



The EU Referendum and the UK Environment

The Future Under a 'Hard' and a 'Soft' Brexit

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For more information about the impacts of EU environmental policy on the UK and what might change after the vote to Leave: <http://environmentEUref.blogspot.co.uk/>

Introduction

On 23rd June 2016 the UK held a referendum to decide its future relationship with the European Union. The electorate was asked if it wanted to remain or leave the EU and voted by a margin of 4% in favour of leaving (52% Leave vs 48% Remain).

The implications for the UK's environmental policy sector are potentially very far-reaching. 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. Yet the environment was barely mentioned in the referendum campaign and there is still very limited understanding of how the vote to leave will impact on this policy sector.

This report updates a detailed review of the academic evidence on how EU membership has influenced UK policies, systems of decision making and environmental quality that was produced to inform the debates leading up to the referendum (Burns et al. 2016). Our earlier work explored the possible effects of a vote either to remain or leave the EU, but now the result is clear, the demand for impartial, expert analysis of its environmental repercussions is even more important.

Will environmental standards rise or fall? Who will make significant decisions outside the EU? And what are the environmental effects likely to be? This report cuts through the technical complexity and the uncertainty associated with the UK's withdrawal from the EU by addressing these and other salient questions. It does so by transparently exploring the risks and opportunities that arise in two main scenarios:

- The UK becomes a member of the European Economic Area (EEA) (the 'Soft Brexit' option)
- The UK negotiates free trade deals with the EU and other trading partners (the 'Hard Brexit' option)

There are infinitely more scenarios that could be considered, but these two capture the most critical choices, risks and opportunities. We hope that by presenting the evidence in this way, this report will give voters a much fuller insight into what will be at stake once the UK government formally initiates its withdrawal from the EU.

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How Will the Process of Leaving the EU Work?

Now that the British public has voted to leave the EU, a key issue of concern is how the process of 'Brexit' will be managed and, what kind of 'Brexit' scenarios are available (see inter alia: Baldock et al. 2016; HMG 2016; Piris, 2016; McFadden & Tarrant, 2015 for a discussion of possible scenarios). Prior to the referendum, the UK Government (HMG 2016) identified three broad options:

- The EEA 'Norwegian Option' which would allow the UK privileged access to the Single Market but which would be accompanied by EU obligations over which the UK would have limited say.
- A negotiated bilateral option (similar to the EU's relationship with Switzerland) which would allow the UK some access to the Single Market depending upon the nature of deals negotiated, and the UK would have to abide by many Single Market regulations again with little say in the content of those regulations.
- No special bilateral agreement and no preferential access to the Single Market. UK access to the EU would be dealt with under existing WTO rules.

Some commentators suggest that the UK's likely preferred option is some kind of EEA half-way house (or as Piris (2016) puts it, 'half membership') where the UK picks and chooses which aspects of the *acquis* it is prepared to implement (*ibid.*); others suggest a looser free trade agreement (FTA) scenario underpinned by a similar pick and mix approach (Grant et al. 2016). However, these types of scenario may be unpalatable to the UK's European partners. Similarly the Swiss negotiated bilateral option is likely to be impractical for both parties (Piris 2016). On the UK side, the sheer number of treaties that would need to be negotiated is a potential obstacle. On the EU side there has been a distinct cooling in relations with Switzerland following the 2014 referendum in which Switzerland voted to reduce immigration from EU states (EurActiv 2014). Consequently, it seems more likely the UK will choose between the Norwegian or 'Soft Brexit' and the free trade or 'Hard Brexit' scenarios, or sub-elements thereof.

But how might these two scenarios unfold? There has been much debate about the procedure set out in Article 50 of the Treaty on European Union. The process of withdrawal is time-limited to two years unless the two parties agree to extend it. It is also deeply uncertain when the procedure will be triggered (Hooton and Stone 2016). It is worth noting that the UK Government (2016, p.6) suggested that whichever of the exit scenarios is pursued it could take up to a decade to negotiate a new settlement with the EU and other trading partners.

To negotiate membership of the European Economic Area (EEA) like Norway, Iceland and Liechtenstein, (the 'Soft Brexit' option) the UK would first have to open negotiations to re-join the European Free Trade Area (EFTA), and then use that as a springboard to join the EEA, which would require the unanimous agreement of the remaining 27 Member States, along with Iceland, Liechtenstein and Norway.

