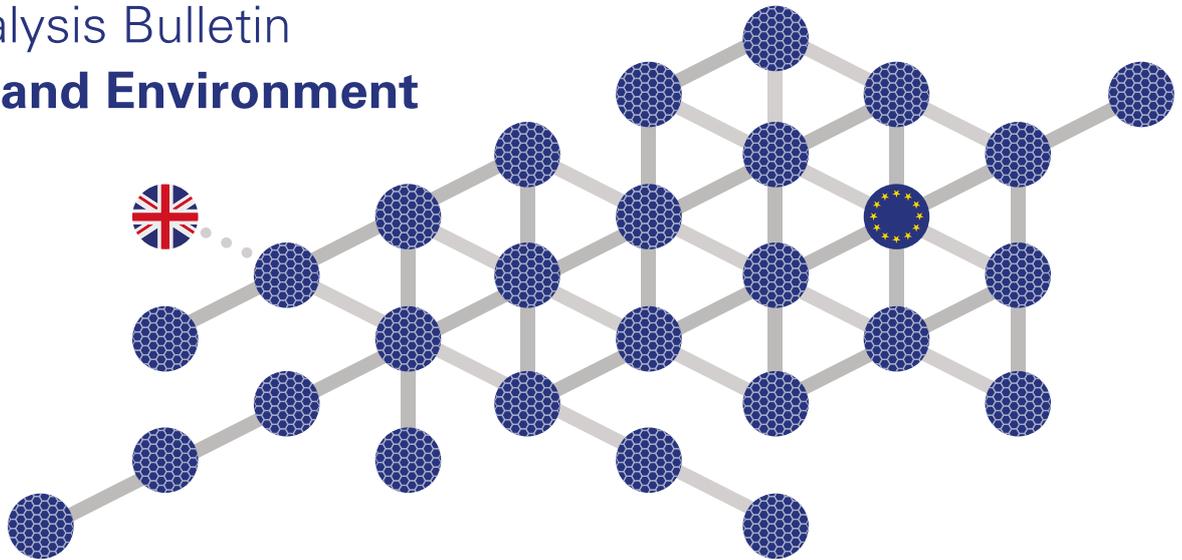


Brexit Analysis Bulletin

Planning and Environment



In the referendum held on Thursday 23 June 2016, people of the UK voted in favour of leaving the European Union. The discussions around the leave process are now ongoing and it will take at least two years, if not longer, for the UK to formally leave the EU. In the meantime, we remain a member of the EU and subject to its rules.

Where are we now?

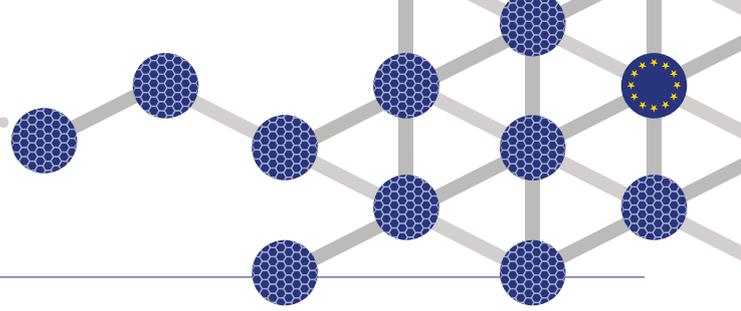
Much of planning law and policy is devolved to the relevant constituent parts of the UK, with powers devolved to the Scottish Parliament, the Northern Ireland Assembly and the Welsh Assembly. European law has a comparatively limited effect in relation to development management regimes themselves across the UK, as the EU does not tend to legislate in this area, leaving this to the individual member states.

Where EU law has a greater effect on planning is in the area of environmental protection. Since the UK joined the European Community, the priority given to the environment has been heightened and this has been reflected in treaty change. Environmental legislation made at EU level has therefore increasingly shaped domestic environmental legislation across the UK. In particular, the EU has adopted legislation relating to water, waste, environmental impact assessment, industrial emissions, contaminated land, protection of biodiversity, habitats and wildlife, energy efficiency and public participation in decisions affecting the environment.

What changes might be made in planning and environment?

Certain EU laws, namely treaties and regulations, are directly applicable in the UK and do not require national legislation to implement them. Depending on what agreement is reached on the UK's continuing relationship with the EU, these rules may cease to apply once the UK leaves the EU, and therefore the UK may need to address these gaps.

However, most EU environmental law takes the form of directives, some of which do not automatically apply in the member states and must be implemented via national legislation. There is, however, case law that determines that some directives can be enforced directly by individual citizens in the absence of national legislation. The constituent parts of the UK have transposed various EU directives relating to the environment into domestic law and, in many cases, national legislation has gone further than what is required by the directives. Any changes to national planning legislation as a consequence of a Brexit will be made by the relevant constituent parts of the UK. It is likely that the Scottish Parliament will seek



to maintain standards equivalent to EU standards in planning and environmental law.

