



SCOTLAND'S PLACE IN EUROPE:

An Assessment of
The UK Government's
Proposed Future
Relationship with
The EU



Scottish Government
Riaghaltas na h-Alba
gov.scot



FIRST MINISTER



**CABINET SECRETARY FOR GOVERNMENT
BUSINESS AND CONSTITUTIONAL RELATIONS**

MINISTERIAL FOREWORD

The people of Scotland voted overwhelmingly to remain in the European Union.

The Prime Minister claims the agreement she has struck to leave the EU, despite that overwhelming vote for remain, will provide clarity and stability.

It is entirely understandable that many in business, in agriculture, in fishing and in all other sectors in Scotland - and individuals - wish an end to the current destabilising uncertainty brought about by the actions of the UK Government. Unfortunately this deal won't do that. The Prime Minister's deal, constrained by her own self-imposed red lines, will in fact extend the period of uncertainty, will inflict long term damage on the Scottish economy and public services, and will cause further political turmoil.

In addition, her presentation of this deal as the only option, without which there would be the chaos of a "no deal," is also untrue. There are options available that would avoid any possibility of a "no deal" but secure a much more beneficial outcome for Scotland.

The Prime Minister's proposed deal will see Scotland taken out of the EU despite the overwhelming vote to remain. The people of Scotland will lose the rights we have as EU citizens, including the freedom to travel, live and work anywhere across the EU. It will see our friends and neighbours obliged to apply for permission to remain in the country they have chosen to make their home simply because they exercised their right to live and work here. It is a deal which will see us poorer, not just economically but socially.

The Scottish Government is focused on working across political parties and across sectors and communities in order to move this issue forward and towards a long term solution. Continued membership of the EU, or at the very least continued membership of the Single Market and the Customs Union remain viable alternatives, which the EU has made clear it would accept. Another referendum, with the option of "remain" on the ballot paper, or a general election are also potential next steps. All those things are being actively discussed.

This paper sets out why the Prime Minister's proposed deal is unacceptable and must be defeated. The Scottish Government will continue to work with others towards that end and to the implementation of a better solution for our country, economy and our public services.

SUMMARY ASSESSMENT OF THE UK GOVERNMENT'S DEAL

Damage of Uncertainty

- Whilst we have yet to leave the EU, the depreciation of Sterling and increase in inflation triggered by the referendum result is already having a negative impact on the economy. Analysis suggests household finances are being impacted to the tune of £600 a year¹. The continued uncertainty generated by the UK Government's approach is depressing investment now, and puts future investment at risk.
- There is no certainty in the Prime Minister's deal on the future trading arrangements, neither for goods nor for services; there is no certainty as to the future mobility arrangements; there is no clarity on the precise justice and law enforcement tools and measures we will continue to benefit from; and there is no guarantee of continued participation in the broad range of EU programmes and funds which support our universities, communities, NGOs and businesses.

Economic impact of the trade proposals

- The definition of the future relationship remains vague, however given the exclusion of Single Market and Customs Union membership it can only amount to a Free Trade Agreement (FTA). This will introduce trade frictions and non-tariff barriers which would inhibit Scottish companies' ability to trade with their EU counterparts and is likely to see business investment, productivity, earnings and employment all reduced, compared to staying in the EU.
- By 2030, our previous modelling indicates that, under an FTA, GDP would be around £9 billion lower than if we stayed in the EU, that is equivalent to £1,600 per person in Scotland than if we remained in the EU.²
- New research by the National Institute for Economic and Social Research finds that a Canada-style Free Trade Agreement with the EU costs £1,100 a year per person by about 2030.
- Services account for around three quarters of Scotland's economic output. No free trade agreement in the world provides anything close to the degree of freedom of movement of services as exists within the European Single Market, and is set to intensify.
- Under the deal, border checks and controls will depend on the extent of the UK's alignment with EU customs and regulatory regimes. However, the declaration contains no commitment to a common rule book on regulation. Therefore, even if a zero tariff agreement were reached, that does not mean 'frictionless' trade at the border, which the last two years of negotiation has made clear there is no means of achieving with current UK government red lines. This is crucial for Scotland's time sensitive food and drink exports, many of which attract a premium for their freshness.
- The Scottish Government has not had any role in negotiations on fisheries, despite the vast majority of the UK fisheries and aquaculture sector being Scottish and, unlike the rest of the UK, Scotland being a net exporter of seafood.
- In this package, the UK has begun the process of reneging on its promises to the fishing industry by accepting both a link between access to UK waters and

¹ National Institute for Economic and Social Research

² <https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/>. see the Technical Annex in Scotland's Place in Europe: People, Jobs and Investment for the assumptions made on exports, productivity and Foreign Direct Investment.

access to EU markets. It also commits to a separate Fisheries Agreement as part of the economic partnership which could result in either the UK conceding guaranteed access for EU vessels to UK waters, or accepting tariffs and customs barriers on trade in fish, seafood and farmed salmon with the EU. This threatens to leave two key Scottish interests to be traded off against each other.

Impact on labour market and demography

- The political declaration confirms the UK Government's intention to end free movement of people between the UK and the EU
- Inward migration has made an overwhelmingly positive contribution to Scotland's economy and society, but this deal does not take account of Scotland's distinct needs on migration.
- In a scenario of 50% less EU migration, the working age population would decline by almost 1% rather than the current projection of growing by 1.1% and the proportion of children would decline by 4.3%.
- There are particular concerns in the Health and Social Care sector where the impact of the UK Government's rhetoric on ending freedom of movement has already had a negative impact.
- Figures, published in November 2018 by the Nursing and Midwifery Council, show that the dramatic decline seen in the number of applicants from the EEA for UK registration in the year after the EU referendum (an 87% year on year drop) has not stopped.

