



The Scottish Parliament
Pàrlamaid na h-Alba

CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE

AGENDA

8th Meeting, 2019 (Session 5)

Thursday 14 March 2019

The Committee will meet at 9.00 am in the Robert Burns Room (CR1).

1. **UK-EU Inter-institutional relations post-Brexit:** The Committee will take evidence from—

Professor Michael Keating, Director, Centre for Constitutional Change;

Professor Paul Cairney, Professor of Politics and Public Policy, University of Stirling.

2. **Local commercial radio:** The Committee will take evidence from—

Corrie Martin, News Director, Regions, and Will Harding, Chief Strategy Officer, Global Radio.

3. **Consideration of evidence (in private):** The Committee will consider evidence heard earlier in the meeting.

Stephen Herbert
Clerk to the Culture, Tourism, Europe and External Affairs Committee
Room T3.40
The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

Agenda Item 1

Note by the Clerk

CTEEA/S5/19/8/1

PRIVATE PAPER

CTEEA/S5/19/8/2
(P)

Agenda Item 2

Note by the Clerk

CTEEA/S5/19/8/3

PRIVATE PAPER

CTEEA/S5/19/8/4
(P)

Culture, Tourism, Europe and External Affairs Committee

8th Meeting, 2019 (Session 5) Thursday 14 March 2019

Post-Brexit UK-EU interinstitutional relations and the role of the devolved institutions

Note by the Clerk

Background

1. The Committee received correspondence from the House of Lords EU Select Committee, on 25 January 2019, regarding work the EU Select Committee is undertaking on post-Brexit UK-EU interinstitutional relations. In particular, the EU Select Committee is seeking views on the role of devolved institutions in these relations. The Chair of the Committee, Lord Boswell of Aynho, stated that the Committee’s work is—

“designed to examine how future UK-EU intergovernmental and interparliamentary mechanisms and dialogue will be conducted. An important component of this work is to consider the role that the devolved institutions (both at governmental and parliamentary level) should play in influencing and shaping this dialogue”¹.

2. The letter from the House of Lords EU Select Committee is provided at **Annexe A** to this paper. The EU Select Committee sought the view of this Committee and the Finance and Constitution Committee to the issues raised in their letter. The Finance and Constitution Committee replied, on 4 February 2019, noting that it considered that it would be ‘more appropriate’ for this Committee to respond to the issues raised. The response from the Finance and Constitution Committee is provided at **Annexe B** to this paper.
3. The Committee considered the letter on 31 January and agreed that the Convener respond to the EU Select Committee stating that the Committee intended to take evidence on this issue and would respond in due course. The Convener wrote to Lord Boswell on 18 February 2019 and this letter is provided at **Annexe C** to this paper.

Purpose

4. The Committee will take evidence on post Brexit UK-EU interinstitutional relations from—
 - Professor Paul Cairney, Department of History and Politics, University of Stirling, and
 - Professor Michael Keating, Professor of Politics and Director of the ESRC Centre on Constitutional Change

¹ Correspondence from the House of Lords EU Select Committee, 25 January 2019, p.1.

Written submissions have been provided by Professor Keating and Professor Cairney which is at **Annexe D** to this paper. Lastly, a SPICe note on post-Brexit UK-EU interinstitutional relations is at **Annexe E**.

Stephen Herbert
Clerk
CTEEA Committee
11 March 2019

Annexe A



HOUSE OF LORDS

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Joan McAlpine MSP
Convener
Culture, Tourism, Europe and External Affairs Committee
Scottish Parliament
Edinburgh, EH99 1SP

25 January 2019

Dear Joan

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

The House of Lords EU Select Committee, which I chair, is undertaking a piece of work on *Post-Brexit UK-EU interinstitutional relations*. This work is designed to examine how future UK-EU intergovernmental and interparliamentary mechanisms and dialogue will be conducted. An important component of this work is to consider the role that the devolved institutions (both at governmental and parliamentary level) should play in influencing and shaping this dialogue.

Given the continued uncertainty of the Brexit process, the Committee has decided not to launch a full-scale inquiry, but rather to engage in an information-gathering exercise with key stakeholders, which we intend to inform a report to be published before the scheduled date of UK withdrawal on 29 March 2019.

As part of this exercise, the Committee would like to take account of the views and perspectives of colleagues in the devolved legislatures. We would therefore like to invite your Committee to set out its views, in writing, on a number of key questions as set out below, as well as any other topical issues that aren't covered here. The list of questions is attached. In order to inform the Committee's forthcoming report, we would like to invite a response by **Friday 8 February**?

