

Divergence of environmental policy post Brexit

Initial reflections by IEEP UK

Michael Nicholson

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Tracking divergence

- Significant divergence vs., minor or inconsequential divergence
- Tracking & Recording → Prioritising → Analysing
- Experiences of ‘Tracking and recording’ post Brexit [environment] legislation so far:
 - Enormously challenging
 - Large number of secondary pieces of legislation – on environment, climate, energy, agriculture, fisheries etc
 - In numbers, so far (from 01 January 2021):
 - Over 100 pieces of UK legislation (including SSI’s, WSI’s and NI Statutory Rules), pertinent to the environment, climate, fisheries, agriculture, energy... 98% are SI’s, unsurprisingly very little is primary.
 - Over 260 pieces of EU legislation – e.g., Decisions, Regulations (*though ~ half are related to biocidal products and plant protection products*)

2010 Industrial Emissions Directive (IED) – Dynamic Alignment or Selective Alignment?

- Critical regulation for 50,000 industrial activities across Europe – establishing regulatory processes and framework for performance objectives
- Earlier this year European Commission proposed an amendment to IED – will this cause divergence from the UK?
- UK transposition of different types, e.g.:
 - Copy out of IED into Statutory Instrument (SI) – so amendment at EU level will not be matched in UK
 - Cross-reference to IED in the SI – so implementation in UK would track change at EU level.
- More complexity, e.g., IED itself cross-refers to other EU law (waste, EIA, etc.). But 2019 withdrawal SI explicitly broke those links.
- Note the UK has indicated further changes, so adding to complexity of understanding divergence.
- Conclusion: amending EU law would cause some divergence from the UK, but in other areas, the UK could continue to be linked to the changes.

Chemicals regulation – a case of ‘Divergence by Default’?

1. A new EU Chemicals Strategy in October 2020: *EU Chemicals Strategy for Sustainability = An EU REACH v.2.0...* Leading to more work for UK to stay broadly aligned?
2. Lack of access to EU REACH chemicals safety database (containing detailed and complex data of over 20,000 known chemicals)
3. eNGO concern that UK taking less protective approach, e.g. change in approach to designating substances of very high concern (SVHCs)
4. Lack of regulatory capacity – UK only able to consider a fraction of protective EU controls
 - EU: 5 chemical substances have been banned since Brexit and 20 are in the pipeline of the restriction process
 - UK: currently 2 of those restrictions are being taken forward in the UK – lead ammunition and tattoo ink.



Institute for
European
Environmental
Policy

mnicholson@ieep.eu

London Office:

25 EP, 25 Eccleston Place
SW1W 9NF, London

www.ieep.eu



@IEEP_eu