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Determining Scotland's future relationship with the European Union



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Culture, Tourism, Europe and External Relations Committee

Remit: To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) proposals for European Union legislation;
- (b) the implementation of European Communities and European Union legislation;
- (c) any European Communities or European Union issue;
- (d) the development and implementation of the Scottish Administration's links with countries and territories outside Scotland, the European Union (and its institutions) and other international organisations; and
- (e) co-ordination of the international activities of the Scottish Administration.
- (f) culture and tourism matters falling within the responsibility of the Cabinet Secretary for Culture, Tourism and External Relations



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Convener's Foreword

This is an important report at a critical time. Article 50 will be triggered by the UK Government within days and the process will begin of negotiating withdrawal from the European Union. As a country of the UK which voted 62% to remain in the EU, Scotland has particular interests and concerns that must be heard. This report is the final opportunity for the European Committee of the Scottish Parliament to influence the UK Government's approach to Article 50.

We have examined the different proposals of the UK and Scottish Governments in depth. We have taken extensive evidence on future trading relationships, the repatriation of powers from Europe, the replacement of current funding from the EU, and relations between the Scottish and UK governments particularly, in regard to negotiations.

Our report concludes that a bespoke solution for Scotland must be considered before and after Article 50 is triggered. There is still scope to try to deliver the Scottish Parliament's desire that we remain in the single market and while there is no direct precedent for this, the Committee agreed that a variety of differentiated arrangements already exist and a bespoke solution for Scotland could be found. The Committee also expects the UK Government to provide a response to the Scottish Government on its position before Article 50 is triggered.

Finally powers not reserved to Westminster in the Scotland Act that are repatriated from the EU should be fully devolved and there should be no financial detriment to Scotland.

On behalf of the Committee I would like to thank all of those who contributed to our work over the last few months. Professor Sionaidh Douglas-Scott and Professor Michael Keating have supported our inquiry since the beginning with their expert advice. Many stakeholders and individuals have given us evidence on the impact of leaving the EU, and the experts and elected members that we met in London and Brussels provided us with valuable insights into the challenges that we will face in the coming months.

Joan McAlpine MSP
Convener of the Culture, Tourism, Europe and External Relations Committee

Conclusions

Scotland's current position in the European Union and its access to international markets

In the 43 years that the UK has been part of the European Union, Scotland has benefited from increasing trade opportunities. The EU is now the single largest market for Scottish exports outwith the UK. The EU is the biggest and most successful free-trade area in the world. It has abolished the tariffs and non-tariff barriers that restricted trade prior to the establishment of the single market in 1993 and has promoted regulatory harmonisation to support and promote free trade.

EU membership, and the access that it has provided to the single market, has been of vital importance to businesses in Scotland, though some sectors have benefited more than others. While some have flourished, others have found regulation burdensome and policies ill-suited to Scotland. One example of the latter is the fishing industry which has faced many challenges as a result of the terms of EU membership and the Common Fisheries Policy. The evidence from the fish-catching sector is that they want no return to either the CFP or the EU. However, the fish processing sector was supportive of remaining in the single market.

Overall however, Scottish businesses have become used to operating within a market without tariffs or non-tariff barriers. They can send a lorry full of Scottish produce across the continent without being hindered by any form of border control, thereby avoiding costs and delays. They work closely with colleagues from other EU countries. They can establish a business or a branch of their business in another Member State and they can provide their services anywhere across the Union. The EU's preferential trade agreements with 55 countries have opened up additional markets, providing greater opportunities for Scottish businesses to trade internationally. This has all become the accepted norm since the establishment of the single market and has been of significant net advantage to the Scottish economy

The Scottish Government's proposal

We echo the agreement of the Scottish Parliament that it is in the interests of the UK to remain in the single market, but this has now been ruled out by the UK Government. We believe that a bespoke solution that reflects Scotland's majority

vote to remain in the single market should be explored with the EU 27 as part of the negotiations ahead, before and after the triggering of Article 50.

While there is no direct precedent for achieving this particular solution for Scotland, there are a variety of differentiated arrangements for territories that are part of current Member States and a majority of the Committee believe that a bespoke solution could be found within the EU to accommodate Scotland.

Moving from full EU membership to EEA membership would be an easier transition for Scottish businesses than leaving the EU completely as they would be able to remain in the single market. Membership of the EEA would also allow freedom of movement, which is very important to key parts of the Scottish economy as well contributing to Scotland's population growth.ⁱ

The UK Government's proposal

The European Economic Area offers the only alternative to membership of the EU which allows non-EU Member States to benefit from the single market on the same terms as the EU Member States. However, this option has also been rejected by the UK Government and in so doing it has lost the only opportunity for an easier Brexit. Instead it has decided to adopt the hardest Brexit and the most difficult course.

The UK Government's decision to leave not only the EU but also the EEA, thereby relinquishing membership of the single market, will have profound consequences for Scotland's economy and future prosperity. The single market is the most successful example of a multilateral free trade area in the world. The UK has decided to abandon the advantages it currently enjoys as a member of the EU and EEA, not only through the single market but also through the trade agreements that the EU has with 55 countries. Instead it has decided to start from scratch in establishing free trade agreements with the EU and with other countries. The UK has decided to do this in a period when there are signs of the world becoming more "mercantilist and protectionist".

In addition, the UK Government has not made public any assessments of the time that it will take to reach new bilateral trade agreements and which countries it will aim to reach agreements with. Nor can the UK Government offer any clarity on whether these trade agreements can cover the same range of sectors as previous agreements did, whether services will be included or whether the UK will be

ⁱ Jackson Carlaw MSP and Rachael Hamilton MSP dissented from this paragraph.

subject to tariffs and non-tariff barriers where it was not before. These issues are all subject to negotiation and have no guaranteed result.

The UK Government has stated clearly that it wishes to regain control of the UK's own laws by leaving the European Union but its desire to protect its sovereignty may not be compatible with its global trade ambitions. We heard that the adoption of EU regulations and standards would be necessary to access the EU single market, as well as facilitating access to other international markets because of the recognition of EU standards internationally. The UK Government may find that if it wishes to have a deep and comprehensive trade agreement with the EU, then it will need not only to adopt EU laws and standards, but also to update them.

Furthermore, as the experience of the EEA EFTA states in negotiating the EEA agreement demonstrates, the European Union may insist on the establishment of a system of surveillance and the judicial settlement of disputes if the UK is seeking to have a barrier-free trading relationship with the EU. It is reasonable to anticipate that the EU will seek to protect its Member States from unfair competition by requiring adequate mechanisms for dealing with complaints and infringements, as well as preventing state aid from distorting competition.

