

NIEL MEMBER BREXIT BRIEFING

EU Exit Update - December 2020

Background

This briefing is intended to provide a general overview of the implications of EU Exit on Northern Ireland's environment. While the UK left the EU on 31 January 2020, we have been in a transition period with the UK remaining in the both the EU customs union and single market which in effect meant that things have remained unchanged. However, we are now just days away from the end of the transition period on 31 December 2020. From the 1 January 2021 therefore, there will be significant changes to environmental policy, legislation and governance in Northern Ireland. This briefing will attempt to summarise these changes and the impact upon the environment. It is likely that there will be shorter as well as longer term Brexit environmental issues that must be prioritised and dealt with. Short-term issues have a strong focus on getting Northern Ireland prepared for what has been termed 'Day One Readiness' in terms of ensuring policies and legislation are in place and remain operable from the 1 January with a clear regulatory framework.

It should be noted however, that as UK/EU negotiations are currently on-going, clarity and certainty around the precise implications and requirements resulting from our departure from the EU is not yet available. A UK/EU deal concluded before the end of December 2020 could see some existing agreements amended or rewritten.

In the longer-term, attention will focus on the environmental policy options that we will have control over as a result of leaving the EU (it is important to note under the NI Protocol, we will remain aligned with the EU in a limited number of EU environmental policy areas - see below). In the policy areas beyond the scope of NI Protocol, it is likely that there will be a consultation process to consider how or indeed if we want to do things differently and to consider if there is a better way to secure environmental improvement.

Brexit and the Environment – A brief timeline

Prior to Brexit, most of our environmental legislation and protection emanated from our membership of the EU. Following the referendum result, under the Withdrawal Act 2018, all of our environmental law was brought under domestic legislation to become retained EU law with the intention that it will come into force right across the UK from the 1 January 2021 and replace existing EU law, which will cease to apply. As such, many of the environmental laws which form the cornerstone of our environmental protections such as the Birds and Habitats Directives, Water Framework Directive, Environment Impact Assessments Directive, etc., will remain largely the same and be regulated in the same way although reporting on these regulations will no longer be to the European Commission. Legislation for the designation and protection of European Designated Sites (SACs and SPAs) has also been embedded in NI legislation and so will continue as is, although again reporting mechanisms have yet to be agreed.

The NI Protocol and the Environment

Following further negotiations between the UK and the EU, in October 2019 agreement was reached on a Northern Ireland Protocol with the aim of avoiding the need for introduction of a hard border on the island of Ireland. This international agreement was subsequently brought into domestic law by the European Union (Withdrawal Agreement) Act 2020. Annex 2 of the Protocol outlines a range of EU regulations and directives which will continue to apply to Northern Ireland, namely those dealing with the environment in relation to trade such as Chemicals, Waste (shipment & packaging), Invasive Species, etc. While these environmental issues are more about protecting the integrity of both the EU

and UK Internal markets rather than environmental protection or enhancement, some direct environmental benefit may still derive from the Protocol. An example would be the EU plan to ban the use of lead shot over waterways as part of the EU REACH regulations. As REACH is covered by the Protocol, this ban would apply to Northern Ireland but not GB. We will still be required to report directly to the EU on the environmental areas listed within the NI Protocol. Following resolution of the remaining issues on the implementation of the Protocol by the UK/EU on 8 December, we can now expect the Protocol to become fully operational irrespective of the outcome of the UK/EU trade negotiations.

Future Trade Agreements

As well as on-going EU negotiations, the UK is currently undertaking a number of trade negotiations with countries such as the United States, Australia, New Zealand, etc. Trade negotiations commonly include environmental chapters. If successfully concluded these could have additional environmental implications for Northern Ireland in areas excluded from the Protocol.

Summary:

- From 1 January 2021 Environmental Law in Northern Ireland will be a mixture of retained EU law (Birds, Habitats etc.) and directly applicable EU environmental law in the areas covered under the NI Protocol (Emissions Trading, Chemicals, Waste etc.).
- Current mechanisms for environmental governance and oversight will also change. The oversight role provided by the European Commission and the Court of Justice of the EU will continue to apply to directly applicable EU law in the areas covered by the NI Protocol. An Office for Environmental Protection (OEP) established under UK Environmental Bill (pending approval by the NI Assembly) will provide the oversight role for the retained EU law.
- A potential threat remains from NI divergence from UK wide environmental standards in areas now covered by the NI Protocol as well as the potential risks of divergence from common EU environmental standards and systems (in environmental areas to be covered by retained EU law) currently applied on an island of Ireland basis.

Brexit Preparedness

Despite the array of work undertaken so far, not everything will be in place for 1 January 2021, so work on our EU exit will not cease on 31 December. Outstanding issues include implementation of the NI measures within the UK Environment Bill such as setting up the OEP and new reporting mechanisms and structure as well as adopting an Environmental strategy for Northern Ireland. In relation to directly applicable EU law under the NI Protocol, further work will be required as to how these laws are interpreted and applied locally without the previous advantage of access to UK wide resources which existed during the UK's EU membership as these laws are applicable to NI only. As future EU policy and legislative developments in the areas covered by the Protocol will need to be adopted in NI, future mechanisms for engagement with the European Commission on the issues will need to be established.

Interim Arrangements

As outlined above, delays to the UK Environment Bill's progress means that the Office for Environmental Protection will not be functional by 1 January 2021. DAERA officials are therefore working with DEFRA on a range of issues, including the potential need for interim arrangements to handle complaints. In the meantime, environmental complaints can be raised through Departmental processes, the Northern Ireland Public Services Ombudsman or via the judicial review process.