

Written evidence submitted by the Institute for Sustainable Resources (ISR)

28th October 2022

House of Lords European Affairs Committee

Inquiry: The future UK-EU relationship

The UCL Institute for Sustainable Resources delivers world-leading research, teaching and enterprise in the sustainable use of global resources. We welcome the opportunity to respond to this inquiry, and are well placed to answer questions in section 3 '*The UK-EU relationship on environment and climate change matters*'.

We would be pleased to speak further about our response. Please contact Kathy Page (Katherine.page@ucl.ac.uk).

Contributors: Jim Watson, Michael Grubb, Paul Drummond, Feja Lesniewska

In addition to considering our responses to specific questions below, we would also note the relevance of the Committee's inquiry from 2013, 'No Country is an Energy Island',¹ to which one of this response's authors (Professor Grubb) was specialist advisor. Notwithstanding Brexit, many of the points covered in that report still seem relevant today.

Environment and climate change

10. How would you assess the current state of UK-EU cooperation on environment and climate change matters?

Since the UK left the EU, some UK and EU environment and climate change policies have been similar. Medium and long-term emissions reduction targets for both the UK and EU have been strengthened, including commitments to reaching net-zero emissions by the middle of the 21st century. The UK was one of the first countries to adopt a net-zero target (in 2019), whereas the EU followed more recently (in 2021).

Some product regulations have also continued to be aligned. For example, the UK has not diverged significantly from EU 'Ecodesign' regulations since Brexit. In 2020, the UK government stated that it would maintain or exceed EU minimum standards, and potentially expand their application to other products. In July 2021, UK regulations were amended to replicate new EU product eco-design and labelling standards.²

There have also been some similarities in responses to the Russian invasion of Ukraine. This includes more ambitious plans for expanding non-fossil energy supplies, caps on energy prices and plans for electricity market reforms. However, the UK has placed less emphasis on energy efficiency than the EU. It has also maintained a commitment to the development of new oil and gas production.

When the UK left the EU, it also left the single market for electricity and gas. There was a commitment in the Trade and Co-operation Agreement (TCA), which was adopted in

¹ <https://publications.parliament.uk/pa/ld201213/ldselect/ldcom/161/161/16102.htm>

² Drummond, P and Watson J (2022) 'Energy' in *Doing Things Differently? Policy after Brexit*. UK in a Changing Europe programme.

December 2020, to collaborate on energy security. A new technical committee was set up to explore how to implement this commitment. It made little progress until the Russian invasion of Ukraine, which led to a more serious plans to co-operate on oil and gas security and the reduction of dependence on Russia – including an early warning system. The invasion has prompted more focus on the role of the UK as a trading hub for natural gas, and the opportunity to help the EU diversify its gas supplies away from Russia. The technical committee has also made some progress has also been made in co-operation on offshore wind. By contrast, progress with electricity market reintegration has been much slower despite being highlighted as a priority in the TCA.

In other areas of environmental policy, the UK is diverging further from alignment with EU environment law and policy that was agreed upon withdrawal from the EU. The EU-UK Trade and Cooperation Agreement contains provisions for cooperation on energy, environment and climate change matters in a number of areas. This added to the retention of EU law through the EU (Withdrawal) Act (EUWA) 2018. Under Article 4(1) of the EUWA 2018, any EU laws that apply to the UK under the Act and its Protocols are to have the same effect as they would in an EU Member State.

Uncertainty over future regression on the position adopted under both Acts to environmental law and policy was caused when the Retained EU Law (Revocation and Reform) Bill (the REUL Bill) was placed before Parliament in September 2022. Clause 1 of the REUL Bill will automatically revoke 'EU-derived subordinate legislation' and 'retained direct EU legislation' (not retained law contained in Acts of Parliament). Clause 3 will repeal section 4 of the EU (Withdrawal) Act 2018 at the end of 2023, so ending the retention of directly effective rights. Clause 4 will abolish the supremacy of EU law, which had been retained vis-à-vis domestic legislation passed before Brexit. Clause 5 will abolish the interpretive role played by the general principles of EU law.

