be seeking to increase its influence on the world stage, as it renegotiates its relationship with the EU.

Conclusions

Brexit poses some major challenges to future work on corporate accountability. The EU has, for the most part, been a positive force in pulling up standards in key social and environmental areas. The UK however, has also led in areas such as corporate reporting and some aspects of workers' rights, so Brexit alone doesn't influence where UK companies stand. The outcome of our negotiations with the EU, in particular whether or not we have a "hard" or a "soft" Brexit, will determine the extent to which current laws from the EU are at risk.

In the short term, the government's White Paper on Brexit and the Great Repeal Bill (currently expected to be introduced during the parliamentary session that commences in May 2017), will provide early opportunities to scrutinise and engage with the government's more detailed Brexit plans. On the Great Repeal Bill, key issues to watch out for will be (a) the extent to which the legislation confers delegated powers on Ministers to amend or repeal existing legal regimes relevant to corporate accountability and the procedures for parliamentary scrutiny of the exercise of these powers and (b) what is said about the status of ECJ judgments in UK common law. It is hoped that the White Paper will provide further clarity on the UK ambitions for future cooperation with EU institutions on matters such as law enforcement and judicial cooperation.

On the other hand, Brexit has opened up political space to discuss ways that we might improve our trading relationships so that these are able to support, rather than undermine, human rights, labour rights, environmental rights and corporate accountability more generally. The political fallout from the EU Referendum in June 2016 has also focussed attention on problems of unfairness and inequality in our society which, in turn, has created momentum around the need for reforms to corporate governance to provide for a greater "voice" for those affected by poor business practices and workers in particular. The government has indicated its desire to increase its influence on the world stage – will it seek to lead from a human rights or environmental perspective in this regard? The path is currently unclear. The extent to which improvements can be made will undoubtedly require strong campaigning from civil society in the UK, especially with a largely ineffective government opposition in place. Both sector-specific approaches, as well as corporate-wide opportunities, are now open.

Briefing paper on the legal implications of the UK Referendum on EU membership for corporate accountability work in the UK

I. Introduction and Methodology

As the UK heads towards Brexit negotiations, this paper lays out the legal implications of this process for corporate accountability work in the UK. The paper was commissioned by the CORE Coalition in October 2016.

There are an estimated 13,000 pieces of regulation that will be impacted by Brexit. Not all of these are relevant to corporate accountability. However, there are many laws originating from the EU that are designed to raise standards of corporate behaviour and which provide strong protections for workers, for consumers, for communities and for the environment. These may be under threat as Brexit becomes a reality.

Following a workshop in late November 2016 with the CORE coalition, after an initial scoping phase, we have focused on five key areas in greater detail in this research. The initial scoping phase excluded a number of key areas, such as transparency, as these were already a focus of CORE work. Further information on the 'long-list' can be found in the initial report.¹ The

current paper thus includes the following issues:

- I. Trade
- II. Environment
- III. Workers' rights
- IV. Access to Justice (civil)
- V. Great Repeal Bill

We conducted a legal analysis of the key areas, and sought to identify stakeholders in each of these, conducting interviews and using desktop research – reports and media - to identify the political environment that surrounds each of the areas. We conducted 1:1 interviews with 21 stakeholders (see Annex 2).

The timeline for Brexit is, at this juncture, unclear. If the government eventually opts for a "hard Brexit" (see Box 1 below), the process could be relatively swift. The negotiation of a "soft Brexit" is likely to be far more complex and time consuming. In either case a transition period is likely to be necessary, to provide time for the renegotiation and implementation of trading and other cooperative arrangements, which could go on for years. The government has indicated its desire to invoke Article 50 at the end of March 2017 and then to publish a Great Repeal Bill in the next parliamentary session, possibly as early as May 2017.

Recent developments affecting process: Following the Supreme Court judgment in the case of *R (Miller) v Secretary of State for the EU* (handed down on 24 January 2017), the government published (on 26 January 2017) a two-line bill to authorise the Prime Minister to invoke Article 50 and thus begin the process of the UK exiting the EU. This bill is to be debated during the last days of January 2017 and a number of MPs have signalled their

¹ Overview for discussion: Legal areas relevant to Corporate Accountability for adverse human rights and environmental impacts that may be impacted by the UK's departure from the UK. Prepared by Doane and Zerk, October 2016

intention to use the debate as an opportunity to clarify the government’s thinking on a number of issues, and to argue for the inclusion of certain “safeguards” in this enabling legislation, with respect to process.

In addition, and shortly before finalisation of this report, the Prime Minister also made a commitment to publish a White Paper on Brexit. This announcement was unexpected, given previous statements by Ministers that a White Paper would not be forthcoming. At the time of writing no commitments as to either the timetable for the White Paper, or its likely scope and content, had been given.



Uncertainties and U-turns: The research presented here is based on the knowledge and insights we have been able to acquire to date. However, there are many “unknowns” at present and the political landscape is fast moving. For example, prior to Christmas there were indications that the UK government might favour a “soft Brexit”, but as early as 4th January 2017, a “hard Brexit” seemed to be more on the cards. The government’s positions on a transition deal have been opaque, equivocal and changeable. Whereas previously Ministers had said that there would be no White Paper on Brexit, on 25 January 2017 (just as this report was being finalised), the Prime Minister executed an abrupt U-turn and announced that a White Paper would indeed be produced (although, as noted above, the timing of this is still unclear).

The lack of clarity, the many legal uncertainties (e.g. surrounding the legal challenges to the triggering of Article 50), a series of inconsistent statements from Ministers, together with a number of abrupt changes of government position, have created obvious challenges for this research and the preparation of this report. We have tried to identify the implications of different scenarios as much as possible, but obviously, with so many key policy decisions yet to be taken by government, this paper cannot cover all eventualities.

Terminology: Also, many terms are currently bandied about, the meaning of which in a post-Brexit world is quite unclear. For instance, politicians often refer to the UK being a “member of the single market” or continuing to have “access to the single market” without explaining what this means in practice. Further explanation on each of these terms is included in Annex 1.

Box 1: What do we mean by “hard Brexit” and “soft Brexit”?

For the purposes of this paper “**hard Brexit**” refers to the situation in which the UK cuts ties with the EU. On “Brexit Day” it would cease to be a member of the single market or the customs union. It would no longer be subject to rulings by the ECJ or EU rules on freedom of movement. The UK would then continue to trade with the rest of the world (including EU countries) on the basis of WTO rules. First, though, the UK would need to decouple itself (by agreement with the EU) from the EU’s current international trading arrangements. For instance, the EU and the UK would need to divide up current trading quotas laid down in deals with third countries. Second, to trade independently with other countries under WTO rules, the UK will need its own set of schedules with the WTO, which will require complex negotiations between the UK, the EU and the WTO on sensitive matters such as agricultural subsidies and tariff quotas.

A “**soft Brexit**”, on the other hand, would involve the UK continuing to trade with the EU on tariff free terms, either as a member of the single market or the European Free Trade Area. Under such an arrangement, the UK would be likely to continue to be obliged to make payments towards the EU budget, to abide by much of existing and future EU law (including the “four freedoms”) and to accept ECJ rulings. The UK may, however, be able to negotiate its own separate trading agreements with third countries, but only if it is outside the EU customs union.

II. TRADE

i. Overview

Whether the eventual outcome is a “hard” or “soft” Brexit, our future trading arrangements will have many implications for corporate accountability. International trade potentially exposes domestic companies to competitive pressures from companies which may not be subject to the same human rights, labour and environmental standards. To avoid a “race to the bottom” it is important that these trading arrangements effectively embed international human rights, labour and environmental standards and preserve sufficient scope for State parties to continue to be able to regulate to these areas effectively without fear of challenge by other States or companies.

From a trade perspective, Brexit creates both risks and opportunities for corporate accountability. Under a “soft Brexit” scenario the UK would continue to be subject, to a large extent, to EU labour and environmental rules, as well as broader EU strategies relevant to corporate accountability. The “hard Brexit” scenario will almost certainly lead to more deregulatory pressures as the UK seeks to make itself more attractive to alternative trading partners, which could lead to reductions in human rights, labour and environmental standards for companies. On the other hand, it may open up the potential to negotiate trade agreements within a stronger “development” agenda, and with greater emphasis on human rights, labour and environmental standards.

Weighing against this will be the constraints built into the WTO trading system, and also the fact that CETA and TTIP (neither of which have managed to embed human rights, social and environmental standards effectively) have been widely touted as models for any future negotiations once the UK is outside the EU. Moreover, negotiating new trading agreements will be a long term project. Most in the business community do not foresee any new significant trade agreements being negotiated successfully within the next 10 years. Also, it is likely that the EU would insist on some degree of regulatory equivalence to maintain access to EU markets, which would limit the extent to which trade agreements with other countries could drive down UK regulatory standards, both practically and legally.

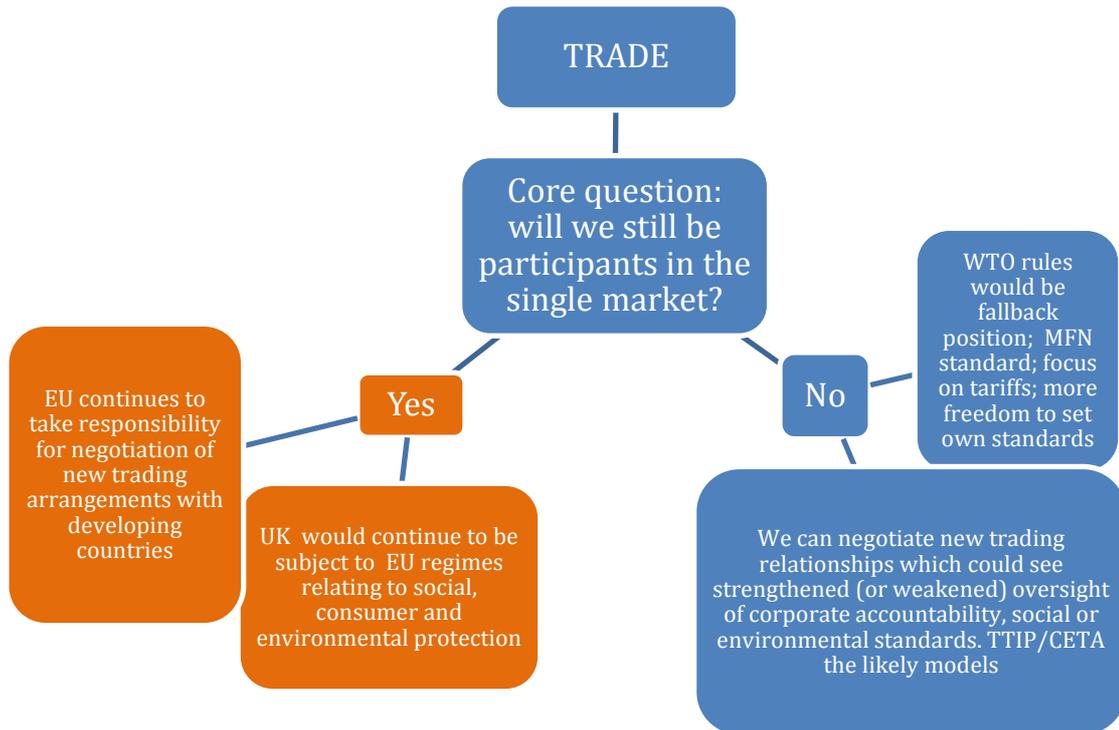
ii. Current legal position

As a member of the EU, the UK is a participant in a tariff free area known as the “single market”². The EU single market is founded on the “four freedoms”; free movement from one EU member state to another of goods, people, services and capital. Single market rules aim to remove direct barriers to trade between members and to harmonise domestic laws, in relation to areas that are important for the smooth functioning of the single market (e.g. where differences in standards would cause distortions to trade).

In addition, the EU is a customs union with a single trade policy and tariff. The UK’s membership of the EU means that it has handed over responsibility for the negotiation of trade and investment deals with third party (i.e. non-EU) States to the European Commission. The Commission (DG Trade) also represents EU member states at WTO meetings. However, all 28 EU member states are also members of the WTO in their own right.³

² Also known as the “internal market” or the “common market”.

³ For further explanation of the different concepts used in this section, see Annex I



iii. What will happen after Brexit? And what might this mean for corporate accountability?

There are four main models for future trading relationships with the EU, each of which has a bearing on the UK's other relationships around the world.⁴

- EEA membership
- Membership of the customs union
- A UK-EU Free Trade Agreement
- WTO Rules

The challenges with respect to each of these routes are many. The following table focuses on the implications for corporate accountability regulation in the UK, and elsewhere.

⁴ House of Lords, Joint report of the EU External Affairs Sub-Committee and the EU Internal Market Sub-Committee, 'Brexit: Options for Trade' published 13 December 2016. <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-external-affairs-subcommittee/inquiries/parliament-2015/brexit-future-trade-uk-eu-inquiry/>.