If you have any questions, please do not hesitate to get in touch. I have written in similar terms to the Chairs and Conveners of other relevant Committees in the Scottish Parliament and National Assembly for Wales. My officials are also in dialogue with officials in the Northern Ireland Assembly.

Yours sincerely,


Lord Boswell of Aynho
Chairman of the European Union Committee

LIST OF QUESTIONS

1. What is your assessment of the mechanisms set out in the Withdrawal Agreement and Political Declaration to govern UK-EU relations a) during the transition period; and b) after the end of the transition period, including at “summit, ministerial, technical and parliamentary level”?
 - a. How do you envisage the mechanisms, including the proposed Joint Committee structures, dispute resolution mechanisms and ‘high-level conference’, operating in practice?
 - b. How do the proposed mechanisms for UK-EU relations during the transition period, and in the post-transition period, relate to one another? What are the key similarities and differences?
 - c. Notwithstanding the House of Commons’ rejection of the Withdrawal Agreement and Political Declaration, how likely is it that the proposed structure will underpin future UK-EU relations in the event of a deal being reached?
2. How should the UK Parliament and the devolved legislatures seek to scrutinise the interinstitutional mechanisms, including the proposed dispute resolution mechanism, both during the transition period and post-transition? How, if at all, should the work of the UK Parliament and the devolved legislatures be coordinated in this regard?
3. What format should the proposed dialogue between the European Parliament and the UK Parliament take? Will this take the form of a ‘delegation’?
 - a. What role should the devolved legislatures play in this process?
 - b. How could such an inter-parliamentary body influence the negotiation and/or governance of the future relationship?
4. What principles should underpin future intergovernmental and interparliamentary bilateral relations with individual EU Member States? What role should the devolved institutions play in the maintenance of such relations?
5. What role should the devolved governments and legislatures play in ensuring effective governance and scrutiny of the UK-EU relationship?
6. What lessons can be learned, both positive and negative, from the EU’s relations with other third countries in its neighbourhood? What can the UK learn from other third countries in seeking to continue to exert influence in Brussels?
 - a. How should the UK’s representation to the European Union (UKREP) adapt to its new role as a third country representation?
 - b. Should the UK Parliament continue to maintain a presence in Brussels?
 - c. What presence should the devolved institutions have in Brussels?



The Scottish Parliament
Pàrlamaid na h-Alba

Finance and Constitution Committee

Lord Boswell of Aynho,
Chairman of the European Union
Committee,
House of Lords
(by e-mail)

The Scottish Parliament
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EH99 1SP

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4 February 2019

Dear Tim,

Thank you for your letter of 25 January inviting me to contribute on behalf of the Finance and Constitution Committee to your information gathering exercise on Post-Brexit UK-EU interinstitutional relations. I understand that you have also written to the Convener of the Culture, Tourism, Europe and External Affairs Committee in similar terms.

My Committee's remit focusses on the constitutional impacts of Brexit within the UK as compared with the Culture, Tourism, Europe and External Affairs Committee whose remit includes relations with EU institutions post-Brexit. It would therefore be more appropriate for that Committee to provide you with further information.

I wish you every success with this important piece of work and look forward to reading your report in due course.

Yours sincerely

Bruce Crawford MSP
Convener



The Scottish Parliament
Pàrlamaid na h-Alba

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18 February 2019

Dear Tim,

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

Thank you for your letter of 25 January regarding the work your Committee is undertaking on UK-EU institutional relations post-Brexit. The role of the devolved institutions, and critically the role of devolved legislatures, in post-Brexit structures is of considerable interest to me and the Committee more generally.

Accordingly, the questions you raise are of significant importance and we intend to take evidence on the issues you raise at a future meeting. Our intention is that this would help contribute to the piece of work that your Committee is undertaking. I have asked my clerks to ensure that your Committee is kept informed of the activity we intend to undertake with regard to the issues you have highlighted.

Yours Sincerely,

Joan

Convener
Culture, Tourism, Europe and External Affairs Committee

UK-EU Inter-institutional relations post-Brexit

Michael Keating, Professor of Politics, University of Aberdeen and Director of Centre on Constitutional Change

Scottish Parliament Culture, Tourism, Europe and External Affairs Committee

8 March 2019

1. The committee asks about inter-institutional mechanisms in two phases.

- 1.1. The first is the transition period or, as the UK Government calls it, implementation phase. In fact this is the period in which the critical negotiations will be conducted.
- 1.2. The rules for this phase are set out in the Draft Withdrawal Agreement of December 2018. During this phase, the UK will be bound by EU laws but will be outwith the institutions of the EU. It may be consulted and invited to EU meetings but without a vote.
- 1.3. The second concerns the management of the long-term relationship, which is to be negotiated.
- 1.4. The relevant document here is the Political Declaration on the future relationship, agreed along with the draft Withdrawal Agreement.
- 1.5. This assumes that there is a withdrawal agreement. If there is not, then there is no provision for a transition phase.

