# SCOTLAND'S PLACE IN EUROPE:
## Our Way Forward

**October 2018**

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# Foreword from the First Minister

With less than six months to go before the UK is due to leave the European Union, time is running out to secure both an agreement on the terms of withdrawal and a political declaration that provides clarity on the future relationship.

The EU has been clear that the key economic planks of the UK Government's Chequers proposal are not acceptable.

The priority now is therefore to avoid the damage of either a no-deal Brexit or a blindfold deal, in which the UK leaves with no detail or guarantees on the future relationship. Any of these outcomes will be disastrous for jobs and living standards.

The Scottish Government, in line with the overwhelming vote for Remain in Scotland, supports continued EU Membership. Remaining in the EU continues to be our strong preference. Nevertheless in December 2016 we set out a compromise plan to keep Scotland and the UK in the European Single Market and Customs Union to limit the damage of Brexit as much as possible.

It is therefore simply incorrect for the Prime Minister to say that there is no alternative to Chequers. In fact, the UK Government's position is increasingly absurd – insisting on pursuing proposals they have been told will not work, while rejecting a plan that will.

With crucial decisions coming up over the next few weeks and months at EU level – and in the House of Commons where the UK Government must seek the approval of the UK Parliament – it is vital to break the impasse. This document sets out how that can be done.

A commitment to maintain membership of the European Single Market and Customs Union would secure both a withdrawal agreement and provide the clarity needed on the future relationship.

This paper sets out why the Chequers proposal will not work, details recent independent analysis of the UK Government's proposals and sets out why a no-deal or a blindfold deal will be so damaging.

For the Prime Minister and the UK Government it is time to face reality. For MPs at Westminster it is time to come together in a common-sense coalition to minimise the Brexit damage.

There is no reason why this proposal cannot be accepted quickly, but if more time is needed to avoid a no-deal Brexit or blindfold Brexit crisis then the UK Government should ask for an extension to the Article 50 process. The Scottish Government has made clear it would support another EU referendum, although it's not clear how it would guarantee that Scotland would not, yet again, face exit against our will. However for those arguing for another EU referendum, an extension of Article 50 would allow the necessary time for it to be legislated for.

The Scottish Government, as ever, stands ready to do everything we can to bring about an end to what has been an unfolding Brexit disaster and to join with others to protect Scotland's place in Europe.

# Introduction

1. It is now well over two years since the EU referendum and less than six months until the UK will leave the European Union. Despite having stalled for two years in setting out what they want from Brexit, the UK Government seems determined to present us with a false choice between two alternatives: no-deal or a withdrawal agreement with the EU that will see the UK depart with little more than the promise of a future relationship in a high-level political declaration, giving no meaningful detail. Despite its rejection by the EU27, the UK Government insists that this future relationship will be based on the Chequers proposal, or a close variant, that will inflict significant and lasting damage on Scotland and the rest of the United Kingdom.

2. While any progress to break the deadlock in the negotiations is welcome, it is clear that any recent progress relates only to the UK's withdrawal from the EU. Meaningful discussion around the crucial issue of the future UK-EU relationship on the other hand remains very limited, and is likely to remain so while the UK Government sticks to the core elements of its Chequers proposal. So, while the potential for some agreement to be reached on the backstop proposal may allow the UK to withdraw from the EU, the nature of the future relationship will remain fundamentally unclear. Consequently, Scotland will be removed from a hugely beneficial relationship with the EU without any promise of how these benefits may be retained or replaced in future.

3. This is partly the consequence of the UK Government adopting unrealistic and counterproductive red lines that, as has been clear from the outset, were never going to be negotiable with the EU and serve only to limit the options available to us. These red lines on the nature of the future relationship render free and frictionless trade with our main international trading partner impossible after we have left the EU. In part too it is a result of the poor management of the negotiations by the UK Government[1]. Such has been the failure of handling that three out of four people think that the UK Government is handling Brexit badly[2]. The UK now faces the prospect of a blindfold Brexit where key decisions regarding our future relationship with the EU have not been taken and will be played out during a further period of negotiation with the EU that will last at least two years and most likely longer and during which the UK will be in an even weaker negotiating position than now.

4. This is not what the public was promised. When the Prime Minister set out the UK Government's strategy in the Brexit negotiations at Lancaster House in January 2017[3]: she assured the public that by late 2018 there would be both a withdrawal agreement securing a transition period and an agreement on a detailed proposition setting out the future relationship between the UK and EU, a relationship that would then be implemented during a transition period.

5. However at this late stage, and notwithstanding progress that some suggest may have been made in recent days, neither is guaranteed. This is not acceptable, and it is certainly not inevitable. Even at this stage there are other possible options – perfectly achievable options – to avoid the very worst effects of Brexit. These would provide the basis of a future relationship that minimises the cost of Brexit and creates relative stability for businesses, communities and for people who would otherwise suffer the very real consequences of a chaotic and/or 'blindfold' exit from the European Union. This paper will review these options.

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1 The Institute for Government https://www.instituteforgovernment.org.uk/sites/default/files/publications/brexit-six-months-to-go-final-WEB.pdf has commented that "The target for agreement on the terms of withdrawal and the future framework is the October 2018 European Council. But there are only 23 working days remaining until then, and a range of substantial issues still need to be resolved. An emergency European Council in November is looking increasingly likely, but even reaching a deal by then is far from straightforward"

2 https://www.politico.eu/article/poll-majority-brits-think-uk-government-theresa-may-doing-bad-job-on-brexit-second-referendum/

3 "Instead, I want us to have reached an agreement about our future partnership by the time the 2-year Article 50 process has concluded." https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech

# Summary of Negotiations and the Scottish Government's Plan

6. The UK Government is presently negotiating with the EU over two sets of linked issues. Firstly, the withdrawal agreement that will determine how the UK will leave the EU, including issues such as the UK's budget contribution and the rights of EU citizens in the UK and UK citizens in the EU. Negotiations on this part of the process are well advanced and there is some expectation that the UK will conclude a withdrawal agreement with the EU in November – including a backstop arrangement for the Irish border that may see the UK as a whole remain within the EU Customs Union. However, nothing is agreed until everything is agreed and there are a number of outstanding issues that could still jeopardise progress, raising the prospect of the UK exiting the EU without a deal. It is also clear that without a withdrawal agreement, there will be no transition period. Any agreement must be ratified by both the UK and European Parliaments. The UK Parliament will have to vote on the terms of the agreement that the UK Government concludes with the EU, and with uncertain parliamentary arithmetic it is far from clear that an agreement will be ratified by Parliament.

7. Secondly, and despite what the public was led to expect by the UK Government, it is clear that the future relationship between the UK and EU will not be discussed in detail and certainly will not be agreed before the UK has exited the EU. Despite the fact that the UK Government agreed to begin the negotiations on the future relationship at the end of 2017, it was a further six months, well into 2018, before discussions to shape the negotiations really began following the UK Government's publication of the Chequers proposal in July. However, as is now clear, this is a proposal that not only lacks the agreement of the EU27 but also commands no majority in the House of Commons. As a result preparatory discussions regarding our future relationship appear to be both aspirational and restricted to the broadest of principles at this stage. This reflects, in large measure, the UK Government's insistence on maintaining its damaging red lines. This lack of clarity about the future relationship between the UK and EU risks a withdrawal agreement being concluded that is not accompanied by any detail on the future relationship. This would consign the UK to the uncertainty of many more years of negotiation without the comfort of an on-going trade and broader relationship with our EU partners.

