

The implications of Article 50

*We welcome back John Ashworth, whose earlier series of articles on fisheries for this website were edited into a single booklet, **The Betrayal of Britain's Fishing**. In this series, John looks at how Brexit will affect our fishing industry. Firstly, however, he begins with a more general overview of the implications of Article 50.*

The month after the historic referendum vote, 1,054 lawyers wrote to the Prime Minister stating that, in their opinion, the referendum is advisory. "The European Referendum Act does not make it legally binding," they wrote. "We believe that in order to trigger Article 50, there must first be primary legislation. It is of the utmost importance that the legislative process is informed by an objective understanding as to the benefits, costs and risks of triggering Article 50".

Having been hoodwinked many times in the past over legal issues concerning fisheries, I have come to be very suspicious about lawyers' interpretations of the law, especially in relation to the EU.

Let us consider in layman's terms what are they saying. As is often the case, their argument is presented in a roundabout, confusing way. At face value, their statement appears to mean that Parliament has to vote on the triggering of Article 50. This is what they would like as Parliament would probably vote NO. I am pretty confident that this is what they are saying. We can also be confident that these lawyers are either remainers or acting on behalf of remainers. In one sense, their argument is correct – the European Referendum Act does

not make the result of the referendum legally binding, but why bring that Act into the equation? It does not determine whether Parliamentary consent is required to trigger Article 50.

Article 50, as part of the Lisbon Treaty, has twice been endorsed through an Act of Parliament. Firstly through the European Union (Amendment) Act 2008 accepting the Lisbon Treaty, and secondly through the European Union (Croatian Accession and Irish Protocol) Act 2013 accepting the *acquis communautaire* in full which includes the Lisbon Treaty, including, of course, Article 50.

So why should any further legislation be needed to accept the procedure which has already been laid out so clearly in existing Acts of Parliament?

There has been a lot of confusion about Article 50. Firstly, in July, the former Italian Prime Minister Giuliano Amato claimed that he had been responsible for writing Article 50, but it was never actually meant to be used. It has been specifically inserted to placate the British

“My intention was that it should be a classic safety valve that was there, but never used,” he said. “It is like having a fire extinguisher that should never have to be used. Instead, the fire happened.”

He went on to say that “Prime Minister May wants to wrap things up by 2019, but it will be easy to prolong matters.” In other words, he hopes that it could become an issue at the next General Election and the Brexit vote overturned.

Secondly, in my experience, our Ministers, even Prime Ministers have been taken to one side and told go and read the treaties. They have not studied them in detail, To avoid making the same mistake, it may be helpful to remind ourselves what Article 50 actually says, whether or not it was ever intended to be used. Here is the wording, in full:-

Article 50 – Treaty on European Union (TEU)

- 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
- 2. 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*
- 3. 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.*
- 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

- 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.*

The wording shows that Giuliano Amato is wrong to state that the process can be prolonged. It is up to the UK not the EU to

decide when to Invoke Article 50. What is more, after the two-year negotiation period, section 3 kicks in and the Treaties shall cease to apply.

This means that as far as fisheries are concerned, at midnight on the given day, the competence the UK handed to the EU through our Accession Treaty no longer applies and control of the UK's 200 nautical mile/median line zone comes back into British control. The implications of that will be considered in my next article, but in conclusion, here are two other thoughts to consider

Firstly, as Regulations (unlike Directives) take their authority from the Treaties, once the Treaties will no longer apply to the UK, **ALL** EU legislation which has come in the form of Regulations will also cease to apply

Secondly, when we joined the EEC as it then was, we joined as a whole "United Kingdom of Great Britain and Northern Ireland". We can only leave as a whole, so if Nicola Sturgeon wants to stay in the EU, first Scotland has to leave the UK and then apply to join the EU. If ever this happened, Scotland was allowed to join and voted to do so, the Scottish fishing fleet, instead of being able to take advantage of independence to regain control of its fishing zone, would have to be reduced further.

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