The UK will not achieve a trade agreement that can be compared to the single market. The EU Member States may only be willing to negotiate for certain sectors and may impose tariffs or non-tariff barriers for access to other sectors. Additionally, the UK may be required to make financial contributions in order to access the single market. It is unclear how the UK can seek a new customs agreement with the EU but not be bound by the EU's Common External Tariff or participate in the Common Commercial Policy.

There is a strong risk that the UK will have to revert to WTO rules at least for a period of time. Based on the evidence we heard from the European Parliament Constitutional Affairs Committee, there is already speculation that the EU may seek to agree the principles of the withdrawal agreement before starting the process of negotiating the future trade agreement. Some have said that the negotiations for the trade agreement could continue for years, thus the UK would leave the EU without a new trade agreement in place. On withdrawal, the UK would also no longer be party to the preferential trade agreements that the EU has with third countries. It is vital, therefore, that transitional agreements be requested by the UK in the Article 50 letter.ⁱⁱ

ⁱⁱ Rachael Hamilton MSP and Jackson Carlaw MSP dissented from the conclusions in this section. Their view is included in Annexe A.

Withdrawal from the EU and the impact on the devolution settlement

It is vital that there is clarity on policy functions that are repatriated from the EU and the funding that is provided to them. We believe that any power currently a competence of the EU that is to be repatriated after Brexit and which is not currently listed in schedule 5 of the Scotland Act 1998 should be fully devolved, alongside a funding mechanism, resulting in no detriment to Scotland.

There is a very significant risk to EU competitive funding streams, agricultural support and structural funding in Scotland following withdrawal from the EU. In relation to agriculture and structural funding, it is not yet clear whether the UK Government will continue to provide funding in these area-based policies to the same extent as the European Union did. Any move towards a territorial funding framework within the UK that is based in population share rather than the allocation system currently in use would see Scotland's agricultural sector, for example, lose hundreds of millions of pounds.

Intergovernmental Relations

It has never been more important that the mechanisms for intergovernmental relations between the Scottish Government, the UK Government and other devolved administrations are fully effective. This was already the case with the growth of the shared space and powers that have come from enhanced devolution arrangements and the Scotland Act 2016. Brexit has increased this need exponentially.

The UK's withdrawal from the European Union will be the most significant change to this country for decades. It will fundamentally alter Scotland's place in the world and impact on the devolved competences of the Scottish Parliament whether that is in terms of the UK's new relationship with the EU, the repatriation of previously EU competences (for example in agriculture or fisheries) or the process of establishing new free trade agreements with other countries.

The Scottish Government has always, to some degree, been involved alongside UK Government ministers in negotiations with their counterparts in other Member States in meetings of the Council of Ministers. Scottish Ministers have participated in negotiations following the prior agreement of a UK negotiating line and set of priorities. This principle should apply to the withdrawal agreement and any new free trade agreements.

In relation to negotiations prior to the triggering of Article 50, we support the intensification of discussions in the joint ministerial committees, in bilateral meetings and at the official level. These meetings should be approached in a

constructive spirit by all parties. The Committee is concerned that this may not always have been the case.

Given that the terms of reference of the Joint Ministerial Committee (European Negotiations) commits all governments to “discuss each government’s requirements of the future relationship with the EU and seek to agree a UK approach to, and objectives for, Article 50 negotiations”, **we expect the UK Government to provide a response to the Scottish Government on *Scotland’s Place in Europe* before Article 50 is triggered. We also expect the UK Government to say whether the Scottish Government’s objectives for a differentiated solution will be set out in the letter from the UK Government to the EU to trigger Article 50.**

Once the UK has agreed its negotiating position and Article 50 has been triggered, we recommend that ways are found to involve the Scottish Government and its officials in the negotiations that follow with the EU, both at the high-level and on the technical detail. Such involvement has been commonplace in the past in areas such as fisheries, agriculture, regional development, judicial co-operation etc. in the Council of Ministers and various working groups. Brexit should be no different.

As the negotiations on withdrawal proceed, it is already apparent that the UK Government, and the Department of International Trade in particular, is participating in preparatory discussions with third countries on new free trade agreements. We are encouraged to hear from the Cabinet Secretary for the Economy, Jobs and Fair Work that some joint working is already underway. This should be built upon and intensified.

We recommend that a means is found to involve the Scottish Government in bilateral and quadrilateral discussions on future trade deals. This could include the creation of a Joint Ministerial Committee on International Trade. This could also include government officials and organisations such as Scottish Development International meeting regularly with their UK counterparts.

Finally, in relation to parliamentary scrutiny and accountability, we believe that it is important that the recently established Written Agreement is augmented to ensure the flow of appropriate information from the Scottish Government to this and other parliamentary committees once Article 50 is triggered and also in relation to discussions on future free trade agreements.

Introduction

1. Since the EU referendum on 23 June 2017, the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee (the Committee) has taken evidence on a number of areas relating to Scotland's future following the UK's withdrawal from the EU. For much of this period, little has been known about the future relationship that the UK Government would seek with the EU. Thus, when we explored future trading relationships, we considered the EEA EFTA model, the Swiss bilateral model and the World Trade Organisation (WTO) model as three potential scenarios.
2. On 20 December 2016 the Scottish Government published its proposals for "Scotland's Place in Europe". In this paper, the First Minister reiterated her view that the best option would be for Scotland to "become a full member of the EU as an independent country".¹ However, she also explored the potential "to find common ground with the UK Government around a solution that would protect Scotland's place in the European single market from within the UK".² She argued that the UK as a whole should remain within the European single market through membership of the European Economic Area, as well as within the EU Customs Union. In the event that the UK Government should not seek membership of the single market, the Scottish Government proposed that Scotland could remain within the single market while still part of the UK.
3. The UK Prime Minister gave a speech on 17 January 2017 in which she set out twelve principles which would inform the UK's approach to withdrawal from the European Union and the future relationship that she wished to seek with the European Union. This ruled out full membership of the single market, instead stating that the UK Government would pursue "an agreement that should allow for the freest possible trade in goods and services between Britain and the EU's member states."³ Subsequently, on 2 February 2017, the UK Government published its White Paper on "The United Kingdom's exit from and new partnership with the European Union" which aims to ensure "free trade with European markets, controlling immigration and taking control of our own laws."⁴
4. Not only do these two papers provide more information on the positions of the UK Government and the Scottish Government, but they also highlight the distance between their respective positions and the future relationships that they seek with the European Union.
5. This report brings together the evidence collected by the Committee on Scotland's future relationship with the EU, focusing primarily on trade. It also considers how the decisions are being, and will be, reached in relation to Scotland's future by examining the structures for intergovernmental decision-making in the UK and the potential impact of the repatriation of powers from the EU on the devolution settlement and Scotland's fiscal arrangements with the UK Government.