2. The Declaration proposes an overarching framework for future relations. This is a new form of agreement, which differs from any other agreement made by the European Union. Little detail is given and there are no useful precedents to indicate how it would work.

- 2.1. There is to be joint working at ministerial, official and parliamentary levels.
- 2.2. A Joint Committee will manage the relationship. Under this will be sectoral groups. There is a lot of emphasis on dialogue. Where there is disagreement, there is provision for binding international arbitration.
- 2.3. There is reference to the UK and European Parliaments.
- 2.4. There is no reference to devolved institutions. That is to be expected as this is an agreement between the EU and the UK. The devolved role will need to be decided within the UK.
- 2.5. Both the negotiations in the transition phase and the long-term relationship will impinge on devolved matters.

3. The ambition, as set out in the Political Declaration, is to go beyond reserved matters of trade. Items include:

- 3.1. Regulatory alignment. 'The UK will consider aligning rules in relevant areas.' This would include devolved matters in agriculture and environment.
- 3.2. EU programmes. Devolved items mentioned include science and innovation, youth, culture and education.
- 3.3. Public procurement
- 3.4. Cooperation in dealing with crime.
- 3.5. A 'level playing field', which could include agricultural support, state aid sectoral and regional development measures.

4. We do not know how the devolved level would fit into this but there is presently a wide array of measures for dealing with similar matters.

- 4.1. The Joint Ministerial Committee (Europe) deals with matters of EU policy where there is a devolved competence at stake.
- 4.2. The Joint Ministerial Committee (EU Negotiations) deals with devolved interest in the withdrawal negotiations. Official working parties support this.
- 4.3. The Ministerial Forum (EU Negotiations) has a more general remit.
- 4.4. Negotiations are proceeding on UK Frameworks to manage common issues after Brexit.
- 4.5. There are discussions on the meaning of the 'UK internal market' and what it implies after withdrawal from the EU Single Market.
- 4.6. There are sectoral bills on agriculture, trade and the environment, which impinge on devolved competences. The Scottish Government is withholding a recommendation for legislative consent as long as the UK retains provisions in the EU Withdrawal Act allowing it to take back competences after Brexit.
- 4.7. There are discussions on how the devolved institutions might feed into UK international agreements after Brexit. This is particularly important because matters that are currently managed under EU relations will become matters of foreign policy, which is clearly reserved.
- 4.8. While both Scotland and Wales have sought to secure the position of the devolved institutions, there is a difference in emphasis. The Welsh Government has been pursuing a policy of 'cooperative federalism', with substantial areas of joint policy-making, as long as the devolved bodies have real power. For example, it has suggested a UK Council of Ministers to deal with common matters. The Scottish Government, in contrast, has emphasized the need for autonomy and scope to make its own policy decisions.

5. Key questions remain

- 5.1. Will the JMC (EN) continue as at present during the transition phase? There have been criticisms from Scotland and Wales that it is not sufficiently effective,
- 5.2. Will the devolved governments be able to participate (by invitation) in the new joint committees and working parties with the EU, as they now do in the Council of the European Union?
- 5.3. If they do, will there continue to be something equivalent to the JMC (Europe) at which a common line can be agreed? How will it work? The present system has been criticized as ineffective.
- 5.4. Can the plethora of intergovernmental mechanisms be rationalized and simplified?
- 5.5. At present, the devolved bodies have representation in Brussels. This allows them to learn of upcoming issues and to liaise with EU institutions. They can also liaise with other member-state and sub-state delegations. It will be important to maintain this role, during the transition/ negotiation phase and in the longer term.
- 5.6. It is a feature of intergovernmental modes of policy making that legislatures tend to be marginalized. It will be important that devolved legislatures have

information on what is happening and opportunities to scrutinize decisions and hold governments to account.

- 5.7. It is important that there should be more cooperation between parliaments. This has been identified as a shortcoming in the existing arrangements. There might be joint inquiries and hearings, exchange of information and common data bases.

