

Brexit White Paper—lack of detail on maintaining environmental standards?

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Public Law analysis: The UK government’s vision for the future UK–EU relationship, as set out in the White Paper presented to Parliament on 12 July 2018, includes proposals for environmental issues. In the third of a series on the Brexit White Paper, Christopher Badger, barrister at 6 Pump Court, examines some of the key environment provisions and considerations.

Original news

Brexit Bulletin—government publishes White Paper on UK–EU future relationship, [LNB News 12/07/2018 126](#)

The Department for Exiting the European Union has published its White Paper on the future relationship between the EU and UK, which seeks to ensure ‘frictionless trade’ between the UK and EU post-Brexit while enabling the UK to make global trade deals and avoid a hard border between Ireland and Northern Ireland. The White Paper reiterates, among other things, the UK’s priorities and red lines, acknowledges that the UK will have more trade barriers than at present and reaffirms that the UK will end the free movement of people.

What are key proposals are contained in the White Paper relating to environmental issues?

It is not straightforward to identify the detail of the key proposals for the environment within the White Paper.

At a high level, within the proposal for an economic relationship with the EU, it is put forward that there will be reciprocal commitments to maintain current high standards through non-regression provisions in areas such as the environment. The same paragraph references the fact that the UK has already made strong domestic commitments to maintaining high standards.

Later in the White Paper, the government confirms that the UK will continue to meet its international obligations in the area of the environment and maintain high standards on climate change, noting the UK’s world leading ambitions. However, there is little detail on how this is to be achieved.

A number of other proposals are put forward, which will impact on environmental issues:

- the UK has proposed a common rulebook to underpin a free trade area for goods, which will include rules that set environmental requirements for products
- the UK will be leaving the common fisheries policy and the common agricultural policy (CAP). It is not proposed that these areas will be captured by the common rulebook. The White Paper states that the UK has been clear that it will seek to improve agricultural productivity and deliver improved environmental outcomes through its replacement for the CAP, but no detail is specified
- at the same time, the UK intends to maintain a robust programme of market surveillance, one aim of which is to enable authorities to take appropriate, consistent and co-ordinated action to prevent non-compliant products from harming the environment
- there should also be a reciprocal commitment to ongoing environmental co-operation, including in international fora, to solve shared global environmental challenges
- the UK will seek close co-operation on air traffic management, with one of the aims being to benefit the environment through reduced journey times and lower emissions

- on the maritime sector, the UK proposes to continue co-operating closely with both the EU and the EMSA, including sharing information on safety and to counter pollution. The UK will continue to be a strong advocate for the safety and environmental performance of shipping and an active member of the International Maritime Organisation
- the UK wishes to explore options on the future energy relationship with the EU, but does not believe that participation in the internal energy market should require a common rulebook on wider environmental and climate change rules
- the UK is committed to working closely with Member States to ensure sustainable management of fishing stocks and the wider marine environment

The White Paper states that the Court of Justice of the European Union will no longer have the power to make laws for the UK, and the principles of direct effect and the supremacy of EU law will no longer apply in the UK. However, the paper does refer to a potential joint reference procedure to accommodate the role of the Court of Justice as the interpreter of EU rules, but founded on the principle that the court of one party cannot resolve disputes between the UK and the EU. UK Courts will pay due regard to case law of the Court of Justice of the European Union, insofar as it is relevant to the matter before them, but would not be able to make preliminary references to the Court of Justice.

In your view, are these proposals adequate?

As alluded to above, there is a lack of detail in the commitment to the environment and how current environmental standards are to be maintained. Governance and enforcement of environmental laws receive no mention. Also, while there is a commitment within the White Paper to non-regression in areas including the environment, quite what this means remains unclear, particularly in the context of the woolly concept of 'equivalence'.

Further, there is no detail as to which environmental rules the government envisages being covered in any future Brexit deal. Current protections covering air, waste, water and chemicals are not expressly included or referred to. This is important. In May 2018, the European Commission referred the UK back to the Court of Justice for its long-standing failure to meet EU air limits for nitrogen dioxide. This alone shows the importance of a detailed commitment to environmental laws, rather than an unchecked promise to ensure high standards.

What might the practical implications be for lawyers and their clients?

It is very difficult to tell. Brexit continues to throw up significant challenges for both lawyers and their clients, but providing concrete advice on what precisely is going to happen is almost impossible. The EU has highlighted the fact that the debate in the UK shows that the final form of the UK's position is far from settled and Jeremy Hunt, the Foreign Secretary, recently conceded that the White Paper is not a 'final offer' but rather a 'substantive offer'—in other words a starting point for future talks.

It is to be presumed that the UK will rely heavily on the [25-year environmental plan](#) and the development of the new independent environmental watchdog as evidence of its commitment to the environment, but even this poses its own difficulties as the UK attempts to import environmental principles into its own legislation while at the same time offer its own (and presumably distinct) interpretation of those principles in a separate policy statement.

Interviewed by Alex Heshmaty.

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