

Brexit & Environmental Regulations Briefing - Coastal Futures 2017

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Background to the conference session

The session conference had presentations from Peter Barham, Dickon Howell, Alec Taylor and Sian John; it was chaired by Mike Cowling. The aim of the session was to brief the audience on potential effects and opportunities of Brexit for environmental regulation, and facilitate their input. This document provides a summary of key points from the session briefing, session presentations, discussion and conference feedback from delegates, together with links to other documents for further details.

The Coastal Futures conference session presentations can be found at <http://coastal-futures.net/archive>.

Introduction and background

June 23rd Brexit Vote to leave EU. At the Conservative Party Conference, Theresa May announced a **Great Repeal Bill** (GRB) which would repeal the European Communities Act 1972, ending the primacy of EU law in the UK. She said the bill would transfer the body of EU law, into UK legislation. The environmental chapter of this alone comprises over **200 legal acts** including water and air quality, waste management, nature protection, industrial pollution control, chemicals and GMOs, noise and forestry. Without them, many of the laws that have held environmental destruction at bay would cease to exist – at the start of our EU relationship we were regarded as the ‘Dirty Man of Europe’.

“It is possible to give some indication of how the future regulation of marine areas will proceed:

Richard Barnes

- Marine cannot be viewed apart from broader trade and single market issues (including freedom of movement). This may result in limits to the extent to which foreign access to fisheries can be excluded.
- In the **medium to long term the UK will need to legislate a new legal regime for many marine matters, especially fisheries**. This would need to establish the rules for access and conduct of catch fisheries, and access to markets. There is an opportunity to draw upon the success of EU CFP, but also to develop new management tools.
- The **UK will continue to be bound by international law agreements** (UNCLOS, OSPAR and RFMOs). It will have to engage directly with international institutions governing marine issues, including UN BBNJ process, RFMOs and regional seas arrangements.
- The **UK will remain under obligations to set TACs that are sustainable**. In reality the prospects of a fishing boom are low given that most stocks are fully or over-exploited.
- The **UK will need to enter into new agreements to deal with shared or transboundary fish stocks**. These could be based on models adopted by Norway.”

[There is a presentation and delegate notes from Richard Barnes in the CF2017 Archive <http://coastal-futures.net/archive>]

Government Priorities

- Legislation and regulation are a necessity
- Will the environment be a priority in negotiations?

- The EU matters for lots of our marine policies: MSFD, CFP etc; climate change commitments; trade issues (energy, shipping, etc)
- On the 4th January 2017 the Environmental Audit Committee called on Government to introduce a new Environmental Protection Act during Article 50 negotiations so that the UK's environmental protections are not weakened. [Chair of the Committee, Mary Creagh MP, said that changes due to Brexit could put our countryside, farming and wildlife at risk.](#) "Existing protections for Britain's wildlife and special places could end up as 'zombie legislation' even with the Great Repeal Bill". That is, where EU legislation is transposed into UK law but is not updated, has no body enforcing it and is erodible through statutory instruments with minimal parliamentary scrutiny.

Process and timing

- The Environmental Audit Committee (EAC) have called for a new Environmental Protection Act. In the first instance this might be a better legal vehicle than everything being incorporated into a cross sector Great Repeal Bill. At least there would be one coherent place to view the transposed material.
- Defra have estimated that there are 800 pieces of environmental legislation from Europe (EAC Committee evidence). If in the GRBill process these are 'opened' for strengthening or weakening then scrutiny will be required. This will be a huge workload on Parliament and stakeholders
- This must include Habitats Directive, Birds Directive, MSFD, EIA, SEA, Bathing Waters, Shellfish etc etc
- Devolution – coherence - Involvement of the devolved countries in determining the Brexit position on environmental regulation going forward - risk of proliferation of diverging laws across UK leading to fragmentation & e.g. coherence of ecological networks. Need to recognise devolved powers but there needs to be some recognition of the shared nature of seas (slightly different to terrestrial) so collaborative mechanisms needed
- **Repeal also raises complex issues with respect to devolved matters since much EU law relates to devolved matters** (inc fisheries and environmental law) many issues. This may require consent of the devolved bodies.

International Commitments (OSPAR, ICES etc)

- MSFD framework is very useful (state / pressure)
- EIAs, SEAs, MSFD and MSP already transposed into UK law.
- OSPAR is now more important at a regional seas level as a result of Brexit
- MSFD needs a UK champion / requires a proactive UK role; requires a framework to link the UK and EU going forwards; it's the best framework on offer!
- OSPAR – could the role be strengthened? Issue is that OSPAR has no independent legal force; OSPAR MPAs are SACs and SPAs, they are effectively 'double badged'. The UK as a signatory should acknowledge the important coordinating role / mechanism

National commitments (25 year plan) - what have Govt said they'll do?

- Need to continue to adhere to sustainable development principles
- Does current legislation meet environmental objectives?
- Does the Defra 25 year plan do the same?
- Do our environmental targets within the UK stay the same?

- EU law may need adaptation for a UK context
- Ecosystem approach is needed in marine planning / MSP* (*Sept 2016)
- Ecosystem recovery and resilience needs to be a focal points going forwards
- There are ongoing EU directives that will still come online before we leave the EU – e.g. the EIA directive which comes into effect in May 2017

[There is a presentation and delegate notes from Gemma Harper in the CF2017 Archive
<http://coastal-futures.net/archive>]

Governance

- Brexit negotiations and planning for legislative changes / new regulation will be time consuming and expensive (and it will require extensive consultation).
- There is a cost to Government in developing policy – that is a constraining factor in policy development
- There are now new departments as a result of Brexit (x2) and existing departments (x6) relevant to the marine environment
- EU legislation has not been well communicated; how can this loss of trust in institutions be regained?
- Needs a statement of clear UK Government objectives.
- Gov't should take into account survey which suggests the public want similar or better environmental protections after Brexit
- Because the seas & oceans do not recognise political boundaries, and do not recognise 'ownership' - after Brexit - our 'Marine & Maritime' laws will still have to pay
- Is there a need for an environmental Framework Act under the GRB?

