

Brexit, Environmental Law and the Level Playing Field

Boris Johnson heralds leaving the EU as "a defining opportunity...to tear away bureaucratic red tape". What does this mean for environmental regulations?

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When the idea of the level playing field emerged from the Brexit talks many environmentalists breathed a sigh of relief.

As Barnier presented this agreement to us in the European Parliament, I remember realising that even if we were to go ahead with Brexit, the inclination of the Brexit regulation burners to trash social and environmental standards would be restrained.

Theresa May agreed to this condition as part of the withdrawal negotiated agreement, but very worryingly Boris Johnson has eliminated it from the proposals he presented to Brussels last week.

Species

It's a typical piece of Brussels jargon but in simple terms the level playing field means that our future relationship with the EU will be based on the understanding that our environmental standards can only build on those of the EU and not undercut them.

It skilfully eliminates the possibility of Singapore on Thames.

In terms of the environment this really matters. It's been frequently repeated that 80 percent of our environmental law comes from the EU.

Although the Withdrawal Act translated this into British law, without the level playing field there is nothing to stop GM enthusiast Owen Paterson persuading his friend Theresa Villiers to allow genetically modified crops into Britain.

Or any of the Tories pro-development paymasters removing protections of species under the Habitats Directive and then letting development rip up protected sites.

Damage

There is much talk amongst pro-environment Tories like Zac Goldsmith about the provisions of the Environment Bill that appeared to disappear when prorogation happened. Now it has a new lease of life as a centrepiece of the [Queen's speech](#).

However, vague long-term plans to deliver environmental improvements, 'enabling' local

authorities and 'promoting' resource efficiency amount to little when compared with the European law it intends to replace.

The proposed Bill seeks to establish new long term domestic environmental governance 'based on environmental principles'.

But notably absent when it comes to principles is the [precautionary principle](#). This is the basis on which genetically modified organisms are kept out of the European market, for example, as we simply don't know what harm they might cause and so it is safer to wait until we do.

This principle is problematic in terms of a future trade deal with the US, where the environmental protection works on the principle of waiting for damage to occur and then taking retrospective legal action à la Erin Brockovich.

Inspiration

Given that the corporations who cause environmental destruction are rich and powerful and citizens are not, I know which legal regime I would rather be living under.

Finally, we come to the very important issue of monitoring and enforcement. The budgets of both the Environment Agency and Defra have been [slashed](#) under the Conservative government, so [who would be able to protect citizens](#) if legal protections on the environment are not upheld?

As European citizens we have access to the European Court of Justice, and in the repeated legal action on air pollution, ClientEarth has shown how effective such cases can be.

The proposed replacement in a British regime would be an Office for Environmental Protection, effectively a part of government even if at arm's-length. There is no proposal for a separate court or any system of independent arbitration other than judicial review.

Given that the inspiration for Brexit amongst many corporate interests was precisely ripping up the 'red tape' that has protected our countryside, waterways, and natural habitats for decades, to have no route to independent legal redress would be a source of considerable concern.

Standards

Indeed, Johnson seemed to confirm exactly this point in his statement about [the Queen's Speech](#) heralding leaving the EU as "a defining opportunity... to tear away bureaucratic red tape".

As the Brexit rollercoaster rolls on, moving from hope and despair about a deal on an hourly basis, we should not be distracted from the real reasons why any Brexit is worse for the environment than continuing as a member of the EU.

The loss of the level playing field will be a serious blow to those of us who depend on European law to protect our natural places and the other species we share them with.

As an MEP I will be voting on any withdrawal agreement, and rest assured, I and a vast majority of my fellow MEPs will not vote for a deal that does not include the level playing

field on environmental standards.

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