Articles

The Covid-19 Outbreak in the UK.

Its Impact of Public Health Security on Environmental Protection

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Abstract

This paper outlines the impact of Covid-19 on environmental policies in the United Kingdom. The first part is a survey on the measures implemented to cope with the Covid-19 emergency, also highlighting some emergency measures enforced by the Italian government. Then, it focuses on the impact of the COVID-19 emergency legislation on environmental and climate change policies and legislations, dealing with Brexit's challenges for the UK environmental law. The conclusion highlights some of the main issues related to the emergency legislation and to the protection of fundamental human rights.

Keywords

Covid-19 Pandemic – The Coronavirus Act 2020 – Environmental Protection and climate change in the UK – Comparative Public Law

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Introduction

The Covid-19 pandemic exploded almost one year ago, soon becoming a global concern. First considered as a mere health emergency, it has soon become an economic and social emergency, due to the measures put in place to limit the spread of the coronavirus (e.g., halt to production, commercial activities, transport and travel restrictions, etc.). For such reasons, it is quite common in the public discourse to compare the pandemic outcomes to the tragic consequences of a war[1].

Like in every crisis, many questions – sometimes rhetorical – arise: when and how will we get out of the Covid-19 emergency? Will people be able to build resilience to reshape our societies, just as after the World Wars? We will certainly be able to get out of the emergency and resume our life, but only after acknowledging the weakness and vulnerabilities of Western society and economy, without examining the impacts of large-scale disasters on its well-being. An example is provided by the legal framework and by state intervention that appear to be uncertain and unsystematic, mainly based on recommendations rather than on specific Orders, and, in some cases, provoking disappointment among individuals (as in the cases of nationwide lockdowns). The most notable example is the contrast between the approaches taken in Italy and those adopted in the UK, at least in the pandemic's early stages. On the one hand, the Italian Government has been adopting a series of progressive restrictions since March, including limitation on individual mobility or temporary suspension of working activities, with the exception of essential services, due to the high number of people who had been infected and/or killed by the virus. On the other hand, the UK government put in place less strict containment measures, in the wake

[1] A. Torre, *Dal Coronavirus alla Corona. Emergenza pandemica ed evoluzione costituzionale del Regno Unito* [2020] 43 DPCE Online <http://www.dpceonline.it/index.php/dpceonline/article/view/981> accessed 11 November 2020. The author points out the warlike matrix of the "key" UK Emergency Legislation, invoking "emergency-conflict" as the basis of emergency legislation, to deal with adverse health, political, and economic conditions. See also F. Fracchia, *Coronavirus, senso del limite, deglobalizzazione e diritto amministrativo: nulla sarà più come prima?* [2020] 3 Il diritto dell'economia 575.

of British Prime Minister Boris Johnson's "Keep Calm and Carry On" slogan, requiring all citizens to adopt the recommended behaviors to prevent the spread of the virus.
Due to the aforementioned causes, evaluating the effectiveness of emergency measures can be challenging, especially without considering the social and legal context in which preventive and precautionary measures have been taken.
However, regardless of the emergency context under examination, it has become clear that there is a political difficulty in finding the right balance between health protection and economic interests, in outweighting fundamental human rights (e.g. the right to liberty of movement, as well as to leave any country, including one's own, the right to assemble, etc.)[2] rather than creating conditions facilitating public protests and demonstrations, as a result of the adoption of the restrictions. The Brexit process, which has increased economic, political and social uncertainty, played a significant role in the UK, despite the threat of Scotland and Northern Ireland's secession.
Furthermore, the aforementioned scenario and the attention towards pandemic-related topics could distract attention away from environmental and climate change issues. In fact, the UK government action on climate change has been adopted under the Climate Change Act 2008[3] and the Climate Agreement at the COP21 in Paris on 12 December 2015[4] to reduce greenhouse gas emissions. During the COVID-19 pandemic outbreak, this commitment was confirmed by the intention to implement green economy policy interventions, with the aim of compensating damages suffered due to coronavirus outbreak.
Moreover, Brexit raises questions about how the UK will continue to take strong climate action at home, whether in partnership with EU Members or not, and if the UK will be setting out its own Nationally Determined Contribution (NDC)[5]. In the UK's withdrawal from the EU, the UK government confirmed to fulfil its commitments to fight against climate change, claiming to have been the first major economy in the world to legislate for a net-zero greenhouse gas emissions target[6].

[2] China is becoming an extreme example. The lack of instruments for human rights protection allowed the adoption of more severe restrictions on individual rights, using the death penalty for those who do not comply with those restrictions. L. Cuocolo (Eds), *Diritti costituzionali di fronte all'emergenza Covid-19. Una prospettiva comparata* [2020] Federalismi.it <https //federalismi.it/13>.

[3] The Climate Change Act 2008 does not only provide for the reduction of targeted greenhouse gas emissions (a target for up to 95% reduction in greenhouse gas emissions by 2050, compared to 1990 levels), but also for policy interventions on waste management and the use of green fuels. Adopting the Paris Agreement in 2015, the UK – Climate Change Act 2008 – set a legal framework to meet the targets for global action on climate change.

[4] The agreement was ratified by the UK on 18th November 2016.

[5] C. Born, *Brexit And The Paris Agreement* [2016] E3G <www.e3g.org> 1: "Technically the EU could ratify whilst the UK contributes to the (then) joint NDC. To further safeguard the UK's continued involvement after it leaves, the EU's NDC could be achieved through a joint fulfilment arrangement or other technical arrangement. This was the approach taken by Iceland when it ratified the second commitment period of the Kyoto Protocol".

[6] <https://www.gov.uk/government/publications/meeting-climate-change-requirements-if-theres-no-brexit-deal/meeting-climate-change-requirements-if-theres-no-brexit-deal>.

1. Main responses to the Coronavirus outbreak

The surge in infections and deaths in Italy, especially in the north of the country, led the government to enforce a lockdown on the whole national territory since March 2020, while the UK Government's adopted a step-by-step approach to respond to the COVID-19 pandemic. In the early phase of the crisis, in the wake of the "Keep Calm and Carry On" slogan, the UK government responded with specific advices instead of national restrictions, urging people to use common sense, to help prevent the spread of the virus. Indeed, the UK Government's action appeared to be inconsistent with its expert medical and scientific advisors (more worried about the spread of Coronavirus)[7]. Probably, due to the increasing awareness regarding the inadequacy of healthcare services – ascribed to the decentralization of the National Health Service (NHS)[8] – the UK Prime Minister initially advocated for herd immunity as the U.K.'s strategy to contain the coronavirus outbreak, saying that many families would have lost loved ones. Although the Health Secretary Mr. Matt Hancock denied that this was ever the government's official strategy, preventive measures (closure of all non-essential business activities and school closures) were very limited and the main concern was to keep citizens well informed, asking them to reduce activities deemed unnecessary and to maintain social distancing[9].

