

How will Brexit affect the public sector?

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21st July 2016

How will Brexit affect local authorities' powers and duties towards EEA nationals in relation to adult and child social care and housing?

Sian Davies

The present situation

- An EEA national who is exercising an enforceable community law right (in general, is “economically active”) has a right to reside in the UK: see Abdi & Ismail v LB Barnet

EEA nationals: now Mainstream welfare provision

- Right to reside is key to central government welfare benefit entitlement:
Abdirahman v SoSWP

Housing

Eligibility is key to provision:

Housing Act 1996

Part 6 (s.160A)

Part 7 (s.185)

the Allocation of Housing and
Homelessness (Eligibility) (England)
Regulations 2006

Accommodation and Support

Support and assistance under:

- Care Act 2014 Part 1
- Local Government Act 2000 s.2

Prohibited in the case of an EEA national by
para.1 and para.5 of Schedule 3 Nationality
Immigration and Asylum Act 2002

But para 3: *exception if, and to the extent that,
support is necessary to prevent a breach of EC
rights*

Post-Brexit

4 possible models

- Norway model: EEA (free movement rights apply)
- Switzerland model: bilateral treaties (free movement rights apply, note, being renegotiated following Swiss referendum in 2014)

(Both are currently treated by UK in line with EU MS's)

The 4 models (continued)

- EFTA: free movement of goods, not services or people
- The go it alone model: right to enter/remain in UK determined by Immigration Rules

Effect of these models

- The Norway/ Switzerland approach: little or no change

Effect of the models (cont'd)

- EFTA model: no free movement of persons, therefore right to reside will not determine eligibility for support
- Negotiated approach to free movement
- Some other approach to eligibility for support?
- No entitlement to support?
- Support available irrespective of nationality?

Transitional provisions: status of EEA nationals

- Currently unclear what status of those currently exercising R to R will be upon Brexit
- Requirement to meet Immigration Rules criteria?
- HR applications for LTR outside the Rules?

LA duties post-Brexit

- will depend on which model is adopted: Norway / Switzerland involve free movement of persons, so no change?
- Will also depend on status of EEA nationals in UK upon Brexit: LTR – with or without recourse to public funds?
- Extended definition of public funds: currently CA 2014, CA 1989 not included

(Immigration Rules, para.6)

Different categories of post-Brexit status?

- Different status for different categories of EEA residence right?
- E.g. Zambrano carers have right to reside and work but NRPF: the right of residence is protected in reality by availability of s.17 Children Act 1989 support, see Sanneh v SoSWP. Government may be less inclined to grant status than e.g. workers/ self-employed

Ireland

- Approach to Irish nationals has been different: e.g. part of Common Travel Area for habitual residence purposes & relevant to “in the UK in breach of immigration laws” (s.50A British Nationality Act 1981)
- Likely to continue irrespective of new approach to other EEA nationals

HR grounds for LTR

- EEA nationals refused LTR under whatever scheme applies will be able in theory to seek LTR under Immigration Rules/ discretionary LTR including on HR grounds
- LA support – especially for families - may continue pending such applications: Clue v Birmingham CC.

Persons without status

- Some forms of support and assistance prohibited: see Schedule 3 NIAA 2002
- Exception to prohibition para.3 if necessary to prevent breach of HR
- HR breach if homeless/ destitute

Cont'd

- Can avoid by return to COO: Kimani v LB Lambeth
 - HO voluntary return scheme does not apply to EEA nationals at present
- <https://www.gov.uk/return-home-voluntarily/who-can-get-help>
- LA assistance to return if necessary: well-being powers

What will happen?

- Status for some EEA nationals currently in UK (cut off date?)
- Amendment of HA 1996 eligibility provisions and Schedule 3 NIAA 2002
- EEA nationals treated in line with other persons from abroad

Any questions?

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Brexit and Public Procurement

Rose Grogan

Outline

- What will happen to procurement law post-brexite?
- What will happen to procurement litigation post-brexite?

Procurement Law Post-Brexit I

Current position:

- “Brexit means Brexit”
- Likely to invoke article 50 by early 2017
- Article 50 negotiations are to determine the terms of exit – but there is also a need to negotiate our future relationship with the EU
- Potential models: EEA, partial (sector-based) EEA access, FTA with the EU, FTA with other countries (e.g. Australia)

Procurement Law Post-Brexit II

Domestic context

- Public Contracts Regulations 2015 implement EU procurement rules
- Local Government is obliged to secure “best value” in any event
- Competitive tendering has its advantages
- Direction of travel in the UK is towards regulation e.g. “gold plating”
- Common law/contractual claims have developed similar principles

Procurement Law Post-Brexit III

International Context

- Single market access
- EU Third-Country rules
- WTO/GPA principles
- Free Trade Agreements with other countries

Procurement Litigation Post-Brexit I

- Pre-article 50 (up to January 2017)
 - Business as usual
 - Current litigation likely unaffected
- Post article 50
 - EU law continues to apply
 - What about interpretive obligations?
 - Will we see litigants trying to develop new routes to challenge?
 - What about referrals to the CJEU?

