Brexit's implications for environmental policy

Britain's membership of the EU has played a crucial role in enhancing the UK's reputation on environmental policy over the last four decades.

In the 1970s Britain was widely derided as the 'Dirty Man of Europe' when it came to environmental matters. But EU membership gradually transformed the UK into an important player and an occasional global leader.

It was therefore surprising that the environment barely featured as an issue in the 2016 Brexit referendum campaign. Yet, despite this absence, green issues have enjoyed an increasingly high profile in UK politics in the years since the Brexit vote.

In 2019 there were several indicators that the environment had become a major focus for voters and politicians. The climate strikes in September of that year and the eruption of the Extinction Rebellion movement, together with plethora of droughts, floods and wildfires all threw an intense political spotlight on the environment. In the May 2019 European elections there was a 'Green surge': the Green Party increased their share of the vote by 4.2% taking them to 12.1% overall, beating the Conservatives into fifth place, and gaining five further seats to take their total number of MEPs to an all-time high of seven. In the December general election the environment was a top three issue for some 25% of UK voters, featuring prominently in all the major party manifestos.

Initial indicators were that this concern with the environment would continue and even be amplified as a result of the Covid-19 pandemic. Memes emerged during lockdown on how 'nature was healing itself' as travel stopped and economies slowed down. A possible link between poor air quality and Covid-19 outcomes further increased concerns about the links between air quality and health.

However, as the lockdown has eased, the government's focus has shifted again to getting the economy moving and new (and in some cases old) environmental challenges have emerged. The pandemic has prompted a surge in the prevalence of single use plastics and litter, especially medical waste such as masks. The government's suggestion that people should avoid public transport is likely to lead to more car journeys and a rebounding in carbon dioxide emissions: Department of Transport figures suggest that whilst car journeys have almost returned to pre-lockdown levels, public transport use is dramatically lower. Whilst in some (mostly urban) areas cycling or walking to work is an option, significant numbers of commuters live too far from their workplaces for these low carbon alternatives to be viable.

Given that the UK now faces the worst economic downturn since the 1700s the government is understandably keen to get citizens back to work. But Boris Johnson's government has recently been sending mixed signals about its environmental intentions.

A key concern of the Conservative Party since the referendum has been to dispel fears that Brexit could lead to weaker environmental, animal welfare or food standards. In July 2017, the then Environment Secretary Michael Gove, proclaimed the government was committed to a Green Brexit, and that environmental standards would not be lowered as a consequence of leaving the EU. He also provided much needed impetus to the Department of Environment Food and Rural Affairs, by successfully pushing for the introduction of the long awaited 25-year Environment Plan providing a much-needed long-term environmental improvement strategy.

But this year fresh doubts about the government's green credentials have suddenly started piling up. In February, Claire O'Neill, a senior Conservative and former MP, claimed that the Prime Minister doesn't 'get climate change'. In July, Mr Johnson complained that conservation causes construction delays, and the Environment Secretary George Eustice has since announced that the rules on environmental impact assessments will be reviewed.

All this undermines confidence in the government's commitment to maintaining environmental standards. Consequently, despite its rhetorical commitment to a Green Brexit, there is an abiding scepticism about the government's willingness and ability to deliver on this soundbite and fears are

growing about what the future holds for UK environmental policy outside of the EU during another economic downturn.

So what can we expect in the post-Brexit era on UK environmental policy? There are three key challenges that the government faces in seeking to deliver its much-vaunted Green Brexit: closing the governance gap created by EU exit; navigating the on-going challenge of the UK 'internal market'; and securing trade deals that allow the UK to maintain its environmental position and ambition. I will consider each of these in turn, concluding with some reflections on what the future may hold for UK and EU environment and climate policies as we emerge from the Covid-19 pandemic.

The environmental governance gap

A clear advantage offered by the EU as a venue for environmental policy making is that it is a transnational forum that brings states together. Environmental pollution does not respect boundaries: species migrate, and the grand environmental challenges, such as climate change, require collaborative action. The EU provides a structured forum to bring together states to address these transboundary challenges.

