

Briefing for the Public Petitions Committee

Petition Number: [PE1801](#)

Main Petitioner: Vincent Mills (On behalf of 'Radical Options for Scotland and Europe')

Subject: Retain powers of economic and industrial intervention

Calls on the Parliament to urge the Scottish Government to negotiate with the UK Government to ensure that in any future EU withdrawal agreement, Scotland retains the power to provide state aid to workplaces threatened with closure; take public utilities such as rail, bus and power fully back into public ownership and require public sector contractors to recognise trade unions and collectively bargain wages

Background

Now that the UK has left the EU, the negotiations on the nature of the future relationship have begun. Whilst elements of the future relationship are likely to involve commitments in devolved policy areas, the negotiations themselves are a reserved competence to the UK government as they are international relations.

The UK Government has indicated it will undertake the negotiations as international relations is a reserved matter. However, its [negotiating mandate](#) includes a recognition of the interests of the devolved administrations, stating that it 'is committed to working with the devolved administrations to deliver a future relationship with the EU that works for the whole of the UK.'

The petitioner highlights three policy areas which it wishes to see Scotland "retain power" over following the negotiations. These are:

- State Aid
- Public utilities such as rail, bus and power back into public ownership
- Require public sector contractors to recognise trade unions and collectively bargain wages

The background to the petition states that:

"Depending on the agreement reached, it may be impossible for Scotland to offer state aid, nationalise enterprises or require businesses

to recognise trade unions in future, powers we believe are necessary for Scotland to flourish.”

As set out below, in some cases Scotland does not have these powers due to them being reserved, whilst in other cases the nature of the future relationship is unlikely to affect Scotland’s ability to undertake some of the tasks requested by the petitioner.

State Aid

Whether State Aid is devolved or reserved is [disputed between the UK and Scottish governments](#). It is probable that the UK government will seek to establish a GB-wide State Aid regulatory approach following the end of the transition period. During the transition period, the UK continues to be bound by EU State Aid rules. The provision of State Aid to workplaces is in itself not contrary to EU law. Any provision of State Aid must comply with EU regulations and requires the authorisation of the European Commission.

A key element of the UK-EU future relationship negotiations involve level playing field provisions. Level playing field provisions are arrangements designed to ensure that the regulatory environments in the UK and EU are similar. The arrangements are intended to prevent companies benefiting from an unfair competitive advantage. This "advantage" would typically be gained due to the lowering or non-enforcement of regulatory standards or as a result of different taxation or State Aid practices.

One of the EU’s top negotiating priorities for the future relationship negotiations is ensuring the UK continues to apply EU State Aid rules following the end of the transition period¹. The UK government has indicated that it does not wish to be bound by EU rules in areas such as State Aid as part of the future relationship agreement.

Public ownership of utilities

The [negotiating priorities of the EU](#) or of the UK government make no reference to ownership of public utilities. Given EU membership did not prevent public ownership of public utilities, leaving the EU and negotiating the future relationship is unlikely to change this. However, the provision of utilities is in some cases reserved under Schedule V of the Scotland Act.

The provision and regulation of rail services” is reserved under Heading E2, Schedule V of the Scotland Act 1998. Scottish Ministers let and manage Scottish passenger rail franchises – but cannot change the legislative basis for rail franchising in Scotland, although a publicly owned operator will be able to bid for the next ScotRail franchise. Network Rail is already in public ownership, belonging to the UK Department for Transport.

¹ https://ec.europa.eu/info/publications/draft-text-agreement-new-partnership-united-kingdom_en

The licensing of bus operators and drivers is reserved. However, legislation governing bus service provision in Scotland is devolved – most recently being amended by the Transport (Scotland) Act 2019.

The generation, transmission, distribution and supply of electricity is reserved under Heading D1, Schedule V of the Scotland Act 1998.

Workers' rights in relation to public procurement

Workers' rights are a reserved matter set out under Employment and industrial relations in [Schedule V of the Scotland Act](#). However, public procurement is a devolved matter.

Both the EU and the UK government have included public procurement as an area on which they wish to seek an agreement. The EU negotiating text on public procurement includes provisions in relation to environmental, labour and social consideration. It states that

“Each Party shall ensure that its procuring entities:

- (a) may exclude from participation in a procurement procedure any supplier which is not in compliance with the applicable environmental, social and labour law;”

Based on the EU's negotiating approach, if Scotland wished to ensure that public procurement contractors were required to recognise trade unions and collectively bargain wages, it would need to be written into Scottish legislation that all public procurement providers must adopt such an approach. This may not be deliverable at Scottish level as employment and industrial relations are a reserved matter.

Scottish Government Action

The Scottish government has sought to influence the UK government's approach to the future relationship negotiations. The Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell, has [suggested that the UK should adopt an approach similar to that followed by Canada when negotiating CETA](#) with the EU, where the provinces were represented in the negotiating room.

The [Scottish government](#) has proposed a future economic relationship with the EU which goes beyond the basic free trade agreement proposed by the UK government. Notably, these include level playing field commitments.

Scottish Parliament Action

The Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee [has begun work scrutinising the future relationship negotiations](#).

Iain McIver
Senior Researcher
31/03/2020

SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP