The EU referendum and UK environmental policy

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Summary

- A number of new reports have analysed the interactions between EU and UK environmental policy, and the potential impacts of a vote to leave the EU in June. These reports include the House of Commons Environmental Audit Committee “EU and UK Environmental Policy” (April 2016), which this brief focuses on. In addition, “The potential policy and environmental consequences for the UK of a departure from the European Union” by the Institute for European Environmental Policy, was published in March 2016, having been commissioned by the RSBP, Wildlife Trust and WWF. Lastly “Burns et al (2016) The EU referendum and the UK environment: An expert review”. Was published in April 2016 by a collection of independent academics, commissioned by the independent think tank “UK in a changing Europe”.

- These reports share in common a strong recognition of the largely positive role that EU environmental policy has had on UK environmental policy in numerous areas, and the benefits that the UK has brought to EU environmental leadership. They suggest a departure would put these mutual benefits at best, in uncertain territory, at worst, at severe risk.

- The briefing, which largely covers the Environmental Audit Committee’s report but which also uses analysis from the other’s mentioned, will be of interest to all officials and councillors who are following the EU
referendum debate who wish to understand the potential ramifications of Brexit on environmental policy in the UK as a whole.

**Briefing in full**

**Background**

The environment has not been included in discussions about the renegotiation of powers between the British government and the EU. Despite this, the environment forms a critical pillar of European policy making, and significant ramifications could arise in the event of a successful leave vote. Recognising this, environmental groups, academic institutes, and parliamentary committees have produced analysis in the last few months considering the historical benefit to the UK environment of EU membership, and the potential ramifications of departure.

The most recent is a short report by the Environmental Audit Committee (EAC)– which conducted an enquiry calling a number of witnesses over the course of six public hearings, to ascertain the impact of EU policy on the UK environment, and the influence of the UK on EU policy making. It did not seek to look at the different impacts on environmental policy depending on different exit scenarios and negotiations. The IEEP’s report goes into much more detail on different departure scenarios- and was later shortened by the IEEP into a report entitled “Brexit – the implications for UK environmental policy and regulation” for the All Party Parliamentary Committee on the Environment. The expert review is an independent academic evaluation and undertakes a detailed assessment of different policy areas and exit scenarios.

**Impact of EU policy on the UK environment**

The EU first created environmental policy as far back as the 1970’s, where specific issues (such as air pollution) were deemed to cross national borders. This informal policy development was not formally enshrined in legislative power until 1987. The founding principle of this as with other policy areas in the EU was subsidiarity: that the EU should intervene only to address issues
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that cannot as successfully be tackled at the individual state level. The EU has since created a raft of legislation to govern various aspects of the natural environment, including:

- Air and water pollution;
- Waste management and recycling;
- Climate mitigation;
- Environmental impact assessment;
- The regulation of chemicals;
- Several aspects of nature conservation;
- Aspects of noise control;
- Regulation of GMOs;

In all reports, there is a general consensus that EU policy has had a materially positive effect on environmental protection in the UK over the last 30 years. EU Directives have pushed standards up faster and more thoroughly than might otherwise have been the case. The IEEP conclude that it is the EU’s combination of legal power and funding support that makes this possible. In the last ten years, EU budgetary support for environmental projects in the UK totalled £500 million. The consensus in all these reports is that less stringent targets may have been set nationally had EU legislation not come into force. The IEEP comments: “UK environmental issues are now almost certainly addressed more by EU policies than national ones”.

One area of contention is on the flexibility of implementation of EU directives. In general, NGO witnesses to the EAC inquiry suggested many Directives were not stringent enough and the UK could be much more ambitious in implementation. While small businesses in particular said some Directives are far too stringent – for example the Ocean Energy group at the Renewable Energy Association said that EIA’s could kill the emergent offshore RE industry. Importantly, the EU Directives focus on ends, but not means. In general, the EU has little impact on the style and process of policy-making and decision-making in the UK, but has significantly impacted on targets and standards that are to be met. The EAC report found that the process of
decision-making had broadly struck the right balance. Only once has the UK had to block EU overreach – in the example of electricity taxation changes.

Some examples of specific legislation are given below:

**Air and water pollution** has significantly reduced thanks to the EU air quality, bathing water quality and water quality directives. According to the IEEP, pressure from the EU has helped to ensure the measures in these Directives were actually adhered to, though the major area of continued UK infringement is in air quality.

**Land-use planning:** one area of particular interest to local government is land-use planning. This is recognised as being one of the least “Europeanised” areas of public policy, with local planning largely left to individual member states to regulate. However, the introduction of the Environmental impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives has influenced planning processes. These have introduced firmer environmental standards into the planning system, as have the Birds, Air Quality and Habitat Directives. The NPPF refers to these Directives directly: “Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements”.

**Climate and energy:** UK and EU policies have co-evolved. The EU 2020 targets set in 2007 required the UK to take a much more interventionist approach comprising new incentives and subsidies. EU policies have also served to create a longer-term framework within which the UK works – cited as a benefit for business and investors. Renewable energy targets were introduced by the Labour government in 1997, but the EU renewable energy directive in 2009 has kick-started a huge shift in deployment- benefitting many EU countries with reduced costs of technologies.

**Impact of UK on EU policy-making**

The EAC points to the ways in which the UK has been able to influence EU environmental policy making. The EU emissions trading scheme and the integrated pollution prevention and control regime were largely based on UK
precedents. Between 2009 and 2015 the UK was on the losing side of environmental issues in legislation decisions only 6% of the time. The UK can also use its strong position within the UK to block environmental legislation – Friends of the Earth suggested this was the case with the energy efficiency and fuel quality directives.

Witnesses also highlighted that UK stakeholders have a say in influencing EU policy-making – not just the government. This applies to local government too through its representative bodies. There is no doubt that environmental groups have benefitted enormously from the EU – with the IEEP commenting that “With massive memberships, money and expertise, the British groups matter in Brussels” and have managed to use EU law effectively to lobby the UK government to meet its commitments. Peter Lilley MP, EAC member, suggests later that this influence and dependence is one reason not to trust the findings of the Committee’s report.

**Impact of different exit scenarios**

The IIEP suggests that the major environmental issues and challenges for the coming decade include:

- Making further efforts to halt and reverse the continuing decline in biodiversity
- Putting in place a more circular economy, including a reduction in waste, and built in obsolesce
- Managing the seas and oceans in ways that address pollution, degradation and over exploitation of resources; and
- Building a more sustainable agriculture and food system that incorporates better soil management, reduced environmental impacts, more space for nature and less wastage.

The EAC notes that there is no specific contingency plan in the environmental policy area, were the UK to leave. There are two exit scenarios outlined by the IEEP. In both scenarios, negotiations on the terms of the departure would take at least two years- involving discussions on the inclusion of the UK in the
single market and concurrent new negotiations with non EU countries to design new trade deals. The two scenarios are:

- Vote to leave but remain in the European Economic Area (EEA). This is the Norwegian model. This requires contribution to the EU budget, and enables access to the single market. EU environmental legislation would still apply, apart from the Bathing water and Birds and Habitat Directives. Voting rights would be lost.
- Vote to leave both EU and EEA: requiring a bilateral EU trade agreement- removing the UK from budget contributions and legislation requirements, but still requiring businesses to comply with the legislation to access the single market.

The permutations of each for a range of crucial environmental policy issues is shown in the table below from the IEEP:
Source: IEEP (2016)

The similarities in argument of all of these reports is that:

- Departure from the EU, but not the EEA, does not radically change the environmental policy requirements placed on the UK and its businesses significantly – with the exception of the Bathing Quality, Birds and Habitat Directives. Some major international agreements have been ratified by the UK as an independent nation, as well as by the EU as a whole, and these would still have to be adhered to- though most offer limited enforcement pressures (eg the Bern Convention)
- Departure is likely, given the recent track record of UK government since 2000, to involve the watering down of some environmental standards in the areas where EU laws no longer apply. The IEEP comments:

“Judging by UK government responses to a range of environmental proposals from the European Commission in recent years, it seems more likely that the current government, and possibly its successors, would opt for a less ambitious approach than that adopted by the EU in a number of areas, including air pollution, recycling, and aspects of nature conservation.”

