

29 June 2016

THE IMPACT OF BREXIT ON THE UK NUCLEAR AND RENEWABLE ENERGY SECTORS

Introduction

Brexit has become reality. No member of the EU has ever decided to leave, so the process of withdrawal is untested, although the vote for Brexit is only the start – not the end – of a process which may or may not, result in complete withdrawal. The position of the UK at the end of this process is as yet unclear.

It is important to understand that until the process of withdrawal is complete the UK continues to be a full member of the EU and remains subject to EU law.

The Main Question: Trading Relations and the Single Market

The main questions to be resolved between the UK and the EU will relate to trading relations. The extent to which applicable law will be capable of change depends on whether the UK wishes to enter the European Economic Area, with continuing reciprocal market access. This question was not a matter for the referendum and will be decided by Parliament following negotiations with the continuing states. The degree to which EU laws and regulations will need to be unpicked depends on those negotiations.

It is the trading relationship between member states and the UK as a non member state that will determine the extent to which the UK is required to maintain current EU legislation.

It is too early to have any view as to the likely relationship that the UK will have with the EU and, while it is possible to draw parallels between the EU's current arrangements with states outside the EU, none of these can be said to offer a precedent. No indication has been forthcoming from the EU as to what terms may be on offer, and indeed there will, inevitably, be differing views between members states each of which hold a veto.

Fundamentally, if open access to the EU market is to be maintained through membership of the EEA / EFTA, the UK will have to agree to the free movement of goods, services and, in theory at least,

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labour – a compromise which, if carried through to reality, would seem to perpetuate the primary concerns of those who have recently voted to leave the EU.

Against this developing background we have sought to consider some of the issues likely to be relevant to those working in the nuclear and renewable energy sectors in the UK.

Nuclear Energy

The nuclear sector is most affected by safety and environmental law, which is governed by a number of layers. International treaties, conventions, EU directives, EU regulations, and laws established by the devolved administrations. Withdrawal from the EU will not mean automatic repeal of these various layers.

International treaties, such as the Paris and Brussels Conventions, and the domestic enabling legislation, the Nuclear Installations Act, are independent of EU legislation and will continue unchanged.

The Euratom treaty is also an independent legal treaty which, although entered into at the same time as the Treaty of Rome creating the EEC, remains independent from the subsequent Maastricht and Lisbon Treaties. The Euratom treaty is however, administered by the European Commission on which, following withdrawal, the UK will cease to have representation. The UK and the remainder of the EU will undoubtedly wish for the UK to remain subject to Euratom and therefore this is an area for future discussion.

EU directives are directly applicable in states and require domestic legislation to implement them, whereas EU regulations apply once in force. The domestic legislation implementing EU directives is made under specific legislation which can be repealed. There will have therefore, to be an evaluation exercise as to whether EU laws should be replaced by similar laws or repealed.

Renewable Energy

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The UK commitment to the Kyoto protocol and the Climate Change Act 2008 is unlikely to be revoked and so, policies to encourage the generation of power through low carbon sources will continue.

It will be difficult for the UK to have substantially different policies to the remainder of Europe on global issues such as decarbonisation and cross border energy distribution if any trading relationship is to be maintained.

One area of concern is energy subsidy, where EU funding has provided an element of the financing for ROC and FIT. These will need to be covered by the UK government if continuity of projects currently under development is to be maintained.

Conclusion

At present, without further clarity being provided as to either the timetable for or the actual extent of the planned UK withdrawal from the EU, it is difficult to offer precision in relation to the effect of Brexit on these sectors. We are monitoring developments and will begin to prepare regular bulletins as to how clients should consider protecting themselves.

Introduction to Prospect Energy and Prospect Law

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