European and External Relations Committee
The EU referendum and its implications for Scotland
Written submission from COSLA

Introduction

1. COSLA very much welcomes this inquiry and the fact that the Committee membership has now been enlarged to be cross-party. A significant amount of early work has been taking place over the summer. COSLA as the national and international voice of Scottish Local Government is keen to contribute to this exercise building upon the previous inquiries on EU membership and European links that the Committee has invited us to give evidence to a number of occasions over the last year.

2. The result of the EU Referendum vote is clearly a significant one. COSLA backed Remain on a cross – party basis and as an organisation we have a leading role and strong influence in Europe so we are clearly disappointed with the outcome. We have been considering the wider implications going forward.

3. Following discussions with the Scottish and UK Government as well as with our peers from other European and European Economic Area countries the COSLA Leaders agreed on 26 August a range of key issues that are considered in this submission.

4. We feel that our contribution is particularly important on this matter as Local Government is not a stakeholder but one of the two tiers of government that make up the governance of Scotland. Because of this Local Authorities are affected by EU law and liabilities as much as Scottish Government is. The support that EU funds give to our communities is just about one of the few stable sources of investment funding that is available. Thus the Convention expects that COSLA and MSPs will be able to have close cooperation in the difficult times ahead.

5. We think that this is both beneficial for the Committee’s own scrutiny role as through the dedicated resources we have at our disposal we are just about the only source of know-how on a range of EU issues affecting Scottish Local Authorities.

6. Equally, through very close contacts that COSLA has with our sister organisations from other European countries, often major players in their respective countries, we have been able to scope the EU membership scenarios for local government and which our Convention approved last March.

7. Furthermore, COSLA nominates and supports several members of the Committee of the Regions, Council of Europe and of our European umbrella CEMR. Through these fora our members are in direct contact with Elected Members from other countries, very often national political figures in their own right. We are at the moment addressing some concerns from our European counterparts about Scotland’s continued engagement in Europe. We are precisely making full use of these political contacts to put a positive and reassuring case for Scotland remaining as close to the EU as possible.

8. For these reasons we are keen that COSLA and the Scottish Parliament, particularly through your Committee and others more directly related to EU issues and Local Government, develop a partnership approach to the scrutiny and formulation of
alternatives that can safeguard Scotland positive links with then the EU. This should include in our view assessment of impact of EU liabilities, legal and financial, of each possible scenario, intelligence sharing, input in formulation of negotiating lines and negotiation discussions.

Detail

The domestic process for dealing with a withdrawal from the EU

The withdrawal process

9. COSLA Leaders met on 26th July and agreed that both the Scottish national and local governments need to address the effects on popular sentiment and risks for community cohesion, status of EU foreign nationals and the range of rights and benefits for our constituents that are currently safeguarded by EU membership. The recent discussions on international trade deals such as the status of local public services in the ongoing TTIP negotiations are a good indication on how sensitive these issues are for our citizens.

10. More specifically, Scottish Local Authorities are like the Scottish and UK Governments tiers of governments directly bound by rights and obligations under EU law. The forthcoming negotiations with the EU will change this relationship and we are keen that the powers and democratic nature of local government are protected at the end of this process.

11. COSLA has long made for the issue of Subsidiarity - whereby decisions should be made at the level that is as closest to the people - the centrepiece of our approach to EU regulation. We apply the same principle when considering whether local powers need to be exercised at national level. For the same reason our starting point is that if powers are repatriated from the EU we would be keen that the principle of Subsidiarity is fully applied so they are devolved to the local level – particularly if prior EU accession these were local rather than national powers.

12. In the same vein the results of the referendum inevitably will bring a very substantive change to relations with the EU. At the same time Scotland is represented in other European organisations such as the Council of Europe. Indeed COSLA and the Scottish Parliament nominates two members each to its Congress of Local and Regional Authorities -whose new term starts this October-. One of its key international agreements is the Charter of Local Self Government which the UK and Scottish Parliaments and Governments are bound to implement but have failed to do so – unlike most European countries. The current negotiations to repatriate powers from the EU thus present an opportunity to finally address this.