Just like in Italy, where the regulatory measures taken by the local Government in response to the coronavirus were sometimes in contrast with regional regulations, the health emergency in the UK highlighted the peculiarities of the British devolution settlements applied in accordance with the Sewel Convention 1999[10]. It was precisely within the scope of decentralization to delegate issues in healthcare systems and various civil service issues, for example to Local resilience forums (LRFs) which ensure the devolution settlement. They are multi-agency partnerships made up of representatives from local public services and other agencies, they are made up of Category 1 and 2 responders under the Civil Contingencies Act 2004, and they contribute to central government civil contingency planning[11].

[7] D.J. Hunter, *Covid-19 and the Stiff Upper, 19 Lip – The Pandemic Response in the United Kingdom*, [2020] The New England Journal of Medicine 1.

[8] Wales, Scotland and Ireland have relatively autonomous healthcare systems.

[9] The UK population surpassed the 60 million mark, UK Covid-19 cases increased to 942,275 people and the rate of reported deaths was 45,955 in October 2020. Italy's population is about 60 million, the total number of coronavirus (COVID-19) cases is 617,000 cases and 38,122 deaths. Recently, due to a significant rise in the number of COVID-19 infections, the Government has reinstating lockdown measures, as in other European countries such as Spain and France.

[10] For a commentary on the evolution of intergovernmental relations in the UK, see J. Gallagher, 'Intergovernmental Relations in the UK: Co-operation, Competition and Constitutional Change' [2012] 14 BJPIR 198; I. Mc Lean, *Understanding the Union*, in M. Keating (eds), *The Oxford Handbook of Scottish Politics* (OUP 2020).

[11] The main civil protection duties fall on the Category 1 responders as follows: risk assessment; business continuity management (BCM); emergency planning; and maintaining public awareness and arrangements to warn, inform and advise the public.

The Civil Contingencies Act 2004, Part 1, establishes a consistent level of civil protection across the UK. Consistency and co-operation at the local level is performed between Local Respondents of Category 1 and 2[12]. Section 1 of The Civil Contingencies Act 2004 defines an 'emergency': (a) an event or situation that threatens serious damage to human welfare in a place in the United Kingdom; (b) an event or situation which threatens serious damage to the environment of a place in the UK; (c) war, or terrorism, which threatens serious damage to the security of the UK. The Act gives a comprehensive list of what is classified as an event or situation threating damage to human welfare, including: loss of human life, human illness or injury, homelessness, damage to property, disruption of a supply of money, food, water, energy or fuel, disruption of a system of communication, disruption of facilities for transport, or disruption of services relating to health. Damage to the environment involves causes or may cause: contamination of land, water or air with biological, chemical or radio-active matter; disruption or destruction of plant life or animal life. A "senior Minister of the Crown" can issue 'emergency regulations' if an emergency is about to occur.

Part 2 of the Act establishes government's emergency powers, defines their limits, objectives and duration. The use of emergency powers is a last resort option in the most serious of emergencies, where existing legislation is insufficient to ensure a properly effective response. The Civil Contingencies Act provides for ministers to take emergency powers to deal with crises. Emergency regulations must be proportionate to the aspect or effect of the emergency they are directed at. What emergency regulations contain will depend on the specific requirement arising out of the potential or actual circumstances of the emergency. Thus, Emergency Measures (adopted by the Council of Ministers)[13] overlap with statutory laws, restricting personal freedom, although they may be consistent with the human rights guaranteed under the Human Rights Act 1995[14].

1.1. The Coronavirus Act 2020

The Coronavirus Act 2020 was adopted to respond to the COVID-19 pandemic. It contains 102 sections and 29 schedules; the Act provides that the majority of the provisions will

[12] Category 1 responders are listed in Schedule 1 to the Act. They are the main organisations involved in most emergencies at the local level: for example, the emergency services. Category 2 responders are also listed in Schedule 1. They are likely to be heavily involved in some emergencies: for example, utilities and transport companies.
The Act brings both groups within its framework to ensure greater consistency and co-operation at the local level. *Cabinet Office, Revision to Emergency Preparedness*, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61024/Chapter-1-Introduction_amends_16042012.pdf> 11 November 2020. On Civil Contingecies Act, see C. Walker, J. Broderick, *The Civil Contingencies Act 2004* (OUP 2006).

[13] A. Torre (n. 2).

[14] About Brexit and repealing of Human Rights Act 1995, see C. Mc Corkindale, *Brexit and Human Rights* [2018] 22 Edinburgh Law Review 126; A. Smith, M. McWilliams and P. Yarnell, *Does Every Cloud Have A Silver Lining: Brexit, Repeal of the Human Rights Act and the Northern Ireland Bill of Rights* [2016] 40 Fordham Int'l L.J. 79.

expire after two years (Sunset Clause)[15], then for another six months after the end of the two-year period, unless the provision expires instead at such earlier time as is specified in the regulations (section 90). Under section 98, "So far as practicable, a Minister of the Crown must make arrangements for the motion mentioned in subsection (1) to be debated and voted on by the House of Commons within a period of 7 sitting days beginning immediately after each 6 months review period. The Government set out the five main purposes of the Act: (i) Increasing the available health and social care workforce; (ii) Easing and reacting to the burden on frontline staff; (iii) Containing and slowing the virus; (iv) Managing the deceased with respect and dignity; and (vi) Supporting people. The Act provides for parliamentary monitoring of the provisions with the possibility of assessing the persistence of the emergency every six months[16]. Other extraordinary measures were added to implement various levels of lockdown (lockdown regulations). These measures are introduced through secondary legislation, especially Regulations and Orders, based on laws on health matters (e.g. National Health Service Act 2006, Public Health (Control of Disease) Service Act 1984) or security (e.g. Social Security Act 1998, Housing Act 1996)[17]. Although the Civil Contingencies Act 2004 allows the government to introduce measures to limit the spread of Covid-19, it has been necessary to introduce an emergency legislation due to a long-term crisis management. The Act has been subject to criticism, since it allows the government to make regulations without an act of parliament, so undermining core democratic principles. The Civil Contingencies Act 2004 gives further emergency powers to the government and, unlike the Coronavirus Act, the parliament has the power to annul or amend regulations by resolution; regulations are limited in duration to 30 days, unless Parliament votes to extend this period before it expires.

In this regard it should be noted that the Constitution Committee of the House of Lords in an inquiry into fast-track legislation in the 2008-09 Session, recommended that there

[15] The Act will expire after two years of the Act's passing (Section 89). This does not prevent Ministers from using powers granted under section 90 of the Act to cause provisions to expire earlier than the two year sunset. Provisions can also be extended for a maximum of an additional six months.

[16] S. Molloy *Covid-19, Emergency Legislation and Sunset Clauses* [2020] UK Constitutional Law, https://ukconstitutionallaw.org/2020/04/08/sean-molloy-covid-19-emergency-legislation-and-sunset-clauses/ accessed 11 November 2020. The Author highlights that the temporary emergency measures may not be sufficient: "Such is the nature of the pandemic and such is the extent and wide-ranging nature of powers afforded under the Coronavirus Act (and similar pieces of legislation adopted globally), that more review processes might be required". On the debate, V. Fredianelli, *L'emergenza Covid-19 in Francia e nel Regno Unito. Un bilancio comparato*, in R. Tarchi (eds), *L'emergenza sanitaria da COVID-19: una prospettiva di diritto comparato* [2020] 1 Rivista Gruppo di Pisa Special Issue 71.

