

Post-Event Briefing: 'The Brexit Series' Waste Seminar

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Post-Event Briefing

Redesigning Waste and Resource Policy outside the EU

Overview

The EU has been one of the main drivers for UK policy and legislation on waste and resource management over the past 40 years. This seminar aimed to explore how Brexit will affect the waste and resource policy landscape, and aimed to identify what policy is needed going ahead to protect the waste and resource industry, as well as our environment, after we leave the EU.

This event was kindly sponsored by:

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Discussion Summary

Dr Alan Whitehead MP opened the event by welcoming attendees and introducing the seminar's speakers.

The Rt. Hon the Lord Deben argued that, as far as sustainable resource policy is concerned, there are no advantages of leaving the EU. This is because waste issues are best solved with the involvement of our neighbours, and historically, the UK has performed poorly with regards to waste issues.

Lord Deben argued that the UK should retain as much waste and resource policy as possible after Brexit, and called on industry to pressure Government to make certain that we

retain existing waste and resource policy and legislation. He believes policy should remain in concert with the EU going ahead, and ideally the UK should lead, not follow, the EU in this area.

Lord Deben concluded by noting that we will need to find ways to continue cooperating with the EU because we still live in a resource-constrained world – the imperative for waste and resource policy remains the same. He pointed out that it is promising to see environmentalism as a mainstream political issue and took courage from this observation despite his pessimism towards Brexit.

“If we found it difficult as members of the EU, then my goodness we are going to find it more difficult outside. We must brace ourselves for this – it won’t change the policies we have, but it will change the ability we have to deliver them.”

Mary Creagh MP observed that the Government’s plans for the environment once we leave the EU remain unclear. She noted her concern surrounding the fact that up to a third of EU legislation of relevance to the Department for Environment, Food and Rural Affairs (Defra) cannot be neatly incorporated into UK law. She also raised concerns surrounding the risk of ‘zombie legislation’ – EU law which is incorporated by the Great Repeal Bill but which lacks legislative protections and enforcement mechanisms, thereby rendering them without effect.

She also expressed concern towards comments by the Parliamentary Under-Secretary at Defra, Dr Therese Coffey MP, who claimed that the proposed 65% recycling target by 2030 in the EU Circular Economy Package is “too high to be achievable”. She argued that the Government is unwilling to stimulate the waste industry with regulation. She urged the waste industry to get the attention of not just Defra, but BEIS, the Department for Exiting the EU, and HM Treasury in order to embed the waste industry within the country’s industrial strategy as well as the UK’s Brexit plans.

“There is a lot of magic thinking going on about what will or won’t happen... I think it is a very, very rocky road ahead.”

Dr Colin Church focused on the future of the EU Circular Economy Package, which will likely become EU law prior to the UK’s expected departure from the EU in 2019. This poses challenges for the Great Repeal Bill – how will it handle EU law which has been passed but not yet implemented in the UK? He also noted that, in the absence of a common EU framework, the different pressures on the devolved administrations might lead to diverging regulatory regimes leading to significant uncertainty and patchiness. For that reason, the UK Government may end up deciding to implement the EU Circular Economy Package after Brexit in order to provide a level playing field across the devolved administrations. Finally, he argued that it might be in the EU’s interests to ensure that the UK adopts the Package in order to maintain competitive balance. Member States will realise that it is disadvantageous to allow a neighbour to avoid complying with the same level of stringency as themselves.

“For this sector, not only do we have all the economic questions that Brexit brings, but also that extra policy

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uncertainty.”

Stephen Shergold explored how Brexit affects waste legislation, court precedence, guidance and policy. Immediately following Brexit, some aspects of the legal framework continue to provide businesses with certainty, such as directives grandfathered under the Great Repeal Bill, court precedence from the Court of Justice of the EU (CJEU) and guidance, standards and reference notes.

However, other aspects are at risk of falling over on ‘day one’ of Brexit and require urgent attention. EU regulations require new laws to replace them. There are also issues for directives that rely upon a community-wide system of implementation, such as the EU Emissions Trading System. Finally, EU policy on resource management will no longer apply.

Over time, gaps may emerge between EU and UK legal frameworks. There will be widening gaps between EU and UK waste law unless we amend our legislation to mirror EU changes to the Waste Framework Directive. This also applies to guidance documents and reference notes. UK court precedence will also likely differ to that of the CJEU, and policy differences will emerge over time.

To bridge such gaps, UK policy could potentially reflect EU policy, for example by keeping the EU Circular Economy Package. The extent to which court decisions in the UK differ from those in the EU depends on the level of discretion courts are given. For example, the more committed we are to the EU Circular Economy Package, the less the courts can influence its implementation. Above all, we must focus on updating UK laws as EU legislation develops, and therefore Brexit poses a long-term challenge to the legal frameworks of our country.