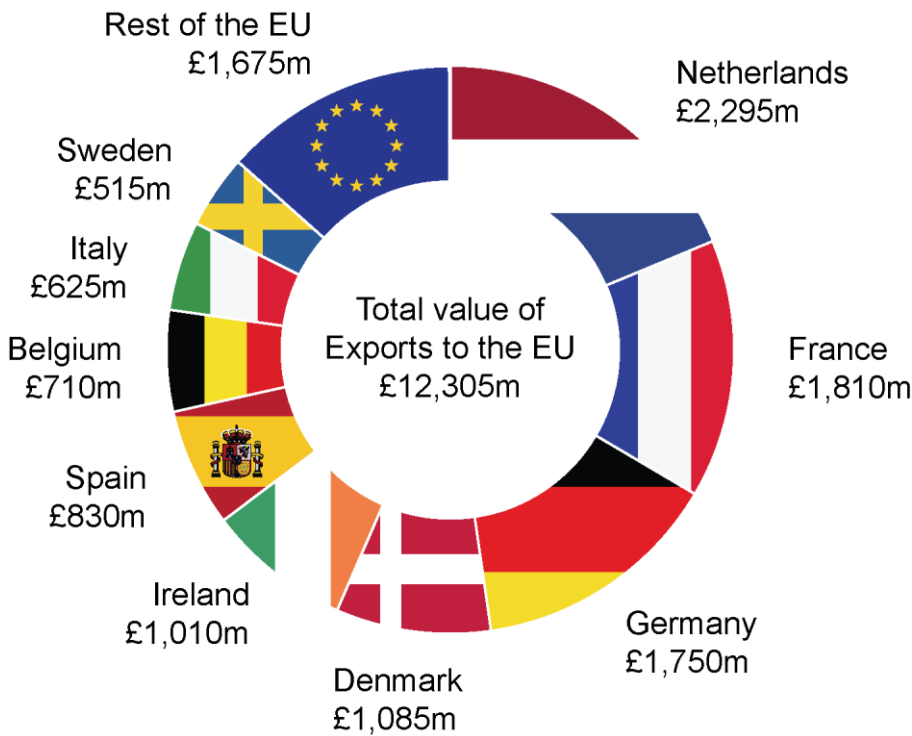
6. The Committee's other reports to date are: [The EU referendum result and its implications for Scotland: Initial Evidence](#), [EU migration and EU citizens' rights](#), and [Brexit: What Scotland thinks: summary and emerging issues](#).
7. This report will be the last report that the Committee publishes before the UK Government notifies its intention to withdraw from the European Union under Article 50. It highlights a range of issues that will be critical in future discussions on Scotland's relations with the EU and which both the Scottish Government and the UK Government must take into account.

Our starting place – Scotland's current position in the European Union and its access to international markets

Scottish trade to the EU

8. As a constituent part of the United Kingdom, Scotland has benefited from increasing trade opportunities since the UK joined the European Communities, widely known as the Common Market, in 1973. The single market with its four freedoms was established in 1993 and the European Union now has 28 Member States.
9. The National Institute of Economic and Social Research has estimated that membership of the EU has increased the UK's trade with EU countries by between 12% and 33% in the last four decades.⁵ The EU is now the biggest international trading partner for both the UK and Scotland. In 2015, 44% of the UK's goods and services at a value of £222 billion were exported to the EU.⁶ The UK exports 47% of its goods and 39% of its services to EU countries, while 54% of its imports of goods, and 49% of its services come from the EU.⁷ 6-7% of the EU's goods and services are exported to the UK.⁸
10. The EU is the destination for 43% of Scotland's exports outside the UK, worth £12.3 billion in 2015.⁹ In 2015 the value of all international exports grew by £1bn compared with 2014, with an increase in EU exports accounting for £520 million of this growth. Since 2002, the annual value of exports to the EU has increased by £0.9bn.
11. Figure 1 shows EU destinations for Scotland's exports by Member State. However, the limits of the data are evident in this table as the value of trade to the Netherlands reflects the importance of the port of Rotterdam through which a large proportion of exports transit.

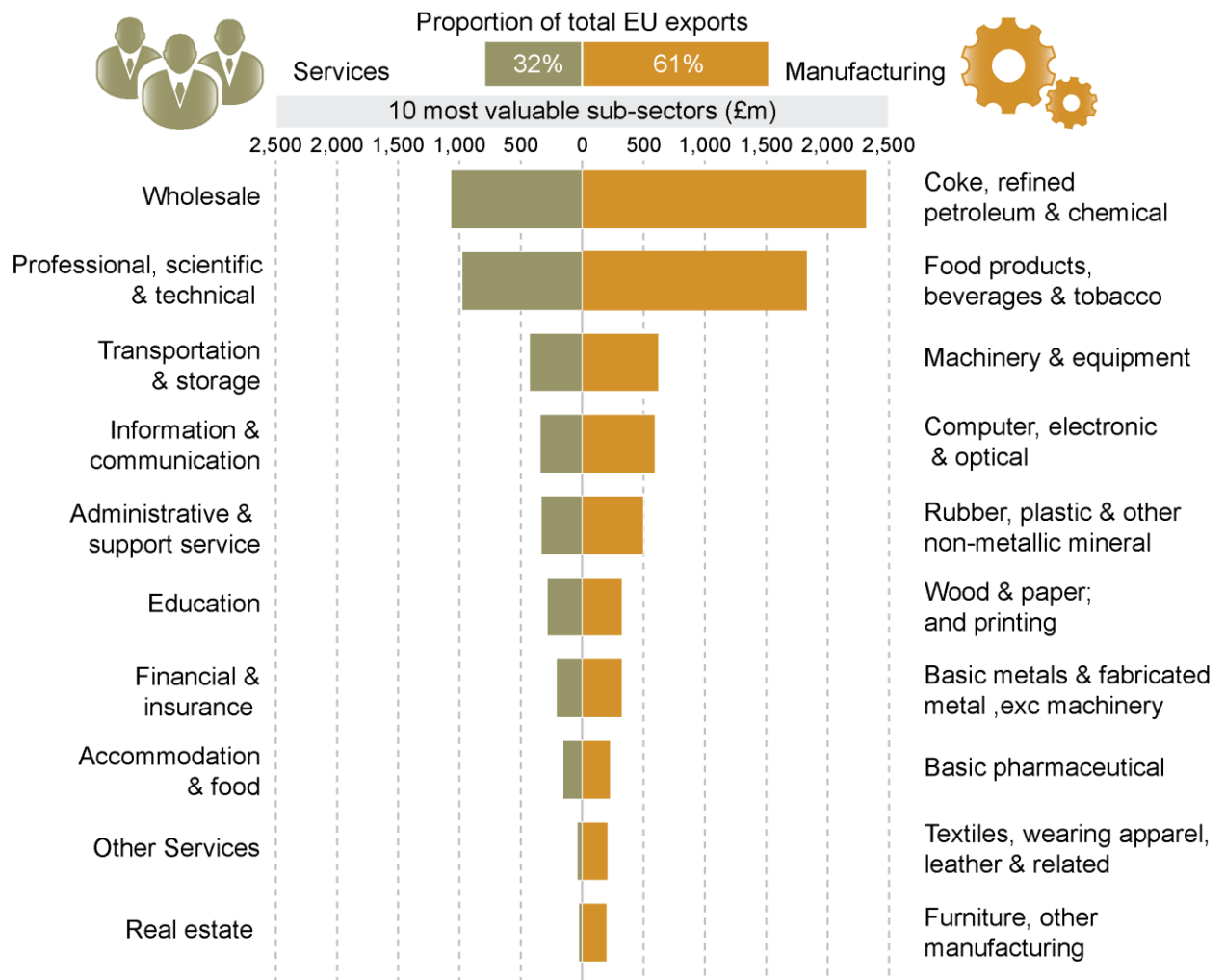
Figure 1: Exports to the EU by country – 2015