Broad and deep cooperation with the EU

- A gap will likely emerge in relation to security, justice and law enforcement cooperation as a result of UK Government red lines, not least on European Court of Justice jurisdiction, putting at risk Scotland's direct links to EU partners in Europol and Eurojust as well as access to tools such as the European Arrest Warrant.
- The outline political declaration provides limited comfort that the opportunities and benefits of continued full participation in competitive EU funding programmes, like Horizon 2020, will be maintained as part of the future relationship.

Constitutional Implications

- There are profound implications for the constitutional arrangements of the UK and the devolution settlements.
- The UK Government has already taken the unprecedented action of imposing legislation, in the face of overwhelming rejection by the Scottish Parliament, enabling it to constrain devolved powers.
- The draft Withdrawal Agreement ignores the views of the people of Scotland, as expressed in the EU referendum, by rejecting any possibility of a closer and different relationship for Scotland with the EU, while seeking – rightly and properly – such a relationship for Northern Ireland.

1. Introduction

1. The UK Government has reached an agreement with the EU on the terms of withdrawal and outline of the future relationship.
2. Under current EU and UK Government plans, immediately after 29 March next year, the Withdrawal Agreement would be Britain's only legal agreement with the EU. The deal consists of the **Withdrawal Agreement**, an international treaty between the UK and the EU which sets out the terms of the UK's departure, and the **political declaration** on the future relationship. The former is over 500 pages of specific provisions, the latter is merely an aspirational statement of intent for the crucial further negotiations. In contrast to the certainty of membership of the European Single Market and Customs Union, the declaration provides no reliable detail and clarity on the future relationship between the UK and the EU. What it does contain suggests a far diminished partnership, one that will leave this country and its people poorer.
3. The Prime Minister has promised that this would not be the case³. She said that by the end of 2018 there would be a full agreement on the UK's withdrawal and the detail of the future relationship. Furthermore, the Prime Minister has consistently promised a deep and special relationship which meets the needs of all parts of the UK. Neither promise has been delivered.
4. Throughout the course of the negotiations, the views of the people, Parliament and Government of Scotland have neither been reflected nor respected. At key stages in the Brexit process, such as the Article 50 notification through to this Withdrawal Agreement and political declaration, the Scottish Government has seen key texts through the media. This makes a mockery of the Prime Minister's claims that the devolved administrations will be 'fully involved'.⁴ The actions of the UK Government have consistently undermined the terms of reference of the Joint Ministerial Committee on EU Negotiations, the body the UK Government offered us as the mechanism to "seek to agree a UK approach to, and objectives for, Article 50 negotiations."⁵

³ The Prime Minister's Lancaster House Speech on 17 January 2017, "... 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>]

⁴ The Prime Ministers visit to Scotland on 15 July 2016, during which she also said she would not: "be triggering Article 50 until [she thinks] that we have a UK approach and objectives for negotiations - [she thought] it is important that we establish that before we trigger Article 50."

⁵ <https://www.gov.uk/government/publications/joint-ministerial-committee-communique-24-october-2016>

5. It is far from certain that this deal will survive scrutiny either in the UK Cabinet or in the House of Commons. The House of Commons has an opportunity to reject the deal and put in place a better outcome when the Prime Minister puts it before them. The Scottish Government believes that there are two ways forward. Firstly, the House of Commons must coalesce around a clear direction of travel that would keep the UK within the European single market and the customs union, and secondly the option of another public vote should be supported.