The REUL Bill threatens powers under the Environment Act 2021 to amend regulations such as the Habitats Regulations which were transposed into UK law after the withdrawal from the EU under the EU (Withdrawal) Act 2018. Such amendments should take time for proper expert and democratic processes, including impact assessment, consultation and public participation, as well as Parliamentary input.

There are important differences between the UK and devolved administrations that need to be understood and considered when discussing UK and EU environment and climate law and policy relations. For instance, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 provides for devolved Scots law to stay aligned to future EU law despite the withdrawal of the UK from the European Union. Exactly how the alignment will be interpreted and upheld in practice going forward is a matter open to potential future legal judgement. Similarly Northern Ireland presents another situation for environmental law. Due to the Protocol, (former and current) EU law in the UK already existed differently in NI compared to the rest of the UK. The REUL Bill and the NI Protocol Bill, as it currently stands, will potentially make the situation in Northern Ireland more complex, especially in regard to borders and trade related environment issues.

11. Should the UK seek to link its Emissions Trading Scheme (ETS) with that of the EU?

The UK was a key architect of the EU ETS, and ran a pilot national emissions trading scheme before the EU ETS was established. One of the major arguments for an EU-wide carbon trading scheme was to establish a level playing field across EU industry. This goal is

partly achieved by securing the same prices, and from 2012, the move to common allocation rules addressed that dimension. Economically, a significant divergence of the UK from EU rules clearly has potential to be problematic.

Overall, we think the advantages of linking the UK emissions trading scheme to the EU ETS outweigh any potential disadvantages. In principle, the UK could seek to gain some economic advantage through retaining an independent ETS, for example through a system which results in a lower price and/or more generous allocation of allowances to key sectors. However, this raises several questions. These include whether it would be compatible with our carbon budgets and net zero goals; and whether the UK would then become subject to costs from the EU Carbon Border Adjustment Mechanism (CBAM, see below). A key reason to link with the EU ETS directly could be to avoid these challenges and in particular to be an intrinsic part of the EU's CBAM (see below).

It is important to note that a core reason to establish the UK ETS as a legally separate system was to avoid involvement with the European Court of Justice (ECJ). Full linking would seem to imply some involvement of ECJ from the EU side. As with some other areas of post-Brexit arrangements, the key question is whether some form of joint legal governance between the UK and EU would be mutually acceptable. This is essentially a political decision that will need to be made.

12. A proposed EU Regulation on a Carbon Border Adjustment Mechanism (CBAM) potentially applies to Northern Ireland under the terms of the Protocol. Focusing on its wider policy implications, what impact would the EU CBAM have on policy in Great Britain?

The EU intends to introduce a Carbon Border Adjustment Mechanism (CBAM), requiring EU importers to purchase certificates equivalent to the weekly-average carbon price under the EU ETS, for qualifying products, from 2026. The objective is to reduce the risk of 'carbon leakage' by domestic industry by levelling the carbon price applied to the production processes of all covered products used or consumed in the EU regardless, of where they were produced. The CBAM will initially cover imports of cement, iron and steel, aluminium, fertilisers, and electricity. A transitional 'reporting' phase is due to begin in January 2023, and it will replace the current system of free allocation of a significant proportion of the permits EU industry (including electricity generators) are required to surrender for their emissions covered by the EU ETS.

Given its proximity to the EU and resulting levels of trade and interconnectedness in heavy industry, the UK (excluding Northern Ireland, if the territory is included under the EU CBAM), is one of the most exposed countries to an EU CBAM – particularly exports of iron, steel, and aluminium³, but also electricity via interconnectors.

Under current proposals, there will be two channels through which industries in a country exporting regulated products to the EU can avoid a charge applied at the border: (1) having a domestic carbon pricing mechanism linked to the EU ETS (or participating in the EU ETS itself, as with non-EU, EEA countries), or (2) having a carbon price applied to the production of regulated products at least equal to that of the EU ETS.