13. For all these reasons COSLA believes that it is necessary that appropriate mechanisms are put in place at political and officer level so that local government is embedded in the Scottish Government negotiation structures in all issues that are directly the competence of local government. As mentioned above this should include in our view, assessment of the impact of EU liabilities, legal and financial, of each possible scenario, intelligence sharing, input into formulation of negotiating lines and negotiation discussions. The same approach has already been confirmed by the UK Government in England.
14. Indeed both the recent Scottish Guidance on Handling EU Obligations and the UK Government EU Policy Statement on the Localism Act 2011 foresee that local authorities have a particular role to play in delivery of EU obligations and commits the UK Government would involve local government or representative bodies including COSLA ahead of, and during EU negotiations. As the Convention highlighted already in June 2014 this is standard practice in Scandinavian and other Northern European countries.¹ We are of course not keen to interfere in government to government relations but we are keen to have an arrangement that is practical, flexible and efficient.

**Impact of EU legislation in Councils**

15. There has been quite a few discussions about the impact of EU law. While the proportion could range between 8% to 84%, an often quoted study by the House of Commons² shows that in the UK as little as 15% of all Westminster statutory instruments are explicitly EU related. If EU regulations are added it turns out that close to 50% of legislation enacted in the UK (Westminster) in a typical year is EU related. Furthermore if Devolved legislation and local statutory instruments are also added COSLA believes that the proportion is even higher. Our Finnish counterparts’ own study³ shows that EU influences 60 per cent of the municipalities’ statutory functions.

16. However we are of the view that far more important is the **qualitative impact** that EU legislation and policy has on Scottish local government competences and services. A snapshot of recent pieces of EU legislation that COSLA has been working on illustrates the very detailed influence that EU legislation has on Scottish councils:

- **Services of General Economic Interest** (SGEI) is the term used in EU law to refer to public services. The European Commission continues only to lightly observe the new EU Treaty provisions (protocol 26) that were added to limit the ability of the EU institutions to constrain the way national and local authorities define and provide public services. This also frames the vast State Aid legal framework that sets the limits the amounts and ways under which public subsidies to private or voluntary bodies for the provision of public goods are deemed lawful under the EU freedom of movement within the EU internal Market.

- **EU Public Procurement** – sets the framework on 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, social criteria) It also includes restrictions on buying local.

- **Environmental Legislation (Waste, Emissions, Energy Efficiency)** the EU sets binding targets and often requires specific commitments from local authorities. Often


these proposals have a poor assessment of their impact at a local level and have ad hoc reporting obligations. While Scotland tends to have targets that are higher than those set at EU level the EU definitions and reporting duties need not the same as defined in Scottish Legislation, resulting in a degree of retrofitting of domestic law when transposing EU directives.

- **Employment and social legislation:** This is important both in terms of Local Authorities as employers of EU nationals but also in terms of community cohesion regarding the status of EU nationals in Scotland and of Scots living abroad full or part of the time. EU legislation enable social rights such as pension transfer, right to residence, employment rights, access to healthcare both in Scotland and in the rest of the EU. A good example is the Working Time Directive that sets limits on work and rest period affecting longstanding work practices in key public services such as fire and rescue of health and care providers. An second example is the Cross border Healthcare Directive that grants access and sets the limits to receive healthcare in other EU countries and vice versa.

17. Clearly the body of EU law is large and the forthcoming negotiations will be difficult. However as opposed to other sectors for Local Authorities the EU negotiations need not be extremely difficult for two reasons:

   a. Most of the EU legislation affecting Councils is by way of EU Directives; this means that they are part of the statute book by an implementing UK or Scottish legislative act. Thus even if the Directive stops having legal effect in the UK, the domestic transposition legislation can remain in force.

   b. A significant part of the existing EU legislation sets targets that are less ambitious than current Scottish ones. The crucial difference is that some of these higher domestic targets (e.g. waste) were set out in a less binding way than the EU ones - so the status of the domestic targets may need to be reviewed accordingly moving forward.

18. Thus, in essence at the end of the EU negotiations what is needed is to provide a legal safeguard at both Scottish and UK levels that confirms that obligations under EU law to Councils remain in force unless another act of Parliament says otherwise. A similar clause has been used over the last few decades for the progressive repatriation of powers to Commonwealth Dominions and in regime change transitions to democratic constitutions in a number of European countries.

19. There are however a number of issues that will need to be resolved as part of the negotiations:

   a. Closure of existing liabilities such as ongoing EU infringement procedures including outstanding fees and dues to the EU budget.

   b. Issues that require reciprocity, e.g. social rights of EU nationals in the UK/Scotland and of Scottish citizens when they are in the EU: This will depend on the UK Government proposal for final status negotiations and which is at the moment unknown. The next section considers a range of scenarios.
20. Moving forward, the First Minister has confirmed that Scotland will continue to play its full part in EU-wide policies, such as most notably climate and sustainable development. As indeed the EU is now formulating targets on a range of issues for 2030 consideration is needed about how best to ensure that domestic and European targets continue to be aligned, the more so as the UK and the EU are signatories of a range of related UN agreements on Sustainable Development (UN Sustainable Development Goals 2015), COP 21 Climate Agreement or HABITAT III. These now have to be transposed into UK and Scots law but also through EU law. So it will be necessary to scope how the latter will now be addressed if EU law (e.g. emissions trading, waste shipments) ceases to be applicable in the UK/Scotland.

Alternatives to EU membership

21. Ahead of the Referendum campaign we had already undertaken a number of discussions with COSLA sister organisations in EU and European Economic Area Member States over the status of their respective local governments as regards to the impact of EU law. This can be briefly summarised here:

a. Full EU Withdrawal – we are keen that we are involved in negotiations and clearance of outstanding legal and financial liabilities fully and directly as it is likely to be the case for our peers in the rest of the UK, as well as repatriating previously local powers that were transferred to the EU (and Scotland/UK Governments) following UK EU membership, including consequentials of changes needed to the Scotland Act and continuation of EU structural and rural payments via new national schemes.

b. Detached UK EU membership: Our Norwegian and Icelandic colleagues are members of the European Economic Area. Thus they are liable to comply with the same EU legislation in the above-mentioned areas as Scottish Local Authorities do. As they do not have Committee of the Regions Members or MEPs they rely on working through our European umbrella organisation the Council of European Municipalities and Regions (CEMR) to ensure that their interests are reflected in the legislative negotiations. By contrast as Swiss/EU relations are set by a series of bespoke bilateral agreements instead, the effect of EU law in Swiss municipalities is much more tenuous.

c. Free Trade Agreement: As evidenced by the ongoing EU-USA trade agreement (TTIP) and the Canada-EU agreement (CETA) there is a significant degree of issues included that concern the provision of local public services as well as procurement obligations. Echoing what we said in a previous Parliamentary Inquiry we are keen that any future Trade Agreement be that with the EU or with any other country or trading block includes at the least the same same safeguards for local public services that is currently provided by the EU treaties. Indeed the safeguards that were included in the CETA agreement are in our view the bare minimum that any future trade deal must cover. Nevertheless as the recent controversy with TTIP shows COSLA is clearly of the view that any trade agreement that touches upon local government powers requires it to be negotiated with input and expertise from local government, which is not the case at the moment.

4 A good summary of problems of implementation of EU law by Norwegians municipalities can be found here NIBR (2008) Logal ivarsetting eller målrettet medvirkning? Om kommunesektoren og EØS-avtalen  (English summary, p.9) https://t.co/h9vIdCftq6
d. **Scotland retaining EU jurisdiction:** If the UK leaves entirely and Scotland retains a form of EU jurisdiction while the rest of the UK leaves the EU (Denmark with Faeroe Islands and Greenland, UK with Channel Islands, Isle of Man and possibly post Brexit, Gibraltar) COSLA to be embedded in the negotiations to ascertain liabilities for Councils and mechanism to influence – (similar to the EEA Norway model)

**EU Funds for local government**

22. For background Scottish Local Government has been allocated up to one third of the £1.3bn EU Structural Funds that are directly coming to Scotland between 2014 and 2020 and which are managed by the Scottish Government. This essentially means funds for SME support delivered by business gateway, financial engineering via the new “Business Loans Scotland” all Scotland Local Authority loan partnership, employability via Community Planning Partnerships (CPPs), special funds on Youth Employment for 12 Councils in the West of Scotland (as it has over 25% youth unemployment rate). All these schemes are run by the Scottish Government Structural Funds Division. This also covers the LEADER programme for rural communities diversification, the small business support scheme and rural broadband (£95m take together and run by the Scottish Government Rural Division) as well as a very small ‘pot’ of about £6m for coastal communities run by Marine Scotland.

23. Scottish Councils also have access to much smaller ‘pots’ of fund by applying to interregional funds (INTERREG) or a variety of other EU funds but these are subject to forming partnership with partners from other EU countries and competitive EU-wide project calls.

24. COSLA officials have had a number of discussions with the Scottish Government and the UK Government on the impact on the referendum on current and future EU funding. Such discussions have confirmed that Scottish Government has legally committed European funds to existing projects up until the end of 2018 and in some cases 2019. The projects being funded support important economic, employment and social priorities. The Scottish Government as Managing Authority and Councils as delivery bodies have a duty to manage the funds responsibly. Until it is clear how negotiations with the EU are to progress these important projects should continue. In other words existing awarded schemes should be launched, claimed, audited and reported as usual.

25. We welcome the recent letter from the UK Treasury confirming that monies that have already been allocated up until this Autumn Statement will run after the designated day of UK departure of the EU, when the UK would replace EU funds with UK Government money. The status for EU funds that were due to be committed for the three remaining years of the present EU programming period 2014-2020 will be clarified by the Autumn Statement. COSLA urges clarification on this particular issue, as many of the ongoing programmes started with at least one year delay, and there will be a significant amount of allocated funds not yet spend by the eventual date of UK eventually leaving the EU. Equally most EU funds operate under a rule that enables two years to be spent, meaning that they could be spent up until 2022. Furthermore existing EU funds have protracted audit trails that last many years after they were spent with records needing to be kept available for inspection by Local Authorities. Therefore as to ensure legal certainty for Councils **we see as a crucial priority of negotiations that Ministries and in particular HM Treasury to negotiate with the European Commission and the**
European Court of Auditors the settlement of any outstanding issues (payments, irregularities) that might arise by that cut-off point.

26. Looking ahead, we see it likely that the UK Government negotiation priorities will seek to continue paying into the EU budget to opt-in to a range of funds: Horizon 2020 for research, major capital investment on transport and energy (including retaining shareholder status of the European Investment Bank), Territorial Cooperation (INTERREG), as well as some minor ones (security and home issues, for instance) deemed of mutual interest for the EU and the UK during the negotiations.

27. For Local Authorities, it is likely that the opportunities of accessing such European will be much reduced. However like our Norwegian and Icelandic colleagues we see merit in pressing for Scottish Councils to continue their existing and successful engagement in transnational projects such as provided by INTERREG. Similar if in the EU research, transport, energy funds to be launched in 2021 there will be strands open for local authority participation, as well as in certain European Investment Bank loans, **we see clear benefits that Scottish Local Authorities continue to have access to them at least in the same way that our Norwegian and Icelandic colleagues do.**

28. The vast majority of funds that benefit Local Authorities, the Structural and Investment Funds (and indirectly the farm subsidies known as CAP Pillar I) would stop being available in any of the above mentioned scenarios. Indeed we note that it has long been the consistent view of the UK Government to repatriate these EU funds. We are however aware that that work is underway by the relevant UK and Scottish ministries in sketching domestic support schemes to replace the current EU funded schemes. On the positive side such schemes would not require to meet current additional EU audit and reporting burdens but on the negative side it is highly unlikely that the UK Treasury would provide the same amount of match funding currently coming from the EU budget.

29. COSLA is clearly of the view that **the new home-grown schemes must follow the same multi-annual, strategic investment principles and legal certainty beyond a single parliamentary term that is provided by EU funds.** In so doing they should devolve responsibilities to the local and indeed community level. They should be multi-purpose, bottom-up led with only one managing authority so that we avoid the current silos coming from separate funding streams and government departments. Lastly these grants should provide added value in filling the investment gaps that cannot be provided by the market or are unlikely to be viable if they were provided via grants.

30. In so doing COSLA is keen to start discussions with government so that the new arrangements can be in place when the EU funds will cease to be accessible for our Councils.

**The position of EU citizens in Scotland - Asylum and Migration Issues**

31. For COSLA and Scottish Local Government, a key concern generated from Brexit is the uncertainty around freedom of movement and the very real possibility there will be a reduction of migration into Scotland from EU countries. We argue that a reduction in EU migrants will adversely impact on Scotland’s ability to grow its economy and tackle problems associated with an ageing population.

32. The 2011 Census figures for Scotland show Scotland’s population at its highest ever level – nearly 5.3 million. It has been affirmed that inward migration has had a significant part to play in the increase in our population. According to the most recent
Scottish projections the population will rise to 5.78 million in 2037. However, this increase is not at an even rate across Scotland – 20 out of our 32 Scottish local authorities are projected to increase, while 12 are projected to decrease. For example, Argyll & Bute’s population is projected to decrease by 13% and Inverclyde is projected to decrease 19%.  

33. Scotland also faces a significant ageing population challenge. Scottish Population projections project the number of people aged 75 and over is projected to increase from 0.42 in 2012 to around 0.53 million (28%) in 2022 and this will reach 0.78 million in 2037 (an increase of 86% over a 25 year period). Meanwhile, the number of working age is projected to increase from 3.5 million in 2012 to 3.51 million in 2022 (an increase of 5%), and then decrease to 3.48 million by 2037 (an overall increase of 4% from the 2012 estimate). Again this is not an even rate across Scotland, e.g., Inverclyde’s working age population is projected to decrease the most 29%. These are stark figures and emphasize the need for Scotland’s local authorities to be able to attract a young workforce to this country.

34. Scottish local authorities are acutely aware of their demographic challenges, and this is highlighted in their Single Outcome Agreements (SOAs). COSLA has carried out a review of the SOAs and population growth is a key priority for Scottish Local Government. Just under half of the SOAs state population growth as an outcome and many stipulate this as their principal outcome. Local authorities are also conscious that migrants are key to achieving a healthy population in their local areas. There is a huge amount of work being carried out by local authorities to make their area an attractive place to live and work; such as ensuring affordable housing; attracting inward investment; creating job, education and training opportunities; connectivity; local transport solutions; tourism; creating and promoting an attractive, high quality environment; and, developing retail and leisure facilities. There are also many examples of local policies specifically tailored to attract and retain migrants, such as relocation and overseas recruitment packages, community based adult and family ESOL to enable inclusion and participation in their local community; workplace ESOL to support the retention of those in local employment; a focus on drawing skills and talent from abroad to support public and private skills shortages.

35. In economic terms, many local authority areas rely heavily on EU migrant workers and if freedom of movement were to end there would be significant implications for local economies. Scottish local government is increasingly reporting shortages and gaps in skills, such as teaching, social work, and the care sector. This would be exacerbated if EU migration were to be impeded. There would also be a significant impact on lower and unskilled sectors such as agriculture, fishing, hospitality, and food. Angus is a prime example of the potential economic impact where the local agricultural economy relies heavily on seasonal migrants. In Angus, the number of migrants can reach 3,000 or so over the season and farms advertise abroad and recruits through agencies regulated through the Gangmasters Licensing Authority and the National Farmers Union. We have not mentioned some of the highly skilled and specialist areas that could also be affected, such as the technology and engineering sectors.

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6 Population Projections for Scottish Areas (2012-based)
36. We will not attempt to forecast what immigration system will be put in place; however, we would want to be involved in its development. Crucially, if the Points Based System (PBS) was extended to EEA countries the current issues with the system will need be recognized and addressed. COSLA has consistently voiced concerns about a system in which the aim is to reduce net migration and the bar is consistently raised to the exclusion of particular jobs and sectors (e.g. the care sector). We have lobbied for a more flexible system that can address the needs of the Scottish economy and our ageing population and to accrue more policy levers to encourage people to move to Scotland. Some of the key issues we have lobbied for in recent years are: restrictions to Tier 2 visas, the reinstatement of the post-study work visa, salary weighting, and changes to salary thresholds.

37. Finally, COSLA and Scottish Local Government would like to voice our concerns for those EU nationals currently living in Scotland, and the rest of the UK, who are now living with an imposed sense of uncertainty. We have consistently acknowledged and valued the benefits people have brought with them in terms of social, cultural and economic values.

Conclusion

38. COSLA is keen that all aspects specific to local government competence such as outlined in this detailed submission are fully addressed as part of the difficult negotiations ahead. It is essential that there is a close team working between COSLA and the Scottish and UK Government and Parliaments to ensure that the principle of subsidiarity and local self-governance is respected throughout this process.