Table 1 – Trade scenarios post Brexit

Future trading options	How this could work	Corporate accountability linkages and challenges
EEA Membership	<p>The UK would become a party to EFTA and then the EEA Agreement and would become a non-EU EEA member (like Iceland, Norway and Liechtenstein). As an EEA country the UK would be required to implement into national law most EU single market legislation, including legislation on consumer protection, company law, environmental protection and social policy. As a Non-EU EEA country, the UK would have no formal powers over decision-making in any of the EU's institutions, but it would be expected to contribute towards the EU's programmes (e.g. Horizon 2020). Non-EU EEA members accept the principle of "free movement of people" (though sometimes with limited safeguards attached). As a non-EU EEA member, the UK could sign FTAs with third (i.e. non-EU and non-EEA) countries BUT only with respect to tariff aspects (as non-tariff issues are an EEA wide matter on which EEA countries must act collectively).</p>	<p>The UK would continue to be bound by current standards with relevance for accountability in the field of human rights and the environment, both within the UK and globally (e.g. labour and environmental standards, public procurement corporate governance standards), BUT the UK would cease to have any formal voice in the development of future EU law and policy with relevance for corporate accountability. The UK's ability to independently negotiate FTAs with third countries would be limited to <u>reduction of tariffs</u>.</p>
Customs union membership	<p>The UK and the EU would negotiate and agree a separate agreement on the UK's continued participation in the customs union, as part of the Brexit settlement. This would require complex rules of origin for goods and would allow free movement of goods around the EU, but not access to services markets. Membership would prevent the UK from being able to negotiate its own FTAs with third countries. However, if the customs union only covered certain sectors, the UK could potentially negotiate separate deals for specific sectors not covered by the customs union. Note, however, that sector-by-sector <u>preferential</u> trade agreements could be in breach of the MFN (Most Favoured Nation) standard laid down in WTO rules. This means that similar terms would need to be offered to all WTO members.</p>	<p>Imports would need to abide by EU rules on product safety, labelling and packaging. However, UK would not be obliged to continue to observe EU labour, environmental, consumer standards etc. UK could only enter into its own preferential FTAs, with respect to sectors not covered by the customs union, however under WTO rules it would be obliged to offer similar terms to all WTO members, the combination of which would undermine the UK's leverage in trade negotiations.</p>

<p>UK-EU Free Trade Agreement (and also FTAs with other countries as well)</p>	<p>The UK negotiates and agrees a FTA with the EU. [Note that for this agreement to be eligible for the exception under WTO rules on MFN it would have to liberalise “substantially all the trade” in goods and/or have “substantial sectoral coverage” for trade in services. In other words, sector-by-sector deals would probably not be legal].</p> <p>The agreement would be likely to require equivalence of certain regulatory standards (i.e. certainly consumer protection standards and potentially “production” standards, such as labour and environmental standards, also) and future regulatory cooperation.</p> <p>If it follows the TTIP and CETA models it would likely cover trade in services, as well as goods, have a strong emphasis on regulatory cooperation, include commitments with respect to minimum labour and environmental standards, set out protections with respect to protection of intellectual property and lay down standards, with respect to investor protection, with the backup of an ISDS mechanism for enforcement by companies.</p> <p>Because this is an unusual situation (i.e. with the UK seeking to row back from current levels of integration) there is likely to be a need for creativity. It is possible that such an FTA agreement could also cover additional matters such as political cooperation or scientific cooperation.</p>	<p>A comprehensive FTA (which covered services and investor protection, as well as trade in goods) would be likely to “lock in” existing EU standards relevant to corporate accountability, such as labour standards and environmental standards and to require close regulatory cooperation (and, in all likelihood, regulatory equivalence) in future. This would limit the scope of the UK to agree diminished standards with another third (i.e. non-EU) State in future.</p> <p>Negotiators are likely to borrow heavily from previous models (such as TTIP and CETA).</p> <p>As the UK pursues FTAs with the EU and then, subsequently, third (i.e. non-EU) states, it will have to be careful about sequencing so that commitments are not made to one trading partner (e.g. with respect to environmental standards or product safety standards) that would put it in breach of commitments made to another.</p>
<p>WTO Rules</p>	<p>The UK is a member of the WTO in its own right. However, it does not have its own schedules of concessions at the moment as it is covered by EU combined schedules. Following Brexit, the UK will need to establish its own schedule of concessions and its new schedules will need to be approved by all WTO members. Separating out its tariff rate quotas (and also permitted subsidies, such as agricultural subsidies) from the EU schedule will require negotiation with the EU – it could not be done unilaterally.</p> <p>Upon Brexit, exports from the UK to the EU would be subject to tariffs and vice versa. UK importers would from then on have to comply with standards, with respect to product safety, labelling packaging etc, in which the UK had not had a say. The UK</p>	<p>WTO rules give States only limited scope to impose so called “production standards” (e.g. labour and environmental standards) on imported goods. Instead, scope to regulate is limited to product health and safety issues (including information and packaging requirements). Attempts to invoke the “precautionary principle” to justify environmental regulations have not fared well in WTO dispute resolution procedures either.</p> <p>Sector by sector deals for preferential access would not be legal under the WTO non-discrimination (MFN) regime.</p>

	<p>would have no preferential access to EU markets. It would trade on MFN terms, meaning that any preferential treatment offered in respect of EU imports (e.g. no duty on Italian prosecco) would need to be offered to all other WTO members.</p>	
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Our future trading relationships will impact a range of other legal areas:

a. Environment: The terms on which the UK will continue to trade with the EU post Brexit are presently very unclear. If the UK wishes to negotiate some form of preferential access to the single market, it is likely that the EU will insist on “regulatory equivalence” from the UK with respect to environmental protection issues, at the very least, and full compliance with chemical safety regimes such as REACH. Continued participation in the single market (e.g. as an EEA country) would almost certainly require the UK to continue to apply and implement EU environmental laws within the UK. This is presently the case with respect to Norway, which is not part of the EU but is part of the EEA. As a quid pro quo for these favourable trading arrangements, Norway agrees to implement EU environmental law within its own jurisdiction, and also to abide by ECJ decisions. However, opting out of the CAP (as Norway does at present) could give the UK greater autonomy with respect to agricultural subsidies. Theoretically this could open up space for a “greener” agricultural policy, with more scope to offer financial incentives for good environmental performance and habitats preservation.

Looking ahead, there may be challenges for the UK in reconciling EU environmental requirements with those of other trading partners (such as the US, Canada or China). In negotiating trade deals with third States, considerable attention will be given to reduction of non-tariff barriers, which could include efforts to remove, reduce or harmonise environmental standards. On the other hand, the EU will be concerned to ensure that the UK does not become a back door to Europe for products with poorer environmental standards. This underlines the importance of a coherent strategy on trade, including a sensible and practical approach to sequencing of agreements.

b. Workers’ Rights: Again, if the UK wishes to negotiate some form of preferential access to the single market, it is likely that the EU will insist on some degree of “regulatory equivalence” from the UK, with respect to protection of workers’ rights. This is presently the case with respect to Norway, which is not part of the EU but is part of the European Economic Area. As a quid pro quo for these favourable trading arrangements, Norway agrees to implement EU labour law within its own jurisdiction, and also to abide by ECJ decisions.

On the other hand, if a “hard Brexit” is the eventual outcome, it will be open to the UK to negotiate a separate trade and investment agreement with the EU. As noted above, TTIP and CETA have been touted as possible models. Both TTIP and CETA include chapters on labour standards, in which the State parties commit to observe international standards as a minimum. In addition, there are provisions designed to bring about further regulatory cooperation and convergence as part of a general drive to reduce non-tariff barriers to trade and a more level playing field for investments. However, labour and human rights standards are not particularly well embedded in these trade and investment agreements as a whole (and the States parties’ “right to regulate” in particular), meaning that their provisions could stifle future labour regulation or, worse, create pressures for a reduction of existing labour standards as part of a programme to “cut red tape” for companies.

c. Development policy: The UK currently negotiates trade deals that impact on developing countries through the EU and most developing countries have preferential access to UK markets as a result. These include arrangements such as Everything But Arms (EBA); the Generalised System of Preferences (GSP) or individual Economic Partnership Agreements (EPAs). With a “hard Brexit”, these arrangements will not automatically apply. In the absence of any new arrangements being negotiated, developing countries would no longer have preferential access to UK markets. A UK-based replacement will be required. Norway has established, for example, its own GSP arrangements with developing countries.⁵

iv. Stakeholder views

Those interviewed in the business community by and large agree that access to the single market is their priority, but many acknowledge that this may not happen in the current political climate. Everyone interviewed was also highly sceptical about trade deals being negotiated in the next few years.

TTIP and CETA were widely acknowledged to be models for future trade deals outside the EU – including by stakeholders consulted in both business and government. Several referred to these as “the gold standard” in spite of the many criticisms that are made of them. TTIP and CETA are not particularly good on human rights and environment, and ISDS is a real concern for corporate power and accountability. Therefore, there is a very real risk that the problems will be replicated all over again in any UK-EU FTA.

Trade, however, seems to be a significant source of leverage from both sides. The House of Lords report considers the possibilities for a future trading relationship between the UK and the EU, developed as part of “a wider deal covering cooperation on issues including home affairs, security, research, acquired rights and climate change”.⁶

The planning phase would necessarily involve extensive consultations with businesses to better understand their needs, interests and supply chains: the question is to what extent other interest groups, including civil society or trade unions, will be consulted in this process.

NGOs are demanding a new trading regime that has to be at least equivalent or better than what we have now. Some thoughts have been given, for example, to tying the SDGs to new trading agreements, and providing for more (non-reciprocal) access to our markets for poorer countries. Under WTO rules, however, any new trade deals must strike a careful balance between guaranteeing the freedom of States parties to continue to regulate business activity in the public interest (which includes the ability to regulate to protect the environment and human rights) and the need to avoid the creation of unnecessary regulatory barriers to trade and investment.

For development, some important questions emerge, especially with a “hard Brexit” scenario, according to those we spoke to:

- 1) To what extent will DFID start to use aid to promote British exporters? Given the current negative public climate around aid, it’s clear that the government will want

⁵ For further information, see the impact of the UK’s post-Brexit trade policy on development, ODI, London. September 2016. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10852.pdf>

⁶ See n. 3 above, para 131.

to demonstrate the benefits of aid for the UK, that altruism is no longer a staple of our approach to aid. There is an interest from DFID already to work on issues where British firms have a comparative advantage, for example in pharmaceuticals, insurance or accountancy.

It was also argued that there will be resentment if we don't protect our businesses while at the same time protecting those in developing countries (eg. Subsidising Namibian beef farmers through aid, but axing subsidies at home), then this is politically unviable.

- 2) To what extent will Brexit also lead to a push towards de-regulation in order to enable trade? Most we spoke to (in business and the civil service) argued, that in the UK there wasn't a large appetite to loosen regulations that impact on labour matters or the environment at home. There is, however, a different scenario abroad, which will impact on our negotiating positions in trade deals. Trump is already saying he will repeal the Dodd-Frank act, which put curbs on the finance sector and both beleaguered American and British firms want less regulation. There are areas that we can't relax, such as food safety, but other matters, of particular importance to development, for example may include transparency and reporting. As one interviewee said, "for business, standards are OK, as long as it gives us access to the free market." However, in this climate, the UK may have little leverage in trading negotiations outside the EU.
- 3) To what extent is the government factoring in development concerns in trade policy, generally and is the government taking a coherent approach? It was noted that the sequencing of different trade deals, and the implications of these for regulation in the UK, could have an adverse impact on producers and manufacturers in developing countries. For instance, in the event that the UK product safety or labelling standards were to diverge significantly from EU standards, then this could create additional financial costs for suppliers from developing markets having to comply with differing or conflicting regimes, in order to supply European markets.

The bottom line on trade is this: the current political leadership in the UK (eg. Johnson, Patel, Davis) argue that the UK can be a "more progressive force for free trade outside the EU." While this may see tariffs dropped for developing countries and therefore improved access, free trade traditionally comes with fewer strings attached for business overall. BOND members, overall, remain sceptical that government rhetoric – "an inclusive economy for all" will be matched by action.

III. Environment

i. Overview

Many have predicted that there will be a bonfire of environmental regulations with Brexit, however, trade deals will have some impact on the extent to which this is possible (see above) vis-à-vis those regulations that affect corporate behaviour. For example, if the UK wants to continue to trade with the EU, we can expect that environmental standards will continue to track those of the EU. Thus, much will depend on the outcome of negotiations on future trading arrangements between the UK and the EU.

Cross-border issues - such as cross-border pollution, protection of migratory species, and climate change – also demand bilateral and multi-lateral co-operative responses.

There have been warnings that if we do pursue a “hard Brexit” then the Great Repeal Bill (see below) will not, of itself, be sufficient to put environmental protection on a firm statutory footing once the UK leaves the EU. It has been argued that a new “omnibus” Environmental Protection Act will be required, to ensure that on “Brexit Day” there are not serious gaps in regimes (and in the enforcement arrangements for this regimes) and that the UK is in full compliance with all of its international environmental commitments.⁷

ii. Current legal position

DG Environment is responsible for the development of legislation on environmental matters that must then be implemented on an EU-wide basis. Policy is directed by periodic Environmental Action programmes, prepared by the Commission and adopted by the Council. In addition to binding legislation, DG Environment also develops “softer law” or voluntary initiatives designed to encourage more environmentally friendly processes and products. The EU budget also makes available funding for environmental projects through various platforms, including Structural Funds, the Cohesion Fund (for the poorer member States) and via the European Investment Bank.

Since the 1970s, the EU has promulgated over 400 pieces of environmental legislation, covering matters such as pollution, air quality, water quality, use of toxic chemicals, preservation of habitats, waste management, noise, environmental assessment and renewables. These are implemented in the UK, in some cases by primary legislation and in some cases by secondary legislation (i.e. regulations).

Table 2 sets out an indicative (by no means exhaustive) list of key pieces of legislation that have an impact on UK business operations.

