

## ***Implications of Brexit for environmental assessment in the UK – results from a one day workshop at the University of Liverpool***

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### ***Introduction***

On 23 June 2016, 51.9% of the participating electorate in the United Kingdom (UK) (i.e. 17.4M people; about 26% of the total population) voted to leave the European Union (EU) in a national advisory referendum. On 29 March 2017, Prime Minister Theresa May triggered Article 50 of the Lisbon Treaty on European Union, starting a negotiation process of withdrawing the UK from the EU, which will come to a close on 29 March 2019. On 19 March 2018, a 21 months extension period was agreed between the EU and the UK, pushing the negotiation deadline back to December 2020.

The British Exit from the EU (Brexit) will have a multitude of impacts. What exactly these will include depends on the specific outcomes of the withdrawal process. The most wide ranging impacts are associated with an option which has been dubbed as a ‘hard Brexit’, and which involves leaving the single market and the customs union<sup>1</sup>. By the time of writing this paper (early 2018), the preference of those in charge was for this option, however, with certain exemptions, covering, for example, financial services which the government would like to see being able to continue selling services across the EU. However, as the EU has consistently stated that such ‘cherry-picking’ is unacceptable (see e.g. the Independent 2017, 20 November), it is still unclear what the result of the withdrawal process will be, and any predictions on potential impacts remain speculative.

In order to make the single market work, common regulatory standards are in place throughout the EU. Associated laws govern relationships between European institutions, member states (MS) and citizens. Based on the Single European Act of 1986, next to the free movement of goods, persons, services and capital, the EU’s legislative competence also includes health and safety of workers, research and development, economic and social cohesion, as well as environmental protection (Fischer 2010).

In preparation for Brexit, in July 2017, the government started the process of a ‘Great Repeal Bill’. This is supposed to repeal the 1972 European Communities Act which took Britain into the EU. This 1972 Act meant that European law took precedence over laws passed in the UK Parliament. The Repeal Bill also aims at ending the power of the European Court of Justice in the UK. Initially, all existing EU legislation is meant to be copied across into domestic UK law in order to avoid what has been called ‘a black hole’ in the statute book of the UK (bba 2017, p.2). This is of importance for environmental assessment - both environmental impact assessment (EIA) and strategic environmental assessment (SEA) - as this is currently prescribed by European Directives. However, after leaving the EU, any pieces of legislation may be altered or abolished, meaning that there is currently uncertainty about the future of environmental legislation in the UK.

There is a particular concern with regards to the future of environmental assessment in the UK. Already before the referendum, attempts were made to weaken EA, which was portrayed by some as a burden for investment and development (Department of Business Innovation and Skills 2014). In this context, Fischer et al (2016, p.106) observed that the UK government was ‘not a particularly

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<sup>1</sup> The single market removes barriers and harmonises rules across the 28 EU member states, allowing for free movement from one EU member state to another of goods, people, services and capital (the so-called four undividable freedoms of the EU). In the customs union no customs duties are levied on goods travelling within it.

keen advocate of EIA as a non-market based regulatory tool'. For instance, EIA screening thresholds were raised by the government in 2015 through amendment of the Town and Country Planning (Environmental Assessment) regulations. Amongst other things this resulted in the thresholds for compulsory EIA for e.g. new housing development being raised from 0.5 ha to 5 ha.

EA in the UK has a long history and practice is characterised by both significant achievements and ongoing challenges (see e.g. Arts et al. 2012). The UK EA system is amongst the most extensively reported and commented on in the world. A considerable number of authors of papers on EA in the English language international professional literature are based in the UK (Fischer and Onyango, 2012; Olagunju and Gunn 2016). Furthermore, in 2012, over a quarter of all master level degrees revolving around environmental assessment and management in the EU were found to be offered by UK based institutions (Fischer and Jha-Thakur 2013). There is therefore good reason to believe that any more dramatic changes to EA in the UK may have consequences that go beyond the UK with possible wider implications for EA systems elsewhere.

It is within this context that we report on the results of a workshop on the potential implications of Brexit for environmental assessment (EIA and SEA) in the UK. This workshop, which was the first gathering dedicated to the topic in the UK, was held on 14 June 2017 at the University of Liverpool's Environmental Assessment and Management Research Centre (<https://www.liverpool.ac.uk/geography-and-planning/research/environmental-assessment-and-management-research-centre/about/>) and was attended by 63 participants. About half of the participants were representatives of consultancies and the other half of academic institutions (including research as well as teaching staff and students), with one local authority employee (and impact assessment officer) also being present.

