

Local Government Association Briefing, Legislating for the United Kingdom's withdrawal from the EU

April 2017



Background

This briefing provides an analysis of the recent Government White Paper: 'Legislating for the United Kingdom's withdrawal from the European Union'ⁱ. It provides a summary of the White Paper and an analysis from the perspective of the key issues facing local government as the UK withdraws from the EU.

EU laws impact on many of the council services that affect people's day-to-day lives. These range from deciding how to protect people from being served unsafe food when they eat out to regulating how councils buy goods and services. The Great Repeal Bill will convert such EU laws into UK law.

To note, there was a diversity of views among local government about Britain's membership of the EU. To reflect this, the LGA remained neutral during and post the referendum. This neutrality continues to be reflected in our objective analysis of new developments and publications in the Brexit negotiations.

Summary of the White Paper

The Government White Paper sets out the objectives of the Government's intent to introduce the Great Repeal Bill as part of the 2017 legislative programme. In summary the White Paper sets out:

- **Repeal the European Communities Act.** Ending the supremacy of EU law over UK law, bringing back full sovereignty of legislation to UK Parliament.
- **Transposition of EU law into UK law.** On the day we leave the EU, all existing EU derived laws will be in place. Parliament will then have the ability to amend, repeal or build on any laws.
- **New secondary legislation** to amend laws which will not work with the UK outside the EU, for example those that rely on EU process or institutions.
- **Removal of the jurisdiction of the European Court of Justice (ECJ) over UK law.** ECJ case law is to have the same status as UK case law in the Supreme Court.
- **Greater Devolution.** As powers return from the EU, there is an opportunity to determine which level is best placed to retain competencies. Power should be devolved closer to the people of the UK than ever before. Though only devolution to the three devolved administrations is specifically mentioned.

What this means for local government

We have undertaken a thorough analysis of what Brexit means for local government. In our December 2016 briefing, we set out the most important issues for local government as the UK negotiates its exit from the EUⁱⁱ. This new briefing

Briefing

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analyses the Government's Great Repeal Bill White Paper through the lens of the priority issues for local government. These priorities were developed following widespread consultation with councils and partners.

Analysis of the White Paper

Autonomy of local government

Responsibilities repatriated from the EU cannot be centralised in Whitehall and Brexit offers the opportunity to devolve powers to local communities through local government.

In the foreword from the Secretary of State for Exiting the European Union, the White Paper states:

*“As we leave the EU, we have an opportunity to ensure that returning powers sit closer to the people of the United Kingdom than ever before”
(page 7)*

“We will work closely with the devolved administrations to deliver an approach that works for the whole of the United Kingdom. But what is clear is that the outcome of this process will be a significant increase in the decision-making power of each devolved administration. As we bring powers back from Brussels, we will put them into the hands of democratically elected representatives in the United Kingdom” (page 8)

An earlier White Paper on Brexit negotiations (January 2017) was clear that the Government would continue to champion devolution to local government and stated that it was committed to devolving greater powers to local government (where there is economic rationale to do so). Public statements by ministers also recognised the call for “double devolution”.

This latest White Paper only addressed devolution to the three devolved administrations as the framework for the paper is the current UK constitutional settlement. It does not mention devolution below Whitehall, Cardiff Bay, Stormont and Holyrood.

Brexit should not simply mean a transfer of powers from Brussels to Westminster, Holyrood, Stormont and Cardiff Bay. It must lead to new legislative freedoms and flexibilities for councils so that residents and businesses benefit. Taking decisions over how to run local services closer to where people live is key to improving them and saving money.

The onus is on the LGA, councils and the local government associations of Wales, Scotland and Northern Ireland to lead this debate, and make the case for new responsibilities to be given to local communities through local government. We will continue to do so.

Elsewhere in the White Paper the government commits to engaging with the Crown Dependencies, Gibraltar and the other Overseas Territories as part of the process for leaving the EU. It would now seem appropriate that a further commitment was made to engage with local government.

Developing a new legal base for local government

EU laws that affect the day-job of councils and any future review of EU law must be informed by their real world impact and lead to new legislative freedoms and flexibilities for councils so that local communities, businesses and consumers can benefit.

We have undertaken a thorough analysis of EU laws which cover council services. We have recommended ten policy areas where keep/amend/delete reviews are neededⁱⁱⁱ: Procurement, regulatory services, environmental policy, waste, employment/workforce, economic development, planning, transport, local government finance, and data/public information.

These ideas have already been provided to Government and the LGA has been invited by ministers to develop the detail. More detailed work is currently being undertaken for ministerial meetings in June.

This White Paper confirms the Government's aim to repeal the European Communities Act 1972 and enshrine all existing EU law 'where appropriate' into UK law at the point of Brexit. After we leave the EU, this large body of EU-origin legislation can then be sifted. As mentioned above, the LGA is already in discussion with the Government on our priority issues.

Many EU laws rely on EU processes and institutions and cannot be easily converted into UK law. In this case, the Government is proposing powers to create secondary legislation which will allow such amendments to be made quickly through ministerial powers. Such secondary legislation will have a big impact on local government. For example, whilst EU procurement powers can be transposed into English law, there will need to be a replacement for such EU processes such as the Official Journal of the European Union (OJEU) where contracts have to be advertised. There are risks and opportunities from such immediate secondary legislation. There is the risk that in the short term power is centralised in Whitehall and future reviews may be hard to initiate. There is also the opportunity for any short-term changes (for example, to procurement rules) to help provide the local flexibilities that the LGA can be the championing in London and Brussels for many years.