⁷ See UK Environmental Select Committee Report: ‘The Future of the Natural Environment after the EU Referendum’, 14 December 2016, <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/599/599.pdf>

Table 2 – Key EU environmental legislation relevant to corporate accountability and UK implementation arrangements

EU legislation & UK implementing legislation ⁸	What it does
<p>Habitats Directive (1992)</p> <p><i>Conservation (Natural Habitats) Regulations 1994; Re-promulgated as the Conservation of Habitats and Species Regulations 2010; Offshore Marine Conservation (Natural Habitats) Directives. The Wildlife and Countryside Act 1981 is also relevant.</i></p>	<p>Requires member states to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive and to introduce robust protection for those habitats and species of European importance. Targets for conservation of 200 rare and characteristic habitat types. Lists over 1,000 animal and plant species for protection.</p> <p>For business, this requires prior assessment of “plans or projects” that may have a “likely significant effect” on a European site. Such plans or projects can only proceed if the competent authority is convinced they will not have an “adverse effect on the integrity of the site. Also imposes “protected species requirements” which say that certain activities that would disturb or harm protected species can only proceed in accordance with a licence (which can only be granted in limited circumstances) or if an exception applies.</p>
<p>Water Framework Directive (2000)</p> <p><i>(Water Framework Directive) (England and Wales Regulations (2003).</i></p>	<p>Establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater. Aims to ensure that all aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands meet 'good status' by 2015. Requires member states to establish river basin districts and for each of these a river basin management plan.</p> <p>This legislation has implications for all industry sectors whose activities affect the water environment (e.g. any business with either a water abstraction licence or a licence to discharge into the water environment, whether directly or via a sewer, including, potentially, agriculture, construction or chemicals companies).</p>
<p>Industrial Emissions Directive (2010)</p> <p><i>Environmental Permitting (England and Wales) (Amendment) Regulations 2013</i></p>	<p>Aims to achieve a high level of protection of human health and the environment taken as a whole by reducing harmful industrial emissions across the EU, in particular through better application of Best Available Techniques (BAT). Requires installations undertaking the industrial activities listed in Annex I of the Directive to operate in accordance with a permit.</p>

⁸ This refers to the laws that apply in England and Wales. Some of these will have been implemented in different ways (and using different instruments) in Scotland and Northern Ireland.

<p>Environmental Impact Assessment Directive (1985, subsequently amended in 1997, 2003 and 2009, codified again in 2011 and further amended in 2014)</p> <p>Note also Strategic Environmental Assessment Directive (2001) which relates to public plans and programmes.</p> <p><i>Town and Country Planning (Environmental Impact Assessment) Regulations 2011</i></p>	<p>Aims to ensure that plans, programmes and projects likely to have significant effects on the environment are made, subject to an environmental assessment, prior to their approval or authorisation. Enshrines consultation with the public as a key feature of environmental assessment procedures. For certain high risk projects, EIAs are obligatory. However, for other listed project types, EU member states can decide what to do on a case by case basis.</p>
<p>REACH Regulation (2006)</p> <p><i>REACH Enforcement Regulations 2008</i></p> <p><i>[N.B. Enforcing authorities in England and Wales are principally the Health and Safety Executive and the Environment Agency].</i></p>	<p>Aims to improve the protection of human health and the environment, through the better and earlier identification of the intrinsic properties of chemical substances (REACH stands for registration, evaluation, authorisation and restriction of chemicals). Applying a principle of "no data no market", the REACH Regulation places responsibility on companies to manage the risks from chemicals and to provide safety information on the substances.</p>
<p>Waste Framework Directive (2008)</p> <p><i>Waste (England and Wales) (Amendment) Regulations 2012</i></p>	<p>Requires member states to take appropriate measures to encourage (a) the prevention or reduction of waste production and its harmfulness and (b) the recovery of waste by means of recycling, re-use or reclamation or any other process, with a view to extracting secondary raw materials, or the use of waste as a source of energy.</p> <p>Requires companies involved in the recovery and disposal of waste to operate in accordance with a licence and imposes strict controls on the management of hazardous waste.</p>

iii. What will happen after Brexit? And what might this mean for corporate accountability?

The Great Repeal Bill (see section V below) is expected to allow for primary and secondary environmental legislation to continue as it currently is, which would see, at least initially, EU legislation “rolled over” into UK law, with powers conferred on Ministers to make further adjustments to legal regimes over time.

For the EU Directives that have already been implemented into UK law (see LH column above, in italics), and which are already subject to supervision and enforcement by UK regulatory institutions, there would be no need for the Great Repeal Bill to do anything special to enable these rights to be preserved post-Brexit. In theory, these regimes would simply carry on until they were repealed or amended in accordance with UK law. Even so, the Great Repeal Bill could confer “Henry VIII” powers that could threaten safeguards over time.⁹

⁹ See further Section V.

However, there is much more to the regimes listed above than the legal rules and regulations in the legislative instrument itself. These are supplemented, enhanced and made effective by a wider legal and policy framework which may include:

ECJ judgments: The ECJ has played an important part in the interpretation and elaboration of the requirements of EU Directives in specific circumstances.¹⁰ The legal status to be given in the Great Repeal Bill to past ECJ rulings has not yet been resolved. However, if the Great Repeal Bill does not preserve this existing body of case law as part of UK law post-Brexit, then this could potentially open up many lacunae in UK environmental regimes that could create uncertainties for regulatory bodies and businesses, and compromise the ability of these regimes to function properly and efficiently in future.

EU-wide “fundamental” legal principles: EU action is founded on a set of fundamental principles and objectives that are enshrined in the EU constitution, but which may not (yet) have a direct equivalent under UK law. These principles and objectives both underpin and inform decision-making in the EU. “Sustainable Development” is one such principle and was explicitly incorporated into the EU constitution pursuant to the Treaty of Amsterdam in 1997. As the UK withdraws from the EU constitutional treaties, attention will need to be given to the question of whether any specific provisions need to be preserved as part of UK domestic law. A comprehensive “roll-over” of EU law into UK law would surely involve, not just the legal instruments, but the legal principles that have hitherto underpinned them. Indeed, this may be necessary to make sense of the current body of ECJ environmental case law (see above). The consultation and debate on post-Brexit environmental protection arrangements should include a discussion on how to ensure that the legal principles that have until now underpinned EU environmental regimes remain on a legislative footing.

Official communications: In some cases, EU regimes, and the principles underlying them, have been supplemented by official communications from the Commission setting out how key concepts and principles underlying the regime are to be interpreted and implemented. For example, in 2000, the Commission issued a communication on the application and meaning of the precautionary principle (mentioned in Article 191 of the TFEU) to help “build a common understanding of how to assess, appraise, manage and communicate risks that science is not yet able to evaluate fully” and with the aim of informing “all interested parties, in particular the European Parliament the Council and member states of the manner in which the Commission applies or intends to apply the precautionary principle when faced with taking decisions relating to the containment of risk”. The legal status to be given in the Great Repeal Bill to prior official guidance of this type is not yet resolved.¹¹ The consultation and debate on post-Brexit environmental protection arrangements should include a discussion on the future legal status of this (and similar) official guidance.

¹⁰ See further European Commission, ‘Nature and Diversity Cases: Ruling of the European Court of Justice’ (Luxembourg, 2006) copy available at http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf; European Commission, ‘Environmental Impact Assessment of Projects’, Rulings of the Court of Justice (2014) copy available at http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf; Sundseth and Roth ‘Article 6 of the Habitats Directive: Rulings of the European Court of Justice’ (2014) copy available at http://ec.europa.eu/environment/nature/info/pubs/docs/others/ECJ_rulings%20Art_%206%20-%20Final%20Sept%202014-2.pdf.

¹¹ The issue is not mentioned in the House of Commons Briefing Paper on the Great Repeal Bill that was released in November 2016. See House of Commons Briefing Paper, No. 7793, ‘Legislating for Brexit: The Great Repeal Bill’, 21 November 2016, copy available at <http://researchbriefings.files.parliament.uk/documents/CBP-7793/CBP-7793.pdf>

Complementary schemes for cross-border regulatory cooperation: Some of the regimes above refer to international cooperative initiatives and/or institutions, our future participation in which is, at this stage, unclear. The REACH regime is one such example. While enforcement of standards is primarily the responsibility of domestic institutions, the regime also provides for a high level of cooperation, coordination and exchange of information between the member states, the European Chemicals Agency (ECHA) and the European Commission. To this end, the REACH regime also sets up a "Forum for Exchange of Information on Enforcement", which coordinates harmonised enforcement projects and joint inspections. The UK implementing regulations take account of these co-operative arrangements, with provisions requiring enforcing agencies to cooperate with "the equivalent of an enforcing authority in another member state"; and the European Chemicals Agency. Obviously some adjustments will be necessary to these regimes to reflect the levels of cooperation on these and other matters that will be in place post-Brexit.

International environmental treaties: Some of the regimes mentioned above have been put in place to ensure compliance, within the EU, with international environmental treaties. For instance, the Habitats Directive implements, within the EU, the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats, of which the UK is a signatory. The Environmental Information Directive implements, within the EU, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (of which the UK, again, is a State party). A smooth and complete "roll over" of requirements under these EU Directives will be needed to ensure that the UK is not in breach of any treaty obligations on "Brexit Day". In addition, legal preparations for Brexit should include consideration as to whether any further steps are needed (in the Great Repeal Bill or elsewhere), to avoid the UK being non-compliant with its commitments under these and other international environmental treaties.

iv. Stakeholder/political perspectives

As with other areas, environmental outcomes rely to a large extent on our future trading relationship with the EU. If we stay in, or want access to, the single market we will need to maintain high environmental standards. Almost everyone suggested to us that product and other standards for the environment would remain more or less the same, as trade will demand this.

With a "hard Brexit", however, things are more precarious. While those businesses that trade internationally will likely want to maintain universal standards if they continue to trade with the EU, many who operate within the UK alone, especially smaller businesses, will want standards relaxed. The pressure to relax these globally may also increase. We could see businesses operating to different standards across their trade with the EU, as opposed to domestically – much like we already see in developing countries. And for developing countries, with the pressure on the pound, this is already exacerbated, as needs to cut costs intensifies.

As noted above, there has already been a call from a parliamentary select committee to establish a new Environmental Protection Act, to ensure that current protections within the EU are upheld, in particular as there is a concern (for all of the reasons outlined above) that the Great Repeal Bill will not, of itself, be sufficient to achieve the "rollover" of environmental rights and obligations desired by government. The UK Environmental Audit Select Committee has warned of the possibility, following Brexit, of "zombie" legislation on

the UK statute books without any clear lines of responsibility for enforcement, and with the added possibility that it could be watered down without parliamentary scrutiny.¹²

In addition, consequential changes to some existing environmental regimes are likely to be required. For instance, disentangling the UK from the EU Emissions Trading Scheme is likely to require further primary legislation (most likely in the form of amendments to the Climate Change Act 2008), together with supporting secondary legislation. The business impacted community, it should be noted, would prefer to remain within the ETS, as leaving unnecessarily complicates things, and would limit their ability to trade their CO2 allowances.

With Brexit, what seems to be at greatest risk is cooperation on international environmental matters. Junker, for example, endorsed a sustainable finance expert group to address investments in green measures across Europe – this may now be threatened. Furthermore, the UK was perceived to be a positive force on environmental transparency across the EU, according to those both inside and outside the government. This may also be threatened. The added ‘Trump’ factor sees far less sympathy globally, for higher environmental standards overall. The corporate accountability movement is facing an uphill battle in the environmental field.

¹² See n. 6 above.

IV. Workers' Rights

i. Overview

Strong regulation and effective enforcement of domestic labour laws is at the heart of States' legal duties to protect internationally-recognised labour rights and is key to ensuring that business enterprises conduct their operations in a manner that respects these rights. The EU has been a strong force in strengthening workers' protections in the UK – the working time directive and agency workers' directive being just two examples. There seems to be little political appetite to dilute workers' rights in the UK at this juncture, and the UK has actually acted in advance of and exceeded EU legal requirements in some areas, such as in the field of modern slavery legislation and in placing controls on “gangmasters”. The government's new industrial strategy and corporate governance reform proposals are signs that there is a political opening to in fact strengthen workers' rights overall.

However, with the desire to develop new trading relationships outside of the EU, there is also a risk that workers' rights will not be prioritised. Already, the impact on the pound is having an impact of cutting costs and jobs overseas. Furthermore, many in the government have prioritised “free trade” which could mean less emphasis on key social protections vis-à-vis workers' rights.

ii. Current legal position

Division of responsibilities between EU institutions and domestic governments

Responsibility for employment and social policy¹³ lies primarily with EU national governments. However, EU institutions can set minimum labour standards for the whole of the EU in the areas for which they are given specific regulatory competence.

The powers of EU institutions to legislate with respect to workers' rights derive principally from:

- Article 153 of the TFEU, which says that the Community is to “support and complement the activities of the member states” in a number of different fields of labour relation; namely, protection of workers' health and safety, working conditions, social security, protection of workers where their employment contract is terminated and the information and consultation of workers; and
- Article 157 of the TFEU, which gives the European Parliament and the Council the power to adopt measures “to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value”.

¹³ Social policy is defined narrowly in EU law to cover actions to improve working conditions of workers and living standards for workers.

