

From the President, Councillor Alison Evison



14 May 2019

James Dornan MSP
Convener
Local Government and Communities Committee
The Scottish Parliament
Edinburgh
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Dear James

Local Government Impact of EU Returned Powers

Thank you for your invitation to provide evidence to the Committee on 30 April 2019. I agree that it was an interesting and informative evidence session.

During the session I highlighted that, of the 145/111 areas that the UK and Scottish Governments have identified respectively, where EU law and devolved competence intersect, 64 of these powers concern Local Government.

As requested in your follow up letter I am happy to provide the assessment that COSLA officials carried out when those lists were announced. Our intention was to use it as a starting point to negotiate with the UK and Scottish Governments in developing these frameworks whenever they concern existing Local Government competences.

However, as I pointed out in the Committee, such discussions have not taken place as yet with either Government. In the case of the UK Government, they have made formal statements to the UK Parliament that they intend to set up "(a) flexible, non-statutory mechanism that, in essence, replicates the kind of engagement Local Government has on EU policy through the Committee of the Regions, but in a lighter-touch arrangement". However, no further work has been possible with UK Government on this due to the focus in the UK Parliament moving in recent months to the Withdrawal Agreement. In Scotland, the Cabinet Secretary for Government Business and Constitutional Relations has also been positive about the potential for such an arrangement here, and discussions as soon as possible would be welcome.

I hope that we will see Local Government involved in any discussions developing the frameworks soon. COSLA is keen to have that discussion with Ministers and their officials, hence I am copying in both Mike Russell and Aileen Campbell.

Procurement

In your letter you also asked for additional evidence on procurement. As you are aware, EU Public Procurement legislation currently sets the framework for how councils invite tenders for their services, and now sets clear limits about when and how to share services. It increasingly influences what councils can buy (such as green award criteria and social criteria). It also includes restrictions on councils being able to promote 'buying local'.

Like state aid or environmental legislation, procurement decisions have a cross boundary dimension, therefore it has been legislated mainly via EU legislation. It is quite likely that the post Brexit UK-EU Association Agreement will see UK and EU procurement legislation remaining broadly aligned. As you will know also, the UK is joining the World Trade Organisation's Government Procurement Agreement (GPA) which is the basis of the current 2014 EU Procurement Directives.

However, unlike State Aid, for instance domestic Procurement legislation is already devolved to Scotland. This means that, while the continued UK-EU relationship will prevent the existing procurement rules changing drastically, it does provide an opportunity to look at more flexible procurement rules in Scotland that would allow the introduction of "buy local" clauses (so that a Local Authority can more easily buy goods and services from local community providers than is possible at present), and for public bodies to require that all providers and subcontractors pay a local living wage to their employees.

As neither the WTO nor the future UK-EU Association Agreement will be as prescriptive as the current EU Directives are in the UK, we see real scope to revisit this question as these powers are returned from the EU.

I hope we can continue our fruitful discussions on these and other Brexit related matters as they will definitely shape the future role and nature of Scottish Local Government.

Yours sincerely

Cllr Alison Evison
COSLA President

cc:

Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations

Aileen Campbell MSP, Cabinet Secretary for Communities and Local Government

Sharing of EU Returned Powers – Local Government Impact Assessment

Overview

This assessment presents the 111 and 153 EU returned powers scoped by the Scottish and UK Governments and identifies the areas of impact to Scottish Local Government. An initial analysis suggests that no less than 64 areas out of 153 directly concern the powers of Local Government.

This initial assessment finds that there are:

- 18 policy areas with high impact on Local Government
- 10 medium impact (but 6 of those will cut across Scottish and UK regulation)
- 36 low impact on Local Government (but out of those there may be:
 - 13 areas cutting across Scottish/UK shared legislative power
 - 8 Non-Legislative Common Frameworks but that might require Scottish and/or UK secondary legislation or action
 - and 5 areas where Non- Legislative Common Frameworks of UK and Scottish Government will be needed.