8. In contrast, the Scottish Government was the first administration in the UK to set out clear proposals on how to respond to the EU referendum in Scotland's Place in Europe in December 2016[4]. The Scottish Government followed this up with further evidence and analysis in an updated Scotland's Place in Europe in January 2018[5] along with a series of other evidence-based papers covering migration[6], agriculture[7], trade[8] and an alternative white paper to Chequers[9]. We have been consistent since 2016 in our policy position.

9. The purpose of this paper is to explain why at this critical stage in the negotiations the UK Government is offering a false choice between either a withdrawal agreement accompanied by a vague and non-binding statement on the future relationship, or a no-deal outcome. By contrast this paper sets out a workable plan that, we believe, would be acceptable to the EU and cause the least damage to Scotland and the UK from exiting the EU. It could also minimise the damage of Brexit to our closest economic partners across the EU. We provide further evidence taking account of independent analysis of the Chequers proposal, and propose an approach around which a common-sense coalition can be built. Time is running out and this plan must be adopted before it is too late.

4 https://www.gov.scot/Publications/2016/12/9234
5 https://www.gov.scot/Publications/2018/01/6407
6 https://beta.gov.scot/publications/scotlands-population-needs-migration-policy/
7 https://beta.gov.scot/publications/the-future-of-agricultural-support-post-brexit-transitional-arrangements/
8 https://www.gov.scot/Publications/2018/08/6222
9 https://beta.gov.scot/publications/contribution-to-the-uk-governments-white-paper-on-the-eu/

10. Our proposals and recommended approach can be summarised as follows:

- ★ Scotland voted overwhelmingly to remain in the EU in 2016. The Scottish Government, supported by the evidence, believes that continued EU membership would be the best outcome for Scotland and the UK.
- ★ If this is not possible, our position is for the UK as a whole to remain within the European Single Market and the Customs Union. The evidence for this position was set out in our two Scotland's Place in Europe publications, the most recent in January 2018. In the period since January the conclusions reached in those papers have been further strengthened by a wide range of additional studies and reports[10]. Our policy would minimise the social and economic damage of leaving the European Union. It would also provide a workable solution to achieving a frictionless border between Northern Ireland and the Republic of Ireland. A Brexit outcome that ensures the UK maintains membership of the European Single Market and Customs Union would also make a future return to full EU membership significantly easier.
- ★ If the UK Government does not wish to take up this sensible and practical position, then given the strong preference of the people of Scotland to stay in the European Union, the Scottish Government would pursue the differentiated approach for Scotland that would allow us to stay in the European Economic Area (EEA) as set out in Scotland's Place in Europe[11].

11. The prospect of a final deal that sees the UK retain membership of the European Single Market and the Customs Union is still a viable one. There is an increasing body of opinion emerging around the EEA and Customs Union[12].

12. Based on the stage the negotiations have now reached and with less than six months to our intended departure from the EU, we make the following proposals:

- ★ The Scottish Government believes that the UK Government should revise its negotiating position on the future relationship to ensure that the whole of the UK remains within the European Single Market and the Customs Union. This would ensure that the UK did not leave the EU without a clarity that the future relationship with the EU would not be an economically and socially damaging one.
- ★ If that proposal is rejected by the UK Government, then the political statement on the future relationship should be sufficiently detailed to allow the people of Scotland to understand the impact on their lives from the monumental decision to leave the European Union. We must not be required to sign up to a blindfold Brexit.

10 For example: https://www.camecon.com/news/economic-impact-brexit-starkly-revealed-new-report/ and https://www.ft.com/content/dfafc806-762d-11e8-a8c4-408cfba4327c; In summary, the evidence on the effect of Brexit on the economy is almost unanimous: it predicts that Brexit will cost the UK economy in the region of 1 to 10 per cent of GDP in the long run, with greater costs for a hard Brexit relative to a soft Brexit. The mechanism driving these results is straightforward. The EU currently receives around 43 per cent of UK exports (House of Commons Briefing Paper, 2017). When the UK leaves the EU, barriers to trade will rise, causing trade and therefore GDP to fall. These findings come from HM Treasury (2016), OECD (2016), PWC (2017), NIESR (2016) and Dhingra et al. (2017) among others, in addition to the recently-leaked internal government report. These estimates often account for the benefits of new trade deals with non-EU countries such as the United States, China, and Australia. On top of this, other studies show that Brexit will cause a fall in inward foreign direct investment (FDI) of around 28%, leading to a 3.4% decline in real income (Dhingra et al., 2016, http://cep.lse.ac.uk/pubs/download/brexit03.pdf). By http://blogs.lse.ac.uk/brexit/2018/03/13/how-useful-are-the-estimates-of-the-economic-consequences-of-brexit/

11 Scotland's Place in Europe (Chapter 3) https://www.gov.scot/Publications/2016/12/9234/4

12 For example Nicky Morgan MP recently said "My preference, and that of many other MPs, is for the UK to follow the Norway model: to re-join EFTA and, through that pillar, remain in the EEA. There are a number of Leavers who also could accept this model – or would have done had the UK Government's red lines not been set down so hard and fast so early on in the Brexit process"

- ★ If the UK Government refuses to remain in the European Single Market and Customs Union, the Scottish Government demands that the UK Government seeks an extension to the Article 50 process to allow for a consensus across the UK on a less damaging approach to be agreed, thereby avoiding a hurried and damaging exit. This could be embodied in a revised EU/UK political declaration and the UK implementing legislation should bind the UK to that approach. This would avoid the dangers posed by a blindfold Brexit resulting from a high-level political declaration. Such an extension would also provide an opportunity for another EU Referendum on Brexit if the UK Parliament agreed. Proposals should also explore how it could be ensured that Scotland would not again be in the situation where should we vote to remain, while other areas of the UK chose to leave, we would nevertheless be taken out of the EU against our will.
- ★ The Scottish Government also proposes that the withdrawal agreement makes provision for an extension of the implementation (or transition) period beyond December 2020. It is wholly unrealistic to expect a comprehensive future economic agreement with the EU to be secured within two years. Failure to build in such flexibility will simply create another potential period of instability towards the end of 2020.

13. The remainder of this document sets out our views on these key issues in further detail. The next section assesses the Chequers proposal, the impact it would have on the UK, and the EU's reaction to it, demonstrating that it cannot form the basis of the future relationship.

# The Future Relationship between the UK and EU

14. The closest the UK Government has come to setting out the detail of its aspiration for the future relationship between the UK and the EU is in the UK Government's Chequers proposal (set out in the July White Paper[13]). Despite having been substantially criticised by our EU negotiating partners, the UK Government continues to insist this remains the basis for its negotiations on the terms of our future relationship with the EU. This is not a sustainable basis on which to take forward negotiations with the EU.

15. While some of the wider elements of co-operation, (such as in relation to justice and security) are welcome, it is the economic relationship that is the centrepiece of the proposal and will have the most significant effect on the future prosperity and welfare of Scotland and the UK. We firmly believe the UK Government's proposals for a future relationship fall far short of what is required if Scotland is to remain a prosperous country able to provide opportunity to our commercial sector and our citizens while maintaining our social and environmental standards.

16. The Chequers proposal aims to ensure future trade co-operation in goods between the UK and the EU, ensure that there is no hard border on the island of Ireland and also allow the UK to pursue future trade deals, in services, with global partners. However the proposals re-state the UK Government's intention that the UK will leave the European Single Market and Customs Union. It is also clear that the proposal excludes free movement of services, which make up around three quarters of the Scottish economy and which would put at risk a great many jobs in our country. Similarly, the insistence on ending free movement of people will jeopardise the success of many of our key economic sectors – from research-leading universities to our farming and tourist sectors – and could undermine our sometimes fragile rural communities.