³ For estimates of potential UK liabilities per sector, see: Burke et al (2021) *What does an EU Carbon Border Adjustment Mechanism mean for the UK?*, LSE, London

If the UK government wishes to avoid adverse impacts to the competitiveness of key heavy industries in Great Britain with respect to their EU counterparts, and electricity generators wishing to trade across interconnectors, its policy choices are limited to two specific options.

Firstly, it could decide to link the UK ETS to the EU ETS, and thus exempt UK industry and electricity generation from the EU CBAM (see response to Question 13). This is the option we think the government should take. It would also avoid potential conflicts under the Northern Ireland Protocol. Secondly, if the UK ETS remains unlinked to the EU ETS, then the UK must introduce measures to ensure the UK ETS (or equivalent) imposes a carbon price that remains at least equivalent to the EU ETS price over time⁴. This, in turn, would require the UK to implement measures to prevent carbon leakage, other than the continued free allocation of permits (which effectively disapply, to a significant degree, the carbon price to industries in receipt).

One such measure would be the introduction of UK CBAM. While this approach may overcome the need for UK industry and electricity generators to pay any duties when exporting to the EU, it would be administratively substantially more complex (both for regulators and the regulated) and may place significant additional pressure and added complication to the position of Northern Ireland within the UK's Single Market, should the EU CBAM apply to the entire island of Ireland.

a. The UK Government is currently consulting on introducing its own CBAM. If it did so, what would be the implications of this for the relationship with the EU?

We think for the UK to try and address possible competitiveness concerns around UK ETS by developing a CBAM independently, which differs substantially from the EU CBAM, is probably not credible. This is due to extraordinarily high degree of both technical complexity but also political sensitivity. A CBAM which was designed to undercut the EU CBAM in terms of trade would almost inevitably invite retaliatory action.

More generally though, designing and – specifically- implementing a CBAM will required a very large degree of economic and political weight, given international concerns. Aligned with or as part of the EU ETS, the UK would enhance this. Without participation or alignment, it seems unlikely the UK would have sufficient capacity and political and economic power to design and implement a misaligned CBAM.

13. Are there any changes you would like to see the Government pursue as far as the UK-EU relationship on environment and climate change is concerned?

The UK government needs to consider the impact that the Retained EU Law (Revocation and Reform) Bill could have on potential EU trade, as well as relations between Northern Ireland and the Irish Republic. The EU created a regulatory level playing field in environmental policy matters. Disruption by lowering of standards in production and processing or agriculture for instance could have negative impacts for UK exporters. It would be more sensible for the UK government to return to the approach as set out in the EU-UK Trade and Cooperation Agreement 2020 and use powers under the Environment Act 2021 to review and revise environmental laws and regulations through evidence-based consultative processes. It remains unclear how tensions between the approaches adopted for EU

⁴ For the power sector, this would be the combined price of the UK ETS and the Carbon Price Floor.

environmental law by the devolved administrations, especially Scotland which has aligned to EU law constitutionally, can be resolved.

The UK is party to nearly all the multilateral environmental agreements (MEAs) that the EU is party to. The obligations under the MEAs including especially the UN Framework Convention on Climate Change (UNFCCC) Paris Agreement, The UN Convention on Law of the Sea and the UN Convention on Biodiversity. These MEAs provide an ongoing forum through conferences of the parties for both the EU and UK in the development of climate change and environment laws and policies. The UK can remain an associate member of the European Environment Agency, an important source of information sharing on regulatory implementation.

Other initiatives by the EU are also taken up and influence processes in devolved administrations and cities. For example, The Fossil Fuel Non-Proliferation Treaty Initiative was adopted by the EU Parliament October 20 2022. Greater London signing up to the Fossil Fuel Non-proliferation Treaty 27 June 2022. It is important to bear in mind that channels of communication exist beyond the UK which can have influence on the development of policy and laws.