

International Agreements:

Implications for Wales

Agreements considered on 16
September 2019

Summary

The External Affairs and Additional Legislation Committee has adopted a procedure for considering the implications for Wales of international agreements signed by the UK Government.

Our focus is on identifying where agreements engage or affect areas of policy for which the National Assembly and Welsh Ministers are responsible.

Where this is this case, we consider whether the agreement needs to be drawn to the attention of the Assembly as a whole, through a report, or simply noted in committee papers.

On 16 September 2019, we considered eight agreements. Of those eight, we agreed to report on two agreements which are listed below.



Introduction

1. On 16 September 2019, we considered eight international agreements that have been signed recently by the UK Government.
2. The agreements considered were:
 - UK-Portugal treaty on reciprocal voting rights for local elections
 - UK-Luxembourg treaty on reciprocal voting rights for local elections
 - New and Amended Schedules to the Revised Agreement on Government Procurement as a result of Australia's accession
 - UK-Switzerland agreement on admission to the labour market for a temporary transitional period and the Free Movement of Persons Agreement
 - Agreement establishing the International Organisation of Vine and Wine
 - International Coffee Agreement 2007
 - International Sugar Agreement 1992
 - UK-Central America association agreement
3. We agreed to report on two of the agreements considered, to highlight concerns that have been raised around consultation with the devolved governments.
4. They are the:
 - UK-Portugal treaty on reciprocal voting rights for local elections
 - UK-Luxembourg treaty on reciprocal voting rights for local elections

1. UK-Portugal treaty on reciprocal voting rights for local elections

Background

5. The UK-Portugal treaty on reciprocal voting rights for local elections is an international treaty and was laid before Parliament on 4 July 2019.
6. The text of the agreement and associated explanatory materials published by the UK Government [are available online](#).

Legal assessment

Does the agreement engage the Assembly's competence?
Yes, the agreement engages the Assembly's competence.

Policy assessment

Are there policy implications for Wales?
Yes, as detailed under this section.

7. The [UK-Portugal: Agreement on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other](#) would allow British and Portuguese nationals to vote and stand for some elections in each other's countries.
8. While the UK is a member of the EU, UK citizens living in the EU27 are able under EU law to stand and vote in elections to the European Parliament, local and municipal government ([subject to a few exceptions](#)) in the EU Member State they live in. Similarly, EU27 citizens living in the UK are able to stand and vote in UK local elections and to stand and vote in the UK elections to the European Parliament. **However, this right under EU law will change at the point the UK leaves the EU** (as soon as the transition period starts in the case of a deal or on exit day if the UK leaves without a deal) – and clearly the UK will no longer hold elections to the European Parliament.

9. The electorate for Assembly elections is (under section 12 of GoWA 2006) the local government franchise. EU citizens resident in Wales are therefore entitled to vote in both devolved elections. The local government franchise is set out in section 2 of the Representation of the People Act 1983 (“the 1983 Act”) and not in EU legislation. The right to vote in Assembly and Welsh local government elections will therefore continue unless it is amended. Legislative competence to amend the franchise for devolved elections rests with the Assembly following the Wales Act 2017.
10. The Explanatory Memorandum to the agreement highlights that the UK pushed for reciprocal voting rights for local and municipal elections in withdrawal negotiations, but was unable to secure these in the Withdrawal Agreement. Therefore, the ability of UK nationals living within the EU27 to continue to be able to vote and stand in local and municipal elections will depend on the electoral rules of the EU Member State in which they live. The Explanatory Memorandum goes on to state that the UK Government will seek to agree bilateral deals with EU Member States where possible to secure voting rights for the future.
11. There are around 26,000 UK nationals living in Portugal. The UK Government therefore negotiated this bilateral treaty with Portugal in order to address the concerns expressed by these UK nationals around their future rights, through securing the right to vote in local elections as well as to stand as candidates in local elections.
12. Article 3 of the Agreement sets out **the entitlement of Portuguese nationals living in the UK to vote and stand in UK local elections**. Portuguese nationals who are legally resident in the UK will have the right to vote and stand as candidates in UK local elections subject to the same conditions as UK nationals. This maintains the status quo.
13. Article 4 of the agreement sets out **the entitlement of UK nationals living in Portugal to vote and stand in municipal elections in Portugal**. UK nationals who are legally resident in Portugal will have the right to vote and stand as candidates in local elections in Portugal subject to the same conditions as Portuguese nationals. To vote in Portuguese local elections, UK nationals must have a valid residence permit, have been a legal resident in Portugal for at least 3 years, and be registered in the Portuguese Electoral Census having been enrolled in the Parish of the area of residence set out in their residence permit. To stand and be elected in a Portuguese local election, UK nationals must have been a legal resident of Portugal for at least five years, and not be ineligible to vote.