17. The Chequers proposals are, however, fundamentally flawed for two reasons. First they violate the negotiating position that the European Council first set out in 2016, and has repeatedly reaffirmed since. The EU is determined to protect the integrity of the European Single Market by ensuring the indivisibility of the four freedoms. The Chequers proposal essentially seeks UK participation in the European Single Market for goods, with the possibility of some limited access to the EU services market. Second although the Chequers proposal is intended to secure (frictionless) free trade in goods, it offers nothing of substance regarding free movement of services or of persons; both of which are vital for Scotland's future economic prosperity.

18. In essence, on those elements of the proposals that relate to the future trade and customs arrangements – even if they were agreed to by the EU and were capable of commanding a House of Commons majority – the proposals fall short of setting a relationship which will deliver frictionless trade in goods and access for services comparable to that of membership of the European Single Market. The Scottish Government's analysis since 2016 has been clear on the extent of the economic damage which a relationship short of this would cause, and the Centre for European Reform recently estimated that the UK economy was already 2.5% smaller as a result of the outcome of the EU referendum[14].

19. The proposed splitting of goods and services, by retaining alignment to the European Single Market for goods but not for services, poses significant risks to the UK and Scottish economies. The services sector constitutes 80% of the UK economy, and currently accounts for 40% of the UK's exports to the EU worth around £110bn annually[15]. Work by Eaton and Kortum finds that services trade is affected by geography almost as much as flows in goods[16]. This finding confirms that it is unrealistic to expect that current EU trade flows could simply be replaced through trade deals with other economies around the world.

13 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf

14 https://cer.eu/insights/cost-brexit-june-2018

15 ONS – UK Balance of Payments (2018)

16 Eaton, J. and Kortum, J. (2018) *Trade in goods and trade in services**

20. The Chequers proposal relies upon the questionable assumption that because the European Single Market is less integrated for services than for goods, that regulatory divergence will have a more limited impact on the future of the UK services sector. As Magntorn and Winters note, this ignores key aspects of the European Single Market for services trade, notably a common legal framework and system of enforcement, free movement of persons and mutual recognition of professional qualifications, and harmonised systems of data exchange[17]. Of these the impact of loss of free mobility of persons, that no EU-FTA has ever come close to replicating, cannot be overestimated. A recent study of the markets for certain professional services in the USA found that "the between-state migration rate for individuals in occupations with state-specific licensing exam requirements is 36 per cent lower relative to members of other occupations" and cited evidence that lower migration was associated with a higher cost of services[18].

21. Scotland is one of the strongest exporting regions for services in the UK, and over recent years has experienced services export growth rates slightly exceeding 8% per annum with significant growth in construction, ICT, professional/ business support, and public administration with an increasing orientation to EU markets. These sectors are all regulation-intensive meaning exiting the European Single Market for services has the potential to have significant ramifications for EU market access. As a consequence of the increasing link between services and manufacturing, services that form part of manufacturing exports constitute an important but under-appreciated kind of services export.

22. In 2017, the value of domestic services inputs into UK manufacturing exports amounted to over £70 billion – close to all direct exports of financial and insurance services combined. Indirect manufacturing linked services exports to the EU has increased markedly for Scotland over recent years in particular in relation to key manufacturing sectors like the Food and Beverages industry[19]. Scotland needs trade agreements in services – its area of comparative advantage – and in particular with our largest market. The EU-Canada Comprehensive Economic and Trade Agreement (CETA) is the most comprehensive trade agreement on services that the EU has ever signed with a third country. Taking this as a comparison, it is clear that the market liberalisation in services that can be anticipated from a UK EU Free Trade Agreement would result in a significant deterioration in market access compared to European Single Market access[20].

23. Outside of the strict boundaries of the future economic relationship, the Chequers proposal offers little more than a wish-list of outcomes. It suggests that the UK wants to have the facility to participate in pan-EU programmes in areas such as culture, education, science and research but offers no certainty on this being achieved. In reality agreement on participating in any of these specific EU programmes will be subject to intense negotiations and conditions which may well violate the red lines the UK Government have set out. The UK Government also proposes that UK agencies should continue to participate in key EU regulatory agencies despite being outside the European Single Market.

17 http://blogs.sussex.ac.uk/uktpo/publications/can-ceta-plus-solve-the-uks-services-problem/
18 http://www.nber.org/papers/w24107.pdf
19 http://blogs.sussex.ac.uk/uktpo/publications
20 http://blogs.sussex.ac.uk/uktpo/publications/brexit-and-regional-services-exports-a-heat-map-approach/

24. Other vital questions similarly go unanswered, for example on issues such as whether the UK's proposals can deliver continued use of the European Arrest Warrant in the absence of agreement to continued jurisdiction of the Court of Justice of the EU; how far the proposed common rule book will extend in relation to trade in agri-food products where the UK Government's proposals are for a smaller set of common rules in this area and greater regulatory freedom; whether the UK Government can overcome the EU position of linking access to waters for fishing and access to markets; or whether there will be a price to pay in respect of access to markets for fisheries products.

25. There is also no information in the White Paper[21] about future mobility arrangements for students, and not enough detail on what is proposed, for example, for scientists and researchers, where mobility and collaboration is a key concern. There is no sense the UK Government proposal to leave the Digital Single Market is coherent and deliverable, falling back on a desire to negotiate global deals in this field. Important detail is also lacking in respect of proposals on road freight and passenger transport services; the UK Government's plan is to explore options to ensure reciprocal access in this area.

26. The Chequers proposal also fails to include any provisions to respond to the dynamism of the European Single Market. More broadly, in relation to goods and services, the proposal does not include any detail on how the UK would take account of evolutions in the laws and regulations of the European Single Market, including flanking measures such as environmental protections and employment rights, and the consequent market access.

27. The UK Government has not managed to convince the people of the UK of their Chequers proposal. In early September, in one (YouGov) poll just 11% of people in Britain said they thought the Chequers proposal would be good for Britain (40% said it would not be good; 49% didn't know). In a further UK-wide (Survation) poll, it was the least popular potential outcome of the Brexit negotiations.

28. Overall, the Scottish Government is clear that the Chequers proposal is high on aspiration, limited in scope and would not protect our interests sufficiently in relation to either our future economic or social prosperity. As we have repeatedly stated there is a viable alternative to the Chequers proposal which is to commit to remaining in the European Single Market and to conclude a Customs Union agreement with the EU. This is the only course of action that will minimise the costs of Brexit and for which negotiations could be concluded by the end of the proposed transition period. The Scottish Government reiterates its position that while the UK public did vote to exit the EU, they did not vote to leave the European Single Market or Customs Union with all that entails regarding their future prosperity and opportunity. We do not consider the Chequers proposal as reflecting a consensus position in the country at large.

## Response of the EU to the Chequers Plan

29. In addition to the damaging nature of the Chequers proposal the EU have been clear that there are elements which they consider simply to be unacceptable or unworkable. Donald Tusk, President of the European Council, said of the proposal in Salzburg that *"It must be clear that there are some issues where we are not ready to compromise and first of all this is our fundamental freedoms and single market and this is why we remain sceptical and critical when it comes to this part of the Chequers proposals"*[22].

21 https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union

22 https://www.theguardian.com/politics/2018/sep/20/donald-tusk-demands-answer-to-irish-border-question-next-month

30. Evidence given by Michel Barnier, EU Chief Negotiator, to a UK Parliament select committee[23], demonstrated the extent of this scepticism in more detail. For example, in relation to the proposed facilitated customs arrangement under which the UK would collect customs duties on behalf of the EU, he said; "*We have two major problems, two issues that we cannot accept. Our customs union, our customs system, as it works, is a fully integrated system that cannot be undermined and we cannot split up the four freedoms of the single market*[24]." Other recent comments by Michel Barnier underlined this point by setting out that there is not a case for a future bespoke arrangement for the UK on financial services. It is reckless for the UK Government to base their negotiating strategy for the future relationship with the EU on a set of principles that the EU have so clearly rejected. This threatens the future success of the negotiations.

