

The Implications for UK Environmental Policy of a Vote to Exit the EU

By Dr Charlotte Burns, Environment Department, University of York, expert in European Union environment policy and processes.

Abstract

The planned referendum on whether the UK should exit the European Union raises a great many questions about the UK's relationship with the European Union (EU) and of the costs and benefits of EU membership. In the field of environmental policy, perhaps more than in any other area, the EU has had an overwhelmingly positive effect. Through its EU membership the UK government has been required to put in place a host of policies with strict targets that are legally binding, and to provide regular publicly available reports upon its performance in relation to those targets. If the UK exits from the EU but remains part of the European Economic Area the huge progress made in improving the UK environment could be lost in the absence of external pressure and auditing from EU actors, particularly in the areas of habitats, birds and bathing water, whilst the UK would still be subject to a wide range of EU laws but with little influence over their content. A total withdrawal suggests a much wider erosion of environmental policy, which is perhaps the intention of the right within and without of the Conservative Party, but one which risks significant environmental damage to the UK.

Introduction

On 23rd January 2013 David Cameron gave his long-awaited European speech, in which he declared his intention to hold a referendum on British membership of the EU with a straightforward 'in/out' question. The legislation will be drafted by 2015 for a referendum to be held in 2017. In the meantime the government is conducting a balance of competences review to determine how EU legislation shapes British policy.¹ It is without doubt the case that in the field of environmental policy the EU plays a major role in shaping domestic legislation. Moreover, from an environmental perspective even contemplating leaving the European Union is an astounding piece of political folly: EU membership has led to a cleaner and healthier UK environment; and provided the business community with the opportunity to shape regulation at the European level and to pursue the competitive advantages that progressive environmental policies afford. EU membership has also provided the UK with a leadership platform on the European and International level on environmental matters. If, as advocated by some commentators, the UK joins the European Economic Area (EEA) then we

¹ see <https://www.gov.uk/review-of-the-balance-of-competences>

will no longer be subject to some important pieces of environmental regulation including the bathing waters, birds and habitats directives, and will have little say over other key areas of European regulation to which we will nevertheless remain subject, for example pollution controls on industry, energy policy, chemical safety rules or rules on product policy. In short the EU is good for our citizens, our environment, our businesses and our global standing.

What has the EU done for UK Environmental policy? The ‘dirty man’ no longer?

EU membership has had a profound impact on UK environmental policy. In the 1970s and 80s the UK earned the unattractive reputation for being the ‘Dirty Man of Europe’; we had the highest sulphur dioxide emissions in the EU and our seas were akin to open sewers as we pumped human effluent into them as part of the ‘dilute and disperse’ approach to pollution control (Rose 1990). Policy was dictated by so called ‘sound science’ with action taken only when incontrovertible damage had been proved, a policy approach that proved so damaging in the case of BSE (Patterson and Gray 2012). Moreover, policy-makers would react to problems only as they emerged, in a fragmented and ad hoc way. Perhaps most damaging though was the voluntaristic approach to regulation adopted with close relationships between policy-makers and those that they sought to regulate. Thus, policies were either implemented but targets were pitifully low, or where targets were breached legal action was rare (Lowe and Carter 1994).

EU membership consequently had a revolutionary effect upon UK environmental policy, primarily through requiring a shift in policy style and goals (e.g. see Jordan 2002; Wurzel 2005). The policies pursued via the EU by the so-called environmental pioneers, notably Germany, the Netherlands, Denmark, Sweden and Finland have driven up standards across Europe as well as acting to prevent the weakening of environmental policies. The ‘europeanisation’ of UK environmental policy has seen a re-organisation of the machinery of government and the introduction of new regulatory agencies such as the national rivers authority, and most importantly the adoption of strict emissions limits with a clear judicial process to support the implementation and enforcement of policy (Jordan 2002). Thus, today many of the most important UK environmental policies and priorities are those that have emerged via the EU. For example, thanks to the EU’s bathing water directive we have been obliged to change approaches to sewage treatment and releases of nitrates and the quality of beaches and bathing waters have improved.² Studies have shown that beach cleanliness is a key determining factor in people’s choice of beach (McKenna *et al.* 2011; Morgan 1999). Therefore cleaner beaches are more likely to attract visitors and boost local economies, delivering the classic win-win scenario of improved environmental quality and economic gain.

