

PE1801/B

Scottish Government submission of 14 August 2020

EU Withdrawal Negotiations

Despite the importance of the ongoing EU-UK Brexit negotiations to Scotland, including in devolved areas, the Scottish Government continues to be insufficiently sighted on current discussions and neither the Scottish Government nor the other devolved Governments have been provided with anything like a meaningful opportunity to influence them. Scotland's interests have scarcely been considered at all by the UK Government.

The Joint Ministerial Committee on EU negotiations is supposed, under its terms of reference, to oversee the negotiations. However, since January of this year, the JMC(EN) has met only twice, with virtual meetings on 21 May and 16 July. On 19 May, the UK Government published its draft legal texts for the negotiations, which were shared with the Scottish Government less than 24 hours before publication, with no opportunity to amend. The SG has repeatedly made the case that we need to be involved in a collaborative and communicative way in the negotiations, particularly where these touch on devolved areas, but the UK government has not engaged with us in a way which Scottish Ministers would consider meaningful. In these circumstances, it is very difficult—indeed, it is next to impossible—to ensure that Scotland's voice is heard in what are the most important constitutional negotiations for decades.

State aid

State aid is a devolved matter and to date, Scottish Ministers have been able to intervene and support business in line with EU state aid rules. However, in its White Paper on the 'Internal Market' published on 16 July 2020, the UK Government expressly reserves control of subsidy regimes without detailing what regulations there might be, or what implications there may be for devolved decision making, and the devolution settlement. In general, the White Paper proposes to centralise control of the internal market to the UK Government and UK Parliament, cutting across devolved powers by imposing new domestic constraints on the exercise of these functions. The reservation of state aid would establish a new UK subsidy control regime, which the UK Government says it is developing separately, and is seen as an integral part of the UK internal market package of measures. The Scottish Government will oppose the UK Government's proposals by every means possible to defend devolution and protect Scotland's ability to take decisions that reflect the needs and priorities of Scotland's businesses and people.

Transport

Our ambition is for Scotland's railway to be public sector-controlled and operated in the service of the public, fully integrated and truly accountable, which will deliver better and more efficient services for our people and our communities.

The Transport (Scotland) Act 2019 extended and improved the powers of local transport authorities to intervene in the market for bus services, including by operating services.

Energy

The Scottish Government has committed to working in partnership with local authorities to develop the ambition of a public energy company that would help contribute to tackling fuel poverty, supporting economic development and contributing to delivery of our ambitious climate change targets.

However, Scottish Governments have never had powers to take electricity production into public ownership, since electricity has always been, and remains, an area of policy and legislation reserved to the UK Government.

Fair Work

COVID-19 is affecting all our daily lives including our workplaces and we recognise the very challenging position many employers and workers are now facing. Adopting a fair work approach is more important than ever. This is why, on 19 July, the Cabinet Secretary for Economy issued a refreshed [joint statement](#) with the STUC, CoSLA, SCVO, the IoD and SCDI outlining the shared commitment to fair work practices in Scotland across the public, private and third sectors.

Central to our fair work approach is the expectation that employers, trades unions and workers should work together to ensure workers are treated fairly and that concerns from employees are taken seriously.

Through our Fair Work First approach employers are being asked to commit to five criteria including payment of the real Living Wage and genuine workforce engagement, such as trade union recognition. The other criteria include:

- investment in skills and training.
- no inappropriate use of zero hours contracts.
- action to tackle the gender pay gap.

Fair work – as defined in the Fair Work Convention’s Framework - is deliberately broad and non-specific, recognising the diverse labour market context in Scotland. Moreover, we believe that introducing blunt conditionality would miss a huge opportunity, as it would exclude employers who want to adopt fair work but need support to do so, and would reduce the opportunity for SG and public sector partners to influence employers and nudge them towards fair work.

The Scottish Government has already taken steps to embed fair work considerations into our procurement processes, including through the Sustainable Procurement Duty. We have published Statutory Guidance which requires public bodies to consider, before undertaking a procurement process, whether it is relevant and proportionate to include a fair work criterion. This statutory guidance is supported by best practice guidance and a toolkit which were developed with stakeholders, including trade unions.

I hope that these comments are helpful for the work of the Committee.