

UKELA Seminar

The influence of EU environmental law on UK policies; perspectives on potential changes should Britain withdraw from the EU

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Some Characteristics of EU environmental law (1)

- Based on the Treaty and principles within it.
- Informed by strategic programmes, currently 7th EAP and long term goals (numerous roadmaps).
- Sensitive to but not confined to trans-boundary issues.
- Often linked to the single market.
- In some areas responds to international obligations, conventions, influences.
- Principally in the form of directives, binding on Member States.

Some Characteristics of EU environmental law (2)

- Often defining objectives (favourable conservation status) or targets (X% of renewable energy by date Y).
- But, not infrequently requiring compliance with precise thresholds (limit values) or sometimes, means to be used (EIA).
- Numerous product standards and regulations.
- Evolving to include newer mechanisms, e.g. economic instruments.

In dynamic terms

- Steady growth to become comprehensive.
- Probably the most influential and widely applied body of environmental law in the world.
- Still being extended but now mainly in consolidation stage; much more circumspect re: new regulation.
- Measures amended and interpreted by ECJ but rarely repealed entirely.
- Confers relative stability.
- Implementation far from perfect.

Some influences from the European Union (1)

- The volume and scope of environmental policy in the UK.
- The objectives and ambition.
- Consideration of trans-boundary and pan-European issues.
- Commitment to longer term direction and sense of momentum.
- Foundation of principles in the TFEU.
- Much extended influence over other Member States.
- Access to and influence of EU agencies (European Chemicals Assembly).

Some influences from the European Union (2)

- Shift in the policy mechanisms employed e.g. environmental limit values, limits on permissible volumes.
- The legal form of policy, including adoption and implementation, inspection, reporting.
- Force of obligations on government and its agencies, exposure to ECJ judgements.
- Penalties for non-compliance and other implementation issues (e.g. Gibraltar) need to prioritise EU measures.
- More general loss of flexibility for the government e.g. over timing and levels of expenditure.

Departure Scenarios

- Many and various especially in relation to trade agreements but can be simplified.
- Join EFTA (Iceland, Switzerland, Norway, Lichtenstein).
- Join EEA (EU and EFTA members but not Switzerland).
- Seek new / different status (e.g. looking for influence on single market decisions as well as being bound by them).
- No obligation on other groupings to accept the UK.
- A more distant relationship (e.g. the Anglosphere?) outside the single market.

EFTA / EEA (1)

- EFTA only model does not involve having to comply with EU environmental law but some measures may be accepted in return for single market access (voluntary adaptation). Multiple bilateral negotiations required. No participation in EU decision making.
- EEA a closer relationship; some participation in the EU's affairs but no vote; majority of EU environmental legislation applies in EEA, mainly because of single market linkage.

EFTA / EEA (2)

- However, some important environmental law does not apply e.g. the Birds, Habitat and Bathing Water directives.
- CAP and CFP do not apply in the EEA.
- EEA Members make budget contributions to the EU (Norway £106 per capita in 2011, compares with £128 net per capita in the UK).

Balance of Competences Review

- General belief that it is in the UK interest for the EU ‘to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for The Single Market and environmental protection’.
- Those preferring national competence referred to land-use planning, noise, soil protection, flooding, environmental crime and environmental justice.
- Worries about burdens / costs on business (e.g. REACH).
- More flexibility for Member States a double edged sword.
- Support for improving implementation of existing law .

Potential themes in more “independent” UK policy (1)

- Pursuit of better regulation and less regulation; emphasise competitiveness (Cameron letter).
- Less burdens on business, including farmers.
- More aversion to high cost commitments.
- Less role for government agencies and state excursions into detail.

Potential themes in more “independent” UK policy (2)

- Reduced capacity in government departments and agencies.
- More variation between countries of the UK.
- More discretion rather than absolute standards?
- Less international engagement.
- Less need to prioritise certain EU measures?

Speculating about future UK domestic priorities

- UK climate ambitions sustained in most areas, some could increase; underpinned by domestic legislation, carbon budgets.
- Less support for renewable energy.
- Product standards: change rather little?
- Scale back air quality ambition?
- Slower progress on waste / recycling / circular economy?
- More 'flexible' approach to nature conservation?
- Less money for agriculture and perhaps for agri-environment?

Imagining a process

- Exit negotiations with EU 27 if decision is to withdraw.
- Negotiating a new deal with the EU.
- Negotiations with EEA / EFTA / other trading partners.
- Potential negotiations between UK countries.
- Continuous negotiations on several fronts over extended period.
- Transitional regime for environmental law and period to adjust.
- Likely combination of continued application of some EU measures and demise of others.

Some issues

- Need to maintain stability by measures to upholding existing legal baseline in most areas and manage transition at reasonable pace. Initially maintain EU derived measures largely as they are?
- However, a prolonged period of uncertainty likely with environmental consequences and implications for investors, including level of commitment to compliance with EU obligations / targets.
- Need to accommodate / respond to changes in EU environmental law depending on future relationship with EU.
- EU environmental law may evolve differently without the UK influenced by different institutional conditions and preferences.
- Both the CAP and CFP would cease to apply raising questions about alternative policies, levels of support for the industry, commitment to environmental goals etc.
- Possible acceleration in variations in approach between UK countries.

Readiness for upheaval?

- How would such a prolonged and profound upheaval be accommodated within the shrinking resources of the civil service machine? Widespread consultation presumably would be required.
- How would the role of the environmental agencies evolve to support this process again within a shrinking budget?
- How far would the UK seek to build capacity to deal with the additional responsibilities for domestic authorities and in the realm of international negotiations?
- When would planning begin?

Towards conclusions

- UK environmental policy has been transformed by EU membership.
- Withdrawal would create widespread uncertainty unless clear alternatives were in place.
- The counterfactual to EU membership is unclear but it would not be a reversion to the early 1970s.
- It would require a new UK vision for the environment and major effort to assure investors.
- How would ambition and drive be maintained without the influence of the EU?
- Is the scale of risk to the environment understood?



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