The Scottish Parliament, Finance and Constitution Committee

Round table discussion on European Union (Withdrawal) Bill

25 October 2017

Introduction

The Scottish Fishermen’s Federation (SFF) was formed in 1973 to preserve and promote the collective interests of Scotland’s fishermen’s associations. Its nine constituent associations represent more than 500 vessels, ranging in size from small creel boats to 80-metre pelagic trawlers.

The SFF believes that Brexit presents a unique set of opportunities for Scotland to reinvigorate its coastal and island communities and deliver a thriving, profitable and sustainable seafood industry.

Given that the fisheries in what will become the UK EEZ are currently managed largely by the EU, and UK vessels account for a minority of overall catches from them, Brexit creates two major opportunities for the catching sector:

- The power to establish a more effective and reactive fisheries management system in our waters that delivers business as well as environmental sustainability. The EU’s Common Fisheries Policy does a poor job on both counts. We insist that fisheries regulations incorporate a commitment to sustainable harvesting whilst allowing the fleets to operate in an economically coherent manner. Scottish fishers have a proven track record of managing stocks sustainably, rebuilding depleted fish stocks and protecting the wider ecosystem.

- Fairer and more appropriate shares of catching opportunities within UK waters. Asserting control over who has access to our highly productive and diverse fishing grounds could generate significant and sustainable economic growth in Scotland’s island and coastal communities at no cost to the taxpayer.

Other opportunities include the freedom to explore new markets for seafood in rapidly expanding economies outside the EU, the ability to direct any grant funding in ways more suited to Scotland than the EU currently allows, and scope for innovative thinking around fleet diversification and development.

The Scottish fishing industry seeks close working relationships with both the Scottish and UK Governments during the Brexit process and subsequently. We intend to secure the best possible deal for all Scottish fishers, irrespective of constitutional developments, and believe that the two Governments working together would produce the best possible outcome for the fishing industry on both sides of the border.

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1 Anglo-Scottish Fishermen’s Association, Clyde Fishermen’s Association, Fife Fishermen’s Association, Fishing Vessel Agents & Owners Association (Scotland) Ltd, Mallaig and North West Fishermen’s Association Ltd, Orkney Fisheries Association, Scottish Pelagic Fishermen’s Association Ltd, The Scottish White Fish Producers Association Ltd and Shetland Fishermen’s Association.
Round table discussion points

NB: two of the nine SFF constituent associations² require more time to consider these issues, and reserve their position.

1. The appropriateness of the powers proposed in the Bill for UK Ministers and Scottish Ministers.

The SFF recognises that the Bill provides UK Ministers with extensive powers that are bound to give rise to unease in Westminster and Holyrood, and would have preferred the Bill to address a number of shortcomings in EU fisheries legislation upon its transfer to UK law.

That said, the SFF draws the Committee’s attention to three overriding considerations:

- The upside for the fishing industry and for Scotland as a whole from controlling access to and managing our own fisheries is so significant that excessive delay to the Bill’s passage would be unacceptable;

- Given the short timetable afforded to the Article 50 process, it is hard to see how else the UK can avoid legal vacuum. The wholesale transfer of EU law minus its legal ‘inoperabilities’ appears to be the only realistic option in that context;

- For over 40 years, the Scottish fishing industry has frequently been subjected to the apparently unchecked and arbitrary whim of unelected officials in Brussels, and without any parliamentary scrutiny at all. The Bill represents an advance on that state of affairs.

2. The approach proposed in the Bill for repatriating powers which are currently competences of the European Union and the implications of this approach for the devolution settlement in Scotland.

The SFF believes that the Bill’s approach to repatriating powers from the EU requires amendment if it is to respect the devolution settlement and deliver appropriate fisheries management.

Specifically, Clause 11 of the Bill provides that where a rule or policy area is covered by EU law on the date of withdrawal, then it will, after withdrawal, become part of ‘retained EU law’ and will be put beyond the competence of the Scottish Parliament, regardless of whether the policy area is devolved.

