At the time of writing, the UK Government is poised to enact Article 50 of the Treaty of Lisbon, thus officially notifying the EU of its intention to leave\(^1\). This so-called Brexit has led to uncertainty about the future of Environmental Impact Assessment (EIA) in the UK since EIA is a legal requirement derived from an EU Directive. Post-Brexit, the UK may no longer be required to comply with EU Directives, so what does the future hold in store for EIA in the UK?

Much depends upon the results of at least two years of negotiations that are about to commence between the UK Government and the other 27 EU Member States. It is generally understood that three main scenarios exist for the UK:

- Membership of the European Economic Area (EEA);
- Membership of the European Free Trade Association (EFTA); or
- Negotiation of separate trade agreements with the EU, i.e. ‘hard Brexit’.

The first two options are politically difficult for the UK Government given its opposition to immigration controls and free movement of EU citizens between member states and are therefore considered unlikely to occur. Instead, all indications are that the UK will shortly commence negotiation of separate trade agreements with the remaining 27 member states. Precedents for trade agreements exist, for example Canada and Turkey, which do not include an obligation to adopt EU environmental legislation\(^2\).

While it cannot be ruled out that EU states could stipulate compliance with the EIA Directive as part of the Brexit negotiations, it is considered unlikely\(^3\).

So, in the event of hard Brexit, the UK is unlikely to be required to comply with the EIA Directive. Nevertheless, the Directive is already transposed into long-standing domestic law throughout the UK which is thought unlikely to be subject to significant change post-Brexit, at least initially\(^4\). EIA Regulations in each nation of the UK will still apply and Acts of Parliament (or equivalent) would be required to rescind them\(^5\). UK environmental legislation is generally considered to be necessary, fit-for-purpose, and much of it already goes over and above the requirements of EU law\(^6\). Despite some initial predictions to the contrary\(^7,8\), the 2014 EIA Directive will be transposed into law despite Brexit\(^9\).

In addition, the UK will continue to be signatories to various international (non-EU) obligations such as the Aarhus Convention, the Ramsar Convention on Wetlands of International Importance and the recent Rio Declaration which adds weight to the opinion that, at the very least, the UK has a moral obligation to retain its EIA legislation in some form in the years ahead\(^10\).

Nevertheless, differences in EIA regimes may emerge between the devolved nations, particularly due to recent political developments in Scotland. The Scottish Government has made clear its determination to remain in the EU by way of an independence referendum prior to the conclusion of UK Brexit negotiations\(^11\).
Whether or not Scotland becomes an independent nation, the current SNP government will be in place until at least 2021. To make any future Scottish accession to the EU easier to achieve, it is unlikely to significantly deviate from any EU Directives, environmental or otherwise.

The appointment of the pro-Brexit Andrea Leadsom, as the UK’s Secretary of State for Environment, Food and Rural Affairs may be an indication that more radical changes will be made to the EIA Regulations in England. As one example, there is speculation that she could raise screening thresholds, effectively reducing the number of developments requiring EIA, in an effort to boost economic development through reducing pre-planning obligations for smaller-scale projects.

What can be said for certain is that, as with most issues pertaining to Brexit, it is extremely difficult to predict the consequences to the UK’s EIA regimes that the next two years of negotiations will have. The hope must be that the high standards and best practice exhibited by EIA practitioners throughout the UK are not compromised by erosions to environmental protection and safeguards in a post-Brexit UK.

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