

European and External Relations Committee

Written Call for Evidence – Scotland's Relationship with the EU

Evidence Paper from Transform Scotland

5th September 2016

1. Introduction

Transform Scotland, the nation's sustainable transport alliance, campaigns for sustainable transport across all transport modes. We call for a transport system which is environmentally sustainable, socially inclusive and economically responsible. We represent over 60 member organisations from across the transport sector, including businesses, charities and third sector bodies.

We welcome the opportunity to respond to this consultation. Our comments are with respect to the call for comments on “the implications for UK and Scots law of a withdrawal from the EU, particularly the need to repeal legislation and prepare new legislation to fill the gaps left by EU legislation”. We hope you find our comments to be a constructive contribution in the considerations of the impacts of the UK leaving the European Union.

2. General Context

Transport legislation and transport policies in the UK have been shaped by numerous EU directives, with environmental laws, infrastructure standards and EU procurement rules having the greatest impact. Perhaps the greatest impact of EU legislation on transport in the UK has been the decarbonisation of the vehicle fleet, arising from the 'CO₂ from Cars' Directive.

The extent to which current standards remain in place depends primarily on the extent to which the UK continues to have access to the EU's single market and whether legislation that affects several sectors of the economy (such as procurement rules) would only be kept in place for sectors that are included in bilateral agreements or retained wholesale.

It is unlikely that domestic legislation in areas that are currently regulated by the EU will be substantially amended before new trade agreements are in place and associated obligations are clear (2018 at the earliest), but all four UK jurisdictions may have to produce emergency legislation to avoid a legal vacuum in areas that are devolved, and unless devolution in those areas is revoked the loss of the common EU framework may result in greater differences between them.¹

¹ Bond Dickinson (12 Aug 2016) The impact on environment and planning law after the EU referendum (online publication), <http://www.bonddickinson.com/insights/publications-and-briefings/impact-environment-and-planning-law-after-eu-referendum>

3. Brexit and Environment

3.1. Environmental regulation in general

The vast majority of the environmental legislation in the UK derives from EU directives, and transport is affected by this body of EU laws in a number of ways. Environmental campaigners have argued that new trading arrangements should be approached as an opportunity to reinforce and enhance existing standards; it is imperative that upon leaving the EU environmental legislation is not weakened and continues to be upheld and enforced in the UK. Pressure from politicians who consider environmental rules and regulations an impediment to the UK's ability to trade effectively must be resisted in order to ensure high standards, not just in transport, but across other areas including water quality, air quality and habitat conservation.

3.2. Climate Change

One obvious exception is greenhouse gas emission targets. The Climate Change Act 2008 and the Climate Change (Scotland) Act 2009 commit the Westminster and Holyrood governments to an 80% cut by 2050 while the EU is only committed to a reduction by 40% by 2030 (as a minimum, based on 1990 levels). If the UK remains ahead of the EU in relation to in this area EU standards in this area will remain in place by default. With transport now contributing as much as a quarter to the Scotland's CO₂ output (2013) and remaining relatively stable², tighter laws and other government interventions in this area are overdue and, apparently, on the way.³

3.3. Air Pollution

When the Institute of Environmental Management & Assessment (IEMA) surveyed over 4,000 environment and sustainability professionals about the likely impact of a pro-Brexit vote⁴ all but 12% agreed that the EU policies had "made a useful contribution" to the UK's policies on air pollution.⁵ As regards the implementation of those policies, the picture is more mixed. Both Scotland and the UK as a whole have failed to keep air pollution within legal limits and have been ordered by the Supreme Court (in 2015) to take immediate action in this area."⁶ The (Draft) Low Emission Strategy for Scotland⁷ lists four EU Directives as part of the current legal framework (Annex E), and having been transposed into UK and Scottish law, most of those are likely to be retained as targets in a post-Brexit UK.⁸ Given that 80% of air

² <http://www.transport.gov.scot/report/scottish-transport-statistics-no-34-datasets-8914> (Table 13)

³ One example is Section 6.5 of the (Draft) Low Emission Strategy for Scotland (2015), which refers to an almost complete decarbonisation of the road transport sector (<http://www.gov.scot/Publications/2015/01/3287/0>).

⁴ See <http://www.iema.net/news/news/2016/06/22/environment-and-sustainability-professionals-reveal-top-10-views-on-%E2%80%9Cbrexit%E2%80%99D/>.

