

Waste Facilities Audit Association

Brexit & Environmental Law

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BREXIT AND ENVIRONMENTAL LAW

- UK Leaves EU 1 February 2020
- Implementation Period 1/2/20 – 31/12/20 (All EU Law continues to apply)
- From 1 January 2021 the ties are severed. EU law only applies to the extent retained by UK statute

7 PILLARS OF 'UK' LAW

- Common Law
- Pure UK Legislation
- Retained EU Law
- Amended EU Law
- Separation Agreement Law
- New UK Legislation
- International Law

RETAINED EU LAW

(effective immediately before 11 p.m. on 31/12/2020)

- EU derived domestic legislation – s2 EU (Withdrawal) Act 2018
- Direct EU legislation (Regulations/Decisions) – s3 EU (Withdrawal) Act 2018
- NOT Directives (but these are still relevant in interpreting EU derived domestic legislation)

AMENDING EU LEGISLATION – s8 EU (Withdrawal) Act 2018

- Power to make regulations to prevent, remedy or mitigate any failure of EU law to operate effectively or any other deficiency (e.g. functions conferred on EU bodies)
- Hundreds of SIs – 2019: providing for no deal; 2020: providing for transition period and NI Protocol



NORTHERN IRELAND PROTOCOL

- NI effectively treated as part of EU after end of Implementation Period
- Art 5.4 and Annex 2 – Certain EU legislation will apply in NI including REACH, POPS, CLP, TFW and ODS Regulations and RoHS, Batteries and Eco-design for ErP Directives but not WFD or amending Directive 2018/851

ENVIRONMENTAL PERMITTING REGULATIONS 2016 - OVERVIEW

- Transposition of Industrial Emissions Directive and other directives
- Other regimes
- Umbrella regulations
- Standardised permitting system
- Structure of EPR

Activity	Schedule	Directive
Part A (1) installations	7	IED (2010/75/EU)
Part A (2)	7	IED
Part B	8	-
Waste operations:		
General	9	Waste Framework Directive (2008/98/EC)
Materials facilities	9	-
Landfills	10	Landfill Directive (1999/31/EC)
Waste motor vehicles	11	End-of-Life Vehicles Directive (2000/53/EC)
Electrical and electronic equipment	12	WEEE Directive (2012/19/EU)
Waste incineration	13	IED
Solvent emissions activities	14	IED
Large Combustion Plants	15	IED
Asbestos	16	Asbestos Directive (87/217/EEC)
Titanium Dioxide	17	IED
Petrol Vapour recovery	18	PVR I (94/63/EC) PVR II (2009/126/EC)
Waste Batteries and accumulators	19	Batteries Directive (2006/66/EC)
Mining waste operations	20	Mining Waste Directive (2006/21/EC)
Water discharge activities	21	-
Groundwater activity	22	Groundwater Directive (80/68/EEC) Groundwater Daughter Directive (2006/118/EC) Water Framework Directive (2000/60/EC)
Radioactive substances activities	23	HASS Directive (2003/122/EURATOM)
Efficiency in heating and cooling energy	24	Energy Efficiency Directive (2012/27/EU)
Flood risk activity	25	-

SCHEDULE 7, Para 5 EPR

- Regulator must exercise functions so as to ensure compliance with [specified] provisions of the IED

WATER LEGISLATION AFTER BREXIT

- Environment (Amendment etc) (EU Exit) Regulations 201
- Environmental Permitting (E&W) (Amendment) (EU Exit) Regulations 2019

ENVIRONMENT BILL

- Saga of continued delay



ENVIRONMENT BILL

- Office of Environmental Protection
- Environmental Principles
- Environmental Targets/Environmental Improvement Plan
- Sectoral provisions

OFFICE OF ENVIRONMENTAL PROTECTION - FUNCTIONS

- Monitoring and enforcement
- Advising Government on environmental law
- Failure of public authorities to comply with environmental law



ENVIRONMENT BILL – ENVIRONMENTAL PRINCIPLES (Clause 16)

- EPs should be integrated into policy making
- Preventative action
- Precautionary Principle
- Environmental damage should be rectified at source
- Polluter Pays Principle

ENVIRONMENT BILL – ENVIRONMENTAL PRINCIPLES (Clause 16)

- SoS must prepare policy statement explaining how EPs should be interpreted and proportionately applied by Ministers when making policy
- SoS must be satisfied that statement will contribute to improvement of environmental protection and sustainable development

ENVIRONMENT BILL – ENVIRONMENTAL PRINCIPLES (Clause 18)

- Ministers must when making policy *have due regard to* the current policy statement on EPs
- However, that duty doesn't require Ministers to do (or refrain from doing) anything if it would (a) have no significant environmental benefit or (b) be disproportionate to the environmental benefit
- The duty doesn't apply to policy relating to: the armed forces, defence, national security, taxation, spending, allocation of resources within Government or Wales

FUTURE OF ENVIRONMENTAL LAW



TRADE AND COOPERATION AGREEMENT

- EU and UK can each set own policies and priorities
- But subject to *non-regression* (A party must not weaken or reduce in a manner affecting trade or investment between the Parties its environmental levels of protection or its climate level of protection below the levels that were in place at the end of the transition period)
- Parties must strive to increase their respective levels of environmental and climate protection

TRADE AND COOPERATION AGREEMENT

- Parties commit to maintain domestic authorities capable of monitoring and effective enforcement
- Parties commit to maintain effective legal avenues for interested parties to allege violations of domestic law

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