Our air is also cleaner: thanks to EU legislation such as the air quality framework directive and related ‘daughter’ directives we have seen our emissions of sulphur dioxide and nitrous

² <http://www.eea.europa.eu/themes/water/status-and-monitoring/state-of-bathing-water>

oxide fall significantly. Where problems do exist, UK citizens can now rely upon their rights under EU law. For example, the UK government is facing heavy fines over its failure to meet its obligations under EU air quality regulations to reduce damaging emissions.³ Without the external pressure and legal avenues afforded by EU membership it is unlikely that policy-makers would make the effort necessary to secure citizens' health, as current reluctance to address air quality in urban centres on grounds of cost testifies.⁴ Similarly, one of justifications for the ambitious targets in the climate change act under the UK carbon budgets was that the UK would be required to meet the targets anyway under EU law. The European Commission is also calling for legally binding targets for renewable energy for 2030, thereby bolstering the efforts of environmental policy actors within the UK by providing external pressure and support for progressive environmental policy in the face of calls to weaken our renewables commitments.

The EU also provides polices to protect UK wildlife under the Natura 2000 and habitats directives which oblige the government to provide protected wildlife zones. It is now well established that natural ecosystems provide a range of services in the form of flood defences, carbon sequestration, pollination, food, water and materials. Moreover, there are wider mental and physical health benefits to be wrought from maintaining natural spaces (Barton and Pretty 2010), for example, those who live within 500 m of accessible green space are 24% per cent more likely to meet recommended levels of physical activity, potentially reducing morbidity and mortality rates (Lawton *et al.* 2010). Nature protection is also popular with UK citizens. In a recent surveys, 92% of respondents said it was fairly or very important for them to have public gardens, parks, commons or other green spaces nearby⁵; 79% thought domestic biodiversity loss was a very or fairly serious problem, 47% agreed that economic development that damaged protected areas should be prohibited and 45% said that such developments should only be allowed if they were of major public interest and if damage were fully compensated.⁶ The popularity of the UK's natural spaces is further reflected in high membership of nature organisations, and generates revenue through tourists attracted to the many beautiful and as yet unspoilt areas to be found within the United Kingdom. Natura 2000 and the habitats directive consequently play a key role in maintaining natural spaces that are valued by UK citizens who wish to see them remain protected.

Ambitious European environmental policies also offer business opportunities to UK firms as they can become leaders in developing new technologies. The UK has the potential to be at the forefront of investments into carbon capture and storage and renewables in order to meet our obligations under EU law and there are clear market advantages in doing so as all industrialised nations are facing climate change and need to meet the challenges posed by the decarbonisation agenda. The Confederation of British Industry (CBI) has suggested that green business accounted for 8% of GDP, a third of UK growth in 2011-2012 and could add a

³ <http://www.clientearth.org/201303042129/news/press-releases/uk-government-faces-supreme-court-over-illegal-air-pollution-2129>

⁴ See <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmenvaud/1820/182002.htm>

⁵ <http://www.defra.gov.uk/statistics/files/Statistical-Release-13-April-2011-biodiversity1.pdf>

⁶ http://ec.europa.eu/public_opinion/flash/fl_290_en.pdf

further £20 billion to the UK economy.⁷ Indeed UK businesses played a key role in calling for ambitious domestic and European carbon targets in order to provide a more certain investment climate for industry. The UK's carbon budgets and Committee on Climate Change set an example that can inform other states within the EU and via the EU on a global level. The EU is also our largest trading partner, thus EU membership offers us access to a larger marketplace and the opportunity to trade with our neighbours under favourable terms and conditions.

Thus, the UK's most important environmental policies that keep popular tourist destinations clean and attractive, maintain our air and water quality standards and provide business opportunities for UK industries, come from our membership of the EU. Perhaps most importantly, given the transboundary nature of environmental problems, in this more than any other policy area, it makes sense to partake in European regional policy-making for both environmental and competition reasons. Only through cooperation with our European neighbours can we address forthcoming environmental challenges, such as climate change, which have wide-ranging economic and social implications. Unilateral action by one state cannot address the wide-ranging transboundary challenges that environmental policy raises. Only through participation in the EU do we as a nation stand a chance of shaping the position adopted by other key players on the environment such as China and the US.

What does the in/out question mean?

David Cameron has claimed that he wants a straightforward in/out referendum question, but the choice the British public will be asked to make is more complex. Whilst it is of course possible to ask the public if they want to leave the EU they should also be consulted on their preferences in the event that they vote 'yes' to an EU exit. One option is to pursue membership of the European Economic Area (EEA).

Joining the EEA?

