



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
ENVIRONMENT  
Implementation & Support to Member States  
**Environmental Enforcement**

Brussels  
ENV.E.3/SG/VP/

Mr Shaun Spiers  
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**Subject: UK related infringements and complaints**

Dear Mr Spiers,

Thank you for your letter of 27 February 2020. I apologise for the delay in responding. In your letter, you ask for clarification on a number of questions concerning the Commission's handling of UK infringements and complaints in relation to the implementation of EU environmental legislation.

In your first question, you ask how many UK environmental complaints and infringement cases are being actively pursued by the Commission. Your second question asks about the details of these files and the stage they have reached. I will try to answer these two questions together.

We currently have 19 open infringement files being handled by DG Environment in relation to the UK. An infringement file is classed as such where at least a letter formal notice has been issued under Article 258 of the Treaty on the Functioning of the EU (TFEU). The open cases are the following:

1. File 2000/4225 in which there was a judgment against the UK in Case C-301/10. This case concerns breaches of Directive 91/271/EEC concerning urban waste water treatment in London and Whitburn. A letter of formal notice was issued under Article 260 TFEU on 25 January 2019.
2. File 2006/4033 in which there was a judgment against the UK in Case C-530/11. This case concerns prohibitive costs of environmental justice. Since the judgment, new legislation was adopted to answer many of the concerns raised.
3. File 2007/2241, which concerns the transposition of Directive 2000/60/EC establishing a framework for Community action in the field of water policy. A reasoned opinion was issued in this case on 23 October 2015. Since this time, substantial new transposing legislation was adopted.

4. File 2012/4149 concerns the failure to correctly apply Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora and Directive 85/337/EEC and 2011/92/EU on the assessment of the effects of certain public and private projects on the environment with regard to the permitting of Pembroke Power Station. A reasoned opinion was issued on 11 July 2014. Whilst the concerns in relation to physical impacts of the power plant on the adjacent Natura 2000 site have been answered, the case has remained open on the question of the sequencing of permits and environmental assessments.
5. File 2013/2055 concerns failures to comply with Directive 91/271/EEC concerning urban waste water treatment which were declared by the Court in case C-502/15. Whilst the judgement concerned numerous agglomerations, only Llanelli, Gowerton and Gibraltar are still outstanding.
6. File 2013/4035 concerns the UK's failure to identify special areas of conservation for the harbour porpoise under Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora which was declared by the Court in its judgment in case C-669/16. This has been largely answered by the UK with the designation of numerous additional sites.
7. File 2014/4000 concerns the failure to ensure that limit values for nitrogen dioxide are met in numerous zones in the UK in breach of Directive 2008/50/EC on ambient air quality and cleaner air for Europe. The case was lodged before the Court of Justice of the EU as Case C-664/18 in October 2018. The pleadings in the case have closed and the parties are awaiting the Court's judgment.
8. File 2015/2030 concerns the failure to establish conservation objective and measures for special areas of conservation throughout the UK under Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora. The case is at the letter of formal notice stage.
9. File 2016/4018 concerns the failure to control burning of peat bogs on sites designated in England for protection under Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora. A reasoned opinion was issued in this case on 28 April 2017.
10. File 2019/2009 concerns the failure to report updates on the assessment of the environmental status of waters, the determination of good environmental status and environmental targets under Articles 5(2), 17(2) and 17(3) of Directive 2008/56/EC establishing a framework for Community action in the field of marine environmental policy. This case is at the letter of formal notice stage.

There is then an additional group of cases that raise technical concerns about the United Kingdom's use of ambulatory references and transposition by reference. These are all at the stage of letter of formal notice under Article 258 TFEU:

11. File 2017/0214 concerning the failure to communicate transposing measures with regard to the amendment of annexes to Directives 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air and 2008/50/EC on ambient air quality and cleaner air for Europe.
12. File 2019/0249 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/738/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
13. File 2019/0250 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/742/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

14. File 2019/0252 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/736/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
15. File 2019/0253 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/739/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
16. File 2019/0254 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/741/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
17. File 2019/0255 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/740/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
18. File 2019/0256 concerning the failure to communicate transposing measures for Commission Delegated Directive 2018/737/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
19. File 2019/0293 concerning the failure to communicate transposing measures for Commission Delegated Directive 2019/178/EU adapting to scientific and technical progress Annex III of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

In addition to these infringement files, there are six open EU Pilot files in which the Commission has raised concerns about EU environmental law with the United Kingdom, but where these have not escalated to infringement action. These are:

