***Brexit*: The marine governance horrendogram just got more horrendous!**Sue Boyes & Mike Elliott, Institute of Estuarine and Coastal Studies (IECS), University of Hull

On 23rd June 2016, the British people voted in a historic referendum on the following question: *‘Should the United Kingdom remain a member of the European Union or leave the European Union?’* Of the 33,551,983 who voted, 51.9% (17,410,742) voted to leave. *Brexit* was not a result many involved in the management, governance and research of the marine environment hoped to or expected to happen. However now it has, the UK needs to decide on how it will proceed and how this situation will affect our legislation, laws and ability to manage the UK marine environment in a future outside of Europe.

At present, regulations and directives come direct from the Commission. Regulations are put straight into practice, whereas directives require implementing legislation to enact into national law. With over 40 years within the EU and its predecessor the EEC, there is a close integration between UK legislation and EU and International environmental law. The horrendogram (Fig. 1) adapted from Boyes & Elliott (2014) demonstrates the amount of UK laws implementing marine related European directives (20 regulations covering 20 different marine pressures) enacted through the European Communities Act 1972 (which incorporates the provisions of the EU treaties into UK law). This is in contrast to primary Acts of Parliament (grey boxes) made to address national policy objectives (18 Acts covering just 8 different policy areas of planning, harbour developments, conservation, archaeology, energy, flooding, marine licensing and fisheries). Key pieces of UK legislation such as the Wildlife and Countryside Act, 1981 (as amended) and the Marine and Coastal Access Act (MCAA) 2009 will still form important pieces of primary legislation protecting and managing the marine environment. Together with the Marine Policy Statement (MPS) adopted by all the devolved administrations (Scotland, Wales and Northern Ireland), which sets out a vision for the UK marine environment through objectives and policy areas, it is unlikely these marine policy instruments will change in the near future but will remain in place until they are withdrawn, amended or replaced.

Once Article 50 of the Lisbon Treaty has been invoked, the UK has two years in which to negotiate our exit and reformulate its relationship with the rest of the Europe[[1]](#footnote-1). Following the two year negotiation period, all directly applicable EU law (e.g. EU Regulations) would have no direct application in UK law and would have to be rewritten or copied into primary legislation. The most straightforward route with respect to existing secondary environmental legislation enacting EU directives would be for the UK to adopt all relevant EU legislation as its own law, until such time as the relevant government departments have had the opportunity to review and adopt their own legislation. At the Conservative Party Conference (October 2016), the Prime Minister Theresa May announced a Great Repeal Bill, which would repeal the European Communities Act 1972, ending the primacy of EU law in the UK. This Bill (to be announced in the next Queen’s Speech) will transfer the body of EU law into UK legislation. It is understood that the environmental chapter of this Bill alone comprises over 200 legal acts including water and air quality, waste management, nature protection, industrial pollution control, chemicals and GMOs, noise and forestry.

Perhaps the most important change will be that the UK is not bound by the European Court of Justice and so not liable to infraction proceedings for infringing directives. The levels of environmental protection afforded by any updated legislation would depend on the political will of the elected government and could result in differing levels of protection. However, until the post-exit scenario is known following the two-year negotiations, it is hard to comprehend how 40 years of European inspired legislation can be unpicked from our domestic law.   
(See: Boyes, S.J. & Elliott, M. 2016. *Brexit*: The marine governance horrendogram just got more horrendous! Marine Pollution Bulletin, 111: 41-44.)



Fig. 1. Marine environmental legislation horrendogram showing secondary environmental legislation enacting EU directives versus UK primary Acts of Parliament   
(Boyes & Elliott, *Mar. Poll. Bull.* 111:41-44, 2016)

1. However the simple act of triggering Article 50 has since been made the case of a High Court decision, stating that Members of Parliament and peers should vote on triggering Article 50, not the government. This is currently being appealed (Nov 16). [↑](#footnote-ref-1)