

Green benchmarks for Brexit

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Introduction

The UK government has promised that there will be no weakening of environmental protections after Brexit, as have the devolved administrations. The UK government has also said Brexit offers an opportunity to set a global gold standard, adopting the phrase 'Green Brexit' and repeating it with gusto. To have a hope of making this rhetoric a reality, the government must not only plug all the green gaps that Brexit opens up, but make significant improvements to the domestic environmental policy framework.

We have already published multiple briefings setting out what must be done during the process of exiting the EU to ensure a greener UK. This paper brings together that body of work, providing a consolidated framework for judging any proposal for Brexit and the policies that stem from it, whether from the UK government or from other interests within the UK.

The four green benchmarks are:

1. Higher environmental standards in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for backsliding.
2. Effective systems of enforcement of environmental law, fulfilling people's rights to environmental information, public participation, access to justice and substantive remedies.
3. Mechanisms for effective co-operation on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.
4. Trade policy that promotes high environmental standards, minimises the UK's global environmental footprint and is responsive to engagement by civil society.

The four green benchmarks in detail

In judging scenarios for the future EU-UK relationship, and related changes to domestic law, policy and institutions, we will look for well-grounded reassurance that the following outcomes remain not just possible but probable.

1. Higher environmental standards in all four countries of the UK, consistent with devolution settlements, with proper resourcing and no potential for backsliding

This requires:

- Commitments to non-regression on environmental standards to be included in domestic law and any EU-UK partnership agreement.
- Full retention of EU law into domestic law, including environmental principles such as the precautionary principle.

- Appropriate mechanisms in place for producing and updating environmental law, including technical standards and appropriate institutions that will not be subject to de-regulation targets.
- Standards higher than the current EU ones, which are enshrined in law, including through a Westminster Environment Act that secures nature's recovery and a healthy environment, and, critically:
 - Fisheries legislation and policy across the four countries of the UK that promotes environmentally sound marine management and sustainable fishing practices, both in UK coastal waters and in shared waters.
 - Agriculture legislation and policy across the four countries of the UK that promotes environmentally sound land management, based around the core principle of public money for public goods, with effective regulations and funding adequate to meet the scale of need.

2. Effective systems of enforcement of environmental law, fulfilling people's rights to environmental information, public participation, access to justice and substantive remedies

This requires:

- A system for domestic environmental governance that is at least equivalent to the role of the European Commission and the European Court of Justice (ECJ). This would need to be in place as soon as the UK leaves the ECJ's jurisdiction and must include an independent watchdog with the necessary powers, resources and expertise to hold the government to account.
- People's rights to environmental information, public participation and access to justice and remedies are fulfilled, in line with the Aarhus Convention.

3. Mechanisms for effective co-operation on the environment and environmental policy, including energy and climate change, both with the EU and within the UK

This requires:

- A commitment that the future UK-EU relationship will include:
 - continued high standards and an enforceable non-regression mechanism; and
 - continued co-operation on managing transboundary issues and international environmental leadership.
- Continued participation in key EU agencies (eg ECHA, EEA, and ACER) to facilitate close co-operation.
- Participation in relevant EU programmes, such as Natura, and environmental funding mechanisms, such as the European Investment Bank's financing of clean energy infrastructure (or equivalent domestic replacements).
- Co-operation on meeting ambitious climate targets in line with the Paris climate accord, including with regulatory alignment on cross border electricity trading to ensure cost effective decarbonisation.
- A framework that effectively supports north-south environmental co-operation between Northern Ireland and the Republic of Ireland.

- New intergovernmental mechanisms for four country co-operation within the UK, including engagement with stakeholders, with effective common frameworks where required.

4. Trade policy that promotes high environmental standards, minimises the UK's global environmental footprint and is responsive to engagement by civil society

This requires that trade policy:

- Promotes positive environmental outcomes domestically and globally, requiring all trading partners to commit fully to non-regression in high environmental standards and making implementation of environmental treaties a basic prerequisite for conducting trade.
- Includes robust and democratic procedures for the enforcement of the environmental components of trade agreements, involving ecological experts in the process.
- Avoids trade barriers for environmental goods and services, including those that are strategically important for addressing climate change.
- Establishes procedures for negotiating, agreeing and ratifying trade agreements that provide for accountability, safeguards, parliamentary scrutiny and engagement by civil society.
- Subjects all trade deals to sustainability impact assessments, both before and during the life of the agreement.

Why this matters

There are three reasons why Brexit matters for nature's recovery and a healthy environment.

First, an estimated 80 per cent of current environmental law stems from the EU, and it has provided an effective forum for tackling many of the environmental challenges we face, especially given that many are of a transboundary, often global, nature. It has robust mechanisms to motivate compliance by public authorities with agreed laws. This means that Brexit will harm our environment if the gaps it creates in protections and international co-operation are not completely addressed, whether in climate diplomacy, networks for nature conservation or enforcing air quality standards.

Second, before the EU referendum, UK wildlife was already struggling, ecosystems degrading and the planet heating up at an alarming rate. If we ignore urgent issues such as these until the Brexit process ends, we will lose precious time that we can never get back, putting green progress on pause, while environmental problems continue to get worse.

Third, Brexit is a critical juncture: a moment at which multiple futures open up and there is an opportunity for the nation to ask itself what direction the country should go in. The environment both shapes and is shaped by this conversation: environmental leadership could be at the heart of an outward facing, high standard UK, or environmental protections could be first on the scrap heap in the haste to seal a trade deal.

The difficulty of assessing Brexit-related options and deals

Brexit and its direct consequences have yet to occur, and judging its ramifications is far from straightforward. Leaving the EU and building new domestic and international arrangements involves a set of processes with multiple stages and uncertainty.

In the negotiations, the plan agreed between the UK and EU is for, first, a withdrawal agreement, then a transition period, and then a deal setting the terms of the new relationship; but a 'no deal' scenario is also quite possible, as it is the default if no agreement is reached.

Domestically, Brexit requires various pieces of new primary legislation, hundreds of associated statutory instruments, and new policy, institutions, and regulatory mechanisms. Intra-UK negotiations are also taking place between the UK and devolved governments, to determine the post-Brexit interaction of reserved and devolved powers and responsibilities. If the UK seeks to negotiate trade deals with third parties, each of those is an additional process, in addition to the process of renegotiating agreements with those countries the UK currently has trade deals with as an EU member.

Each of these processes has multiple implications for the environment and related policy areas, including agriculture, fisheries and energy. But, because so many of the outcomes will be the result of negotiations – between the UK government and the EU, other countries and devolved administrations, as well as within the UK government itself – it is very hard to predict outcomes. This difficulty is compounded because not everything is transparent, and there are plenty of unknowns. Some outcomes will not be known for several years.

Assessing Brexit's environmental implications at any point in time needs to account for this complexity and limited information. We must also recognise the current political volatility, which makes the durability of any outcome uncertain.

Conclusion

We know that environmental policy does not happen in a vacuum. Green progress is especially difficult during periods of economic crisis, or when the public feels disempowered, or when the grain of international geopolitics goes against co-operation. But we also know that the environment is the foundation of all economies, communities and nations. And it is in crisis.

We will work hard to ensure that, whatever outcome is reached at the end of the Brexit process, it moves us towards a greener UK. We call on politicians of all parties and people from all walks of life to do the same.

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