In addition, EU decision making tends to be insulated from day-to-day political pressures, which is particularly advantageous for environmental policy, which benefits from long-term stable policy frameworks. For example, effecting a transition to a low carbon economy means thinking through industrial strategy, energy and transport infrastructures and training the workforce with appropriate skills. All of that requires being able to think long-term with interim targets laying the ground towards an ultimate goal, such as the zero-carbon economy. Businesses need to invest over the long term and will have greater confidence doing so if they believe policy frameworks and investment plans are stable. The EU can provide such stability. Although, the downside is that policy can be difficult to update or remove if it is no longer fit for purpose.

For the UK, the way that the EU's environmental rules have developed over time has not always been easy, as the label of the 'Dirty Man of Europe' indicates. It is clear that UK policy makers failed to anticipate the likely impact of EU membership upon domestic environmental policy and crucially the cost of implementing policies devised for another type of policy-making system. Part

of the story of the Europeanisation of UK environmental policy is the story of the UK civil service and ministers learning to play the Brussels game better and to seek to influence EU policy rather than constantly, and often unsuccessfully, opposing it.

A key driver for a shift in the UK's behaviour was the ongoing threat of legal action from the European Commission and the European Court of Justice (ECJ). Consequently, a dominant concern that has emerged from Brexit debates is how to replace the environmental governance architecture that underpins the implementation and enforcement of EU policy.

Robust implementation and enforcement are indispensable tools for policy makers to secure confidence in a system of environmental governance. The ECJ and the European Commission have provided the EU with independent bodies that can hold states to account for any failure to implement policy. There is a requirement included in much environmental legislation that EU member states report their progress to the Commission, which can then publish these data, providing a layer of external public accountability. The Commission can refer states to the ECJ for consistent breaches of EU law and the ultimate sanction of a fine is available.

Whilst the UK has been taken to Court relatively rarely, experts in the field are clear that the threat of legal action has had an important deterrent effect. One immediate impact of Brexit is the removal of these independent external bodies that can hold the UK government to account if it fails to deliver upon its policy commitments.

The government has sought to address this governance gap through its Environment Bill, which is due to return to the House of Commons in September 2020. The Bill proposes long-term environmental targets, environmental improvement plans (EIPs), a policy statement on environmental principles and the creation of an Office for Environmental Protection (OEP).

The OEP has been touted by the government as an independent domestic environmental watchdog that will monitor progress on the EIPs, scrutinise public authorities' implementation of environmental law and offer advice to government. The OEP goes some way towards assuaging the fears expressed by those who lobbied for a national body to replace the functions of the ECJ

and Commission. However, it also has a number of weaknesses.

First, as noted by Colin Reid, Professor of Environmental Law at the University of Dundee and a member of the Environmental Governance sub-group of the Scottish government's Roundtable on Environment and Climate Change, 'no arrangements under domestic law can achieve the degree of independence from the national government that the EU institutions enjoy'. The OEP will be appointed by the Secretary of State for the Environment, who will also set its budget; it will then report to the government, rather than (like, say the National Audit Office) to Parliament. Nor, of course, is there anything to prevent a government with a majority abolishing it (or threatening to abolish it) in the future should it make itself too awkward. It will therefore not be able to be fully independent and may be unwilling to be overly critical of government ambition or policy.

The OEP's power to enforce environmental law will rest upon issuing decision notices with an ultimate sanction to refer cases to a form of judicial review, a process which is regarded by campaigners as time-consuming and costly. This element of the OEP has been criticised for being inadequate, and certainly compares poorly to the enforcement powers enjoyed by the ECJ. Indeed, a key challenge that emerged in debates over the creation of the OEP concerned whether fines could be effective within a UK context as any fines imposed on public authorities would simply flow back into the UK exchequer rather than out of the country and, as a result, would have a limited deterrent effect.

Second, because environmental policy is devolved the OEP is not a UK-wide body. Scotland has proposed its own equivalent, Environmental Standards Scotland (ESS), which shares some features with the OEP but will enjoy more independence by reporting to the Scottish Parliament, and will have more direct enforcement powers. In Wales the Senedd has yet to bring forward its own proposals for an equivalent Welsh body. Whilst the Environment Bill provides for the OEP's remit to extend to Northern Ireland there are on-going questions about how it will be resourced.

Hence, whilst the Environment Bill goes some way towards addressing the governance gaps created by Brexit it can never offer an equivalent level of environmental protection as is available within the EU, and differences in levels and types of enforcement may appear across the UK.

