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What does Brexit mean for the UK's Climate Change Act?

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Abstract

This article examines the potential implications of the United Kingdom's exit from the European Union (so-called 'Brexit') for the success and survival of the country's flagship climate policy, the Climate Change Act 2008. The impact of a 'soft' and a 'hard' Brexit for the main features of the Climate Change Act are assessed, building on documentary evidence and elite interviews with key policy-makers and policy-shapers. The article argues that the long-term viability of the Climate Change Act was being threatened even before the EU referendum, and that Brexit will do little to improve this situation. Even though the existence of the Climate Change Act is not under immediate threat, a range of issues presented by Brexit risk undermining its successful implementation.

Key words: Brexit – EU referendum – Climate Change – Climate Change Act – Emissions Trading Scheme – Energy

Introduction

With the imminent departure of the United Kingdom (UK) from the European Union (EU), much work is being done to assess the impact of 'Brexit' and to investigate future policy and governance options. Although the UK's future energy and climate change relationships with the EU have received some attention, there has been no detailed analysis of the potential implications of Brexit for the UK's Climate Change Act 2008 (CCA), the country's flagship climate policy. This oversight is surprising, especially as the long-term viability of the CCA was questioned even before the EU referendum.[i] The lack of attention might stem from the assumption that the

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CCA will be unaffected by Brexit as it is a domestic piece of legislation. This is specious reasoning, however, as even the softest of Brexit scenarios will have significant ramifications for the CCA's survival and success.

The CCA was groundbreaking in two respects: it constituted the world's first attempt to make climate change targets legally binding for a government and it was passed with overwhelming cross-party support (only three MPs voted against it). The CCA sets an ambitious target of 80% greenhouse gas (GHG) emissions reduction below 1990-levels by 2050, to be achieved through five-yearly carbon budgets. Each carbon budget is set twelve years in advance, both to give sufficient long-term incentives for investors and to bind future governments to meeting emissions targets. An independent expert Committee on Climate Change (CCC) was established to provide recommendations on the amount of GHG emissions that should be permitted under each carbon budget and to monitor progress. The Government has to set out policies and proposals sufficient to meet the carbon budgets and report regularly to Parliament on progress implementing them.

In this article, the implications of both a 'soft' and a 'hard' Brexit for the CCA are assessed. For simplicity, a 'soft' Brexit is defined as retaining Single Market and European Economic Area membership and remaining in the Customs Union. A 'hard' Brexit involves falling back on World Trade Organisation (WTO) rules or negotiating a bilateral agreement with the EU. The analysis draws on documentary evidence and eleven elite interviews with key policy-makers and policy-shapers. The interviewees consisted of six politicians from across the political spectrum (Green, Labour, Liberal Democrat, Conservative and Scottish National Party), two members of the CCC and three representatives from influential environmental non-governmental organisations (ENGOs). The first section of the article outlines the domestic challenges faced by the CCA pre-referendum. The subsequent sections then outline the potential implications of the two Brexit scenarios for the main features of the CCA. The article argues that, although it is unlikely that the CCA would be repealed, a range of issues presented by Brexit risk undermining its success.

Getting rid of the 'green crap'

Created in 2008, the CCA was passed at the height of public concern for climate change and amid intense party competition and cross-party consensus on the issue. Since then the global financial crisis followed by the austerity policies of the Coalition and Conservative Governments from 2010 have seen climate change slip back down the political agenda. Climate change has also become an increasingly partisan issue, manifested in widespread opposition on the Conservative backbenches to onshore wind farms and green levies – a level of discontent that famously prompted the despairing cry from David Cameron to 'get rid of all the green crap' in response to rising energy bills.[ii] The Conservatives have evinced waning climate ambitions in recent years, weakening some of the key policies underpinning the CCA – from stopping subsidies for onshore wind and scrapping the zero carbon homes scheme, to selling off the Green Investment Bank and dismantling the Department of Energy and Climate Change. The party also strongly supported fracking in its 2017 manifesto, which critics argue would prevent the UK from shifting away from fossil fuels to renewable energy.