31. The EU's response also makes clear that the Chequers proposal does not remove the requirement for a legally binding backstop to ensure that there is no re-introduction of a hard border on the island of Ireland. Scotland recognises the distinctiveness of the situation concerning the border on the island of Ireland and is fully supportive of a solution of a frictionless border that respects the Good Friday Agreement. It is increasingly likely that there will be an element of differentiation for Northern Ireland in their relationship with the EU compared to the rest of the UK. In particular it seems Northern Ireland will have the option of remaining within the European Single Market, at least for goods and for some cross-border trade in services.

32. This demonstrates that the UK Government is willing to consider the principle of differentiation within the UK after Brexit. Consequently the Scottish Government believes that the UK Government should reconsider the proposals we put forward in 2016 that provided a credible plan for Scotland to have a future relationship with the EU that meets our particular needs. Such flexibility by the UK Government across the whole of the UK would also ensure that the democratic wishes of the people of Scotland, who are EU citizens, and voted overwhelmingly to remain within the EU in 2016 could be taken into account in the UK's future relationship with Europe.

33. It has become clear that the weakness of the Chequers proposal stems from the fact that it attempts to reconcile a series of red lines unnecessarily imposed on the negotiations by the UK Government, while at the same time seeking to maintain frictionless access to the European Single Market, at least for goods. As we have already noted, the European Union have made clear, this approach cannot be reconciled with the founding principles of the European Single Market. The proposals put forward by the Scottish Government do not create the same challenges. By using a credible and well understood model – UK membership of the EEA and Customs Union – we would expect the EU and other EEA members to support such an application and for a speedy conclusion of negotiations. EEA and Customs Union membership, while less advantageous than full EU membership, nonetheless gives access to shared institutional structures that would minimise the likely deficit in our influence over EU policy that otherwise seems unavoidable.

23 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/oral/88890.pdf

24 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/exiting-the-european-union-committee/the-progress-of-the-uks-negotiations-on-eu-withdrawal/oral/88890.pdf

# A ‘No-Deal’ Brexit

34. The UK Government's insistence on sticking to the main elements of the Chequers proposal as a template for our future relationship with the EU27 raises a very real risk that we will face a 'no-deal' outcome to the Brexit negotiations. This could occur either now with a failure to conclude a withdrawal agreement, or before the end of a transition period. The Scottish Government is clear that this would be a wholly unacceptable outcome and one that would have significant and lasting damage to our economic and social prospects. Leaving the EU without a deal, including a clear commitment on our future relationship, would cause substantial dislocation to our daily lives and a degree of economic damage that would undermine our long term prospects, lower our standard of living and result in an unacceptable rise in unemployment. Indeed the chief executive of the Royal Bank of Scotland recently warned that a no-deal exit from the EU could tip the UK back into recession[25]. As we discuss later, the alternative is clear – continued UK membership of the European Single Market and Customs Union.

35. The risks and likely impacts that must rule out 'no-deal' as an option have been thrown into sharp relief by the UK Government's own 'technical notices'. These 'no-deal' notices describe the anticipated impacts of leaving the EU without a deal, and are inconsistent – not least that many rely on immediate deals being struck with the EU covering specific activities without which key parts of the economy will simply stop functioning. This includes a number of services we should naturally take for granted – for example, the necessary agreements to allow flights between the UK and the EU2[26]. There is no guarantee at all that any such 'deals' can be agreed, in the absence of any over-arching agreement.

36. Even if specific deals can be achieved in such a 'no-deal' outcome, the impacts set out in the Notices[27] are extremely damaging. For example:
    - ★ The prospect of border delays disrupting food supply chains, particularly for fresh foods;
    - ★ Plans to mitigate border delays by minimising customs checks for food and feed imports, potentially leading to an increased risk of food fraud;
    - ★ Road hauliers would need permits to drive legally in Europe, of which there are only a very limited number currently available;
    - ★ All UK drivers would need to carry a 'green card' showing proof of motor insurance in EU countries, including Ireland;
    - ★ Additional documents and health checks would be required for animals travelling to the EU, including proof of effective vaccination of pets, which can take up to four months;
    - ★ An end to accessing video or music streaming subscriptions, such as Netflix, from EU countries.

37. While the Scottish Government played a limited part in fact-checking drafts of these Notices on, for example distinct regulatory systems in Scotland, we do not consider these Notices to have served a useful purpose. If their intention was to reassure the public that a 'no-deal' scenario could be managed effectively, they have not been successful in that aim – with a broad range of stakeholders expressing serious concern about the scenarios depicted in the Notices. If their intention was to provide useful information to the public, then there were far more effective ways this could have been done. And if their intention had been to bring home to people how serious the impacts would be, then they may well have achieved that – but at the cost of increasing the normalisation of such an outcome in some people's minds, without a concomitant and repeated insistence by the UK Government that it recognises the unacceptability of this outcome and will rule it out.

25 https://www.telegraph.co.uk/business/2018/10/04/rbs-boss-warns-risks-bad-brexit/

26 https://www.gov.uk/government/publications/flights-to-and-from-the-uk-if-theres-no-brexit-deal/flights-to-and-from-the-uk-if-theres-no-brexit-deal

27 https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal

38. For these reasons, as we have already noted, it is essential that the UK Government categorically rules out the prospect of a no-deal Brexit. The choice being placed in front of people in the UK and Scotland – between the UK Government's flawed blindfold Brexit deal or no-deal – is a false choice.