- Departure significantly reduces the UK’s ability to influence laws that it will still mostly have to abide to. The UK would be a minor outsider in policy discussions – unable to influence long-term policy direction and targets. In international negotiations, the UK would gain extra independence but would have little purchase on the EU position that has large collective strength internationally.
- Departure is risky because it is uncertain – no one knows exactly what the exit negotiations will deliver and in the short-term this uncertainty will harm green investment, business confidence and nature conservation.
Alternatives to the Common Agricultural Policy (CAP) and Common Fisheries Policy (CFP) would need to be introduced rapidly. These are the source of huge subsidies from the EU – resulting in increased risk to the agricultural sector.

The Welsh Local Government Association has come out publicly in favour of staying within the EU, and cites its laws on environmental protection as one of the reasons. Many local authorities are also able to a variety of EU funding streams (PDF document) – many of which support sustainability/environmental actions, such as the ELENA energy fund and Natura 2000. Presumably some of these funds would be in jeopardy in the event of a full withdrawal.

Critiques of the EU

Unlike the EAC report, the IIEP recognises that not all of EU policy making in this area is of positive value. It notes the significant complexity within an enlarged EU – with tensions leading to significant compromise. The case of the Eastern European bloc winning significant concessions in climate mitigation policy because of its reliance on coal is a recent example. This compromise also means some Directives are unclear in their definitions. For example the definition of waste in the Waste Directive leaves so much open to interpretation as to limit its usefulness. As mentioned above, some Directives have historically positively harmed the environment – such as the CAP and CFP. It is surprising green groups have not highlighted these more.

The EAC report contains one strong dissenting voice in the form of MP Peter Lilley. He refused to sign off the committee’s report and used his committee right to issue a response to it within the report itself (found in Annex A). The MP’s amendments were each in turn rejected by the other members of the committee. He lists a number of process and content disagreements with the committee on which he sits:

- That the witnesses chosen were not done so impartially – with almost all reflecting a pro-European political bias. That in particular, given major environmental groups dependent on funding from the EU, their opinions,
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relayed significantly in the report, cannot be trusted as “he who pays the piper calls the tune”.

• He cites a number of examples that he feels are missing from the report, including; that UK law already commits Britain to more intensive cuts in emissions than the EU as a whole post-Paris – so the UK’s extra efforts are meaningless, and the fact that the government has admitted that were it not for the EU biofuels directive, the government would abandon the growing of biofuels that have had such a negative impact on food prices.

Comment

A highly politicised discussion

It seems that discussions around the EU referendum are highly politicised. The EAC report, while based on significant numbers of witnesses’ oral and written evidence submissions, seems rather one-sided in its analysis. It should be noted though that the overall conclusions of the EAC report are broadly in line with other independent analyses that this briefing has used.

However, there is little doubt that environmental protection has vastly improved in the time that the EU has been issuing environmental directives. Only a counterfactual analysis can indicate that environmental protection is very likely to have been less thorough and less effective without the EU. Environmental groups are unanimous in their support of remaining in the EU. This conviction is arguably more to do with evidence of stronger environmental protection, than purely a reflection of the money received by green groups by the EU.

While these reports all focus on a national-level analysis, for local authorities, the stakes are also high. In general, EU environmental legislation has not affected how the UK government goes about designing policy, only affecting the targets and standards adopted. Local government is still largely responsible for implementation of policy – and has therefore had to interpret and make sense of much EU law. A leave vote could jeopardise local authority
eligible funding streams for environmental projects, and result in a watering down of the powers of local authorities to enforce environmental standards in planning and resource management decisions.

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