Paul Cairney, Written Evidence to Scottish Parliament *Culture, Tourism, Europe and External Affairs Committee*, 11th March 2019

The Committee questions are:

- How should the UK Parliament and the devolved legislatures seek to scrutinise the interinstitutional mechanisms, including the proposed dispute resolution mechanism, both during the transition period and post-transition? How, if at all, should the work of the UK Parliament and the devolved legislatures be coordinated in this regard?
- What principles should underpin future intergovernmental and interparliamentary bilateral relations with individual EU Member States? What role should the devolved institutions play in the maintenance of such relations?
- What role should the devolved governments and legislatures play in ensuring effective governance and scrutiny of the UK-EU relationship?
- What presence should the devolved institutions have in Brussels?

If we are being optimistic, forums such as the *Interparliamentary Forum on Brexit* – and the work of their members - provide the advantages once described in relation to Scottish Parliament committees:

- To provide a venue in which representatives of many political parties could work together in a more businesslike and less polarised environment than usual.
- To investigate issues in depth, drawing on knowledge from stakeholders and experts.
- To hold governments to account by asking them to report on current developments.
- To distribute information to the wider public or encourage other organisations to do so.
- Overall, to focus on the longer term, identifying issues of policymaking process, and generating ‘institutional memory’.

If so:

1. its members are in the position to reflect on key issues that may be lost during periods of highly salient political change, such as the future of intergovernmental relations (IGR) and parliamentary oversight of IGR.
2. the increasingly-used ‘shared powers’ model between the UK and Scottish Governments means that we will only get a full overall sense of policy change by scrutinising the outputs of multiple governments.

If we are being less optimistic, some ever-present factors tend to undermine these ambitions:

- Committees are not well-resourced in relation to executives, which limits their ability to gather and share information enough to provide effective oversight.
- Elected members find it difficult to juggle party/ committee hats.
- Examples such as IGR and European relations have proven to be particularly difficult to scrutinise, often because IGR within the UK is (compared to many

other political systems) relatively informal, and executives often agree to keep their deliberations confidential.

- The UK's informal IGR has faced repeated criticism from Westminster and Holyrood bodies.
- Until 2007, the main concern was that a shared party of government (Labour) helped produce a type of informal IGR that was (a) unsustainable in the long term, and (b) unhelpful to parliamentary scrutiny.
- After 2007, this informality continued, to the extent: that (a) SNP-Labour and then SNP-Conservative relations played out largely behind closed doors (with the obvious exception of constitutional issues); and, (b) Scottish Ministers did not prove to be much keener to share with Scottish Parliament committees their routine discussions – on, for example, an agreed line in EU negotiations - with UK ministers.

A combination of these accounts helps describe the dilemma that the Scottish Parliament and Scottish Government will face when discussing the future role of IGR oversight:

- IGR informality within the UK often benefits executives. An agreement to be informal, coupled with the trust that comes from honouring this agreement over time, helps them engage in full and frank discussions.
- Informal influence may be the Scottish Government's best option in EU venues given that it does not have a formal role. If so, the same logic applies: build up trust by being reliably discreet during negotiations, and be sparing in your report back to a Parliament that publishes its deliberations.
- A huge number of people have - over the last 20+ years - made the same argument that devolved ministers should have a 'seat at the table' (alongside UK ministers) in key negotiations. They have been unsuccessful, and it is difficult to see why they would be successful now.



Culture, Tourism, Europe and External Affairs Committee

8th Meeting, 2019 (Session 5) Thursday 14 March

Post-Brexit UK-EU interinstitutional relations, and the role of the devolved institutions

Briefing Paper

Context

The UK's future relationship with the EU, both during the transition period (if the Withdrawal Agreement is approved) and following the implementation of the new relationship will be underpinned by governance arrangements which will jointly be administered by the UK and the EU.

This short paper sets out the governance arrangements which will underpin the operation of the Withdrawal Agreement along with examining the governance arrangements the EU has in place to service both the EEA Agreement and the EU-Ukraine Association Agreement.

The following SPICe Briefings informed the writing of this paper:

- [The UK's Departure from the European Union - An overview of the Withdrawal Agreement](#)
- [The UK's Departure from the European Union - An overview of the Political Declaration](#)
- [European Economic Area Membership](#)
- [If the Withdrawal Agreement receives the consent of the House of Commons a transition period until the end of 2020 will follow during which the UK will continue to transpose and implement EU legislation. The paper also sets out how the UK and Scottish Parliaments currently engage with EU processes as these will continue to be relevant both in the event of a transition period and as the future relationship develops.](#)
- [The paper also sets out Scottish and UK representation in Brussels and in EU member state capitals. These representations will play a key role both during the transition period and as the future relationship develops.](#)

The Governance Arrangements set out in the draft Withdrawal Agreement

The draft Withdrawal Agreement includes various governance arrangements which will oversee operation of the Agreement. These governance arrangements include representatives from the UK and the EU and are set out in the table below.