Importantly, the Government is unlikely to meet one of the key requirements of the CCA, because existing policies and proposals will not achieve the emission reductions required by the fourth and fifth carbon budgets (the periods of 2023-2027 and 2028-2032 respectively). The urgent need to address the 'policy gap' has been highlighted by the CCC on several occasions. In its progress report to Parliament in 2016, the CCC pointed out that current policies are likely to deliver at best only half of the required emissions reductions from 2015 to 2030.[iii] Similarly, environmental law organisation ClientEarth warned that if the government's persistent neglect of the policy gap were not addressed 'we run the risk that, in time, the Act could fail'.[iv]

Even the long overdue Clean Growth Strategy[v] – which was published in October 2017 and lays out the Government's plan to meet the fourth and fifth carbon budgets as required under the CCA – failed fully to close the policy gap, prompting ClientEarth to announce that it was considering legal action. The publication of the plan was severely delayed by the EU referendum and the 2017 general election. Yet despite having had over a year to develop the plan since the fifth carbon budget was approved in June 2016 – and despite the Department of Business, Energy and Industrial Strategy (BEIS) identifying Brexit as one of three 'significant challenges' to progress in the plan – the document includes surprisingly little detail about how Brexit might affect UK climate policies. This lack of analysis on the impact of Brexit suggests a failure to plan sufficiently for the future and provide investors and green groups with assurances about the UK's long-term strategy.

Unsurprisingly, therefore, the majority of the actors interviewed criticised the Government for not making climate change a priority and for shying away from incurring the short-term costs (and potential unpopularity) of implementing new climate policies. Three interviewees argued that climate change was indeed a priority for the Government, although they admitted that ambition could be strengthened. For example: 'Everything they have said so far suggests that it is still important to them. *Where* on their list of priorities it comes, however…' (CCC member) and 'There is rhetoric (…) but there is no meat on the bone' (ENGO representative). Nonetheless most of our interviewees believed that the cross-party consensus underpinning the creation of the CCA in 2008 had weakened. The disappointing role of the media was commented on in this respect, with several interviewees arguing that the media were failing to maintain the saliency of the issue and, according to a Liberal Democrat politician, providing a mouthpiece for the 'strongly sceptical Trumpian part of the Conservative Party'. One ENGO representative observed that: 'The whole thing [the CCA] is designed to work on the assumption that people will be listening to the Climate Change Committee, and that if the Committee said "the government has said X but it is obviously not doing anything in order to achieve it" that would cause political problems. The Climate Change Committee has been saying so this year in bold italic capital letters and it got almost no coverage.' Similarly, another ENGO representative commented that: 'The Act by itself cannot necessarily drive the level [of ambition]' – high saliency of the issue and public pressure to maintain cross-party consensus are also required. As such, the success of the CCA was already under threat before the EU referendum, as the low saliency and priority given to the issue and the growing partisan divide endangered its sustainability.

Achieving the emissions target

One of the key features of the CCA is its overall and ambitious target of 80% GHG emissions reductions by 2050. Both Brexit scenarios pose challenges to the achievement of this goal. At the most general level, negotiating and implementing any Brexit scenario could provide a substantial distraction from the urgent task of reaching the emissions target for the Government and civil service. Inaction by the government will also lead to business insecurity, and prevent the investments necessary to reach the target from taking place. The 'distraction' of Brexit was frequently mentioned in the interviews as a key challenge, and most actors feared that climate change could become even less of a government priority as a consequence.

The interviewees also voiced fears that this trend could be further aggravated if Brexit leads to a protracted economic downturn. Echoing the period following the global financial crisis, climate change is likely to become a lower priority if times are hard (though economic downturns are also associated with lower emissions). As one ENGO representative put it, climate change could become 'an unaffordable luxury'. One reason for this concern is that even under a soft Brexit, the UK stands to lose significant amounts of funding from a range of EU sources, which could undermine efforts to reach the CCA's emissions target. Most significantly, under the current EU budget (covering 2014-2020), the UK receives approximately

€5.8 billion to fund projects that support the environment and tackle climate change.[vi] Moreover, non-EU countries do not receive preferential treatment from the European Investment Bank (EIB), which indicates a further potential funding reduction for the UK's low carbon transition, as nearly 30% of EIB loans to the UK have supported energy infrastructure (amounting to over £8 billion in the past five years – double that of the Green Investment Bank).[vii] The UK is also likely to lose out on EU funding for Research and Development, from which it has been a net beneficiary. Under a harder version of Brexit, foreign investment and access to skilled workers may well diminish, potentially delaying and increasing the cost of developing infrastructure and low carbon technology.

