Brexit and planning

What are the implications of Brexit for planning in England? Janice Morphet explores

Following the UK referendum that voted to leave the EU, it is worth considering what the implications for planning might be in the event that Article 50 is triggered and leave negotiations commence. As the UK has been advised by the EU, there would be two stages in this process. The first would be the terms of exit and the second would be to negotiate future trading arrangements. These negotiations will be held consecutively rather than simultaneously. At the end of the exit stage, English would then no longer be an official EU language which would probably mean that all EU documents would revert to being published in French as before 1992.

This short note has been written to advise National Planning Forum members on the alternative options that might be pursued and how these have varied implications for planning. It is also important to note that this is an evolving situation and that more options and considerations may emerge over time. The note firstly considers which policies the UK has pooled within the EU and the ways in which these shape the legislative framework, implementation tools and delivery programme. The note then continues to review a range of options for the UK that have been mentioned in the Brexit referendum campaign and how each of these might influence the planning system. There is also a table that provides an opportunity to compare the alternatives.

What policies and powers has the UK pooled within the UK that have an influence on planning?

Since its inception the European Community and, later after 1992, the European Union has operated through the development of pooled powers between the member states. These have been developed through common principles, policies and programmes that are delivered through legislation and other forms of agreement. The EU has a different legal culture from the UK. The EU adopts a cumulative approach to legislation, signified by the 'whereas' clauses at the beginning of every formal document, compared with the UK that maintains a five- year episodic model where each Parliament is taken individually. Although the difference in cultural institutional practice has been difficult for the UK to accommodate, it has always fully participated in EU negotiations and agreements of policy and legislation although this has not been reported formally through Parliament or through the media, unlike other member states.

The dominant model of institutional practice within the EU is through the adoption of key principles through agreements and treaties that are then applied through subsequent legislative and implementation programmes. The legal tools are primarily directives and regulations. Directives are implemented by member states in their own legislation within an agreed timescale. Regulations are implemented by member states at the point of agreement, in the words as written and do not have to be approved by member state Parliaments. There are other forms of agreement including the use of Administrative Space, the Open Method of Coordination and informal ministerial agreements. The legislative framework, including disputes and non-compliance, are set within judgements made by the European Courts of Justice (ECJ). EU projects and programmes are funded though the European Investment Bank (EIB) to which member states and their public bodies including local authorities also have access for capital projects.

Economic Policy

Within the EU treaties (primarily Rome, Maastricht and Lisbon), the economic focus is pre-eminent and is expressed through the overarching principles of economic and social cohesion. This is primarily expressed through structural funds programmes and membership of the Single Market introduced in 1992. Over time and through negotiated agreements (that the UK has fully participated in) the EU is now responsible for the macro-prudential policy of its member states. In the exercise of this policy, the European Commission (EC) makes judgements on member state economies, advised by the OECD, IMF and World Bank. Since the economic crisis in 2007, the EU has adopted an economic policy programme Europe 2020 and the progress of each member state towards achieving a sound economy is assessed every six months after which recommendations are made. Since Europe 2020, the UK has consistently been recommended to improve its performance on infrastructure delivery, housing market reform, planning regulation and young peoples' skills. These four recommendations are also consistent with the judgements on the UK's economy made by the IMF and OECD in the same period.

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Other pooled policies

The UK has pooled a range of policies within the EU since its membership in 1972. These have primarily been generated by the single market and are located in the principles of free movement of capital, good, services and people. The policies that have been pooled are listed below. Most, UK legislation on these policies is that agreed within with EU:

- Transport – all modes and scales
- Energy
- Water
- Air
- Habitats
- Waste
- Ports
- Rural/agriculture
- Public health
- Culture/heritage
- Regeneration policy
- R and D

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- Higher education
- Telecommunications
- Economic infrastructure including housing

Each of these policies is operated through legal frameworks and then delivery programmes that are directed towards improving standards for specific issues such air quality or energy consumption or by improving economic and social cohesion through locational competitiveness aided by investment in transport or research and development. Increasingly these programmes are being drawn together in more integrated ways and operate through tiers of government. For example in transport, the Trans European Networks (TEN-T) programme is designed to improve access for goods and people across the EU's area and this is supplemented by Sustainable Urban Mobility Plans (SUMP) within city regions that link to the networks and improve other objective environmental standards.

Sectoral programmes have also been developed in isolation but in 2013, through a new Cohesion Regulation, they have been brought together at the sub-state level. For the first time transport, energy, R and D, rural, ports, urban, maritime, environment, economic regeneration and poverty programmes and funding have been brought together. In England these are delivered through local growth deals and projects and programme delivery is already exercised by the Mayor of London. They were anticipated to be taken on by the mayors of the new combined authorities when they are elected in 2017 and onwards.