The table below shows:

- 14 areas that would be Reserved to Westminster (**Red**)
- 24 areas that would require Legislative Common Frameworks (LCF) by the Scottish and UK Parliament (i.e. shared powers) (**Light Red**)
- 38 areas that might still require moving from just developing legislative common frameworks to develop shared legislation as well (**Orange**)
- 4 areas that are in principle status quo but might end up requiring some form of Scottish and or UK legislation in the future (**Light Orange**)
- 27 Areas that will only require Non- Legislative Common Frameworks (NLCF) by both UK and Scottish Governments (**Light Green**)
- And only 14 areas that there would be NO CHANGE (Status quo) (**Green**)

111/153 EU Returned Powers Assessment Table

How to read this table:

For ease of use we are using the original list of 111 powers and adding those additional lists that involve some form of shared or legislative competence.

We use the above described colour code to explain the proposed apportionment on power, highlighting those that will require shared and legislative measures.

The first and last columns look specifically at Local Government. There are areas that might be important for the Scottish or UK Governments but less so (or less likely to change) for Local Government and vice versa. When that is the case the Local Government Column will have a different colour. Some areas are marked as a question mark (e.g. "Shared?") this reflects the likelihood that the repatriation of EU powers might require a shared framework in the medium term – even if at the moment neither UK or Devolved Administrations are proposing one.

Impact in Local Gov. powers	UK / Scottish Split (UKG proposal)	Power	Comment / Potential for LG flexibility (in brackets, COSLA body)
HIGH	LCF	1. Agricultural Support	CAP Pillar I and EAFRD have a disproportionate effect in local economic dev in rural areas, community empowerment. Surprising that Devolved Administrations not asking for ERDF, ESF too
	LCF	2. Agriculture – Fertiliser Regulations	
Low	LCF	3. Agriculture – GMO Marketing & Cultivation	Council Environmental Services
Low	LCF	4. Agriculture – Organic Farming	Council Planning/Environmental Services
	LCF	5. Agriculture – Zootech	
Low	LCF	6. Animal Health and Traceability	Council Health and Trading Standards
Low	LCF	7. Animal Welfare	As above
Medium	NO CHANGE	8. Aviation Noise Management at Airports	Planning (overruled by SG/UK powers)
	NLCF	9. Blood Safety and Quality	
Medium	NO CHANGE	10. Carbon Capture & Storage	CCS planning (as well as fracking) overruled by SG - still to have an impact
Low	LCF	11. Chemicals regulation (including pesticides)	Will affect environmental services but little room of manoeuvre regardless it is SG or UKG dealing with this post Brexit.
Low	NLCF	12. Civil judicial co-operation – jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)	Little room for manoeuvre regardless if it is SG or UKG dealing with this post Brexit.

Low	NLCF	13. Civil judicial co-operation – jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)	Little room for manoeuvre regardless if it is legally SG or UKG dealing with this post Brexit.
MEDIUM	NLCF	14. Civil judicial cooperation on service of documents and taking of evidence	Some covered by International Agreements (Hague Convention) – SG/UK unlikely to engage / HIGH impact for citizens
	NLCF	15. Criminal offences minimum standards measures – Combating Child Sexual Exploitation Directive	
Low	SHARED	16. Control of major accident hazards	Limited scope for influence regardless if it is SG or UKG
Low	NLCF	17. Cross border mediation	Limited scope for influence regardless if it is SG or UKG
	RESERVED	18. Data sharing – (EU fingerprint database (EuroDac))	May conflict with Devolved Home affairs powers – a case where agreed frameworks rather than Reserved approach might make sense
HIGH	NLCF	24. Efficiency in energy use	This set of EU law HIGH impact in Council planning, building standards, and Procurement. LG must seek wider local discretion
Low	LCF	25. Elements of Reciprocal Healthcare	Strong impact for the public, limited room for LG gaining powers
HIGH	NO CHANGE	28. Energy Performance of Buildings Directive	This set of EU law has HIGH impact on Council planning, building standards, and Procurement. New EU law to hit UK before Brexit. LG must seek wider local discretion
HIGH	NO CHANGE	29. Environmental Impact Assessment (EIA) Directive	This set of EU law has HIGH impact on Council planning. LG must seek wider local discretion
HIGH	NO CHANGE	30. Environmental law concerning energy planning consents	This set of EU law HIGH impact on Council planning, building standards, and Procurement. LG must seek wider local discretion
	SHARED	31. Environmental law concerning offshore oil & gas installations within territorial waters	UKG proposal includes this under broader heading of “Environmental law concerning energy industries”
HIGH	NLCF	32. Environmental quality – Air Quality	This set of EU law has HIGH impact on Council (including EU sanctions). UKG/SG likely to use to centralise transport powers. LG must seek wider local discretion
	LCF	33. Environmental quality – Chemicals	Marginal impact/Compliance – tied to continuation of REACH link with EU27