Likewise, under a hard Brexit the UK will no longer have to follow the environmental and energy *aquis* (the body of common rights and obligations that is binding on all the EU member states), and a key external incentive for action will thus no longer apply. The CCC estimates that EU policies have contributed to around 40% of UK emissions reductions since 1990, and cover about half of the UK's potential emissions reductions to 2030. According to a CCC member, the loss of such legislation would be particularly serious for climate adaptation policies, as these are more dependent on EU law than mitigation policies, which should be largely protected through international agreements. The absence of EU Directives in these areas also means that UK businesses lose an important source of investment stability, as climate policies become vulnerable to the domestic electoral cycle instead. Furthermore, there is a concern that extant EU law will start to be dismantled or weakened post-Brexit, both through the EU Withdrawal Bill process and in the future.[viii] Several interviewees were worried that the 'Henry VIII powers' created under the EU Withdrawal Bill (allowing Ministers to edit large amounts of transferred EU legislation via secondary legislation) would prevent proper parliamentary scrutiny of legislative changes that might affect climate policies as the UK leaves the EU. For example:

> ‘The main thing is the huge amount of power that it [EU Withdrawal Bill] gives to the Government to fiddle with EU regulations, and that however good intentions might be, that gives them an awful lot of scope to get rid of awkward things that might not be noticed. If the Bill is passed through as it is, civil servants and ministers will see an opportunity to get a whole load of stuff through, most of which will not be noticed, and get rid of what are seen as inconvenient environmental rules. (…) There is a huge danger then, even if there is not an overt will to do that. There is just so much temptation because there is that window to junk a load of stuff that you do not really like, even though it might be good.’ (Liberal Democrat politician)

An associated concern is that under a hard Brexit the UK will lose an important mechanism for holding the government to account and settling disputes via the Commission and the Court of Justice of the European Union (CJEU). EU reporting and monitoring requirements have been an important means of assessing governments’ performances, and the threat of being fined by the Commission for persistent underperformance (infraction) is an important incentive for governments to stay on track with environmental obligations. However, a CCC member argued that the reporting requirements to Parliament under the CCA were critical in preventing progress from slipping and for holding the government to account, and would hopefully alleviate some of the above concerns. Yet Defra Minister Michael Gove, in his address to the Environmental Audit Committee on the 2nd November 2017, admitted that new institutions would have to be designed to replicate these EU functions and to avoid a ‘governance gap’. This adds to the already heavy workload of the UK civil service, however, and there is no guarantee that any putative new UK institutions will be as effective. The risks created by the governance gap were identified by several actors as the most significant challenge presented by Brexit.

Carbon budgets, the ETS and energy

Brexit also raises the question as to whether the UK will withdraw from the EU's Emissions Trading Scheme (ETS). Under a soft Brexit the UK would continue to be a member. However, ETS membership requires accepting the jurisdiction of the CJEU, something that Theresa May has rejected, calling it a 'red line'. Thus as the softer Brexit scenario seems improbable, it is likely that the UK will withdraw from the ETS, which poses several challenges.

For example, leaving the ETS could make it harder to reach the UK's emissions targets. Even though the UK has a domestic floor price for carbon credits (starting at around £16 per tonne of CO_2 and aiming to reach £30 per tonne by 2020) UK companies benefit from being members of the ETS as they have access to a larger potential market within which they can sell and purchase allowances, thereby reducing costs. Furthermore, exiting the ETS would entail an adjustment to the carbon budgets and a change in the way they are accounted, taking up valuable civil service time. Similarly, any UK replacement – for example a domestic emissions trading scheme or a carbon tax – would be complicated and time-consuming to establish and would raise problems of stability, scale and longevity outside a European framework. The interviewees were unanimous in lamenting the likely loss of access to the ETS. As one exclaimed: 'it's mad not to be [a member]!'

