

How Will Brexit Affect the U.K.'s EHS Law? Britons May Not Like It

How exactly United Kingdom law will change after Brexit is uncertain. Although British voters wanted to return to a truly national legislative regime, Brexit de facto will not make the U.K. entirely independent from EU legislation, since the EU will remain an important trading partner.

Following the formal withdrawal, the U.K. will have to review multiple areas of law and decide on its national legislation that should be in place after Brexit. It will also have to determine whether it will have bilateral agreements with the EU and every country in it, or be part of a group, such as the European Free Trade Association (whose members are Norway, Liechtenstein, and Iceland). If the U.K. were to join EFTA, it would have to retain or reenact most EU environmental legislation to ensure full access to the Single Market. But even if it only concluded a bilateral agreement with the EU, it would have to respect a fair amount of EU legislation in order to have the right to export its products into the Single Market.

For instance, non-EU manufacturers have to meet EU energy-efficiency requirements. The U.K. would have to comply with EU waste-recycling requirements and the REACH regulation of chemicals in imported products. The U.K. will also have a great interest in maintaining EU product standards, such as those agreed by the European Committee for Standardization, the European Committee for Electronical Standardization, and the European Telecommunications Standards Institute, in order further to import its goods into the EU. Until now, EU manufacturers favored U.K. testing laboratories for manufactured goods. This will probably change too.

In those areas of environmental law that are not connected to the free mar-

ket access, the U.K. will be less likely to take EU legislation into consideration in the future. The Renewable Energy Directive imposes a 20 percent production rate of energy derived from renewable resources on the Member States. After Brexit, the U.K. would no longer have to achieve this goal.

It will also be interesting to see how the U.K. will regulate its fishing policy. It has been part of the Common Fisheries Policy promoting sustainable practices. The EU enters into sustainable fisheries partnership agreements with third countries to fish in their economic zone. In order to fish in the economic zone of the U.K., the EU will now have to sign such an agreement. Part of the Common Fisheries Policy is the European Maritime and Fisheries Fund for sustainable fishing. A budget of €5.7 billion is allocated to and jointly managed by the Member States. After Brexit, the U.K. will not receive

any funding from the EMFF. It is questionable whether the U.K. after Brexit will pursue a cheaper policy that would affect sustainable fishing in the whole of Europe, con-

sidering that fish do not respect economic zones.

When it comes to legislation on greenhouse gas emissions, it would make a difference which model (EFTA or bilateral) the U.K. would choose. The EU, its Member States, and the EFTA members are part of the EU Emissions Trading System. A company that does not use all its emissions allowances can trade them with other companies. A company that emits beyond its allowances is fined. This system ensures that the overall cap is not exceeded, that companies have a financial incentive to use their allowances wisely, and that those companies in need of more allowances can receive them. As a Member State, the U.K. is currently part of the



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EU ETS and would remain a part of it if it were to join the EFTA. Otherwise, the U.K. would leave the system and would not have to comply with the cap requirement any longer.

In order to achieve environmental goals, states often subsidize environmental measures that otherwise would be deficient. The EU state aid law allows subsidies in some constellations, but is generally very rigorous, and the European Commission strictly controls its implementation. If the U.K. were to enter into a bilateral agreement with the EU, it would no longer have to comply with this strict set of rules, nor would it be controlled by the Commission. However, as the U.K. would no longer be part of the Free Trade Zone, the EU would be very likely to sanction the import of highly subsidized British products, applying an increased external tariff.

The U.K. will probably further comply with EU legislation that is a precondition for the access to the Single Market. For legislation that sets pure environmental goals, the U.K. presumably will have less interest in continued compliance. Therefore, it is possible that environmental standards in the U.K. will be lowered. It is, however, certain that, if the U.K. wants to keep trading with the EU after Brexit, it will remain in large part dependent on EU environmental legislation without having the power to influence the legislative process. Whether this result reflects the U.K. voters' intentions is doubtful.

Whether the results will reflect the voters' intentions is doubtful