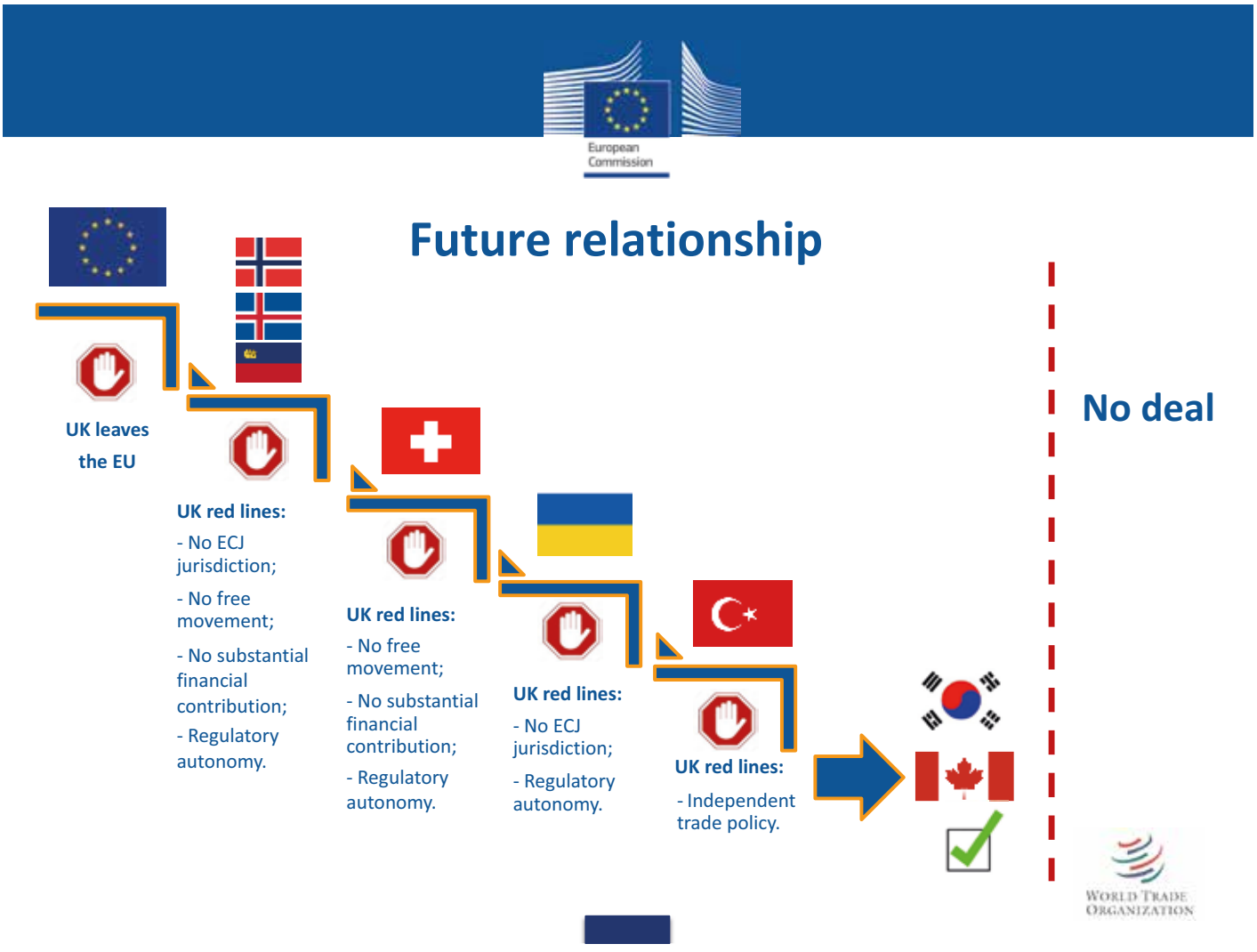
39. Notwithstanding our firm opposition to the UK Government's strategy, as a Government we are nonetheless developing detailed contingency plans for a no-deal Brexit to be triggered should this be the case. The Scottish Government is engaged with relevant public bodies and Scottish local authorities to assess how the risks and potential impacts of a 'no-deal' Brexit could be mitigated. And where action needs to be taken now, because there simply would not be time to take the necessary steps before 29 March 2019 – for example, in preparing the huge volume of secondary legislation, unprecedented in scale, pace and complexity[28] that would be necessary in the event of a 'no-deal' Brexit.

40. In giving this assurance that the Scottish Government will take all reasonable steps to mitigate the risks and impacts of a 'no-deal' Brexit, it must be made clear that it is not in our power to remove these risks and impacts altogether. The issues highlighted above are not ones that we have the powers to alter. Working with partners in Scotland and, where possible, with the UK Government, we will do all we can to minimise the immediate impact of a 'no-deal' Brexit.

28 http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11676

# A Blindfold Brexit and Extension of Article 50

41. The UK Government has hitherto shown little willingness to consider other options or come forward with a substantive alternative to the Chequers proposal, although it has indicated there may be some minor concessions in relation to the border on the island of Ireland. Notwithstanding this, the core elements of the proposal remain unchanged and the UK Government is demanding flexibility from the EU to reach agreement.




29

29 https://ec.europa.eu/commission/sites/beta-political/files/slide_presented_by_barnier_at_euco_15-12-2017.pdf

42. The only alternative to this proposal, as presented by the UK Government, cannot be no-deal. Instead, as we have set out an extension of Article 50 to allow time for a consensus to be reached across the UK should be agreed. The EU have been clear that all options for the future relationship remain available to the UK, and that it is only the self-imposed constraints of the UK Government – its red lines - that limit the choices available. If this remains the case then the consensus of informed opinion is that while the UK Government may yet achieve agreement on withdrawal – although this is by no means certain given the difficulty of agreeing a solution for the Irish Border - a political declaration is likely to be high level in nature and lacking a clear sense of what a future relationship between the UK and the European Union will look like. The UK will then be negotiating after 29 March 2019 from outside the European Union.

43. The UK Government committed through the Lancaster House speech[30] to reach a detailed agreement on the future relationship by October 2018. The subsequent implementation period was agreed to allow for necessary practical arrangements to be made. However, in the absence of such detail, the implementation period will further extend the period of uncertainty and see the UK leaving the EU with very little sense of what a future relationship might look like. This would have a hugely detrimental effect on both citizens and businesses. Of particular concern is the effect on investment decisions that are being taken now by existing businesses in Scotland or prospective businesses looking to locate or invest in Scotland. Business investment has remained muted, for example the latest ONS statistics show that business investment grew at 1.6% in 2017, compared with a pre-Brexit forecast by the OBR in March 2016 of 6.1% annual growth for 2017[31].

44. Leaving the European Union with no-deal or a bad deal would inflict significant damage on Scotland. Similarly, leaving with nothing other than a high-level political declaration – not legally binding – to guide the shape of our relationship with the EU as a third country is also not an outcome the Scottish Government considers viable.

45. Perhaps of greater concern is that any declaration or agreement will be set within the most turbulent of political times in Westminster. For example, Michael Gove suggested in September 2018 that it may be possible to leave the EU with the Chequers proposal and then, once out, unpick that steadily over time or negotiate a different type of relationship[32]. This approach undermines the UK Government negotiating position, implying that the UK Government may not be negotiating in good faith.

30 https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech

31 ONS – Business investment in the UK: January to March 2018 revised results, and OBR – Economic And Fiscal Outlook (March 2016)

32 https://www.theguardian.com/politics/2018/sep/16/chequers-deal-undone-after-britain-leaves-eu-michael-gove-brexit

46. The so called 'blindfold Brexit' that the UK Government's current policy would lead to would be a wholly unacceptable outcome from the Article 50 process:

- ★ The UK Government would have little over 18 months to negotiate a complex and comprehensive future economic relationship with the EU, amidst a period of multiple other priorities for the EU. If these negotiations failed, or only partially succeeded, the UK would have no preferential trade arrangements with our largest trading partner and be obliged to fall back on WTO terms of trade that would severely damage our export industries, both in the goods and services sectors.
- ★ During these crucial negotiations the UK would no longer be a member state of the EU but a third country facing the collective negotiating strength of a market in excess of 400 million consumers. This not only weakens the UK's negotiating hand, but also brings the risk that if the negotiations conclude in either no-deal or a bad deal there would be no possibility of limiting the damage.
- ★ A period of a further two years of negotiations will itself bring further uncertainty and the accompanying economic damage.

47. The Scottish Government opposes the UK exiting the EU against a backdrop of such uncertainty on the specific content of the future UK-EU economic relationship, not least because the indications are that the best form of relationship that may be achieved in the time available – a basic free trade agreement – will significantly damage Scotland. Instead we propose the UK Government seeks an extension of the Article 50 process to enable the UK Parliament to scrutinise and evaluate the options for the UK and provide a more secure basis for future negotiation. In particular it would allow for the UK Parliament to mandate the Government to secure a beneficial future relationship with the EU that involves membership of the European Single Market and Customs Union. Moreover an extension of Article 50 would also accord the necessary time for a second EU referendum to be legislated for[33], in the event Parliament agrees.

48. Extension of Article 50 is provided for within the existing text of the treaty, requiring agreement both from the UK and unanimity from the remaining 27 Member States of the EU[34]. This decision may be influenced by the fact that they have seen the UK Government prevaricate and delay reaching agreement over the terms of the UK withdrawal, including in relation to the border on the island of Ireland and the detail of what they want of a future relationship. The Scottish Government would however urge the UK Government to change its negotiating strategy as a matter of urgency, and keep the UK in the European Single Market and Customs Union. The Court of Session has also recently referred a case to the Court of Justice of the European Union (CJEU) on whether the UK can unilaterally withdraw Article 50. A ruling on this, that the CJEU will make in late November, will also have a significant bearing on the options for the UK.