A UK departure from the ETS would also have negative consequences for the scheme itself. First, there is the difficult question of what to do with the UK's credits. As the environmental think tank E3G point out,[ix] UK-originated allowances cannot simply be expropriated or cancelled as they were bought and traded in good faith and may no longer be held by UK companies. On the other hand, if no adjustments are made, the UK's legacy carbon credits increase the amount of surplus 'hot air' in an already oversupplied system. Compensation is also costly and contentious. Leaving the ETS could therefore seriously undermine the integrity of the scheme. In addition, under both Brexit scenarios the UK will lose its political representation in EU bodies (such as the Commission, Council and European Parliament), thus reducing the pressure to reform the inefficiencies of the scheme[x] – as well as EU climate and energy policies in general. All interviewees highlighted that under either Brexit scenario this loss of representation would entail less influence for the UK not just on EU climate policy, but over international climate policy as well because the UK would no longer be a member of the EU negotiating block. This lack of influence might in turn result in the EU's climate ambitions slipping in the future, as the UK has traditionally been an important driver in this area, and a countervailing voice to less ambitious states such as Poland and Hungary. As one CCC member observed: 'We have removed from ourselves the ability to influence other countries about this business of battling with climate change with us. We will be still doing that in the international agreements, but our particular direct and effective role with our nearest neighbours will have been removed. Therefore that is a disadvantage, furious disadvantage, in the battle against climate change.'

A related issue is the UK's access to the internal energy market (IEM) post-Brexit. The IEM harmonises and liberalises energy markets across Europe, with the aim of spurring greater competition between providers and delivering cheaper and more reliable energy to countries and consumers. Remaining within the IEM keeps electricity prices down in the UK and helps meet demand, particularly for gas. However, as with ETS membership, access requires accepting the jurisdiction of the CJEU and following the EU's environmental and energy *aquis*. Brexit therefore implies the need to create a new agreement with the EU for access to the IEM. A Chatham House report in 2016 outlines the possible options for a post-Brexit energy relationship, reviewing the risks and trade-offs involved.[xi] It points out that a soft Brexit, although less disruptive as it retains access to the IEM, nonetheless comes at the cost of reduced influence and sovereignty, with the UK having to accept vast amounts of EU legislation over which it would have no say. A harder version of Brexit offers more sovereignty over energy policy, buildings, infrastructure and state aid – but at the expense of uncertainty over market access, investment and electricity prices. Either Brexit scenario thus poses challenges for the UK in gaining access to cheap, reliable, and – importantly – low carbon energy in the future, which would help it to meet the targets of the fourth and fifth carbon budgets.

The Committee on Climate Change

The final feature of the CCA is the Committee on Climate Change, which also has an Adaptation Sub-Committee that advises the Government on how to prepare for the impacts of climate change. At present the CCC is generally respected by politicians, green groups and the media, having published a range of recommendations on how the Government can meet the carbon budgets as well as reports on Government performance in implementing the CCA. It has a watchdog function and an important role in holding the Government to account on climate change. Given its popularity and the standing of its members, it is unlikely that Brexit will have a significant effect on the existence or functioning of the CCC – at least in the short to medium-term – as any Government seen to be undermining this institution would face quite serious criticism. Moreover, as a statutory committee set up through parliamentary legislation, disbanding the CCC would not be straightforward.

However, it should be remembered that despite the respect and authority the CCC commands, the existence of the policy gap demonstrates that the Government has nonetheless failed to adhere fully to its recommendations. The policy gap persists, with emissions projected to be 6% and 9.7% above the requirements of the fourth and fifth carbon budgets respectively, despite the introduction of new measures. Furthermore, the chairman of the CCC, Lord Deben, recently criticised the Government's Clean Growth Strategy for planning to use 'flexibilities' such as international carbon credits to meet the carbon budgets, instead of domestic action as the CCA intends. Similarly, the lack of media coverage of this policy gap raises the question of how influential the CCC really is. Thus the strength of the CCC is already being tested, and Brexit can only augment the challenges it faces over the longer term.

