



# Scottish Greens Brexit Position Paper: Preparing for Impact

Published September 2017

# Summary

In June 2016, Scotland voted to remain a member of the European Union (EU). The UK Government however, is committed to pressing ahead with exiting the EU without regard to the outcome of the vote in Scotland.

Calls to allow a differentiated solution which would permit Scotland to maintain a closer relationship with the EU have been rejected by the UK Government, as have calls for an independence referendum that would allow people in Scotland the option to choose to remain a member of the EU as an independent state.

The Scottish Greens maintain the position that we should have as close a relationship as possible with the EU, ideally as an independent state with full EU membership or, as a minimum, through UK or Scottish participation in the single market via European Economic Area (EEA) membership.

However, as it is clear that the UK Government is intent on pursuing a 'hard Brexit', this position paper sets out Scottish Green position on our priorities relating to leaving the EU in the circumstances we find ourselves in.

We believe that the current legislation to remove us from the EU constitutes a power-grab by UK Ministers. It must be changed to:

- Uphold and enhance our existing rights
- Create democratic safeguards
- Protect devolution

Hard Brexit is dangerous and damaging, but to prepare, Scotland must:

- Argue for immigration to be devolved to protect the rights of EU citizens and third country nationals
- Protect and enhance workers' rights
- Replace and strengthen the environmental safeguards we will lose

These priorities reflect the issues the Scottish Greens believe to be at significant risk from the Conservative's approach to Brexit. As the process of leaving the EU continues to develop, further updates will be issued.

# EU Withdrawal Bill

The EU (Withdrawal) Bill, also known as the 'Repeal Bill', raises serious concerns with regards to basic parliamentary democracy in its current form. The bill constitutes a power-grab by UK Ministers which would permit them the use of far-reaching powers and the ability to rule at their discretion with minimal democratic oversight. The Scottish Greens are opposed to the proposed Repeal Bill and will vote to withhold legislative consent when the Bill comes to the Scottish Parliament for approval unless it is significantly improved. Key concerns include:

## Charter of Fundamental Rights

The UK Government has proposed not to transpose the Charter into domestic law when the UK exits the EU. This decision undermines protections against violations of basic rights post-Brexit. The EU Charter covers a considerably broader array of basic rights than the UK's current domestic rights laws enshrined in the Human Rights Act, which implements the European Convention on Human Rights. This includes rights relevant to more recent technological advancements, such as the right to protection of personal data, and social and economic rights, such as the right to collective bargaining and the right to fair and just working conditions.

### Greens say

As a minimum, the UK must retain the Charter of Fundamental Rights to ensure that all changes to retained EU law remain compatible with rights guarantees. The Charter of Fundamental Rights must also be expanded beyond retained EU law and incorporated into Scots law to provide enhanced domestic protections beyond the remit of retained EU law.

## Powers to Legislate by Regulation

The Repeal Bill grants Ministers powers to legislate by regulation, the so-called 'Henry VIII powers'. These are far too extensive and do not allow for Ministers to be held to account by Parliament. In particular, the default use of the negative procedure (whereby regulations can be enacted without a parliamentary vote), the 'urgency' provisions (which allow for regulations to be enacted without even informing Parliament), and the absence of any further accountability mechanisms are unacceptable in light of the unique scale of the changes that will be brought about by leaving the EU.

### Greens say

The Bill must be amended to change the default option for statutory instruments to the affirmative procedure, with the negative procedure used only in instances of very minor changes such as removing defunct references to EU law.

The provisions on urgent matters which permit regulations to be made without informing Parliament must be removed. Further, provisions allowing for an emergency brake that would permit Parliament to suspend the Ministerial power to make regulations under the Repeal Bill if an abuse of procedures is believed to have taken place must be added.

Green MSPs want the Scottish Government to agree that it will not replicate this lack of democracy, and agree to a Terms of Reference which ensures any decisions prompted by EU withdrawal are fully accountable to the Scottish Parliament.

## Devolution

The Bill allows areas of devolved competence to be amended by UK Ministers without the consent of the Scottish Parliament. It also imposes new requirements to conform with Westminster on areas of retained EU law that are not reserved under the Scotland Act 1998. These aspects of the Bill undermine devolution and fundamentally alter the constitutional settlement in the UK.

### Greens say

The Bill must be amended to remove the possibility of UK Ministers acting in areas of devolved competence without the consent of the Scottish Parliament.

All areas of law currently under the remit of the EU that are not covered under Schedule 5 of the Scotland Act must be devolved to Scotland.



# EU Citizens and Free Movement

Free movement throughout the EU (and EEA) has enriched Scotland socially, culturally, and economically. Historic emigration of Scottish born people and an aging population mean that Scotland is particularly reliant on migration in comparison to other nations within the UK. It is important that all those who have chosen to live here feel welcome and at home in Scotland.