[17] Many statutory instruments (SIs) used for emergency measures, have been subject to negative procedure (the SI is laid before Parliament after it has been made into law by the minister, but may be annulled if a motion to do so – known as a 'prayer' – is passed by either House within 40 days of it being laid before Parliament. Parliamentary recesses of over four days do not count towards the 40 days) or to affirmative procedure (the SI is laid before Parliament after it has been made – signed – into law by the minister, but cannot remain law unless it is approved by the House of Commons and in most cases also the House of Lords within a statutory period – usually 28 or 40 days). An extensive analysis on SI and Covid-19 is on Hansard Society, *Coronavirus Statutory Instruments Dashboard*, 2020, <https://www.hansardsociety.org.uk/publications/data/coronavirus-statutory-instruments-dashboard 11 November 2020>.

should be a presumption in favor of sunset clauses appearing in fast-tracked legislation to ensure that it is subject to parliamentary review; and that there should be a presumption in favor of early post-legislative review of fast-tracked legislation[18]. As underlined in the Public Administration and Constitutional Affairs Committee Fourth Report of Session 2019-21[19], as a result of the timescales involved and the political situation, detailed scrutiny of the Coronavirus Bill was not practical. It is therefore very important that Government is held to account for how it uses and justifies the continued application of the Act. Therefore, it's particularly important that the Government provides information to help facilitate effective Parliamentary scrutiny: the original rationale for the temporary provisions in the Coronavirus Act, because those provisions are still justified and the evidence base for demonstrating those provisions are still effective[20].

1.2. A brief comparison between Italy and the UK on COVID-19 emergency legislation

Examining the Italian legislation on civil protection (Legislative Decree No. 1 of January 2, 2018) and the Civil Contingencies Act 2004, it emerges that both in Italy and the UK emergency management falls under the sphere of civil protection. In this framework, many similarities emerge regarding devolved competences, which in Italy are provided by Article 117 of the Constitution. In both legal systems, the proximity of each of the aspects of civil protection are evident and the central government plays a pivotal role. In Italy this department has shown limits due to regulatory overlap between the national government and the Regional Governments and because of the lack of coordination, particularly during the summer, in the second phase of the epidemic. The UK emergency management has been much more centralized, despite it has given various competences to local and regional authorities in the field of civil protection. However, both governments have decided to face the emergency using secondary legislation, referred to as urgent or as necessary, which then becomes law. In the UK, the Coronavirus Act 2020 grants the government emergency powers, while the Italian government has adopted a series of Decrees, then converted into law. Although both in Italy and in the UK the Parliament plays a central role, the two systems tend to strengthen the executive power during an emergency.

[18] R. Kelly, *Fast-track legislation*, House of Commons Library, Briefingpaper, Number 05256, 25 March 2020. The Committee identified five constitutional principles that it believed should underpin the consideration of fast-track legislation: i) he need to ensure that effective parliamentary scrutiny is maintained in all situations; ii) The need that the technical quality of all legislation is maintained and improved; iii) The importance of providing interested bodies and affected organisations with the opportunity to influence the legislative process; iv) The need to ensure that legislation is a proportionate, justified and appropriate response to the matter in hand and that fundamental constitutional rights and principles are not jeopardised; v) The need to maintain transparency.

[19] Public Administration and Constitutional Affairs Committee, Fourth Report of Session 2019–21, Parliamentary Scrutiny of the Government's handling of Covid-19, 8 September 2020.

[20] R. Cormacain, *Keeping Covid-19 emergency legislation socially distant from ordinary legislation: principles for thestructure of emergency legislation* [2020] The Theory and Practice of Legislation 1; R. Hogarth, *Parliament's role in the coronavirus crisis*, Institute for Government, 2020.

The Coronavirus Act 2020 sets out measures to respond to the COVID-19 pandemic, while Orders and Regulations related to unresolved issues or to get them resolved quickly become less important.

In Italy, the adoption of secondary legislation has become the rule rather than the exception. The first Decree-Law with restrictive measures to face the health emergency by Covid-19 (Decree-Law No. 6 of 23 February, 2020), granted the "competent authorities" with the power to adopt measures in response to coronavirus outbreak. Many other Decrees of the President of the Council of Ministers (DPCM)[21] have been issued, which have progressively limited fundamental human rights granted by the Constitution. The DPCMs are regulatory acts which have the force of law[22]; they are not converted into law by Parliament but they recall Articles 16, 17 and 32 of the Constitution, which legitimate the government's containment measures to protect public health as a fundamental human right indispensable for the exercise of other human rights.

Therefore, in Italy, much more than in the UK, the epidemic crisis has been de-parliamentarized, due to the limitation upon the power of Parliament[23], while the government is entrusted with special powers to manage the emergency situation and it is referred to as the sources of law[24].

2. UK Environmental Law, Brexit and Covid-19

Although the United Kingdom withdrew from the European Union on 31 January 2020, it is clear that the UK environmental legislation still has a significant European footprint[25]. However, soon it will be possible to understand how the UK's environmental legislation will evolve and if it will continue to comply with the EU environmental legislation. One

[21] Unlike Decree Law or the ordinary law, the DPCM do not require parliamentary approval.

[22] E.C. Raffiotta, *Sulla legittimità dei provvedimenti del Governo a contrasto dell'emergenza virale da Coronavirus* [2020] Biodiritto <www.biodiritto.org> accessed 11 November 2020.

[23] F. Clementi, *Quando l'emergenza restringe le libertà meglio un decreto-legge che un Dpcm*, Il Sole 24 Ore, 13 March 2020 <https://24plus.ilsole24ore.com/art/coronavirus-quando-l-emergenza-restringe-liberta-meglio-decreto-legge-che-dpcm-ADfpIxC>

[24] S. Cassese, *La pandemia non è una guerra. I pieni poteri al governo non sono legittimi*, Il dubbio, 14.04.2020 < https://www.ildubbio.news/2020/04/14/cassese-la-pandemia-non-e-una-guerra-pieni-poteri-al-governo-sono-illegittimi/>

[25] Article 2 of the European Union (Withdrawal) Act 2018 (it is an Act of the UK Parliament that provides for repeal of the European Communities Act 1972, related to the accession of the United Kingdom to the European Community) provides that EU-derived domestic legislation continues to have effect on and after exit. B. Guastaferro, *Parlamenti, Corti e struttura territoriale dello Stato: il Regno Unito tra Brexit e devolution* [2020] 41 DPCE Online <www.dpceonline.it> accessed 11 November 2020; G. Caravale, *L'approvazione dell'European Union (Withdrawal) Act 2018 e le incertezze dell'accordo di recesso* [2018] 2 Nomos <www.nomos-leattualitaneldiritto.it> accessed 11 November 2020; P. Craig, *Constitutional Principle, the Rule of Law and Political Reality: The European Union (Withdrawal) Act 2018* [2019] 82 MLR 319; M. Elliott, S. Tierney, *Political Pragmatism and Constitutional Principle: The European Union (Withdrawal) Act 2018* [2019] 1 PL 1.