For spatial planning, the UK disputed the EC's role and powers in 1992 at the outset of the work on the European Spatial Development Perspective (ESDP). Following its adoption in 1999, the ESDP has had an informal status and been used across Europe. At the same time the EC introduced new mega regional areas as part of its wider cohesion policy including the Atlantic Arc and North Sea region. These again were informal but supported through funding. Lastly, through the single market, a compendium of planning systems in each member state was prepared.

The position of spatial planning has changed since the adoption of the Lisbon Treaty in 2007, when territory was added to the principles of economic and social cohesion. Since then there has been a slowly developing approach to consider the ways in which the territory of the EU should be added into its policies. There was a report on the Territorial Agenda as part of Europe 2020 and more recently (May 2016), the Urban Pact has been adopted that includes explicit commitments to review and develop policy on spatial planning. This is being accompanied by a new spatial planning compendium and development of the scenario planning across the EU that will result in a revised ESDP, that is likely to be linked with the new EU infrastructure investment programme launched in 2014. The UK has been a major user of this investment programme. This will develop and supplement the TEN-T and TEN-E (energy) programmes.. The mega regional programmes and policies have been developed individually and formally adopted as part of the EU's legal framework with the Baltic Sea, the Adriatic, the Danube and the Alps agreed and more expected. These are multi level contracts where the objectives for the regions are formally enshrined within the EU.

Treaty agreements where EU acts to ensure compliance

There are also some treaties and agreements that the UK has made with other bodies such as the World Trade Organization where the EU now supervises their implementation for each of its member states. These include agriculture and competition. There may also be environmental obligations that continue through agreements with the UN and any agreements signed following Paris.

What are the implications when the UK triggers Article 50?

As shown on the table, the options post-leave are primarily related to the regulatory framework. All options other than remain remove access to legal frameworks, funding and project support including for major transport projects such as the A14, Northern rail hub and Crossrail and local transport schemes including integrated ticketing and rail improvements. The Cohesion programmes when ended will also remove local growth deals, rural development support, research and development funds and regeneration and skills support. Other programmes that are lost icnlude Horizon for science and Erasmus for student exchange.

A second less well defined set of consequences relate to the outlook for the economy and foreign investment that influence the confidence for development.

What are the options?

The European Economic Area (EEA): the 'Norway' Model

In the EEA or Norway model, the UK would have access to the Single Market in return for payment of a similar fee to that paid now and the adoption of the four freedoms for capital, good, services and labour. The UK would receive no rebate and no funding for infrastructure projects or cohesion. Other regulatory requirements through the WTO such as for agriculture and trade remain. Also the policies for aligning administrative boundaries with those of functional economic areas will continue as an OECD , IMF and World Bank policy.

Trade Agreements: Canada/Switzerland Model

In this model, the UK would agree trade terms with the EU for goods and services on the acceptance of EU regulations and payment of a fee. The Swiss model includes financial services and goods and is based on the acceptance of the four single market freedoms. The Canadian model is primarily focussed on specific goods rather than services and rests on the acceptance of the EU's regulations before there is access to its market. The UK would receive no rebate and no funding for infrastructure projects or cohesion. Other regulatory requirements through the WTO such as for agriculture and trade remain. Also the policies for aligning administrative boundaries with those of functional economic areas will continue as an OECD , IMF and World Bank policy.

The Free Trade Model

The UK would negotiate specific trade agreements with any other country and would do this within the WTO rules. It would have no access to existing trade agreements between the WTO, the EU and other countries. The UK would receive no rebate and no funding for infrastructure projects or cohesion. Other regulatory requirements through the WTO such as for agriculture and trade remain. Also the policies for aligning administrative boundaries with those of functional economic areas will continue as an OECD , IMF and World Bank policy.

The reverse Greenland model

Greenland is an autonomous territory within the Kingdom of Denmark and was a member of the EU between 1973-1982. Following a referendum, Greenland opted to change its status to that of an associated overseas territory within the EU. Greenland is eligible for specific funding from the EU's general budget through the EU-Greenland Partnership and the President of the Commission (on behalf of the EU), the Prime Minister of Denmark and the Greenland Premier signed on 19th March 2015 'an umbrella' framework document for the post-2013 EU-Greenland relations, a "Joint Declaration on relations between the European Union, on the one hand, and the Government of Greenland and the Government of Denmark, on the other".