By contrast, the 'Hard Brexit' option is available either as a deliberate choice by the UK or as a default outcome in the event that withdrawal negotiations do not reach a satisfactory conclusion after two years and are not extended, although it would still require renegotiation with the World Trade Organisation (Beattie, 2016).

Whichever option is chosen, the UK is very likely to have to implement some of the *acquis communautaire* (body of EU rules) if it wishes to access the European market, over which the UK will have little to no say in shaping (see Baldock *et al.* 2016). Crucially, under a ‘Hard Brexit’, not only will the UK face the Common External Tariff (CET), it will also no longer benefit from the array of Free Trade Agreements to which the EU is party (Piris 2016; HMG 2016). And whilst a ‘Hard Brexit’ option would see the UK facing fewer obligations than either EU or EEA membership, UK companies will have reduced access to the Single Market in key sectors such as services (almost 80 per cent of the UK economy), and may therefore face higher costs (HMG 2016). Turning to the question of budgetary contributions, if the UK joins the EEA then it will still contribute to the EU budget albeit at a reduced level (HoC Library 2013). If the UK leaves the EU altogether then it will no longer have to contribute to the EU budget.

To summarise, on balance it seems that there are two likely ‘Brexit’ scenarios (Hard vs Soft) and in both cases some elements of the *acquis communautaire* will have to be applied in order to access the Single Market. The following sections summarise the implications arising from these two broad post-referendum scenarios for policy, governance and environmental quality.

The 'Soft Brexit' Option

Under this first exit scenario the UK would continue to enjoy access to the Single Market, and would still be subject to the majority of environmental rules, but with limited opportunity to shape its contents. EEA Members are supposed to comment collectively upon EU provisions but the operation of these processes is not consistent. However, the elements of the *acquis* pertaining to, amongst others, the Common Agricultural Policy, Common Fisheries Policy, Habitats and Birds directives, Bathing Water and element of climate policy will no longer apply to the UK.

Policy

On international policy, the UK will probably seek to pursue its own international policy preferences but will be bound to follow collective EU positions. Consequently, the UK could gain *de jure* independence whilst in fact being subject to a *de facto* alignment with wider EU international policy objectives (Oberthur 2016). Moreover, the UK leaving the EU raises the risk of changing the balance of power within the Union, which will still affect the UK, and also risks weakening the EU in international negotiations due to the diplomatic weight and strength that the UK can offer (*ibid*). On internal environmental policy, there is likely to be limited change except in relation to those areas of the *acquis* that fall outside the EEA agreement, where attempted deregulation may occur (Burns and Jordan 2016). Thus for energy and climate policy relatively limited change is anticipated, but it is worth noting that the Norwegian experience involves assuming the costs and benefits of EU membership without having a say in the rules.

On farming and the common agricultural policy, the EU will lose a major source of funding and a key liberal voice calling for reform (Gravey 2016). Similarly, at national level we are likely to see a major shake-up of the funding and regulatory regime for agriculture, particularly in relation to the devolved administrations. It seems likely from an environmental perspective that the farming lobby will oppose most greening measures and will seek to roll back policies on habitat and bird protection, and on nitrates, which are seen as expensive. Regarding fisheries, the UK is likely to be required to put in place a new fisheries management system similar to the CFP, however, this option is likely to raise risks for long term fisheries productivity and sustainability, as there is little evidence to suggest that Britain would continue to adhere to wider environmental policies currently offered by the EU (Stewart 2016). Moreover, UK access to marine environmental research funding will almost certainly decrease and there is a risk of fewer opportunities for essential international collaboration (*ibid*).

Governance

Overall there are relatively limited implications for the UK legal order and government, arising from the 'Soft Brexit' option: much will stay as is, with the most likely consequence will arise for scrutiny of EU policy, which the Norwegian experience suggests will become more reactive (Bulmer and Jordan 2016). This option may result in growing politicisation of environmental policy with renewed calls for deregulation and frustration amongst Eurosceptics over having to still implement much of the *acquis* (Carter 2016). There is a risk that pressure groups will become reactive defensive organisations that spend more of their time trying to protect hard won environmental regulations which fall outside of the 'soft Brexit' agreement (for example water,

habitat and birds regulations) (Berny 2016), and which were criticised by the Leave campaign (Neslen 2016a).