of the major factors that led to the results of Brexit referendum in 2016 was the prospect of a stronger economic growth resulting from the removal of the UK from the European restrictions[26]. In addition, there is the prospect to reduce administrative burdens, authorisations, reports and data sharing related to environmental legislation. Moreover, the UK will need to decide if to implement its commitment agreed at COP21 in Paris in 2015. The Agreement on Climate Change contains non-regression clauses[27], it brings all nations into a common cause to undertake ambitious efforts to fight climate change. Countries submit their plans for climate action known as "nationally determined contributions" in a framework of differentiated responsibilities and respective capabilities. As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts, which will represent a progression over time. Therefore, it is an improvement or, at the most, the maintenance of an unchanging situation, but with the objective to achieve higher levels of climate protection. It is not only a EU's strategy but it has become an international climate action[28]. The outcome document of the United Nations Conference – or Rio+20 – states the need that all Parties do not backtrack from their commitment to the outcome of the United Nations Conference on Environment and Development, albeit it does not explicitly refer to the principle of non-regression. The 2016 World Declaration on the Environmental Rule of Law, drafted by a team of members at the 1st IUCN World Environmental Law Congress in April 2016 in Rio de Janeiro, Brazil, attempts at codifying the non-regression principle and imposes a duty on States to take appropriate steps to promote and achieve ecological justice through the environmental rule of law.

With regard to the so-called 'resistance test' of British environmental legislation, it should be noted that the EU environmental law was transposed into the national system of environmental legislation. This has included the establishment of a UK-wide environmental governance body, as the consequence of an active and propulsive involvement of the United Kingdom in the in the field of the EU environmental policy[29]. This is the case of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora – which aims to promote the maintenance of biodiversity – translated into specific legal obligations by the Conservation (Natural Habitats, &c.) Regulations

[26] A plausible scenario that could affect the UK might be the risk of a regression, together with a reduction of environmental standards to better compete in international markets. Therefore it will be necessary to see the impact of environmental regulation on the Uk domestic and international market. M. Gehring, F. Phillips, *Brexit and Environmental Law. The Rocky Road Ahead*, CIGI, Waterloo, 2018, 6 ss. The Authors examin the legal and policy considerations underpinning Brexit in light of international environmental commitments, in particular relating to climate change, arguing that deregulatory pressures could evaporate the dream of a greener post-Brexit Britain.

[27] Environmental protection is enforced by the implementation the principle of non-regression through regulatory, sanctioning and jurisprudential measures. C. Petteruti, *Le sanzioni ambientali come strumento di prevenzione del danno ambientale. Profili di comparazione* [2019] 4 DPCE 1113.

[28] C.T. Reid, *Brexit and the future of UK environmental law* [2016] 4 Journal of Energy&Natural Resources Law 407.

[29] Ibid.

1994[30], or of climate change regulations, the Greenhouse Gas Emissions Trading Scheme Regulations 2012 and the system of Integrated Pollution Prevention and Control (IPPC). The UK-wide policies on waste are built on the EU waste laws: the definition of hazardous waste in the Environmental Protection Act 1990 originates from the Directive 2008/98/EC – also known as the Waste Framework Directive – and the EU Directive 91/689/EEC – the Hazardous Waste Directive. Clearly, just as the UK environmental law will be less influenced by the EU law, the EU environmental law may be seen differently in legal systems such as the common law[31]. As matter of fact, the UK's withdrawal from the EU could then have less significant consequences than we might think, due to the United Kingdom's post-Brexit relationship with the remaining European Union members. Indeed, the relevant EU environmental legislation will continue to apply in the UK, due to the UK's ambition to maintain "the freest possible trade"; therefore, the UK will remain largely aligned to the EU businesses trading standards[32].

3. Impact of COVID-19 outbreak on GHG policy

A new report published on the UN-established Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) warned that preventing future pandemics depends on tackling biodiversity loss and climate change[33]. This perspective is confirmed in the address of the UK Committee on Climate Change, which is responsible for monitoring progress towards the targets in addition to providing independent advice on carbon budgets. According to the Committee addressing this, these priorities can lead to multiple benefits through improving the condition of the natural environment and air quality, benefiting biodiversity and public health, as well as improving well-being, and reducing society's exposure to external shocks[34].

Although it's too early to make an assessment of the impact of COVID-19 on the environment, the available data have shown a strong correlation between emission reduction and energy consumption. Therefore, in Europe, there is a correlation between GHG emissions and GDP, highlighting that the emission reduction targets can be only achieved through a

[30] See the Conservation of Habitats and Species Regulations 2010 entered into force on 1st April 2010.

[31] Decisions of the European Court of Justice (ECJ) are bound to a significant redrafting due to the new directions of the UK Supreme Court that in the judgment *R (on the Application of Miller and another) (Respondents, 1) v Secretary, 19 of State for Exiting the European people Union (Appellant, 19)* has ruled "Upon, 19 United, United Kingdom's, 1999 withdrawal from the European people Union, EU law Will Cease to be a source of Domestic law for the future (...), decisions property of the Court of Justice Will (…) be of no more than persuasive authority, and there Will well no further References It is not just a that court from UK courts".

[32] About the Britain's future economic relationship with the EU, see V. Bogdanor, *Brexit, the Constitution and the Alternatives* [2016] 27 King's Law Journal 314.

[33] IPBES, *Workshop on Biodiversity and Pandemics* (2020).

[34] CCC Reducing UK emissions Progress Report to Parliament (2020).

sustainable development policy[35]. As it has been already pointed out, environmental policy often sets short-term goals, renouncing long term goals and so making it even harder for States to develop national long-term strategies on climate change[36].

The UK's commitment to fight against climate change has been pursued under international agreements with European Member States. The Climate Change Act 2008 aims to enable the United Kingdom to cut greenhouse gas emissions by 80% below 1990 levels[37]. It is the first global legally binding climate change mitigation target set by a country[38]. Although no specific sanctions or penalties are stated to apply for failing to meet targets, it is clear that the Government's violation of the Climate Change Act 2008 would expose it to a political censure, if not to a judicial one. Indeed, it has been pointed out that the key strength of the Climate Change Act is its long-term objectives[39]. This is because the action to combat climate change requires structural changes that cause political debate about the different options available, due to their impact on households and businesses. Surely regulatory framework may help manage and deal with potential socio-political conflicts and structure a constructive decision-making process[40], particularly in view of the seriousness of a pandemic scenario such as Covid-19.

The Climate Change Act has already been subject to several changes since it came into force, in fact, since 2008 Conservative and Labour parties have alternated in government.

