

POST-BREXIT ENVIRONMENTAL REGULATIONS: UPDATE

THE MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT PUBLISHED ON 24 OCTOBER THE STATUTORY INSTRUMENTS IN RELATION TO ENVIRONMENTAL ASSESSMENTS AND THE PLANNING REGIME. THE LEGISLATION UPDATED WILL ALLOW THREE ENVIRONMENTAL ASSESSMENT INSTRUMENTS TO CONTINUE WHEN THE UK LEAVES THE EUROPEAN UNION.

The Ministry of Housing, Communities and Local Government published updates on 24 October 2018 to legislation which will allow three environmental assessment regimes to continue seamlessly when the UK leaves the European Union in March 2019.

A firm commitment from the government is to ensure the UK's established environmental protection mechanisms will remain post-March 2019 and to avoid interruptions to the planning system.

Statutory instruments have been issued concerning the following:

- Environmental Impact Assessment (EIA) – which aims to ensure environmental considerations are taken into account at the development consent stage of the planning process;
- Strategic Environmental Assessment – which aims to ensure that environmental considerations are taken into account at the strategic plan-making stage of the planning process; and
- Hazardous Substances Regulations – these ensure the objective of preventing major accidents, and limiting the consequences of such accidents, are taken into account in land-use planning.

This action follows the enactment on The European Union (Withdrawal) Act 2018 on 26 June 2018 where Section 16 sets out the Environmental Principles that must be maintained and enforced by a new independent body to replace the enforcement functions currently carried out by the European Commission and European Court of Justice.

Within paragraph 26 of The European Union (Withdrawal) Act 2018, it stated: "Where environmental principles are contained in specific

pieces of EU legislation, these will be maintained as part of our domestic legal framework through the retention of EU law under the EU (Withdrawal Bill)."

The statutory instruments published enshrine the principles we are well acquainted with and will maintain the status quo. Day-to-day practice will not significantly alter and ongoing project work across the planning industry will not be inhibited. We should ensure that the correct, amended legislation is referred to in application documents.

The government's announcement is a promising step towards the objectives set out in DEFRA's 25-year Environmental Plan published on 11th January 2018, as it shows its commitment to environmental protection following EU withdrawal.

However, there are key challenges that still remain to fully implement the 25-year Environmental Plan and achieve the ultimate goal of becoming the first generation to leave the environment in a better state for the next generation. Central to this is how environmental capital is valued and perceived when the country needs economic growth.

The next key publication will be the Environmental Principles and Governance Bill that is expected to be published by 26 December 2018. This will set out how established environmental principles will be upheld.

This won't be easy to achieve as the principles will need to be defined in a way that diverges from EU case law but not weaken the current environmental protection. Additionally, the formation of a new independent body to enforce the eagerly anticipated Bill and ensure compliance within the planning system will also need careful consideration. The vision for this new independent body (also has

been referred to as a “watchdog”) will be to act as a key consultee when national planning policy is being considered and provide advice on current environmental considerations within existing policy to be implemented into developments.

There are many unknowns including how the Environmental Principles will impact upon decision making in relation to planning applications and how this new independent body will not overlap with existing bodies, such as the Environment Agency.

Moving forward, the Commons Environmental Audit Committee launched an inquiry into the government’s proposals for a new environmental “watchdog” and its proposals to bring the Environmental Principles into UK law following Brexit. The inquiry was anticipated to be concluded by August this year, however a report has yet to be published.

The conclusions of this inquiry, alongside the publication of the Environmental Principles and Governance Bill will hopefully provide further clarity for the planning and environmental assessment regime. However, until these documents have been published, the government’s recent publication of amendments to existing legislation confirms the intention for our established environmental assessment regimes to continue after Brexit and provides some certainty that the planning system will not come to a grinding halt.



LUCY WOOD
DIRECTOR
lucy.wood@bartonwillmore.co.uk



JAYNE OSWALD
ASSISTANT ENVIRONMENTAL PLANNER
jayne.oswald@bartonwillmore.co.uk

OFFICE ADDRESSES

101 Victoria Street
Bristol
BS1 6PU
T/ 0117 929 9677

St Andrews House
St Andrews Road
Cambridge
CB4 1WB
T/ 0122 334 5555

Greyfriars House
Greyfriars Road
Cardiff
CF10 3AL
T/ 0292 066 0910

The Observatory
Southfleet Road
Ebbsfleet
Dartford
Kent
DA10 0DF
T/ 0132 237 4660

68/70 George Street
Edinburgh
EH2 2LR
T/ 0131 220 7777

Whilst every effort has been made to ensure the accuracy of the information contained within this publication, no warranty, expressed or implied, is given that the information is complete or accurate nor that it is fit for a particular purpose. All such warranties are expressly disclaimed and excluded. Any opinions, recommendations or interpretation provided are not necessarily the current opinions, recommendations or interpretation of the contributors and may be changed at any time.

this publication or to any third party for any loss or injury arising out of the information or any actions taken or not taken in response to any information or a user’s use of (or inability to use) this publication. The recipient is obliged to inform any subsequent recipient of such terms.

The Centrum
38 Queen Street
Glasgow
G1 3DX
T/ 0141 548 8240

3rd Floor
14 King Street
Leeds
LS1 2HL
T/ 0113 204 4777

7 Soho Square
London
W1D 3QB
T/ 0207 446 6888

Tower 12
18/22 Bridge Street
Spinningfields
Manchester
M3 3BZ
T/ 0161 817 4900

The Forum
The Pearl
New Bridge Street West
Newcastle
NE1 8AQ
T/ 0191 605 3500

This guidance note was printed on paper using fibre sourced from sustainable plantation wood from suppliers who practice sustainable management of forests in line with strict international standards. Pulp used in it’s manufacture is also Elemental Chlorine Free (ECF).

The Blade
Abbey Square
Reading
RG1 3BE
T/ 0118 943 0000

Regent House
Prince’s Gate
4 Homer Road
Solihull
B91 3QQ
T/ 0121 711 5151

The White Building
5th Floor
1-4 Cumberland Place
Southampton
SO15 2NP
T/ 023 8038 1968

Neither Barton Willmore nor any representative, agent or employee nor any connected company or party shall be liable to a user of