

“Britain’s approach to environmental policy fundamentally changed because of its membership in the European Union.”

Will Brexit Degrade UK Environmental Policy?

CHARLOTTE BURNS

In a referendum on June 23, 2016, the British public voted by a narrow margin to exit the European Union, a phenomenon popularly dubbed “Brexit.” Following lengthy withdrawal negotiations, the resignations of two prime ministers, and two elections in the space of two and a half years, the United Kingdom officially left the EU on January 31, 2020, with a further transition period due to end on December 31, 2020. At the time of writing, there is still a good deal of uncertainty about what the future holds. Although an agreement has been reached on the divorce settlement, the rights of UK and EU citizens in their respective territories, and a means of keeping the Northern Irish border open, the nature of the future trading relationship between the EU and UK remains to be resolved.

The political declaration adopted alongside the withdrawal agreement sets some broad goals, including developing “an ambitious, broad, deep, and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core.” But Prime Minister Boris Johnson’s Conservative government, newly elected with a large parliamentary majority, has indicated its clear desire to diverge from the EU and to develop separate standards. There has been much speculation about the likelihood of a trade deal with the United States and what that might mean for food and animal welfare standards, among other concerns.

Moreover, while the immediate threat of going over a “cliff edge” in a no-deal Brexit has been removed, it is still entirely possible that the UK will find itself at the end of the transition period in December 2020 without having secured a trade deal with the EU or any other significant trading

partners. Under this scenario, the UK will trade with other states under World Trade Organization terms. A host of studies have shown that this option would have mixed effects on the UK economy, benefiting some sectors but harming others, and there is an overall consensus that it would result in a shrinking economy in the medium term.

As the Brexit saga has unfolded, a bigger and potentially existential crisis—climate change—has gained increasing attention and become a key part of the debate about what Brexit means for the UK, specifically for its environmental ambition and much-vaunted climate leadership. Somewhat surprisingly, the environmental implications of Brexit were not extensively debated during the referendum campaign in 2016, but emerged as a key issue in the immediate aftermath of the vote. It became apparent that UK environmental policy has been profoundly Europeanized.

The rising political salience of the environment, and of climate change in particular, has helped focus further attention on this issue. The nature of the UK’s environmental governance architecture, especially the implementation and enforcement of policy, is now being debated. Key questions include whether the UK will diverge from EU environmental standards, and if so, to what extent; how it will coordinate environmental policy within its own borders as authority in this area is devolved so that it is shared between the UK government and the governments of Scotland, Wales, and Northern Ireland; and whether and how the UK will cooperate in international environmental regimes. The last question is pertinent in light of the fact that the UK will be hosting the annual meeting of the United Nations Framework Convention on Climate Change, the Conference of the Parties (COP 26), in Glasgow in November 2020.

Underpinning all of these debates are the big questions of whether the EU has positively shaped

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UK environmental policy, and what the implications of Brexit are for British ambitions to claim green leadership.

NO MORE 'DIRTY MAN'

In the early years of its EU membership in the 1970s and 1980s, the UK had the unenviable reputation of being the “Dirty Man of Europe.” The dominant British approach to environmental policy had been based on minimizing costs, so that pollution abatement was only pursued when and where it was considered economically and technically practicable to do so. This approach resulted in a government-sponsored pollution control strategy known as “dilute and disperse.” For example, to deal with emissions from power stations, tall smokestacks were built in order to avoid causing local air pollution—but the emissions were carried away on the prevailing winds and fell elsewhere in the form of acid rain. Similarly, for sewage disposal, waste products were watered down and effluent pumped out into the sea via long pipes, to be carried away by the currents.

One problem with this policy approach was that it exported British pollution to other countries. Environmental protection is a transboundary concern. Since pollution does not respect borders, there is a strong case for cooperation among states. But British environmental standards and goals were invariably contextual, based on determinations of environmental quality within particular areas at specific times. They were also often reactive, and based on voluntarism: that is, business operators negotiated with regulators over the best ways to address pollution, and cost was the primary consideration.

In stark contrast, the emerging EU policy approach had been influenced by the German model, which was more legalistic, based on tightly defined environmental rules and emission limits that regulated pollution at the source. It was consequently somewhat of a shock for officials at the UK Department of the Environment to find themselves under pressure to implement rules and standards that were completely at odds with the dominant British policy approach. They had failed to anticipate or appreciate the extent to which joining the EU would affect domestic policymaking.

In effect, the early days of the Europeanization of UK environmental policy put the British government in the unexpected position of being a policy

taker. EU policymaking is often characterized by regulatory competition in which member states compete to “upload” their policy models to the EU level in order to minimize the costs of implementing EU policy at a later date. Some member states emerge from this competition as policy shapers (those that have successfully uploaded policy) and others as policy takers. The so-called implementation deficit in EU environmental policy often occurs when member states lose this regulatory competition—or fail to engage in it—and then must implement a policy that does not fit well with domestic policy styles and infrastructure. Such policy misfits can impose high costs.