[35] D. Helm, *The Environmental Impacts of the Coronavirus* [2020] 76 Environ Resouree Eeon 21: "Put simply, the evidence from the correlation between the falls in emissions and GDP during the pandemie lockdowns indicates that achieving the Paris Agreement of a 1.5 °C limit to global warming is going to be very difficult if GDP and population continue to rise. This observation should further ignite the debate about whether growth in consumption is compatible with limiting global warming and protecting the environment more generally, and whether technological progress can be fast enough to reduce the environmental impacts of that greater consumption". I. Schumaker, *Perspectives on the Economics of the Environment in the Shadow of Coronavirus* [2020] 76 Environmental and Resource Economics 447.

[36] A. Averchenkova, S. Fankhauser and J.J. Finnegan, *The impact of strategic climate legislation: evidence from expert interviews on the UK Climate Change Act* [2020] Climate Policy 1: "Policy certainty can be enhanced through several channels. First, putting policy into law, with due parliamentary oversight, is expected to reduce the scope for backsliding from earlier commitments and to ensure continuity in climate change objectives, targets and policies (…) it is more difficult to ignore, weaken or abolish a parliamentary act than government strategies or white papers, as it requires active legislative processes to amend or remove them". The Authors highlights that it is useful to delegate the implementation of climate interventions to independent bodies charged with evaluating or implementing policies.

[37] So far, the United Kingdom has been implementing a plan to bring all greenhouse gas emissions (GHG) to net zero by 2050. Specific interventions have been identified to achieve this target such as: energy efficiency, sustainable consumption, renewable energy, intensification of the use of hydrogen as renewable energy source. To reach the new goal of the Net Zero, it reduced GHG emissions by at least 44% compared to 1990 (2018 data). However, even before the pandemic, the UK was lagging behind in achieving its 2022, 2027 and 2032 targets. S. Bell, *United Kindom*, in E. Lees, J.E. Viñuales (eds), *The Oxford Handbook of Comparative Environmental Law*, (OUP 2019): "It has been argued that the Climate Change Act 2008 sets sufficiently clear targets for greenhouse gas (GHG) reduction to create a form of substantive rights in the UK's political constitution".

[38] Loi n° 2019-1147 of 8 November 2019 on Énergie et Au Climat in France; the Klimaschutzgesetz 2019 in Germany; the Swedish Climate Act 2018.

[39] K. Hill, *The UK Climate Change Act 2008. Lessons for National Climate Laws* (ClientEarth 2009); H. Townsend, *Climate Change Act 2008: Will It Do the Trick?* [2009] 11 Environmental Law Review 116.

[40] A. Averchenkova, S. Fankhauser and J.J. Finnegan (n. 36).

The pandemic is the latest event that, together with the economic crisis and the Brexit referendum, has affected the UK. Nevertheless, the Act has not suffered setbacks, except some delays, and it has never been repealed[41]; on the contrary, it has been amended with the aim to achieve more ambitious targets than those of 2008[42]. In short, everything suggests that it can also withstand the impact of COVID-19, perhaps contributing to the development of Green-Economy as an opportunity to promote employment and business growth.

So much emerges from the Committee on Climate Change that in April 2020, six initiatives were indicated to the Prime Minister for a resilient recovery from COVID-19: use climate investments to support the economic recovery and jobs; lead a shift towards positive long-term behaviours; tackle the wider resilience deficit on climate change; embed fairness as a core principle; ensure the recovery does not lock-in greenhouse gas emissions or increased climate risk; strengthen incentives to reduce emissions when considering fiscal changes[43].

The Committee on Climate Change Reducing UK emissions' Progress Report to Parliament shows that the long-term climate targets will remain unchanged: the need to prepare for climate change and to transition to a Net-Zero economy remains a scientific and economic imperative and provides a positive vision for society[44]. There is no doubt that the net zero target by 2050, following the pandemic, is set in a new context. However, commitment to reduce climate-changing gas emissions is currently highlighted, stressing the UK's action in the fight against climate change at international level also with regard to the 26th session of the Conference of the Parties (COP26) of the UN Framework Convention on Climate Change (UNFCCC) hosted in Glasgow by the UK in partnership with Italy. Postponed to November 2021, the Conference will be a key moment to check the Nationally determined Contributions (NDCs) by the Parties for intended emissions reductions to 2030.

[41] The Committee on Climate Change (CCC) is one of the main features and strengths of the Act 2008, an independent advisory body. See the Recent Committee's 2020 report to Parliament (2020) <https://www.theccc.org.uk/publication/reducing-uk-emissions-2020-progress-report-to-parliament/>.

[42] The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, which amends the Climate Change (Scotland) Act 2009, sets targets to reduce Scotland's emissions of all greenhouse gases to net-zero by 2045.

[43] CCC (2020) Letter to Prime Minister Boris Johnson on Building a resilient recovery from the COVID-19 crisis: "The economic recovery from [COVID-19] gives the UK a chance to grow back in a way that is fit for the low-carbon future to which it aspires, and that can benefit from the industrial and economic developments that this future offers".

[44] Ibid.

4. Environmental impacts of the COVID-19 pandemic

The EU environmental law rests on the Environmental Law principles. The key principles of the Environmental Law are the precautionary principle (or precautionary approach) and the prevention principle.

This requires environmental standards to prevent environmental damage. The violation of these principles involves the application of the 'polluter pays' principle; this principle means that the polluter should bear the "costs of pollution prevention and control measures". The precautionary principle and the prevention principle are central principles of the UK Environmental Law[45]. The current UK environmental legislation is the result of the the implementation and the adherence to the international and EU's norms[46]. The result is a complex – and uncertain – post-Brexit legal system, mainly due to the process of the UK transposition of EU legislation, ensuring that directives are transposed into domestic legislation. The implementation of the latter is conferred by the central government to its departments, which will then report on areas of competence: Department for Environment, Food and Rural Affairs (Defra) and divided among a range of other departments including the Ministry of Housing, Communities & Local Government; the Department of Business, Energy and Industrial Strategy; the Department of Transport; the Treasury; and the Ministry of Justice[47].

Currently, the European Union (Withdrawal) Act 2018 requires the Secretary of State to publish a draft Bill consisting of a set of environmental principles, to be kept in the body of the UK law. The aim is to prevent that, in the UK after Brexit, these principles may not be applied, even in the courts, through transposition and implementation of the EU legislation into the domestic legal order. On the other hand, leaving the European Union would give the UK the opportunity to optimise environmental policy. In this regard, George Eustice, appointed Secretary of State for Environment, Food and Rural Affairs, said the Environment Bill 2019 is a keystone in the government's vision to deliver the most ambitious environmental programme. The Bill sets out policies, strategies and specific objectives in environmental protection[48]. In the face of Covid-19 emergency, it's more important than

[45] However, it should not be ignored that jurisprudence gives environmental principles political rather than legal importance.

[46] With respect to the original role of environmental issues in private law, which is mainly involved in protecting property and in neighbourhood disputes, environmental law has been progressively increasing its public dimension since the period of industrialization and urbanization, together with the growing demand for the environmental and human health protection. S. Bell, (n. 37).

[47] Ibid.