2. Why the Scottish Government cannot support the UK Government's proposed deal

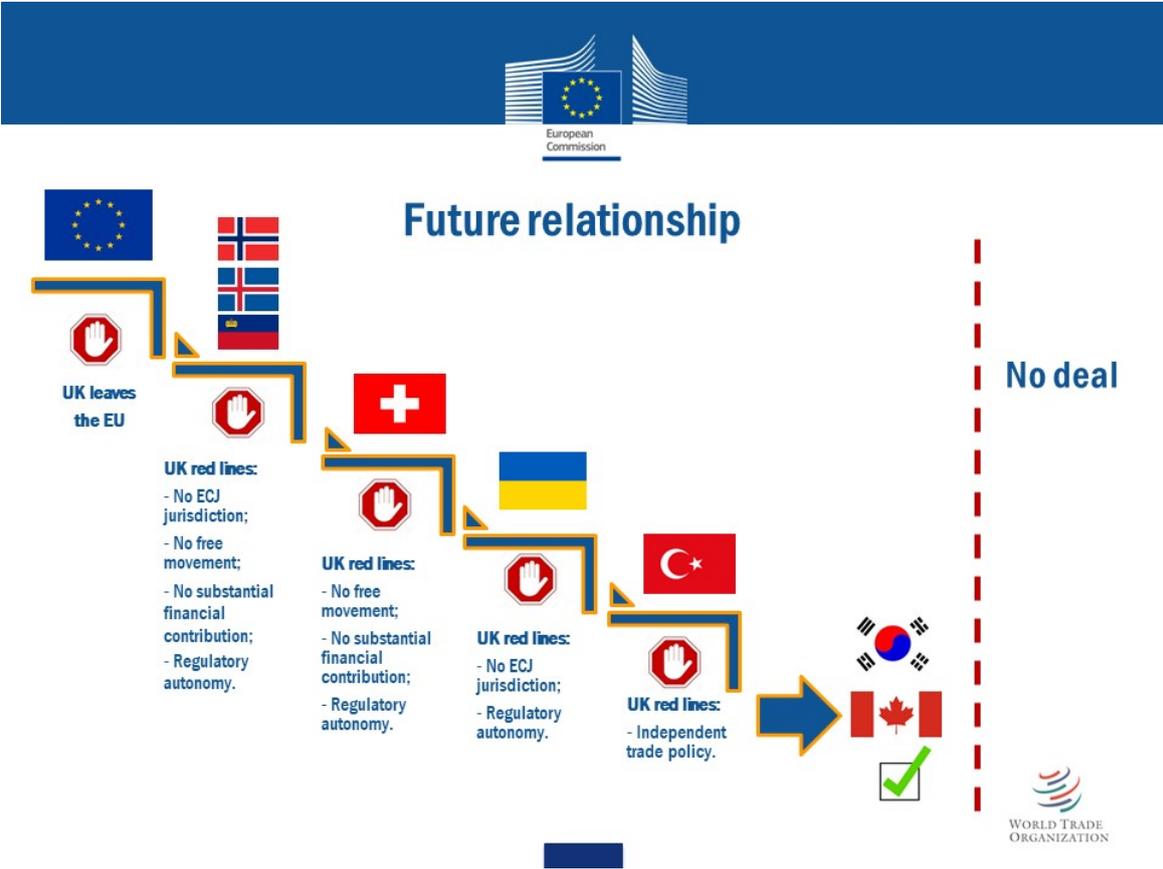
2.1 Continued Uncertainty

6. There is a sense in some quarters that the deal represents a major breakthrough and gives clarity for the future. Nothing could be further from the truth. The agreement may have taken over two years of intense negotiation, but it nevertheless only covers the UK's divorce from the EU. The political declaration which accompanies the Withdrawal Agreement provides no certainty on the future relationship as so much within the text is conditional upon the obligations the UK Government will accept.
7. Nearly all the difficult decisions which need to be taken about the future of our businesses and society have simply been postponed for another day, to be negotiated by the UK once we have become a third country. We therefore face what is effectively a blindfold Brexit, with several more years of damaging uncertainty for businesses and of UK government still consumed by these negotiations and their own internal divisions. Such uncertainty is likely to lead to businesses postponing or cancelling investment and recruitment plans until the UK's future economic relationship with the EU becomes clearer. This will depress economic activity and put jobs at risk.

2.2 Overall Economic Impact

8. Based on the Withdrawal Agreement and the political declaration, Scotland will be substantially poorer than it would be if it stayed in the European Union. The UK Government describes the aims of the framework for the future relationship as 'ambitious'. However the Prime Minister's red lines, on leaving the European Single Market and Customs Union, ending freedom of movement and ending the jurisdiction of the Court of Justice of the EU, have meant that the proposed future relationship could only be built around a standard free trade agreement which will inevitably weaken our economic ties with the EU.

9. The EU for its part, demonstrated by the graphic below, has been equally clear that the four freedoms are indivisible and cannot be cherry-picked. That free trade agreement is what is now being presented by the UK Government. A briefing from the Institute for Public Policy Research (IPPR)⁶ on the outline political declaration reached a similar conclusion. It argues that “the UK and the EU are still headed for a far more distant economic relationship than the status quo.” It compares the political declaration to something far closer to the type of free trade agreement with the EU that Canada has, and concludes on that basis that, “the future relationship points towards a free trade agreement, which, while ambitious compared to other similar agreements, is inherently constrained and radically different to the current single market arrangements that come with membership of the EU.” The graphic below also demonstrates that UK membership of the Single Market and Customs Union would be an acceptable model.



⁶ <https://www.ippr.org/files/2018-11/brexit-withdrawal-agreement-nov18.pdf>

⁷ Slide presented by Michel Barnier, 15 December 2017 https://ec.europa.eu/commission/sites/beta-political/files/slide_presented_by_barnier_at_euco_15-12-2017.pdf

10. *Scotland's Place in Europe: People, Jobs and Investment*⁸ demonstrated that a comprehensive FTA, which is broadly analogous to the future partnership outlined in the Political Declaration, would introduce trade frictions and non-tariff barriers which would inhibit Scottish companies' ability to trade with their EU counterparts. It would limit the ability of Scottish companies to attract the workers that our country needs and to fill skill gaps in our economy. Scotland's ability to attract international investment, and the jobs that it creates, would also be diminished. More broadly, the benefits that single market membership has brought in terms of competition, specialisation, innovation and investment would all be reduced, with a corresponding impact on Scotland's competitiveness and productivity.⁹

11. This will ultimately reduce living standards, employment opportunities and earnings for people across Scotland. The Scottish Government's analysis indicates that under an FTA, business investment could fall by up to 7.7% and that GDP would be 6.1% lower by 2030 compared to remaining in the EU. This is equivalent to £9 billion or £1,600 per person in Scotland. New research by the National Institute for Economic and Social Research (November 2018) finds that a Canada-style Free Trade Agreement with the EU costs £1,100 a year per person by about 2030. The Canada FTA lies between the EEA and FTA modelled by Scottish Government.

2.3 The crucial service sector will be significantly disadvantaged by the deal

12. Services account for three quarters of Scotland's economic output. We export services outside the UK to the value of £11.6 billion¹⁰ – 39% of all international exports. At the moment Scottish service providers face relatively limited regulatory barriers when selling their services across the EU - either directly across borders, by travelling to other EU countries, or by establishing a branch in another member state.