Environmental quality

On quality there are fewer risks than are associated with a complete 'Hard Brexit' but the prospects for habitats, birds, and water quality will be dependent upon the preferences of the government of the day and the impact of lobbying (Burns 2016). In the areas where the *acquis* has not shaped policy, economic deregulation has triumphed over sustainability, suggesting that leaving the EU raises potential risks for environmental policy (Owen and Cowell 2016). This raises particular questions for the future of UK farming and of its impact on the land.

The 'Hard Brexit' Option

Under this second exit option the UK can seek to negotiate access to the Single Market under free trade rules established by the WTO. The UK will not be required to contribute to the EU budget but will also not be able to benefit from shared expertise and resources provided via the European Council, the Commission or other important bodies such as the European Environment Agency. Consequently, the civil service is likely to find itself having to develop new areas of expertise (Wright & Patel, 2016), especially in the Department for Environment, Food and Rural Affairs (DEFRA) which has seen major cuts to staff in order to meet spending commitments (Kaminski and McGlone 2016). The minimum protections for the environment secured by international conventions will continue to apply but the standards and enforcement for these policies is generally weaker than would exist under the 'Soft Brexit' option (Scott 2016). The UK government will be free to reform environmental policy but many of the environmental rules adopted to facilitate the operation of the Single Market (such as product standards) will have to stay in place if the UK wants to trade with the EU. The UK government will have little say over their content. Thus the UK will become a policy-taker in many areas.

Governance

There is scope for considerable incoherence and numerous policy gaps emerging when the Article 50 negotiations conclude, as most directly applicable EU law and subordinate legislation has been implemented under the powers conferred by the European Communities Act (ECA), and will cease to apply (Scott 2016). To avoid this outcome an Act of Parliament can be passed that provides for the continued application of directly applicable and subordinate EU legislation (*ibid*), although there is on-going debate about the practicalities of replacing the many regulations that would cease to apply (e.g. Gordon & Moffat, 2016). It should be noted that the EU's transnational governance framework offers a range of important advantages in relation to environmental policy most notably the pooling of expertise, which allows the UK to draw upon expertise located elsewhere in the EU and vice versa. As noted above these opportunities are now likely to be lost.

From a government perspective, there are limited implications for the structures of government but processes and procedures across Whitehall may change (Bulmer and Jordan 2016). Notably EU-facing departments, such as DEFRA, will see a rebalancing of some of their work in the short and long-term, which may provide the opportunity for some more pro-active policy developments in domestic environmental policy. The most important implications, however, relate to the question of the supremacy of Parliament, which may be able to scrutinize policy at the pace of national rather than EU policy processes (*ibid*).

Nevertheless, it seems likely that much of the environmental *acquis* as it applies to the Single Market will still be applicable to the UK whichever exit option is pursued, which has on-going implications for the supremacy of the UK parliament, and the pace at which the UK considers relevant legislation.

On parties, now that leadership of the Conservative Party appears to have been settled it seems likely that the UK will witness an effort to weaken environmental rules as far as possible through processes of deregulation (Carter 2016). However, once its own leadership issues are resolved there is scope for the Labour Party to use the environment as an oppositional issue under such a

scenario. The Green Party however, will lose a key source of its current influence and funding that derives from having MEPs in the European Parliament (*ibid*). For pressure groups there is a similar set of challenges. Many of the UK's pressure groups benefit from EU membership by being able to access a range of resources both financial and human (expertise, networks) that will no longer be so readily available (Berny 2016). Moreover, pressure groups will no longer be able to rely upon the EU's Court of Justice as a vehicle for upholding environmental standards (*ibid*). As under the 'Soft Brexit' option they face the risk of being transformed from proactive campaigners for stronger standards at EU level into reactive defensive organisations that spend more of their time trying to protect hard won environmental regulations. This interpretation is underpinned by a pessimistic assumption about the likely attitudes and behaviour of parties and government towards the environment during and after the exit negotiations.