Joint Committee

Title II of the Agreement establishes a Joint Committee which will be responsible for the implementation and application of the Agreement. The Joint Committee will be composed of representatives of the EU and of the UK.

Title II also sets out how the Joint Committee will operate. It will be co-chaired by both sides.

In terms of the operation of the Joint Committee, the Agreement states that either the UK or the EU may refer to the Joint Committee any issue relating to the functioning of the Withdrawal Agreement. The Joint Committee will then be empowered to make decisions and recommendations by mutual consent. The Agreement does not address what mutual consent within the Joint Committee means in practice.

The Joint Committee will meet at least once a year or by request of either the EU or the UK.

Beneath the Joint Committee, the Agreement includes provision for 6 sub-committees:

1. the Committee on citizens' rights
2. the Committee on the other separation provisions
3. the Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland
4. the Committee on issues related to the implementation of the Protocol relating to the Sovereign Base Areas in Cyprus
5. the Committee on issues related to the implementation of the Protocol on Gibraltar; and
6. the Committee on the financial provisions

The sub-committees are required to report to the Joint Committee both ahead of and following meetings. Further sub-committees can be established if deemed necessary.

Under the Agreement, the Joint Committee will have the power to adopt decisions in respect of all matters for which the Agreement provides and to make appropriate recommendations to the EU and the UK. Any decision adopted by the Joint Committee will be binding on the EU and the UK and so must be implemented. Decisions will have the same legal effect as the Withdrawal Agreement.

Annex VIII of the Agreement provides the rules of procedure for the Joint Committee and sub-committees.

Initially, any dispute under the Withdrawal Agreement will be referred to the Joint Committee for further discussions. If after three months no agreement is reached, the

Agreement includes a mechanism to establish an independent arbitration panel to rule on the dispute.

Title III of the Agreement sets out provisions for dispute settlement regarding the interpretation and application of the Withdrawal Agreement after the end of the transition period.

The arbitration panel will be composed of five people, with two members proposed by the EU and two members proposed by the UK along with a chairperson who shall be selected by consensus by the four members of the panel.

Ahead of the end of the transition period, the EU and the UK must agree on a 25-person list of potential candidates to serve on an arbitration panel if necessary.

The Political Declaration on the future relationship states that the precise institutional and legal form of any future agreement will be based upon is at this stage undetermined. However, it is proposed that management and supervision of the future relationship is envisaged through the creation of a Joint Committee. This approach closely mirrors the proposal for a Joint Committee to manage the Withdrawal Agreement.

The Political Declaration also sets out the ways in which discussions and political dialogue would take place suggesting meetings at summit, ministerial and technical level as well as at parliamentary level. There is no detail beyond this description though the arrangements set out to govern the EEA Agreement and the EU-Ukraine Association Agreement provide an indication of what might be possible.

The Governance Arrangements set out in the EEA Agreement

The European Economic Area (EEA) is currently made up of the 28 EU Member States and three other countries, Norway, Iceland and Lichtenstein (three of the four EFTA countries). All EEA countries are part of the Single Market; however, non-EU EEA countries (Norway, Iceland and Lichtenstein) are not part of the EU Customs Union. Norway, Iceland and Lichtenstein have an independent trade policy, which means they negotiate their own trade agreements outside the EEA.

The EEA has a number of institutions to manage its operation. The joint EEA machinery consists of the EEA Council and the EEA Joint Committee at Governmental level and the EEA Joint Parliamentary Committee and the EEA Consultative Committee at legislative level.

The EEA Council

The EEA Council generally meets twice a year. Its role is to provide the political leadership for the EEA. The EEA-EFTA States are represented in the EEA Council by their respective foreign ministers whilst the EU is represented by the rotating Council Presidency.

The Presidency of the EEA Council alternates between the EU and the EEA-EFTA side.

The EEA Joint Committee

The EEA Joint Committee is responsible for the management of the EEA Agreement and typically meets six to eight times a year. It is a forum in which views are exchanged and decisions are taken by consensus to incorporate EU legislation into the EEA Agreement.

The Joint Committee consists of the EEA-EFTA ambassadors to the EU alongside the European Commission's External Action Service.