33 Sargeant, Renwick and Russell, 2018 THE MECHANICS OF A FURTHER REFERENDUM ON BREXIT https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/The_Mechanics_of_a_Further_Referendum_on_Brexit

34 The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, **unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.**

# The Scottish Government's Plan

49. The core of our proposal is the same one the Scottish Government set out in December 2016 and the evidence for it has been reinforced with the passage of time. We believe that the best outcome, short of continued EU membership, is for the UK as a whole to remain within the European Single Market and the Customs Union.

50. If the UK Government adopted these proposals, it could:

- ★ End the current impasse in negotiations on the future relationship by using a credible and well understood model.
- ★ Provide certainty for EU citizens in the UK and UK citizens in the EU.
- ★ Remove the need for the EU backstop to be implemented on the Irish border by ensuring the continuation of border free trade and travel between the Republic of Ireland and the UK without the introduction of a border in the Irish Sea.
- ★ Remove the need for a period of further uncertainty during potentially protracted trade negotiations from March 2019.
- ★ Remove the risk of a chaotic 'no-deal' Brexit.

51. The immediate adoption of our proposals by the UK Government would, in addition to the benefits set out above, minimise the costs incurred by Brexit. A wealth of evidence, as set out in Scotland's Place in Europe in December 2016 and elsewhere, has further reinforced the case for our proposals. For example, the recent report by the Migration Advisory Committee provided clear evidence on the positive impact of EEA citizens who have come to the UK by virtue of free movement.

52. European Single Market membership has had a beneficial impact on the development of our society and the range of rights and protections that the people of Scotland take for granted – such as consumer protection and anti-discrimination. Collaboration and sharing of good practice with EU partners has been a cornerstone of the ability of independent countries to tackle shared challenges from the domestic to the global, for example tackling organised crime that does not respect boundaries, action on climate change and space exploration to name a few. In a significant number of cases, Scottish and UK institutions have been the lead partner on joint projects such as Horizon 2020 – as part of which Scottish organisations have headed more than 350 European research and innovation consortia to date.

53. Establishing a Customs Union between the UK and EU is necessary to secure frictionless trade with the EU. It will eliminate the need for customs checks on goods exported to (and imported from) the EU that otherwise will be necessary to ensure compliance with the UK and EU respective 'rules of origin'. Membership of a Customs Union will also deliver frictionless trade for our vital exports of perishable goods, and will protect the interests of the many Scottish-based companies whose products form part of complex global and EU supply chains.

54. Membership of the European Single Market and the Customs Union would also ensure that the UK kept pace with further regulatory changes in response to innovations in the marketplace, such as the emergence of new digital business models.

55. Scottish Government analysis has shown the significant detrimental economic impact of any options that fall short of European Single Market and Customs Union membership. For example, should the negotiations deliver an FTA style relationship (which we believe the Chequers proposal will be little better than), the damage would be significant: Scotland's GDP would be around 6.1%, or £9 billion (in 2016 cash terms), lower by 2030, compared to continued full EU membership. Should the UK remain in the European Single Market by joining the EEA this impact could be significantly mitigated, with Scottish GDP estimated to be around 2.7% (or £4 billion) lower.

56. Recent analyses of the UK Government's White Paper proposal have also demonstrated the economic costs that would be likely to arise from the Chequers proposal, compared to continued membership of the European Single Market. For example NIESR (National Institute of Economic and Social Research)[35] conclude that the Chequers proposals would result in a trade intensity that is more comparable to a Switzerland or Canada style Free Trade Agreement (FTA) than a Norway Style EEA arrangement. NIESR's review also included an impact analysis incorporating information from the White Paper into their economic forecasts for the UK suggesting that EU exit represents a material risk to UK growth prospects.

57. A range of further evidence since the publication of Scottish Government analysis in January 2018 has also demonstrated very similar levels of economic impact. These studies include the UK Government's Brexit impact assessments[36] that benchmarked very closely to our analysis. It set out that the 'no-deal' scenario, that would see the UK revert to World Trade Organization (WTO) rules, would reduce growth by 8% over that period. The softest Brexit option of continued single-market access through membership of the European Economic Area would, in the longer term, still lower growth by 2%."[37] Even Theresa May's so-called Chequers deal would see GDP take a 4.13% hit, research carried out by the National Institute of Economic and Social Research (NIESR) suggests[38] The European Parliament[39] has also published numerous impact studies that demonstrate the impact across a wide range of sectors of the UK's exit from the EU in a range of scenarios. For example when considering consumer protections the report concludes that "from the perspective of consumers in the EU28, an EEA membership of the UK is the most favourable Brexit scenario. It would ensure the application of the high European consumer protection standards for consumers in the EU27 and in the UK to a very large extent"[40].

58. The IMF recently also suggested that Brexit would have a negative impact on the UK economy, imposing significant costs. Speaking in London[41] Christine Lagarde said "Any deal will not be as good as the smooth process under which goods, services, people and capital move around between the EU and the UK without impediments and obstacles". A no-deal outcome would affect other EU economies "to a lesser extent".

59. Similarly, Professor Jonathan Portes[42] has argued that, under a Chequers scenario, trade in goods could be deemed to be free of both tariff and non-tariff barriers, while trade in services could be viewed as equivalent to falling back to an FTA scenario. Consequently Portes argues that the impact of the Chequers proposal would still be significant, and would lie in between the EEA and FTA scenarios modelled in cross – UK Government analysis.

60. Taking into account the growing importance of services to the Scottish economy, and Scottish exports, the implications of falling back to an FTA scenario are stark. Services currently make up around three quarters of the Scottish economy and account for an increasing proportion of Scotland's exports to the EU, rising from 22% of total EU exports in 2002 to 33% of total exports in 2016[43]. Moving towards an FTA could have significant implications for sectors.

35 National Institute of Economic and Social Research (2018) National Institute Economic Review, 245, F11-F13, August 2018

36 https://www.buzzfeed.com/albertonardelli/the-governments-own-brexit-analysis-says-the-uk-will-be

37 https://www.buzzfeed.com/albertonardelli/the-governments-own-brexit-analysis-says-the-uk-will-be

38 https://institute.global/news/tony-blair-brexit-and-uks-services-trade

39 http://www.europarl.europa.eu/unitedkingdom/en/brexitpublic/brexitstudies.html

40 http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602055/IPOL_STU%282017%29602055_EN.pdf

41 https://www.bbc.co.uk/news/business-45546785

42 Professor Jonathan Portes, senior fellow at The UK in a Changing Europe http://ukandeu.ac.uk/dont-be-fooled-into-thinking-a-chequers-brexit-would-be-economically-painless/

43 Scottish Government (2018) Export Statistics Scotland

61. Micro, small and medium-sized enterprises are significant parts of the Scottish economy. The UK Government's suggested Facilitated Customs Arrangement (FCA) proposals will have a disproportionately negative impact on these firms which have less resilience/capacity to respond to increased administrative burden. The Scottish Government is concerned about the risk that increased customs complexity may limit the international ambition of SMEs and start-ups[44]. In addition to this there are particular sectors in Scotland, such as agriculture and foodstuffs, which are highly sensitive to any delays at the border.

62. There is also a tangible risk, already evident, of loss of talent and associated collaboration opportunities that poses a significant threat to Scotland's innovation agenda and the growth of priority economic sectors such as Fintech/ Insurance tech (both sectors that provide support to the financial services industry and which are significant growth sectors in Scotland). The most recent report published by Deloitte demonstrates the foundations for growth in this sector in Scotland[45].