## **Background**

As explained above, there is currently a lack of clarity for what the anticipated British Exit from the European Union will mean for environmental assessment in the UK in the medium to long term. In the short term, no major changes are expected as the associated European EIA and SEA directives will remain valid until 29 March 2019, and possibly for at least the extension period until December 2020. However, after that the UK Parliament will at one point start to "amend, repeal and improve" laws. Depending on any potential economic consequences of Brexit (and literally all studies suggest negative implications for all options and scenarios)<sup>2</sup>, there may be particular pressure on legislation which is seen as a barrier to economic (GDP type) growth.

Considering existing pressures on and 'streamlining' attempts of environmental practices and standards by the current government, one possible consequence could therefore be a weakening of UK environmental policy. For SEA and EIA, this could mean e.g. raising thresholds for plans, programmes and projects requiring assessments further than what has already happened, or reducing timescales for preparing them. There is also the possibility that the government could abolish them. Comments in this direction have been made by e.g. the Foreign Secretary in a speech on 14 February 2018 (The Road to Brexit: A United Kingdom), stating that *"We can simplify planning, and speed up public procurement, and perhaps we would then be faster in building the homes young people need; and we might decide that it was indeed absolutely necessary for every environmental*

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<sup>2</sup> The European Parliament's IA has been available since March 2017 (at [www.europarl.europa.eu/unitedkingdom/en/ukevents/brexit/brexitstudies.html](http://www.europarl.europa.eu/unitedkingdom/en/ukevents/brexit/brexitstudies.html)), while the US think-tank the RAND Corporation's IA on the implications for the US, the EU and the UK was published in December 2017 – the latter soberly highlighting that the 'key question for the UK is how much worse-off it will be' after leaving the EU (see [www.rand.org/pubs/research\\_reports/RR2200.html](http://www.rand.org/pubs/research_reports/RR2200.html))

*impact assessment to monitor two life cycles of the snail and build special swimming pools for newts – not all of which they use – but it would at least be by our decision.”*

On the other hand, the requirements for EIA and SEA are already enshrined in other international agreements that the UK is signatory to, notably the Aarhus Convention on public participation in environmental decision-making<sup>3</sup>, so it would need to untangle itself from these before it can make major changes to the EIA and SEA regimes. Furthermore, if the UK remained a member of the European Economic Area, as Norway is, then it will be required to comply with the EIA and SEA Directives, although not with the Habitats Directive (UKELA 2017). Friends of the Earth has already issued a complaint to the United Nations, claiming that the EU withdrawal bill breached the Aarhus Convention by not consulting the public on changes to EU-derived environmental law (Guardian 2018).

Currently there appears to be no defined strategy, process or initiative in place for engaging with or lobbying of central government with regards to how SEA and EIA may change. Whilst there clearly ought to be a role for the professional community in helping to shape future EIA and SEA and supporting the development of an effective decision support instrument for an environmentally sustainable development, the current government is showing very little interest, not just in SEA and EIA, but EA as a family of evidence based anticipatory and participatory decision support instruments in general.

### ***The Workshop***

It is within this context that a workshop was organised and held in Liverpool on 14 June 2017, with the involvement of the Ireland-UK branch of the International Association for Impact Assessment (IAIA). Seven speakers talked on various aspects of the potential implications of Brexit for environmental assessment in the UK, including:

- On SEA and EIA in the UK
  - o how environmental aspects and the quality of decision making had been considered before and after the introduction of the European EIA and SEA directives (John Glasson; Oxford Brookes University)
  - o Strengths, Weaknesses, Opportunities and Threats (SWOT) of and for the UK EA system (Urmila Jha-Thakur and Thomas B Fischer, University of Liverpool)
  - o Successes and failures of SEA in the UK (Riki Therivel, Levett-Therivel)
  - o How to improve effectiveness of EIA in the UK (Rufus Howard, Royal HaskoningDHV)
  - o How to lobby government (Josh Fothergill, IEMA)
- On international SEA and EIA experiences
  - o The Swedish SPEAK project – currently Europe’s biggest research project on Environmental Assessment (Kedar Uttam and Berit Balfors, KTH Stockholm)
- On the need to assess the impacts of Brexit on different UK regions/localities
  - o How to change an established Policy Instrument - a case for (Territorial) Impact Assessment (Olivier Sykes, University of Liverpool)

In addition to these talks, in the afternoon, discussions were held in six groups, focusing on the question on what future SEA and EIA should look like. These discussions revolved around different themes, including health, the role of academia, expectations of local authorities as well as

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<sup>3</sup> The case of SEA Protocol and Espoo Convention are more complicated as they are EU-only agreements, but they supplement a previous ‘parent’ agreement that goes beyond EU Member States only (a ‘mixed’ agreement) and untangling from these mixed agreements might be problematic (UKELA, 2017)

opportunities and threats posed by Brexit. The aim of all sessions was to identify strategies for safeguarding existing EA achievements and for supporting further development of an effective EA regime.