Source: [Exports Statistics Scotland](#)

- Figure 2 shows the top performing export sectors to the EU. 61% of Scottish exports to the EU are in manufacturing (with coke, refined petroleum and chemical products at the top followed by food products, beverages and tobacco products) and 32% are in services.

Figure 1: Scottish exports to the EU, 2015



Source: SPICe [2015](#)

13. The Cabinet Secretary for the Economy, Jobs and Fair Work (the Cabinet Secretary) summed up the trade advantages that Scotland has currently through the UK's membership of the EU—

“ The EU is the world's largest trading bloc: it is the largest trader of goods and services in the world; and it ranks first in both inbound and outbound international investments. Of Scottish international exports, 42 per cent go to the EU, and eight of Scotland's top 12 export destinations are within the EU. Scottish exports to the EU were worth about £11.6 billion in 2014. Scottish businesses wishing to export to or import from the EU face no tariffs, quotas or duties applied to the goods that they trade. A common set of regulations and rules apply.¹⁰

14. The Rt Hon Greg Hands, Minister of State for Trade and Investment, UK Government (Mr Hands, the Minister of State) told the Committee that—

” ...like much of Scotland, I campaigned on the remain side during the referendum. Indeed, 70 per cent of my constituents voted to remain in the EU. However, it was a UK-wide referendum and I am, above all, a democratic politician. More people voted to leave the EU than for anything else in our electoral history and, if you look at the figures, it is clear which union should matter more to the consumers and businesses of Scotland. While Scottish exports to EU countries totalled £12.3 billion in 2015, the goods and services that Scotland sold to the rest of the UK were worth £49.8 billion. That is four times the level of exports to the EU and three times the level of exports to the rest of the world.

” Trade within the UK single market supports 270,000 Scottish jobs—roughly 10 per cent of Scotland’s total employment—and represents 31 per cent of Scottish gross domestic product. Furthermore, Scotland’s exports in goods and services to the rest of the UK have increased by 74 per cent since 2002 compared with growth of 7.8 per cent in Scotland’s sales to the EU over the same period. Scottish exports in goods and services to the UK are, therefore, increasing at almost 10 times the rate of Scottish exports to the EU. It is clear that the UK is the most important union for Scotland. By speaking with one voice, we can champion all the UK’s consumers and businesses. Their interests should be at the heart of our discussions.¹¹

What is the single market?

15. The UK is widely considered to be one of the key Member States behind the development of the European single market. In a speech entitled “Europe Open for Business” at Lancaster House in April 1988, the then Prime Minister, Margaret Thatcher, described how “Britain had taken the lead” in pushing for a single market and called on business to take the opportunities that it offered—

” Just think for a moment what a prospect that is. A single market without barriers—visible or invisible—giving you direct and unhindered access to the purchasing power of over 300 million of the world’s wealthiest and most prosperous people.

” Bigger than Japan. Bigger than the United States. On your doorstep. And with the Channel Tunnel to give you direct access to it.

” It’s not a dream. It’s not a vision. It’s not some bureaucrat’s plan. It’s for real. And it’s only five years away.¹²

16. The single market embodies one of the key objectives of the EU: to create an internal market between its member states that ensures the free movement of goods, services, people and capital. Professor Michael Keating, one of the Committee’s expert advisers, described the EU single market in a briefing for the

Committee as a “unique example of a single market agreement” in the international trading environment. He explained—

” The single market involves the removal of barriers to the free movement of goods, services, capital and workers. This includes harmonization of product standards, or mutual recognition so that products meeting home standards are deemed to have met the standard everywhere in the EU. The EU single market is not yet complete, but there is a commitment (strongly supported by successive UK governments) to completing it, especially in services. The four freedoms of the single market are deemed to be inseparable in order to ensure a level playing field. Freedom of movement of workers is also important in facilitating free movement in services. There are also rules about state aid, competition, public procurement and other fields.¹³


17. Under the Treaties, the EU has the legal basis to prohibit negative integration and promote positive integration. This means that Member States cannot have disproportionate or unjustified barriers to the four freedoms, and that the EU can legislate to remove tariff and non-tariff barriers. In order to eliminate non-tariff barriers, the EU has promoted regulatory harmonisation and the principle of mutual recognition, requiring Member States to recognise each other's regulations and standards in order to allow goods and services to be freely traded across the EU.
18. The EU legislation which has been adopted in order to promote regulatory harmonisation has been evident in a wide range of policy areas where the EU has competence including: competition and mergers policy, state aid, procurement, environmental protection, workers' rights, consumer protection and data protection. The legislation in these areas has been perceived by some businesses and economists as burdensome, although the counter argument is that the common body of law and standards allows for an equal playing field for all Member States in accessing the single market.
19. When the UK leaves the EU, the UK Government has made it clear that it will no longer be part of the single market and therefore benefit from the four freedoms. However, the UK Government aspires to negotiate a comprehensive free trade agreement (FTA) covering both goods and services.

The four freedoms

20. The four freedoms are the following—
 - Free movement of goods: since the establishment of the single market in 1993, controls on the movement of goods, either in the form of tariffs or non-tariff barriers have been abolished within the EU. For Scotland, this has meant access to a 'home market' of over 500 million consumers.