Table 3 - Workers' Rights: Key EU legislation and UK implementation arrangements

<p>EU legislation & UK implementing legislation¹⁴</p>	<p>What it does</p>
<p>Working Time Directive (2003) (n.b. amends the original 1993 Working Time Directive)</p> <p><i>Working Time Regulations (1998) (amended in 2003)</i></p>	<p>Sets out limits to weekly working hours, minimum rest periods, minimum paid annual leave entitlements, extra protection for night workers.</p>
<p>Equal Opportunities Directive (2006)</p> <p><i>Equality Act 2010</i></p>	<p>Aims to achieve equal treatment of men and women in matters of employment and occupation.</p>
<p>Equal Treatment in Employment and Occupation Directive (2000)</p> <p><i>Employment Equality (Sexual Orientation) Regulations 2003; Employment Equality (Religion or Belief) Regulations 2003; Disability Discrimination Act 1995; Employment Equality (Age) Relations 2006; Race Relations Act 1976 (Amendment) Regulations 2003.</i></p>	<p>Provides protections against discrimination in the workplace based on religion or belief, disability, age or sexual orientation</p>
<p>Framework Directive on Health and Safety at Work (1989) ("OSH Directive") [plus five "daughter" directives on specific workplace health and safety topics].</p> <p><i>Health and Safety at Work Act 1974; PLUS six further pieces of secondary legislation (1992) to implement the further requirements of the 1989 OSH Directive, including the Management of Health and Safety at Work Regulations 1992; Workplace Health and Safety Welfare Regulations 1992 PLUS a system of "approved codes of practice".</i></p>	<p>Aims to bring about improvements in occupational health and safety, to protect workers from workplace risks and occupational diseases; promotes workers' rights to make proposals relating to health and safety, to appeal to the competent authority and to stop work in the event of serious danger.</p>
<p>Pregnant Workers Directive (1992)</p> <p><i>Management of Health and Safety at Work Regulations 1999</i></p>	<p>Aims to protect the health and safety of women in the workplace when pregnant, or after they have recently given birth and women who are breastfeeding. Gives women paid time off for ante-natal appointments and places duties on employers to assess risks and to adjust working conditions (including transfer to other duties) if necessary.</p>

¹⁴ This refers to the laws that apply in England and Wales. Some of these will have been implemented in different ways (and using different instruments) in Scotland and Northern Ireland.

<p>Parental Leave Directive (2010)</p> <p><i>Parental Leave (EU) Regulations 2013</i></p>	<p>Sets out minimum requirements with respect to parental leave for male and female workers, and related employment protections; protects workers from discrimination on grounds of applying for leave; creates a right to return to the same job or similar; provides for rights to request changes to working hours.</p>
<p>Framework Directive on informing and consulting employees (2002)</p> <p><i>Information and Consultation of Employees Regulations 2004</i></p>	<p>Establishes a general framework setting out minimum requirements for the right to information and consultation of employees.</p>
<p>European Works Council Directives (1994-2006)</p> <p><i>Transnational Information and Consultation of Employees (Amendment) Regulations 2010</i></p>	<p>Creates a right for employees (100 or more) working for corporate groups with a presence in more than one EU member state, to request the establishment of a European Works Council (threshold size and presence requirements apply). The European Works Council acts as a vehicle for informing and consulting with employees on the progress of the business and any significant decision at European level that could affect their employment or working conditions.</p>
<p>Transfer of Undertakings Directive (2001)</p> <p><i>Transfer of Undertakings (Protection of Employment) Regulations 2006.</i></p>	<p>Aims to protect employees' rights in case of a "transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger".</p>
<p>Written Statement Directive (1991)</p> <p><i>Employment Rights Act 1996 (Part 1).</i></p>	<p>Gives employees the right to a written statement setting out their pay and working conditions within 28 days of starting work.</p>
<p>Temporary Agency Work Directive (2008)</p> <p><i>Agency Workers Regulations (2010).</i></p>	<p>Lays down a general framework applicable to the working conditions of temporary workers. Aims to guarantee a minimum level of effective protection, based on a principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary workers and workers who are recruited by the user company.</p>

As can be seen from Table 3 above, EU law has had a significant influence on the development of employment law in the United Kingdom. However, there are a number of areas of employment law that have developed independently. For instance, UK laws on equal pay and outlawing race discrimination originally predated the relevant EU legislation (although these have since been enhanced by the introduction of new concepts through EU

legislation such as “equal pay for work of equal value”).¹⁵ Laws on unfair dismissal protections and the national minimum wage were UK initiatives and would not be affected (at least not technically or legally) by Brexit. There are examples of cases where the UK has gone beyond what was required in EU Directives (e.g. rights to shared parental leave, and rights to request flexible working under the parental leave regime). In addition, the UK has independently developed regimes to assist vulnerable workers, notably the licensing regime under the Gangmasters (Licensing) Act 2004.

iv. What will happen to these laws on Brexit? What are the implications for corporate accountability?

There are two aspects of employment regimes to consider here. First, the legislative regime itself and, second, the interpretations of those regimes that have been supplied, over the years, by the ECJ.

UK legislation: As the provisions of these EU Directives have already been implemented into UK law (using both primary and secondary legislation), and are already subject to supervision and enforcement by UK regulatory institutions, there would be no need for the Great Repeal Bill to do anything special to enable these rights to be preserved post-Brexit. These regimes would simply carry on until they were repealed or amended in accordance with UK law.

However, the intention is for Ministers to be given powers under the Great Repeal Bill to gradually amend UK legislation originating from the EU over time, including so-called “Henry VIII powers” to enable Ministers to make changes to primary legislation, as well as secondary legislation. If “Henry VIII” powers are indeed conferred under the Great Repeal Bill (see further section V, below), future opportunities to challenge amendments to (or repeals of) the legislation listed in the LH column of the table above (*in italics*) will depend on the extent to which there are safeguards built into the Great Repeal Bill, with respect to the use of these powers. Such safeguards could include requirements for Ministers to notify and/or consult with Parliament over the ways in which the powers are to be exercised, and any specific proposals for reform, as well as time limits for use of powers (i.e. “sunset clauses”). This is discussed further in Section V below.

ECJ decisions: A further question relates to the legal treatment to be given in the Great Repeal Bill to past ECJ decisions on employment law. For instance, ECJ decisions have been handed down as to the kinds of working commitments that should count towards the 48 hour time limit under the Working Time Directive (e.g. whether “presence” must be counted, or whether the employee must be officially on call) and have also clarified workplace discrimination laws in ways that have been helpful to female workers (e.g. by making it clear that treating a woman unfavourably because of pregnancy or maternity leave was *prima facie* sex discrimination, without the need to identify comparators applicable to male workers). Over time, the ECJ has handed down a series of decisions on employment law that have interpreted employee rights under EU regimes expansively and in a way that has been broadly sympathetic to the needs of EU workers, enhancing and strengthening the rights of workers under these EU wide regimes.¹⁶

¹⁵ As opposed to “equal pay for equal work”, which disadvantaged workers in fields of work in which female workers heavily outnumbered male workers.

¹⁶ See TUC, ‘UK Employment Rights and the EU: Assessment of the impact of membership of the European Union on employment rights in the UK’, <https://www.tuc.org.uk/sites/default/files/UK%20employment%20rights%20and%20the%20EU.pdf>

If the Great Repeal Bill does not preserve this existing body of case law as part of UK law post-Brexit, then this could potentially open up many lacunae in UK employment law regimes, to the disadvantage of UK workers.

iv. Stakeholder perspectives/political views

In the current political climate, it is unacceptable to have British employment law set by the EU – so the government will want to show that it is taking charge.

There is significant political pressure in the UK to improve workers' rights. The Sports Direct and BHS scandals have revealed serious cracks in the system that exploits workers. The government's corporate governance review has indicated a willingness to improve the social contract between business and government and to give workers greater involvement in decision-making about matters that affect their job conditions and security – though this is subject to challenge, and we've already seen a softening of a view to introduce worker representation onto company Boards.

Nonetheless, many in the business world are now actively looking at how they can ensure better relations with their workforce and the public overall. For example, there is more active engagement across the business community in developing a northern economic strategy, as there is a recognition that 'Brexit' was a symptom of leaving communities outside the South-East behind.

From a business perspective, one lobbyist argued that they don't want a huge amount of disruption at this stage by changing employment regimes – thus they would foresee that existing measures should, for the most part, remain the same. They noted that for international business, for example, there is no desire to see European Works Councils dismantled, or a divergence of laws across borders.

Greg Clarke, the secretary of State of Business, Energy and Industrial Strategy (BEIS), has said "I will be very clear that all of the workers' rights that are enjoyed under the EU will be part of that Bill and will be brought across into UK law" and internally our sources in Biz tell us he has said this is his aim.¹⁷ Nonetheless, no guarantees have been provided and the TUC has issued warnings that employers see this as an opportunity to dilute workers' rights.¹⁸

We did hear that there were areas that the business community may lobby against as Brexit progresses, such as the agency workers' directive – which many in the business community actively despise. For the working time directive, the major demand isn't necessarily to change the rules, but instead to pursue easements in record keeping. Is this a slippery slope? Perhaps.

While employers say they want regimes to remain the same, they have also lobbied strongly in the past against certain requirements. Brexit will be an opportunity to finally act on these. The TUPE regime, for example, creates headaches for employers, so we could foresee some relaxation with this – perhaps in terms of information or consultation requirements with employees. Caps on financial awards for discrimination claims may also be at risk, as could financial awards associated with length of employee service.

¹⁷ <http://www.personneltoday.com/hr/brexit-workers-rights-debate/>

¹⁸ <https://www.tuc.org.uk/international-issues/europe/eu-referendum/prime-minister-must-stand-firm-workers-rights-come-under>

Access to Remedy (civil)

i. Overview

People who have suffered harm as a result of business activities (e.g. personal injuries as a result of workplace practices, or injuries and losses as a result of environmental damage) need to be able to seek legal remedies through the courts. This is absolutely key to corporate accountability. Moreover, access to remedy for human rights abuses is, in itself, a human right. All States have a legal duty to ensure access to remedy as part of their duties to protect human rights.

People seeking remedies through the courts for business-related harm face a number of serious and significant obstacles. In many cases, these obstacles can already prove insurmountable. Following Brexit, there is a risk that those obstacles could become even greater for claimants seeking to use the UK courts to enforce their rights against companies. Persuading a UK court to take jurisdiction over a case involving foreign harm could be more difficult, and getting judgments enforced in cross-border cases could be more complex and costly. On the other hand, Brexit may create opportunities to address some issues that have been problematic for claimants, such as the rules on the quantification of damages in cases of foreign harm which are currently making it difficult to finance legal claims in cross-border cases.

ii. Current legal position

Table 4 - Key pieces of EU legislation and UK implementation arrangements¹⁹

EU legislation & UK implementing legislation ²⁰	What it does
<p>Rome II Regulation (2008)²¹</p> <p><i>The Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008. (n.b. This EU law is directly applicable. However, further regulations were needed to tidy up inconsistencies in UK law and to deal with the fact that the UK comprises several different legal jurisdictions).</i></p>	<p>Governs the law applicable to non-contractual disputes (including torts). <i>Note:</i> The Rome II Regulation was promulgated to simplify and harmonise the rules for deciding which country's laws should govern questions of liability and the amount of damages that will be payable in a cross-border case (see definition of "cross-border case" in the glossary). Generally speaking, in a cross-border case, the court applies the law of the place where the damage was suffered. But this creates problems for claimants if they suffered injuries in a jurisdiction where damages awards are very low and they need</p>

¹⁹ Note that this table focuses on judicial remedy. However, it is worth noting that the EU has also promulgated several pieces of legislation relating to alternative dispute resolution, such as the Alternative Dispute Resolution in Consumer Disputes Directive (2013) and the Directive on Mediation in Civil and Commercial Matters (2008).

²⁰ This column refers to the laws that apply in England and Wales. Some of these will have been implemented in different ways (and using different instruments) in Scotland and Northern Ireland.

²¹ Rome I on contractual disputes is omitted as it is of less relevance for the purposes of this study, being more relevant to commercial (especially company-to-company) disputes. However, the comments below with respect to Rome II would apply equally to Rome I.

	to enforce their rights in a jurisdiction (like the UK) where the costs of litigation are very high.
Brussels Ibis Regulation (2012) (or “Recast Brussels Regulation”) <i>Civil Jurisdiction and Judgments Act 1982, as amended by the Civil Jurisdiction and Judgments (Amendments) Regulations 2014</i>	Lays down the rules that courts of EU member states must use to determine if they have jurisdiction in cases with links to more than one country in the EU. <i>Note:</i> This regulation was designed to reduce red tape in getting domestic civil judgments obtained in one EU member state enforced in another EU member state.
Legal Aid Directive (2003) <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012.</i>	Aims to improve access to justice in cross-border civil disputes by establishing minimum common rules relating to legal aid for such disputes. (Here, "cross-border" civil cases refers to cases where the person requesting legal aid does not live in the EU member state where the case will be heard or where the decision is to be enforced).

iii. What will happen after Brexit? And what might this mean for corporate accountability?

As with other EU regimes, it will be important that the UK’s post-Brexit transposition arrangements cover, not just the legislation itself, but also the interpretations of those regimes that have been supplied, over the years, by the ECJ. EU policy and practical initiatives on legal cooperation in civil cases continue to be developed through initiatives such as the Hague Programme²² and the European Judicial Network.²³ It is unclear, at present, whether the UK will continue to have a role in these initiatives post-Brexit.