Subsequently, main messages from the presentations are provided. A discussion of possible strategies for the future follows on from that

**John Glasson** during his keynote presentation reflected on leading UK practice and guidance on EIA and SA (Sustainability Appraisal) undertaken well before the implementation of the EU Directives. A particular feature was the focus on major projects (e.g. North Sea oil and gas projects) with significant impacts on both, bio-physical and socio-economic environments.

However, the EU Directives were seen as a force for good: introducing strong regulatory underpinnings, spreading good practice not only in the EU but also worldwide, and displaying a willingness to evolve to overcome perceived weaknesses, although it could be argued that they had held back a more integrated and comprehensive assessment process. The Directives have had positive impacts on decision making for projects and plans, although the assessment of fundamental impacts on the environment still suffers from weak impacts monitoring.

For the future the message was one of 'keep calm and carry on'; many European treaties are linked to international conventions (e.g. UNECE), which means that the UK's commitment to EIA should remain largely unchanged. There are however opportunities for some consolidation of UK legislation, for more integrated assessment, and for more proportionate and shorter ESs, utilizing the rapidly evolving digital technology.

**Urmila Jha-Thakur** and **Thomas B Fischer** presented a synopsis of 25 years of EIA in the UK and conducted a SWOT analysis of the same (See Jha-Thakur and Fischer 2016). The paper used the results of a SWOT analysis of the UK EIA System conducted by Glasson (1999) as the benchmark against which the recent findings were compared and contrasted. The results revealed that in terms of strength and weaknesses, very little has actually changed for EIA. A majority of the changes are associated with weaknesses and threats, i.e. external factors. This implied two things, first that the UK EIA system is largely resilient to external factors and secondly, there is a need for the EIA community to improve and enhance the internal factors irrespective of what the implications of Brexit would be.

Overall, the findings of the paper revealed that the perception of EIA stakeholders in the UK remain largely positive in terms of how effective EIA has been in influencing decision-making and enhancing environmental protection. Furthermore, the paper also touched upon the trend of increasing expectations amongst its stakeholders with what an EIA can achieve. Therefore, the conclusions emphasised that it is important for EA professionals to uphold the merits of EA and manage expectations realistically, thereby enabling the case of EA to be strengthened.

**Riki Therivel** noted that SEA has definite costs in consultant or authority time, but also clear benefits in terms of improvements to plans (generally from more extensive at neighbourhood plan level to minimal at the national level; see also Fischer and Yu 2018; Therivel and Fischer 2012), evidence of plan sustainability, and improved stakeholder engagement. SEA also acts as a 'mock examination' for plan-makers. The high profile legal challenges of 2007-2013 and ongoing changes to the planning system have led to lengthy, 'cover your tail' SEA reports.

The Local Plans Expert Group suggested in 2016 (p.35) that SA/SEAs are "often of little genuine assistance to decision making". In contrast, a summer 2016 survey of English local authorities by Omar Ezzet (2016) found that 77% of respondents see SEA as an effective mechanism for producing

environmentally sound and sustainable local plans, and 71% believe that SEA's benefits outweigh its costs.

Riki's wish list for an improved future UK SEA system is:

1. It exists
2. SEA reports (including appendices) should be <200 pages
3. Plan impacts should be tested against environmental standards/thresholds, and plans should help to achieve these standards
4. Assessment of cumulative impacts should be a key part of SEA
5. An explanation should be required if the plan goes against the SEA findings
6. Scrutiny of the post-adoption 'SEA statement' information should be required.

**Rufus Howard** explored how EIA can become more proportionate by using new technology and employing evidence based practice and stakeholder consensus building. Rufus presented two case studies, one based on the Industry Evidence Programme (IEP), and another showing an online example of a digital Environmental Statement.

The IEP is a sector-based review of Environmental Statements and monitoring reports, and multi-stakeholder engagement to develop shared knowledge resources to drive proportionate impact assessment through evidence based practice. The project has gathered data on 50 offshore wind farms, consisting of over 3000 documents. A data review was undertaken taking a topic by topic approach to look for trends in environmental reporting and, where possible, see how the assessment has been carried forward into management action.

The project identified a lack of strategic overview of impacts, across projects, and poor communication between projects, stakeholders and over time. In essence the data from the 50 projects is not centrally stored, analysed, or cascaded to improve current and future practice. Furthermore, monitoring of predicted impacts, effectiveness of conditions and mitigations is limited and what has been undertaken is not widely known. The final deliverable for the project was the identification of 10 recommendations for practice and further research. One of the key recommendations is to create an online evidence hub that pulls together evidence from projects, government bodies, developers, NGOs and researchers to create a holistic repository of knowledge on the EIA for the sector. The evidence hub can then assist in gap analysis, dissemination of knowledge and support for a cross-sector community of practice. The steering group is currently in the process of seeking funding and delivery partners to carry forward the recommended actions.

