



The EU Referendum and the UK Environment: An Expert Review

How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave?

Executive Summary

This booklet should be cited as: Burns, C., A. Jordan, V. Gravey, N. Berny, S. Bulmer, N. Carter, R. Cowell, J. Dutton, B. Moore S. Oberthür, S. Owens, T. Rayner, J. Scott and B. Stewart (2016) The EU Referendum and the UK Environment: An Expert Review. How has EU membership affected the UK and what might change in the event of a vote to Remain or Leave? Executive Summary
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Foreword

It is widely acknowledged that the EU has had a profound effect upon UK environmental policy, both through single market and environmental regulation, and policies in areas such as agriculture, climate change, energy and fisheries. This booklet neatly summarizes the findings of a rigorous academic analysis of the environmental effects of EU membership since 1973 and then reviews what might happen in the event of a vote to Remain or Leave. It demonstrates clearly how deeply entangled the EU and UK have become over this period. The analysis was funded by the ESRC's The UK in a Changing Europe Initiative. It helps to advance that Initiative's mission to provide impartial, research-based evidence into what promises to be a highly charged debate around the referendum. The contributors are acknowledged academic experts in their respective fields. In contributing to this review, their mission is to explain, not to campaign for either side. By making the findings of existing academic research available, their intention is to help people to make up their own minds.



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Introduction

In 2015 David Cameron announced that he would seek to renegotiate the UK's existing terms of membership with the EU and put the outcome to a vote in a national referendum. The result of that vote is hugely significant because it will shape the UK's relationship with the rest of Europe for decades to come. David Cameron has described it as “the most important decision that the British people will have to take at the ballot box in our lifetime.”

The stakes are particularly high in a mature policy area such as the environment, which has been profoundly affected by a wide array of EU policies covering agriculture, energy, fisheries, climate change and of course environmental protection. The EU is well-known for its economic activities – its single market, customs union and currency. Yet its environmental policies, which have quietly accumulated since the early 1970s, address every aspect of environmental protection from air and water pollution, through to land-use planning and climate change. Together, they constitute one of the most comprehensive bodies of environmental protection law in existence anywhere in the world today.

Because policy making in Brussels is often highly technical, its net effect on the daily lives of UK citizens and their local environments tends to escape media attention. This short booklet seeks to address that situation. First, it summarizes the main findings of a detailed review of the academic evidence on how EU membership has influenced UK policies, systems of decision making and environmental quality. Containing 14 chapters and over 60,000 words, the review documents how the EU has affected UK environmental policy and how, in turn, the UK has worked through the EU to shape wider, international thinking. It has been authored by 14 international experts, who have drawn on the findings of over 700 publications to offer an impartial and authoritative assessment of the evidence.

Second, this booklet looks forwards in order to explore what the effects might be of a vote either to remain or leave the EU. A vote to remain would mean that the UK operates in a ‘reformed’ EU. But what would that actually look like? By contrast, a vote to leave would push the UK into uncharted waters: no state has ever left the EU before. Would environmental standards be more likely to rise or fall, who would make significant decisions and what are the environmental effects likely to be?

This booklet seeks to cut through the technical complexity and the uncertainty associated with these choices by transparently exploring the risks and opportunities that are likely to arise across three main scenarios:-

- A vote to Remain – (The ‘Reformed EU option’)
- A vote to Leave – and become a member of the European Economic Area (EEA) (The ‘Norwegian option’)
- A Vote to Leave – and negotiate free trade deals with the EU (The ‘Free Trade option’)

There are infinitely more scenarios that could be considered, but these three capture the most critical choices, risks and opportunities. We hope that by presenting the evidence in this way, this booklet will give voters a much fuller insight into what is at stake on 23 June.

Charlotte Burns, Andy Jordan and Viviane Gravey



The present - what is at stake?

Environmental policy

- The EU has helped to modernize the UK's environmental policies since 1973. The style of national policy has become more preventative, underpinned by fixed standards, clear deadlines and explicit principles such as precaution and sustainability.
- The relationship between the EU and UK has been two-way. The UK has shaped EU thinking across a number of areas including wildlife protection and climate change. It has also prevented the EU from pursuing common policies on fracking and soil protection that are not perceived to be in the UK's national interests.
- The UK's experience of membership is very typical of the other 27 Member States. Their policies have also been affected by the EU, but remain essentially different because legal powers are shared between Brussels and national capitals. There has been no significant long term convergence towards an environmental 'superstate' in Brussels.