Policy

A major issue under a complete exit is the uncertainty that will follow, which raises the risk of uncertainty for investors and, by extension, investment in key sectors (Burns and Jordan 2016). Whilst the government's commitment to a fifth carbon budget will settle a lot of disquiet, the uncertainty already generated by the vote to Leave and lack of clear plan from the Leave camp (Shankelman 2016) appears to have dampened investment in some sectors (Neslen 2016b). The content of policies rather than their style and structure is likely to be subject to reform, but a significant roll back of policies is unlikely. One possible outcome is that standards will increasingly depend upon the political preferences of the party in government. However, regulations on transboundary air and atmospheric pollution, drinking water, chemicals and hazardous waste will probably stay in place as they derive from international commitments although these standards are generally set at a lower level with weaker enforcement mechanisms (Burns 2016; Scott 2016). Turning to the international level the UK's exit from the EU risks a 'lose-lose' scenario (Oberthur 2016). The EU will lose the UK's diplomatic capability and influence, and it will also lose one of the current most progressive forces in relation to climate change (also see Rayner and Moore (2016) on this point). From the UK's perspective, its international standing is likely to diminish, moreover given the size and regulatory power of EU, the UK would be likely to fall into line on a range of policies, although over time divergence may emerge.

On climate, the UK may now leave the EU emissions trading scheme (ETS), but could decide to put in place a national system that could be linked to the ETS – although this has never been done before (Rayner and Moore 2016). Regarding energy, the high level of integration between the UK and EU energy markets, suggests that the UK will remain entwined within those markets but with the risk of having less say over the rules governing them (Dutton 2016).

On farming and the common agricultural policy, the implications are similar to those under the 'Soft Brexit' option, thus there is a risk for the EU of losing funding from the UK and a key liberal voice calling for reform. There is a likelihood of a major shake-up of the funding and regulatory regime for UK agriculture, particularly in relation to the devolved administrations. It seems likely from an environmental perspective that the farming lobby will oppose greening measures and will seek to roll back policies on habitat and bird protection, and on nitrates, which are seen as excessively costly. As noted above the UK will be required to put in place a new fisheries management system that is likely to be similar to the current arrangements under the CFP. The

UK's exit from the EU is likely to be unfavourable for fisheries productivity and sustainability, as there is little evidence to suggest that the UK would continue to adhere to wider environmental policies currently offered by the EU. Moreover, there is a high risk that access to marine environmental research funding would decrease with knock on effects upon essential international collaboration.

Environmental quality

On quality, as for policy, the UK will continue to be bound by international commitments, which are significant for drinking water, chemicals regulation, and transboundary air and atmospheric pollution. However, as noted above there is still risk of lower standards as these international rules are generally weaker and harder to enforce than their EU equivalents. In other areas there is a risk that environmental rules will be subject to deregulatory pressures which may jeopardise the gains made in environmental quality since the 1970s and potentially limit future improvements.

Conclusion

The UK faces two broad Brexit scenarios: one Soft the other Hard. For fisheries, agriculture and bathing water the outcome is likely to be broadly similar under both these scenarios. Much of the broader environmental *acquis communautaire* will continue to apply in the UK under the ‘Soft Brexit’ option but could be largely removed under a ‘Hard Brexit’ option.

More work is required to sort through the detail of both these options. First, it is necessary to *map out the policy landscape* to determine which policies are covered by domestic legal instruments such as subordinate legislation adopted to give effect to EU laws. This is an important task because the implementing laws could still remain in place, even after the UK formally leaves the EU.

Second, research is needed to determine where the potential *policy gaps* might arise were the subordinate legislation adopted under the auspices of the European Communities Act to be rescinded. Once that work has been completed it will be necessary to decide how to respond to any gaps. Research is needed to scope out the options. Will the UK fill in gaps with domestic legislation or leave them? In relation to agriculture, there are added complexities arising from the fact that the devolved authorities will need to be fully involved in any decisions.

Third, what are the democratic implications of the ‘Soft Brexit’ option? Whilst this option has the benefit of maintaining a degree of policy stability, the risk is that policy making becomes less not more democratic (because the UK will become a policy-taker with little say in the content of EU rules adopted via the EEA).

To conclude, the vote to Leave has – at a very basic level – addressed some of the uncertainties that became apparent in the referendum debate. The UK will now leave the EU. However, the UK now needs to decide what Brexit really means. This report has outlined the key differences between two central Brexit scenarios. Each one introduces a whole range of future policy choices for British environmental policy makers. The choices they make will impact on current UK law and policy, on systems of governance in the UK and, eventually, levels of environmental quality that are currently enjoyed by UK citizens.

| | | Future scenario | | |
|--------------------------------|--|----------------------------------|---|--------------------------------------|
| | | Status Quo | Soft Brexit | Hard Brexit |
| Autonomy of UK decision makers | Enjoy favourable access to the Single Market? | Yes | Yes | No |
| | 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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