

Brexit and Environment Policy: The Seven Key Battlegrounds

Leaked drafts of the government's 25-year environment strategy maintain the bullish stance of the recent White Paper on leaving the EU, namely that Brexit is *an opportunity to develop over time a comprehensive approach to improving our environment in a way that is fit for our specific needs*.

This continues the narrative not just that environment policy isn't a priority element of the negotiations, but also that little will change in the short term. And yet, as the multi-dimensional poker game that is Brexit unfolds, decisions made over the next two years will have significant implications for the environment policy that emerges. Seven separate but overlapping battlegrounds in particular spring to mind:

1. The EU-UK trade deal

It has been clear from the start that equivalent environmental product standards will be a non-negotiable prerequisite for UK exporters who want to continue to sell into the EU market. This means vertical, industry-specific, (e.g. automobile) legislation, horizontal (e.g. eco-design) legislation as well as anything affecting component elements (chemicals etc).

But will the red lines end there? The European Parliament in its reaction to Article 50 called for the EU-UK free trade agreement to *encompass safeguards against unfair competitive advantages including environmental dumping*. In other words they might look to impose restrictions on any kind of policy divergence they deem to be regulatory undercutting. A high profile case in point might be use of the Precautionary Principle (in R&D), but could extend as far as energy efficiency in manufacture and even taxation.

2. The Agencies

The final deal will define the UK's relationship with the 40+ EU agencies and accompanying EU programmes. The Government's white paper on Brexit stated that after leaving the EU and the Single Market *we will not be required to make vast contributions to the EU budget*, though it also acknowledged that *there may be European programmes in which we might want to participate*.

'Participation' is a loaded term however. While some agencies, like the European Environment Agency, are mainly pools of economic and expert resource, others, like the European Chemicals Agency, have significant soft law powers (in the form of guidance) whose decisions can be brought before the European Court of Justice – a level of interference the government has made clear it will not accept.

3. The Bill

Membership of these agencies will come at a cost – a long-term 'maintenance' arrangement to be agreed alongside the divorce bill, the final amount being a sliding scale that reflects the level of access the UK decides it wants to enjoy. There is a flip side of course, that in the event of a hard Brexit, the UK may demand reimbursement for its fair share of what are essentially economic assets in the final settlement.

There is also the question about the extent to which the UK will be bound by decisions by the European Court of Justice made after Brexit regarding targets that the UK had signed up to pre-Brexit. The obvious example is the 2020 air quality target that the UK is set to miss by some margin, however there are also pending decisions about renewable energy and recycling targets which might incur a fine.

4. Primary legislation

At a domestic level it is estimated that as many as 13 Acts of Parliament will have to be steered through the Commons and Lords alongside the Great Repeal Bill. This "Primary legislation" will focus on areas where new policies and administrative processes are required after Britain leaves the EU – especially immigration and customs where new frameworks need to be built from scratch. This Primary Legislation will undergo significant scrutiny through both Houses of Parliament.



Departments have been asked to scour the Acquis Communautaire and advise on where urgent and wholesale reform requiring a government bill is needed. Nuclear safety, chemicals and agriculture are all possible candidates for new bills, however the government be resisting calls for an Environmental Protection Act or similar overhaul of laws on [clean air](#) and the [wider environment](#) in the immediate term at least - although a draft air quality plan is due to appear by 24 April.

5. Secondary Legislation

Much of the focus will be on the thousands of pages of EU law, much of it environmental, where the government argues that substantive policy change is not needed, but rather a 'correction' to preserve legislative and policy stability leading up to March 2019. For environment policy, the correction will reflect the sudden change in institutional responsibilities and authorities, the legal status and enforcement of EU targets, the underlying regulatory justification and specific EU policy mechanisms such as the ETS.

These changes will come via differing forms of secondary legislation, which will allow a greater or lesser degree of scrutiny by Parliament depending on the how substantive the changes are. This gives considerable discretionary power to ministers, however which has alerted campaigners to the possibility that changes might be made through the backdoor with the minimum of public and political oversight. To ensure continued accountability and high standards, they are calling for a new public body that will supervise government and agency compliance with the law.

6. Trade deals

New trade deals with third countries will inevitably have environmental implications – by virtue of technical standards, mutual recognition, dispute resolution and even the unintended environmental by-products of new imports.

Currently EU trade agreements require partner governments to 'protect the environment' and the EU undertakes sustainability impact assessments to evaluate the potential impacts of a proposed agreement both in the EU and abroad. There will be pressure on the UK government to replicate this system - at the very least to draw public attention on the environmental impacts of trade agreements – especially where a deal with the US is concerned. Transparency will be in short supply however – not least in run up to 2019 when the UK is formally prevented from entering into any negotiations while it remains an EU member.

7. Devolution

And then there is Devolution. The environment is largely an area of devolved competence with diverging policy and primary legislation between the different parts of the UK. Agri-environment schemes differ between the four countries and each has their own climate change targets. The respective assemblies have already emphasised that where European law falls within devolved competence it is for them to decide which parts of it are to be preserved or repealed.

The government meanwhile will not necessarily see it this way. The subsidy/payments regime that replaces CAP will dictate substantially the environmental standards of post Brexit farming and the Treasury will resist calls for four completely different farm support systems in the UK. Then there is the trade issue – the UK government will bear sole responsibility for upholding the agreements and ensuring compliance with WTO commitments despite diverging policy regimes. An obvious headache will be GMOs, which are banned in Scotland, NI and Wales but permitted (in theory if not practice) in England.