- Freedom of movement of workers guarantees every EU citizen the right to move freely, to reside and to work in another Member State. Discrimination on the basis of nationality, residence or language is not permissible and EU citizens living or working in another Member State must have equal rights to the nationals of that country.
 - Right of establishment and freedom to provide and receive services: in order to achieve a genuine internal market in services, this aims to ensure the unhampered right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services.
 - Free movement of capital: this removes all restrictions on movement of capital within the EU and between Members States and third (with certain exceptions).
21. Regulatory harmonisation in the single market has been achieved through considerable legislation. Member States are responsible for transposing EU directives into their domestic legislation and for enforcing that legislation domestically. Any failures on the part of a Member State to do this can lead to legal action by the European Commission, other Member States, companies or individuals in national courts, or in the Court of Justice of the European Union (CJEU). The CJEU has played a significant role in adjudicating in matters relating to the single market and considerable jurisprudence underpins the single market.

The Customs Union

22. The free movement of goods is governed by the customs union, which is enshrined in Article 28 of the Treaty on the Functioning of the European Union (TFEU)—
-  The Union shall comprise a customs union which shall cover all trade in goods and which shall involve prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relation with third countries.¹⁴
23. Thus, under the customs union, tariffs between the Member States are abolished and there is a common external tariff. In practice this means that goods imported into any Member State can subsequently circulate freely within the EU without any further controls such as rules of origin. All goods imported into the EU need to comply with “rules of origin” requirements which determine where goods and their components have been produced in order to ensure that the appropriate customs duty is levied. Imported goods also need to comply with EU standards and regulations for product safety.
24. The EU has exclusive competence over trade policy and negotiates trade deals with third countries as there is a single tariff regime within the EU. The EU coordinates trade policy with third countries as a result of the customs union. The agreement of common external tariffs on goods imported from outside the Union is

formulated through the Common Commercial Policy (CCP). The CCP provides the foundation for decisions regarding tariffs on imported goods, quotas and other restrictions and control on imports and exports.

25. The EU currently has in place preferential trade agreements (PTAs) with 55 partners including Chile, South Korea, Mexico, South Africa and the Central American countries, as well as the new Comprehensive Economic Trade Agreement (CETA) with Canada.¹⁵ The UK, as a Member State, currently benefits from these trade agreements and will lose its preferential access to those markets (some of which are key markets for Scotland's exports such as Brazil, the United Arab Emirates, Singapore and Australia) on leaving the EU. The UK can negotiate new bilateral agreements, but it is likely that this will take considerable time given the number of agreements that it currently benefits from, as well as the time that it takes to negotiate trade agreements. Furthermore, formal talks cannot commence until the UK has withdrawn from the EU.
26. The European Free Trade Association (EFTA) and the European Economic Area (EEA) states are not part of the customs unions. Therefore, products manufactured in the EEA EFTA states from raw materials from outside the EEA and exported to other EEA states, are subject to rules of origin. Professor Keating explained—

” Rules of origin determine how much of the product was made within the EEA and how much imported, to decide what tariffs are due. Applying these rules is costly to business and governments, and requires the scrutiny of trade.¹⁶

Membership of the single market versus access to the single market

27. In discussions on the single market since the EU referendum there has been considerable reference to “access” to the single market. Professor Keating advised the Committee that—

” Any country can access the EU market in the sense of exporting goods there, subject to tariffs and other obstacles to trade. Only the member states of the EU are ‘members’ in the sense of owning the institutions and participating in making the rules.

” There is only one exception, which allows non-EU members to enjoy the same terms as EU member states in the single market. This is the European Economic Area (EEA), which includes the three countries of the European Free Trade Association (EFTA) – Norway, Iceland and Lichtenstein. The condition for this is that they accept the four freedoms and also the various single market regulations, but without a vote in the making of those regulations. There is no provision for opting out of parts of the single market, with the exception of agriculture and fisheries, which are not covered. A bilateral agreement (in the form of some 120 treaties) between the EU and Switzerland includes some of the single market terms

but does not cover financial services. It also obliges Switzerland to accept the free movement of workers, a matter on which it is currently in dispute with the EU.¹⁷

28. Tore Myhre of the Norwegian Confederation of Enterprises told the Committee that it was important to—

” ...understand the difference between, on the one hand, a free trade agreement, which is basically about customs, tariffs and some rules and, on the other hand, the EEA and the single market, which are about harmonisation of the rules. That is a whole different ball game, but people do not really see the difference. In the public rhetoric, we hear people say that we can “take part in” or “have access to” the single market, but it is something completely different to also take on all the rules and regulations.¹⁸

29. In evidence to the Committee, Mr Russell, the Minister for UK Negotiations on Scotland's Place in Europe (Mr Russell, the Minister for UKNSPE) explained what the Scottish Government understood by membership of the single market—

” There is a spectrum of positions, which are complementary but not exactly the same, and there is the use of language to consider. The language in this bedevils the matter. Membership of the single market, by our definition, could be achieved in two ways—by being a member of the EU or by EEA membership through EFTA. Either would constitute membership—our proposal makes it clear that we believe that the EU is the right place to stay. For a variety of reasons, that does not appear to be the UK Government's view. In the circumstances, membership through EFTA and EEA is the right thing for the UK. Apparently, the UK has rejected that, so now it is for Scotland.¹⁹

Written evidence on the single market

30. The Committee's initial report “The EU referendum result and its implications for Scotland: Initial Evidence” highlighted the importance of accessing the single market without any barriers. It stated—

” ...a key conclusion from the early evidence that we have heard relates to the importance of access to the single market (both for services and goods), and the lack of tariff and non-tariff barriers (such as licensing).²⁰

31. The Committee issued a call for evidence in the summer of 2016. In response to the Committee's call, a number of submissions referred to the value of the single market. For example, Macduff Shellfish – a major Scottish seafood exporter – stressed the importance of the single market to its business—

” Macduff Shellfish has established an international reputation in providing the highest quality shellfish across the world. Of £77 million of global sales,

78% of our sales are to markets in and across Europe, worth an estimated £60 million (or £49 million excluding UK sales). Moreover, 79% of our employees originate from other European Member States. The European labour market is a vital resource to Macduff and our continued success will be dependent upon the future flow of European workers. In recent years, our business has expanded its capacity, employment levels, and profitability as a result of the European single market. As such, Macduff Shellfish considers it imperative that the UK retains access to the European single market in the future.