This was the position in which the UK found itself during the 1970s and 1980s as it struggled to come to grips with the requirements of the EU environmental *acquis communautaire* (a term that encompasses the EU’s body of laws, regulations, and policies). Moreover, a huge upswing in EU environmental regulation started in the mid-1980s as part of the drive to complete the European single

market by removing barriers to trade. Environmental policy was seen as a crucial market-correcting measure that could be developed to protect those member states with higher standards from being undercut by peers with lower standards.

The UK consequently faced a wide range of policies that it was obliged to implement.

The initial UK response to EU environmental policy requirements was obstructive. Ministers sought to block policies unless they were based on clear, unambiguous scientific evidence. But this position became increasingly untenable, and the British government’s approach shifted. Policymakers realized that the EU was increasingly involved in domestic environmental policy, and began to understand that Europeanization was a two-way process. If the UK wanted EU environmental policy to fit better with its preferred approach, more efforts were needed to upload British preferences to the EU level.

FROM TAKER TO SHAPER

In the 1990s, the British government started trying to shift the emphasis of EU environmental policy away from strict emissions limits, toward more contextual approaches to regulating pollution. Its proposals called for monitoring environmental quality over time, basing policy on tech-

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nical and financial feasibility, embracing more market-based instruments (such as eco-auditing and emissions trading), and crucially, less regulation. As British proposals were accepted at the EU level, this enabled the UK to move from being an environmental policy taker to a policy shaper. One particularly notable success was uploading a key policy principle to shape the EU's 1996 directive on Integrated Pollution Prevention and Control.

Thus the UK evolved from its early days of being an environmental laggard to emerge as a more constructive presence at the EU level. At times, it even acted as an environmental policy entrepreneur. This role was exemplified by the UK's enactment of a domestic law, the Climate Change Act (CCA), in 2008. The CCA was the first law of its kind to be adopted by any country, establishing the UK as a global leader in ambitious domestic climate legislation. The CCA bound the British government to statutory targets for reducing greenhouse gas emissions, underpinned by five-year carbon budgets. It also established an independent Climate Change Committee to offer expert advice and report on the government's progress in reaching the targets.

At the EU level, the UK was an important counterbalance to the more climate-skeptic member states, and British diplomats were increasingly recognized for their expertise in international climate negotiations. But the UK's environmental leadership credentials should not be overstated. Although the UK learned to play the EU policy game well enough that it was not always a policy taker, it frequently sought to block or water down EU environmental proposals.

Moreover, since the adoption of the CCA, a number of the flanking policies designed to put the law's ambitions into effect have been diluted or removed. The CCC has warned of a policy gap: the policies required to meet long-term targets are not in place. In 2019, when the UK committed to achieving the goal of zero net carbon emissions by 2050, the CCC was quick to point out that new policies to drastically reduce emissions and offset any remaining emissions would be required to reach that target.

Nevertheless, it is clear that the Europeanization of British environmental policy has been a major transformation. Not only has the UK evolved from the role of policy taker to that of policy shaper, but the EU has also had a profound impact on the development of British environmental policy.

MIND THE GAP

Due to the deep intertwining of EU and UK environmental policy, the Department for the Environment, Food, and Rural Affairs (Defra) was one of the British government's busiest agencies in the runup to Brexit. In 2017, a National Audit Office report warned that Defra's workload would be significantly increased by Brexit, not least because 80 percent of its work was framed by EU legislation. Defra received a massive increase in staff numbers (after years of austerity-inspired cuts) to meet the tight schedules for getting its policy portfolios "Brexit-ready."

The fact that Defra is responsible for agriculture, fisheries, and environmental policy partly explains its huge Brexit workload. The EU's Common Agricultural and Fisheries policies (the CAP and the CFP, respectively) have substantially shaped the British government's approach to—and, crucially, its funding for—these sectors. Brexit has vast implications for their future governance and economic viability.

Both the CAP and the CFP have undergone reforms intended to reduce their adverse impacts on the environment. The funding system under the CAP has subsidized large agribusinesses and encouraged overproduction and intensification of farming, with negative consequences for wildlife. The CFP has encouraged overfishing and other wasteful practices, leading to rapid depletion of fish stocks. Reform of the British agriculture and fisheries sectors is therefore seen by the government and key stakeholders as a potential way to deliver a Brexit dividend.

The government has proposed a support system for farmers and land users based on the principle of public money for public goods, such as healthy soil, clean water, and reduced carbon emissions. But exactly what this will mean in practice remains to be decided. For fisheries, the key question is what kinds of quotas the UK can negotiate with its near neighbors. These include not only the EU, but also leading independent fishing nations such as Iceland and Norway.