“This is not a fix in two years, nor a fix with the Great Repeal Bill – this will be a legislative programme for many years to come to make sure we don’t fall out of step.”

Prof. Ian Boyd spoke about this year’s annual report from Sir Mark Walport, the Government Chief Scientific Adviser, which is entitled, ‘From Waste to Resource Productivity’.

The report has six themes. Firstly, in order to properly extract value from waste we need to generate good quality and readily available data about what waste exists, where it is and how it is composed. Doing this allows us to then trade, move and up value waste. Secondly, designing out waste will be pivotal to extending the life of materials and facilitating their reuse. Thirdly, new business models, such as providing services rather than selling goods, will play a key role in minimising waste. The fourth theme is consumer behaviour: in order to tackle issues such as food waste we will need to change the collective consciousness about how people perceive and understand the waste of materials within the production system. The penultimate theme concerns optimising co-benefits and integrating the waste system within the wider economy. Finally, Prof. Boyd argued that we are never going to deal with waste unless we also deal with consumption. At the end of the day, less waste is about less consumption.

“Waste presents a massive opportunity for us if we learn how to manage it well.”

Prof. Philip Purnell highlighted the major opportunity that Brexit might offer for better public procurement. After Brexit, he noted, we would be less constrained by EU state aid rules and therefore Government could become the leading customer for the circular economy. He suggested that Government could require itself to buy only British products from recycled British materials, and noted that this would help charge forward the circular economy. He argued, however, that the biggest threat stemming from Brexit is simply the uncertainty in the policy and regulatory framework, claiming that it is impossible to invest in a volatile system like waste management without clear policy and regulation. He called on Government to give clear reassurances to the waste industry about either following existing EU frameworks or to rapidly establish an alternative UK framework in order to give the sector the certainty it needs to operate.

"In terms of the biggest threat that Brexit springs upon us, it is simply the uncertainty in the policy and regulatory framework."

Highlights from the Q&A

Roy Hathaway from the Environmental Services Association (ESA) outlined three areas where the UK might do better than the EU after Brexit: quicker decision-making, fewer constraints from legislation that applies to 28 Member States, and the increasing tendency of EU law to be prescriptive.

Lord Deben disagreed, claiming that Defra can be as slow as the EU. He also emphasised the disadvantages of running a business where there are different rules in different places. Finally, he argued that EU law has not become more prescriptive, highlighting the Producer Responsibility Directive as an example. He believes the UK has been influential in ensuring that EU law is not prescriptive and raised his concern that after Brexit the UK will have to mirror laws which we have not had any influence on.

Michelle Ponting from Sony Interactive Entertainment agreed, claiming that producers like working within a harmonised legal regime.

Geoff Beacon from the Pollution Tax Association asked whether we should take seriously the 'scare stories' about investor-state dispute settlement (ISDS).

Lord Deben shared these concerns. He cautioned that many organisations see Brexit as an opportunity to get rid of regulations, which they view as barriers to trade. He highlighted his worry that when it comes to arranging trade deals, the UK might decide to weaken its environmental standards and turn a blind eye to the sustainability of the resources it trades in order to attract business.

Hazel Lobo from 3rdi and De Montfort University asked how the waste industry can ensure Brexit doesn't affect legislation and compliance across devolved administrations.

Colin Church views this as a problem, although he noted that the devolved administrations will continue to pursue their own waste policies as at present. He raised concerns about whether the Great Repeal Bill will need legislative approval from Scotland and Wales.

Roy Hathaway from the ESA asked for clarification as to whether we are still required to adopt the EU Circular Economy Package if it is agreed upon before Brexit, even if it is not transposed into domestic law at the point of departure.

Colin Church clarified that it would apply due to the Great Repeal Bill.

Stephen Shergold noted the possibility of implementing the Circular Economy Package through domestic policy from the UK.

Hazel Lobo asked how changes to guidance will affect how regulation is carried out after Brexit.

Stephen Shergold argued that if guidance is developing in the EU after Brexit, it is likely to become disconnected with what UK industry wants. The solution to this is to ensure that stakeholders such as CIWM and ESA engage with Defra to ensure that their guidance after Brexit serves to benefit UK industry.

Chris Coggins from WAMTECH asked about the potential of waste as an energy resource.

Prof. Purnell argued that waste from energy faces a problem with the fact that the economy needs to keep producing waste which is inefficient. He also argued that burning waste means materials reach an end point in their lives, and prevents other use options. He concluded, therefore, that energy from waste is appropriate in some but not all contexts.

Prof. Ian Boyd noted that creating energy from waste decreases the value of materials, and is therefore a poor way to fuel an economy. He argued that energy from waste should be part of a solution, but not dominant.

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