



Law Society
of Scotland

Consultation Response

The Scottish Government's international work

October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Society's Brexit Policy Working Party welcomes the opportunity to consider and respond to the Scottish Parliament's consultation: Inquiry into the Scottish Government's international work. The sub-committee has the following comments to put forward for consideration.

How should the Scottish Government engage with the EU and what should it seek to achieve from its engagement?

Post Brexit engagement

Whilst it is important to consider the limitations of the devolved legislatures and administrations in regards to foreign policy, a number of devolved areas such as culture, education and the environment will be influenced by the trade deals that the UK agrees to and the existing TCA with the EU. The influences on these devolved areas could be improved by targeted engagement with overseas organisations, national and sub-national governments. The primary focus of Scottish Government engagement with the EU will probably be upon the implications of the ‘keeping pace power’ in the Scottish Government’s UK Withdrawal from the European Union (Continuity) (Scotland) Act [2021].

The Scottish Government has to this stage engaged on the international stage on areas such as the environment and net zero, well-being, and innovation. Democratic accountability means that MSPs must be engaged with these decisions and be able to scrutinise what engagement the Scottish Government is undertaking in Brussels and elsewhere to further the government’s agenda.

Oversight should also include how EU law and policy continue to influence UK and Scottish law and policy particularly in terms of “keeping pace” but on also the impact on the UK economy or businesses. Importantly, oversight could aim to ensure that the UK, in negotiating future arrangements with the EU, seeks to maintain and improve the many legal frameworks that have been built over the last 46 years, including those governing the provision of legal services across the EU.

We have previously noted our concern about the lack of formal mechanisms for the devolved legislatures to be able to express views to either the United Kingdom Parliament or the European Parliament. We note the existence of the European Parliament ‘European Friends of Scotland’ friendship group which serves as an informal network of MEPs representing different political groups of the European Parliament with the objective of helping to facilitate dialogue on specific areas of mutual interest.¹ Whilst this network will be useful for engagement with the European Parliament we feel more formal mechanisms for MSPs to oversee the Scottish Government’s international engagement, particularly in relation to the EU where Scottish Ministers could make decisions to remain in lockstep with EU law upon the basis of discussions, would be beneficial. One potential option would be a memorandum of understanding between the Scottish Parliament and the Scottish Government covering this.

We also welcome that UK and EU Parliaments have been able to establish a Parliamentary Partnership Assembly consisting of members of both Parliaments “as a forum to exchange views on the partnership”.

¹ <https://www.gov.scot/groups/european-friends-of-scotland/>

This has been approved by the EU parliament on the 5 October 2021 and we encourage the UK parliament to start formal post-Brexit engagement as soon as possible.²

Offices

The Scottish Government European Union Office in Brussels works to ensure that Scotland, Scottish issues and the work of the Scottish Government are understood by the EU Institutions, Member States and regions. The Brussels Office used to provide support to Scottish Ministers when they participated in EU Council meetings, to meet with the EU Commission or the European Parliament. Whilst Scottish Government ministers will no longer be attending Council meetings, they should maintain engagement with both the Commission and Parliament where it is relevant to devolved policy areas. The office will need to support these meetings and, through networking and using informal groups such as the ‘friends of Scotland’, ensure that ministers meet relevant officials and politicians. It will be more important than ever that the office monitors developments in the EU Institutions and reports to colleagues in Scotland so that policies of relevance to the ‘keeping pace power’ of the UK Withdrawal from the European Union (Continuity) (Scotland) act are flagged in advance.

This work should be supported by a range of policy and cultural events to take place in the conference centre in Scotland House.

² https://www.europarl.europa.eu/doceo/document/TA-9-2021-0398_EN.html

How might the EU-UK TCA affect how the Scottish Government engages with the EU and how will that engagement interact with UK government policy in this area?

The EU-UK TCA will continue to effect a wide range of policy areas which will impact on the Scottish Government. The Cabinet Office published in late 2017 a list of 111 points where EU Law intersects with devolved matters. The subsequent establishment of common UK Frameworks illustrates the many areas that will continue to be (to varying extents) influenced by the TCA. The TCA has established a joint UK-EU Partnership Council which is similar in structure to the Joint Committee that previously governed the UK-EU Withdrawal Agreement. The Council will take decisions by mutual consent and is chaired jointly by a European Commissioner and a UK Government minister. Scottish Government ministers attend these meetings and since the Partnership Council is the main forum for interaction between the UK and EU they should, where possible, work with the UK Government to ensure issues are dealt with through this mechanism. The Council is only one of a number of structural arrangements (e.g. the Trade Partnership Committee and various specialised committees and working groups) mentioned in Title III of the TCA, which create a dialogue between the UK and the EU.

