

How to regulate better after Brexit: Think differently, speak softly and carry a bigger stick

Teddy Roosevelt, the US president in the opening decade of the 20th century, liked to quote an African proverb, 'speak softly and carry a big stick; you will go far'. His approach proved pretty successful.

Today we stand in the opening decades of the 21st century and have the opportunity to make many things anew after Brexit, including how we regulate our environment. So let me offer as a guide an updated version of the Roosevelt doctrine, which is this: Think differently, speak softly, and carry an even bigger stick – you will go even further.

Let me unpack that for you in the next ten minutes.

Think Differently

Whatever you think of Brexit, now we have left the EU we have a great opportunity to rethink completely how we protect and enhance nature. That's because 80% of our environmental legislation comes from the EU. Much of it – and let's remember that the UK wrote a lot of it – has done a lot of good. But a lot of it is quite old, some of it wasn't designed for a country like the UK, and much of it is pretty prescriptive, setting out what outcome is to be achieved and how, often in some detail.

Now we have left the EU I think we could invent a new model which would simultaneously improve the environment, deliver better for business and cost the taxpayer less.

That model would think differently. It would set higher standards than the ones we have now. It would be climate-proof, ensuring our regulation is forward-thinking and flexible to help us mitigate and adapt to the climate emergency, which remains the biggest threat of our time. It would define more clearly than a lot of the current legislation the goal to be achieved and by when – healthy water quality in all our rivers by 2030 – for example. It would have fewer, simpler and better regulations to achieve those goals. Those regulations and the way they were implemented by the regulators would be proportionate, risk-based and outcome-focused.

Speak softly

In running the model the regulators would speak softly, at least at first. We would assume good intent on the part of operators until and unless they showed us otherwise – and most businesses and farmers do have good intent. The default approach would be the carrot of advice and guidance to help operators comply before any resort to the stick of enforcement. Complying

with the overall model would be less burdensome for good businesses. Those with a strong track record of compliance would be rewarded with lower regulatory charges, fewer inspections and a wider degree of discretion in deciding how the standards would be met.

In her speech to you last year, Dame Glenys warned against 'not litigating or being combative for the sake of it'. I couldn't agree more. I'm a big fan of carrots. When the EA works at its best, it is usually by working with rather than against those we regulate: collaborating, innovating and problem-solving. Speaking softly, if you will.

Carry a bigger stick

But not every operator has good intent.

So the future model I'd like to see would also carry a much bigger stick. It would make regulated industries pay the full cost of their regulation. They currently don't: quite a lot of it is subsidised by the taxpayer. It would make them pay the full cost of repairing any damage they do to the environment: they currently don't do that either. And the model would carry much tougher punishment for the biggest and worst polluters. In cases of extremely harmful and reckless pollution – and we've seen far too much of that in the last few years – that would include fines so large they would put a major dent in companies' bottom lines and sentences that would put their bosses in jail. That would greatly concentrate the minds of Boards and Chief Executives and have a powerful deterrent effect.

The future model would have one other feature I want to stress: greater cooperation between the regulators themselves to deliver better outcomes. That is already happening: in the water sector for example, there is very strong collaboration between the EA, Ofwat and the Drinking Water Inspectorate to share intelligence and to ensure that by using our different tools in a joined-up way we can together be stronger and even more effective regulators of the water companies.

The new Office for Environmental Protection will have a key role to play in helping all of us be better regulators – both in helping share analysis, advice and best practice, and in holding us all – and the government – to account when we fall short. The regulators need regulating too.

Regulation works

But as we start to think about the new world and what needs to be different, let's recognise that much of what we have done in the past has produced massive benefits. So let's change what needs changing but keep what's worked.

The first thing that's worked is regulation itself. Whether we are talking air quality, water quality, greenhouse gas emissions or waste, one thing we know is that robust regulation delivers better outcomes for people and nature. That is why most of the bathing waters around our coast are the cleanest they have ever been since records began. That is why the Thames is

in a far better state than it was a few decades ago, with the Zoological Society of London recently reporting that a river which was declared biologically dead in 1957 is now home to 92 bird species and 115 marine species, including sharks, seahorses, eels and seals. Regulation is why our air is cleaner: since 2010, we have seen a dramatic decrease in particulate emission from the industries we regulate. And perhaps most importantly in our climate-ravaged world, regulation is what will help us resolve the climate emergency and deliver on our COP26 commitments. Since 2010, greenhouse gas emissions from the sites the EA regulates have decreased by 50%. Mitigating the extent of climate change by reducing carbon emissions is crucial to tackling it. If we want to mitigate, we need to regulate.

And it's not just the environment that benefits from good regulation: so do people and so does justice. We know that poorer and more diverse communities experience a lower quality environment, whether that is via air, water, flooding or access to nature, and have a poorer quality of life and lower life expectancy as a result. Good regulation is one of the best ways of levelling up.

Good regulation needs the right funding

Nothing in life is free. Ultimately we will get the environment we are prepared to pay for. And that applies to regulation as well. A core requirement for robust and effective regulation is adequate funding. The Environment Agency's regulation is funded from two sources: government grants and the charges we apply to the businesses we regulate to cover the costs we incur in regulating them. We think there is a strong case for increases in both of those income streams and we are having good conversations with the government about that. But I am not here today to lobby for more money or to complain about our budget. We know times are hard, for the government finances, for businesses and for the taxpayers, and we will always do the best we can with the money we have.

What I will do though is give you an example of how a relatively small amount of money can make a big difference. A few years ago somebody, possibly me, said that waste crime was the new narcotics – it was big, nasty, profitable and it was ruining lives and livelihoods. The criminals were damaging jobs, growth and tax revenue as well as the environment by undercutting the legitimate waste business.

The government did something about that. In 2018 it gave the EA an extra £30million and new powers. We invested in our local Area Enforcement Teams and innovated with body cameras to gather the evidence we need, as well as fostering productive new partnerships with the police and the other agencies by establishing a new Joint Unit for Waste Crime where we track, target and go after the criminals.

As a result we have made huge strides in this area. In 2020 we stopped illegal activity at 722 sites and inspected hundreds of shipping containers which prevented the illegal export of more than 11,000 tonnes of waste. Thanks to this work the courts are now seizing more assets from more

criminals and putting more of them behind bars.

Conclusion

So as we look back at the big environmental wins of the past, whether that's preventing acid rain or sorting out that big hole in the ozone layer, none of that would have been possible without regulation. The right regulation is not deregulation.

Yet it's also true that the right regulation isn't exactly what we have now, and the way we regulate in this country can and should change to fit the new context in which we find ourselves.

Another favourite Teddy Roosevelt quote of mine is 'nine-tenths of wisdom is being wise in time'. So let's learn from the successes of past regulation, build on the achievements of the present, and invent a better model for the future; let's do it together; and let's do it fast.

And however differently we think, however softly we speak, and however big the stick we carry, let's remember the point behind all of this: to be the first generation to leave the environment in a better state than we found it.