Four subcommittees assist the Joint Committee (on the free movement of goods; the free movement of capital and services including company law; the free movement of persons; and horizontal and flanking policies). Numerous expert and working groups report to these subcommittees.

The EEA Joint Parliamentary Committee

The EEA Joint Parliamentary Committee is an advisory body that comprises members of the national parliaments of the EEA-EFTA States and Members of the European Parliament (MEPs). It is not directly involved in the EEA decision-making process but, through reports and resolutions, it aims to monitor and scrutinise EEA-relevant EU policies and decisions adopted in the EEA Joint Committee.

The EEA Consultative Committee

The EEA Consultative Committee is an advisory body made up of members of the EFTA Consultative Committee and the European Economic and Social Committee. The Committee works to strengthen contacts between the social partners on both sides and to cooperate in an organised and regular manner to enhance awareness of and provide input on the economic and social aspects of the EEA.

The EEA Consultative Committee meets once a year and adopts resolutions on areas of priority.

Judicial Enforcement of the EEA Agreement

Membership of the EEA requires a judicial enforcement system for the agreement. The EEA Agreement incorporates a two-pillar system of supervision where EU Member States are supervised by the European Commission; while the participating EFTA States are supervised by the EFTA Surveillance Authority. Enforcement is undertaken for the EFTA states by the EFTA Court.

The EFTA Surveillance Authority (ESA) monitors compliance with the EEA Agreement in Iceland, Liechtenstein and Norway.

The ESA is independent of the EEA-EFTA States and its role is to safeguard the rights of individuals and undertakings under the EEA Agreement. It does this by ensuring free movement, fair competition and control of state aid. The ESA's role mirrors the role of the European Commission within the EU.

The EFTA Court fulfils the judicial function within the EFTA system, interpreting the EEA Agreement with regard to the EFTA States participation in the Agreement.

The Governance Arrangements set out in the EU-Ukraine Association Agreement

Based on the content of the Political Declaration on the Future Relationship, the UK's future relationship with the EU would most closely resemble the EU's Association Agreement with Ukraine.

The Association Agreement with Ukraine is built on four pillars:

- Deep and Comprehensive Free Trade Area (DCFTA)
- internal security,
- co-operation in foreign policy and defence and
- thematic co-operation, for example on cross-border research and innovation projects.

The Governance arrangements for the EU-Ukraine Association Agreement are as follows:².

- At the top level, the EU-Ukraine Summit will be established: The Summit will present the highest level of political dialogue and will be a platform for meetings between Presidents.
- At ministerial level, the dialogue will be conducted within the Association Council which could meet in any configuration. The Association Council will have the power to take binding decisions.
- The Association Council will be assisted in the performance of its duties by an Association Committee. The Association Committee will create Subcommittees to implement sector cooperation. Meeting in a special format, the Association Committee will address the specific DCFTA issues.
- The Association Agreement also foresees a parliamentary dimension, notably by establishing a Parliamentary Association Committee. It will be a forum for Members of the European Parliament and the Parliament of Ukraine to meet and exchange views.
- Another important element of the Association Agreement is the promotion of regular civil society meetings. Hence, a dedicated Civil Society Platform will be established. The Platform will be able to make recommendations to the Association Council.

The Association Agreement also sets out a Dispute Settlement Mechanism. This mechanism would come into effect if obligations under the Association Agreement are not fulfilled by one of the Agreement Parties. For the DCFTA part, another binding trade specific Dispute Settlement Mechanism is set out in form of a dedicated protocol. This trade specific mechanism is inspired by traditional WTO dispute settlement mechanism.

²https://eeas.europa.eu/sites/eeas/files/071215_eu-ukraine_association_agreement.pdf

How the UK and Scottish Parliaments currently engage with EU processes

Both during any transition period and under the future relationship, it's likely that the UK and Scottish Parliaments will wish to continue to engage with EU processes and in particular, the legislative process.

Both Parliaments current responsibilities with regards to the EU can be summarised as:

- Scrutinising EU draft legislation and other EU documents.
- Changing UK law to reflect agreed EU legislation and treaties.
- Holding the relevant government to account on its EU policies and negotiating positions in the EU institutions.

These responsibilities will continue during any transition period and possible beyond that depending on the nature of the future relationship.

The Scottish Parliament's engagement with the EU has focussed on developments outlined in the annual European Commission Work Programme. This results in the Parliament publishing its European priorities each year, [the most recent report was published in May 2018](#).

The UK Parliament scrutinises all EU legislation and documents in the House of Commons Scrutiny Committee whilst the House of Lords European Union Committee looks at fewer EU documents it carries out detailed reviews on subjects selected for their general importance³.