63. Our analysis has shown that an FCA will not deliver the expected benefits and fall well short of membership of the EU Customs Union. The perceived benefits of pursuing an external trade policy outside a Customs Union do not stand up to scrutiny. It has been argued by the UK Government's Global Britain Strategy[46] that the UK would offset any decline in trade with the EU from being outside of the European Single Market by exporting more to other countries. However, fully replacing the value of EU trade will be challenging, as illustrated by trade flows with emerging economies such as Brazil, Russia, India, China and South Africa (known as the BRICS countries). These nations account for around £2.1bn (7%) of Scotland's exports. In comparison, the EU accounts for £12.3bn (43%) of Scotland's exports. Even small proportionate losses in trade (or lost growth in trade) with the EU would require dramatic increases in trade with such countries. In addition to this, the UK would also lose access to EU negotiated FTAs, with no evidence that these could be replicated or improved upon post-Brexit.

64. In addition to the potential shortfalls of any replacement Free Trade Agreements, the FCA will also introduce significant additional bureaucracy (including rules of origin), disrupting trade flows and introducing delays that will impact Scotland disproportionately to other parts of the UK.

65. It has been demonstrated in this section that there is a viable alternative to the Chequers proposal, and the Scottish Government's proposal would address the challenges that have taken the UK Government's negotiations with the EU to their current impasse. Beyond this, as the evidence demonstrates, our proposals would also be the best outcome for the future economic and social prosperity.

66. Our proposal would also provide the best foundation – short of continued EU membership – should, in future, Scotland choose to be independent and seek to re-join the EU. Equally, we believe that our plan would provide a solid foundation for the UK's future relationship with the EU and would ensure that should the UK as a whole decide to seek to re-join the EU in future, this transition would be more easily achieved. In particular as a result of existing regulatory alignment, the continued requirement for EU compliant regulators and shared social and environmental standards the transition back to EU membership in the future could be more easily managed. The dynamic nature of the relationship between UK and EU policy, that the EEA would create, would also ensure that the UK would have kept pace with further innovations within EU policy making, minimising any gap in policy terms.

44 Federation of Small Business – https://www.fsb.org.uk/media-centre/press-releases/finally-a-brexit-blueprint-but-much-more-work-to-do

45 https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/Innovation/deloitte-uk-connecting-global-fintech-hub-federation-innotribe-innovate-finance.pdf

46 https://www.gov.scot/Publications/2018/01/6407/9

# Acceptability of European Single Market and Customs Union

67. The Scottish Government is clear that continued EU membership is the surest way to secure future social, economic and environmental benefits. Nonetheless, a model such as membership of the EEA combined with being in a Customs Union with the EU could be made to work if the UK Government dispensed with its inflexible red lines and worked closely with the EU to negotiate a solution that would keep Scotland and the United Kingdom in the European Single Market and Customs Union.

68. The UK Government's refusal to explore this model seems to hinge on two principal issues. Firstly that it would require continued participation in free movement of people, and secondly that the UK would be subject to the rules of the EU with limited influence over them.

## Free Movement of People

69. The Migration Advisory Committee's final report provides very clear evidence of the positive impact of EU citizens on the UK's economy, public services and finances. This is in line with evidence already published by the Scottish Government. Given this clear evidence, the Scottish Government cannot accept the recommendations from the MAC to route future EU migration through the current UK immigration system. Such a recommendation would mean that 75% of EU workers currently in the UK – a higher percentage in Scotland – would not have been eligible[47]. In the hospitality sector, for example 97% of the EU workforce would not have been able to come to the UK[48]. We know that the Tier 2 migration route for skilled workers is bureaucratic, costly and burdensome for business. The proposed extension of the Immigration Skills Charge will be a significant cost for employers.

70. It is, however, important to be clear on what the MAC said, and did not say, in relation to free movement of people and the European Single Market. They were careful to stress that their recommendations on migration rules were on the assumption that there was no relationship between those rules and the nature of future trade relationships the UK enters into. In other words, if adopting a different migration policy – such as free movement with the EU – brought other benefits, in terms of trade, investment and growth, that might overall be the best migration policy for the UK. Given the overwhelming evidence, cited again in this paper, of the economic loss to the UK in leaving the European Single Market and Customs Union, the economic case for the UK to retain free movement and European Single Market membership is equally overwhelming. Given Scotland's major demographic challenges and the needs of our rural communities in particular, the case for Scotland is even stronger.

71. There is evidence of shifting public opinion on migration and indeed the MAC notes that the *'UK may find itself in the position of ending free movement just as public concern falls about the migration flows that result from it.'* The Ipsos MORI Issues Index provides long-term trends on attitudes about what individuals across England, Scotland and Wales cite as the single most important issue facing Great Britain today. After reaching a peak of 40% in 2015, concern about immigration is currently at a lower level than in 2010[49]. In August 2018, 44% thought the most important issue is Brexit and the EU; 9% thought it was the NHS, hospitals or healthcare; and only 6% thought it was immigration[50]. There has been a decrease in the proportion of people in Great Britain prioritising the control of immigration from other EU countries over access to free trade with the EU. Further recent polling suggests that people in other parts of the UK are now – as with people in Scotland – more likely to prioritise UK/EU free trade over such concerns around immigration[51].

47 Analysis by Institute for Public Policy Research, 2018 https://www.theguardian.com/world/2018/sep/20/seven-in-10-eu-workers-in-uk-would-be-barred-under-brexit-proposals

48 Analysis by Institute for Public Policy Research, 2018

49 https://www.ipsos.com/sites/default/files/ct/news/documents/2018-08/issues_index_august18_v1_public.pdf

50 Ipsos MORI Research Index – August 2018, p. 3, https://www.ipsos.com/sites/default/files/ct/news/documents/2018-08/issues_index_august18_v1_public.pdf

51 The Orb Monthly Brexit Tracker asks how strongly people in the UK agree or disagree that having greater control over immigration is more important than having access to free trade with the EU. In the latest poll in early September 2018, 38% agreed that control over immigration is more important, while 48% disagreed (14% didn't know). This is one of the highest 'disagree' figures in the times series.

72. Non-UK EU citizens within Scotland play a crucial role in our economy, our public services and our communities. After months of uncertainty, the UK Government confirmed earlier this year how their rights will be protected – and the Prime Minister has since stated that those rights will be protected even in the event of no-deal. The UK Government now needs to provide absolute clarity and a guarantee to EU citizens that they will honour the rights already agreed and contained with the draft Withdrawal Agreement and the EU Settlement Scheme design. We know that the lack of equivalent commitment to UK citizens in other EU Member States will be worrying for them, and urge the UK Government to seek guarantees about their future rights as a matter of priority.

73. The National Conversation on Immigration report published by British Futures on 17 September identified a lack of confidence in the UK Government's ability to manage immigration competently and fairly, as well as a lack of trust in the UK Government and a lack of understanding about how the current arrangements work. '*Almost no-one knew the detail of current free movement rules… When we explained these regulations in the discussion, there was scepticism that such regulations were ever enforced*'[52].

74. There are existing limitations and restrictions on the exercise of the right of free movement that could be much better explained and more effectively enforced. For example, EU citizens seeking work in the UK have no access to job seekers' benefits here for three months after they arrive, and can be refused those benefits and required to leave the country if they do not have a realistic prospect of finding work. EU Member States may refuse entry to, or in certain cases remove, EU citizens of other Member States on the grounds of public policy (such as criminality), public security or public health; or in the event of abuse of rights or fraud, such as 'sham' marriages.

