
Back in October 2018, the Government announced that both Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) will continue to operate as before with ‘no substantive changes’ following Brexit. At this time the Government emphasised its commitment to ‘maintaining the highest environmental standards after we leave the EU and will continue to uphold international obligations through multilateral environmental agreements’. Reassuringly, to ease such a transition and avoid potential delays in the planning process, the Government confirmed that there would be no need to retrospectively re-examine any decisions made before Brexit. The environmental community breathed a temporary sigh of relief, got back to work, all under no illusion that the devil is always in the detail.

On 22 December 2018, Michael Gove, Secretary of the Environment, Food and Rural Affairs, presented the draft Environment (Principles and Governance) Bill to Parliament. This new regime will replace the environmental protections currently provided by EU law and form part of a wider Environment Bill. In the draft Bill Gove states that ‘our EU Exit will not see a weakening of environmental protections. Far from it. The draft Bill shows the strength of our commitment to a Green Brexit’ and a Bill which will ‘contain specific measures to drive action on today’s crucial environmental issues: cleaning up our air, restoring and enhancing nature, improving waste management, resource efficiency, and managing our precious water resources better’. A quick google search will tell you that this draft Bill received very limited media attention amongst the white noise of Brexit coverage and Christmas festivities.

As suspected, the devil does begin to rear its head in the detail of the draft Bill. The definition of the environment (referred to as ‘environmental matters’) and ‘environmental law’ is far narrower in the draft Bill than it is in the current EIA Directive. The draft Bill therefore indicates that some topics included for under the current EIA Directive, may be excluded, such as forestry, flooding, socio-economics, cultural heritage and climate change. Instead, the focus is on protecting, maintaining, restoring or enhancing what is traditionally considered to be the natural environment, such as wild animals, plants, habitats, land, water and air (refer to clause 30 of the draft Bill). However, ‘town and country planning’ is also not considered under ‘environmental law’ which is questionable when EIA and SEA are central to the protection of the environment within the planning process.

Other interesting stipulations (or lack of) within the draft Bill include:

- No inclusion of the Government’s commitment within the withdrawal agreement to ‘non-regression’ from current EU environmental laws.
- Creation of the Office for Environmental Protection (OEP), referred to in the media as a ‘green watchdog’. The OEP would report on the environmental improvement plans, monitor and advise on environmental law, and also have an enforcement function.
- Requirement for Secretary of State to produce an environmental improvement plan. The first is titled ‘A Green Future: Our 25 Year Plan to Improve the Environment’ (11 Jan 2018). The next is to be completed by 31 January 2023 and at least every five years thereafter.

In conclusion, whilst the detail is emerging, it is slow and incomplete, raising more questions than answers. There is no further detail of the Government’s wider Environment Bill, the role of the OEP is opaque (particularly its enforcement powers) and there is currently no commitment in the draft Bill that our current EU environmental laws will not be diluted.
As ever, there are also huge uncertainties in the event of a ‘no deal’, although we know preparations are being made for a new statutory body in this scenario. The draft Bill is currently due to be debated after the current scheduled Brexit date of 29 March 2019, however this could be pushed back. Whilst the Government has consistently ruled out seeking an extension, an agreement has still not been reached with the EU. In an effort to avoid a ‘no deal’ scenario it is looking increasingly likely that Article 50 will be extended beyond 29 March 2019.

This article was written as a contribution to the EIA Quality Mark’s commitment to improving EIA practice. Lisa Hall, Associate at Bidwells LLP, March 2019.