Consenting requirements – Environmental Impact Assessment

The EU's Environmental Impact Assessment Directive sets out the requirements for carrying out environmental impact assessments for development projects. The constituent parts of the UK have transposed the EIA Directive into domestic law. The relevant domestic regulations relating to environmental impact assessment are largely free-standing, and may not necessarily have to be subject to extensive change once the UK leaves the EU.

The new amended Environmental Impact Assessment Directive has come into force and must now be transposed by the UK into domestic law via domestic legislation. Some aspects of the new EIA Directive may be of interest to developers and public authorities. In particular, the new Directive contains timescales for EIA screening determinations and consultation on the environmental report, and a requirement that if projects have significant adverse effects on the environment, member states must impose conditions requiring the monitoring of significant adverse effects after development commences.

The EU member states have until 16 May 2017 to bring in any necessary changes to their national EIA rules to comply with the new Directive. In order to leave the EU, as has been well publicised, the UK will have to give two years' notice. It is likely that numerous interim transitional measures will have to be put in place during this time. Given that the new EIA Directive implementation date falls prior to June 2018, it might be that the UK will still be required to implement the new Directive into domestic law and if it did not, it may be possible for individuals to enforce the new Directive through the courts. It will be for the UK constituent parts to decide whether they wish to amend domestic EIA legislation further.

Wildlife law

Some of the current UK wildlife legislation derives from the EU's Habitats Directive and Birds Directive. The provisions of these directives have been implemented via the Wildlife and Countryside Act 1981 and differing conservation regulations, depending on which part of the UK you are in.

Domestic legislation cross-refers to the relevant EU directives and adopts the EU's conservation designations including special areas of conservation and special protection areas (forming the network of European protected areas known as Natura 2000), as well as European protected species. As such, UK wildlife

legislation will have to be reviewed as it does not operate in isolation from EU law.

UK legislation generally goes further than the minimum requirements set out in EU directives, which may suggest that protection afforded to wildlife under domestic law is unlikely to reduce following Brexit. There may be an opportunity to review existing European wildlife designations in the UK depending on what agreement is reached in negotiations.

EU Environmental Law and Post-Brexit Options

The extent to which EU environmental laws will continue to apply in the UK following Brexit depends on the agreement struck governing the ongoing relationship between the UK and the EU.

The UK Government has not given any substantive indication of the ongoing relationship with the EU it will seek following Brexit. The current models that exist for other non-EU states include joining the European Economic Area (EEA) with the three other EEA Member States (Iceland, Liechtenstein and Norway); the Swiss model, which is based on bilateral treaties; a Customs Union based on the current Turkish model. A further option would be to negotiate a Free Trade Agreement with the EU and trade with the EU on terms governed by the WTO. The UK deal is likely to be UK-specific.

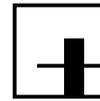
Under the EEA Agreement, most EU environmental law still applies to EEA states, including the Environmental Impact Assessment Directive and the EU environmental regulatory regimes relating to air, chemicals and control of major accident hazards, waste, noise and water. The Habitats Directive and Birds Directive are specifically excluded from the EEA Agreement. Therefore, if the UK were to join the EEA, it would still have to comply with a significant proportion of EU environmental laws.

At the other end of the spectrum, if the UK went down the WTO route, the UK would no longer be directly bound by EU rules on environmental regulation, though UK exports would still have to comply with EU product safety laws if trading with the EU.

In any event, the UK will have to continue to comply with international conventions to which it is party, including the Ramsar Convention (on conservation of wetlands); the Aarhus Convention (on access to information, public participation and access to justice in environmental matters) and the Kyoto Protocol (on reduction of greenhouse gas emissions).

Concluding Remarks

Development management procedures across the UK are unlikely to be impacted by Brexit. The consequences



of Brexit are likely to be further reaching in relation to environmental regulation, including for environmental impact assessment and wildlife legislation. The true impact of Brexit on planning and environmental law will

only become clear once negotiations are underway, as the future legal relationship with the EU will govern the extent to which the UK must continue to comply with EU environmental laws.

SHEPHERD AND WEDDERBURN'S BREXIT ADVISERS JOINING THE DOTS OF THE EU REFERENDUM

What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

For further information in the first instance, please contact:



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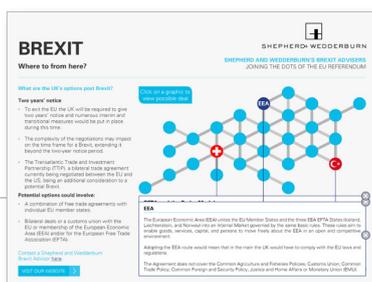


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