

Leaving the EU: What it means for charities

On 23 June 2016, voters in the United Kingdom decided by a small majority (52% Leave, 48% Remain) that the UK should leave the European Union (EU).

This Kubernesis Bulletin seeks to explore what this may mean for charities. Unlike most of our bulletins which deal with precise issues of charity regulation or charity tax rules, this is a much broader issue where it is impossible at this stage to be precise on what will happen. But we believe some comment is better than none. We were heavily involved in the referendum campaign and debate, and read many of the policy papers published by the government and others. We also looked carefully at a number of briefings prepared for charities and by charities in the lead up to the referendum campaign, and the advice given by charity regulators (the Charity Commission and OSCR) on charity involvement in the campaign.

Stage and Timescales

The details of what would actually happen in the event of a referendum outcome in favour of leaving the EU were not well-explained during the campaign. From Nigel Farage's announcement in the early hours of 24 June that it was Britain's "independence day" many may have thought the UK was leaving the EU immediately!

However, the referendum was non-binding in the sense that it does not directly trigger any legal change whatsoever: it simply gathered the views of the electorate to enable the Government to act. Nevertheless, the Government has committed to implement the decision, even though Prime Minister David Cameron was firmly on the Remain side of the campaign.

There will be (at least) three stages to the process.

- **Stage 1: Informal discussion** – 24 June 2016 to (perhaps) mid-autumn 2016

The formal process of withdrawal only begins once the UK government gives notice to the EU under [Article 50](#) of the *Treaty on European Union* that it wishes to withdraw from the EU.

Whilst Mr Cameron stated during the campaign that he felt the Article 50 process should be triggered almost immediately if the referendum result was a vote to leave, he seems to have taken a different view on the night. Following his decision to resign as Prime Minister he announced that the Government would not trigger Article 50 until after a new PM was appointed (now expected by 2 September).

So at the present there is no legal change whatsoever: the UK continues to be a full member of the EU, all aspects of EU law continue to apply in the UK and UK charities are just as entitled to apply for EU funding as in the past. This is particularly relevant to large charities such as universities which apply directly for EU research funds, but it also applies to smaller charities which may receive EU funds through other programmes.

► But despite the reality that nothing has changed in law, everything has changed in the perceptions of the public in the UK, in the rest of the EU and around the world. Financial markets are badly hit with the pound falling dramatically against other currencies and big falls on the London stock market (see below for more on how this impacts on charities). International deals involving the UK are being put on hold. UK charities with international links are already being affected directly and many other charities will feel the effect in due course.

It is not clear how long this stage will last – some have suggested that even once the new PM is in post that there could be a further delay of months (or even years) while the strategy is clarified before Article 50 is formally triggered. However, other EU members have made clear that a long wait would be unacceptable and those who voted Leave would also no doubt protest if the government delays the process too long. In practice, it seems the formal withdrawal process under Article 50 will need to start at the latest by mid-autumn 2016 or certainly by the end of the year.

- **Stage 2: Withdrawal negotiations** – (probably) mid-autumn 2016 to late 2018

Once the UK gives notice to the EU under Article 50 there is a maximum period of two years to complete negotiations for full withdrawal from the EU (unless all 27 of the remaining EU members agree an extension which seems unlikely).

Hopefully by the start of this stage the new PM and Government will have a clear idea of the terms of withdrawal they are seeking – but it remains to be seen how far the other EU members will agree to what Britain is seeking.

- ▶ There will be a vast number of issues to agree including the status of UK citizens living and working in other EU countries, and citizens of other EU countries living and working in the UK. These are issues of great concern to charities with staff in other EU countries and charities working with migrant communities in the UK.
- ▶ However, the biggest issue will be whether or not the UK retains full access to the EU single market – in practice whether it remains in the European Economic Area (EEA) even though outside the EU. The EEA includes Norway, Iceland and Liechtenstein as well as the 28 EU members. The EEA provides for the free movement of persons, goods, services and capital within the internal market of the European Union – i.e. it extends the EU's "single market" beyond the actual EU members. (Switzerland also has some partial rights to involvement in the single market but is not signed up to the full EEA rules.)

Many of the benefits of EU membership extend to the EEA – for example a UK tax payer can use gift aid to donate to a charity in any EEA member provided the organisation is recognised by HMRC as a charity under UK tax law. But, because they are part of the single market, members of the EEA must also accept the majority of EU regulation to ensure they cannot compete unfairly – yet as non-EU members they have no direct say in the creation of the rules and must also accept free movement of people between EEA member states. They also have to pay substantial amounts to the EU to cover all the costs related to setting and enforcing the rules of the single market including accepting the decisions of the European Court of Justice in many areas. (The main reasons for a country being in the EEA but not the EU, is that for most purposes it falls outside the EU's common agricultural policy and common fisheries policy – these were key issues for Norway and Iceland.)