[48] According to E. Fisher, *Executive Environmental Law* [2020] 83 The Modern Law Review 163, the Draft Bill is inadequate in its engagement with the nature of environmental problems, the benefits of legislation, and the importance of constitutionalism: "In this 'unfrozen moment' thus lies a risky post-Brexit future – a future that not only environmental lawyers, but also public lawyers should be alert to".

ever not only to protect and manage environment but also to foster investment in green economy.

Beyond what could be the innovation effects of the British environmental law, it seems difficult that it won't apply the principles of both domestic and international environmental law, with the risk of a regression of the Environmental protection and management[49]. This would be in contrast with the principle of non-regression of International Environmental Law related to the environmental protection. On the other hand, these set of environmental principles, including the precautionary principle has been recognised by British case law with regard to environmental impact assessments and authorisations[50].

The precautionary principle plays an important role related to the Covid-19 pandemic, because, in line with the implementation of environmental law, it guides many of the measures to contain the contagion in cases where there is a lack of clear and unambiguous scientific indication[51]. Indeed, both in Italy and in the UK the application of the precautionary principle has taken on an even stronger connotation, since the measures to contain the spread of virus COVID-19 have been adopted in the absence of definite scientific data, in order to prevent the critical issues in the healthcare sector – particularly in hospitals – rather than to contain the negative impact on people's health. Therefore, the governments restrictions on non-essential businesses, unnecessary administrative burdens and people's

[49] The *Fishermen and Friends of the Sea (Appellant) v The Minister of Planning, Housing and the Environment (Respondent) (Trinidad and Tobago) [2017] UKPC* offers some instructive examples of how the UK courts deal with environmental principles. The case is noteworthy because it provides a relatively rare judicial consideration of one of the core environmental principles – the polluter pays principle — by the UK Privy Council. Lord Carnwath began the judgment with a general summary of what the polluter pays principle is about, "The Polluter Pays Principle ('PPP' or 'the Principle') is now firmly established as a basic principle of international and domestic environmental laws. It is designed to achieve the 'internalization of environmental costs', by ensuring that the costs of pollution control and remediation are borne by those who cause the pollution, and thus reflected in the costs of their goods and services, rather than borne by the community at large". Therefore, the principles of environmental law, being rooted in international customary law, can only be acknowledged and implemented by the national jurisprudence of the United Kingdom. If the UK government keeps its promises about transposing environmental principles and responsibility into post-Brexit legislation, there will likely be no particular action by the UK courts. Otherwise, if a framework emerges in which environmental principles is a downsizing in practice, it is possible that the UK Supreme Court adopts a more interventionist and controlling attitude. C. Hilson, *The Polluter Pays Principle in the Privy Council: Fishermen and Friends of the Sea (Appellant) v The Minister of Planning, Housing and the Environment (Respondent) (Trinidad and Tobago) [2017] UKPC 37* [2018] 30 Journal of Environmental Law 507.

[50] The British courts have been fostering the need to comply with the EU Environmental Legislation. The violation is sanctioned as environmental offences and the consequent civil and criminal liability. *R v Milford Haven Port* Authority [2000] 2 Cr App R (S) 423, *R v Anglian Water Services Ltd* [2003] EWCA Crim 2243, *R v Thames Water Utilities Ltd* [2015] EWCA Crim 960; [2016] 3 All E.R. 919, all cited in P. Stookes, *Brexit and Implications for Environmental Law* [2018] 6 Environmental Law and Practice Review 103.

[51] The precautionary principle was enshrined in the Maastricht Treaty of 1992 and has been applied by the European Court of Justice as a *general principle of law*, acquiring the definition of principle that "enables decision- makers to adopt precautionary measures when property scientific evidence about an environmental or human health hazard is uncertain and stakes are high". The precautionary principle used in the emergency legislation may lead to the implementation of measures based on based on purely hypothetical scientific evidence, where uncertainty, such as lack of information, acquires a positive charge. In fact, the precautionary principle has become a guiding principle adopted by governments to respond to the challenges of the pandemic and adopt containment measures. D. Bourguignon, *The precationary principle. Definitions, applications and governance, European Parliamentary Research Service*, December 2015, PE 573.876.

daily activity movements were aimed at reducing the spread of the virus and preventing hospital collapse. Therefore, this approach changes the policy for determining the criteria for risk acceptability. The risk should not be assessed by comparing it to the consequences of an adverse event but considering the ability of the management system to react and contain the consequences of an adverse event, implementing strict safety measures.
In the event of unidentified risks and waiting for scientific data, the government is responsible for establishing the criteria for risk acceptability, according to threats and vulnerabilities parameters, and considering all the population's concerns. It is therefore up to political bodies to decide the measures to be implemented, involving the political parties concerned and taking temporary, proportionate and non-discriminatory actions, without neglecting the burdens and benefits associated with the decisions[52].

5. Necessity and proportionality as tools for protecting human rights and environment in times of emergency

The Covid-19 emergency is exacerbating existing human rights violations. The measures to prevent the spread of the virus have had an impact on constitutional human rights, and have been hardly accepted by people. This is due to different levels of risk perception between citizens – partially related to scientific uncertainties inherent to the symptoms and the model the virus can spread, partially because of unclear messages to explain the measures taken. Freedom of movement, freedom of thought and worship, freedom of assembly and association are just some of the issues contained in the emergency measures set out in the Public Health (Control of Disease) Act 1984, The Health Protection (Coronavirus) Regulations 2020 and the Coronavirus Act 2020, which arise compatibility problems with the provisions of the Human Rights Act 1998 and the Equality Act 2020. Therefore, in the absence of a written constitution, the Human Rights Act 1998 is the 'shield' of human rights principles, constitutionally guaranteed. The Act provides that it is unlawful for a public authority to act in a way that is incompatible with a Convention right (Article 6), guaranteed under the European Convention on Human Rights (ECHR). However, the protection of human health, of public safety, or the protection of public order and the rights of others are fundamental rights set out in the Convention which can both restrain the fundamental freedoms. In this difficult balance between the right of protection and other rights, the main concern is not only linked to the proportionality and necessity of the measures taken

[52] Communication from the Commission on the precautionary principle, COM (2000) 1 final. According to the Communication, decision-makers need to be aware of the degree of uncertainty attached to the results of the evaluation of the available scientific information. Judging what is an "acceptable" level of risk for society is a political responsibility. A wide range of initiatives is available in the case of action, going from a legally binding measure to a research project or a recommendation. The decision-making procedure should be transparent and should involve as early as possible and to the extent reasonably possible all interested parties (Refs. 5).

in achieving the objectives of protection. The fear is that the emergency may consolidate a different approach for the protection of all the rights and freedoms, leading to a regression of their protection[53]. Therefore, the adoption of appropriate measures under the rule of law is a basic prerequisite to legitimate restrictions of these rights only if such restrictions are "necessary in a democratic society like the one of the UK. At the same time, since environmental factors may affect individuals' rights (for example, by affecting their health), the call to good regulation is a step to protect natural environment as announced by Boris Johnson in the UK New Deal, to respond to the economic collapse caused by Covid-19. Indeed, the Prime Minister's "build, build, build" slogan has been interpreted by many as an alarm to weaken environmental protection. Therefore, it is clear that the requirements of necessity and proportionality, referred to in the Coronavirus Act 2020 to legitimate the emergency measures adopted, should also be properly considered as options to relaunch social and economic activities, to achieve a correct environmental protection and to improve environmental objectives.