For both sectors, a central issue will be what kinds of trade agreements the UK is able to negotiate and with whom. Farming groups have expressed concern that a trade deal with the United States would allow imports produced under lower standards to flood the British market and undercut domestic competitors, driving farmers out of business. The specter of chlorinated American chicken being sold in British supermarkets has become a

common Brexit-related theme in the UK media. But the government has consistently promised that Brexit will not lead to lower food or animal welfare standards. It has introduced legislation to lay the groundwork for post-Brexit agriculture and fisheries policies, but these bills have been criticized by nongovernmental organizations for being vague and neglecting to set concrete commitments on the question of standards.

Another key source of concern regarding the possible impacts of Brexit is the so-called environmental governance gap. Environmental campaigners and lawyers have highlighted the fact that the EU provides a range of monitoring and enforcement mechanisms that allow for independent oversight—and the ultimate threat of financial sanctions if a government fails to implement policies effectively. Member states are required to report their progress on meeting targets, and those data are often published online. When governments fail to meet targets, they can face prosecution and the prospect of being fined by the European Court of Justice (ECJ). For example, the British government was referred to the ECJ in 2014 for its failure to implement EU air quality rules. The ECJ ruled against the government and instructed it to propose plans to meet air quality targets.

An independent British think tank, the Institute for Government, found in 2017 that while the UK has generally been a good citizen in terms of implementing EU laws, when it does end up in court, it is most often in environmental cases. So it is understandable that some are concerned that once it is unconstrained by the legal backstop provided by the European Commission and the ECJ, the British government will be less likely to implement environmental legislation effectively.

Brussels has also provided a framework of principles that are formally articulated in the EU Treaties. They require, among other things, that member states pursue a high level of environmental protection, take precautionary action, and make sure that polluters pay. When it fully disengages from the EU at the end of the 2020 transition period, the UK will no longer be legally bound by these principles.

A campaign coordinated by Greener UK, a coalition of NGOs, has demanded a response to the environmental governance gap. The Johnson government has sought to address such questions with its draft Environment Bill, which was published on January 30, 2020. The principal innovation in the bill is a plan to create an Office for Environmental

Protection (OEP), which the government has suggested will scrutinize environmental policy and law, investigate complaints, and take enforcement actions to uphold standards.

However, the plans for the OEP have faced fairly robust criticism on the grounds that its members will be appointed by, and accountable to, the secretary of state for the environment, and will therefore have limited independence. The OEP would also enjoy far narrower authority than that afforded to the European Commission and the ECJ. For example, it will not have the power to levy fines against the government. The bill does make reference to environmental principles, but compared with EU law, the wording places a weaker legal requirement on the government in terms of how it must put those principles into effect.

LEVEL PLAYING FIELDS

Another key drawback of the draft bill is that it would have limited application across the UK, since the environment is a devolved policy sector. This means that the governments of Scotland, Wales, and Northern Ireland have a degree of autonomy in deciding policy within their own territories. Under the UK's devolution settlement, which took effect in 1999 and has evolved since then, the Environment Bill would apply in its entirety to England, but different parts of the legislation would apply in different ways across the other UK nations. Regarding the OEP, there is an ongoing debate about whether Scotland will have a similar body within its own territory.

While the UK was an EU member state, the fact that British environmental policy was subject to devolved government proved relatively unproblematic, since all parts of the UK were bound to follow EU rules and regulations as a minimum floor. Individual states could diverge from those standards only by setting higher ones. Thus, Wales has a well-developed suite of sustainability policies, and Scotland has generally adopted more ambitious climate targets than the rest of the UK. Northern Ireland, by contrast, has tended to be the environmental laggard within the UK, since it has struggled to implement legislation due to the low political salience of environmental issues in the territory and a lack of trained personnel and resources to develop and implement policy.

Now that policies will no longer be decided at the EU level, key questions include whether there will continue to be common UK standards, and if so, who will decide what those standards are, and

how much divergence will be allowed. Businesses have expressed concern about whether regulatory divergence among the different governments within the UK could make trade across the country more challenging. A closely related question is whether the UK can, or indeed wants to, diverge from EU standards—and if so, in which direction.

The Scottish government has indicated its desire to keep its standards aligned with the EU's, with the scope to adjust in line with EU policy developments—so-called dynamic alignment. However, this option has been emphatically ruled out by the Johnson government, which has said it intends to diverge from EU standards. But the European Commission has indicated that it sees continued UK alignment with those standards as a condition for a trade agreement. It is difficult to gauge the sincerity of these pronouncements, since both sides are positioning themselves for forthcoming trade negotiations.