- ▶ During the referendum it seems many people failed to understand that whilst one could possibly have a free trade agreement in *goods* without free movement of people it would be impossible to have full membership of the single market including free trading in *services* unless people are free to work in any country which is a member of the EEA. Yet the majority of UK exports are services rather than goods, so losing full access to the single market would affect the UK economy badly.

It is impossible to have any idea of what a post-EU United Kingdom will look like until we know whether or not the UK is likely to remain in the EEA. It could be argued that the referendum only asked about withdrawal from the EU and that withdrawal from the EEA would be a further step which perhaps should require a further referendum! However, many of those campaigning for a Leave vote suggested that they wished the UK to be outside the scope of all EU legislation, and to have 'full control of borders' (i.e. not to be subject to the freedom of movement rules) which suggested they did not wish to retain EEA membership.



Nevertheless, for those who supported the referendum case to Remain (which includes the vast majority of charities that expressed a view) the option of staying in the EEA would obviously be the next-best option. This would also represent the obvious 'mid-way' position between those who argued for Remain and for Leave – though like any mid-way position it would not please either party.

According to the Treasury economic projections published before the referendum, the option of remaining in the EEA would be much less damaging to the UK economy than a complete withdrawal from everything associated with the EU. On this basis, the Government's tax receipts to pay for public services would not be hit so badly (so cuts in public sector funding for charities would perhaps be less serious) and likewise individuals would not be hit so badly and so levels of charity donations may only fall slightly.

- ▶ Charities which support this argument may well wish to suggest to their MPs that the UK should *negotiate to remain in the EEA*. If so, such representations should be made right away, before the UK negotiating position is finalised.

However, this option would only be possible if those such as Boris Johnson and Michael Gove who campaigned for the Leave vote are willing to wind back many of their promises during the campaign. It would also require considerable generosity from the 27 continuing EU members to allow a state which has opted to leave the EU to remain in the EEA.

During this stage, the UK will still be a member of the EU – EU laws will continue to apply, and in principle EU grants will be still be available to the UK. However, knowing that the UK will be withdrawing in less than two years will almost certainly mean that no long-term EU funding will be available to charities or public sector bodies in the UK. As the two year period proceeds, there is likely to be a gradual withdrawal from EU institutions – for example it has been suggested the UK's MEPs may step down early.

- **Stage 3: Full withdrawal** (probably) from 2018 or early 2019

A key element in the negotiations will be to set a formal date for the UK's official withdrawal as an EU member. For those on all sides, certainty on timescales is crucial. Most EU decisions are based on calendar years, so 1 January 2019 is perhaps the most likely date for formal withdrawal.

On that date, the vast majority of the European Communities Act 1972 will need to be repealed. This was the Act which brought the UK into the European Community in 1973, and, although it has been vastly amended over the years, it remains the primary legislation which enables EU law to apply in the UK.

However, for that to happen, enormous amounts of new UK legislation will need to have been passed in 2017 and 2018 to prevent a vacuum. It has been suggested that there are over 2,800 areas where the UK currently relies on EU law and for which domestic legislation will thus be needed once the UK withdraws from the EU. Many of these areas – for example, employment law, discrimination law, environmental law, animal welfare – are fields where charities actively campaigned for EU-wide standards. Charities concerned with these areas will need to take care that domestic legislation does not water down what they consider to be important provisions in EU law. (However, if the UK remains in the single market as a member of the EEA, the legislative changes will be more limited.)

Some MPs and Peers believe that the vast majority of Parliamentary time over the next two years will be taken up with enacting new UK laws to replace EU laws so there may be little scope for new legislation that charities may wish to seek.

In practice, it will be impossible to review every area individually, and so in the short term UK legislation may continue to apply EU Regulations and the various provisions in UK law based on EU Directives – clearly this will annoy those who campaigned for 'Brexit'.

By the time of full withdrawal, it is widely hoped that the UK will have successfully negotiated new international trade agreements not just with the EU, but also with all the other major world economies where the EU has existing agreements. But all sides agree this will be a huge challenge.

Financial Implications for Charities

There is little doubt that the withdrawal process will have enormous financial implications for the entire UK economy (and also for the economies of other EU countries and the rest of the world). Charities are bound to be affected.