13. From an already unambitious starting point in their White Paper¹¹, the UK Government has ceded further ground on services in the Political Declaration. The language in the declaration accepts that there may be exceptions and limitations to the scope of obligations in respect of cross border trade in services and the movement of capital

⁸ <https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/>

⁹ See the Technical Annex in *Scotland's Place in Europe: People, Jobs and Investment* for the assumptions made on exports, productivity and Foreign Direct Investment.

¹⁰ Export Statistics Scotland 2016 (January 2018)

<https://www2.gov.scot/Resource/0053/00530678.pdf>

¹¹ The future relationship between the United Kingdom and the European Union (United Kingdom Government, July 2018) <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

and payments, merely some form of “appropriate” arrangements for recognition of professional qualifications which will be connected to the depth and breadth of the provisions on movement of people. There is little within the Political Declaration that breaks new ground for trade in services and investment in comparison with recent FTAs signed by the EU or other advanced economies.

14. Scotland’s largest EU services export sector is *Wholesale, retail trade; repair of motor vehicles*¹² including the wholesale of iconic Scottish fishery and aquaculture products like salmon. Any loss of access to the EU market for these products will have a direct detrimental impact on the sector, and the jobs which the sector creates in rural communities.
15. No free trade agreement in the world provides the degree of freedom of movement in services that is lost by leaving the single market and it is difficult to see how such a loss could be made up. Scotland’s interests are different, and it is essential that we are fully involved in determining UK negotiating priorities¹³ in the future, which has not happened in these negotiations.

2.4 Loss of Market Access for Key Scottish Exports

16. The EU is the largest single market for Scotland’s international exports, with exports worth £12.7 billion in 2016, supporting directly and indirectly hundreds of thousands of jobs across Scotland. Further to which, in 2015, Scotland exported around £3.6 billion to countries with which the EU has an FTA. This trade accounted for a further 13% of Scotland’s international exports.¹⁴
17. Last year, nearly 6,800 companies operating in Scotland exported goods to the EU and over 10,000 companies were reliant on imports from the EU.¹⁵ All will be potentially impacted by a decision to leave the single market and customs union through higher costs, a loss of competitiveness or production delays. These impacts will in turn feed through to suppliers, jobs and the wider Scottish economy.

¹² Export Statistics Scotland 2016 (January 2018)

<https://www2.gov.scot/Resource/0053/00530678.pdf>

¹³ *Scotland's role in the development of future UK trade arrangements* (2018)

<https://www.gov.scot/news/strengthening-scotlands-voice-in-trade-deals/>

¹⁴ Scottish Government (2017) Exports Statistics Scotland and SG Calculations

¹⁵ HMRC Regional Trade Statistics <https://www.gov.uk/government/statistical-data-sets/regional-trade-statistics-interactive-analysis-second-quarter-2018>

18. The EU is a particularly important destination market for exports from the coke, refined petroleum and chemicals sector, accounting for more than 80% of Scotland's international exports in that sector. The political declaration links zero-tariff trade to an ongoing commitment on customs and level playing field. Frictionless trade is dependent upon the UK's continued alignment with EU regulations, and may not be compatible with the development of an independent UK trade policy. The fact that any prospect of complete freedom from tariffs for trade in goods is conditional on the EU being content that there is a level playing field, means that freedom from tariffs cannot be taken for granted.

19. Food and drink exports, including premium iconic Scottish produce like whisky, beef, langoustines and salmon, are as a whole approximately four times more important to the Scottish economy than for the UK as a whole. Given the perishable nature of many food exports, the potential impacts of increased friction at the border are very severe. The political declaration makes clear that border checks and controls will depend on the extent of the UK's alignment with EU customs and regulatory regimes, therefore even if such a zero tariff agreement were reached frictionless trade at the border is not guaranteed. The EU is the largest regional market for Scotch Whisky exports, accounting for 31% (£1.37bn) of total Scotch exports in 2017.¹⁶ While it will not suffer the same tariff issues as most agri-food products, other border checks and excise arrangements would create unnecessary friction for exports.

20. Any delays to exports caused by, for example, increased certification requirements (e.g. Export Health Certificates, Certificates of Origin) or customs inspections would be devastating for many businesses; our fresh, chilled or perishable products (seafood, red meat, poultry meat, fruit, vegetables, and dairy) attract a premium for quality and freshness.

21. Fishing, aquaculture and fish processing employed around 14,700 people in 2016 and contributed £903m in gross value added (GVA) to the Scottish economy. Within this, aquaculture directly employed 2,300 people and generated £216m in GVA¹⁷. Around 2,300 people were employed in fishing related businesses across Orkney, Shetland the Western Isles alone. Any new trade barriers to Scottish seafood exports to the EU will have a devastating effect on their competitiveness with knock on implications for livelihoods across some of our most remote rural communities.