” Macduff Shellfish also depends heavily upon global trade agreements that have been negotiated by the EU on behalf of Member States. Sales outside of Europe account for £17 million of sales annually. It is imperative for Macduff and the wider fishing industry that these agreements are renegotiated to the benefit of the UK in order to maintain and maximise global export opportunities for UK businesses.²¹

32. The National Federation of Roofing Contractors (NFRC) stated that its “members greatly benefit from being part of the European Single Market”.²² It therefore “strongly urges a preferential trading partnership to be a key component of the negotiations” in order to avoid an increase in costs due to higher tariffs.²³ Similarly, CBI Scotland stated that “The UK’s new relationship with the EU must retain the ease of UK-EU trade that businesses get from the single market, and balance regulatory equivalence with the EU with flexibility and influence over the domestic environment.”²⁴

33. Jim Cockram, of Copernicus Technology Ltd said—

” Clearly not being in the EU as far as the EU market part will make life more difficult for us all to do business with EU members, including accounts, VAT, import and export tariffs, rules and of course the CE markings! But overall this can all be overcome as long as we get good trade deals as part of the BREXIT negotiations.²⁵

34. Scottish Financial Enterprise stressed the importance of passporting rights and the right of establishment under the single market—

” Financial institutions with entities situated in the UK and other EU jurisdictions rely on passporting rights and the right of establishment to operate across borders. The prospect of the UK leaving the EU single market, where financial services passporting rights are lost, is a likely scenario that financial institutions must plan for. The loss of this freedom is likely to result in some restructuring for firms which may mean potential job losses/ transfers, and reduced UK revenue. The extent of the impact will be largely dependent on the organisational structure of each financial institution.²⁶

35. Ben Thomson argued that global politics would change over the next generation, and that Scotland needed a strong role within Europe to represent its interests—

“It is almost inevitable over time that global representation will be organised into continental regions with Europe, with just over 10% of the world’s population, being one region. Representation on other global bodies whether global corporates, charities or government organisations are also likely to move to a continental regional basis. Therefore, it is vitally important that Scotland has a strong role within Europe as a conduit for global representation, particularly as Scotland’s largest export industries; whisky, oil and gas and financial services are all global in nature.²⁷”

36. The Committee also heard oral evidence on the importance of the single market. Garry Clark from the Scottish Chambers of Commerce told the Committee—

“On the relationship with the EU, our members, in common with others around the table, have a clear priority of ensuring continued tariff-free access to the single market. There is also a desire to ensure that we have an adequate supply of labour from international marketplaces. It is clear that remaining in the single market would have been an obvious way of addressing those issues, but that is not to say that they cannot be addressed from outside the single market, as others have already mentioned.²⁸”

The Scottish Government and the UK Government’s positions

Introduction

37. The Scottish Government published its position paper on [Scotland’s Place in Europe](#) on 20 December 2016. At that point in time, the UK Government had not given an indication of the future relationship that it intended to seek with the EU. This was set out in the Prime Minister’s Lancaster House speech on the [UK government’s negotiating objectives for exiting the EU](#) of 17 January 2017, and in the subsequent White Paper - [The United Kingdom’s exit from and new partnership with the European Union](#) - published on 2 February 2017.
38. There is a considerable distance between the positions of the respective governments: the UK Government seeks to leave the EU and negotiate a completely new relationship with the EU based on a deep and comprehensive free trade agreement; the Scottish Government argues that Scotland and the rest of the UK should remain in the single market but proposes a compromise to secure Scotland’s place in the single market.

39. The Rt Hon David Mundell MP, Secretary of State for Scotland (Mr Mundell, the Secretary of State) told the Committee that he considered the Scottish Government's paper to be "a serious contribution to the debate and that serious work is under way to consider it."²⁹ He also told the Committee—

” It is important to be clear—there has been a lot of public debate on this point—that Scotland will not be in the EU at the end of the process. There is no set of circumstances in which Scotland could remain a member of the EU after the rest of the UK has left. If Scotland's constitutional position were ever to change, it would have to apply to be a member of the EU afresh and we should not make easy assumptions about the length of time that that would take, the process that Scotland would have to follow or the terms of membership that might be on offer.³⁰

40. Mr Mundell, the Secretary of State, referred to the Scottish Government's paper as "a serious contribution to the debate" and he was "taking it seriously"³¹.

41. In a letter to the Committee on 21 February 2017, Mr Mundell, the Secretary of State, set out the process by which the Scottish Government's proposals were being considered—

” Following consideration of the proposals and subsequent presentation of them by the Minister for UK Negotiations on Scotland's Place in Europe, Mr Russell, at JMC(EN), the JMC(P) of 30 January, we instructed departments to intensify our engagement with Scottish Government officials to deepen this understanding and forge a constructive dialogue between the UK and Scottish governments. That has been our focus over the last few weeks and I am pleased officials from both governments are engaged in this work, including 6 official led meetings in the last two weeks.

42. Mr Russell, the Minister for UKNSPE, told the Committee that the UK Government needed to recognise the Scottish Government's position in the Article 50 letter that will formally notify the European Council of the UK's intention to withdraw from the EU—

” What we need now, as the article 50 letter is drawn up, is a commitment to say—whether that is in the letter or subsidiary documentation—at the very least, that the issue of a differentiated solution will be put on the agenda for negotiation with the other 27 countries. Even if you believe that that cannot be achieved, it is the right thing to do because that would place the issue in the discussions, allowing the decision to be made in that context, rather than ex cathedra by the Prime Minister or the Tory UK Government Cabinet.³²

43. When questioned by the Committee on the timing of a response from the UK Government on the Scottish Government's paper, Mr Mundell, the Secretary of State, said—

” My view is that the invoking of article 50 is not a red line in the process. It is possible that discussions could continue after the invoking of article 50.

” However, it is clear that the committee and the Scottish Government are entitled to a response, so the UK Government will respond formally to the proposals in the document. We have already acknowledged the areas on which we are in agreement.³³

The Scottish Government's position on Scotland's Place in Europe

44. The Scottish Government's position is underpinned by the desire for as close a relationship with the EU as possible. In her introduction to “Scotland's Place in Europe”, the First Minister states, “At the heart of the proposals in this document, and our proposals for any EU negotiations, we are determined to maintain Scotland's current position in the European Single Market.”³⁴

45. The Scottish Government argues that “The Scottish people did not vote for Brexit, and a “hard Brexit” would severely damage Scotland's economic, social and cultural interests.” It also states that a “hard Brexit” would “hit jobs and living standards deeply and permanently.”³⁵ The First Minister clearly articulates her view that the best option would be for Scotland to become a full member of the EU as an independent country, arguing that this would “resolve the fundamental cause of the position Scotland currently finds itself in: Westminster Governments that Scotland doesn't vote for, imposing policies that a majority in Scotland does not support.”³⁶

46. The Scottish Government argues that Scotland's future relationship with the EU “should be guided by the pursuit of opportunity for our people, solidarity between our citizens and co-operation among nations.”³⁷ It summarises Scotland's key interests—

” **a) Economic interests** – in particular, retaining membership of the European Single Market and its market of 500 million people in addition to free trade across the UK; protecting the thousands of jobs that are directly linked to our place in that market; ensuring our firms have access to the EU workforce they need; and pursuing the collaboration and funding that is so essential to our future prosperity.