The UK net zero targets are based on a veryambitious pathway that involves:

- energy efficiency in buildings;
- modification and or carbon transport;
- implement renewable energy to contribute to a resilient and sustainable energy system;
- embedding low-carbon investments into trends in world energy markets by sector and technology.
- Strengthening Agricultural Support Services, promoting land use conversion and biodiversity protection;
- Resilience to Climate Change.

As highlighted by the Committee on Climate Change[54], climate investment will help create jobs and a new economic recovery, while changing the UK's gas emissions and building climate resilience. To achieve these goals, a more broadly cooperation is required by the territorial authorities, which must make full use of the policy levers available to them and work closely with the UK Government to ensure delivery in those areas that are not devolved.

[53] J. Pugh, *The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person* [2020] 7 Journal of Law and Biosciences 1.

[54] Committee on Climate Change, *Reducing UK emissions. Progress Report to Parliament*, June 2020, presented to Parliament pursuant to Section 36(1) of the Climate Change Act 2008.

6. UK Environmental Digital Activism in the time of Covid-19

The Covid-19 pandemic has certainly highlighted the importance of communication about the current emergency, contributing to guide communities and individual behavior. The communication channels involved are not only the traditional media, but above all the Internet and social medias. The capillary action of this kind of communication highlights the problem of the right "not to be informed", more than of the right "to be informed". In short, there is a problem related to the selection of information that requires a critical approach that Internet and social networks users do not always have, being exposed to the threat of fake news. Moreover, school closures and restrictions on gatherings may have a negative impact on public participation. Environmental activists mainly show this discomfort. Just think about the protests around the world aimed at preventing further global warming and climate change which shacked up public opinion, promoting the international debate on climate change.

The Internet has been used as the key instrument by Environmental activists (particularly those committed to the fight against global warming), since it is a mechanism for worldwide information dissemination, it is a useful tool to make people – including bloggers – voice their opinion and organize themselves in an environmental movement. The advantage of the so-called 'social media activism'[55] is to involve individuals with different backgrounds around common causes[56]. The use of social media and the Internet has thus created new forms of environmental activism, strengthening the concept of environmental democracy[57] and its principles[58].

[55] S. Wilson, *Representing Climate Activism through Digital Media before and during COVID-19 lockdowns* [2020] 4 International Journal of Contemporary Humanities 2; L.E. Hstress, J. Hopke, *Internet-Enabled Activism and Climate Change*, in M.C. Nisbet, S.S. Ho, E. Markowitz, S. O'Neill, M.S. Schäfer, and J. Thaker (Eds), *The Oxford Encyclopedia of Climate Change Communication* (OUP2018).

[56] N. Basserabie, *How activism is evolving to hold government and business accountable* [2019] Australian Human Rights Institute <www.humanrights.unsw.edu.au> 11 November 2020.

[57] In the European legal system, environmental democracy can be developed through participatory and ecologically politics, according to which, authorities are required to involve citizens in the decision-making processes. At international level, the Aarhus Convention grants the public rights regarding access to information, public participation and access to justice. See G. Cordini, *Ambiente e democrazia. Profili introduttivi di diritto pubblico comparato* [2001] Diritto e gestione dell'ambiente 11; on the Aaarhus Convention see C. Petteruti, *Le limitazioni indirette al diritto di accesso del pubblico alle informazioni ambientali: ammissibilità di una tassa per l'accesso alle informazioni ambientali nei limiti della ragionevolezza* [2017] 1 DPCE Online http://www.dpceonline.it/index.php/dpceonline/article/view/102 accessed 11 November 2020.

[58] Principle 10 of the 1992 Rio Conference on Environment and Development provides three Environmental Democracy rights: 1) the right to participate in environmental decision making, 2) the right for citizens affected by environmental decisions to receive pertinent information, and 3) the right to access judicial and administrative proceedings, including redress and remedy, to effectuate these rights. D. Takacs, *Environmental Democracy and Forest Carbon (REDD+)* [2014] 44 Environmental Law 71: "In addition, indigenous peoples, other forest dependent peoples, and possibly all local citizens should give free, prior, and informed consent (FPIC) when decisions about environmental resources vital to their lives are made".

In the UK, Environmental Movement Organizations –environmental non-governmental organizations (ENGOs) and environmental charities – have been joined by non-formal Environmental Movement Organizations, which include environmental networks59. As noted[60], there are different community-based (local, regional, national and global) Environmental Movement Organizations in UK that operate more as non-formal networks. At the same time there are environmental networks like the Campaign against Climate Change (CCC), a UK-based pressure group founded in 2001. These movements made extensive use of the internet and of social media as tools for advocacy campaigns, to mobilize collective participation and action. However, democratization of environmental digital activism may contradict itself. Indeed, it cannot be ignored that digital activism requires hardware and software to access the Internet, thus creating inequalities[61]. Moreover, the widespread diffusion of environmental technologies and the development of green computing will be needed as well – including hardware and software; this might be more expensive than the use of a laptop or a smartphone. All these issues must be taken into consideration. These problems have emerged even after Covid-19 emergency in different countries – like Italy – that have implemented school closures and strategies to support remote learning. This choice raised heated debates about the violation of the right to education for persons without financial resources having to buy education-related ICT equipment and lacking broadband connectivity[62].

Albeit environmental digital activism (often called 'clicktivism') might increase minorities' involvement in British environmental movements, it should not be ignored that actually there may be limitations due to problems with access to the web, generating inequalities in digital activism.

[59] S. Pickard, *The Nature of Environmental Activism Among Young Peoplein Britain in the Early 21st Century*, in B. Prendiville, D. Haigron (Eds), *Political Ecology and Environmentalism in Britain* (Cambridge Scholars Publishing, 2020). According to the authors: "Non-formal Environmental Movement Organisations tend to have a different organisational structure to political parties and other formal organisational structures. Indeed, they are usually leaderless and (officially) tend to have no hierarchy, thus operating within a decentralised, horizontal and egalitarian grouping, or informal 'fluid networks'".

[60] Ibid.

[61] J. Pickeril, *Environmental Internet Activism in Britain* [2001] 13 Peace Review 365.

[62] Article 26 of the Universal Declaration of Human Rights provides the right to education. Education shall be free, at least in the elementary and fundamental stages. Higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Article 2, Protocol 1, of the European Convention on Human Rights provides that No person shall be denied the right to education.