Climate change and energy policy

- The UK has sought to lead the EU towards stronger climate policies. It has repeatedly advocated higher emission reduction targets than most other Member States and has been particularly influential in shaping the EU's longer term targets for 2020 and 2030.
- The EU has sought to create a common liberalised energy market in Europe. The UK has been a strong advocate and shaper of this strategy, often against the wishes of other Member States.
- The EU has contributed greatly to the strong growth in the national renewables sector – notably wind

– in the 2000s, yet the UK maintains the right to determine its own energy mix (such as between onshore and offshore wind). Specific investments must nonetheless be planned within the parameters of EU state aid rules.

Agricultural policy

- The Common Agricultural Policy (CAP) has had an overall negative environmental impact on environmental quality, increasing pollution and accelerating the decline of some bird populations. However, it is very likely that a national agricultural policy pursued outside of the EU after 1973 would have generated similar effects.
- CAP reforms since the early 1990s have reduced some of these environmental impacts. They have, for example, limited land abandonment in nature rich areas of farmland.
- The UK has been a consistent champion of CAP reform, pioneering environmental protection measures that have been widely applied across the EU. However, the UK's ability to achieve reform has been constrained by its wider strategy to maximize the national rebate from the EU budget.

Fisheries policy

- Fish are a shared resource that span national borders. Some form of shared management would have been required had the UK not joined the EU. Experts believe that UK fish stocks had already declined substantially prior to 1973.
- For much of its history, the Common Fisheries Policy has failed to ensure economically and ecologically sustainable fishing across EU waters. But recent reforms have tackled its underlying weaknesses. The sustainability of UK fisheries has improved considerably in recent years.

- Many of the EU's environmental policies (e.g. the Habitats, Water Framework and Marine Strategy Directives) counteract some of the weaknesses of the Common Fisheries Policy, benefitting the fisheries and the marine ecosystems upon which they depend.

Land-Use planning

- Land use planning remains largely under national control. New EU legislation in this field can only be adopted if it receives the blessing of every single Member State. Non-planning policies adopted by the EU have nonetheless introduced stricter environmental standards, which influence planning decisions in a number of important ways.
- EU membership has had a number of indirect effects on planning procedures: promoting public participation; improving access to justice; and enhancing the provision of environmental information.
- Since 2000, the environmental protection role of planning has been weakened by government measures serving to reduce the scope for challenging economic development on environmental grounds. EU environmental legislation has only provided a partial bulwark against these trends, because land use planning remains one of the least Europeanised spheres of UK environment policy.

International policy

- The UK has played a prominent role in giving the EU an international environmental face. It makes important contributions that shape the EU's positions, strategy and diplomacy on critical global topics such as climate change, ozone depletion and biodiversity protection.
- The EU has acted as a major diplomatic actor in international environmental negotiations, on a par with large states such as the US and China. Working together at a global scale has allowed the Member States to project their international influence further than if they had acted alone.

- EU environmental policies have significant external effects across the globe. The EU's international standing derives from the economic strength of its single market, the ambition and legal force of its internal policies and the fact that it speaks for 28 Member States and over 500 million citizens.

National government

- The EU does not place any legal obligations on how Member States organize their domestic administrative systems. This gives the UK government a free hand to (re)structure and resource Whitehall departments, or to devolve significant legal powers to Wales, Scotland or Northern Ireland.
- Although the structures of Whitehall have been largely unaffected, EU membership has deeply affected the inner workings of individual departments. Over time, the Department for Environment, Food and Rural Affairs (DEFRA) and the Department for Energy and Climate Change (DECC), have learned to shape EU policies at the design stage.
- The negotiation of EU environmental policy is the responsibility of UK central government, but responsibility for its implementation is usually devolved. This arrangement allows some differences to emerge between the countries of the UK, but limits the scope for substantial divergences.

UK law and legal procedures

- EU law is supreme over conflicting national law and contains more robust mechanisms for its enforcement in the UK than international law. EU law confers rights on individuals that they can enforce before their domestic courts.
- The EU Court of Justice seeks to promote the full achievement of the objectives underlying EU law. UK courts are obliged, as far as possible, to interpret national law in the light of the purpose of EU law. In doing so, they are bound to follow the European Court's legal interpretations.

- While the UK has a relatively good record in complying with EU environmental law, it faces significant challenges in a number of areas including air and water pollution.

Parliament and politicians

- The supremacy of EU law has had a significant impact on the long-standing principle of national parliamentary sovereignty. British Members of the European Parliament (MEPs) have a greater capacity to shape EU environmental rules than UK Members of Parliament (MPs). The Lisbon Treaty granted UK MPs an opportunity to exercise greater influence over EU policy making, but they have not yet chosen to seize it.
- The growing importance of EU policy was a significant background factor encouraging the major UK political parties to strengthen their environmental programmes during the 1980s and 1990s.
- Party political competition on environmental topics has in part been prompted by the EU's ambitious environment and climate policy targets. Discontent with EU environmental policy has contributed to growing partisanship, especially over climate policy, since 2011-12.

