

Institution: University of Dundee		
Unit of Assessment: UoA 18 Law		
Title of case study: Brexit: the implications for Scottish devolution and for environmental governance		
Period when the underpinning research was undertaken: 2010 ongoing		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Alan Page Colin T Reid	Role(s) (e.g. job title): Professor Professor	Period(s) employed by submitting HEI: 1985 - 2020 1991 ongoing
Period when the claimed impact occurred: 2015 - ongoing		
Is this case study continued from a case study submitted in 2014? N		

1. Summary of the impact

Professors Page and Reid are major figures in two aspects of the responses to Brexit: the devolution dimension and its consequences for environmental law. They have helped to shape debate, at Holyrood and Westminster and among stakeholders, on issues such as inter-governmental relations, common frameworks, governmental accountability, and enforcement of environmental laws. Their contribution has ensured that the political rhetoric has increasingly given way to action on the procedural and constitutional challenges raised, including the acceptance of the need for new environmental governance arrangements, ensuring that major questions are properly addressed.

2. Underpinning research

Brexit raises major legal and political questions over the allocation of powers within the UK, since the devolution settlements were made when the UK's membership of the EU was taken as a given and some issues were left open which would otherwise have required clear resolution in the establishment of devolved administrations. Early work [R4] showed that the only practicable way to handle Brexit was to pass legislation providing for the continuity of existing EU law. Research building on previous studies [R3] further served to explain and highlight the complexities and implications of the current position [R2, R4].

Most significantly, Page's research demonstrated [R1] that many of the powers the Scottish Parliament possessed in areas such as agriculture, fisheries and the environment were powers in name only, because decisions in those areas were taken in Brussels rather than Edinburgh, but that they would become real powers once the UK left the EU. This in turn raised the possibility of the different nations of the UK heading in different directions if the devolution settlements were left unaltered, and in so doing threatening the integrity of the UK 'internal market'. He also pointed out that, important though they undoubtedly are, the powers that would fall to the Scottish Parliament on EU withdrawal paled into insignificance in comparison with those in areas such as trade, competition and immigration that would fall to the UK Parliament, which in turn raised the question of what voice, if any, the Scottish Parliament would have in relation to decisions in those areas.

Page also identified how the political deadlock which subsequently arose over the destination of repatriated competences in the intergovernmental negotiations over the EU (Withdrawal) Bill might be resolved without either government losing face. He proposed a 'standstill agreement' whereby the disputed powers would continue to lie where they fell under the devolution settlement but that the governments would agree not to exercise them until such time as they

had been replaced by the common frameworks to which they were by then committed, at which point the precise location of the powers would cease to be important.

The loss of the EU mechanisms to hold the government to account has also been identified as a significant issue, with environmental law as an area of particular relevance given the role of EU measures in shaping so much of the law and policy [R4, R5]. Reid has played a key part in exploring the possible options for using existing or new mechanisms to provide an oversight role and ensure the enforcement of environmental commitments. Both the UK and Scottish governments proposed the development of new arrangements for post-Brexit environmental governance, but with significant differences and he has examined the options, identifying ways of reducing the negative impacts of the current fragmented progress [R6].

Research has continued to explore the relationship between UK and devolved governments and parliaments on such issues, working out the consequences of the various options being discussed and shedding light on the heated disputes [R2, R5].

3. References to the research

[R1] Page, A. (2016) *The implications of EU withdrawal for the devolution settlement*. Scottish Parliament: Culture, Tourism, Europe and External Relations Committee. Available online: https://discovery.dundee.ac.uk/ws/portalfiles/portal/11835256/The_implications_of_EU_withdrawal_for_the_devolution_settlement.pdf (Accessed 07 March 2021)

[R2] Page, A. (2017) 'Brexit, the repatriation of competences and the future of the Union', *Juridical Review: the Law Journal of the Scottish Universities* 2017 (1) pp. 38-47 [peer reviewed]

[R3] Page, A.C. (2015) *Constitutional law of Scotland*. Edinburgh: W. Green [published in Scottish Universities Law Institute series, involving review by both senior judge and academic reviewer]

[R4] Reid, C. T. (2016) 'BREXIT and the future of UK environmental law', *Journal of Energy and Natural Resources Law*, 34(4) pp.407-415 DOI: [10.1080/02646811.2016.1218133](https://doi.org/10.1080/02646811.2016.1218133) [winner of Willoughby Prize for most significant paper of the year in that journal]

[R5] Reid, C. (2018) 'The Future of Environmental Governance in the (Dis-)United Kingdom', in Biondi, A., Birkinshaw, P. and Kendrick, M. (eds) *Brexit: The Legal Implications* European Monographs, Netherlands: Wolters Kluwer, pp. 241- 250.

[R6] Reid, C. (2019) 'The Future of Environmental Governance', *Environmental Law Review*, 21(3), pp. 219-225. DOI: [10.1177/1461452919855841](https://doi.org/10.1177/1461452919855841)

4. Details of the impact

Page has made two defining contributions to the debate over the destination of repatriated EU competences following the UK's proposed withdrawal from the European Union. His early analysis [R1] was widely accepted as the authoritative statement on the formal and practical division of powers – no government, parliament or think-tank thought it necessary to produce another - and provided the starting point for all the work that was done subsequently in the UK's parliaments and governments on the implications of EU withdrawal for devolved competences [E1, E3, E4, E5]. When the Secretary of State for Scotland, David Mundell, was asked by industry and other trade associations about the implications of EU withdrawal for decision-making in the fields closest to their interests, he simply referred them to Professor Page's 'masterly analysis'.