” **b) Solidarity** – supporting the ability of nations to come together for the common good of all of our citizens to tackle crime and terrorism and deal with important global challenges like climate change; protecting the rights of EU citizens to settle in Scotland and continue to contribute to the development of our economic prosperity and diverse communities with

reciprocal arrangements for our citizens living, working and studying in other EU countries.

- ” **c) Social protection** – ensuring the continued protection of workers’ rights and maintaining social, environmental and human rights advances.
 - ” **d) Democratic interests** – respecting Scotland’s overwhelming vote to remain in the EU and ensuring that Scotland’s distinctive voice is heard, particularly in our future relationship with the EU and European Single Market, and that our wishes are respected.
 - ” **e) Influence** – safeguarding our ability to shape the laws and policies that define our future economic and social development.³⁸
47. Notwithstanding its stated preference to remain in the EU, the Scottish Government explores whether it “can find common ground with the UK Government around a solution that would protect Scotland’s place in the European Single Market from within the UK.”³⁹ In order to do this, it makes two propositions—
- ” **Firstly**, we argue that the UK as a whole should remain within the European Single Market – through the European Economic Area – and within the EU Customs Union.
 - ” **Secondly**, we consider how Scotland could remain a member of the European Single Market and retain some key benefits of EU membership even if the rest of the UK decides to leave.⁴⁰
48. The Scottish Government explained why it considered that the UK as a whole should remain within the Single Market as a member of the EEA and within the customs union—
- ” Our firm view is that, alongside remaining in the European Single Market, the UK should remain within the EU Customs Union. This would reduce to a degree the disruption of years of negotiating new FTAs, with no evidence that the eventual outcome will be better. If remaining in the EU Customs Union proves unacceptable to the UK Government and it is intent on pursuing its own international trade policy, this should not rule out remaining in the European Single Market. Retaining UK membership of the European Single Market as a non-member state under the terms of the EEA would not require the UK to remain within the EU Customs Union: Norway, Iceland and Liechtenstein are members of the Single Market but are not in the EU Customs Union.⁴¹
49. In evidence to the Committee, Professor Anton Muscatelli, the Chair of the First Minister’s Standing Council on Europe, indicated that he considered that it was “possible to have a parallel market solution” as described in the Scottish Government’s paper.⁴² He recognised that, “it is undoubtedly true that the softer

the Brexit, the easier it will be to implement a differentiated solution.”⁴³ In relation to the Scottish Government’s proposal, he considered that—

” If we look at the detail of the proposal in “Scotland’s Place in Europe”, it is about how to keep Scotland within the single market if the rest of the UK decides to be outside it. In order to maintain the integrity of the UK market, the proposal in the document makes it clear that what is needed is essentially to keep the whole of the UK within the same customs zone and to develop arrangements that in some way allow the regulatory side of the European single market to conform closely to that of the UK so that there is not too much divergence. As Sir David Edward has pointed out, UK companies that still want to export to Europe will have to adhere to European standards. The closer we remain to the status quo, the more likely it is that we will be able to apply a differentiated solution.

” Additional work needs to be done in that territory in order to address some of the issues concerning how to implement a differentiated solution. As I and some other members of the standing council have said, it is entirely technically feasible to do that, challenging though it is. However, as somebody else has pointed out, there is no easy solution to Brexit. The only easy solution would have been if the UK as a whole had decided simply to slip naturally from EU membership to EFTA-EEA membership. Everything else is complicated. Hard Brexit is complicated. There are no easy solutions in that territory.⁴⁴

50. In making the case for a differentiated arrangement for Scotland, the Scottish Government states that “there is already a range of differentiated arrangements within the EU and single market framework, reflecting a willingness on the part of the EU and its member states, throughout its history, to be flexible.”⁴⁵ The Scottish Government refers to the examples of Greenland and the Faroe Islands, which are part of Danish territory but outside the EU, as well as the Channel Islands which are not in the EU, but are part of the customs union. The Scottish Government states that “A differentiated solution for Scotland would vary in detail to these and the other examples that exist, but the principle would be the same.”⁴⁶
51. The Scottish Government also notes that if differentiated solutions could be sought for certain sectors – such as the financial sector or the automobile sector – and there is a prospect of geographical flexibility for Northern Ireland, then there could be the potential for a differentiated relationship for Scotland.
52. In evidence to the Committee, Mr Russell, the Minister for UKNSPE referred to the diversity of arrangements that currently exist within the EU—

” The UK Government also does not recognise the diversity of arrangements that the EU has, although it pays lip service to them. For example, France has arrangements for its outre-mer territories. Even within these islands, the arrangements of the Channel Islands and the Isle of Man are very

different; they are in the customs union and, because of the nature of that, there is de facto membership of the single market, although it is not quite the same. Those are different circumstances from the ones that prevail in other sub-state arrangements in Europe.⁴⁷

53. Mr Russell, the Minister for UKNSPE also posited that “Europe has always been very flexible”.⁴⁸ He argued that—

” If these points are put into negotiations, they will be seriously considered and—if there is the political will—there will be the possibility of finding that solution. That is the reality of what happens in Europe. Therefore, if Theresa May puts these points on the table, the likelihood is that we will be able to find a resolution.⁴⁹

54. Dame Mariot Leslie, a member of the First Minister’s Standing Council on Europe, set out her perspective on the boundary between legal constraints and precedents on the one hand, and what could be achieved through political negotiation in relation to Scotland securing a differentiated relationship with the EU on the other. She stated—

” First, it is not a free-for-all. People who say that anything can be negotiated with political will overlook the fact that, in the EU, there are treaties, a body of jurisprudence and so on, so it is not always the case that one can negotiate absolutely anything provided that there is the political will.

” It seems to me that, in the case of the Brexit negotiations between the UK and the rest of Europe, and what might happen between Scotland and the rest of the UK internally, the starting point is the political one.

” The legal frameworks in terms of the EU treaty will have to be amended to take account of the UK’s exit: there will have to be revision of some of the financial provisions, voting rights and so on. Once we start to open up treaties and ratification, it is possible to open up a space in which other things are negotiated as well. Incidentally, that also has to be true for EFTA and its conventions and agreements if anything was to happen on that front. It is therefore simply wrong to say that it is impossible to envisage any change to the legal provisions as they stand.⁵⁰

55. The Scottish Government argues that any future trading relationship that does not involve the UK remaining part of the single market will result in people and businesses facing “different ways of trading with other countries” which will “necessarily involve administrative changes and burdens.”⁵¹ It therefore recognises that while its “proposal is complex and will be difficult to implement” the same “will be true for any proposal from the UK Government”⁵² which does not involve the UK staying in the single market. In evidence to the Committee, Mr Russell, the Minister for UKNSPE stated—

” I do not think that we have made any secret in the paper of the difficulties of the position in this negotiation. It is important to recognise the extraordinary difficulty that the United Kingdom has put itself in with regard to those matters. It will, therefore, require a great deal of imagination and flexibility, just as our proposal will require imagination and flexibility.⁵³

56. Ian Duncan MEP told the Committee that there were some policy areas in which he could envisage Scotland having a greater degree of engagement, but that he could not foresee that a separate relationship would be politically palatable to some Member States—

” I anticipate there being elements on which Scotland could have a differential relationship with the EU. For example, that could happen if there were an appetite in England and Scotland but not in Wales to continue with Erasmus, or whatever. I can perceive that there would be opportunities within the framework that is established by the UK Government in the negotiations. However, if there were to be a recognition of an entirely separately packaged deal, even that alone would raise anxieties, certainly among the Spanish, who thus far have been very vocal on the matter. I suspect that the same would probably be true in Belgium, because of the issues around separation there, and there are other places in the EU where that notion would be troubling.

