



Brexit: Expect Environmental Law Changes!

As we approach the end of the transition period, we examine some of the likely impacts on the protection and regulation of the Environment in the UK.

This is the first in a series of four short briefings reflecting on the potential outcomes in the UK that will apply after 31st December 2020.

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We will look at some of the key features of the current EU system and compare those with elements that the UK anticipates will replace them post Brexit. In particular we will focus on the replacement of the EU's principal institutional actors together with the concept of harmonization.

It is worth remembering that EU environmental law and policy were largely developed in conjunction with a desire to support and protect the EU's single market. Harmonization was a central part of the agenda, ensuring that environmental issues throughout the EU (for example the treatment of waste materials) were treated equally by all member states, thus maintaining the same level playing field and fair competition. EU environmental policies were therefore framed in the context of an economic focus rather than a purely environmental one. The European Commission and the European Court of Justice have also played a key role in the implementation and enforcement of environmental policies and legislation across the EU. After 31st December 2020 the UK will either have to rely on its existing national institutions or develop new bodies. Whatever the outcome, Brexit does potentially open up opportunities in the industrial, energy and infrastructure sectors.

We know that in principle on "exit day" UK domestic legislation implementing the EU directives will form part of retained EU law. However at present it is unclear to what extent the UK will look to depart from EU standards and targets which are widely used in EU environmental law (i.e. in water quality) and look to reduce the impact of environmental principles.

Whilst the EU layer of environmental law ceases to apply overnight, arguably the significance of international environmental law increases.

The UK will be solely responsible for its own environmental law policies which may well in practice diverge from current EU thinking. The UK has already taken some steps by drafting an Environmental Bill and introducing the Office for Environmental Protection. There is also still an unanswered question over the extent to which the UK will be bound by international environmental treaties and conventions which it has signed up to under the auspices of the EU but has not signed in its own right.

Finally, independent of a deal or not, the EU trading block is still likely to be a major trading partner with the UK, even if other bilateral trade deals are reached. **In that respect the EU will still be able to ensure compliance with its environmental regulations on those UK sectors that export into the EU.** If the UK chooses to distance itself from the EU regime and reduce environmental standards, this could potentially create a dual system of standards for many UK industries, increasing their internal costs and reducing fair competition between those that trade with the EU and those who focus on the UK internal market. On top of that, although it seems the tendency would be for environmental standards to be reduced in the UK, any different form of compliance imposed by UK bodies will mean additional expenditure by companies and sectors that have already invested in fulfilling previous EU requirements.

In next week's briefing we will be looking at the current EU institutions (principally the European Commission and the European Court of Justice) and examining how the UK plans to replace their functions.