Environmental groups

- EU membership has afforded greater opportunities for non-governmental organisations (NGOs) focused on environmental, health and consumer protection to influence the design of environmental policies.
- In the UK, as in other EU states, NGOs have shown varying degrees of interest and involvement in EU matters. Some have been able to exercise significant influence in Brussels.

- UK environmental groups have learnt how to use EU law to hold the UK government to account for failing to implement EU environmental policies.

Reforming EU policy

- The UK has been one of the most vocal advocates of 'better regulation' and greater subsidiarity at EU level since the early 1990s, alongside other Member States (e.g. Netherlands, Germany) and the European Commission.
- Environmental policies, including water, air or biodiversity directives have been frequently targeted under 'better regulation' plans, on the grounds that they harm national sovereignty and create unnecessary regulatory burdens.
- In the last decade EU policy processes have been extensively reshaped and the number of new policy proposals reduced, but there has been no extensive deregulation at EU level.

Environmental quality

- The EU has been a major factor driving improvements in the quality of drinking and bathing water, the reduction of landfill waste, the reduction of emissions from power stations and the protection of habitats.
- However, there continue to be challenges in relation to water pollution, urban air quality and the protection of some species. Excessive cost is often cited as a reason for the UK's poorer implementation of these policies.
- In many areas environmental quality improvements were required by both the EU and international treaty commitments. However, the legal force of international laws is generally less than that of corresponding EU rules.

The Future – What are the Implications of Remaining and Leaving?

A Vote to Remain - The 'Reformed EU Option'

Environment, agriculture, fisheries and energy did not explicitly feature in David Cameron's renegotiation process. It was mostly dominated by the discussion of benefits for migrants and the governance of the Eurozone. The new settlement secured by the PM also included a commitment to boost the EU's competitiveness. The EU is already putting this into effect in the environmental sector, through an ongoing reform of EU rules, pushed strongly by the UK government. The renegotiation did not touch upon the key aspects of the UK's environmental relationship with the EU or affect its budgetary contribution or single market access.

The key risks and opportunities in this scenario are as follows:

- Inside a 'reformed' EU, the UK government would have the opportunity to push for competitiveness reforms across a much larger number of EU environmental policy areas as part of the Commission's 'regulatory fitness checks'. Environmental NGOs are likely to perceive these as a significant risk to existing environmental standards.
- The UK government will also continue to enjoy the opportunity to set higher environmental standards than the minimum required by EU legislation. The UK will also maintain the opportunity to work through the EU's international policies to exercise global leadership, as it has done on topics such as climate change.
- Whatever the outcome of the referendum, there is a risk that deeper political discontent with the existing distribution of legal powers in the EU, could limit the UK's ability to pursue its national interest.
- UK MPs will have an opportunity to exploit the new 'red card' procedure that was agreed in the renegotiation to slow and/or stop new EU legislative initiatives - assuming that they can secure the agreement of at least 16 other EU national parliaments.

Summary

- *The environment is already a 'reforming' EU sector; this scenario is therefore very similar to the status quo.*
- *The level of **uncertainty** associated with this scenario is therefore **relatively low**.*

A Vote to Leave – The ‘Norwegian Option’

After a vote to leave, the UK would have to invoke an untested procedure (set out in Article 50 of the Treaty on European Union), which will open up a range of possibilities. One is to negotiate membership of the European Economic Area (EEA) like Norway, Iceland and Liechtenstein. The UK would first have to open negotiations to re-join the European Free Trade Area (EFTA), and then use that as a springboard for joining the EEA, which would require the unanimous agreement of the remaining 27 member states, along with Iceland, Liechtenstein and Norway. Alternatively the UK could seek to join EFTA, and then like Switzerland, negotiate a series of detailed bilateral agreements with the EU. However, these would take time to negotiate and once agreed would have to be constantly revised and updated. The package of reforms secured by the Prime Minister in February 2016 would not apply. The detailed review indicates that the EEA option is the more likely of the two and is covered in more detail below.

In the ‘Norwegian’ scenario most existing EU environmental rules would continue to apply apart from those covering bathing water, habitats and birds, and some aspects of climate legislation. The Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP) would cease to apply. As a non EU member, the UK would have to strike its own trade and investment agreements with countries outside the EU.