UK legislation: The implementing legislation listed in italics in the LH column above will carry on post Brexit, without the need for anything special in the Great Repeal Bill. However, the mutuality of obligations between EU member states that would be needed to allow these regimes to continue as they are could not be achieved by the UK on its own. This mutuality (i.e. which ensures that there is at least one court which is obliged to take jurisdiction, and that there is a harmonised and predictable set of rules to settle the problem of which legal regime to apply to a problem, and which ensures that a judgment obtained in one EU member state can be relatively cheaply and easily enforced in another) is supported by a multi-lateral arrangement which here, in the EU, takes the form of an EU Regulation. The UK could not maintain or replicate these benefits through domestic UK legislation alone. Under current proposals for the Great Repeal Bill, the UK may apply the same rules with respect to jurisdiction, choice of law and enforcement of judgments that it does now, but it would

²² <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005DC0184&from=EN>. See further http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.12.5.html.

²³ https://e-justice.europa.eu/content_cooperation_in_civil_matters-75-en.do.

effectively be cut loose from this highly cooperative system. It is most likely that a replacement treaty would be needed to restore these cooperative benefits.²⁴

When it comes to negotiating a new treaty, the difficulties are much reduced if the UK opts for a “soft Brexit”. If a “soft Brexit” is chosen, then it may be open to the UK to become a party to the Lugano Convention 1988 (which presently governs legal cooperation arrangements between EU member states and non-EU member states who are members of the EFTA). While this older treaty is unlikely to have all the advantages and features of the recast Brussels Regulation, it will help to preserve a level of cooperation between the UK and the EU, with respect to jurisdictional and enforcement matters, which are both vitally important to claimants seeking to hold companies to account through the courts.

ECJ decisions: A further question relates to the legal treatment to be given in the Great Repeal Bill to past ECJ decisions on jurisdictional, choice of law and enforcement matters. For instance, in the case of *Owusu v Jackson (2005)*²⁵ the ECJ confirmed that the UK common law doctrine of *forum non conveniens*²⁶ was inconsistent with EU rules on the civil jurisdiction of courts in cross-border cases. This decision helped to remove a significant obstacle to claimants against companies, historically the source of much delay and expense for claimants at procedural stages.

If the Great Repeal Bill does not preserve this existing body of ECJ case law as part of UK common law post-Brexit, then this could potentially open up many lacunae and uncertainties in present UK regimes governing jurisdiction, choice of law and enforcement of civil judgments, which could have a potentially adverse affect on access to justice in the UK.

Other programmes of activity and resources: EU policy on judicial cooperation in civil matters has been developed over the years under the auspices of a succession of Council-mandated programmes (most recently, the Hague Programme and the Stockholm programme), the aim of which is to create a European justice area that ensures (i) a “high degree of legal certainty for citizens in cross-border relations governed by civil law”; (ii) “easy and effective access [of citizens] to civil justice in order to settle cross-border disputes” (iii) simplification of cross-border cooperation instruments between national civil courts and (iv) support the training of the judiciary and judicial staff.²⁷ Further practical support for judges and legal practitioners is available via the European Judicial Network. Originally established to facilitate cooperation in criminal law cases, the network was extended to civil law cases pursuant to a 2001 Council Decision. The network essentially consists of contact points designated by each of the EU member states to provide a quick and easy way of resolving jurisdictional, legal, evidential or technical issues that arise in cross-border civil cases.²⁸ It is unclear, at present, what the continued involvement of the UK in these programmes and initiatives will be following Brexit.

²⁴ It is worth noting here that the precursor to the Brussels Regulation was indeed just such a treaty. See the 1968 Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Brussels, 27 September 1968.

²⁵ [2005] 1 Lloyd’s Rep. 452.

²⁶ The doctrine of *forum non conveniens* is applied in a number of common law jurisdictions around the world and gives courts the power to “stay” (essentially stop) civil litigation on the basis that the forum chosen by the plaintiff is not the appropriate (or most convenient) forum for hearing and deciding the matter. This essentially procedural doctrine can pose a significant challenge, and considerable delays and financial burdens, for plaintiffs in cases against companies where the harm was suffered in one country but the company alleged to be responsible for the damage is located in another.

²⁷ http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.12.5.html

²⁸ See further EU, ‘Judicial cooperation in civil matters on the European Union: A Guide for Legal Practitioners’, September 2015, copy available from http://ec.europa.eu/justice/civil/document/index_en.htm pp. 111-112.

iv. Stakeholder perspectives/political observations

Plaintiffs' lawyers working on cases involving allegations of business-related human rights abuses and harm have expressed concern about the potential additional costs and complexities that the post-Brexit legal environment could pose for claimants. For those practitioners we spoke to, efforts by the EU to simplify and harmonise rules on jurisdiction, enforcement of judgments and other procedural matters, have been largely positive in access to justice terms. The prospect of Brexit, however, makes the legal picture a lot less certain.²⁹

Even though substantive legal standards may remain on the statute books, opportunities for private enforcement of those rights may be diminished post-Brexit. One practitioner expressed concern that, in the field of consumer protection law (not a focus area for this study), a "hard Brexit" will mean that consumers and consumer groups will lose an important avenue for enforcing their rights through the ECJ. Another practitioner expressed disappointment that claimants may lose the benefit of legislation currently in the pipeline, but not yet enacted, that could have been beneficial to claimants. For instance, the EU has recently begun the processes of developing a harmonised position on collective redress mechanisms (or "class actions") that are important for reducing the financial costs of legal claims.³⁰

On the question of the status, post-Brexit, of past ECJ judgments relevant to access to justice (of which *Owusu v Jackson*, discussed briefly above, is only one), those we spoke to expressed incredulity at the idea that judgements, so essential for our understanding of the modern EU regimes would be effectively annulled by the Great Repeal Bill.

While the complete cancellation of ECJ jurisprudence in the UK may be a wish of some in the UK government, this would be completely impractical. It would either create great gaps in existing regimes (which would have to be re-litigated) or we would revert to pre-1973 common law positions that may no longer be appropriate. Either would be a "nightmare"; as one of our informants put it, "the law has moved on and the ECJ decisions are part of that law".

These problems are not adequately addressed in the government materials that have appeared so far on the transposition arrangements under the Great Repeal Bill. Further thinking from the UK government is clearly needed on these technical legal points which have such significance for the ability of claimants to hold companies to account and enforce their rights in practice.

The House of Lords EU Justice Sub-committee has recently begun work on "the ramifications of the UK's departure from the EU for Civil Justice Cooperation" and its inquiry will consider matters such as "whether the UK can continue to participate, post-Brexit outside the CJEU's

²⁹ Not all EU harmonization efforts for access to remedy have been helpful for claimants, for example the Rome Statute (see Table 4) has meant that claimants in cross border cases were only entitled to the amount of damages they would have incurred in their home jurisdiction, i.e. the lowest common denominator.

³⁰ See the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013H0396>.

jurisdiction, in areas covered by existing EU legislation aimed at facilitating civil justice cooperation: the Brussels I Regulation recast and, in the context of family law, the Brussels IIa Regulation and the Maintenance Regulation”.³¹ They will be reporting in February 2017.

We heard that practically, if we want to maintain any level of trading with the EU, total severance from ECJ and its jurisprudence is impossible. The committee is looking at mutual recognition and harmonizing rules as an option.

As one Baroness on the Lords EU Justice Sub-committee stated, “It is quite shocking how little thinking there has been on all this at Government level. And what they don't realise is how vitally important these regulations are to law that underpins relationships.”

At least some of the access to justice issues raised above are also likely to be raised in the course of the House of Commons Justice Committee inquiry on “implications of Brexit for the Justice System” that will examine “the likely effects of Brexit on the processes of criminal and civil justice, as well as views on the financial effects on the legal sector and business and the economy more widely, and on steps which should be taken in the process of Brexit negotiations or by other means to minimise any adverse effects and enhance any positive effects”.³² Oral evidence was taken from legal experts on 20 December 2016 and will continue on 10th January 2017.

Finally, neither of the practitioners saw a particular risk to the UK legal aid system specifically as a result of Brexit. Although legal aid has been cut back in the UK as part of government austerity measures, the UK legal aid system has remained one of the more generous, in the civil law sphere, when compared to those of many other EU member states.

³¹ See <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-justice-subcommittee/inquiries/parliament-2015/brexit-civil-justice-cooperation/>.

³² <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/brexit-and-the-justice-system-16-17/>.

VI. Great Repeal Bill

i. Overview

According to government announcements so far, the intention underlying the Great Repeal Bill will be for legislation derived from EU regimes to be “rolled over” into UK law (as far as is legally possible given that the UK will no longer be an EU member state), with powers conferred on Ministers to make further adjustments to legal regimes over time. The legislative process could begin as early as May 2017.

The legal techniques eventually chosen by the government to achieve this “rollover” of EU law and to provide for post-Brexit “adjustments” have significant implications for corporate accountability. The government’s plans to confer “Henry VIII” powers on Ministers to allow them to repeal Acts of Parliament by executive order (instead of going back to Parliament) would make Ministers very vulnerable to excessive corporate lobbying and undue influence in seeking to water down social or environmental protections. Our stakeholder sources indicate that “Henry VIII” powers are likely to be drafted into the legislation, but that the government will be under a lot of pressure to keep delegated powers to a minimum and to ensure sufficient safeguards are written into the legislation. Campaigners will want to make sure that the risks associated with these unusual powers are understood and communicated to the public, and that there is proper scrutiny of the government’s plans going forward.

The problems with the Great Repeal Bill do not end with “Henry VIII” powers, however, there is still a question mark over the extent to which helpful past judgments of the ECJ with respect to the interpretation of existing social and environmental regimes will continue to form part of UK common law after Brexit.

ii. Current Legal Situation

The Great Repeal Bill will:

- repeal the European Communities Act 1972
- transpose EU Law into UK law where necessary and where practical to maintain
- continuity and legal certainty
- confer on Ministers delegated powers to enable them, over time, to make further changes to existing UK law that derives from EU law “so as to fit the UK’s new relationship with the EU”³³

These measures will come into effect on “Brexit Day” (i.e. the day that the UK officially leaves the EU).

Table 5 below sets out what are expected to be the main features of the proposed Great Repeal Bill (based on UK government statements to date),³⁴ the risks that these could pose (i.e. from the perspective of ongoing work to improve corporate accountability through legal reform), some thoughts about possible opportunities for consultation and scrutiny as the Bill is developed and debated, and some preliminary suggestions as to safeguards that could be included in the legislation itself to ensure that there is proper scrutiny of, and public

³³ House of Commons Briefing Paper, No. 7793, ‘Legislating for Brexit: The Great Repeal Bill’, 21 November 2016, copy available at <http://researchbriefings.files.parliament.uk/documents/CBP-7793/CBP-7793.pdf>.

³⁴ This is based on the contents of the House of Commons Briefing paper published on 21 November 2016, see n. 33 above.

consultation with respect to, proposals for future “unpicking” of legal regimes derived from EU law.

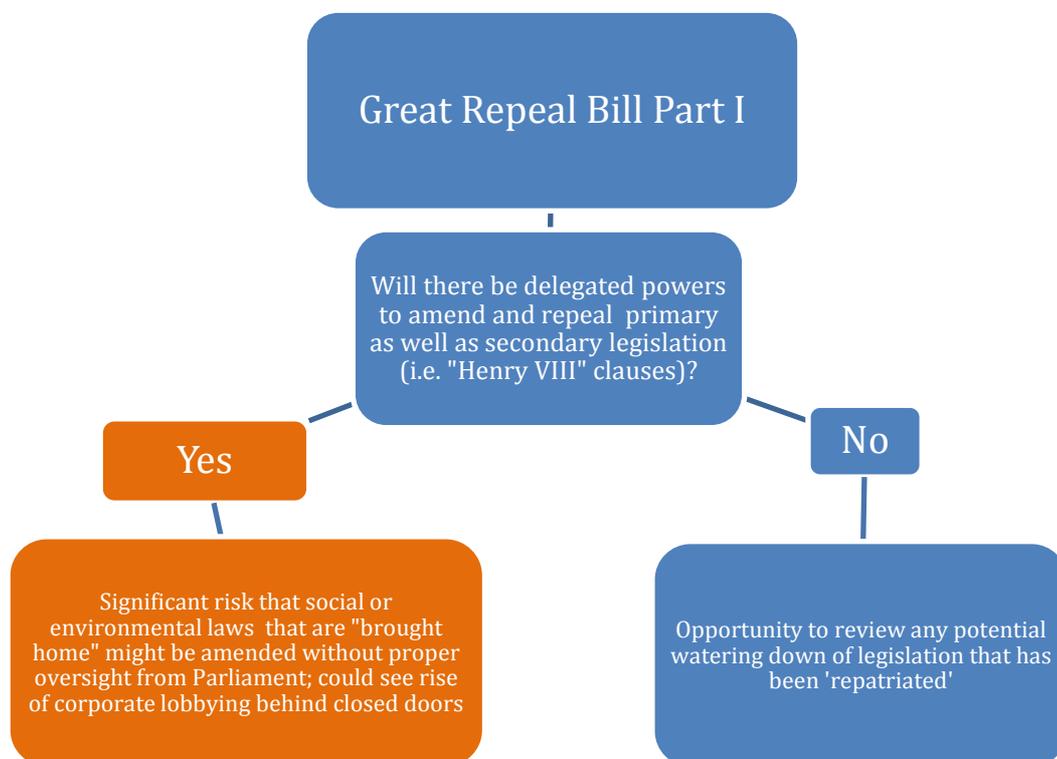


Table 5 – Great Repeal Bill: likely features, key risks and safeguards that will be needed in the legislation

Likely features of GRA	Risks (i.e. with particular relevance to corporate accountability regimes)	Steps the UK government should take to ensure that there is proper transparency and that CORE members have an opportunity to review and comment	Things that could be put in the GRA to help boost opportunities for, and quality of, parliamentary scrutiny of future “unpicking” process
Broadly framed clause to ensure transposition and “continuance” of directly applicable legislation not earmarked for repeal (see immediately below)	Some directly effective legislation may not make sense in a purely domestic setting, detached from the relevant EU-wide cooperative regimes (e.g. consumer regimes which provide for a right of action or appeal to the ECJ, or environmental regimes)	Early publication by UK government of legal analysis regarding functioning of directly effective regimes post-Brexit. Subsequently there would need to be proper parliamentary scrutiny of transposition and “continuance”	Nothing further.