**Josh Fothergill** tackled the subject of how we move forward with impact assessment in the UK during and post-Brexit. In principle, when it comes to EIA and SEA at least, the approach is simple: the European Union's requirements are already part of UK law and thus will be carried forward via the Government's 'Great Repeal Bill'. The situation, however, becomes more complex as we look beyond March 2019 (or December 2020) into the UK's post-Brexit future.

Devolution within the UK means that environmental laws are managed by different Governments, Whitehall – covering the UK as a whole and England - the Scottish Government, the Welsh Assembly and the Northern Ireland Assembly. As a member of the EU, the UK had its EIA and SEA laws set at a continental level and then simply had to transpose them into UK laws, with occasional minor variations arising from devolution. Set adrift from the direction defined by the EU's EIA and SEA Directives, EA within the UK is not just a single entity, which can reshape the future direction of UK environmental assessment, but four different Governments.

The Scottish Government has shown great support to EIA and SEA over the last decade, whilst Whitehall has, at times, appeared to be actively seeking to diminish the breadth and depth of their application. Further to this, the UK courts are likely to become the ultimate authority on resolving legal challenges, rather than referring cases to the European Court of Justice, which will also generate a more gradual drift from environmental assessment practice within the EU.

Josh concluded that the UK environmental assessment community need to focus on ensuring practice is delivering value to project and plan-making, and at the same time, work with stakeholders to set out a positive vision and action plan for the future. There is a clear need to develop a broad collaborative consensus on how the UK can improve environmental assessment, rather than being frozen by the uncertainty generated by Brexit.

### ***Future of environmental assessment***

Impact assessment in the UK has a number of weaknesses, including the generation of unfocused and disproportional baseline data, problems in generating reasonable alternatives, lack of clarity about impact significance, an underdeveloped monitoring regime, insufficient input by the public and overly lengthy documentation.

However, it also has significant strengths. Both, EIA and SEA are well-established and well-understood. They lead to improvements – sometimes significant improvements - in projects and plans (Arts et al 2011; Phylip-Jones and Fischer 2013). They increase public understanding of, and input to, projects and plans. Their benefits are generally seen as outweighing their costs (IEMA, 2011).

Environmental assessment in the UK faces a number of threats. The political leadership at the national level is perceived as not being in favour of environmental protection and development, despite its recently-published 25 year environmental plan (HM Government, 2018). The environment has had little ‘voice’ in recent electoral debates. Government may see Brexit as an opportunity to cut perceived ‘green tape’ by weakening, for example, screening thresholds and Habitat Regulations Assessment.

Furthermore, the prolonged period of austerity has led to capacity limitations of local authorities to deal with voluminous EIAs and other documentation (e.g. of HIA). Over time, there may be a threat not just in organizational and legal terms, but also in behavioural, lifestyle, and ethical terms.

Brexit is not only a threat to the UK’s economy and environment, but also to those of the EU: in losing the UK, the EU will lose a relatively robust economy and a relatively environmentally conscious voice. The UK also has species and habitats that add significantly to the EU’s biodiversity.

The government’s devolution agenda – its encouragement of city regions, joint authority working and neighbourhood plans – provides opportunities. For instance, IA may be picked up at the regional level through devolved powers by mayors’ offices. Improved collaboration of authorities would not only achieve the legally required ‘duty to cooperate’ but could also be a way of better accounting for cumulative impacts.

Furthermore, the rapid expansion of the UK’s digital infrastructure could allow greater political engagement of the younger generations, and an associated increase in environmental protection activities, including EIA. A positive message could be built about how useful EA is for society, in terms of reducing future environmental risk and promoting environmental enhancement. In this context, improved proportionality of assessment and better monitoring in EA are key.

Overall, EA has been a force for good, has a growing and wide acceptance amongst key stakeholders, and has led to the better and more systematic consideration of environmental issues in project and plan decision making. And whilst there are some ongoing problems, there has been a willingness to address problems, and processes have evolved. Brexit has the potential to allow EA, and other environmental legislation, to be revisited, updated and strengthened.

However, the UK government's lacklustre approach does not bode well. Many fear that, in the absence of European requirements, the government will strive to substantially weaken the instrument and reduce its usage. Having said this, there is of course the possibility of changes to the Government in the future and how this might re-shape the country's approach towards the environment. In order to positively influence the way EA is approached and supported during the Brexit process and post-Brexit, those involved in EA need to better communicate its successes and highlight what would be lost if EA was weakened.

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