¹⁶ HMRC Overseas Trade Statistics, 2017

¹⁷ <https://www2.gov.scot/Topics/marine/Publications/TopicSheets/tlist/economy>

	Fishing	Aquaculture	Fish Processing
GVA (£m)	296	216	391
Employment (000's)	4.8	2.3	7.6
GVA per Worker (£)	61,344	94,850	51,395

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2.5 It trades away the promised ‘sea of opportunity’ for the Scottish fishing industry

22. The political declaration and the Withdrawal Agreement appears to commit the UK and the EU to agreeing a new fisheries agreement on access to waters and quota shares, in time for the end of the transition period. The backstop also involves a link between access to EU markets and access to UK waters, and the commitments in the political declaration are contained within the Economic Partnership section suggesting a link to trade. The specific reference to agreeing shares suggests that the UK Government is gearing up to accept a long-term deal on access and quota shares, before any annual access and quota coastal state negotiations take place. This would be in direct contradiction to the position set out in the UK Government’s White Paper on Fisheries which set out a position that such arrangements would be a matter for annual negotiation once the UK is an independent coastal state, and that there should be no link between access to UK waters and access to EU markets.¹⁹ By brigading aquaculture with fisheries in making this link, the withdrawal agreement has placed Scotland’s farmed fish and shellfish sectors at the mercy of whatever is agreed in the Fisheries Agreement, effectively setting up one vital Scottish interest against another.
23. That such an agreement could be arrived at without any engagement with Scottish Government, or, to our knowledge, an assessment of its impact on Scotland, shows the UK Government’s complete disregard for vital Scottish interests. Furthermore it would be a betrayal of the promise made to Scottish fishers and a demonstration that there is indeed no ‘sea of opportunity’ awaiting us outside the European Union, while also creating severe uncertainty for our aquaculture sector. As we have long feared, it would appear that Scottish seafood and catching sector interests are being treated as expendable in the Brexit negotiations.

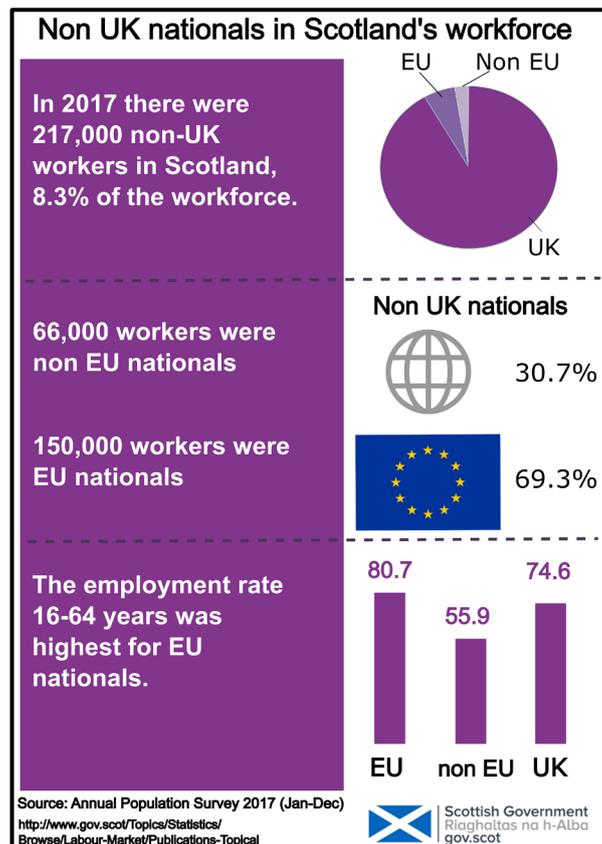
¹⁸ <https://www2.gov.scot/Topics/marine/Publications/TopicSheets/tslist/economy>

¹⁹ <https://www.gov.uk/government/consultations/fisheries-white-paper-sustainable-fisheries-for-future-generations>

2.6 Loss of freedom of movement will have strong negative consequences

24. The UK Government has publicly committed to ending freedom of movement. Yet inward migration has helped to turn Scotland from a nation of emigration with a declining population into a culturally diverse, outward looking nation with a growing population to sustain our rural communities and our public services. It has brought benefits and opportunities for people born in Scotland. The recent report from the Migration Advisory Committee confirmed that EEA nationals contribute more to public services and finances than they take out. Any reduction in EU migration could have a serious effect on Scotland's population growth and its demographic composition. In Scotland, all of the projected increase in our population over the next 25 years is due to migration. The Scottish Fiscal Commission judged that, given the changing relationship between the UK and the EU, a 50% less future EU migration variant of the population projections was appropriate for planning assumptions. In that scenario the working age population would decline by almost 1% rather than the current projection of growing by 1.1% and the proportion of children would decline by 4.3%.
25. Latest data shows that there are an estimated 235,000 EU citizens living in Scotland, alongside an estimated 142,000 other international migrants. Together these individuals represent 7% of Scotland's population. These EU citizens are making a vital contribution to Scotland's economy. They are driving our population growth and ensuring that we have workers to meet the needs of businesses and the public sector.
26. In the political declaration, mobility forms part of the economic partnership. Yet the social and cultural aspects of migration are important: migration has been particularly important in our rural communities and in the care sector. Research by the James Hutton Institute estimates that Scotland's sparsely populated areas are at risk of losing more than a quarter of their population by 2046 if current demographic trends are left unchanged. Earlier this year, we set out the case for Scotland to have greater control over migration policy reflecting the clear differences between Scotland's needs and those of elsewhere in the UK.²⁰

²⁰ <https://www.gov.scot/publications/scotlands-population-needs-migration-policy/>



2.7 Damaging implications for the Health and Social Care Sector

27. The Care Sector is very reliant on EU citizens. The UK Migration Advisory Committee concluded that EEA migrants contribute more to the health service and the provision of social care in financial resources and through work than they consume in services. They accepted that the care sector would face even more serious problems if EEA migration was restricted. Yet this is precisely the scenario that this sector faces.

28. A survey published mid-2018 produced robust evidence showing that 5.6% of people employed within adult social care and childcare are non-UK EU nationals, equivalent to 9,830 workers. A November 2018 British Medical Association survey of 1,527 EEA-trained doctors across the UK found that 78% are unconvinced by the promises that have been made that their rights will be protected in the event of a no-deal Brexit, 37% were unaware of the Westminster Government's settled status scheme and 35% are considering moving abroad.