As we have stated elsewhere, we believe it is important to ensure a “whole-of-government” approach in terms of the engagement with the EU. The concept is also of particular relevance to the future governance of the TCA. In this context “whole of government” should be interpreted as “whole of governance” to include not only the UK Government but also the Scottish Government, the Northern Ireland Executive, the Welsh Government and external stakeholders. The Scottish Government’s decision to implement a ‘keeping pace power’ means there will potentially be the desire from Scottish Ministers to engage with the EU outside the Partnership Council to discuss the laws and regulations they are intending to implement which may not be applied across the rest of the UK. It is important that the UK Government and Scottish Government maintain transparency with each other about this engagement and that the UK and Scottish Parliaments scrutinise this where appropriate.

What role should the Scottish Parliament have in scrutinising the operation of the TCA and how the TCA influences the Scottish government's engagement with the EU?

Scrutiny and engagement of devolved areas of TCA

Scottish ministers and the Scottish Parliament will continue to be responsible for observing and implementing international obligations in areas of devolved competence as defined in schedule 5 paragraph 7 of the Scotland Act 1998. Since Scottish Government ministers will be responsible for applying the TCA it follows that the Scottish Parliament may also play an important role in scrutinising their actions. Any actions in relation to the 'keeping pace power' of the Scottish Government's UK Withdrawal from the European Union (Continuity) (Scotland) act [2021] should also be scrutinised and that includes oversight over intergovernmental relations and the Scottish Government's overseas engagement. There is potentially an issue here in that the Act does not give a clear method for reporting when Scottish Ministers have decided not to use the 'keeping pace power' and we would emphasise that we would welcome the Scottish Parliament having oversight of this and any associated engagement.

What should the priorities of the Scottish Government be in developing its external affairs work and overseas presence, including its international development policy?

Support for relevant sectors

The activities of the Scottish Government's overseas presence will need to be reassessed as under the terms of the UK's withdrawal from the EU it has become a third country in regards to its relations with the EU. For many sectors that are the responsibility of the devolved parliaments and administrations international support from government will become more important as the organisations seek to find new ways to engage with partners. Scotland Europa and the Scottish Government's offices will need to play an important role and we would like to see further clarity regarding the aims of these institutions going forward. One example of a sector looking for support is Scotland's Creative industries. EU funding of media projects was cross border and in the future ensuring those links are maintained will require support from the UK and Scottish Governments.

Civil Society will also play an important role, for example the CBI will remain a part of Business Europe. Whilst these links will continue it is important to note that many of these European organisations are structured around EU membership and inevitably this will result in a period of adjustment during which appropriate support will be required.

The links between these UK, Scottish and European organisations also serve to highlight the importance of the relationship between the UK Government and devolved administrations. There will need to be coordination between the two so that Scottish organisations based in countries with or without a Scottish Government office receive advice that aligns to a common strategy.

Long term

Whilst it is too early to comment on the Turing Scheme it is worth bearing in mind that a number of our future lawyers have taken advantage of programmes to broaden their horizons during their studies, which rely on reciprocal arrangements with other EU universities.³ The ERASMUS programme, the best-known EU student exchange programme established in 1987, had a number of participants from Scottish law schools. It is also important that the Scottish Government continues to support students from abroad through schemes such as the Saltire Scholarship where possible.⁴

³ <https://www.turing-scheme.org.uk/>

⁴ <https://www.gov.scot/news/supporting-eu-students/>

Legal Services

Now that the UK has left the EU and the transitional period has ended Scottish solicitors in Europe will be subject to the host bar's rules in relation to third country lawyers (unless they took steps to protect any rights acquired prior to 31 December). This will vary from country to country. We would encourage the Scottish Government and the UK Government to work together closely with the professions to support Scottish solicitors in European countries and elsewhere across the globe.

Does the Scottish Government's budget for external affairs deliver value for money?

We have no comment to make.

Please elaborate. What principles should inform the Scottish Government's international engagement (e.g. economic, democratic, human rights, climate change or cultural / 'soft power' priorities)?

Principles

Whilst we would welcome transparency from the Scottish Government on what its principles are we do not see any particular reason they should be limited in scope, though all activity must be accountable to the Scottish Parliament.

And should that engagement be based on geographical or policy focus? Please elaborate.

Policy

Scotland's legal professionals are not based in one location and therefore it is important that there is not an overly narrow geographic focus. We therefore encourage the Scottish Government to have a presence covering as many areas as possible but also encourage them to work closely with the UK Government to ensure that there are equal levels of support when there is no Scottish Government office.



How do the Scottish Government's EU and international policies interact with UK foreign and diplomatic policy in these areas?

No additional comments.



For further information, please contact:

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