## Influence and 'Taking Back Control'

75. Secondly, it has been suggested that membership of the European Single Market and Customs Union is not consistent with the UK 'taking back control' of its own laws from Brussels. As the Scottish Government has consistently set out, we accept that our proposal does not deliver the same level of influence as our preferred future relationship – EU membership. EEA and Customs Union membership does however ensure that the UK and devolved legislatures are responsible for laws that affect the UK, and in return for market access and other benefits implement laws that are consistent with those of the EU in relevant sectors of society and the economy.

76. While EEA membership would require the UK to adhere to all European Single Market legislation, including with regard to so-called flanking measures such as maintaining high environmental standards and labour market protections, it does not require the UK to remain within either the Common Agricultural Policy or the Common Fisheries Policy. EEA membership protects the free movement of services from which the Scottish economy increasingly benefits and would guarantee that UK (and Scottish) interests were properly represented at the wide array of EU regulatory agencies responsible for setting standards for all goods and services freely circulating within the European Single Market. It would also facilitate future participation in emerging market areas, such as the Digital Single Market that is of growing benefit to Scotland.

52 National Conversation on Immigration Final report, British Future and HOPE not hate, September 2018, p 32

77. A similar relationship on the European Single Market has functioned very effectively for Norway. The Norwegian Government recently published a strategy setting out its future relationship with the EU. As well as an ambitious agenda for the future relationship with Europe the paper also sets out the benefits of this model to Norway. "The EEA Agreement occupies a unique position among the various agreements Norway has concluded with the EU to safeguard Norwegian interests. The EEA Agreement helps to ensure economic security and predictability. It is vital for the Norwegian business sector, for Norwegian jobs, and for our ability to maintain a sustainable welfare society. Without labour from other EEA countries, many Norwegian businesses would come to a standstill. Without access to the internal market and a level playing field in the EEA, the Norwegian export industry would suffer.

78. Under the EEA Agreement many Norwegians make use of their rights under the Agreement to cross borders, live, work, invest, and study in other EEA countries. Younger generations take these opportunities for granted. The Government sees it as one of its main tasks to increase awareness of the importance of the EEA Agreement for safeguarding fundamental Norwegian interests"[53].

79. As the Scottish Government has demonstrated, backed by the vast majority of independent analysis and evidence, the best outcome short of full membership for the future relationship of the UK and EU for both economic and social policy outcomes would be European Single Market and Customs Union membership. In this critical phase of the negotiations it is vital to recognise this as the most viable option at this seemingly deadlocked stage of the negotiations.

53 https://www.regjeringen.no/en/dokumenter/work_programme_2017/id2536921/

# The Effect of Brexit on the UK Constitution and Devolution

80. The process of Brexit has demonstrated weaknesses in the UK's constitutional arrangements, and the threats to the position of the devolved administrations and legislatures. Over the last two years there have been moves to centralise power in Whitehall and Westminster; long standing protections of devolved powers have been ignored and removed; and decisions that affect the people of Scotland have been taken without proper democratic accountability through the Scottish Parliament. During the passage of the European Union (Withdrawal) Act 2018 there were sustained efforts by the UK Government to introduce wide ranging restrictions on currently devolved powers. Eventually the UK Government took the unprecedented decision to legislate in devolved areas after the Scottish Parliament explicitly refused to give its consent, breaching the Sewel Convention. The Withdrawal Act also allows UK Government Ministers to change the competence of the Scottish Parliament without its consent, breaching a fundamental principle of the devolution settlement put in place in 1998.

81. It is clear current constitutional arrangements cannot bear the weight of Brexit, neither to negotiate the UK's withdrawal from the EU nor in the longer term. Long standing weaknesses in our arrangements – lack of robust legal protections of devolved powers, lack of effective mechanisms for inter-governmental working, and cultural attitudes within Whitehall and Westminster – have been illustrated starkly through the Brexit processes[54].

82. There is now a need for a widespread debate about the implications of Brexit for the UK's constitutional arrangements. The Scottish Government has already set out proposals to ensure that the Scottish Government and Scottish Parliament are able to protect Scotland's interests, including devolution of further responsibilities for key rights currently guaranteed by EU membership[55]. There is also an immediate need to strengthen the Sewel Convention and protect current devolved responsibilities, and to improve arrangements for the conduct of intergovernmental relations across the UK. The Scottish Government will continue to develop further proposals to secure Scottish interests following withdrawal and enhance the powers of the Scottish Parliament, including the potential for an international legal identity for Scotland. We will also contribute to a wider debate on the nature of the future governance of these islands.

83. And as the Scottish Government has said, we will also set out our view on another Independence Referendum at the end of this phase of negotiation. Our proposal on European Single Market/Customs Union membership offers the strongest foundation – short of continued EU membership – should, in future Scotland choose to be independent and seek to rejoin the EU.

54 See the report of the House of Commons Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU: reconciling differences and building strong relationships* (July 2018).

55 See Chapter 4 of *Scotland's Place in Europe* (2016)

# Conclusion

84. As has been clearly demonstrated, while the UK Government may succeed in gaining agreement to withdrawal from the EU, the future relationship remains very unclear and the current UK Government negotiating position is based on the core elements of a fundamentally flawed proposal. The Scottish Government has set out a credible and evidence-backed plan that would immediately address this situation by keeping the UK within the European Single Market and the Customs Union, thereby protecting jobs, economic growth and prosperity and safeguarding vital social and environmental benefits as well as removing any further uncertainty.

85. The significant challenges and clear limitations of the Chequers proposal, that the UK Government continues to place at the centre of its strategy for the future relationship between the UK and EU, have also been clearly set out. It has been shown that the choice between two scenarios – Chequers proposal or no-deal – claimed by the UK Government is a false choice. In reality, the outcome seems more likely to be a blindfold Brexit that is not acceptable.

86. We have also made clear the impact that Brexit is having on the internal operations of the UK, and the wider constitutional challenges that an exit from the EU represents. These issues further heighten the uncertainty and potential impact of Brexit across the UK, and need to be urgently addressed.

87. The Scottish Government set out clear proposals in 2016 that would best protect Scotland's interests. This was for the UK as a whole to remain within the European Single Market and Customs Union. This was supported by clear evidence that has since been further supported by a range of additional independent evidence, including an evidence-backed plan for the UK to remain in the European Single Market and Customs Union. This would provide certainty and a clear way forward that would have every chance of being successfully negotiated with the EU and other EEA partners.

88. As matters stand, and against the wishes of a clear majority of the people of Scotland, the UK is set to leave the EU at a time of great uncertainty and significant challenges in world affairs. The vagaries of globalisation, the rise of populism, the breakdown in international trade diplomacy, the challenge of climate change, and the significant increase in the movement of stateless persons are matters that concern us all.

89. Presently the UK is a member of a family of nation states that has the capacity, when acting together, to address these issues. Outside the EU the UK will be a smaller player globally and therefore more vulnerable to a landscape shaped by others. This has the potential to impact our economic prosperity and our way of life. The Scottish Government believes this is neither necessary nor desirable.

90. The Scottish Government also remains fully committed to securing a positive and mutually beneficial future relationship with European partners, rejecting the increasingly negative rhetoric characterising the negotiations, that will not serve the UK well in sustaining existing partnerships and developing new ones. Whatever happens on Brexit, we will remain an outward-facing and international nation.

91. Time is running short and the stakes could not be higher for decisions that will have a fundamental effect on Scotland, and the UK, for many generations to come. The proposals we have put forward have the interests of the people of Scotland at their heart. We firmly believe that – short of continued EU membership – continued membership of the European Single Market and Customs Union is the only way to protect our future economic and social prosperity. At this time of uncertainty we believe our proposals respect the outcome of the UK referendum while offering the most credible solution to the current impasse. This will provide Scotland and the UK with a solid basis for a future positive relationship with the EU and allow us to protect the future prosperity of Scotland and the UK.

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