The key risks and opportunities in this scenario are as follows:

- The UK government would gain the opportunity to alter environmental rules and regulations in those areas not covered by the EEA, e.g. the CAP, CFP, and bathing water, habitats and birds directives. However, the government would have limited opportunity to shape EU decisions in other policy areas, including EU product standards. It would also be subject to EFTA/EEA enforcement processes.
- In international policy making, the UK would have the opportunity to negotiate on its own. Experience suggests, however, that the UK would probably align itself with EU positions that it had not fed into. In national policy making, the UK risks having to implement EU product standards to secure access to the single market.
- There is a risk to democratic governance in this scenario. Currently, UK MPs and MEPs can shape EU policies, but for EEA members those opportunities are limited. Like Norway, the UK therefore risks experiencing new democratic problems outside the inner core of the EU.
- There is an even more fundamental risk associated with this scenario: the UK can apply for EEA membership but its application could be refused by the other 30 member states if the EU wishes to dissuade other states from leaving the Union.

Summary

- *This scenario is different to the status quo.*
- *The level of **uncertainty** associated with this scenario is therefore **relatively high**.*

A Vote to Leave – The ‘Free Trade Option’

Following a vote to leave, the UK could opt to negotiate trading and diplomatic relationships with the EU on a case by case basis, outside EFTA and the EEA. These could be struck bilaterally or through the framework of the World Trade Organisation. First of all, the Article 50 procedure would have to be invoked and completed. As much EU legislation that applies in the UK has been incorporated without the adoption of national laws, the House of Commons would have to fill the regulatory gaps that would appear post-exit. Second, the UK would have to negotiate fresh access to the Single Market. In order to achieve this, many existing EU rules and regulations (especially those relating to product standards and labelling) would have to remain in force. The UK is also likely to face higher tariff levels when trading with the EU. Third, having extricated itself from the EU and established new trading arrangements with EU member states, the UK would also have to renegotiate new trade agreements with non-EU countries because the UK’s access to such countries through the EU’s Free Trade Agreements would no longer apply.

The key risks and opportunities in this scenario are as follows:

- There is much uncertainty over the time it will take to unravel all the EU commitments that have built up since 1973 and negotiate an orderly exit. Article 50 of the Treaty on European Union stipulates two years unless all 27 remaining member states agree to extend the timeline. There is a risk that the exit process becomes messy and complicated, requiring much longer than two years.

- Once out of the EU, the UK will not have to pay into the EU budget; UK politicians will have an opportunity to decide how to spend any money saved. One risk is that current beneficiaries (e.g. farmers, some nature protection schemes and geographical areas that have benefitted from relatively large transfers) receive less money overall.
- The UK Parliament will enjoy greater parliamentary sovereignty. It will have the opportunity to change national standards, although in order to trade with the EU, many existing product rules may have to remain in place. There is also a risk that environmental rules will be weakened.
- There will be new opportunities for politicians, civil servants and lawyers in renegotiating relations with the EU and other trade partners, and/or nationalizing existing EU rules. A risk is that some of the money that the UK saves from its EU budget contribution will have to be diverted to fund the nationalization of policy making and the negotiation of new international environmental agreements that are currently implemented through EU law.
- UK MPs will have an opportunity to avoid compliance pressures from the European Union Court of Justice in areas such as water and urban air quality where the UK is not improving as fast as EU requirements. They may also have an opportunity to fast track the release of genetically-modified crops and foodstuffs and the exploitation of shale gas reserves, unrestrained by EU environmental rules.

Summary

- *This scenario is very different to the status quo.*
- *The level of **uncertainty** associated with this scenario is therefore **very high**.*

A Summary: What do Remain and Leave Look Like?

		Future Scenario		
		Remain	Leave	
Autonomy of UK Decision Makers		'Reformed' EU Option	'Norwegian' Option	'Free Trade' Option
		Enjoy favourable access to the Single Market?	Yes	Yes
Contribute to the EU budget?	Yes	Yes, but at a reduced level	No	
Subject to EU fisheries and farming policies?	Yes	No	No	
Automatically subject to EU environmental rules?	Yes	No, but most would apply	No	
Subject to EU legal enforcement processes?	Yes	No, but subject to similar EFTA/EEA enforcement processes	No	
Able to shape EU rules?	Yes	No	No	
Able to raise UK standards?	Yes, in general	Yes, in general	Depends on terms of trade negotiated	
Able to lower UK standards?	Yes, except where EU rules apply	Yes, except where EU rules apply	Depends on terms of trade negotiated	
Able to shape international policies?	Remain the same	Probably decline	Probably decline	

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*The views expressed are those of the authors
not of the organisations that they represent.*

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This booklet and the full report that it summarises have been funded by the Economic and Social Science Research Council (ESRC) through its UK in a Changing Europe Initiative, and Impact Acceleration Scheme and the Higher Education Funding Council for England's Higher Education Innovation Funding.

