



BREXIT AND THE ENVIRONMENT MOVING ON BEYOND THE REFERENDUM

The UK Government announces a Great Repeal Bill. The resulting transposition of all EU law into UK law leads to a number of questions in relation to environmental legislation.

Since the Referendum in June when the UK voted to leave the EU, there has been a great deal of discussion over how environmental and climate change law might change in the future (see our recent briefings included below this article). Of course much of this depends on the relationship we continue to have with the EU going forward. However, statements by senior government figures have confirmed that there will be no immediate cull of environmental law once the UK leaves the EU. This would in any event be unlikely given the amount of international law in place governing the UK's environmental responsibilities, the role that the UK has often taken as driving force for stronger EU policy in some areas, and the adverse reaction of many stakeholders to such a course of action.

At the Conservative Party Conference in October, the Prime Minister Theresa May confirmed that a Great Repeal Bill will be presented to Parliament to repeal the European Communities Act 1972 (the Act that makes UK law subject to EU law).

David Davis, Secretary of State for Exiting the EU, confirmed that on the day the UK leaves the EU, all EU law at that time will "where practical" be transposed into domestic law. This is a practical solution since it will give the UK time to consider which laws can and should be amended and in what way. However, even with this

approach, there are a number of likely complications and decisions to make:

- How will we deal with references in EU legislation to bodies and regimes that operate at a European level. In many instances it will be workable for the Environment Agency or Secretary of State to be the relevant body in substitution for the European Commission (e.g. in relation to Environmental Impact Assessment). However, this will be much more difficult for regimes like REACH which establishes complex registration and authorisation processes which involve for example, use of EU databases and collaboration between Member States.
- What approach will we take to European case law? EU Court of Justice interpretations have featured heavily to interpret European legislation in a number of areas of environmental law – e.g. in relation to environmental impact assessment and waste.

Finally, the UK will need to decide how closely to mirror the development of EU legislation and case law moving forward. So while this is possibly the most straightforward approach, the Government needs to focus on how to make this work in practice. Of course this process might be overtaken somewhat by events if the UK decides to remain more formally within the Single Market and certain

EU legislation has to remain in place as a result. Even if this does not happen, EU law has had a tendency to become increasingly *extra-territorial* in its application and the UK may find itself having to comply with EU law in practice to retain access to EU markets in due course.

For commentary on some of the potential implications of Brexit for environmental law see our previous briefings: [Brexit - What next for Environmental & Climate Change Law?](#); and [Brexit and the Energy Sector: UK Climate Change and Renewables Policy and Targets](#)

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