



QUEEN'S
UNIVERSITY
BELFAST

Queen's on Brexit

A series of Research Briefing Papers discussing aspects of Brexit from QPol at Queen's University Belfast

Briefing
Paper

1

Brexit and the environment: Challenges and opportunities for the UK and Northern Ireland

October 2017

Dr Viviane Gravey
School of History, Anthropology, Philosophy and Politics

Introduction

The Environment Secretary, Michael Gove, has announced his intention to establish post-Brexit Britain as "*the home of the highest environmental standards*". How likely is it that his vision will be fulfilled in the UK as a whole, and, more specifically, in Northern Ireland? As policymakers start planning the UK's post-Brexit future, it is vital that they are fully aware of the key challenges and opportunities that lie ahead with regard to environmental regulation, governance, and enforcement.

For the UK, some environmental law will be difficult to roll forward into domestic law, while maintaining good environmental governance could pose one of the biggest challenges.

For Northern Ireland, there are additional considerations, such as, the extent to which the devolved administrations will be permitted to diverge from UK-wide rules, and the impact on Northern Ireland's border with the Republic of Ireland.

Background

EU membership has been critical in shaping modern environmental policy in the UK. Prior to joining the EU, the UK was actually one of the first EU states to develop its own environmental policy. But that early policy was very different to the much more rigorous and wide-reaching body of EU-led environmental policy which we have now.

Before joining the EU, UK environmental policy was reactive rather than preventative; acceptable levels of pollution were negotiated locally with no fixed standards, and the aim was to limit the impact of pollution on the environment, rather than to reduce it at source.

By contrast, EU membership has provided the UK with clear environmental standards, fixed deadlines, access to information and justice in environmental matters. It has also supplied a set of fundamental principles: the precautionary principle, sustainability, and the polluter pays principle (Burns, Jordan, Gravey, et al. 2016).

As policymakers start planning the UK's post-Brexit future, it is vital that they are fully aware of the key challenges and opportunities that lie ahead with regard to environmental regulation, governance, and enforcement.

UK-wide challenges

How much EU law will still apply?

This is not an easy question to answer; a 'hard' Brexit would provide the UK with the maximum amount of flexibility in terms of whether or not it decides to adopt existing EU regulation. Under a 'soft' Brexit it is likely that most EU environmental legislation would continue to apply, particularly if the UK stays in the European Economic Area ('Single Market'). Table 1 provides an overview of the degree of UK policy autonomy offered by different scenarios, including the status quo.

Table 1: Hard v. Soft Brexit scenarios (from Burns, Jordan & Gravey 2016)

		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 projects?	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

Whether we end up with a 'hard' or a 'soft' Brexit, EU environmental law will still have considerable impact on the UK's environmental policy and regulation, as importers have to comply with many EU environmental product and process standards when they trade with the EU (Burns, Jordan & Gravey 2016). Hence, the more the UK chooses to diverge from EU environmental law, the greater the barriers for UK-EU trade.

One example is the impact of the EU's 2006 [REACH Regulation](#). Many manufacturers in the United States have made their supply chains 'REACH compliant' to avoid the cost of operating different production lines for EU and non-EU markets (Bradford 2012), UK manufacturers may have to do the same.

Under a 'soft' Brexit it is likely that most EU environmental legislation would continue to apply, particularly if the UK stays in the European Economic Area.

How easy will it be to transition from EU to UK law?

One in four pieces of EU legislation fall under the remit of the [Department for Environment, Food and Rural Affairs](#) (DEFRA).

That represents a total of some 1,200 different laws. The former DEFRA Secretary of State, Andrea Leadsom admitted that converting EU legislation into UK law would not be a straightforward process. While approximately two thirds of EU environmental law may be relatively easy to transpose, the remaining third includes provisions such as reporting requirements to the Commission – which will no longer apply – making the transposition more challenging ([Environmental Audit Committee 2017](#)).

Furthermore, the civil service faces clear capacity challenges to deliver Brexit. DEFRA saw its core staff depleted by two thirds (a loss of 4,000 jobs) since 2005 - ten times more than the jobs created in DEFRA since Brexit. Beyond staff numbers, questions of expertise remain: over the next few years, DEFRA and its devolved counterparts will have to be transformed from departments implementing EU policies to departments developing UK and devolved policies, which require different skill sets.

What else needs to be considered?

Maintaining environmental standards involves more than simply having the right laws and regulations in place; a large and multifaceted regulatory infrastructure needs to be replaced to ensure that the law is followed and standards adhered to. The UK will now need its own version of this regulatory infrastructure, unless it is able to opt in to continue using European structures (such as the European Environmental Agency or sector-specific agencies covering chemicals or food safety). Examples of the key 'governance gaps' which need to be addressed include:

- **The reporting processes** – what will replace the current common EU regulatory infrastructure?
- **EU law offers recourse to justice.** The European Commission is an independent implementation watchdog and, as EU environmental law is binding on the UK, the Government can be taken to court (both in the UK and at EU level) if it fails to meet its environmental targets. NGOs and environmental lawyers have argued that judicial review as it exists under UK law – the Government's favoured replacement – would not be satisfactory.