The second major contribution was introducing the idea of a 'standstill agreement' to resolve the political deadlock over the destination of repatriated competences [E1]. Although both

governments hesitated at the time, this solution was effectively adopted in the continuing negotiations over the replacement of EU regimes by common frameworks, and echoes appear in the United Kingdom Internal Market Act 2020.

Reid's focus has been on environmental governance. The report [E8] on *Environmental Governance in Scotland on the UK's withdrawal from the EU*, by the sub-group of the Scottish Government Round-Table on Climate Change and Environment (informed by R4) was the basis for the provisions on environmental principles and governance in the UK Withdrawal from the European Union (Continuity) (Scotland) Bill passed in December 2020. More specifically, two suggestions by Reid to Westminster committees in relation to avoiding obstacles to collaboration between UK and devolved structures were endorsed by them [E6] and accepted in the Government's responses to these and appear as clauses 24(4) and 40(2) of the Environment Bill as introduced at Westminster in early 2020.

Evidence based on their research has been heavily relied on by parliamentary committees since before the Brexit referendum in 2016 [E1-E6]. At Westminster, Reid has given oral evidence to three different committees and Page to five committees (six occasions) as well as being appointed a special adviser to the Public Administration and Constitutional Affairs Committee. At Holyrood, Page has given oral evidence before three committees (five occasions) and is a member of the Scottish Parliament's Standing Committee of Experts; Reid has given evidence to two committees (five occasions) and was appointed in 2019 as a long-term adviser to the Environment, Climate Change and Land Reform Committee at Holyrood. As the Convener records [E10], he has been "able to bring the findings from [his] earlier research and analysis to committee discussions which has been incredibly helpful and insightful"; examples include work in response to the legislative consent motion on the Environment Bill which prompted the Scottish Government to refine its stance on the scrutiny of legislation.

In all cases the subsequent reports and discussions show that the evidence given has been used to mould these committees' analysis and recommendations on issues such as inter-governmental relations, common frameworks, mechanisms for parliamentary scrutiny, governmental accountability, and enforcement of environmental laws. Although UK government processes have been resistant to external and expert inputs, the increasing attention to the procedural and constitutional challenges raised, including the acceptance of the need for new environmental governance arrangements, demonstrates the impact of their contribution (with others) in ensuring that major questions are properly addressed.

As well as the influence on official deliberations, Reid and Page have helped to shape the wider consideration of the Brexit challenges among stakeholders and practitioners, notably raising awareness in audiences in England of the significance of the devolution aspects of the Brexit process. This has been reflected in the input these groups have made to policy formulation [E9] ensuring that such considerations are not overlooked in the evolving law and policy. Both have been frequently called on to explain their analysis of the governance position at events for practitioners, policy-makers, parliamentary staff, stakeholders and academics, and their work has been heavily used in preparing briefing papers [E7].

Reid and Page's research has also informed the substantial contributions made to official consultations and enquiries on Brexit and post-Brexit environmental governance. Page is part of the Royal Society of Edinburgh Constitutional Law and Government Working Group and Reid of the Law Society of Scotland's Environment Committee and the Brexit Task-Force (now Governance and Devolution Group) of the UK Environmental Law Association (UKELA), where his contribution has been "*singularly impressive and in particular has ensured that those operating solely within the English jurisdiction have been alerted to and addressed the implications for the devolved nations*" [E9].

5. Sources to corroborate the impact

[E1] Scottish Parliament: Finance and Constitution Committee, Official Report of meeting of 15 November 2017 [evidence by Page]

<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=11205>

[E2] House of Commons Environmental Audit Committee: EU and UK Environmental Policy (2015-16 HC 537) [references to Reid, with quote from para.10 adopted for Summary (p.3)]

<https://publications.parliament.uk/pa/cm201516/cmselect/cmenvaud/537/537.pdf>

[E3] House of Commons Public Administration and Constitutional Affairs Committee: Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration (2017-19 HC 484) [heavy reliance on Page, with further references in subsequent debates]

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/484/484.pdf>

[E4] House of Commons Public Administration and Constitutional Affairs Committee: Devolution and Exiting the EU: reconciling differences and building strong relationships (2017–19 HC 1485) [many references to Page's evidence]

<https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/1485/1485.pdf>

[E5] Scottish Parliament Delegated Powers and Law Reform Committee, Legislative Consent Motion on the European Union (Withdrawal) Bill (54th Report of 2017) [reliance on Page throughout]

<https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2017/11/17/Legislative-Consent-Memorandum-on-the-European-Union--Withdrawal--Bill/DPLRS52017R54.pdf>

[E6] House of Commons Environment, Food and Rural Affairs Committee: Pre-Legislative Scrutiny of the Draft Environment (Principles and Governance) Bill (2017-19 HC 1893) [recommends proposal by Reid; paras 135 and 139]

<https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/1893/1893.pdf>

[E7] SPICe Briefing *Implications of Leaving the EU – Environment* (16/97, 5 December 2016) [many references to Reid] [PDF Available]

[E8] Scottish Government Roundtable on Environment and Climate Change (Environmental Governance sub-group): Environmental Governance in Scotland on the UK's withdrawal from the EU (2018) <https://www.gov.scot/publications/report-roundtable-environment-climate-change-environmental-governance-scotland-uks-withdrawal/pages/12/>

[E9] Corroborating statement from UK Environmental Law Association Brexit Task-Force

[E10] Letter from Convener of Scottish Parliament Environment, Climate Change and Land Reform Committee