

## Environment and Rural Affairs Brexit Roundtable Legislation and Regulation Working Group

### Summary of Legislative Context

#### 1. The European framework

- 1.1 The UK joined the then European Communities (now the EU) as a Member State in 1973. Under the EU Treaties, which established the EU and its institutions, Member States confer competencies on the EU such as the power to legislate in particular areas, including environment, agriculture and fisheries.
- 1.2 The EU Treaties are effective in the UK by virtue of the European Communities Act 1972 (ECA '72). The effect of this is that the majority of the environmental laws and policies in Wales are based on EU law and this has delivered significant benefits not only in terms of environmental protection but also in terms of social protection such as standards for high quality food and produce, improved consumer protection, safer working environments and better public health.
- 1.3 Some EU law is directly applicable in all Member States (EU Regulations) or in those Member States to whom it is addressed (EU Decisions) and other EU law is binding on Member States in terms of the effect to be achieved (EU Directives) through domestic national implementing legislation. In the UK, European obligations such as Directives may be given effect by primary and secondary legislation, and in relation to Wales this includes UK Acts of Parliament, Acts of the National Assembly for Wales and subordinate legislation that may have been made by UK Ministers, Welsh Ministers or on a composite basis by them acting jointly. The corollary of this is that there is a substantial body of EU derived legislation in the sphere of environment and rural affairs that now applies in Wales, as similarly does throughout the UK.
- 1.4 In relation to agriculture and fisheries, a large percentage of the legislative framework is comprised of directly applicable Regulations (e.g. Common Agriculture Policy (CAP) and Common Fisheries Policy (CFP)).
- 1.5 Many of our laws serve to implement not only EU laws, but also other international treaties and agreements. Wales has a growing reputation as a leader in its approach to climate change, natural resources management and sustainable development with the introduction of both the Well-being of Future Generations (Wales) Act and the Environment (Wales) Act.

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### 2. The Great Repeal Bill

2.1 The UK Government's White Paper "*Legislating for the United Kingdom's withdrawal from the European Union*" sets out the UK Government's approach to facilitate the process of withdrawal from the EU through the Great Repeal Bill. The White Paper states the Bill will have three purposes:

- (i) Repeal of the European Communities Act 1972 on the day that the UK exits the EU;
- (ii) Convert the body of EU law as it stands at the moment of exit from the EU into domestic law. This will include: -
  - i. Directly applicable EU law (e.g. EU Regulations);
  - ii. All domestic laws to implement EU obligations (this includes both primary and secondary legislation);
  - iii. Rights in the EU treaties relied on directly in court by individuals; and
  - iv. Historic Court of Justice case law – the intention is questions of interpretation '*will be determined in the UK courts by reference to the CJEU's case law as it exists on the day [UK] leaves the EU*'.
- (iii) Provide an enabling power to make secondary legislation to amend "inoperability" issues, i.e. a power to enable Ministers to make corrections to the preserved laws that would otherwise no longer operate appropriately once the UK has left the EU.

2.5 The effect of converting EU law into domestic law is to preserve EU law in domestic law as it stands on the first day the UK exits the EU.

2.6 The purpose of the enabling power to address inoperability is to ensure that, as at the day of exit, the legislative framework is functioning. The White Paper envisages that UK Ministers and Ministers of Devolved Administrations will exercise this enabling power. The White Paper states: -

*"Legislation that is within the competence of the devolved legislatures or ministers giving effect to EU law will also need to be amended as we leave the EU. We therefore propose that the Bill also gives the devolved ministers a power to amend devolved legislation to correct law that will no longer operate appropriately, in line with the power we propose should be held by UK ministers"* (paragraph 4.6).

2.7 Going forward, the White Paper provides that following exit and after the conversion of the body of EU law into domestic law, there will be an opportunity for a wider review. The White Paper provides: -

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*“...Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of that law to keep, amend or repeal once we have left the EU.”* (paragraph 1.12).

- 2.8 The White Paper also refers to the need for common frameworks to safeguard the harmonious functioning of the UK’s own single market following exit from the EU. Currently, within the UK agriculture, fisheries and environment are areas that are broadly devolved. All of the UKs constituent territories operate within the policy frameworks that are set by the EU, such as the Common Agricultural Policy. The White Paper identifies “common frameworks” as a means to limit divergence within the UK single market and to provide the basis for the UK to negotiate future trade deals. The White Paper refers to the setting of common frameworks: -

*“...When the UK leaves the EU, the powers which the EU currently exercises in relation to the common frameworks will return to the UK, allowing these rules to be set here in the UK by democratically-elected representatives.”* (paragraph 4.2).

- 2.9 The White Paper does not include any definition of what constitutes a “common framework”. The White Paper further indicates that during the period of developing frameworks, the UK Government will seek to minimise any changes to these frameworks by Devolved Administrations (paragraph 4.4).

### 3. Going forward

- 3.1 Whilst the UK Government’s White Paper indicates the UK Government’s direction of travel in terms of the purpose of the Great Repeal Bill, at the time of writing, the Queen’s speech announcing the new UK Government’s legislative programme has been delayed. We do not know, at this stage, how the UK Government’s statements about policy will be translated into the Bill provisions and of particular concern is the extent to which the enabling power to make secondary legislation to amend “inoperability” issues will be able to be exercised in relation to Wales by the Welsh Ministers. In addition, we do not know whether the Queen’s speech will include other Bills to make provision for UK “common frameworks” and the impacts that these could have on the existing devolution settlement.
- 3.2 Going forward, it will be important to ensure that Wales has an effective and appropriate legislative framework and we have an opportunity to develop a smarter, more effective, modern regulatory framework, which supports clean growth and improves the prosperity and competitiveness of Wales and builds on environmental standards and does not endanger the improvements in environmental outcomes delivered to date.

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