

Potential Policy and Environmental Implications for the UK of a Departure from the EU

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EU Influences on the Environment

- Globally, through participation in and implementation of international law and treaties (Climate, CBD)
- Internally through the development and application of EU environmental legislation
- Through the influence of other legislation e.g. trade, markets, research, etc.
- Through sectoral policies e.g. CAP and CFP and related expenditures
- Through institutions, both general and specialised (EEA, European Chemicals Agency)

Some Characteristics of EU environmental law (1)

- Based on the Treaty and principles within it.
- Informed by strategic programmes, currently 7th EAP and long term goals (numerous targets and roadmaps).
- Sensitive to but not confined to trans-boundary issues.
- Often linked to the single market, common standards for goods/processes
- In some areas responds to international obligations, conventions, influences.
- Principally in the form of directives, binding on Member States.

Some Characteristics of EU environmental law (2)

- Directives often define objectives (attaining favourable conservation status) or targets (X% of renewable energy by date Y) to be met by governments
- But, not infrequently, require compliance with precise environmental thresholds (limit values) or sometimes, the means to be used (EIA).
- In some cases impose ceilings e.g. on total emissions
- Numerous product standards and regulations.
- Policy has evolved to include newer mechanisms, e.g. economic instruments.

In dynamic terms

- Steady growth of policy to become comprehensive.
- Probably the most influential and widely applied body of environmental law in the world.
- Still being extended but now mainly in consolidation stage; much more circumspect re: new regulation.
- Measures sometimes amended and often interpreted by ECJ but rarely repealed entirely.
- Confers relative stability.
- Implementation far from perfect.
- But governments strongly incentivised to implement, failure risks penalties

EU Decision Making

- Collective European approach embedded in policy and practice in UK and elsewhere
- UK a major source of influence as well as being influenced by EU policy
- Tendency for governments to be more ready to adopt higher standards collectively than alone
- Process can be slow and more legalistic than in UK, more predictable, less scope for discretion

Impacts on UK Environment

- More longer term targets e.g. Water Framework Directive
- More regard to trans-frontier impacts e.g. acid rain
- Often resulted in higher environmental standards e.g. air and water pollution, enhanced pressure for recycling, less landfill waste, etc.
- More ambition in nature conservation e.g. requirements for habitat protection, invasive species control
- Not always positive e.g. biofuels targets

CAP and CFP

- Traditional CAP incentivised production with associated environmental pressures
- Reforms since 2003 have changed emphasis and impact now mixed
- Significant source of funding through agri-environment
- CFP overlays complex historical fishing rights
- Early versions had ineffective environmental safeguards
- Recent 2013 reform widely welcomed by environmental organisations – a platform for progress

Departure Scenarios

- Many and various especially in relation to trade agreements but can be simplified.
- **Join EEA i.e. the EU and EFTA members but not Switzerland (the Norway model)**
- Requires joining EFTA first
- **Seek new / different status outside the EEA (e.g. looking for influence on single market decisions as well as being bound by them) – Canada a possible model**
- **A more distant relationship (e.g. the “WTO” model) outside the single market, relying on bilateral negotiations**
- No obligation on other groupings to accept the UK.

The EEA Option

- EEA entails rather a close relationship; some participation in the EU's affairs but no vote when decisions made; majority of EU environmental legislation applies in EEA, mainly because of single market linkage.
- However, some important environmental law does not apply e.g. the Birds, Habitat and Bathing Water directives.
- CAP and CFP do not apply in the EEA.
- EEA Members make budget contributions to the EU (Norway £106 per capita in 2011, compares with £128 net per capita in the UK).
- European Commission exercises compliance functions

The Non-EEA Model

- UK free to cease to apply EU environmental legislation – unlikely to be instantaneous or complete withdrawal
- Some measures e.g. product standards would continue to apply to UK exports to EU Single Market
- No influence on EU decision making or participation in working groups, etc.
- Less momentum to adapt new measures – with some exceptions
- Likely to be associated with more broadly deregulatory approach
- Less certainty for investors e.g. in renewable energy

Assessing the Impacts of Brexit

- Risks of lower environmental standards, depending on scenario
- Outside the EEA less impetus for progress or pressure for compliance
- Independent role (outside EU group) in international negotiations; reduced influence?
- Major changes in agriculture and fisheries policies, potentially less money for agri-environment funding
- But strong UK commitments in some areas e.g. binding carbon budget

Possible Outcomes of the UK/EU Referendum

	Membership of the European Union	Inside the EEA Brexit Scenario 1	Entirely outside Brexit Scenario 2
Does the UK retain access to the EU Single Market?	Yes	Yes	No, all access to be negotiated
Does it contribute to EU budget?	Yes	Yes (budget contribution would probably fall, however)	No, unless negotiated as part of an access deal
Do the CAP and CFP apply?	Yes	No	No
Do EU environmental laws continue to apply to the UK?	Yes	Most of them will, with some exceptions e.g. the nature directives and Bathing Water Directive.	No, but UK exporters will need to comply to export into the EU
Does the UK have a say in the formulation and amendment of EU policy on the environment?	Yes	EEA countries are only consulted during the preparation process for legislation. They do not take part in the formal negotiations, and cannot vote; and they have no MEPs to influence legislative outcomes through the European Parliament.	No
Would the UK continue to be subject to mechanisms to ensure compliance and penalties for non-compliance?	Yes	Yes, the European Commission retains enforcement powers and fines can be imposed for non-compliance.	No
Would it be necessary to negotiate new trade arrangements which could have impacts on environmental standards?	No	In some areas, yes, including in relation to agriculture and fisheries.	Yes, across a wide front.
Could a future UK government lower current environmental standards in the UK?	Only by means of an agreement at EU level	Not in the majority of cases where they are covered by EU obligations.	Yes; although UK exporters would need to abide by EU product standards, as well as face tariffs in many sectors.

Imagining a process

- Exit negotiations with EU 27 if decision is to withdraw.
- Negotiating a new deal with the EU.
- Negotiations with EEA / EFTA / other trading partners.
- Potential negotiations between UK countries.
- Rapid CAP and CFP negotiations
- Continuous negotiations on several fronts over extended period.
- Transitional regime for UK environmental law and period to adjust.
- Likely combination of continued application of some EU measures and demise of others.

Some issues

- Need to maintain stability by measures to uphold existing legal baseline in most areas and manage transition at reasonable pace. Initially maintain EU derived measures largely as they are?
- However, a prolonged period of uncertainty likely with environmental consequences and implications for investors, including level of commitment to compliance with EU obligations / targets.
- Need to accommodate / respond to changes in EU environmental law depending on future relationship with EU.
- EU environmental law may evolve differently without the UK, influenced by different institutional conditions and preferences.
- Both the CAP and CFP would cease to apply, raising questions about alternative policies, levels of support for the industry, commitment to environmental goals etc.
- Likely acceleration in variations in approach between UK countries.

Towards conclusions

- UK environmental policy has been transformed by EU membership.
- Withdrawal would create widespread uncertainty unless clear alternatives were in place.
- The counterfactual to EU membership is unclear but it would not be a reversion to the early 1970s.
- It would require a new UK vision for the environment and major effort to assure investors and secure adequate funding
- How would ambition and drive be maintained without the influence of the EU?
- Significant risks to the environment in view of most experts
- Is the scale of risk to the environment understood?



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