

The impact of multi-level policymaking on the UK energy system

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Our aim is to demonstrate the importance of multi-level policymaking as a lens through which to understand the UK's energy system. The energy system is shaped by decisions and actions taken at multiple levels of government, and responsibility for energy and non-energy policies tends to be shared. Energy regulation is a constitutional competence of the Westminster parliament and government (except in Northern Ireland). However, the UK Government has delegated some aspects of energy and climate policies to Scotland and Wales, and they enjoy executive and legislative competences in many non-energy policy areas such as planning, building regulations, the environment, and land use, enabling them to forge distinctive paths in areas such as renewables, fracking, and energy efficiency. EU law has influenced and constrained UK and devolved energy policies, limiting divergences between them, but also facilitated greater cooperation across the island of Ireland, most notably vis-à-vis its electricity market. The Brexit vote and intention to withdraw from the EU could have a major effect on energy and non-energy policies, shaping and constraining the policy capacities and options across the UK's governments, and creating new policy interdependencies between them.

To identify the likely effects of this multi-level policymaking dynamic, we develop a work package to demonstrate how policies affecting the energy system are currently made and by whom, and the effect these policies have on dynamics such as energy supply and demand: *what is the energy policymaking system and how does it affect the energy system?* We 'zoom out' to identify key parts of an overall policymaking system and their effect on the energy system, and 'zoom in' to identify policymaking dynamics in different dimensions of the energy system, including *energy demand* management, and *energy supply* issues (focusing primarily on renewable energy, fracking and nuclear policies). These work packages enable us to examine in-depth the nature and differential impact of multi-level decision-making on different areas of policy affecting the energy system. In each case, we examine the extent to which the 'law on the page' predicts the willingness and ability of each government to make authoritative choices, and to identify whether Brexit has a maximal or minimal impact on devolved competences and capacities. Key questions addressed in work packages are:

1. Who is responsible for action to reduce energy demand?
2. Does Brexit affect UK and devolved policy on energy supply?

Our focus helps fill the gap in current knowledge described by in the UKERC scoping paper (Cox et al, 2016) by applying insights from policy studies (Cairney), political science (McEwen) and law (McHarg), combined with public policy and energy expertise (Turner, Wilson). We address a process that is emerging in real time during academic research:

- mapping current responsibilities and dynamics, using (a) legal documentary analysis and interviews with policymakers, and (b) media, survey, and social networks analysis to identify the beliefs, actions, and influence of policymakers and influencers
- generating realistic scenarios to prompt discussion with practitioners and policymakers on how they could respond effectively to the post-Brexit landscape
- analysing negotiations and their outcomes as they emerge.

Work Package 1. What is the 'energy policymaking system' and how does it affect the energy system?

We map the current distribution of policy powers affecting energy supply and demand across the UK's four nations, and identify the extent to which they intersect with EU competences

in energy, the environment, market regulation and competition. Chaudry et al (2009: iv) define the UK energy system as ‘the set of technologies, physical infrastructure, institutions, policies and practices located in and associated with the UK which enable energy services to be delivered to UK consumers’. Public policy is a key influence, and the UK’s policymaking system can have a profound impact on energy dynamics. Constitutional changes *may* produce policy change, but their impacts require careful attention alongside other dynamics. We map the policy process and the effect of policy change on energy supply and demand.

We identify a policymaking system, and its key dynamics, to show the effect of shifts in constitutional competencies. Although there is an overall political system, it contains too many actors and problems to be manageable. Elected policymakers divide responsibilities into levels and types of government, and delegate responsibility to civil servants and agencies in policy subsystems. This allows key actors to process discrete aspects of energy policy related to specific sectors (such as nuclear, oil and gas, and renewables) or cross-cutting issues (such as electricity transmission), limit participation, and develop rules of evidence gathering - including consultation - to define and solve problems. Within that basic framework, policy studies focus on (a) relationships between levels and types of government, and (b) the formation of ‘advocacy coalitions’ in subsystems, driven by the beliefs of actors and their position in networks. For example, studies of interest groups suggests they ‘venue shop’ if dissatisfied with policy in one level of government, and/ or form alliances with like-minded groups and policymakers at multiple levels. Identifying their beliefs and strategies is a key way to identify the most important networks and veto points.