Devolution and the environment

The debates over the environmental governance illustrate another key challenge for the UK government: environmental policy is a devolved matter. Within the EU this has meant that all parts of the UK have been committed to the same minimum EU standards but the devolved nations could adopt diverging policies as long as they respected those EU minimum standards.

Typically, the devolved nations have diverged upwards taking the opportunity to innovate and push ambitious agendas suited to local environmental circumstances and priorities. Hence, Wales has created a Sustainable Development Commissioner and adopted an ambitious set of sustainability and waste policies. Scotland has gone further on climate and single use plastics than other parts of the UK. Northern Ireland, on the other hand, has tended to be an environmental laggard within the UK, struggling to meet the EU's minimum standards.

As the UK leaves the EU there is scope for each devolved nation to take different environmental policy positions. For example, the Scottish government has indicated its desire to align with the EU after Brexit and to pursue a policy of dynamic alignment whereby Scotland mirrors and adapts its own policy ambitions to keep in line with the EU.

The UK government, by contrast, has been clear that it does not intend to align English standards with the EU. The Welsh government has indicated a desire to stay aligned with the EU and to maintain standards.

The Northern Irish position is complicated by the shared land border with the Republic of Ireland and the agreement of the Northern Ireland Protocol as part of the EU Withdrawal Treaty. Under the Protocol, Northern Ireland will be subject to EU rules covering manufactured and industrial goods.

A further complication on devolution and the environment is that aspects of environmental policy that touch upon international relations and international trade are reserved to the UK government. Hence, on genetically modified organisms (GMOs), Wales and Scotland have adopted more restrictive policies than the UK government, as allowed under EU law. However, as this policy touches upon trade it will be regulated at the UK level, meaning that central

government will be able to dictate regulations in Wales and Scotland that had been decided locally before Brexit.

In an ideal world with well-functioning coordination between the UK government and its devolved partners such differences should not provide insurmountable problems. However, the existing infrastructure for resolving inter-governmental disputes, the Joint Ministerial Committee, is widely regarded as being unfit for purpose. With polls suggesting increasing support for independence in Scotland, relations between the Scottish and the UK governments are poor, which makes constructive agreement difficult to reach. Moreover, the increasingly politicised nature of the relationship between Scotland and the UK makes navigating the devolved policy space difficult for all the devolved nations.

The UK government's recent White Paper gives some indication of how it intends to regulate the UK's internal market using the principles of mutual recognition and non-discrimination, which are similar to their EU equivalents. Hence, products accepted in one part of the UK should be recognised in the other countries and not be subject to discriminatory rules.

However, as England is the largest market and economy in the UK, it seems likely that its standards will drive what happens in the devolved nations. Moreover, there is scope for some confusion over goods and services travelling between Britain and Northern Ireland, where the terms of the Northern Ireland Protocol will trump UK internal market rules, so that goods that are not produced to EU standards, cannot be marketed in Northern Ireland.

Finally, and worryingly from an environmental perspective, the White Paper is cursory in its treatment of the environment and climate change – they are mentioned only eight times and even then in fairly vague terms as part of promises to world leading standards. The myriad challenges faced in navigating the UK 's internal market are mirrored on a larger scale in the UK's on-going trade negotiations with the EU.

The environment and trade

The shape of the UK's future trade relationship with the EU and other

partners, such as the US, are likely to be key determinants of the UK's future environmental ambition. From an environmental perspective, trade is crucial. Countries that allow products into their own markets that are manufactured in countries with lower environmental standards may find domestic goods becoming uncompetitive by comparison, leading to pressure to lower prices and ultimately to weaken standards in a race to the bottom.

Almost inevitably, poorer environmental quality results from such deregulatory competition. Pollution does not respect borders and states with higher standards can still be negatively affected by pollution generated in states with lower standards.

A key driver of international environmental cooperation was the increasing recognition of the negative impacts of transboundary industrial pollution, such as acid rain. One of the main reasons for the creation of the EU's environmental policy regime was to prevent this downward spiral by creating a level playing field underpinned by common minimum standards. The EU has made it clear that it sees the level playing field (LPF) as a key condition for future trade negotiations and includes environmental standards within its definition of the LPF. Environmental campaigners have also called for a principle of environmental non-regression, to be included in any future trade agreement so that current standards cannot be diluted.