29. Figures published in November 2018 by the Nursing and Midwifery Council show that the dramatic decline seen in the number of applicants from the EEA for UK registration in the year after the EU referendum (an 87% year on year drop) has slowed but not stopped. In fact, it has been compounded by the loss of almost 2,500 experienced EEA

nurses and midwives across the UK in the past year. In exit surveys, many EEA registrants gave continuing uncertainty about their future lives and careers as a significant factor in deciding to leave the register and the UK.

30. Curtailment of free movement will also negatively impact the free movement of medical researchers between Scotland and other EU countries and it could affect the ability of our academic institutions to attract medical students to come here to study and train, impacting on the provision of health care.
31. Uncertainty about continued participation of the UK in European research and innovation programmes as a result of Brexit is leading to diminished international competitiveness and influence of the Scottish health research sector, coupled with increasing exclusion from collaborative funding bids with others in the EU. This in turn may reduce the attraction of Scotland to potential collaborative partners outside the EU.
32. EU Exit will also mean the loss of UK membership of the European Medicines Agency, which could result in patients in Scotland having slower, more costly, or reduced access to new medicines.

2.8 Undermining cooperation in Security, Justice and Law Enforcement

33. While this is an area in which both the EU and the UK Government have significantly aligned interests in as close a relationship as possible, the EU are nevertheless clear that future arrangements will reflect the commitments the UK is willing to make. Cooperation to the degree we currently benefit depends on being willing to respect the EU rules and the role of the Court of Justice of the EU (CJEU) in interpreting EU law, as well as continued adherence to the European Convention on Human Rights and adequate protections for personal data. The political declaration also highlights that arrangements should reflect both the EU and Member States' commitment to the Charter of Fundamental Rights.
34. The Scottish Government wishes to have as close a relationship with EU as is possible and maintain access to as much of the existing security, law enforcement and criminal justice tools and databases as possible to ensure our police and operational partners can rapidly prevent and detect cross border crime. We remain concerned at the likely gap and loss of operational capability which will emerge as a result of UK Government

red lines, and the fact that leaving behind membership of the EU necessarily involves a different relationship with the EU's tools and agencies.

35. The Withdrawal Agreement states that there will be access to a wide variety of EU tools and databases during the transition period, which will enable our law enforcement partners to operate effectively during this time. However, the Scottish Government is concerned about the potential reduced effectiveness of the European Arrest Warrant through member states being permitted to operate constitutional bans on extraditing their own citizens in the transition period. Furthermore, whilst extradition is reserved, there is little detail in the political declaration about how the proposed "effective arrangements" will enable "efficient and expeditious" surrender, nor how extradition arrangements will work and impact on our operational partners.
36. This impacts on Scotland's separate criminal justice system as well as the role and functions of the Lord Advocate. There is no mention in the political declaration of the importance of recognising the Scottish specific considerations. Scottish operational partners currently benefit from having direct links to their EU partners in Europol and Eurojust, which is vital for the rapid exchange of information to fight cross border crime. Instead the UK and the EU will "work together to identify the terms for the UK's cooperation via Europol and Eurojust".
37. Nor are there references to the Schengen Information System (SIS II) database and the European Criminal Records Information System in the political declaration. Instead there is only a broad reference to the UK and the EU considering further arrangements appropriate to the UK's future status for data exchange, such as "exchange of information on wanted or missing persons and objects and of criminal records" The limits of these arrangements are "so far as is technically and legally possible, and considered necessary and in both Parties' interests". As the political declaration sets out, the future relationship will take into account "the fact that the United Kingdom will be a non-Schengen third country". All of which suggests that we may lose access to those specific measures after transition. This is of concern to Police Scotland and will be to other operational partners given how fundamental both of these tools are for fighting crime and keeping our people safe.

2.9 Diminution in Participation in EU Funding Programmes and Collaborations

38. The EU is not only an economic relationship, it is a close partnership that has enhanced many areas of our lives. Through its funding programmes and initiatives the EU has supported collaboration across science and innovation projects, provided for education and researcher exchanges, and generated cultural networks supporting our creative industries.²¹ The political declaration provides little comfort that these opportunities and benefits will be maintained at current levels as part of the future relationship. Under the “Areas of Shared Interest” section in the declaration, the terms for the UK’s continued participation in EU programmes will be the same as any other third country, although there may be some additional agreement on general principles in the future relationship. There is no mention of the so called ‘cooperative accords’ providing programme participation and deep collaboration, which the UK Government proposed in its July 2018 White Paper.²²
39. Scotland has been particularly successful in attracting over 11% of all funding won competitively by UK organisations through the current funding programme for research, science and innovation - Horizon 2020 - reflecting the excellent leading international edge of our research base. In addition to which Scotland regularly secures around 12% of the UK total of Erasmus+ funding. The Erasmus+ programme aspires to provide opportunities for over 4 million Europeans to study, train, gain experience and volunteer abroad. Erasmus+ raises the profile of Scotland as a place to live, work and study in key overseas markets and showcases the best of Scottish education. Creative Europe is the principle EU funding programme focused on the culture and creative industries sectors. It’s impact is significantly wider than the funding it provides. The programme’s non-financial benefits - job creation, exports and leveraging additional funding, internationalisation and networks - being highlighted as being of at least as much importance.
40. While the political declaration indicates that these programmes, and their successors, are to be open to the UK to continue to participate in as a third country, the decisions on participation will be taken following our exit by the UK Government, on the basis of the normal options open to third countries. There are no guarantees meaning that we would be leaving the EU in March 2019 with no certainty.