This mapping project helps identify the extent to which the repatriation of energy competences opens up new opportunities for the UK and devolved governments to pursue energy policies which were hitherto constrained by EU law, or whether it will generate new constraints within UK legislation which will constrain the competences and capacities of the devolved institutions. Will it prompt new forms of venue shopping, or necessitate new processes of intergovernmental relations? We identify the likely sources of cooperation and competition in energy policy and relevant non-energy policies, their effects on the evolution of the energy system, and the intergovernmental mechanisms that may be necessary to ensure coordination across the UK’s multi-level energy system.

Work Package 2: Who is responsible for action to reduce energy demand?

We examine multi-level action to reduce energy demand, examining the extent to which the distribution of policy-making competencies is optimal for required policy outputs, and the post-Brexit opportunities.

Energy demand is more challenging to policymakers than energy supply because the demand side involves millions of actors who, in the context of household energy use, also constitute the electorate. There are political tensions in making policies to reduce energy demand and carbon where this involves cost and inconvenience for private actors who do not necessarily value the societal returns achieved. Tensions surround public perceptions of whose responsibility it is to take action – including local, devolved, national, or international government agencies – and governments often try (or are perceived as trying) to shift responsibility to each other or individuals and firms. Problems arise where the recipient of responsibility lacks the ability to take effective actions.

Policy on energy efficiency consists of a range of interventions, such as energy labelling and product/building standards, emissions reduction measures, promotion of efficient generation, and buildings performance measures. It is an area of policy which is notoriously diffuse and lacking in co-ordination. Since 2012, a key contribution of EU action on energy efficiency has been the setting of targets to reduce demand, although leaving considerable discretion to national governments to formulate actions, and with the UK government delegating some responsibility to the devolved governments which, in turn, often require local authorities to take action. To date, many policies (such as the Green Deal) to ‘nudge’

consumer behaviour have had limited success so that attention is turning to whether a wider range of policy instruments may be employed via the taxation system and/or intervention in non-energy markets (e.g. linking Energy Performance Certificate ratings to transactions in the housing market), but with availability of different types of instruments varying from national to devolved governments, as well as between and within devolved regions. In particular, while, in its draft energy strategy, the Scottish Government proposes to set a new energy efficiency target to 'deliver the same level of ambition' as the EU-wide 2030 30% target, it has limited devolved powers to explore incentive mechanisms linked to taxation. It may be limited to more coercive measures that run the risk of exacerbating afore-mentioned political tensions around energy and climate ambitions.

Industrial energy demand is already a highly regulated area, involving a complex mix of instruments, depending on type and scale of industrial activity and energy use. Some industries (e.g. whisky distilling) face a combination of Climate Change Agreements (CCAs), Carbon Reduction Commitment Energy Efficiency Scheme (CRC), Climate Change Levy (CCL), and the EU Emissions Trading System (EU ETS). Moreover, some large energy users (e.g. petrochemicals) are challenged by current policy discussions over District Heat Networks where industry would be expected to act as a heat source. Particularly amid concerns around post-Brexit trade, industrial players may similarly respond negatively to increased regulatory pressure where this may affect costs and competitiveness.

However, Brexit provides a window of opportunity to rethink these relationships and policies, including potentially simplifying the landscape. The WP considers what the possibilities may be to improve the policy outcomes for both household and industrial demand that may be achieved through the existing and potentially shifting distribution of policy-making competencies. The potential to use tax incentives to impact energy generally lies at the UK national level, while devolved responsibilities may enable regulation, for example via building codes and housing markets. The WP will identify the opportunities and constraints for different levels of government within the UK to design and enact demand-side policies, particularly in terms of the extent of coordination required within the national framework (e.g. if incentives via taxation may be relevant to areas where responsibility is devolved, e.g. Scotland's Energy Efficiency Programme) and/or where further devolution may deliver more local capability. Since there remains high uncertainty regarding changes that may result from Brexit, and these issues will play out over several years, we focus on generating scenarios and explore their costs and benefits with key industry stakeholder, citizens' groups and policymakers.