Conclusion

UK is currentlyfacing two wicked public policy issues – Covid-19 and Brexit, having a deep impact on its economic, political and environmental activity.
The British people's reaction to the referendum result was not unanimous; separatist national identities were fueled in Scotland and Northern Ireland – which voted to remain.
Thus, many uncertainties rose, particularly at international level, since there is no precedent of a Member State withdrawing from the Union. It is extremely difficult to predict the future of the UK. Similarly, it will be hard to forecast the impact of the COVID-19 pandemic. Therefore, it is arduous to define the negative effects of both Covid-19 and Brexit in the UK or whether they could provide new opportunities.
Environmental issues are rooted in this uncertain scenario. The UK's withdrawal from the EU may involve a review of environmental legislation and there might be a return to the former regulatory framework as an immediate impact of Brexit (The European Communities Act 1972), as stated in UK Supreme Court Miller Judgment on 27 January 2020[63].
A Review of the Regulatory Framework could be even more necessary in response to Covid-19 and it's the environmental impacts – for example, its implications on climate change – which will affect the future economic policy choices. Actually, the European Union (Withdrawal) Act 2018 contains provisions to make regulations to prevent a regression on the UK environmental law and regulation; UK will continue to apply the EU law under the 2018 Act.
It is no coincidence that specific maximum precautionary measures are helping to control and reduce the spread of the virus. Both in the UK and in other countries – like Italy – precautionary measures and prevention measures have been adopted so far; therefore, it is difficult to determine which ones prevails. While restrictions on the use of public transport are based on disease prevention aimed at reducing the risk of infection in confined spaces, precautionary measures require limitations on all non-essential business activities, because they may facilitate the spread of the virus.
Therefore, Britain is experimenting a new precautionary approach, managing the critical issues of the system to prevent the risk of infection rather than managing the risks itself.
Comparing the Italian and the British interventions to deal with the COVID-19 pandemic, it is evident that the executive plays a key role, as shown by the UK Coronavirus Act 2020 and the Italian Civil Protection Code.
The use of secondary legislation to deal with the pandemic reduced'the influence of the legislatures. Both in the UK (the Coronavirus Act 2020) and in Italy (Decree-Laws No. 6

[63] R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), [2017] UKSC 5.

of 23 February 2020 and No. 19 of 25 March 2020), Parliaments allowed governments to rapidly introduce emergency measures that have affected constitutional rights.
To this extent, the recurrent "limitative pattern" measures through the use of secondary legislation may foster the risk of by-passing the temporary requirements, which is essential in states of emergency, thus leading to a limitation of human rights, due to deviations from the legislative power. The last assumption suggests that, both in the UK and Italy, in dealing with the emergency, the Parliament was called to ratify the measures taken by the government or to take the institutional steps deemed necessary to legitimate the measures adopted in time of emergency, without playing an active role in checking the limiting of fundamental rights on the grounds of the requirement of proportionality and necessity of the emergency measures adopted[64].
The Italian Government often used secondary legislation issuing Ministerial Decrees (DPCM) and Ordinances, which, being administrative acts, are subject to preventive control[65]. For instance, there is little doubt that some measures (e.g. restrictions on individual mobility, privacy, and even the right to health) are contained in the Decree-Laws No. 6 and no. 19/2020[66].
Similarly, the use of Ordinances has been wide, causing regulatory overlaps among executive bodies (e.g. Ordinances of the Ministry of Health and Ordinances of the Head of the Department of Civil Protection), the national government and the Regional Governments (which, in the exercise of their power to adopt restrictive measures, have frequently applied more stringent measures confined to a specific territory). In UK, the Coronavirus Act 2020 has substantially transposed the strategic plan of the Government issuing Policy Statement, Policy Papers and Reports, conferring wide powers to the government (expanding the plethora of Orders and Regulations issued) and approving government's Coronavirus action plan[67]. In this regard, concerns have been raised about how the Coronavirus Act 2020 has been fast-tracked through Parliament, without a proper and thorough analysis of the broad powers ascribed to the Government[68]. Furthermore, the total volume of

[64] The question arises as to whether the effect of this situation is the result only of the impact of the virus emergency or whether it is the result of a new balance of power which is emerging in parliamentary systems. S. Baldini, *Il Parlamento*, in L. Pegoraro, A. Rinella (eds), *Sistemi costituzionali*, Torino, 2001. In British politics, Parliament usually has a dominant role, although the most recent events triggered a process of rebalancing between the parliamentary support to the Government (the majority) and its role to examine and challenge the work of the government.

[65] This situation is further aggravated by the fact that the adoption of the measures is influenced by medical-scientific indications coming from external entities.

[66] A. Cardone, *La "gestione alternativa" dell'emergenza nella recente prassi normativa del governo: le fonti del diritto alla prova del Covid-19* [2020] <www.lalegislazionepenale.eu> 11 November 2020.

[67] The Coronavirus (Scotland) Act and the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act of Ireland have been in compliance with the Coronavirus Act 2020.

[68] In this regard, no clause has been included in the Coronavirus Act regarding questions about the necessity and proportionality of the measures taken, although requests were made before the approval of the Act. It must be said that the Government has ensured that the powers will be exercised in accordance with the principles of necessity, proportionality and not-discrimination and will be consistent with international human rights law.

delegated legislation, such as the Health Protection (Coronavirus) Regulations 2020, the Statutory Sick Pay (General) (Coronavirus Amendment) (No. 2) Regulations 2020, and the Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 have not been adopted through Parliament, but laid under the negative or affirmative procedures, albeit they have provided significant provisions related to criminal liability and suspension of certain business activities.

Therefore, the temporary requirement must always be guaranteed and respected, so that a state of emergency does not turn in what Carl Schmitt described a 'State of Exception'. It is no coincidence that the provisions of both the Coronavirus Act 2020 and Decree Law no. 1 of 2nd January, 2018 are time-limited and provide temporary restrictions of fundamental rights.

Another issue could arise in the case of a long duration of COVID-19 pandemic, with the risks of normalizing the Coronavirus emergency. In this case, better planned and designed regulatory interventions will be needed in order to respond to the inevitable social and economic changes that cannot be managed through an extension of existing emergency measures and without ensuring respect for fundamental rights in the exercise of their powers.

The proportional and necessary character of the measures adopted must be consistent with an economic, social and political reset, and must consider some important issues such as environmental protection and mitigations against climate change, which are major factors in facing the virus also. While the UK Prime Minister declares new strategic investment plans in infrastructure, in Italy many measures are announced to simplify administrative procedures. For example, the lockdown period has seen a slew of new renewable energy plants, also due to the suspension of exports of critical minerals from China and to the delays concerning permits issued by the competent authorities[69]. In the current situation, proportional and necessary measures for a "recovery" legislation should simplify administrative procedures, at least to allow the Italian renewable energy sector to reach the emissions reduction targets required by the European Union[70].

[69] L.M. Pepe, *The Scenario of Renewable Energy Sources in Italy and the Effects of COVID-19* [2020] Global Energy Law and Sustainability 200.

[70] Under the 'Clean Energy For All Europeans' Package (Regulations and Directives), the European Commission required all Member States to meet international emissions targets by increasing the share of energy produced from renewable sources (+32% by 2030) and improve energy efficiency (+32.5% by 2030).