Central to the differences between their positions is the notion of the level playing field—the idea that the UK should maintain standards similar to the EU's in order to facilitate free and fair competition. A key concern for the EU, and for many British activists, is that the UK will seek to weaken workers' rights and environmental standards to make its own goods more competitive. There is great uncertainty concerning which areas of environmental policy will be linked to the level playing field. It seems likely that the British government will seek to limit consideration to product standards and tradeable products, such as waste. Yet there is a strong case, given the transboundary nature of pollution and migratory patterns of wildlife, to adopt a more environmentally inclusive definition of the level playing field—for example, to encompass nature protection or water quality.

Another important principle that is likely to be a focus of the negotiations is environmental non-regression, which requires states to refrain from weakening existing policies and standards—and has been included in recent EU trade agreements with Canada and Japan. There was a reference to non-regression in the UK's original draft withdrawal agreement, which was negotiated when Theresa May was prime minister, but it was deleted after Johnson replaced her. However, it seems likely that the EU will insist on a non-regression clause, particularly since the new European Commis-

sion president, Ursula von der Leyen, has made an ambitious package of environmental measures, dubbed the Green Deal for Europe, a key part of her agenda.

MORE THAN LIP SERVICE?

A further factor that may deter the UK government from weakening environmental policy is the increasing political salience of environmental issues, especially climate change. The combined impact of heatwaves, floods, and droughts across Europe, wildfires in Europe, the United States, and Australia, and record high global temperatures has kept climate change in the news.

Young people have walked out of their classrooms in climate strikes to take to the streets in protest of their elders' failure to take the emergency seriously. Their foremost spokesperson, Swedish teenager Greta Thunberg, has been increasingly prominent, meeting world leaders and politicians, addressing the UN and various parliaments, and drawing the ire of climate-skeptic world leaders such as Brazilian President Jair Bolsonaro, Australian Prime Minister Scott Morrison, and US President Donald Trump. Meanwhile, a new protest movement, Extinction Rebellion, has embraced bolder, disruptive climate activism, bringing parts of London to a standstill in the autumn of 2019.

Climate change was a major issue in the December 2019 UK general election: 23 percent of British voters identified it as one of their top three concerns. With climate change and environmental policy rising on the political agenda, the government is under pressure to take them seriously—or at least give the impression of doing so.

So far, Johnson has paid some lip service to the environment. He pledged in his victory speech following the election that his government would “make this country the cleanest, greenest on earth, with the most far-reaching environmental program.” However, the government has already made some decisions that suggest a degree of policy incoherence. For example, it offered tax relief to a failing airline, Flybe, even though air transport is a major contributor to greenhouse gas emissions and Johnson had recently committed to meeting the goal of net zero emissions by 2050.

Moreover, although the UK is due to host the international climate meeting in Glasgow in Novem-

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ber, it was revealed in February that little preparation has taken place. The official set to lead the British delegation and organize preparations for the meeting, former climate minister Claire Perry O'Neill, was unceremoniously fired, allegedly over performance issues. She has been replaced by former International Development Secretary Alok Sharma, who will have to move quickly to get the COP 26 preparations back on track.

BACKSLIDING FEARS

Britain's approach to environmental policy fundamentally changed because of its membership in the European Union. It is no longer the "Dirty Man of Europe" that was once known for exporting pollution to its near neighbors and would only tackle environmental problems if it was economically expedient to do so. At first, its EU experience was as a policy taker that found itself forced to implement policies poorly suited to its own regulatory tradition and style. By the 2000s, though, the UK had become a policy shaper that was able to engage more constructively with the EU, and even offer environmental leadership on occasion.

Yet now that the UK has left the EU, many campaigners and analysts are concerned that the government will be prepared to water down domestic environmental, food, and animal welfare standards to secure preferential terms of trade with other partners. Although some moves have been made

to address the environmental governance gap that Brexit has opened, the planned Office of Environmental Policy would not enjoy the independence or the power to hold the government to account that are vested in the European Commission and the European Court of Justice.

The British government's stated desire to diverge from EU standards has also heightened concerns among the environmental policy community that Boris Johnson's aspirations to green leadership are purely rhetorical. There is a widespread suspicion that Brexit will be bad for the British—and European—environment. Dispelling such doubts will require committing to the principle of environmental non-regression and implementing policies that deliver on key pledges, such as net zero carbon by 2050.

Despite Johnson's green rhetoric, the utopian ideal for many Brexit supporters is the "Singapore on Thames" model of a low-tax, deregulated economy. In these circles, a strong environmental policy is viewed as a barrier to economic growth and development. Only by putting in place concrete and meaningful policies to realize his stated vision of a clean, green Britain can the prime minister assure skeptics both in the country at large—including the devolved governments of Scotland, Wales, and Northern Ireland—and in the EU that his expressions of concern for the environment are more than greenwash. ■