Specific challenges for Northern Ireland

Devolved administration responsibilities – where now?

At present DEFRA and the UK's three devolved administrations are able to implement the same EU rules in different ways; this is due to the fact that certain powers or 'competences' have been devolved to Scotland, Wales and Northern Ireland. These include environment, agriculture and fisheries policy.

Repatriating EU law to the UK – the purpose of the EU Withdrawal Bill – raises fundamental questions about who is 'taking back control'. Should Westminster or the devolved nations assume responsibility for currently devolved issues such as the environment? The UK Government's favoured option is to transfer power to Westminster in order to limit divergence between UK nations' policies. The Welsh and Scottish Governments have described this option as a '[naked power grab](#)'.

Furthermore, where common UK standards and frameworks would be useful – for example to make trade easier and to avoid a 'race to the bottom' – there is disagreement as to whether such frameworks should be decided in Westminster (as suggested by the UK Government), or jointly between the four governments (as called for by the Welsh government).

These two questions highlight growing tensions between the central and devolved administrations, at a time where a smooth transition of environmental legislation and standards requires seamless co-ordination between all UK administrations.

What about the Irish border?

The border between Northern Ireland and the Republic of Ireland will be a critical challenge for policymakers when re-shaping environmental governance post-Brexit. While Brexit provides the UK with the opportunity to diverge from EU law, any deviation in environmental standards will create complications across the Irish border.

One example is waste. Differing rules and costs for waste management between Northern Ireland and the Republic of Ireland have already fuelled waste smuggling in the past: a price-hike for the cost of landfill in the Republic of Ireland in the early 2000s led to an estimated 250,000 tonnes of waste being illegally dumped in Northern Ireland. A cross-border repatriation plan was established under the auspices of the 2006 EU Shipment of Waste Regulation and should be completed by 2018 ([Northern Ireland Assembly 2016](#)). [Illegal waste shipment across the border continues](#) however and is likely to increase after Brexit as any divergence in waste rules between the two jurisdictions would create new opportunities for smuggling, while reduced tools for cross-border cooperation (such as the UK leaving the European Arrest Warrant scheme) would make it harder to tackle illegal activities at the border ([House of Lords EU Committee 2016](#)).

There will be a need for continued and, ideally, strengthened, north-south mechanisms that will manage shared resources, despite the absence of common EU rules making this more complex.

A key example of cross-border cooperation is the management of water quality and resources in river basins. To meet the requirements of the EU's Water Framework Directive, Northern Ireland and the Republic of Ireland have jointly established three cross-border international River Basin Districts, each of which has its own Management Plan that must be implemented by relevant agencies [in the respective jurisdictions](#).

The future of these bodies (and of the Loughs Agency, a cross-border body set up to oversee the still-contested Lough Foyle and Lough Carlingford) is uncertain ([Northern Ireland Environment Link 2017](#)).

Conclusion

The UK faces a number of challenges if it wishes to deliver Michael Gove's promise of a 'Green Brexit' and Northern Ireland's devolved status and border with the Irish Republic present additional challenges. These will need to be addressed with considerable care if policymakers wish to avoid Brexit leading to significant adverse impacts on Northern Ireland's environment.

Dr Viviane Gravey is a co-investigator in the ESRC-funded project "Brexit and the Repoliticisation of UK Environmental Governance", a UK-wide project (Cardiff, York, UEA, Dundee, Queen's University Belfast), leading the Northern Irish dimension of the project. The project investigates potential divergence, dismantling and contestation in UK environmental policy and governance following the vote to leave the European Union.

Information about the project can be found at www.brexitenvironment.co.uk

Contact:

Email: v.gravey@qub.ac.uk

Phone: +44 (0)28 9097 1316

References

Bradford, A., 2012. [The Brussels effect. Northwestern University Law Review](#) 107(1), pp.1–68.

Burns, C., Jordan, A., Gravey, V., et al., 2016. [The EU Referendum and the UK Environment: An Expert Review](#). p.168.

Burns, C., Jordan, A., Gravey, V., 2016. [The EU Referendum and the UK Environment: the Future under a 'Hard' and a 'Soft' Brexit](#). p16.

Environmental Audit Committee, 2017. [The Future of the Natural Environment after the EU Referendum](#). p.55.

House of Lords EU Committee, 2016. [Brexit: UK-Irish Relations](#). p.80.

Northern Ireland Assembly, 2016. [Background paper on Waste Management in Northern Ireland](#). p.27.

Northern Ireland Environment Link, 2017. [Written Evidence submitted by Northern Ireland Environment Link for the Northern Ireland Affairs Committee's inquiry into the future of the land border with the Republic of Ireland \(BDR0030\)](#). p.13.



Queen's University Belfast
University Road
Belfast
BT7 1NN
Northern Ireland
United Kingdom

QPol Policy Engagement at Queen's
w: www.qub.ac.uk/brexit
e: qpol@qub.ac.uk

 @QPolAtQueens