This approach has been suggested as an option for the UK. It would not require the triggering of Article 50 and would allow Scotland, London, Northern Ireland and Gibraltar to remain within the EU and for other areas to have an associated status. It would then not have the land border issues on the island of Ireland or between England and Scotland should independence be pursued.

Remain

The UK remains a full member of the EU until at least two years after it triggers the exit process through Article 50.

How do these models reflect on the planning system? The implications of each of these positions on existing legislation, policy and programmes are shown on the table, RIGHT

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Examination of the Brexit options and their influence on planning

Policy/ legislative area	Current	Norway model	Canada / Switzerland model	Free trade model	Greenland option	
					in	out
Regulations and directives						
Free movement						
Payment						
rebate						
Informal agreements						
Infrastructure programmes TEN-T - legislation and funding						
TEN-E energy legislation and funding						
Cohesion programmes incl transport, regen, rural, ports, r and d, skills (frequently put in LEP growth deals)						
Access to EIB finance						
ESDP mark 2						
Urban Pact planning reg						
Single market			selective	selective		
Competition (WTO)						
Agricultural mkt regulation (WTO)						
Combined authorities (OECD)						
Pressure on planning reform, housing and infrastructure (IMF; OECD)						
Environment/ climate change (UN)						

Brexit and devolution

Time will show us whether the referendum marked the point at which London got some of the powers that its counter-parts in other countries take for granted says Ben Rogers

As has been widely observed, the EU referendum revealed a nation divided across many fault lines, including class, education and age, but also geography. The capital in particular showed the strongest vote to remain in the UK of any region or nation with some 60 per cent of Londoners voting to remain, compared to 51 per cent across the UK as a whole, and 41 per cent in the West Midlands – the most Europhobic region.

The Mayor of London and London business groups were quick to respond to the referendum and within a few days the Mayor had put out a statement arguing that the result boosted the case for giving more power to the capital: Speaking at business summit, Sadiq Khan urged the Government to "move fast" on devolution, and said "we can't hang around for the outcome of the negotiations before we give Londoners more control".

It has to be said that I am not quite convinced that this was the right time to be making the argument for devolving more power to the capital. After all, while the referendum result was ostensibly a vote against the EU it was also, surely, a vote against 'London' and the London based economic, political and economic establishments - the City, central government, and the metropolitans elites who run most of our national life. The UK, it should never be forgotten, has the greatest regional disparities of any OECD nation and remains, despite the devolutionary reforms of the Blair and, to a lesser extent Cameron governments, a relatively centalised state. Against this background, perhaps the first reaction of London should not have been to call for more control over its affairs, but to promise to redouble efforts to win over those millions of citizens who evidently feel alienated from the capital, its wealth, power and metropolitan values.

But perhaps the Mayor could reasonably respond that London government is not the same thing as the London establishment and that he wants other regions to and cities to be given more power too. This is not, Sadiq Khan might say, London making a grab for more of everything it already has, but London government calling for the decentralisation of power from Westminster and Whitehall to City Hall and the boroughs.

Timing aside, I find the Mayor's calls for further decentralisation of power, over taxes and services to London compelling. Cities like Paris and New York have far more control over their taxes and services than London does. As the 2013 London Finance Commission reported set out, a staggering 66 per cent of London's income comes from central government grant, compared with 30.9 per cent in New York, and only 7.7 per cent in Tokyo.

But will the Brexit vote lead to London getting more power? It is not obvious that it will. Over the next few years both Parliament and the Civil Service are likely to be absorbed in dealing with the fall-out from June's vote and striking a new deal with the EU. Moreover, if, as most economists predict, the economy weakens, the natural tendency of national government is likely to want to take a firmer grip on all the levers within its reach. It easy to imagine, in these circumstances, that calls for further devolution to London and other regions will fall on deaf ears.

But there are also arguments pointing the other way. First, many commentators and politicians have suggested that one of the reasons that so many English voters feel alienated from the political establishment, including the EU, is precisely because regional and city government is relatively weak. Scotland and Ireland, both with devolved government, voted to stay in the EU, and while

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Wales voted leave, the leave vote (52 per cent) was not as high as in many English regions. A second argument, and one likely to weigh more heavily with No 10 and the Treasury, is simply that further devolution, especially to London, could help boost the UK economy at a time when government will be desperate for growth. London and the broader South East make an outsized contribution to the UK's prosperity. Giving the Mayor and London government more power over taxes and services could ensure that the capital can develop funding arrangements and other policies tailor-made to the cities challenges. Giving London more power over property taxes, could for instance, allow it to invest more in housing and transport.

The next months and years will show us whether the referendum marked the point at which London got some of the powers that its counter-parts in other countries take for granted or whether central Government retained and even tightened its grip on its highly productive capital.

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