

Fisheries part 2 – the legal position

Once Article 50 is invoked, unless there is a mutually-agreed extension to the negotiation process, the treaties will cease to apply after the stipulated two year period whether or not an agreement has been reached. We will no longer be members of the EU, and thus no longer bound by EU Treaties and Regulations. Legislation on our statute books which began life as EU Directives will still apply because they have become part of our domestic legislation, although we will have the freedom to amend or repeal them.

Whatever exit agreement Mrs May seeks with the EU, it is in everyone's interest to work for an amicable settlement, as is becoming apparent. However, if the other 27 members start being awkward for whatever reason, it will make no difference as far as Article 50 is concerned: we will be out after two years.

It is useful that in fisheries we have already experienced two occasions when a termination date for an agreement was reached, as will also be the case at the end of the article 50 process. The second example shows very clearly that the Commission learnt from the first, even though the two incidents are 30 years apart. They show very clearly what will happen, particularly without any agreement.

The background to the first incident goes back to our Accession Treaty to join the then EEC in 1972. Within that Treaty was a 10-year transitional derogation, which terminated on 31st December 1982, exempting the UK from the equal access principle which handed the competency of all UK waters to Brussels. In other words, while the derogation was in force, the 6 nautical mile and partial 6 to 12 mile limits were reserved for exclusive use by the British.

A further transitional derogation, Regulation 170/83, was agreed and should have come into effect on 1st. January 1983 to replace its predecessor. However, it did not become operational until 25th. January 1983, leaving a 24-day gap.

Kent Kirk, a Danish fishing captain who was also an MEP, decided to test the legal position during those 24 days. He took his Danish-registered fishing vessel inside the British 12-mile and started to use his fishing gear. He was promptly arrested, escorted into North Shields, tried, found guilty and fined. The case went to the European Court, and a year and a half later, the guilty verdict was overturned. Why was this?

The answer was simple. We British had completely failed fully to read and understand the Treaties and Regulations we had signed up to. In our Accession Treaty, we had handed all our waters up to the base line (The low water mark – the shore line) to the EU. When the first 10-year derogation giving us back exclusive use out to 12 mile expired, we reverted back to the original arrangement under our Terms of Accession for 24 days until the new derogation came into force. Kent Kirk proved that without a derogation – in other words during the first 24 days of 1983 – any EU vessel could have fished up to the British beaches.

In 2012, thirty years later, the Commission realised that, thanks to the increasing complexity of fisheries management, they were facing a similar situation. The next 10-year transitional derogation would not be ready in time to take over from Regulation 2371/2002 which was schedule to expire on 31 December 2012. In order to avoid a repeat of the Kent Kirk saga, the existing Regulation was extended by a year to give time to finalise Regulation 1380/2013 which replaced it seamlessly on 1st January 2014.

The lesson from these two cases is that when you hit a termination date, Regulations cease to apply if nothing is put

in its place. This is particularly important with regards Article 50, as section 3 of the Article states that *"The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period. "*

As far as fisheries are concerned, unless an agreement is reached to change the negotiating timetable, two years after invoking Article 50, at midnight of the given day, all the terms stated within our EU Accession Treaty cease to apply, meaning that the legal basis for handing competency over the living marine resources within all UK fishing waters to the EU collapses and competency returns to HMG. Furthermore, as EU Regulations rely on the Treaties for their legality, those Fisheries Regulations which create and distribute EU quota and determine the percentage share out and who fishes what and where in the British zone also cease to apply.

To repeat, everything goes. This even includes the rights of EU vessels to fish in British waters, known as historic rights, which date from 1971. The relative stability quota share out of 1983 also goes. Bearing in mind that the EU quota system was designed as a tool of integration, rather than sensible fisheries management, its demise will be a very positive development. If, however, by the end of Article 50's two-year negotiation period, the UK has not signed off a fishing policy to replace EU legislation, we will find ourselves in a legal position whereby no British vessel can fish in EU waters and no EU vessels can fish in British waters, while all existing allocations cease to apply

What has to be understood is that once the clock starts ticking, it is imperative to have an agreement in place by the time we leave, for otherwise, this is the problem we will face on exit day. Under international law, our government will be

legally responsible for the management of the UK 200 nautical mile/median zone, and we automatically revert back to the Fishery Limits (1976) Act.

Given the obvious benefit of regaining control of these resources and the consequences of the Treaties ceasing to apply, it is obvious that we will have the upper hand in any new negotiations with the EU over any access to our waters. However, the UK government and fishing industry are far from united in their enthusiasm for the end of quotas and the return of fisheries to UK control. In the next article, I will explain the difficulties which could complicate negotiations – the concern of banks who have lent money based on EU quota that will be all be lost once we leave the EU.