This is particularly significant in the case of fisheries, as retained EU law will include all but the legally inoperable parts of the Common Fisheries Policy (CFP). Scottish Ministers would need to seek the agreement of the UK Parliament for amendments to this and other legislation regulating fisheries, dramatically limiting Scotland’s ability to carry out its devolved responsibilities and deliver effective, reactive fisheries management.

The SFF is deeply concerned that the Scottish Government and Parliament would be unable to make changes to the discard ban, for example, which Scottish Ministers as well as the fishing industry recognise as unworkable in Scottish waters in its present form. In this and in many other areas of fisheries management, the devolution settlement and all that implies for reactive policymaking suited to regional conditions is a vital component of fleet and even environmental sustainability.

² The Orkney Fisheries Association and the Clyde Fishermen’s Association.
Justification for Clause 11 appears to rest on three, interrelated considerations: ensuring absolute legal certainty at the point of exit; the desirability of a short, ‘clean’ Bill in a congested parliamentary timetable; and the difficulties of picking through 40 years’ worth of EU legislation and apportioning the appropriate parts, clause by clause, to the devolved administrations. While the SFF is not in a position to offer expert opinion on these points, it observes that even if Clause 11 is required for these reasons on Day One of Brexit, it could be amended to expire on Day Two.

3. Whether there is a need to establish common UK frameworks to replace EU frameworks in devolved policy areas such as agriculture and environment; the appropriateness of the arrangements for these suggested by the European Union (Withdrawal) Bill; and alternative models for discussing, agreeing and operating any common frameworks that may be required.

The SFF believes that common UK frameworks for certain aspects of fisheries policy are sensible and desirable, and notes agreement on the principles underlying UK common frameworks at the Joint Ministerial Committee meeting on 16 October 2017.

4. The suitability of current inter-governmental relations structures for a post-Brexit environment, and alternative processes and structures that may improve the effectiveness of intergovernmental relations, in light of the process of EU withdrawal and the development of common frameworks.

The SFF believes that safeguards need to be built into intergovernmental processes to ensure that the Scottish fishing industry’s predominance within the UK fishing industry is taken into proper consideration.

Scotland accounts for around 65% of the value and volume of fish landings by UK vessels, and represents over half of the UK catching sector’s employment. Peterhead, Lerwick and Fraserburgh alone account for over 70% of UK finfish landings (i.e. excluding shellfish, where landings are distributed more evenly around the UK). Unsurprisingly, the Scottish fishing fleet accounts for the lion’s share of catches of many of the UK’s most important commercial fish stocks.

The SFF has long argued that Scottish Ministers should take the lead role in negotiating UK quotas for stocks in which the Scottish fishing industry has the predominant interest, just as other devolved administrations should lead in negotiations for stocks in which their industries represent the predominant share. This arrangement need not be enshrined in primary legislation; it may be that the devolved administrations would be content with a memorandum of understanding enshrining this principle.

Aside from the specific context of international quota talks, the UK will act as a ‘Coastal State’ in a number of forums, and of course as a member of many other bodies that may not be primarily concerned with fishing but could affect the industry indirectly (climate change forums, for example). Given that Defra would be the UK Government department representing the UK to the outside world, the SFF suggests that the Scotland Office be given an express remit to ensure that the views of the Scottish Government and Scottish Parliament are taken properly into account in formulating UK positions when fisheries are directly or indirectly concerned.
5. **Mechanisms that could be put in place to ensure that the Scottish Parliament has sufficient oversight over the process of negotiating, legislating for and implementing Brexit, and of the exercise of powers conferred on Scottish and UK Ministers by the European Union (Withdrawal) Bill.**

The SFF has no particular view or expertise on how the Scottish Parliament should exercise oversight over the Brexit process or powers conferred on Scottish and UK Ministers. Its member associations are focused on the opportunities created by Brexit to build a strong, sustainable seafood industry that will generate significantly more economic activity in Scotland’s coastal and island communities, and is confident that the Scottish Parliament will continue to support the fishing industry in achieving those aims.