²¹ <https://www.gov.scot/publications/scotlands-place-europe-science-research/>

²² <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

3. Constitutional Implications

41. The UK Government's approach to withdrawal from the EU has profound implications for the constitutional arrangements of the UK, and the devolution settlements. The UK Government has already taken the unprecedented step of imposing legislation, in the face of overwhelming rejection by the Scottish Parliament, enabling it to constrain devolved powers. In the draft Withdrawal Agreement it has now ignored the views of the people of Scotland by rejecting any possibility of a closer and different relationship for Scotland with the EU, while seeking – rightly and properly – such a relationship for Northern Ireland. The views of the people, Parliament and Government of Scotland have not been reflected or respected in the objectives or approach of the UK Government to the negotiations, calling into question any claim that the UK is a partnership of nations, or any claim for respect for Scotland within the Union.

4. Implications of the 'Northern Ireland Backstop'

42. The Withdrawal Agreement contains provisions which are designed to ensure that, if no future relationship agreement which will deliver an open border on the Island of Ireland is reached within the transition period, there is a backstop in place to avoid such a 'hard border.' By hard border, we mean any kind of checks or controls on people or goods crossing the border between Northern Ireland and the Republic of Ireland. In December 2017, both the EU and the UK Government committed to ensuring that, in keeping with the Good Friday Agreement, there would be no such physical border controls in place on the island of Ireland. At the same time the UK Government has committed that there will be no new barriers between Great Britain and Northern Ireland to ensure continued unfettered market access for Northern Ireland products in Great Britain.

43. The draft Withdrawal Agreement makes clear, if there is no agreement reached on the future EU-UK relationship by 31 December 2020, and there is no agreement to extend the implementation period, the backstop solution will apply unless or until an agreement is reached which would address the unique circumstances on the island of Ireland, avoid a hard border and protect the Good Friday Agreement. This will lead to the creation of a single EU-UK customs territory or "bare bones" customs arrangement which excludes fisheries and aquaculture. In contrast, the draft text provides for a far deeper model of integration in respect of Northern Ireland.

44. The UK Government has presented the agreement as protecting the constitutional integrity of the UK and ensuring frictionless trade until such point as a future partnership between the UK and the EU is established. However, the arrangements for the “customs territory” between the UK and EU are limited in primarily addressing only the risk of tariffs or quotas on goods between the EU and the UK, (with the exception of fishery and aquaculture products). As illustrated in the European Commission’s slide on customs controls,²³ customs cooperation is complicated and truly frictionless trade requires a wider set of measures, including security and safety controls at the border, financial controls and market surveillance at the customs office of import.
45. There is a significant gap between the bare bones customs union proposed between the EU-UK territories and what is necessary to truly facilitate frictionless trade, and this is made evident in the number of specific arrangements for Northern Ireland. To allow Northern Irish businesses to place products on the EU’s internal market without restriction, the Union’s Customs Code will continue to apply in respect of Northern Ireland only. It also ensures that Northern Ireland will remain aligned to the European Single Market in respect of: legislation on goods, rules for veterinary controls, rules on agricultural production and marketing, VAT and excise duties in respect of goods, and state aid rules. While these commitments are still less than full single market alignment, and crucially do not cover services, they still represent a significant differentiation between the commitments of Northern Ireland and the rest of the UK, with consequently a closer relationship for Northern Ireland. There are also a wide set of provisions that address a number of other unique circumstances on the island of Ireland, including North South Cooperation in areas of environment, health, agriculture, transport, education and tourism as well as areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.
46. The clear advantages to Northern Ireland of this deeper relationship are further evidence that the Scottish Government’s proposals for continuing full membership of the Single Market and Customs Union are far preferable to the deal negotiated by the UK Government. The facilitation of unfettered access for Northern Ireland businesses to the EU and UK internal markets for goods and commitments, and cooperation in a range of service sectors, comes close to the kind of legal certainty and assurance that we have been seeking for Scottish business, at least in respect of goods. However, as the Scottish Government has made clear from the outset, in our view the best way to provide the legal certainty so desperately sought by business and to address the

²³ https://ec.europa.eu/commission/sites/beta-political/files/customs_controls_0.pdf

unique situation of the island of Ireland is for the UK as a whole to remain in the customs union and single market.

47. While the Withdrawal Agreement sets out that these rules are a backstop only, and do not create a permanent relationship between the EU and the UK, the timescale to agree a future relationship by December 2020 is hugely ambitious and rely heavily on sophisticated technological solutions which will take time and expense to implement.²⁴. Therefore, particularly taking into account the refusal of UK Government to contemplate a UK wide approach to EU single market membership and a customs union with the EU, it seems likely that the arrangements set out will take effect for some period of time locking the UK into a two-tier system of access to the EU market for an indefinite period. Indeed, despite more than two years of effort, there is no sign of a realistic proposal, other than membership of Single Market and Customs Union, that would achieve a frictionless border, and allow the backstop to be switched off. The Scottish Government fully and unconditionally supports the Good Friday Agreement and the maintenance of an invisible border on the island of Ireland. However, we also firmly believe that if the UK is determined to pursue a more distant relationship with Europe, there should be an extension of the principle of differentiation established in the draft Withdrawal Agreement in respect of Northern Ireland to other parts of the UK. This is essential to safeguard Scotland's and the UK's wider interests.