The UK Government's current position on EU citizens undermines basic rights and falls short of the basic standards the Scottish Greens consider acceptable. This is largely due to the UK Government's intention to apply the UK's current domestic rules for external, non-EU migration to EU citizens. Examples of these rules include discriminatory minimum income thresholds for family unification, a restrictive definition of family members which does not account for actual relationships, prohibitively expensive fees for visas designed turn a profit for the Home Office, and restrictions imposed even on those actually granted indefinite leave to remain.

## Greens say

In line with our policy on the single market, the Scottish Greens believe that free movement should continue.

All EU citizens present in the UK on the date of Brexit should be allowed to remain and enjoy the same rights as they currently do, including for family unification. Confirmation of this should be made without delay, far ahead of the withdrawal date.

## Greens say

Leaving the EU must be used as an opportunity to bring fairness and equality into the entire migration framework. Migration (and asylum) policy should be devolved to the Scottish Parliament to achieve this and to prevent the UK Government from adopting harsh measures targeted at migrants in Scotland, including through the extensive executive powers they intend to create through the EU (Withdrawal) Bill.

Any devolved immigration system should immediately remove the punitive measures listed above and instead function based on the recognition that free movement of people is essential and of considerable benefit to Scotland, both economically and culturally.



# Workers' Rights

EU activity around workers' rights and employment protection has generally been restricted to providing a floor of minimum standards across the EU.

However, as the UK has amongst the weakest labour regulations in the EU, European laws have often acted to underpin positive developments in the UK.

Rules on fixed-term work, part-time work, agency workers, outsourced workers, holiday time, working time and breaks, collective dismissals, equal pay, and health and safety are all underpinned by EU law. Successive UK Governments have been openly hostile to many of these labour standards for interfering with the ability of businesses to adopt a US-style hire-and-fire culture.

Whilst EU laws have acted to improve domestic UK standards, they are still to a low standard and have, on occasion, instead acted as a barrier to higher standards. One such example is the European Court of Justice case-law that has prioritised the freedom of movement of services over the ability of states to impose higher standards in public procurement than the minimum standards provided for in EU law (the *Laval*, *Rüffert*, and *Luxembourg* cases). These decisions have had a domestic impact; the Scottish Government has stated that it cannot require companies bidding for public sector contracts to pay the living wage.

## Greens say

Competence over labour regulation must be devolved to Scotland to allow the Scottish Parliament to protect and improve existing standards on workers' rights. The Scottish Greens will oppose any efforts to weaken workers' rights in the UK.

## Greens say

Leaving the EU must be used to raise employment standards where possible. As a devolved area, public procurement rules can be used to ensure that contractors adopt high working standards. This would mean strengthening the Scottish Government's guidance on fair work practices to add a requirement that those delivering public services and works adopt high standards, including payment of the living wage and use of secure employment contracts over zero-hour or fixed-term contracts.



# Environmental Protections

The EU is a key source of many environmental protections in Scotland, both in terms of legislation and institutional framework. It addresses issues including air quality, conservation of natural habitats and wildlife, water quality and waste, and marine planning and fisheries.

EU law also incorporates the precautionary principle that requires public authorities to take a preventative approach to decisions where there is a risk of environmental damage occurring. The EU institutions, including the Commission, and the European Court of Justice, and specialist agencies such as the European Environmental Agency, all contribute towards a robust framework by providing monitoring, data gathering, and enforcement functions.

The EU also provides the framework for the Common Agricultural Policy and Common Fisheries Policy. Both of these policies provide vital protections for common resources and opportunities to deliver more for society and the environment. As these policy areas are not reserved under the Scotland Act, powers over them must be transferred to Scotland upon leaving the EU.

## Greens say

All current EU standards on the environmental must be incorporated into domestic law and must not be weakened as a result of leaving the EU. As these environmental matters are not reserved under Schedule 5 of the Scotland Act, powers in this area must be devolved to the Scottish Parliament.

Functions carried out by EU institutions must be transferred to relevant domestic authorities, such as the Scottish Environmental Protection Agency, along with sufficient funding to allow them to carry out these roles effectively.

Scotland must establish a new Environmental Court to replace the functions currently fulfilled by the European Court of Justice and a new Environment Commissioner with powers to hold the government to account on its environmental commitments.

## Greens say

Scottish fisheries policy after Brexit must improve existing protections for sustainability and tackle long standing inequalities in the quota system. Fisheries policy must be science-led and place respect for ecosystems at its heart. Scottish marine protection must also deliver sustainable use of our waters. Our protected areas must deliver diverse ecosystems and be backed up by effective monitoring and sanctions for those who deliberately harm the environment.

Agriculture and rural development policies after Brexit must facilitate a just transition to a fair, healthy and sustainable food system. The system of agricultural subsidies which replaces the EU Common Agricultural Policy must be designed to support a change towards sustainable farming and be clearly tied to the delivery of public benefits such as rural jobs, food sovereignty, water management, biodiversity and carbon sequestration.

