

Divergence in environmental policy and law post Brexit

What it means and why it matters

David Baldock

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Two strands of divergence

- Between the UK and the EU following Brexit
- Between the four countries of the UK, to a degree much enhanced by Brexit and removal of need to follow EU policy
- But restrained in certain areas by Internal Market Act 2020
- A matter of law, its enforcement, policy, practice, the role and character of institutions
- Potentially reaching from the petty to the Polar
- Increasingly becoming evident
- Potentially accelerated in England by forthcoming Bill on Brexit Opportunities

Does it matter?

- There is considerable alignment on the big issues like net zero
- However, conflicting preferences over future alignment : Scotland v England
- And the particular complexities of Northern Ireland
- Questions over UK capability to deliver parallel systems-and their costs
- Brexit benefits for environment (and industry?) ill defined: announcements ad hoc
- Little analysis or tracking of divergence and its consequences available
- Level of uncertainty is growing
- While environmental policy is of increasing structural and economic importance
- Divergence more than academic interest

Towards a taxonomy of divergence

Divergence a dynamic process: many forms, explanations, consequences

Some of the components include:

- Varying motors and drivers for policy intervention on the environment
- Divergence in issues addressed
- And in regulatory strategy and philosophy
- The choice of policy instruments selected, individually and in combination

Towards a Taxonomy (2)

- Details of policy design, including environmental and economic scope, reach within a regulated sector, targets, specified thresholds, exemptions, measurement and reporting regimes, labelling, processes required for compliance etc.
- The timing of intervention and questions about leaders and followers
- The implementation and enforcement of environmental and related legislation
- Reporting, data gathering, evaluation and transparency
- Flanking measures, including policies addressing related issues such as trade, state aids, funding for public bodies, investment support, taxation, agriculture, fisheries

Pathways to divergence

- Dynamic alignment
- Selective alignment
- Ad hoc divergence
- Divergence by default
- Divergence by design

Assessing divergence

- Divergence may be visible and clearly consequential: the case of environmental product standards
- But often it is less visible and harder to follow
- And it may be challenging to assess its significance
- Nonetheless, tracking is possible and in the public interest
- Governmental bodies required to invest in detailed knowledge but tracking occurs internally rather than with public face.
- A more open approach is needed

In conclusion

- Divergence is beginning to appear at range of different levels, from technical to strategic
- In several areas the UK appears to be lagging eg the case of chemicals or to have lower ambitions, as with energy conservation
- Higher environmental ambitions displayed in certain areas; potentially agriculture
- Environmental product standards are potentially particularly sensitive eg trade with Northern Ireland
- Deregulatory tone in England not adopted in other parts of the UK
- More public information, assessment and discourse required
- Leading to greater clarity about the best environmental outcomes



Institute for
European
Environmental
Policy

Dbaldock@ieep.eu

London Office:

25 EP, 25 Eccleston Place
SW1W 9NF, London

www.ieep.eu



@IEEP_eu