5. Conclusion: coalescing around a better alternative

48. What is now evident is that under the deal negotiated by the UK Government we would be taken out of the European Union, the most successful and developed international partnership in the world on the vaguest set of aspirations. With all the key decisions to be taken on a future partnership yet to be negotiated a lengthy period of uncertainty is set to continue. When combined with the restrictions that the European Union will inevitably have to place on a non-member – or a 'third country' – this will undoubtedly leave this country less well-off economically, socially, democratically and reputationally.
49. It is simply not true for the UK Government to present this deal as the only choice for the country. The Prime Minister's repeated claim that the only alternative is 'no deal' is disingenuous, presenting anyone who opposes her with a wholly false choice. We believe that something better is possible, something that secures a better outcome for Scotland and the UK as a whole.

²⁴ As outlined by Jon Thompson, chief executive of HMRC, in his evidence to Westminster Treasury Select Committee on 23 May 18.

50. Our assessment on some of the key issues as above, demonstrates the negative impact of the Prime Minister's deal on this country, both now and for future generations. It is our responsibility as a Government to be clear that this is not good enough for Scotland. It clearly and unequivocally fails to satisfy the five interests set out by the First Minister in July 2016 shortly after the EU referendum.
51. A free trade agreement where Scotland's key sectors are ignored will do untold damage to our **Economic** interests; a meagre commitment by the UK Government to non-regression in the field of social and employment rights will leave our interests in **Social Protection** fundamentally undermined; our desire to act in **Solidarity** with our neighbours in relation to security and justice, climate change, and other global challenges will be lessened; as a smaller player we will lose out on **Influence** in the world. Furthermore the UK Government's approach to these negotiations and engagement with the devolved administrations demonstrates a re-centralisation of power putting our influence over existing areas of devolved competence at risk. Above all, both the process of these negotiations and the outcome which has been delivered, demonstrate a disregard for the **Democratic** interests of Scotland, and the 62% of people in Scotland who voted to remain in the European Union.
52. There is presently real doubt over whether there is a parliamentary majority for the Prime Minister's deal when it comes to the House of Commons for the so called meaningful vote. That vote is being falsely described by the UK Government as a choice between the deal which they have agreed with the EU or a no-deal. The impact of no deal, both short- and long-term, would be so critical and damaging that a responsible government should rule it out, rather than present it as the only alternative.
53. It is necessary, however, that while we call on the UK Government to rule out a no deal outcome, unless and until that happens, we will continue to prepare for it to the best of our ability given the situation we have been placed in, responsibly protecting Scotland's interests whatever the outcome.
54. The House of Commons still has an opportunity to reject the UK Government's proposed deal and seek a better alternative. The Scottish Government is clear that that must be a commitment to retaining permanent membership of the European Single Market and Customs Union (a well understood, existing construct) and that we would support a second vote on EU membership which includes the option to remain.

55. Neither a bad deal nor no deal are acceptable. That is why the Scottish Government, recognising that what is on the table bears no resemblance to what was sold to voters in 2016, supports a second referendum, acknowledging this would almost certainly require the UK Government to request an extension of the Article 50 withdrawal procedure as provided for in the EU Treaties. That would present an opportunity – although not a guarantee as the result in the rest of the UK may not change - for the people of Scotland to have their views respected in the way that they were not in the first referendum on 2016. The Scottish Government believes that the only way to guarantee that the wishes of the people of Scotland are respected is to become an independent country and that the treatment of Scotland throughout the Brexit process has demonstrated the costs to the Scottish economy and society from not enjoying that independent status.
56. The Scottish Government is calling on all those who, like us, cannot accept what is currently on the table to come together, coalescing around the pressing need for a change of approach. We will work with anyone of good will on such an endeavour.

ANNEX: Comparison Table

	EU membership	The Prime Minister's Proposed Brexit deal
Scotland better or worse off? (£) - in 2016 cash prices	Growth remains on track ²⁵	Loss equivalent to £1,610 per person in Scotland ²⁶ compared to EU membership (by 2030)
Impact on business investment % change	Investment remains on track	7.7% lower compared to EU membership (by 2030)
Northern Ireland backstop , will apply from 2021 unless the UK and EU can agree how to avoid a hard border on the island of Ireland and protect the GFA	Current arrangements, so no need for a backstop	A special deal for Northern Ireland will put Scotland at a serious competitive disadvantage
Imports and exports → 6,800 Scottish companies export to the EU → More than 10,000 companies rely on imports from the EU	Full access to the EU market	More border checks and regulatory requirements for goods will be inevitable outside single market, and service exports will be substantially restricted
Services , which account for 75% of Scotland's economy	Full access to EU market	Limitations to service suppliers' ability to operate cross border, meaning export of services will be severely hindered
People In the event of 50% less EU migration, Scotland's working age population would be projected to decline by 1%	Free movement of people, to meet Scotland's need for workers for example in research, health, care, and remote rural areas	Likely to include an end to free movement, with severe implications for key economic, health and care sectors, plus long term effects on Scotland's population growth and age profile
Social and Environmental Standards	High standards and protections, for example for the environment, food safety, animal welfare, health and safety, equality and working conditions	No guarantee that the UK will maintain the same high standards in future.
Collaboration	Scotland to continue to benefit from punching 'above its weight' from EU funding programmes and initiatives such as Horizon 2020 and Erasmus+	Little guarantee that these opportunities and benefits will be maintained as part of the future relationship

²⁵ Baseline – no change

²⁶ modelled as Free Trade Agreement



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