The examples of Iceland, Norway, Switzerland and Liechtenstein have been held up as showing the future prospects for a UK outside the EU. These states (with the exception of Switzerland⁸) are members of the EEA and as such enjoy preferential access to the Single European Market. However, whilst EEA members do not participate in Justice and Home Affairs, Common Foreign and Security Policy, the Common Agricultural Policy, and the Common Fisheries Policy, in order to gain preferential access to the EU market they do have to abide by the *acquis communautaire* – the rules and regulations governing the operation of the single market, including many environmental rules - but with some notable and important exceptions (EEA 2011). If therefore by an in/out referendum what David Cameron actually means is that the UK will leave the EU but become a member of the EEA instead, then the implications are arguably worse from an environmental perspective. Whilst the UK will still

⁷ http://www.cbi.org.uk/media/1552876/energy_climatechangerpt_web.pdf

⁸ Switzerland is a member of the European Free Trade Area and negotiates access to the Single Market on a case-by-case basis.

have to abide by many of the same EU environmental regulations that exist today some of the most environmentally significant policies are currently excluded from the EEA environmental policies (See Annex XX, EEA 2011), specifically the directives on:

- bathing water,
- birds,
- habitats,
- shellfish waters,
- fresh waters needing protection or improvement in order to support fish life,
- and exchange of information on the quality of surface fresh water.⁹

Consequently, membership of the EEA will mean that the UK government will no longer be bound by EU laws in these areas. Currently, under the terms of EU membership EU law takes supremacy over national law requiring member states to implement EU law or face legal action. If the UK leaves the EU then the government will be free to amend or repeal the acts adopted to give effect to the EU laws that are not included in the European Economic Area Agreement. It is consequently possible that the standards of environmental protection afforded by EU membership will be weakened depending upon the preferences of the UK government and parliament.

Moreover, from a political perspective preferring EEA membership to EU membership does seem rather odd as the UK would remain subject to many of the same regulations as it is now (plus any future rules developed) but with much less influence over their content. EEA members are consulted on the content of EU laws but it is the member states of the EU that have most influence. Indeed the vast majority of EU environmental legislation is adopted by the ordinary legislative (or codecision) procedure under which legislation is increasingly negotiated informally amongst small groups of actors, EEA members are consequently unlikely to see their positions as well-represented as EU member states. Those advocating EEA membership therefore seem to be asking the British public to trade their current influence in Europe for less influence whilst having to implement many of the same rules, which seems like a poor choice. Another option would be to leave the European Union entirely without joining any of the European free trade bodies.

⁹ Council Directive 76/160/EEC of 8 December 1975 on the quality of bathing water, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters, Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life, and Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community.

Leaving the European Union entirely?

If the UK public vote to leave the EU and we do not join the EEA then from business and global standing perspectives the UK will without question be worse off. Global businesses currently located within the UK that benefit from access to the European market are likely to move their operations elsewhere in the Union if we as a state opt to leave. As noted by Roger Carr,

“UK membership (of the EU) provides unfettered access to a single market of 500 million people, which today is our largest export customer. Departure would necessitate multiple bilateral agreements, frustrate free trade and damage our export performance in the medium term. Growth in new markets, however rapid, could not compensate for the inevitable decline in European activity.”¹⁰

From an environmental perspective it seems likely that leaving the EU will see a watering down of environment policy. With the notable exception of climate change legislation, in recent times the UK has failed to play a leadership role in the environmental policy field. The UK government has sought to block strict rules limiting imports of tar sands at the European level,¹¹ tried to water down the EU energy efficiency directive,¹² and threatened to block an EU pesticide ban that will protect bees.¹³ Rhetoric from key players in the Tory party and the UK Independence Party suggests that they would like to see the clock turned back on progressive environmental policies, condemning UK citizens to poor water and air quality, and negatively affecting business throughout the UK that benefit from tourism and wider ecosystem services, and raising the prospect of an increasingly built-up countryside with fewer green spaces. Such a perspective is peculiarly short-sighted and narrow, failing to take into account both the wider economic benefits that environmental policies deliver and their popularity with the public.

Moreover, even if we were to leave the EU it seems likely that we will have to maintain some of the same EU rules in order to trade with the European Union, so we will continue to be subject to many EU standards, for example on product policy, but with no say over their content.

Renegotiation of terms of membership

David Cameron claims that his preferred option is to renegotiate the terms and conditions of EU membership and he has argued that if he is successful he will then campaign for a yes vote. Yet it seems unlikely that the other key states in Europe will countenance this kind of ‘pick and mix’ approach to policy commitments as to allow the UK to engage in such

¹⁰ <http://www.cbi.org.uk/media-centre/news-articles/2013/01/leaving-the-european-union-would-be-bad-for-britain-writes-sir-roger-carr/>

¹¹ <http://www.guardian.co.uk/environment/2011/oct/27/uk-eu-tar-sands-regulation?INTCMP=SRCH>

¹² <http://www.guardian.co.uk/environment/2012/jun/14/uk-government-eu-energy-efficiency?INTCMP=SRCH>

¹³ <http://www.guardian.co.uk/environment/2013/mar/13/owen-paterson-ban-pesticides-bees>

strategies would open a Pandora's Box – with other states rushing forward with their list of demands. Perhaps most damning is the fact that between now, and the referendum in 2017, there will be uncertainty about the future nature of the UK's regulatory framework.