Risks - Legislation at risk –

- Leaving the EU is not the best outcome for the environment
- Resourcing is a major issue
- Devolution is a major issue and approaches could (will) differ
- Who will enforce EU legislation that is not updated? Risk of zombie legislation is a reality and with that this legislation could be eroded with minimal Parliamentary scrutiny
- EEA membership might complicate matters
- BPA announcement: port zone proposal – exemption for environmental designations? This is a clear risk – a race to the bottom.
- Some existing EU Directives could be updated or revised... but there is a resource issues (time and cost)
- Secretary of State: 800 pieces of EU legislation which have an impact on the UK; 'many cans, many worms'; scrutiny of all those pieces of legislation is an immense task
- Is there sufficient expertise within Government to address these issues?
- The UK needs sustainable development and better biodiversity outcomes....
- Research and collaborative relationships are at risk. Needs discussion.
- Devolution should not make the UK more fragmented in terms of environmental protection
- Research: UK pays €1 Billion per year into EU budget; gets out €1.6 Billion. The UK Government have said they will guarantee €1 Billion. What will happen to the €0.6 Billion

shortfall?

Students: more EU students are now going to Canada every year than go to the UK.

Massive risk and loss in research projects which are EU funded, this will impact marine research even more! There is now a reputational and structural risk to UK research and science.

- Marine planning in a post-Brexit world: heard nothing from MMO about how they might address requirement of Article 12 of MSP Directive - i.e. to undertake MSP with non-EU states. We'll leave EU but will still have to share European Regional Seas with euro-neighbours
- Legal redress - The stick of ECJ will disappear and then if UK break a directive there will be no sanction via infraction
- Deregulation / race to the bottom / austerity impacting enforcement, data collection, monitoring etc / loss of research funding
- The loss of the Habitats Directive from our legislation would be the biggest step backwards from marine conservation, especially for subtidal habitats that have little coverage (particularly in Wales)

Opportunities

- There may be an opportunity for better socio-economic outcomes...
- Opportunity to clarify targets
- Opportunity to address Issues of Overriding Public Interest (IROPI) which currently address / reflect EU needs that may be changed to fit a UK context
- IFCA's have been a great success as they have made environmental legislation real (and have made a real difference on the ground).
- Make the most of MACAA (2009)
- EU Environmental Directives are not perfect. But they, and their associated UK regulations, have good/meaningful aspects - don't lose them
- TLP is not expecting environmental designations to disappear post-Brexit. Fully expect to address impacts - and maximise opportunity for biodiversity enhancement
- MACAA and Wildlife Countryside Act are key pillars of UK Environmental legislation
- We as academics / researchers / conservationists need to be more active, more critical. We need to ensure that experts ARE listened to, otherwise opportunities will be missed; we need to work collectively and constructively.
- EU directives have been developed together and become more closely aligned over time. This harmonisation is an opportunity (and a reason) to ensure we work closely in the future.
- We need to implement what legislation we already have properly first!

Uncertainties and inconsistencies –

- We are still interpreting EU Directives and MACAA (2009)
- Will any changes still deliver sustainable development?
- Any sense of certainty needs to be based on experience
- Concerned about areas outside of MPAs; wider management issues
- Managed decline of nature is a reality
- EIA regulations have conflicts within them already

- Can you have growth AND better environmental outcomes? The state of the economy will be the key driver for subsequent impact on marine environment
- Exposure to new legislation (eg trade / shipping) may cause a problem for the UK where they have previously been able to rely on EU membership
- EIAs will not be discarded as they are a requirement of sustainable development

Web-links and or references

- Article 50 issues:
 - V Miller and E Lang, 'Brexit: How does the Article 50 process work?' House of Commons Briefing Paper No 7551, 30 June 2016
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7551#fullreport>
 - Outline of Brexit in the Supreme Court: <https://fullfact.org/law/brexit-supreme-court-arguments/>
 - Supreme Court, 'Brexit case': <https://www.supremecourt.uk/news/article-50-brexit-appeal.html>
- Great Repeal Bill:
 - Sionaidh Douglas-Scott, 'The Great Repeal Bill: Constitutional Chaos and Constitutional Crisis. Available at :
<https://ukconstitutionallaw.org/2016/10/10/sionaidh-douglas-scott-the-great-repeal-bill-constitutional-chaos-and-constitutional-crisis/>
 - Alan Page, 'Brexit: the implications for the devolution settlement'. Available at <http://centreonconstitutionalchange.ac.uk/blog/brexit-implications-devolution-settlement>
 - Environmental Audit Committee report on Brexit & the Environment
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmenvaud/599/59902.htm>
- Fisheries and marine post-Brexit:
 - SJ Boyes and M Elliott, 'Marine legislation – The ultimate 'horrendogram': International law, European directives & national implementation. Available at <http://www.sciencedirect.com/science/article/pii/S0025326X14004354>
 - O Bennett, 'Brexit: What next for UK fisheries?' House of Commons Briefing Paper CBP 7669, 27 July 2016. Available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7669>
 - House of Lords European Union Committee, 8th Report of Session 2016-17. Brexit: fisheries. HL Paper 78. Available at <http://www.parliament.uk/brexit-fisheries-inquiry>
 - Brexit: Six-months on. Available at <http://ukandeu.ac.uk/wp-content/uploads/2016/12/Brexit-Six-months-on.pdf>