Those who argued for Leave accepted that there would be a short-term economic shock, but argued that freed from the shackles of the EU, the economy would quickly pick up. However, most Remain campaigners, and the Treasury's official forecasts, suggested the consequences would last much longer.

For charities which receive funds internationally or which fund projects overseas the implications are enormous.

But even for charities *working solely in the UK* the implications may include:

- Significantly reduced income from the public sector – if, as expected, tax revenues fall, the Government will either have to increase taxes or make cuts, and recent governments have preferred to make cuts. Charities are likely to face substantial further cuts on top of those of recent years.
- Removal of EU funding. Over the years, charities in certain fields such as urban regeneration, research, and the arts have benefited enormously from EU funding programmes: estimates suggest that EU funding is worth around £200m a year to charities. Although Leave campaigners suggested that the Government would be able to continue all financial support previously provided by the EU because it would no longer be paying into the EU, this seems very optimistic. (Moreover, if the UK stays in the EEA, the UK will still need to make a substantial financial contribution to the EU.)
- Big losses of investment income. Charities with stock market investments have seen their value fall dramatically. Unless the market quickly recovers because of the post-Brexit euphoria anticipated by Leave campaigners, the major grant-making foundations will almost certainly have to cut their levels of grant-making to the sector. This may be offset to some extent if UK interest rates rise to persuade international investors to lend to the UK at a time of higher risk – if this extends to domestic bank accounts, charities may see slightly better returns on bank deposits. But if the Government has to pay more on its borrowing due to the UK's down-rated credit rating, charities may face further cuts.
- Increased austerity. Cuts to public expenditure are likely to have further impact for welfare spending and other support for the poorest members of society. See below on the human implications.
- Increased prices. With the pound falling against other currencies, imported goods and services will cost more. It is widely predicted that prices of petrol, clothing and IT equipment will rise. Overseas travel costs will increase. The extent to which any particular charity is affected will depend on the resources it needs to purchase: there will be less impact on charities whose main costs are UK-based staff.

- Possible tax changes. The Government will certainly not have the resources to extend any tax concessions to charities, and may be looking to limit existing concessions. Full withdrawal from the EU would allow the UK to make certain changes to the VAT regime which could be beneficial to charities, but this will only be possible if the Government can make up the revenue from other sources.
- Reduced legacy income if house prices fall as widely predicted.
- Greater demand for donations from individuals. If (as expected) income falls from other sources, charities will only be able to maintain their work if they can make the case for individuals to give even more. Reduced personal incomes may make it harder for donors to give on a regular basis at higher levels, but there will still be many rich people with substantial savings and charities may wish to focus their efforts on attracting major lump sum gifts.

Human Implications

Virtually everyone in the UK (and beyond) will be affected by these changes.

Some are delighted to see the UK's withdrawal from the EU and may find themselves with renewed optimism to grow businesses or develop careers in areas not dependent on the EU. Nevertheless they may find it harder to win business if there is a significant downturn in the economy.

However, many others will be negatively affected. We do not normally comment in detail in Kubernews Bulletins on the direct work undertaken by charities with their beneficiaries, but charities may be called to address any of the following:

- General anxiety and uncertainty over changes. It seems that understanding of the EU and how EU law affects the UK is very limited and there are many misconceptions.
- A significant number of individuals may be directly affected by companies cutting back on their UK activities or relocating jobs abroad to remain in the EU.
- A huge sense of loss – amounting to a bereavement experience – for those whose identity is tied to their status as EU citizens. There is already evidence of some on the Remain side in the referendum feeling that their core values have been profoundly undermined. Counselling charities and those in the mental health field are likely to spot the signs most directly but other charities could well be affected by related factors such as a downturn in volunteer motivation (though others may be galvanised into action).
- Those who have choice may look to emigrate to other EU countries – particularly those in fields of work which require international collaboration on providing services outside the UK. There could be a considerable exodus of skilled professionals, depriving charities of key donors and volunteers.
- As the withdrawal proceeds, those looking to work abroad in other EU countries may find that they can only do so with work permits. This will greatly limit opportunities for many young people. It is conceivable that in a few years time, UK citizens could even require visas to visit other EU countries.
- People from other EU countries feeling unwelcome or even under pressure to return to their country of national origin. There have been suggestions that the referendum outcome is leading to increased racist abuse. There is a major role for community-based charities to support those affected.

Overall

This Bulletin has sought to highlight some of the processes linked to EU withdrawal which may affect charities, but other issues may emerge. Please get in touch under our advice service to discuss these points further.

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