Conclusion

In short, the Cameron referendum gambit is a poorly-thought through policy designed to see off his political opponents from the right with too little consideration given to the consequences of a UK exit for our environment, economy and international standing. No state has ever left the EU before so there are many unanswered questions about exactly what consequences will follow if we do so. Will we go into the EEA? Or will we go it alone? Will current EU law remain in place until repealed or amended? The phrasing of a referendum question therefore becomes crucial – in or out is simply inadequate. The options available in the event of an exit and the implications arising from each of those options need to be explained so that the British public can make an informed choice.

Form an environmental perspective, whilst it is not inevitable that an EU exit will lead to a weakening of UK environmental legislation, the frequent attempts by UK ministers to weaken progressive environmental policy at the European level, and the on-going refusal to implement important air quality law suggest that in the absence of external pressure there will be a weakening of environmental policy. Even if we become members of the EEA several crucial areas of policy are excluded from the agreement, which raises for example, the unpalatable prospect that rather than seeing a continuous improvement in bathing water quality and the provisions of useful up to date information as the latest directive is implemented we could see a return to poor water quality with little to no information provided to UK citizens. If we stay in the EU we will continue to be part of larger market place with the ability to shape its rules and norms, to have clear emission limits that are enforceable, the opportunity to drive green growth and, if we wish, to push further and faster with environmental policies¹⁴. Therefore for the sake of the health of UK citizens, the natural environment and British business interests, European Union membership remains Britain's best option.

¹⁴ In line with the EU's so-called 'environmental guarantee' (Article 193 TFEU).

References

Barton, J. and Pretty, J. (2010) 'What is the Best Dose of Nature and Green Exercise for Improving Mental Health? A Multi-Study Analysis', *Environment, Science and Technology*, 44(10):3947-55.

DEFRA (2013) *Bathing Water*, URL:

<http://www.defra.gov.uk/environment/quality/water/water-quality/bathing/>

DG Environment (2013a) *Bathing Water Quality*, URL:

http://ec.europa.eu/environment/water/water-bathing/index_en.html

DG Environment (2013b) *The Habitats Directive*, URL:

http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

Environment Agency (2013) *Revised Bathing Water Directive*, URL:

<http://www.environment-agency.gov.uk/business/regulation/107017.aspx>

EEA (2011) *Agreement of European Economic Area*,

URL: <http://www.efta.int/~media/Documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>.

Jordan, A. (2002) *The Europeanization of British Environmental Policy*, Basingstoke:

Palgrave Macmillan.

Lawton, J.H., Brotherton, P.N.M., Brown, V.K., Elphick, C., Fitter, A.H., Forshaw, J., Haddow, R.W., Hilborne, S., Leafe, R.N., Mace, G.M., Southgate, M.P., Sutherland, W.J., Tew, T.E., Varley, J., & Wynne, G.R. (2010) *Making Space for Nature: a Review of England's Wildlife Sites and Ecological Network*. Report to DEFRA.

Lowe, P. and Carter, N. (1994) 'Environmental Politics and Administrative Reform', *The Political Quarterly*, 65(3):263-274.

McKenna, J. Williams, A.T. and Cooper, A.G. (2011) 'Blue Flag or Red Herring: Do Beach Awards Encourage People to Visit Beaches?', *Tourism Management*, 32:576-588.

Morgan, R. (1999) 'Preferences and Priorities of Recreation Beach Users in Wales, UK', *Journal of Coastal Research*, 15(3): 653-667.

Natural England (2013) *Special Areas of Conservation*, URL:

<http://www.naturalengland.org.uk/ourwork/conservation/designations/sac/default.aspx>

Patterson, A. and Gray, T. (2012) 'Unprincipled? The British Government's Pragmatic Approach to the Precautionary Principle', *Environmental Politics*, 21(3): 432-450.

Rose, C. (1990) *The Dirty Man of Europe: Great British Pollution Scandal*, London: Simon and Schuster Ltd.

Wurzel, R. (2005) *Environmental Policy-Making in Britain, Germany and the European Union*, Manchester: Manchester University Press.