Procurement Litigation Post-Brexit II

- Post Brexit
 - Transitional provisions likely
 - What about EU cases?
 - What about English cases decided with reference to EU principles?
 - Increase in contract claims?

How will Brexit affect domestic planning and environmental law?



Peter Village QC
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How will Brexit affect domestic planning law?



Presented by Peter Village QC

Planning generally

- Less impacted by Brexit than environmental law– less direct EU influence on the ‘rules’, e.g. national policy, local plans.
- However, whither EIA and Habitats Directive?

Infrastructure delivery

- Theresa May in speech on 11/7/16:
 - “more Treasury-backed project bonds for new infrastructure projects”
 - A “proper industrial strategy to get the whole economy firing”
 - A plan to help “not one or even two or our great regional cities but every single one of them”

Infrastructure delivery

- What of EU funds, including regional aid (UK receives £1.8bn pa in structural and investment funds + finance from EIB to fund infrastructure projects and urban development schemes)?
- Open letter signed by many prominent Leave campaigners (including BoJo and Gove):
 - “...more than enough money to ensure that those who now get funding from the EU – including universities, scientists, family farmers, regional funds, cultural organisations and others – will continue to do so while also ensuring that we save money that can be spent on our priorities”
- Business as usual until Art 50?
- Will govt step in to provide alternative funding?
- More private sector / JV?

Housing delivery

- Theresa May in speech on 11/7/16:

“Unless we deal with the housing deficit, we will see house prices keep on rising. Young people will find it even harder to afford their own home. The divide between those who inherit wealth and those who don’t will become more pronounced”
- But – in reality more of the same?

March 2014: “there is a clear need to address population growth and provide more houses, but at the same time we must protect what is best about the local area including its green belt land, open countryside, nature and wildlife, and historic sites and buildings...”
- Market realities – developers’ business models and areas experiencing growth
- Housing and Planning Act
 - See latest commencement regulations, with some provisions having come into force on 13/7/16

Housing need

- New 2014-based Household Projections
- ONS's projections already adopting cautious assumptions of net international migration
- International v EU migration
- Single market = free movement?
- Returning UK nationals currently in EU?

Airport expansion

- Heathrow decision deferred (again)
- See also TM's 'nuanced' position in 2014 (Planning Magazine, 12/7/16):
 - Told Airports Commission – number of jobs in Maidenhead area depended on Heathrow
 - But... residents' concerns re noise and environmental impacts
- NB - Heathrow also near TM's constituency

Devolution

- Cities & Local Government Devolution Act 2016 passed in January
 - Transfer powers, funding and accountability to local government
- 10 deals agreed by April 2016 (of which 7 committed to preparing spatial planning frameworks)
- Greg Clark (Communities Secretary) in speech on 8/7/16 said devolution “more important than ever”
- New SSCLG – Sajid Javid priorities "to build more homes and increase home ownership, devolve powers to local areas and help communities deliver excellent public services".
- But... George Osborne no longer in cabinet

How will Brexit affect domestic environmental law?



Presented by Justine Thornton QC

Summary

- Majority of domestic environmental law is derived from EU law.
- Immediate challenge is to avoid a chaotic environmental Brexit
- Much depends on forthcoming political decisions about future relationships.
- But international environmental law will be of greater significance

What's the starting point?

- How clean will the environmental slate be wiped?
- Single market Norwegian style solution or Swiss/Canadian style?
- Default option is international environmental law

International environmental law

- A substantial body of international environmental law (Conventions)
- What we currently see as EU law is a reflection reflecting international law which will still bind us (biodiversity/chemicals/climate)
- Will set substantial constraints on what UK can do internally in developing a new framework

We are all international lawyers now.....

- Conventions on Biodiversity/Transfrontier shipment of waste/climate change/Justice
- Domestic legislation presumed to be compatible
- May have a bearing on common law
- Will judges exercise more discretion to take account of int law?
- Are Ramsar sites part of customary international law?

The future – reshaping domestic environmental law

- Defra – mothballed project on reshaping environmental law – to be resuscitated?
- Laws under political pressure ??
 - Habitats
 - EIA
- Improvements – more intelligible definition of waste?
- Retain the EU tradition of emission targets/air quality objectives?

Immediate practical implications

- DECC has gone...
- Will the new EIA changes be brought into force?
- European Commission unlikely to commence infraction proceedings
- What about the Euratom treaty? (nuclear)
- Will litigants be deterred from bringing EIA challenges?

Longer term practicalities

- Status of previous court decisions based on EU law?
- Status of European Court cases – eg will judges be required to ‘take account’ of European case law?
- Return of Euro sceptic black letter law judges?

Questions and discussion

