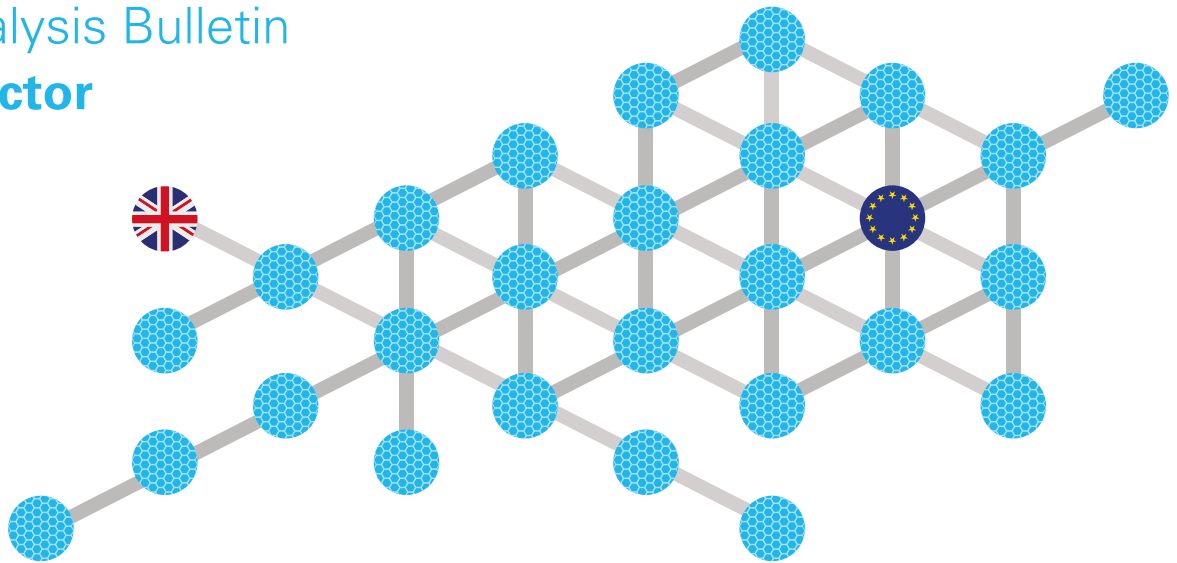


## Brexit Analysis Bulletin

### Public Sector



The public sector is one of the areas that is often considered to be heavily regulated and impacted by the EU, particularly in relation to areas such as public procurement and the rules which regulate state aid. However, in practice the majority of legislation which regulates the public sector is UK legislation. This note looks at what the potential impact of a Brexit might be on the public sector across the UK.

#### EU procurement

One of the areas which many consider might change is the UK's approach to public procurement. The UK is subject to the EU Procurement Directive which has been adopted into UK law via enabling legislation: the Public Contracts Regulations 2015 in England and Wales, and the Public Contracts (Scotland) Regulations 2015 in Scotland. In the event that the UK opted to leave the EU nothing would therefore change in the short term. However, it would mean that these laws could be revoked and/or replaced with alternative legislation.

Whilst it is true that without the EU Directive sitting above UK procurement rules, there could be more flexibility. However, it is difficult to imagine that the UK would remove public procurement rules altogether. Public Procurement is, at its core, there to prevent corruption and enable open and fair treatment and that driver would remain. It is possible, that any amended procurement regime could seek to restrict competition to UK entities. Many UK based companies would see this as a positive step, particularly in relation to certain areas of industry such as steel and labour. This would depend on the parameters of the emerging relationship between the EU and the UK following a Brexit. If the UK were to restrict competition to the UK, it is likely that the EU would also be able to restrict competition across the remainder of

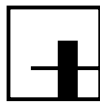
the EU to exclude UK businesses, which could have an adverse impact on organisations that currently bid for opportunities in the rest of the EU.

The UK is also a party to the World Trade Organisation's Government Procurement Agreement and, as such, even in the event of a Brexit, those rules would continue to apply.

In Scotland, the Scottish Government has gone further than Westminster in terms of Public Procurement by implementing the Procurement Reform (Scotland) Act 2014, which implements a separate set of regulations to contracts that sit below the EU thresholds. These rules would also therefore continue to apply in Scotland and, as the Scottish Government has gone further than it is required to under EU Law, it is unlikely that it would eliminate the procurement rules.

#### State aid

Were the UK to leave the EU, the rules preventing unlawful State Aid would cease to apply to the UK and the Westminster and Scottish Governments would be in a position to revise their public spending guidelines and protocols. This could enable direct investment in certain projects that may not currently be possible due to the state aid rules.