	<p>which rely on EU level regulators). Some depend on continued cooperation of other EU member states and therefore their continued applicability will depend on the exit settlement eventually arrived at. Continuance of regimes that rely on reciprocity (e.g. cooperative regimes relating to enforcement of foreign judgements, see “access to remedy” above) will almost certainly require further supporting international agreements.</p>	<p>arrangements as the Bill proceeds through parliament.</p>	
<p>Changes to existing primary or secondary legislation</p>	<p>At this stage, it appears that this will most likely be limited to legislation that must necessarily be repealed to give effect to Brexit, such as the European Union Act 2011. However, there is a theoretical possibility of further repeals (e.g. to change references in existing legislation from EU regulatory institutions to comparable UK ones). Usual practice would be to list all the legislation to be repealed or amended under the Great Repeal Act in a schedule.</p>	<p>Early publication of proposed lists of items earmarked for repeal and amendment in the GRA.</p> <p>Subsequently there would be parliamentary scrutiny of repeal proposals as the Bill proceeds through parliament.</p>	<p>Nothing further.</p>
<p>Secondary legislation made under 2(2) of the European Communities Act to be saved so that they do not disappear when their “mother legislation” is repealed</p>	<p>Theoretical risk that secondary legislation could be missed, unless the saving provision is a general one.</p>	<p>Early publication of proposals for saving provisions.</p>	<p>Nothing further.</p>

<p>Delegated powers to enable Ministers to make changes to secondary legislation</p>	<p>Risk of subsequent “unpicking” of secondary legislation establishing regimes that are important for corporate accountability (e.g. in fields of labour law, environmental law or access to remedy in civil cases) without proper public debate or parliamentary scrutiny.</p> <p>(Note: for examples of secondary legislation that could potentially come within the ambit of delegated repeal powers under the GRA, see previous sections in reference to labour law, environmental law and access to remedy.</p>	<p>Early publication of the government’s proposals with respect to the scope of these powers and the procedures that will apply to their use (see RH column).</p>	<p>These powers would need to be tightly defined and constrained by subject matter and/or a “purpose” test. In addition (or in the alternative) certain matters could be carved out of the scope of delegated powers. For instance, Ministers could theoretically be barred from using GRA powers to repeal or amend secondary legislation on specific topics.</p> <p>Consider advantages and disadvantages of time limited powers.</p> <p>Further safeguards can be provided in the form of procedure chosen for the regulations to be scrutinised and passed; i.e. whether by “negative, affirmative or super-affirmative” procedure. (See Box 2 for an explanation of these procedures).</p>
<p>Delegated powers to enable Ministers to make changes to primary legislation (“Henry VIII” powers”)</p>	<p>Risk of subsequent “unpicking” of primary legislation establishing regimes that are important for corporate accountability (e.g. in fields of labour law, environmental law or access to remedy in civil cases) without proper public debate or parliamentary scrutiny. (Note: for examples of primary legislation that could potentially come within the ambit of delegated repeal powers under the GRA, see previous sections on labour law, environmental law and access to remedy.</p>	<p>Early publication of the government’s proposals with respect to the scope of any “Henry VIII” powers, and the procedures that will apply to their use, (see RH column).</p>	<p>These powers would need to be tightly defined and constrained by subject matter and/or a “purpose” test. In addition (or in the alternative) certain matters could be carved out of the scope of delegated powers. For instance, Ministers could theoretically be barred from using GRA powers to repeal or amend primary legislation on specific topics.</p> <p>Consider advantages and disadvantages of time-limited powers. Further safeguards can be provided in the form of</p>

			procedure chosen for the regulations to be scrutinised and passed; i.e. whether by “negative, affirmative or super-affirmative” procedure (see Box 2 below for an explanation of these procedures).
Delegated powers to promulgate further secondary legislation	These should be limited to purposes essential to the purposes of the GRA. Anything wider creates the risk that the GRA could be used as a “back door” for future law-making, without proper public debate and parliamentary scrutiny, in a way that could undermine established regimes.	Early publication of the government’s proposals with respect to the scope of any delegated powers to promulgate further regulations, the reasons why they may be required, and the procedures that will apply to their use, (see RH column).	<p>These powers would need to be tightly defined and constrained by subject matter and/or a “purpose” test. In addition (or in the alternative) certain matters could be carved out of the scope of delegated powers. For instance, Ministers could theoretically be barred from promulgating secondary legislation under the GRA on specific topics.</p> <p>Further safeguards can be provided in the form of procedure chosen for the regulations to be scrutinised and passed; i.e. whether by “negative, affirmative or super-affirmative” procedure. (see Box 2 below) for an explanation of these procedures.</p>
Further statutory powers	Risk that GRA could inadvertently remove or restrict the ability of Ministers, courts or regulators to give effect to or to participate in cooperative schemes (e.g. regulators networks, mutual legal assistance schemes etc).	Early publication of proposals with respect to any further delegated powers (e.g. to enable Ministers to ensure the continued involvement in various other cooperative schemes, in accordance with the terms of the “divorce” arrangements).	Ensure powers are sufficiently widely drafted to reflect any special arrangements made under exit settlement, and/or that continuance provisions are sufficiently widely drafted to cover this eventuality.

Status of ECJ judgments (past)	Risk is that uncertainties and gaps could emerge in regimes relevant to corporate accountability (e.g. labour rights protection regimes, or environmental regimes) if past ECJ decisions (e.g. with respect to how different provisions should be interpreted) were to suddenly cease to have effect in the UK(see previous sections).	Early publication of the government’s proposals on the treatment to be given to past decisions of the ECJ.	Continuance provisions should include a “saving” of past ECJ judgments (see above) as part of UK common law.
Status of ECJ judgments (future)	Divergence between UK case-law and ECJ judgments could produce different levels of legal protection in key corporate accountability areas (e.g. labour rights and environmental protection), with UK companies being held to lower standards than EU ones (or vice versa). Note, however, that continued participation in the single market will require the UK to continue to accept ECJ judgments as part of UK law.	Early publication of the government’s proposals on the status to be given future decisions of the ECJ would be desirable to enable time for proper public consultation and debate. For instance, it may be helpful to give courts the power to continue to refer to ECJ judgments (i.e. as “advisory” judgments) in their interpretation of regimes derived from EU law.	The deal struck between the UK and the EU will determine the legal options here.

Box 2: How secondary legislation is made: “negative”, “affirmative” and “super-affirmative” procedures

Under the **negative** procedure, secondary legislation is laid before both Houses of Parliament and will come into force provided that no objection is made within 40 days. Such an objection may either annul the legislation or require that an alternative procedure is used (see below).

Under the **affirmative** procedure, both Houses of Parliament must expressly approve the secondary legislation (having had a period of time to review and consider it) before it can be promulgated as law by the responsible Minister. In the Commons, affirmative procedure instruments are usually referred automatically to the relevant committees for debate. In the Lords, affirmative procedure instruments are always debated.

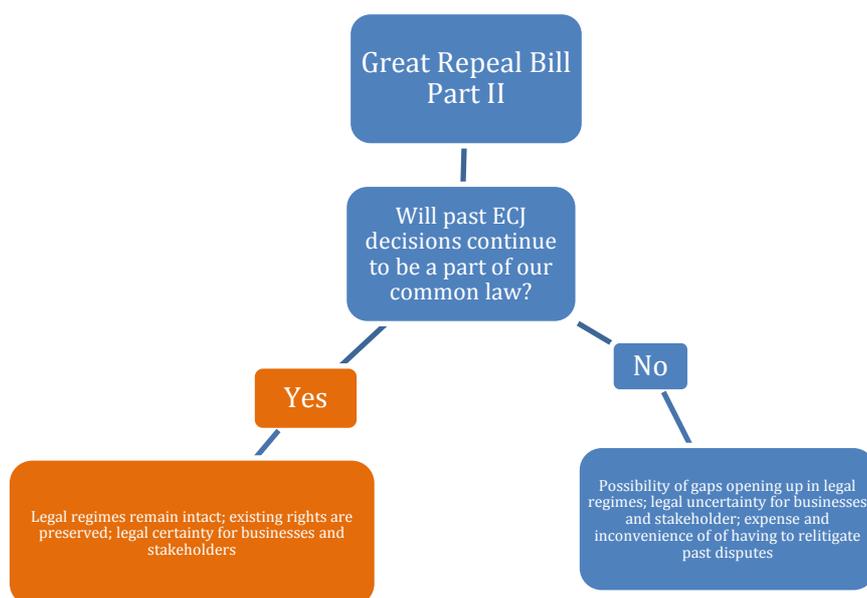
Under the **super-affirmative** procedure, the responsible Minister must first lay the draft secondary legislation before parliament, then have regard to representation and recommendations made in respect of it, then possibly republish it in a revised form. As with the affirmative procedure (see above), the secondary legislation requires assent by both Houses before it can pass into law.

iv. Stakeholder and political perspectives

Aside from the fact that the Great Repeal Bill proposals are flawed – civil servants told us that many of the laws are simply un-transferrable to the UK context alone – there are significant risks to corporate accountability posed if the Great Repeal Bill seeks to remove past ECJ decisions from UK common law (see Table 5 above, bottom and second bottom rows), or if wide-ranging “Henry VIII” powers are granted to Ministers under the legislation.

The House of Lords select Committee on the Constitution says that “Henry VIII” powers should be drawn up as narrowly as possible, and many MPs and Lords, as well as those in the business community, will not want to see delegated powers too wide-ranging. They won’t want to slow down the legislation, so people are optimistic that these powers will be avoided. Civil servants confirmed this. However, with 13,000 pieces of European legislation effected, it will be impossible for the government not to try and delegate some “tinkering” powers to Ministers, or they risk years mired in a future legislative quagmire as they try to unpick Brussels-based rules.

Our civil service insights have said that very little thought has been given to ECJ decisions. Indeed, when this was raised as a query to civil servants in BEIS as well as to senior business lobbyists, blanks were drawn. They simply said that the standing assumption is that European case law would stand until the Supreme Court changes those decisions.



The timing of the introduction of the Great Repeal Bill is still unclear. The UK Parliament Joint Committee on Human Rights has urged the government to publish the Great Repeal Bill in draft, prior to its introduction to Parliament, “to ensure that it receives detailed and rigorous scrutiny, ideally by a pre-legislative joint scrutiny committee”.³⁵

³⁵ House of Commons and House of Lords Joint Committee on Human Rights ‘The human rights implications of Brexit’ HL Paper 88, HC 695, published 14 December 2016, copy available at <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2015/human-rights-brex-16-17/>, see p. 6.

Also unclear at the present time is when the promised White Paper on Brexit will be introduced, and what the overlap (if any) will be between the White Paper consultation process and the subject matter to be covered by the Great Repeal Bill. For the purposes of developing a campaigning strategy, a better understanding of the timetable will be important.

VII. The International Environment

While there wasn't a significant amount of time to delve into this, a few key points emerged.

First, international approaches will likely become more important with Brexit. British business will look to global standards, rather than European ones, and they will reassert a presence in forums such as the ILO. As an example of this, the CBI has now withdrawn from the International Employer's Federation – considered to be a regressive force in the ILO – in order to have their own standing at the ILO. The WTO also comes into the spotlight with much greater force, much as it did in the 90's.

The UK currently has £1.3 Bn of ODA funding currently going through the EU. What happens to this? As more money is being channelled through private sector means, will Priti Patel take the Treasury view that wants to see more money going to the IMF, to be spent as capital³⁶? She certainly wants to see more money going through the CDC, as does the Treasury. Thus corporate accountability of these projects comes even more into the spotlight. What principles would be applied? How can high human rights or environmental standards be upheld?

Whilst international agencies become more important, there is a counterforce that bilateralism rather than multilateralism will be the order of the day. The UK currently spends 50% more in absolute terms on multilateral agencies than the US: Trump will want to withdraw the US even further from international forums and the UK could very well follow suit.

A senior lobbyist from the business sector agreed with a voice from the NGO sector, however, that outside the EU we could become a more progressive force. This could include tying trade deals to the UN Guiding Principles on Business and Human Rights and/or the SDGs. One member from the business community suggested the UK could in fact lead this process. Since Brexit, there has been more interest in this, as the UK will want to be seen to be leading on the International stage – at the OECD, or UN, for example - in order to maintain influence that it will have lost at the EU level.

A further trend to take into account is how Brexit is already leading to "Brexodus" of UK business. The Big 4 audit firms, for example, are registering in Dublin and the Finance Sector is showing signs of relocation. How can the UK campaign if the leading businesses are outside of our shores? Multilateral dimensions will become increasingly important in this regard.

³⁶ This is because money going through in this way doesn't impact on borrowing figures.

VIII. Conclusions

This paper shows, in five key legal areas, how Brexit can have an impact on corporate accountability. Some (indeed most) of these will impact issues in the UK, such as labour rights, however, there is also a knock-on effect to corporate performance overseas, as we have aimed to demonstrate.