The UK government has however rejected the EU's desire to apply the principles underpinning the LPF to a trade deal. Moreover, the current state of play indicates that an EU-UK trade deal is unlikely to be reached by the end of the transition period. The government continues to want a trade deal with the US, and whilst successive Secretaries of State for the Environment, and indeed the Conservative 2019 election manifesto, clearly stated that UK food and environment standards would not be weakened, recent indications are that the government will allow products such as chlorinated chickens and hormone-treated beef onto the UK market. However, these products will be subject to higher tariffs to make them less competitive, although it has been suggested that this regime may be time limited.

Most of the concern about chicken and beef has been the effect upon consumers of eating food that has been treated with particular chemicals, the implications for animal welfare and the impact upon UK farmers. But mass

industrialisation of food production also has a range of environmental effects through pollution from faeces and urine that can generate poorer air and water quality as well as greenhouse gas emissions. The long-term fear is that allowing imports of US products that are cheaper due to economies of scale and lower standards will make UK products less competitive, driving UK farmers out of business, and/or leading to pressure to weaken standards here with a range of negative economic, social, and environmental impacts.

Moreover, the government's apparent willingness to now accept US products despite earlier promises suggests that the long-held fears of the environment lobby that Brexit could herald a move to weaken regulations were well-founded and will heighten cynicism about how the government plans to deliver 'Green Brexit'.

New normal?

As the Covid-19 pandemic has unfolded there has been an increasing focus upon what the 'new normal' will look like. Predictions have ranged from dire economic recession to more positive visions of increased home-working and time spent with loved ones as people re-evaluate what is important to them. One discourse has focused upon rethinking our economic model to make it more environmentally benign and able to achieve net zero by 2050. This discourse marries the increased salience of the environment that emerged in 2019 with the narrative that now is the time to rethink our lifestyles and that plans to kick start the economy should focus upon a green recovery.

Rishi Sunak, the Chancellor of the Exchequer, tried to capture this dynamic in his July budget with a £3 billion green investment plan. The main planks of the plan rest upon making homes, schools, and hospitals more energy efficient and upon creating new green jobs. However, these plans have been criticised as lacking ambition, particularly when compared to the more generous green recovery plans in Germany and France. As elsewhere, the government has more work to do to demonstrate that it is genuinely committed to protecting the environment.

Moreover, it is also clear that the government faces a range of competing priorities. For example, in the so-called red-wall areas – traditional Labour seats taken by Conservatives in the general election – aviation manufacturing

has been negatively affected by the pandemic. The government therefore faces some difficult choices: its levelling-up agenda would suggest supporting these industries to protect jobs, but aviation is a major contributor to greenhouse gas emissions and such a move would run counter to the goal of securing a green recovery.

Conclusion

A key concern of the Conservative Party since the referendum has been to dispel concerns that Brexit could lead to weaker environmental, animal welfare or food standards. Green Brexit has been a slogan championed by Theresa May and Boris Johnson to ward off criticism from environmental and non-governmental organisations and to dispel fears of what leaving the EU will mean for the environment.

The Environment Bill does, indeed, go some way to delivering some elements of Green Brexit and should be adopted as a matter of urgency before the end of the transition period. However, by digging up de-regulatory tropes about newts, and breaking commitments on food standards the government has heightened fears long entertained by environmental commentators and campaigners that, outside the EU, the government will seek to weaken environmental ambition.

Looking ahead there are some key litmus tests that will indicate how seriously the government takes the environment and how committed it is to creating 'world-beating' environmental policy.

First, the delayed national infrastructure strategy can be used to reassure environmentalists that the government is serious about funding a green recovery by, among other things, investing in making social housing more energy efficient, in renewables, in other element of carbon transition and in public transport.

Second, future trade deals should include environmental guarantees that existing standards will not be traded off to secure a better deal via a non-regression principle.

Third, the government needs to throw its full weight behind successful

management of the postponed international climate change meeting, COP26. Commitments made to secure genuine reductions in carbon emissions ahead of the conference are likely to be critical.

Lip service to environmental ideals is all very well. But delivering genuinely world-beating legislation that can lead to a low carbon transition, protect biodiversity, and deliver clean air to reduce pollution-associated health risks requires careful, considered, properly-costed and ambitious policies from serious politicians who are prepared to cooperate with like-minded governments.

By Charlotte Burns, Research Leader of Brexit & Environment research network at The UK in a Changing Europe and Professor of Politics, University of Sheffield.

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