Parliamentary networks in the EU

The European Parliament instigates cooperation with Member State parliaments. This takes the following forms⁴:

- The presidents, or speakers, of each national parliament and the European Parliament meet every year and identify the broad guidelines for this cooperation.
- The EU affairs committees of the national parliaments and MEPs meet regularly in the Conference of Parliamentary Committees for European Union Affairs (COSAC).

Scottish and UK representation in Brussels and in EU member state capitals

Within the European Union, the Scottish Government currently has five offices. These are:

- Scottish Government European Union Office
- Berlin Hub
- London Hub

³ <https://www.parliament.uk/about/how/role/relations-with-other-institutions/europe/>

⁴ <http://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/national-parliaments>

- Dublin Hub
- Paris Hub

The aim of the European Union office is to provide:

“support to Scottish Ministers travelling to Brussels to participate in European Council meetings, to meet with the European Commission or the European Parliament, as well as monitoring developments in EU institutions and feeding this in to colleagues in Scotland.”⁵

According to the Scottish Government, the aim of hubs is to “provide a platform for collaborative activity to increase exports and attract investment to Scotland”⁶. The Hubs also cover broader economic opportunities, including:

- promoting Scotland's research, innovation, industrial, social and cultural strengths
- building diplomatic government-to-government relations
- pursuing cultural collaborations
- exploring collaborative research and innovation opportunities

The UK Government’s representations within the European Union are made up of the UK Representation to the European Union (UKRep) based in Brussels and the network of embassies in all 27 EU Member States.

According to the UK Government:

“The UK Permanent Representation to the EU represents the UK in negotiations that take place in the EU. UKRep ensures the UK’s interests are promoted and explained to other Member States and the EU Institutions on the whole range of EU business.”⁷

Iain McIver

SPICe Research

⁵ <https://www.gov.scot/policies/international-relations/international-offices/>

⁶ <https://www.gov.scot/policies/europe/innovation-and-investment-hubs/>

⁷ <https://www.gov.uk/world/organisations/uk-representation-to-the-eu>

Culture, Tourism, Europe and External Affairs Committee

8th Meeting, 2019 (Session 5) Thursday 14 March 2019

Local Commercial Radio

Note by the Clerk

Background

1. At the Committee meeting on 28 February 2019, Members requested an evidence session on Global Radio following the announcement outlined below.
2. On 26 February 2019 Global Radio announced that they would be reducing local programming across their stations Capital, Heart and Smooth.
3. The decision will reduce the number of breakfast shows being broadcast across Capital from 14 to one; across Heart from 22 to one; and across Smooth from seven to one. Local drivetime programming will be also be reduced across the UK on all three stations including: from 14 to nine on Capital; from 23 to 10 on Heart. All local and regional weekend programming will end.
4. In Scotland, Capital, Heart and Smooth will broadcast the new UK-wide breakfast show and lose regional weekend programming, although Global will produce and broadcast regular news bulletins throughout weekdays.
5. Drivetime shows (4pm – 7pm) will be the only local and regional programming broadcast on Capital Scotland, Heart Scotland and Smooth Scotland.
6. Capital Scotland will be the first to end regional breakfast programming, broadcasting their UK-wide breakfast show from 8 April.
7. A written submission has been received from Ofcom, which is in **Annexe A**.

Purpose

8. The Committee will take evidence from:
 - Corrie Martin, News Editor, Regions, Global Radio
 - Will Harding, Chief Strategy Officer, Global Radio

**Gemma Cheek
Committee Assistant
CTEEA Committee
11 March 2019**



Culture, Tourism, Europe and External Affairs Committee – Thursday 14 March

Written Submission from Ofcom

Ofcom is the communications regulator in the UK. We regulate the TV, radio and video-on-demand sectors, fixed-line telecoms (phones), mobiles and postal services, plus the airwaves over which wireless devices operate. Our main duties include ensuring that the UK has a wide range of electronic communications services, including high-speed services such as broadband.

This document is our submission to the Culture, Tourism, Europe and External Affairs Committee in response to its request for evidence of 4 March 2019. It is in relation to Global Radio's recent announcement to launch UK-wide national breakfast shows on Capital, Heart and Smooth.

While this was a purely commercial decision by Global Radio, it was made possible by a change in October 2018 to Ofcom's Localness guidelines on how local commercial analogue radio licensees meet the statutory requirements for locally-made programmes. This paper provides an overview of this change, as well as Ofcom's decision on 4 March 2019 regarding 'approved areas' in Scotland and Wales.