HIGH	NO CHANGE	34. Environmental quality – Flood Risk Management	HIGH impact on Council planning, building standards. Small likelihood LG obtains wider local discretion
	RESERVED	35. Environmental quality – International timber trade (EUTR and FLEGT)	
	SHARED?	36. Environmental quality – Marine environment	Marginal impact/Compliance
HIGH	SHARED?	37. Environmental quality – Natural Environment and Biodiversity	HIGH impact on Council planning. Some scope to increase LG discretion
	LCF	38. Environmental quality – Ozone depleting substances and F-gases	EU framework transposes UN Montreal Protocol. Unlikely scope for local flexibility
	LCF	39. Environmental quality – Pesticides	Environmental Services. No scope for LG flexibility as it disrupts UK and UK-EU trade
Low	NLCF	40. Environmental quality – Spatial Data Infrastructure Standards	Planning
HIGH	LCF	41. Environmental quality – Waste Packaging & Product Regulations	Low impact in Council Env Services. Brexit likely to be used to centralise. (EE/Leaders) NOT LISTED: Waste Management & Shipments of Waste– HIGH IMPACT on Councils. New EU Law to hit UK before Brexit. Must seek wider LG flexibility
HIGH	NLCF	42. Environmental quality – Waste Producer Responsibility Regulations	HIGH impact on Council Services. Including on ancillary costs not met by Producer Responsibility Schemes. LG to push for wider discretion and financial compensation
Medium	NO CHANGE	43. Environmental quality – Water Quality	
Medium	NO CHANGE	44. Environmental quality – Water Resources	
	NLCF	45. Environmental quality – Biodiversity – access and benefit sharing of genetic resources	
Low	SHARED	46. Equal Treatment Legislation	Unlikely that LG will be able to increase discretion regardless whether this falls to UKG or SG
Low	SHARED	50. EU Social Security Coordination	Unlikely that LG will be able to increase discretion regardless whether this falls to UKG or SG
Medium	LCF	51. Fisheries Management & Support	Knock on effect on LG economic development. Depends on EU-UK deal
	LCF	52. Food and Feed Law	Environmental Services. Limited ability to increase LG discretion
Low	LCF	53. Food Compositional Standards	Trading standards. Low likelihood of increasing LG discretion

Low	RESERVED	54. Food Geographical Indications (Protected Food Names)	Knock on effect on economic development in rural areas. Clear UKG/SG clash – a sharing approach might be preferable than reserved powers to UKG
Low	LCF	55. Food Labelling	Public Health/Trading Standards
Low	SHARED	56. Forestry (domestic)	Planning/Biodiversity
Medium	SHARED?	57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)	Tied to Withdrawal deal outcome. Will have an impact on LG workforce and provision of Council services given Health and Social Care Integration
MEDIUM	Shared?	60. Harbours	Most ports are privatised. Knock on Effect on LG Economic Development. Small harbours rely on State Aid
Low	LCF	61. Hazardous Substances Planning	Planning/Resilience. Not possible to increase LG discretion
Low	Shared?	62. Heat metering and billing information	Affects Planning, Procurement, Trading Standards and Finance. Not possible to increase LG discretion
MEDIUM	NO CHANGE / SHARED?	63. HIGH Efficiency Cogeneration	Planning. Possible to increase LG discretion
MEDIUM	LCF	64. Implementation of EU Emissions Trading System	Economic Policy, Planning, Climate. Unlikely to increase LG discretion Strange UK/SG have included this as UK will not be part of EU (unless it is included in Withdrawal Treaty)
Low	NO CHANGE	65. Ionising radiation	Planning
HIGH	Shared	66. Land use	HIGH impact on LG planning powers. Opportunity to increase LG discretion
Low	NLCF	67. Late payment (commercial transactions)	EU requirements lower than existing UK ones. LG unlikely to seek discretion on this
Low	NLCF	68. Legal aid in cross-border cases	
HIGH	RESERVED	69. Migrant Access to benefits	HIGH impact in Council services and community cohesion. To be tied to Brexit deal. Clear clash with UKG powers on Migration and SG on Social Services. Limited opportunity to seek local flexibility
Low	NO CHANGE	70. Minimum standards - housing & care: regulation of the use of animals	Unlikely standards will be relaxed regardless whether EU, UKG or SG regulated
Low	NLCF	71. Minimum standards legislation – child sexual exploitation	Unlikely standards will be relaxed regardless whether EU, UKG or SG regulated
	SHARED?	72. Minimum standards legislation – cybercrime	
	Devolved	73. Minimum standards legislation – football disorder	