Work Package 3: Does Brexit affect UK and devolved policy on energy supply?

How does multi-level policymaking affect UK and devolved policy on energy supply? It is difficult for single governments to coordinate an overall energy mix to secure supply from many sources, and multi-level policymaking adds a further dimension to planning and cooperation. Yet, the effect of constitutional changes is highly uneven. For example, devolution has allowed Scotland to go its own way on renewable energy, nuclear power and fracking, but Brexit's impact ranges from high to low. It presents new and sometimes salient challenges for cooperation to supply renewable energy but, while fracking and nuclear are often the most politically salient issues, Brexit may have relatively little impact on policymaking *within the UK*.

In terms of nuclear, the biggest impact is on European cooperation (withdrawal from Euratom), state aid, and general issues regarding security of supply and climate change policy. Nuclear policy is reserved to the UK level (even in NI) with the exception of generation consents (where Scottish Government has stated a clear position not to grant consent relating to any new nuclear capacity within Scotland) and nuclear waste management, both of which may be unaffected by Brexit.

In terms of fracking, the EU oversees environmental and water policies that may limit development (if it does not meet required standards), but they are implemented by UK and devolved environmental agencies (e.g. SEPA in Scotland), and Brexit is unlikely to change those rules. The key political issue relates to the extent to which the UK is willing to push for (well-regulated) fracking development. So far, it has encouraged but not obliged English local authority planning approvals, and delegated veto powers to the Scottish and Welsh governments, both of which appear reluctant to remove moratoriums on development. Much will depend on the role that shale gas could play in the UK energy mix. Domestically extracted shale gas could increase security of supply, as UK off-shore reserves decline. Moreover, certainly in Scotland, domestically fracked gas would, at least initially, mainly be used in industrial processes. Gas (or, associated non-gas liquids produced with gas, such as ethane) is a key feedstock in industrial processes particularly in the petrochemical plant at Grangemouth and domestic extraction would replace these imports. Therefore, the energy and climate change debate is complicated by 'consumer responsibility' perspectives when the UK imports energy rather than extracting it directly (and the UK has no regulatory control over extraction practices overseas). This perspective is relevant to the nuclear question in Scotland as well, where reduction in thermal capacity is leading to a greater reliance on imported electricity via the National Grid and where nuclear capacity is increasing outside of Scotland.

In terms of renewables, the UK and devolved governments have worked together to meet obligations within the Energy and Climate Change Package, with the Scottish and Welsh Governments set to contribute a disproportionate share of the UK's legal requirements in converting energy from renewable sources. Policy competences in relation to renewables development are distributed across multiple levels: the EU, UK Government and Ofgem, Scottish Government, and local authorities. Split competencies are often a source of tension, particularly between the Scottish and UK levels. EU law has largely been supportive of renewables development, through the setting of renewable energy targets, provision of funding for projects and infrastructure, and by providing guarantees of fair grid and market access. At times, however, EU law has been an obstacle to development. EU environmental law has been used to challenge renewable generation projects in islands areas (*Sustainable Shetland v Scottish Ministers* [2015] UKSC 4; *RSPB v Scottish Ministers* [2016] CSOH 103), and EU state aid rules have caused difficulties in setting a higher 'strike price' for islands renewables under the Contracts for Difference support scheme.

In that context, we explore the possibility that renewables policy may be most impacted by Brexit, while nuclear and fracking are examples in which Brexit may have a minimal *direct* impact on policy but where the wider impacts of Brexit may ultimately have indirect effects. Overall, the big debates are about the future energy mix, and how local, devolved, and UK governments balance the local environmental impacts of, and likely political opposition to, energy development against the economic and energy supply benefits. Brexit's impact could be *indirect*, particularly on fracking in Scotland if further UK delegation (to all intents and purposes) places the final decision in the hands of the Scottish Government rather than a multi-level system with three veto points. In such cases, the key to explaining policy development is with reference to competing (pro- and anti-fracking) 'advocacy coalitions' within distinct levels of government.