## Grant funding

The public sector currently benefits from grant funding from various EU institutions and that funding can be useful in stimulating growth and regeneration in areas and projects that would not otherwise be feasible. If the UK were to leave the EU, it is likely that UK public sector bodies would no longer be entitled to apply for that grant funding, which may prejudice the ability to progress those projects or areas of research.

## Accounting treatment

Public Sector bodies in the UK are currently required to comply with the European System of Accounts 2010 which are a set of rules issued by Eurostat that determine how the public sector reports its overall levels of debt in relation to the national accounts which are prepared by the Office of National Statistics (the ONS). These rules have impacted on the public sectors ability to structure finance solutions and delivery models, including the Scottish Government's Non Profit Distributing Revenue Finance model. In the event that the UK left the EU it would no longer need to follow rules prescribed by Eurostat and that may allow the ONS to follow alternative accounting rules which could impact future delivery models.

## Infrastructure investment

The European Investment Bank (the EIB) is the EU's bank and it provides finance and expertise across a wide range of investment projects which contribute to furthering EU policy. The EIB often provides a large element of finance for many of the UK's largest complex infrastructure projects. The EIB primarily invests in projects within Europe and represents the interests of the EU's member states. From a public sector perspective the availability of EIB funding can be the difference between having a successful, bankable, project and a project that cannot

go ahead. A Brexit would be likely to impact on the UK public sector's ability to secure EIB finance, although it is also possible that a Brexit could give rise to alternative models and these are covered in our banking and finance analysis bulletin, which is available [here](#).

## Access to EU expertise and input into EU Law

One of the less tangible benefits to the UK public sector is access to wider areas of expertise and forums across the various EU Institutions. UK public sector bodies would not be able to take advantage of these forums in the event of a Brexit.

The UK can currently directly influence EU policy and law, and this influence would be lost in the event of a Brexit. It is likely that any model emerging out of a Brexit would still require the UK to observe many of the EU's rules and regulations when trading in the future. The UK would not have had the opportunity to shape or influence those rules.

## Changes to the political and electoral system

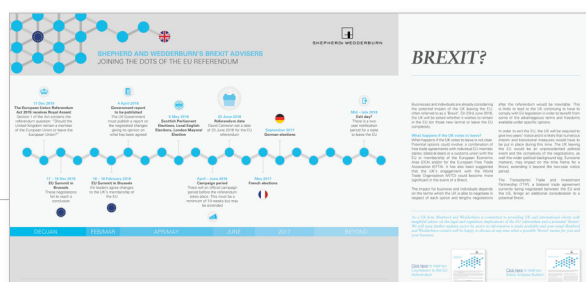
Clearly a Brexit would also have consequences for the political and electoral system. We would no longer have a requirement for Members of the European Parliament and therefore no requirement for European elections.

## Concluding remarks

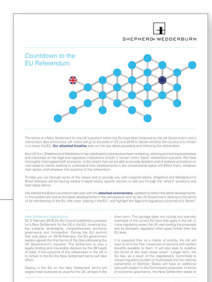
In the short term it is unlikely that a Brexit would have major implications for the public sector in terms of day-to-day operation. In the longer term it is possible that the government would have more flexibility to shape the UK's procurement and spending protocols and rules. That could come at the cost of grant funding, EIB investment and restrictions on the UK's ability to bid for opportunities across Europe.

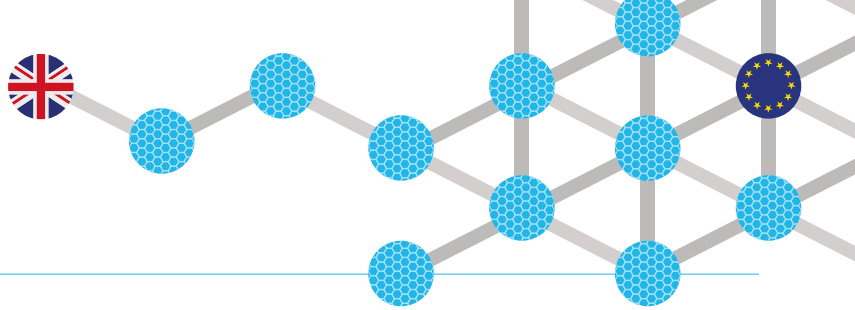
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### JOINING THE DOTS OF THE EU REFERENDUM

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#### What If?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

With the EU referendum now only weeks away, members of our dedicated Brexit Advisers will continue to interrogate the 'what if' questions, relating to specific sectors, that will emerge when the UK decides whether to remain in or leave the EU.

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