

# Brexit and environmental legislation

A workshop organised by **SAGTA** on 23 March under Chatham House rules looked at what the likely effect of Brexit would have on the sector come 2019 and beyond.

On the surface at least the challenge of transposing EU legislation into UK law is gigantic. According to the Institute for Government, 1200 EU laws alone are related to Defra. They are not all directly related to the environment, but one speaker referred directly to 111 Regulations; 256 Directives and 138 decisions in the environmental realm. It has been reported that 65% need technical changes to bring into UK law, while 35% need substantial changes.

## Many unknowns

Given so many unknowns, attitudes become important. Is withdrawing from the EU a threat or an opportunity? And the subject matter is bound to throw up many more questions than answers. But the questions shine a light on the direction of travel.

Upon exiting the EU, the Great Repeal Bill will convert existing EU law into UK law, wherever practical and appropriate, and end jurisdiction by the Court of Justice of the European Union' (CJEU). How will devolved Governments implement laws? Could this lead to differences across UK? Is this a once-in-a-lifetime opportunity to improve the way we manage the environment?

The workshop heard there are areas of environmental law in the UK which are purely domestic, but much domestic and EU legislation is interrelated including contaminated land, water pollution, environmental permitting, nature conservation, water quality, air quality, climate change and energy law plus environmental impact assessment.

Adding to the uncertainty further is the fact the European Commission is carrying out REFIT (Regulatory Fitness and Performance) programme on EU legislation as part of its Better Regulation programme. REFIT is resulting in withdrawal of proposed legislation, and codification, recasting other revisions and repeal of existing legislation. So there is a moving target.

## International Conventions

The workshop heard that the UK is a party to nearly 40 international environmental related conventions either as an individual party or a Member State of EU or both. It was

pointed out that it is going to be difficult to determine the division of competencies in conventions ratified by the UK and EU.

The UK would no longer be bound if only the EU is a party, but would need to ratify the convention if it wished to continue to be a party. Where the UK is a signatory, for example the Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979), it is implemented through the Habitats & Birds Directives, so the UK does not have to comply with these directives after Brexit, but does need to comply with international agreements.

What will be the future of environmental principles? All EU law (not just environmental law) is based on the following principles - polluter pays; preventive; precautionary; and subsidiarity. There have already been strong voices among MPs and trade bodies to dispense with the precautionary principle.

## Water

Many water Directives have been transposed with different regulations in England and Wales, Scotland and Northern Ireland. Domestic legislation in the UK frequently refers to EU legislation and groundwater and contaminated land are devolved matters. The Water Framework and Waste Framework directives are common but the method of implementation differs and the guidance is different. And the workshop heard that in the absence of the directives, differences between England and Scotland, like in several other areas, diversity will most likely increase.

Questions arising in the workshop included: How should we define harm? Is the definition of pollution satisfactory? Do we need to define hazardous substances to be able to avoid pollution? How are they identified? How much groundwater to protect? Is everything fine as it is?

## Waste

Waste laws are driven by Waste Framework Directive (2008/98/EC) and the definition of 'waste' shaped by CJEU legislation. The EC has recently proposed amendments. To indicate the complexities, take Regulation

(EU) No 1013/2006 on shipments of waste implements, in part, Basel Convention (ratified by the EU and the UK and other Member States) and requires liaison between Member States. The regulation applies to non-hazardous and hazardous waste; Basel Convention applies only to hazardous waste. Would Member States continue to liaise with the UK beyond Basel Convention requirements?

Nearly all waste law in the UK is based on EU law and most aspects of waste law have been devolved in the UK. Many aspects of waste involve product compliance and there are supply chain considerations. Would England, Wales, Scotland and/or Northern Ireland continue to implement the EU Circular Economy Plan which aims to close the loop of product life cycles by more recycling and re-use of products and includes targets for reducing waste, promotion of reuse, incentives for production of greener products, etc.?

## Conclusions

In terms of specific areas, on groundwater, conclusions were that some changes in definitions may be needed but the legislation is generally, like IPPC, basically OK. On waste there is a big opportunity to change, with some saying some CJEU cases and definitions which drive waste regulation have been less relevant to the UK than mainland Europe. On EIA and Habitats there is cover in conventions, and opportunities for new approaches but where we stand will need to be clarified. The ecological risk assessment element of Part 2a with receptor definitions coming from the Habitats Directive will have to be sorted out. There were suggestions that the Environmental Liability Directive was for the scrapheap, particularly with the lack of take-up in some member states.

It will be a challenging two years ahead. What is likely is greater diversity of approaches on the environment in the devolved authorities, with maybe a softer Brexit in Scotland and Northern Ireland and a harder one in England and Wales. What will be needed is a lot of consultation with Defra and adequate resourcing.