- 14.** Article 8 of the agreement sets out the **arrangements for modification of the agreement**. The agreement may be modified by written agreement between the UK and Portugal, and any amendment will enter into force 10 calendar days after the Parties notify each other that internal procedures for their entry into force have been completed.
- 15.** Article 9 states that **either party may terminate the agreement in writing or via diplomatic channels**, and that termination will take place 60 calendar days after the other country receives the notification. Should this happen, mandates of UK or Portuguese nationals elected in the host country will continue until either the next election or mandates are terminated under conditions provided by the law for the country's own nationals.

Involvement of the devolved administrations

- 16.** The Explanatory Memorandum states that the UK Government wrote to the devolved administrations and the Northern Ireland political parties to inform them of the approach to pursue voting agreements bilaterally. The Department for Exiting the EU updated the devolved administrations on voting rights progress through fortnightly calls and shared the legal text of the treaties. **However, unlike the agreement between the UK and Spain the Explanatory Memorandum does not say that the devolved administrations were content with the UK Government's approach.**
- 17.** The First Minister wrote to the Llywydd on 3 July highlighting his concerns around the modification arrangements in the UK's reciprocal voting agreements with individual EU Member States. His letter stated that the UK Government is constraining the devolved administrations' legislative and executive competence, as a future Assembly would be unable to legislate to remove the franchise from such citizens. While the Welsh Government supports the policy position in the agreements, as these will ensure the continuation of the franchise for local government (and Assembly) elections for those EU Member States with which the UK has agreements, it raises the possibility that a future Assembly may take a different view. The Welsh Government has emphasised the need for a process to remove Wales from this mechanism should a future Assembly adopt this political position. It has also stated to the UK Government that the Welsh Government must be fully engaged with negotiations of these agreements, in order that commitments are not made on its behalf, without its consent.

18. In further correspondence on 12 September¹, the First Minister reiterated the Welsh Government’s constitutional concerns in relation to the Luxembourg and Portugal agreements. Furthermore, the First Minister gave an assurance in principle that the Welsh Government “will normally notify the Committee” when consulted on UK international agreements but that it there may be occasions when confidentiality restrictions will need to be respected.

House of Lords report

19. The House of Lords EU Select Committee has [reported on the agreement](#), which it considered on 23 July. It made no comments on particular aspects of the Bill, and reported the agreement for information.

Implications for devolution

20. This is an important example of the UK Government entering into international agreements relating to devolved subject areas.

21. In the case of the existing agreements with Spain, Portugal and Luxembourg, this is in line with Welsh Government policy. However, it is possible that the UK Government may fail to reach agreement with some other Member States, and then seek to remove (or limit) the entitlement to vote under section 2 of the 1983 Act. If the Welsh Government and the Assembly wish to retain the entitlement of citizens of that country to vote in devolved elections, it may be necessary to act quickly to ensure that any changes made by the UK Government do not apply to devolved elections. That could involve using the Emergency Bill procedure set out in Assembly Standing Orders.

Conclusions

Due to the similarities (in terms of the issues raised) between the UK-Portugal and the UK-Luxembourg agreements, our findings and conclusions are detailed at the end of section 2.

¹ Hyperlink when available

2. UK-Luxembourg Agreement on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other

Background

22. The UK-Luxembourg Agreement on the Participation in Certain Elections of Nationals of Each Country Resident in the Territory of the Other is an international treaty which was laid before Parliament on 4 July 2019.

23. The text of the agreement and associated explanatory materials published by the UK Government are available online.

Legal assessment

Does the agreement engage the Assembly's competence?
Yes, the agreement engages the Assembly's competence.

Policy assessment

Are there policy implications for Wales?
Yes, as detailed under this section.

24. The UK-Luxembourg: Agreement would allow British and Luxembourg nationals to vote and stand for some elections in each other's countries.

25. While the UK is a member of the EU, UK citizens living in the EU27 are able under EU law to stand and vote in elections to the European Parliament, local and municipal government (subject to a few exceptions) in the EU Member State they live in. Similarly, EU27 citizens living in the UK are able to stand and vote in UK local elections and to stand and vote in the UK elections to the European Parliament. However, this right under EU law will change at the point the UK leaves the EU (as soon as the transition period starts in the case of

a deal or on exit day if the UK leaves without a deal) – and clearly the UK will no longer hold elections to the European Parliament.