Another reason for concern is the example of the Australian Climate Change Authority, created in the image of the British CCC. Australian climate change politics has been more contentious than in Britain, and Australian climate policies remain at the lower end of ambition amongst developed countries. The Australian Climate Change Authority has struggled to influence the Government, and has had internal debates as to whether it should base its recommendations on what scientific evidence warrants or what is politically feasible – with three members resigning in protest over what they perceive to be the latter approach.[xii] If a hard version of Brexit leads to an economic downturn and climate change slips down the political agenda as a result, it is not inconceivable that the CCC will face similar debates in the future.

As such, it might be the case that the CCC is safe simply because it is not worth the trouble of abolishing. For now, however, its continued existence remains secure, provided reputable researchers continue to participate in it and well-respected and prominent figures chair and promote it. However, even such characteristics should not be taken for granted – as evinced by the Australian case. Closer to home, the mass walk out of members of the Social Mobility Commission over the Government's failure to advance the fairness agenda due to Brexit dominating the political agenda, also highlights the potential risks Brexit poses to independent bodies seeking to shape government policy.

Is it all bad news?

It is important to note that Brexit might also provide some positive opportunities for UK climate change efforts. First, being outside the EU might allow the UK to play a more innovative role in international climate change negotiations, as Norway has occasionally managed to do. Second, several actors pointed out that the reform of the EU's Common Agricultural Policy post-Brexit provides a golden opportunity to reform UK agricultural policy in a more climate-friendly direction, helping to meet both climate mitigation and adaptation goals. Third, some interviewees hypothesised that if Brexit leads to the transfer of further powers to the devolved nations, this might lead to a competition developing between the UK's nations and a 'race to the top', as Scotland and Wales have generally been more ambitious on climate change than the UK Government. Finally, and perhaps less seriously, one interviewee noted that the distraction of Brexit may prevent the Government from dismantling climate policies further.

Significantly, all the actors interviewed maintained that it was highly unlikely that any Government would overtly try to scrap the CCA, and that the main risk from Brexit related to keeping it alive and successful. The vast network of ENGOs in the UK and general acceptance amongst the majority of politicians and parties about the science of climate change meant that there would always be a 'safety net' preventing the CCA from being overturned. Moreover, the global momentum behind action on climate change and rapid technological developments in renewable energy and road transport may mean the targets will be met regardless of the poor efforts of the Government. Importantly, having the CCA is regarded as being (considerably) better than nothing, as it ensures that climate change remains on the political agenda in some shape or form. Indeed, a CCC member maintained that the CCA was in fact doing its job, as it had forced the Government to respond to the issue by, for example, publishing the Clean Growth Strategy, despite the distraction of Brexit.

Conclusions

Even the softest of Brexit scenarios poses significant challenges for the CCA. Although repeal of the CCA seems unlikely in the foreseeable future, a range of issues presented by Brexit risk undermining its success.

The loss of EU legislation, recourse to EU institutions and various sources of funding – as well as the general distraction of negotiating and implementing Brexit – means that reaching the UK's emissions target could be harder to achieve. Leaving the ETS will entail an adjustment of the carbon budget and the way it is accounted, and losing access to this scheme and the internal energy market weakens the prospects of staying within the carbon budgets (as well as the integrity of these schemes themselves). Brexit might also lead to a significant loss of influence for the UK over international and EU climate policy. Due to its popularity, the CCC does not face significant risk in the short to medium-term, though the Government's pre-Brexit failures and the example of the Australian Climate Change Authority should not encourage complacency about its long-term future.

There were signs that the Government was already wavering in its commitment to achieving the ambitious medium-term emissions reductions targets set out in the carbon budgets even before the EU referendum, and Brexit will do little to increase the salience of climate change or improve the cross-party consensus on it. Thus, even if the existence of the CCA is not under immediate threat, Brexit is almost certain to exert a negative impact on its effective implementation.

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