There must be maximum transparency and scrutiny of such secondary legislation. Under current EU legislative rules, the advice of local government leaders would be sought formally if there were to be changes to EU laws and their collective view would be considered in parliamentary debate. No such rules apply in the UK. The need for such advice is even greater now as local communities' expectations of Brexit are so varied. The Great Repeal Bill offers the opportunity for the Government to formalise how UK local government provides advice and scrutiny on UK Parliamentary bills that impact on the day-job of councils and to ensure that the diverse views and expectations of local communities are addressed as EU law is converted.

Securing investment that is currently sourced from the EU

Local areas in England have been allocated £5.3 billion in EU regeneration funding by 2020 to create jobs, support small and medium-sized enterprises, deliver skills, and boost local growth across the country. Government needs to begin developing a domestic growth policy which must be fully funded to deliver its ambitions and be locally driven post-Brexit. This must be designed and delivered by local areas as an integrated replacement for EU funding and existing national schemes to support infrastructure, enterprise and social cohesion.

The White Paper does not address this issue.

We will continue to lead this lobby and the LGA is currently conducting work to examine the main elements of a future domestic regeneration fund. This work will be published in the next few months.

The LGA is currently reviewing those EU funding initiatives (outside the structural funds) which are of most benefit to councils. The Prime Minister has indicated that

the door may remain open to allow the UK to buy into certain future EU programmes valued by councils. These include territorial cooperation/INTERREG programmes, Innovative Urban Actions, and the ERASMUS programme which promotes student mobility. The European Commission has indicated its openness to allow the UK to buy into such programmes post exit.

Community cohesion

Councils play the leading role in bringing communities together and will be important in tackling challenges such as the retention of skilled workers. For example, 7 per cent of existing adult social care staff from the continuing EU.^{iv} Securing a sustainable adult social care workforce and excellent care skills must be a priority for the Government.

The White Paper sets out a wider legislative programme (see page 11) including an Immigration Bill and new customs regime. The LGA will continue to monitor for any developments and produce relevant briefings as soon as new information becomes available.

Future UK Trade Relationships

Many councils have significant experience in developing trade links globally through securing investment and regeneration deals from overseas developers. Such international links could enhance the government's work on future UK trade deals.

The White Paper announces government's intention to conclude an ambitious trade deal with the EU27 and with many other countries globally.

The position of public services within such trade deals is also of interest to councils. The exclusion of social services and health services for example from the proposed EU/US trade deal (TTIP) was a key concern for some councils who were against greater liberalisation of these sectors and against giving corporations new powers to challenge public policy decisions.

We are developing work in this area through our City Regions and People and Places Boards. This work will be published before our annual conference and will be presented to Government to influence its work on new trade deals.

Other issues from the White Paper of interest to councils

Transition period

Government has announced that its current preference would be for a transitional period for certain sectors, such as financial services, to avoid a regulatory 'cliff edge' in March 2019. The LGA will be monitoring this issue and any impact on the sector.

Council of Europe

The Council of Europe (CoE) is a European (as opposed to an EU) body charged with protecting democracy and human rights. It runs the European Court of Human Rights (ECHR) in Strasbourg. The White Paper announced the government's commitment to retaining membership of the ECHR. The government's commitment to continued membership of the Council of Europe and the European Court of Human Rights will mean that the CoE Charter of Local Self-Government will continue to apply, ensuring international scrutiny of the political, administrative and financial independence of local authorities from central government in the UK. There will be a CoE peer review of UK local government in 2020 and this is an opportunity for the Government to demonstrate to international partners the newly-devolved responsibilities to communities which have been secured post exit.

Place-based impact of Brexit

Government must begin to address the real and varied impacts and opportunities of Brexit at the local level, in both urban and rural areas. The onus has been on councils to provide such evidence.

We are consulting widely and building our evidence base to support the exit negotiations to maximise on the opportunities available and mitigate the risks to achieve the best possible outcome for local government. So far we have received and collated 41 submissions from 29 councils, two combined authorities, four council/regional groupings, two LEPs, and two university led responses for local areas.

In 2017, the Prime Minister's speech setting out the Government's 12 negotiating priorities for Brexitⁱ, the UK Supreme Court's Article 50 judgement^{vi}, the Government's White Paper on *The United Kingdom's exit from and new partnership with the European Union*, the triggering of article 50, and the White Paper on *Legislating for the United Kingdom's withdrawal from the European Union* on the Great Repeal Bill, have created new the boundaries for future negotiations. For example, the certainty that the UK will not negotiate to remain in the single market or customs union.

As negotiating boundaries become clearer, the place-based evidence is also likely to be more tangible. To ensure the Government is provided with this dynamic, place-based evidence, the LGA will work with councils and their partners to continue their diligence in responding to the potential risks and opportunities that Brexit poses to their organisations and wider communities. We will ensure that such evidence is collated and provided to ministers.

Contact

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ⁱ Legislating for the United Kingdom's withdrawal from the European Union: white paper, March 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf

ⁱⁱ LGA December 2016 Brexit Briefing: <http://www.local.gov.uk/documents/10180/5533246/December+2016+-+local+government+and+EU+briefing.pdf/ebabb7b4-2386-47c9-81f8-0a0c6fc0ecea>

ⁱⁱⁱ <http://www.local.gov.uk/documents/10180/5533246/December+2016+-+local+government+and+EU+briefing.pdf/ebabb7b4-2386-47c9-81f8-0a0c6fc0ecea>

^{iv} Skills for Care, September 2016, The State of the adult social care workforce in England, p.61, <https://www.nmds-sc-online.org.uk/Get.aspx?id=980099>

^v The government's negotiating objectives for exiting the EU: PM speech, 17 January 2017, <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

^{vi} UK Supreme Court, R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant), 24 January 2017, <https://www.supremecourt.uk/cases/uksc-2016-0196.html>