Low	SHARED	74. Minimum standards legislation – human trafficking	Unlikely standards will be relaxed regardless whether EU, UKG or SG regulated
Low	LCF	75. Mutual recognition of professional qualifications	Impact on public sector employment (and community development). To be tied by Withdrawal Bill. No opportunity to seek LG flexibility
	NLCF	76. Mutual recognition of criminal court judgments measures & cross border cooperation – European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive	
Low	LCF	77. Nutrition health claims, composition and labelling	Unlikely to seek LG flexibility. Public Health
Low	NO CHANGE	78. Onshore hydrocarbons licensing	Overruled by SG Planning
	NLCF	79. Organs	
Low	LCF	80. Plant Health, Seeds and Propagating Material	Unlikely to seek LG flexibility
	NLCF	81. Practical cooperation in law enforcement – Asset Recovery Offices	
	SHARED/ NLCF	90. Practical cooperation in law enforcement – European judicial network	NLCF is for EJM for civil judicial cooperation matters.
	SHARED?	91. Practical cooperation in law enforcement – implementation of European Arrest Warrant	
	NLCF	92. Procedural rights (criminal cases) – minimum standards measures	
Low	NLCF	93. Provision of legal services	Legal and Admin, Community Justice. Unlikely to seek LG flexibility
HIGH	RESERVED	94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state	New EU legislation took force in UK at end April 2018. Significant costs for Councils. UK keen to keep it tied to EU framework. Some scope for local flexibility (to reduce overall cost of new rules by Councils) A shared approach would seem more advisable than a reserved one

HIGH	LCF	95. Public sector procurement	Quite likely SG and UKG might overlap each other. At present neat separation between Scottish and UK procurement powers HIGH impact on LG procurement AND shared services. Key priority to seek LG flexibility
Low	SHARED?	96. Public health (serious cross-border threats to health)	Low likelihood to seek LG flexibility
	NLCF	99. Rail franchising rules	
	NO CHANGE	100. Rail markets and operator licensing	
	SHARED? NLCF	101. Recognition of insolvency proceedings in EU Member States	NLCF as per Insolvency Regulation Possibly Shared for recognition of other member states
HIGH	Devolved?	102. Renewable Energy Directive	HIGH impact on Council Planning and Building Standards. New rules to come from EU before Brexit. Small likelihood LG obtains wider local discretion
Low	NOT LISTED	103. Rules on applicable law in civil & commercial cross border claims	Ancillary impact on Trading Standards and Community Justice
	NLCF	104. Sentencing – taking convictions into account	
HIGH	RESERVED	105. State Aid	HIGH impact on Las' Economic Policy. Opportunity to seek local flexibility BUT tied to UK-EU post Brexit Deal. The most obvious case for a shared approach by UKG/DAs/LAs
Low	SHARED?	106. Statistics	Some scope to fine tune statistics to target local areas – likely UK/SG disagreement as Brexit allows recentralisation
HIGH	NLCF	107. Strategic Environmental Assessment (SEA) Directive	Strong relevance for Councils. Some potential to seek more LG flexibility
	NLCF	108. Tissues and cells	
Low	NLCF	109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)	Tied to Brexit FTA deal
Low	NLCF	110. Victims' rights measures (criminal cases)	Ancillary impact on Council Social Services.
HIGH	NO CHANGE	111. Voting rights and candidacy rules for EU citizens in local government elections	LG may be consulted on changes of franchise

Other UKG listed powers not scoped by Scottish/Welsh 111 powers list

Impact in Local Gov. powers	UK / Scottish Split (UKG proposal)	Power	Comment / Potential for LG flexibility (Brackets, COSLA body)
HIGH	LCF	Services Directive	Interesting that UKG includes this (and this alone) as UK to leave the EU. Unlikely LG will be allowed to relax existing register, one stop shop for bidders