1. EUP(2014)7045 raising mainly concerns about the use of transposition by reference in relation to Directive 2008/98/EC on waste.
2. EUP(2015)7396 which raises concerns about powers in England and Wales to control diffuse pollution from agricultural sources under the Water Framework Directive 2000/60/EC. These concerns have now been largely answered.
3. EUP(2015)7640 raising concerns about the regularisation of damaging developments in Northern Ireland. This file initially focused on failures to apply the requirements of Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment to developments that had evaded planning permission, but was expanded to also request clarification on other allegedly illegal projects. These include sand quarrying in Lough Neagh SPA, a proposed goldmine in Gortin, an illegal waste site in Mobouy Road which is polluting the River Faughan SAC and more generally the follow up given to the 2018 Mills Report with regard to improvements needed on enforcement in Northern Ireland.
4. EUP(2016)8354 raised concerns about the completion of the Natura 2000 network in the marine environment, in particular with regard to the need to designate additional Special Protection Areas offshore under Directive 2009/147/EC on the conservation of wild birds.
5. EUP(2016)8756 raised concerns about the transposition of Directive 2008/50/EC on ambient air quality and cleaner air for Europe.
6. EUP(2016)9105 raised concerns about failures to control diffuse pollution from agriculture in breach of Directive 91/676/EEC concerning the protection of

waters against pollution caused by nitrates from agriculture. More recently, the Commission has added questions about the failure of the United Kingdom to comply with the requirements of Article 5(4) of the Directive given that Commission Decision 2013/481/EU providing the legal basis for the derogation in England, Wales and Scotland from the 170kg N/hectare/year threshold normally applicable in Nitrate Vulnerable Zones expired on 31 December 2016.

Finally, there are 14 open complaint files (known as CHAP files), which are independent of the files listed above, although a number of them are at the stage of having been “pre-closed”.

1. CHAP(2019)3209 raising concerns about High Speed 2 Rail;
2. CHAP(2019)3068 raising concerns about Hinckley Point C’s cooling system;
3. CHAP(2019)2984 concerning the use of pesticides and the Habitats Directive;
4. CHAP(2019)2158 on the protection of marine species;
5. CHAP(2019)1779 on fisheries management in the Dogger Bank;
6. CHAP(2019)1691 on air quality and combined heat and power units;
7. CHAP(2019)1309 on hazardous waste disposal and transport;
8. CHAP(2019)296 on nature protection in Wales;
9. CHAP(2019)33 on Hinckley Point C power station and the EIA Directive;
10. CHAP(2018)3808 on air quality and wood burning stoves;
11. CHAP(2018)3648 on the failure to support waste oil recycling;
12. CHAP(2018)958 on the use of acoustic devices by salmon farms;
13. CHAP(2018)832 on pressure of farming on water quality;
14. CHAP(2016)184 on the inappropriate use of SANGs in Devon.

You then ask what will happen to these after 31 December 2020 and whether the Court of Justice of the European Union will still treat cases after this date. You also ask whether the Commission can still respond to complainants between now and 31 December 2020.

These questions must be answered in light of the relevant provisions of the Agreement on the withdrawal of the UK from the EU<sup>1</sup>. This Agreement provides for a transition period due to last until 31 December 2020 if no extension is agreed. During the transition period, save for limited exceptions, Union law applies to and in the UK and for this purpose the UK is treated as if it were a Member States (Article 127 and 131 of the Withdrawal Agreement). Notably, the powers conferred upon Union institutions remain intact in relation with the UK, including the Commission’s powers to ensure correct application of Union law and to investigate cases of non-compliance by the UK, be it on own initiative or on the basis of complaints. It follows that before the end of the transition period, the Commission can still investigate complaints regarding the compliance by the UK with Union law.

After the end of the transition period, the Commission will continue to be competent for administrative procedures which were initiated before the end of the transition period concerning compliance by the UK with Union law and the Court of Justice will continue to have jurisdiction over such cases (Article 92 of the Withdrawal Agreement). In addition, within a four-year period running from the end of the transition period, the Commission may bring cases before the Court of Justice, under Articles 258 and 108(2)

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<sup>1</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7.

TFEU, for infringements of EU law that occurred in the period before the end of the transition period (Article 87 of the Withdrawal Agreement). The Court of Justice will continue to have jurisdiction over such cases.

Yours faithfully,

e-signed  
Paul Speight  
Head of Unit