Although Brexit processes and outcomes undoubtedly pose risks to corporate accountability, we believe that these also open up significant opportunities to strengthen corporate accountability campaigning. Political space has opened up. In future, more of our laws will be made domestically. There is renewed interest in policy questions surrounding international trade. Moreover, the decision in the Brexit referendum has revealed the frustrations of the many people who feel they have been left behind in our economic system, and created a new political will to address this. With a weak political opposition, however, the role of civil society organisations in exerting pressure on the government becomes even more important.

Corporate accountability campaigning has been strengthened, in some ways, by a European presence, however this shouldn't be overstated. The UK was a strong force in pulling up regulation in the EU – for example in corporate reporting, and some argue, on human rights. There are some signs to show that the UK will want this approach to continue. Indeed, a greater risk may be that there will be a backslide at the European level on these matters with the absence of the UK.

The final deal with the EU will have the biggest bearing on what happens to corporate accountability overall. If we continue to be participants in the single market, the status quo may be largely preserved – though the UK loses influence and will be unable to affect legislation in Europe. This means campaigners from the UK will also be shut out or will at least lose any MEPs who have been a positive force in Brussels. Business lobbyists – including those representing British business will continue to be very active in Brussels, perhaps even more so than is currently the case as they seek to retain some measure of influence over regulations that impact on them, even if indirectly.

There may be some sector specific approaches that corporate accountability campaigners could pursue. With new and different trade deals on the cards, particular focus will be given to those areas where the UK has a potential “competitive advantage” – for example pharmaceuticals, insurance or accountancy. Some of these industries will have a greater impact on human rights or the environment, so they could provide a more immediate focus than larger macro-level issues.

In the shorter term, the possibility of a new Environment Protection Act, together with the new Industrial Strategy and Corporate Governance Review are all potential opportunities to strengthen laws relating to corporate accountability. The opening up of Company Law, once again (clause 172 on Director's Duties) provides CORE with an opportunity to redress weaknesses in the original bill. While these initiatives have emerged at least partly in response to the Brexit vote they are not dependent on it, and thus provide clearer paths towards CORE's campaigning goals.

ANNEX I: GLOSSARY, ABBREVIATIONS AND DEFINITIONS

ADR means Alternative Dispute Resolution.

CBI means the Confederation of British Industries.

CAP means Common Agricultural Policy.

CDC means the Commonwealth Development Corporation

CETA means the Comprehensive Economic and Trade Agreement, a free trade and investment agreement negotiated between the EU and Canada and signed by the parties on 30 October 2016.

CFP means Common Fisheries Policy.

CFSP means Common Foreign and Security Policy.

Civil courts refers to the courts that are responsible for hearing and deciding private disputes (e.g. between individuals, between companies, and between individuals and companies). They are distinct from the criminal courts.

Commission means the European Commission.

Council means the EU Council of Ministers.

CPR means Civil Procedure Rules (of the courts of England and Wales).

Cross-border cases are cases where the relevant facts have taken place in, the relevant actors are located in, or the evidence needed to prove a case is located in, more than one State.

Customs union refers to the situation where a group of countries agree to apply a single tariff to goods that are imported from outside the union. Once the goods have cleared customs in one of the members of the customs union they can be freely shipped around the union without any further tariffs being imposed.

Delegated powers, when referring to the UK legal system, means the powers of Ministers (usually under primary legislation) to promulgate further laws and rules as secondary legislation.

DFID means the Department for International Development.

Directives, in the context of EU law, are laws that have been promulgated by the EU institutions in accordance with EU constitutional arrangements but which are then required to be implemented by EU member states. When a Directive is passed, EU member states are given a period of time within which they must have enacted implementing legislation. If this is not done within the time limit, or if it is not done properly, enforcement action may be taken against the relevant EU member state.

DG means a Directorate General of the European Commission.

EAC means the Environmental Audit Committee, a cross-party select committee of the House of Commons.

ECJ means the European Court of Justice, the highest court of the EU on matters of EU law.

ECHA refers to the European Chemicals Agency.

ECHR means the European Court of Human Rights.

EEA means the European Economic Area. It was established by an agreement that entered into force on 1 January 1994 between EU member states and the three EEA EFTA States (Iceland, Liechtenstein and Norway). It establishes the participation of those three EFTA States in the EU single market.

EEC means European Economic Community.

EFTA means European Free Trade Association. It is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four member states; Iceland, Liechtenstein, Norway and Switzerland.

EIA means Environmental Impact Assessment.

EMU means European Monetary Union.

ETS means Emissions Trading Scheme.

EU means the European Union. It is a grouping of 28 European nations that participate in a Single Market and agree to be bound by a customs union. It has its origins in the European Coal and Steel Community (1951) and the European Economic Community (1958). The UK joined the EU (then the EEC) in 1973.

Four freedoms refers to the four freedoms that form the basis of the EU Single Market, namely, free movement from one EU member state to another of goods, people, services and capital.

Free Trade Area refers to an area where there are no tariffs or taxes or quotas on goods and/or services from one country entering another.

FTA means Free Trade Agreement.

GSP means the Generalised System of Preferences;

“Henry VIII” powers, in the context of the UK legal system, refers to powers given to Ministers under primary legislation to make changes to primary legislation as well as secondary legislation. Normally, under the UK constitution, primary legislation can only be amended or repealed by further primary legislation. However, secondary legislation can be amended or repealed by either primary legislation or secondary legislation.

ILO means International Labour Organisation.

ISDS means Investor State Dispute Settlement and refers to the system of dispute resolution between investors and States used in some bilateral investment agreements and several of the recent “mega” trade and investment agreements, including TTIP and CETA.

MFN refers to the “Most Favoured Nation” standard under WTO rules which forbids States from discriminating between their trading partners. However, there are (limited) exceptions for customs unions, free trade areas and under special preferential arrangements designed to assist with economic development in developing countries (i.e. the GSP).

NTBs means non-tariff barriers and refers to State measures, other than tariffs, that have the effect of preventing or impeding trade, such as subsidies, quotas, technical standards, licensing, packaging, and labelling requirements, local content requirements, phytosanitary rules; food, plant and animal inspections and other regulatory measures.

Primary legislation, in the context of the UK legal system, means Acts of Parliament.

Product standards, mean, in the context of international trading rules, the standards that relate to the composition of a product.

Production standards mean, in the context of international trading rules, the standards that relate to the methods and processes by which a product was obtained or produced.

Quota means, in the context of trading arrangements, a trade restriction imposed by a government that limits the number or monetary value of products that can be imported into a country in a specified time period.

Recommendations issued by the European Commission, are negotiated instruments and are formally issued through EU channels but they are legally non-binding on EU member states.

Regulations, in the context of EU law, are laws which are promulgated by the Council and which are directly effective in EU member states. This means that they must be complied with and they can be enforced without the need for any implementing legislation on the part of EU member states.

SDGs means the UN Sustainable Development Goals, as set of international development goals agreed in 2015;

Secondary legislation, in the context of the UK legal system, refers to legislation that can be made on delegated powers, such as Regulations, or Orders in Council.

Single Market refers to the free trade area created by the EU which features very high levels of cooperation, harmonisation and integration with a view to eliminating, as much as is possible, all forms of NTBs. The aim is to make it as easy for companies to sell goods to consumers in other EU member states as it is to sell to consumers in its own country. It rests on the “four freedoms”.

Tariff means a tax or a duty that must be paid on a particular class of imports or exports;

TFEU means the “Treaty on the Functioning of the European Union” (more commonly referred to as “the Lisbon Treaty”).

TTIP means the Transatlantic Trade and Investment Partnership, a free trade agreement (not yet completed) negotiated between the EU and the US.

TUC means the Trade Union Congress.

TUPE refers to the UK Transfer of Undertakings (Protection of Employment) Regulations 1981, which implements an EU-wide scheme to protect employment rights when employees are transferred from one employer company to another (e.g. in the context of a business acquisition or corporate restructuring).

WTO means the World Trade Organisation.

ANNEX 2 – INTERVIEWEES

(ANONYMISED WHERE REQUESTED, below and in the body of the paper)

Stage 2

1. Senior representative, Business Association.
2. Senior civil servant, BEIS
3. Senior civil servant, BEIS/Dex-EU liaison
4. Steve Waygood, Aviva
5. Matt Grady, Traidcraft
6. Tim Aldred, Fairtrade Foundation
7. Sam Lowe, Friends of the Earth
8. Owen Barder, Centre for Global Development
9. Kathleen Spencer Chapman, BOND
10. Director, Corporate Affairs, Energy firm
11. Baroness, House of Lords, EU Justice sub-committee
12. Senior litigator, specialising in consumer and business and human rights cases, Hausfeld
13. Barrister specialising in negligence and human rights-related litigation on behalf of claimants, Doughty Street Chambers
14. Dr. Emily Jones, Oxford University
15. Professor Catherine Barnard, University of Cambridge

Stage 1

16. Paul Brannen, MEP
17. Senior representative, Business trading association
18. Senior lobbyist, Business association.
19. Claire Methven O'Brien, Danish Institute for Human Rights
20. Civil servant, Corporate Governance Reform
21. Tomislav Ivančić, SHIFT

ANNEX 3: REPORT FROM PHASE 1 OF RESEARCH SETTING OUT “LONG LIST” OF LEGAL AREAS POTENTIALLY IMPACTED BY BREXIT, PREPARED FOR DISCUSSION AT CORE WORKSHOP IN LONDON, 24TH NOVEMBER 2016

Overview for discussion

**Legal areas relevant to Corporate Accountability
for adverse human rights and environmental impacts
that may be impacted by the UK’s departure from the UK.**

**Prepared by:
Deborah Doane and Jennifer Zerk**

For: CORE Coalition

October 2016

Important note: The contents of this paper are not, and cannot be taken as, legal advice.

Introduction and Overview

This paper is intended to provide an initial desk-top review of the legal areas that will be impacted by Brexit, that could be of interest to CORE members. We have tried to give a first glance into what we see as the risks and opportunities, and relevance to CORE. However, these are not fully comprehensive as yet. This initial draft is intended to help signpost those areas into which we want to delve deeper for discussion around the risks, opportunities and political landscape.

We have organised the issues around the following 4 categories:

- 1) Human rights/labour/poverty
- 2) Environmental issues
- 3) Trade, International development
- 4) Other cross cutting issues

A couple of key points have arisen in compiling this review:

- 1) Theresa May announced the introduction of ***“The Great Repeal Bill”*** at the Conservative Party Conference, which will repeal the 1972 European Communities Act and provide for the entirety of EU law to be transposed into UK law, but then will give Parliament and Ministers the power to gradually repeal EU laws they consider to be unnecessary or undesirable. The proposals are highly problematic for a number of reasons. First, as much as EU law has already been incorporated through domestic legislation, the proposal creates the risk of a confusing “doubling up” of laws. Second, some regimes and some aspects of current EU regimes will no longer be relevant to the UK post-Brexit. Third, some EU laws refer to or give power to EU regulatory authorities and institutions that we may no longer be accountable to. Fourth, there will be lingering questions about the legal effect to give to ECJ decisions handed down prior to Brexit.

In short, the Great Repeal Bill, while simple in theory, will actually be very complicated, delicate and cumbersome in practice. In reality, many contextual changes will be needed to EU laws (and their commensurate domestic enforcement regimes established) for them to make sense as domestic UK law in the post-Brexit context. The precise changes that will be necessary will depend on the outcomes of Brexit negotiations. Finally, close attention needs to be paid to the provisions in the Bill relating to the methods by which legislation will be repealed. If the intention is to give Ministers the power to repeal elements of existing EU laws through secondary legislation, without the need for detailed parliamentary scrutiny, then this creates a new set of potentially serious risks regarding access to information and process.

- 2) It’s worth noting at this juncture that the issue of ‘Trade’ arises as an overarching theme to many of the individual legal issues. This is because the terms of any future UK-EU trade deal are likely to have a knock on effect on the extent to which the UK government is free to depart from existing EU regulatory standards (e.g. labour, environmental or consumer standards) and develop distinctive regulatory approaches.
- 3) Many of the issues are more relevant to the domestic agenda. CORE will want to assess the extent to which focusing on domestic issues has a potential impact on corporate accountability abroad (see especially “Access to Justice” under “Cross-

cutting issues” below).

- 4) There are a number of post-Brexit changes that may not have a legal outcome, but will have an impact on ‘soft power’ and less tangible areas of policy (eg. International development). CORE may also wish to consider these, though campaigning on non-legal issues could be more challenging. For the purposes of this initial review, we have only sign-posted these areas for discussion.
- 5) This review has not yet addressed regulatory regimes governing sectors such as chemicals, infrastructure, or pharmaceuticals. We would ask CORE to identify those sectors that are of greatest interest for further investigation.