⁵ <http://www.iema.net/news/news/2016/06/22/environment-and-sustainability-professionals-reveal-top-10-views-on-%E2%80%9Cbrexit%E2%80%99D/>

⁶ Friends of the Earth Scotland (2016) Air pollution in Scotland (revised version) <http://www.foe-scotland.org.uk/node/2031>

⁷ <http://www.gov.scot/Publications/2015/01/3287>

⁸ See also <http://ec.europa.eu/environment/air/quality/standards.htm>

pollution in cities coming from traffic,⁹ the Scottish Government currently is under pressure to target motorised traffic in urban areas accordingly.

4. Transport Infrastructure

Infrastructural investments are likely to reflect trends within the economy as a whole, especially employment trends, but they too are currently subject to the EU regulation with regard to the environment. 80% of the environment professionals surveyed by IEMA expressed the view that the EIA Directive¹⁰ “enhanced the way that environmental issues [had been] factored into development consent decisions for major infrastructure projects” and two thirds (65%) predicted that “the way that environmental issues are taken into account in infrastructure decision making would be reduced or removed altogether.” This is relevant to transport decisions in relation to major investments, such as airport extensions and roads, but also to transport planning within cities.

Another factor that might affect investments of that nature is the reduced availability of migrant workers from the EU as this may affect the viability of major infrastructural investments.¹¹

5. Public Sector Procurement and Manufacturing

Access rights for foreign suppliers to government procurement markets are almost certain to remain an element of the UK's trading relationships with the EU and other parts of the world. If a post-Brexit UK became a member of EFTA it would automatically be subject to EU public sector procurement.¹² Similar, though slightly more flexible, procurement rules would apply if the UK wanted to access the EU's internal market as a GPA signatory.

The current legal situation in Scotland leaves even less room for protectionism than what is stipulated in EU law and other UK jurisdictions. The Procurement Reform (Scotland) Act 2014 and related legislation¹³

⁹ Friends of the Earth Scotland (2016) Air pollution in Scotland (revised version) <http://www.foe-scotland.org.uk/node/2031>

¹⁰ Directive 2011/92/EU, more recently 2014/52/EU.

¹¹ Brexit: Civil engineers call for 'flexible' immigration and procurement reform. <http://www.transport-network.co.uk/Brexit-Civil-engineers-call-for-flexible-immigration-and-procurement-reform/13162>

¹² Cf. www.publicprocurementnetwork.org/index.php?option=com_content&view=article&id=59&Itemid=54

¹³ This includes the Public Contracts (Scotland) Regulations 2015, Utilities Contracts (Scotland) Regulations 2016 and Concession Contracts (Scotland) Regulations 2016. All of these laws, and Procurement Reform (Scotland) Act 2014 itself, came into force on 18 April 2016.

incorporate relevant EU directives but cover a much larger range of contracts due to a lower contract value threshold (over £50,000 for supplies and services, and £2,000,000 for public works).¹⁴

With regards to the transport sector, public sector procurement legislation is most relevant to infrastructure, the operation of services and manufacturing of rolling stock (buses, trains) and ferries. Recent Scottish examples of contracts being awarded to non-UK firms include ScotRail (operated by Abellio, 10 years from April 2015)¹⁵ and the construction of MV Loch Seaforth (procured by Caledonian MacBrayne, but built by Flensburger Schiffbau-Gesellschaft MBH and Co., completed 2014)¹⁶, the Aberdeen Western Peripheral Route (AWPR) contracts, the Edinburgh Trams development, and the contracts for the Queensferry Crossing.

Conversely, the future status of EU procurement legislation in Scotland affects domestic companies bidding for public sector contracts across the EU. If current rules remain unchanged they will continue to enjoy the right to equal treatment. An example of a company which is affected by this are the bus manufacturer Alexander Dennis Ltd (Falkirk). Another respect in which Brexit affects their international prospects is currency fluctuation. If the value of Sterling does not recover to its pre-referendum value relative to the Euro, the outcome of the UK-EU referendum can be said to have benefited UK-based companies who exports to Europe, though any advantages in that respect may, of course, be neutralised by increasing costs for imported raw materials, labour etc.

¹⁴ See <http://www.gov.scot/Topics/Government/Procurement/policy/10613>, <http://www.ojec.com/thresholds.aspx>; <http://www.brodies.com/blog/scotlands-new-procurement-regime-force/> Public Contracts (Scotland) Regulations 2015, Utilities Contracts (Scotland) Regulations 2016 and Concession Contracts (Scotland) Regulations 2016.

¹⁵ The tender includes a provision for the Scottish Government to cancel the contract at the halfway point.

¹⁶ <https://www.calmac.co.uk/press/transport-minister-visits-mv-loch-seaforth>