Ofcom's duties

The Broadcasting Act 1990 places a general duty on Ofcom regarding local analogue (FM and AM) commercial radio, and a specific duty regarding each local service that we license. The general duty is that we must do all we can to secure the provision of a range and diversity of local services.¹ The specific duty is that when we run a competitive licence award process and select the winner, the licence we issue for the winner must contain appropriate conditions to secure that the character of the service, as proposed by the licence holder when making his application, is maintained during the licence period.²

In addition to these duties, Ofcom is also required by law³ to carry out our functions relating to local services in the manner that we consider is best calculated to secure that local analogue commercial radio stations provide:

- programmes consisting of or including local material; and
- locally-made programmes

to the extent (if any) that Ofcom considers appropriate, and to provide guidance as to how these statutory requirements should be met. 'Locally-made programmes' are defined in the legislation as

¹ Section 85(2)(b), Broadcasting Act 1990

² Section 106(1), Broadcasting Act 1990

³ Section 314, Communications Act 2003

programmes which are “made wholly or partly at premises in the area or locality for which that service is provided or, if there is an approved area for the programmes, that area.”

The Localness guidelines relating to locally-made programming

Prior to the change in October 2018, Ofcom’s Localness guidelines were last substantially revised in 2010. The guidelines in place between 2010-2018 set out the following minimum expectations for FM local stations regarding the volume of locally-made programmes that various types of services should provide on weekdays:

- a minimum of 10 hours of locally-made programming between 6am and 7pm (and this must include the breakfast show) if they are providing local news at least hourly at peak-times (breakfast and afternoon drivetime), or;
- a minimum of 7 hours of locally-made programming between 6am and 7pm (and this must include the breakfast show) if they are providing local news at least hourly throughout the same period.

Given the changes in competition (such as the increased use of streaming services such as Spotify and Apple Music) and listening habits (such as the growth of listening to digital radio) across the radio sector during this period, as well as other contextual factors such as the UK Government’s intention to press ahead with proposals for amending commercial radio’s regulatory framework⁴, Ofcom commissioned new research and in light of this research, subsequently launched a consultation on amendments to the localness guidelines in June 2018.⁵

The June 2018 consultation document outlined proposals to amend the Localness guidance regarding the minimum number of hours expected of local FM stations on weekdays to the following:

- a minimum of 6 hours of locally-made programming between 6am and 7pm if they are providing local news at least hourly at peak-times (breakfast and afternoon drivetime), or;
- a minimum of 3 hours of locally-made programming between 6am and 7pm if they are providing local news at least hourly throughout the same period.

The June 2018 consultation was open for six weeks and generated responses from a range of stakeholders across the radio sector, policy makers and the wider public.⁶ Having considered the range of views put forward by respondents, Ofcom adopted the proposals outlined above.⁷

Importantly, although these amendments give stations the flexibility to provide less locally-made programming than was the case under our previous guidelines, and for that locally-made programming to be made further from the area the station broadcasts to, we have clarified our expectations regarding the types and amount of local material that a local station should deliver.⁸ This

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/668926/Commercial_radio_deregulation_Government_response_final.pdf

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0012/115113/consultation-localness-radio.pdf

⁶ Responses available at <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-localness-commercial-radio?showall=1>

⁷https://www.ofcom.org.uk/_data/assets/pdf_file/0019/124435/statement-further-consultation-localness-commercial-radio.pdf

⁸ The revised Localness guidelines provide detail around what local material is and the provision of local news, as found at <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness>

means that listeners should still expect a locally-relevant service, irrespective of where the programmes are broadcast from.

The Localness guidelines in relation to approved areas

Ofcom has also now published on 4 March 2019 a further statement on ‘approved areas’ (i.e. where stations must broadcast their required local hours from) in Scotland and Wales.⁹ The Committee may be interested in this for further context despite it not being directly relevant to Global Radio’s decision.

The March 2019 statement confirmed our decision to approve two areas in Scotland (northern Scotland and southern Scotland) as well as all of Wales as a single approved area. These areas were first proposed in our initial consultation of June 2018 and were adopted following a second period of consultation across October and November 2018.

Alongside the changes to the Localness guidance regarding locally-made programming, this will give local commercial analogue radio stations in Scotland greater flexibility over where they make their required hours of ‘locally-made’ programmes and should strengthen their ability to deliver a service which is relevant to the local area they broadcast to.

Ofcom

11 March 2019

⁹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/guidelines-localness-commercial-radio>