I. HUMAN RIGHTS/LABOUR STANDARDS/OTHER SOCIAL MATTERS		
<i>Issue</i>	<i>Risks and Opportunities</i>	<i>Relevance to Corporate Accountability (high, medium, low)</i>
Labour Rights, Part 1 – freedom of association, collective bargaining, workplace health and safety and non-discrimination, protection of worker rights on sale of business undertakings, information and consultation with workers.	<p>Government has given repeated assurances that there will be “no bonfire of workers’ rights” post-Brexit. However they may yet be vulnerable as part of a “red tape” cutting, e.g. The Working Time Directive. These issues may also come under scrutiny as part of future trade deals.</p> <p>Theresa May has said she will address ‘irresponsible’ corporate behaviour, and is considering putting employees on company boards, or looking at publishing executive pay ratios. A review is underway.</p>	Medium - high
Labour Rights, Part 2 – treatment of migrant workers, including victims of human trafficking. Free movement and treatment of EU migrant labour is currently covered in EU legislation. The rights of non-EU migrants are covered by a series of EU Directives.	<p>There is a high risk to EU migrants currently living and working in the UK, vis-à-vis their right to remain. The rights of non-EU migrants should initially be protected as they’ll be covered under the “Great Repeal Bill.” However, the withdrawal of the UK from the EU may lead to gaps in international regimes to improve protections, especially as the UK is not yet a signatory to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. On human trafficking, domestic legislation on modern slavery provides some degree of cover. Future trade deals may provide opportunities to apply pressure to State parties to strengthen these rights.</p>	Low - Medium

<p>Human Rights Act (1998) and European Convention of Human Rights.</p>	<p>The ECHR is a separate legal project from the EU with its own judicial oversight mechanism (the European Court of Human Rights). Leaving the EU will not, of itself, alter the UK's obligations under the ECHR, or any of its implementing arrangements within the UK. Therefore, no changes are needed to the Human Rights Act because of Brexit. <u>However</u>, a commitment to scrap the Human Rights Act (and replace it with a British Bill of Rights) was included in the last Conservative party manifesto, and alluded to in the last two Queen's Speeches. As long as the UK remains in the EU, these proposals are highly problematic as the British Bill of Rights proposals are arguably inconsistent with ECHR participation, and abandoning the ECHR is inconsistent with EU membership. However, once the UK leaves the EU, these obstacles to the British Bill of Rights potentially fall away as UK could have greater political and legal freedom to withdraw from the ECHR and tinker with existing protections.</p> <p>On the other hand, the EU could insist that the UK continue to abide by existing social, environmental and human rights standards as part of a future UK-EU trading deal.</p> <p>The Human Rights Act only imposes obligations on public authorities (which includes companies only to the extent that they are exercising public functions). Were this legislation to be replaced in future, there may be an opportunity to widen the scope of private commercial activity to which the law applies, and better enshrine the "corporate responsibility to respect" in UK law.</p>	<p>Med - High</p>
II. ENVIRONMENTAL ISSUES		
<p><i>Issue</i></p>	<p><i>Risks and Opportunities</i></p>	<p><i>Relevance to Corporate Accountability</i></p>
<p>Environmental policy, Part 1 – biodiversity, protection of habitats and natural resources. Since 1970, the EU has promulgated over 400 pieces of environmental legislation covering pollution, air quality, water quality, use of toxic chemicals, habitats, waste</p>	<p>In addition to binding legislation, the EU adopts 'soft laws' and promotes voluntary initiatives. The stated intention has been to retain the existing body of EU environmental law intact. However, a large proportion of UK environmental law (especially technical aspects) is governed by secondary legislation (see for example, regulations relating to environmental</p>	<p>Medium - high</p>

<p>management, noise and environmental assessment.</p>	<p>impact assessment, emissions permits or liabilities with respect to contaminated land), which are, procedurally, much easier than primary legislation to unpick (see comments at (i) on page 1 above). The extent to which the UK government is actually free to depart from existing EU standards will depend on any future UK-EU trade deal (which, if past deals are anything to go by, is likely to include some provisions requiring regulatory cooperation and equivalence in environmental regulation). On the other hand, in the context of negotiation of new trade deals with non-EU states, the UK government may find it advantageous to weaken some existing regulatory requirements (e.g. implementing legislation made under the REACH directive), as part of an agreement to progressively remove non-tariff barriers.</p>	
<p>Environmental policy, Part 2 – climate change and renewables. DG Climate Action formulates and implements climate policies and strategies, eg. Paris agreement, EU ETS, low carbon technologies. Renewable Energy Directive imposes binding national targets on EU member states.</p>	<p>Theresa May’s government is already showing less interest in renewables and climate change, even though EU laws on renewables will, initially at least, be protected as part of the Great Repeal Bill. The UK is an individual signatory to the Paris Agreement. There could be more opportunity to campaign to support development of domestic renewables, technologies and industries, or to pursue national carbon taxes. Some businesses, though, will see any move to regulate climate change as a further barrier to trade and investment, and an imposition of red tape.</p>	<p>Med</p>
<p>Fisheries. Several environmental directives are relevant for the preservation of coastal and maritime habitats. Key legislation relates to conservation of fisheries and catch limits, while the Commission operates the European Maritime and Fisheries fund which provides grants to help fishing operators develop ways of fishing more sustainably.</p>	<p>The need to regain control over UK fisheries was an important theme of the Leave campaign and so will likely be at risk in a post-Brexit scenario. There will need to be new agreements between the UK and EU on quotas with respect to migratory fish stocks, as well as negotiated agreements with other third parties, such as Norway and Iceland. Fishing operators will want to see quotas liberalised.</p>	<p>Low</p>
<p>Agriculture. The Common Agricultural Policy aims to help farmers produce sufficient quantities of food for Europe, ensures that food is safe, and protect farmers from excessive price volatility. EU farmers enjoy</p>	<p>More autonomy will be given to the UK in allocating, or reducing agricultural subsidies, which could lead to more influence of agribusiness and supermarkets in British agricultural practices. Conversely, it could mean greater scope for the development of incentives to reward good environmental or social</p>	<p>Med - High</p>

<p>subsidies for certain activities. It also covers issues such as use of pesticides, product quality, labelling, protection of natural habitats, crop rotation and use of GMOs.</p>	<p>practices in farming and improvements in natural habitats, as well as building local food economies.</p>	
III. TRADE AND INVESTMENT, INTERNATIONAL DEVELOPMENT		
<p>Issue</p>	<p>Risks and Opportunities</p>	<p>Relevance to Corporate Accountability</p>
<p>Trade and investment (goods and services). In addition to negotiating trade deals with other countries, DG Trade is also responsible for defending EU trading interests within the WTO system. TTIP and CETA were both negotiated through DG Trade, though neither is in force yet. Negotiations on CETA are complete, although difficulties have been encountered at domestic level, as some national parliaments are now refusing to ratify the deal unless certain conditions are met.</p>	<p>EU trade strategy includes a number of social, environmental and developmental goals. Both CETA and TTIP are controversial because they include provisions that may have a chilling effect on future social, environmental, health and safety and human rights regulation of companies at the domestic level. Their use of investor-state dispute resolution mechanisms have further exacerbated these concerns. Unless there is a change in approach, it is likely that these issues will be replicated in any future trade deals the UK tries to negotiate with the EU, and potentially with other countries as well... Opportunities to improve on TTIP and CETA precedents will be very limited. We can also expect a diminished UK voice within the WTO framework.</p> <p>On the other hand, with Brexit, the UK could avoid being party to TTIP and CETA and could, theoretically, have more scope to negotiate more 'human rights respecting' trade deals in future.</p>	<p>High</p>
<p>Trade – EPAs and Everything But Arms. The EU has several Economic Partnership Agreements with African, Caribbean and Pacific Group of states.</p>	<p>The poorest countries will lose their duty-free, quota-free access to UK consumers under these agreements, as market access won't automatically be transferred if the UK leaves the single market.</p> <p>Opportunities may exist to campaign for stronger policies that support pro-human rights or environmental behaviours of companies wishing to trade with the UK and vice versa.</p>	<p>Medium - High</p>
<p>International Development. DG Devco designs and implements strategies to reduce poverty and ensure sustainable development and the promotion of democracy, peace and stability.</p>	<p>The impact is likely to be greater on EU policy than on UK policy, as the UK has, arguably, been a strong force for supporting policies such as transparency (eg. Country x country reporting) and reducing corruption. UK International Development Policy is already taking a more</p>	<p>High</p>

	trade-focussed approach. As per trade policy, above, this could take a backwards step in terms of progress if the UK's influence is reduced and it is forced to concede social and environmental protections.	
Financial Services. DG FISMA currently oversees EU financial services policy, which aims to “deliver secure, and efficient financial markets and ensure coherence and consistency between different policy areas.” This covers banking, insurance, securities and financial market regulation. Post 2008, it has played an important role in regulating the financial sector across Europe.	The UK was behind trying to lower regulations at the EU level post 2008, so arguably stronger financial regulation was possible within the framework of the EU. We can expect lower regulatory standards for financial services companies to compensate for loss of “passporting” rights of UK businesses post Brexit and to maintain competitiveness and attractiveness of the UK as a global business centre.	Med - High
IV. CROSS CUTTING ISSUES		
Issue	Risks and Opportunities	Relevance to Corporate Accountability
Access to Justice – Part I; civil remedies; Rome I and Rome II, plus Regulation 1215 (‘Brussels Ibis’) clarify jurisdiction and applicable law and help to reduce red tape associated with getting judgments enforced in cross-border cases; also, several pieces of legislation relevant to ADR.	The basic regime should be preserved in arrangements under the Great Repeal Bill. However, differences between the UK and other EU states in legal traditions and constitutional structure (UK being a common law country) increases the chances of divergence in future, which will add to the complexity and expense of cross border cases for litigants. Cross border cases could include, for example, trafficked labour or serious fraud. Post-Brexit, UK courts may consider themselves freer (depending on the legal framework) to revert to earlier judicial precedent on jurisdictional issues, which gives them greater flexibility to refuse to hear cross border cases.	Med-high
Access to Justice – Part II; criminal remedies; note various laws relating to crimes with cross border implications plus directives to aid harmonisation of definitions of certain crimes, and to lay down standards as to the minimum sanctions that should apply; at the operational level, note development of mechanisms to facilitate cross-border cooperation with respect to	Existing criminal law provisions derived from European law should be retained as part of UK law under the Great Repeal Bill, but questions remain over the extent to which UK law enforcement bodies will continue to cooperate with, and have access to, intelligence collected by European law enforcement institutions such as Eurojust and Europol. Brexit could put obstacles in the way of future cross-border criminal investigations of business activities, unless some replacement regime for cooperation and access to information can be	Low-med

detection, investigation, and enforcement of crimes (esp. Eurojust and Europol).	negotiated.	
Company Law , including corporate governance and reporting. The EU tries to harmonise Company Law across member states to provide similar protection to shareholders and other parties. A key piece of legislation is on non-financial reporting, which came into force in 2014. Governments have 2 years to implement, and the UK government published a White Paper on Feb 2016. It views the UK Companies Act as complying with this directive.	The UK government could decide to tone down narrative reporting, however the law was largely developed in the UK initially, so this would also require a revision to the Companies Act. Brexit could, however, open up more opportunities to consider the role of Company Law and its provisions – especially with Theresa May’s Corporate governance review.	Med - High
Consumer Protection. EU Consumer policy designed to ensure that goods and services are safe markets and are fair. The 2011 Directive on Consumer Rights.	EU regimes on product liability should be preserved under the Great Repeal Bill. Product standards may be vulnerable to change (including, for example, energy saving light bulbs or health and safety). Any access to the single market, though, will likely require these to remain intact. New trade agreements with non-EU states may have a chilling effect on new product or consumer safety standards that could act as non-tariff barriers to trade.	Low
Competition Law. EU competition law derives from EY foundation treaties, supplemented by regulations and case law emanating from the ECJ. It covers anti-competitive behaviour, mergers, cartels and state aid. In 2014, the EU passed the Competition Damages Directive, enabling people adversely affected by breaches of competition law to sue for damages in national courts.	Will be part of the Great Repeal Bill, and substantive aspects will be unlikely to change. Post Brexit, UK regulatory authorities will have sole responsibility for enforcement. There could be more flexibility, post-Brexit, to adapt to the needs of UK businesses and consumers – for example, pricing of milk to cover production costs for dairy farmers, or to offer more support and subsidies to ailing industries, such as steel. These would, however, be under the gun in any future trade deals. Mega mergers, like for Monsanto, will inevitably have cross-border implications and will frequently involve corporate actors from multiple jurisdictions. It is unclear how these will be managed in future.	Low - medium

<p>Government Procurement. There are 3 European directives. Laws are in place to ensure that public contracts are handed down in a way that ensures value for money and respects principles of fair competition.</p>	<p>It's unlikely that this will be subject to any immediate revisions post Brexit. EU procurement law gives scope for consideration of social and environmental criteria in procurement decisions. However, the regimes in both TTIP and CETA on public procurement raise concerns about the extent to which public authorities within State parties will be able to attach human rights or environmental criteria in future. This could be a campaigning opportunity as UK-EU and UK-rest of the world trade negotiations unfold.</p>	<p>Low - Medium</p>
<p>Anti-Corruption. 2003 Framework Decision on combating corruption in the Private Sector.</p>	<p>The UK already has a sophisticated legal regime on bribery and corruption that extends jurisdiction over offences committed by UK nationals and companies overseas. However, the ability of UK law enforcement bodies to respond to cross-border cases may be impacted (see "Access to Justice" above).</p>	<p>Low - Medium</p>
<p>Tax and Tax Avoidance. EU member states must ensure that tax regimes are consistent with free movement of workers, services and capital and do not breach prohibitions on state aid (eg. Apple/Ireland case vis-à-vis tax avoidance).</p>	<p>Direct taxation is largely a matter for national competence. However, the EU's recent Apple/Ireland case highlights the challenges for EU states in reconciling state aid prohibitions with domestic tax policy. Post-Brexit, the UK may have more flexibility to offer tax incentives to certain companies and industries. It will still, however, be party to international policies and initiatives relating to tax cooperation and tax avoidance, for instance through the G7, G20 and OECD and will need to abide by commitments made in those settings</p> <p>Post-Brexit, the UK may have more flexibility with respect to the imposition of indirect taxes on businesses. However, these are likely to be covered in any future UK- EU deal relating to non-tariff barriers.</p>	<p>Medium</p>