- 26.** The electorate for Assembly elections is (under section 12 of CoWA 2006) the local government franchise. EU citizens resident in Wales are therefore entitled to vote in both devolved elections. The local government franchise is set out in section 2 of the Representation of the People Act 1983 and not in EU legislation. The right to vote in Assembly and Welsh local government elections will therefore continue unless it is amended. Legislative competence to amend the franchise for devolved elections rests with the Assembly following the Wales Act 2017.
- 27.** The Explanatory Memorandum to the agreement highlights that the UK pushed for reciprocal voting rights for local and municipal elections in withdrawal negotiations, but was unable to secure these in the Withdrawal Agreement. Therefore, the ability of UK nationals living within the EU27 to continue to be able to vote and stand in local and municipal elections will depend on the electoral rules of the EU Member State in which they live. The Explanatory Memorandum goes on to state that the UK Government will seek to agree bilateral deals with EU Member States where possible to secure voting rights for the future.
- 28.** There are around 6,000 UK nationals living in Luxembourg, around one per cent of the total population. The UK Government therefore negotiated this bilateral treaty with Luxembourg in order to address the concerns expressed by these UK nationals around their future rights, through securing the right to vote in local elections as well as to stand as candidates in local elections.
- 29.** Article 2 of the agreement sets out **the entitlement of Luxembourg nationals living in the UK to vote and stand in UK local elections**. Luxembourg nationals who are legally resident in the UK will have the right to vote and stand as candidates in UK local elections subject to the same conditions as UK nationals. This maintains the status quo.
- 30.** Article 3 of the agreement sets out **the entitlement of UK nationals living in Luxembourg to vote and stand in municipal elections in Luxembourg**. UK nationals who are legally resident in Luxembourg will have the right to vote and stand as candidates in local elections in Luxembourg subject to the same conditions as Luxembourg nationals. UK nationals must have legally resided in Luxembourg for at least five years, of which the last year prior to application for registration must be uninterrupted.

- 31.** Article 5 of the agreement sets out the **arrangements for modification of the agreement**. The agreement may be modified by written agreement between the UK and Luxembourg, and in accordance with national arrangements for entering any modification into force.
- 32.** Article 7 states that **either party may terminate the agreement in writing**, and that termination will take place 30 calendar days after the other country receives the notification.

Involvement of the devolved administrations

- 33.** The Explanatory Memorandum states that the UK Government wrote to the devolved administrations and the Northern Ireland political parties to inform them of the approach to pursue voting agreements bilaterally. The Department for Exiting the EU updated the devolved administrations on voting rights progress through fortnightly calls and shared the legal text of the treaties. **However, unlike the agreement between the UK and Spain the Explanatory Memorandum does not say that the devolved administrations were content with the UK Government's approach.**
- 34.** The First Minister wrote to the Llywydd on 3 July highlighting his concerns around the modification arrangements in the UK's reciprocal voting agreements with individual EU Member States. His letter stated that the UK Government is constraining the devolved administrations' legislative and executive competence, as a future Assembly would be unable to legislate to remove the franchise from such citizens. While the Welsh Government supports the policy position in the agreements, as these will ensure the continuation of the franchise for local government (and Assembly) elections for those EU Member States with which the UK has agreements, it raises the possibility that a future Assembly may take a different view. The Welsh Government has emphasised the need for a process to remove Wales from this mechanism should a future Assembly adopt this political position. It has also stated to the UK Government that the Welsh Government must be fully engaged with negotiations of these agreements, in order that commitments are not made on its behalf, without its consent.

House of Lords report

- 35.** The House of Lords EU Select Committee has reported on the agreement, which it considered on 23 July. It made no comments on particular aspects of the Bill, and reported the agreement for information.

Implications for devolution

- 36.** This is an important example of the UK Government entering into international agreements relating to devolved subject areas.
- 37.** In the case of the existing agreements with Spain, Portugal and Luxembourg, this is in line with Welsh Government policy. However, it is possible that the UK Government may fail to reach agreement with some other Member States, and then seek to remove (or limit) the entitlement to vote under section 2 of the 1983 Act. If the Welsh Government and the Assembly wish to retain the entitlement of citizens of that country to vote in devolved elections, it may be necessary to act quickly to ensure that any changes made by the UK Government do not apply to devolved elections. That could involve using the Emergency Bill procedure set out in Assembly Standing Orders.
- 38.** In further correspondence on 12 September², the First Minister reiterated the Welsh Government's constitutional concerns in relation to the Luxembourg and Portugal agreements. Furthermore, the First Minister gave an assurance in principle that the Welsh Government will normally notify the Committee when consulted on UK international agreements, however, the First Minister also stated that there may be occasions when confidentiality restrictions will need to be respected.

Conclusions (relating to both Agreements)

We note the implications of both international agreements for elections in Wales and for the devolved settlement. We share the concerns expressed by the Welsh Government in relation to the constitutional implications of agreeing to these, and similar, subsequent, agreements for the issue of voting rights. In laying this report, we hope to bring these matters to the attention of the National Assembly and facilitate further debate in this area.

We welcome the Welsh Government's commitment in principle to notify us when it is consulted on an international agreement.

We call upon the UK Government to engage fully with the Welsh Government as agreements of this kind are developed with other countries in the future, and ask that the Welsh Government keeps us informed of progress with these matters.

² Hyperlink when available

We intend to maintain a watching brief in this area and will continue to scrutinise these issues in relation to future agreements laid before Parliament.