” There are certainly possibilities for Scotland or any member of the home nations to determine a different suite of elements within the UK negotiating package—that is probably true—but it depends on what level that is at, how fundamental it is and how far you drill down.⁵⁴

57. Mr Mundell, the Secretary of State for Scotland, told the Committee that officials from the UK Government and the Scottish Government were part of a work stream examining access to the single market—

” I have not seen evidence that suggests that there is a possibility of membership of the single market without EU membership and the various things that go with that. ... a work stream has been established on access to the single market, whereby all the alternatives are being examined and the detail of such proposals is being gone through by lawyers and others.⁵⁵

EEA EFTA membership – an option for Scotland?

EFTA

58. Chapter Three of the Scottish Government's paper provides more detail on “an integrated solution for Scotland which ensures continued membership of the European Single Market, and collaboration with EU partners on key aspects of policy and participation in EU programmes such as Horizon 2020.” The paper states—

- ” This has been described by some as the “Norway option”, but properly encompasses all of the EFTA countries which are also party to the EEA Agreement, including Iceland and Liechtenstein. Beyond the common aspects of these relationships (which relate to the implementation of the European Single Market), Scotland would also seek the opportunity to collaborate in a wider range of policy areas such as energy and justice, which would add to our ability to work with European partners beyond a relationship based solely on free trade. Other differentiated options would also be open to Scotland instead of, or in addition to, the one discussed in this chapter, whereby Scotland could seek to remain part of particular EU policies and initiatives (i.e. Horizon 2020, Erasmus, Europol).⁵⁶
59. EFTA was established in 1960 by seven European countries – including the UK – which wished to benefit from a trading bloc, but which were either unable or unwilling to join the European Economic Community (EEC). The UK shortly afterwards decided to seek membership of the EEC, joining at the same time as Ireland and Denmark in 1973. EFTA became less viable as a trading bloc and in 1994 an agreement establishing the EEA as a free trade area came into force between all of the then EFTA states – with the exception of Switzerland – and the EU member states. The current EEA EFTA states are Norway, Iceland, and Liechtenstein.
60. The EEA is a free trade area composed of the three EEA EFTA states and the 28 EU Member States covering the four freedoms of the single market and the “flanking policies” such as social policy, consumer protection, and environment policy. The EEA Agreement excludes external relations, agriculture, fisheries, transport, regular budget contributions, regional policy and monetary policy. The EEA EFTA states do, however, make a financial contribution to economic and social cohesion in the EEA. For Norway, the retention of complete control over agricultural and fisheries policy was very important. Norway can participate in the single market on the condition that it applies the *acquis communautaire* in relation to the four freedoms – the free movement of goods, services, capital and labour – and in relation to a number of the “flanking policies” such as social policy, environmental policy and consumer protection. The EEA countries adopt all EU legislation relevant to the functioning of the single market, which means everything related to the free movement of persons, goods, capital and services, as well as public procurement and state aid.
61. In addition to the EEA agreement, Norway has agreements with the EU in the fields of justice and home affairs, defence and security cooperation.

Norway’s membership of EFTA

62. Dr Ulf Sverdrup of the Norwegian Institute for International Affairs told the Committee that Norway had prospered in its relationship with the EU, but it was not possible to think of the Norwegian model as a “nice, tailor-made solution.” Instead he perceived it is—

” ...much more of a patchwork of patches that have been stitched together in a messy and complicated fashion. It has evolved over time, and a lot of technical and complex adjustments have been necessary. It was designed as a transitional arrangement prior to 1994, but it has become permanent. It has served as a platform for domestic political compromise in Norway, where public opinion has been split on its relationship with the European Union. It is in no sense an optimal model—it has huge costs in terms of representation and efficiency—but it is seen as an acceptable solution.⁵⁷

63. Tore Myhre told the Committee that the EEA agreement was vital to the Norwegian economy. He explained that the main focus of the EEA agreement for Norway was the single market. He described the EEA agreement as a “national compromise” whereby business achieved its objective of being part of the single market while “those who were sceptical of the European Union got their part in keeping the formal sovereignty.”⁵⁸

64. Dr Sverdrup had led the secretariat for the Official Norwegian Europe Review, which established that Norway’s agreements with the EU cover around three quarters of all EU rules and regulation and 100 per cent of the single market, which he pointed out was “more than can be said for many Member States, including the United Kingdom.”⁵⁹ Tore Myre described the process by which Norway adopted EU laws as a “kind of paradox”. He said—

” ...we are obliged to take on all new legislation regarding the single market. That is the premise for the EEA to function, because we need a level playing field. At the same time, however, it is not totally automatic, because a law first has to be taken into the EEA agreement and then it has to be transposed into Norwegian legislation, so there is a formal possibility of rejecting new pieces of legislation. Importantly, we have never rejected a piece of EU legislation. The real situation is that, if we do that, we risk compromising the agreement.

” There are clauses in the agreement that say that, if we do not take up new legislation, the EU can suspend that part of the agreement. That is so serious for us that we have never challenged the EU in that respect.⁶⁰

65. Dr Sverdrup also referred to Norway’s experiences in dealing with the EU and the dynamic of the relationship. He observed that from the EU side, the EEA was perceived as the “best functioning” of its agreements with third countries. From the Norwegian perspective, the EU had been a “constructive partner in that it had tried to accommodate Norwegian interests and concerns.”⁶¹ However, he also noted that the EU can “be a fairly tough negotiator” and “be more unified in relation to third countries than many people tend to think.”⁶²

Becoming a member of EFTA

66. The Scottish Government argues that this “option does not require concessions either from the UK Government or the governments of the EEA Member States to permit Scotland to join the single market” and instead “requires agreement that Scotland should not be required to leave that market against the clear democratic wishes of a majority of our, and the EU’s, citizens.”⁶³

67. In response to a question from the Committee about the possibility of Scotland joining EFTA while still part of the United Kingdom, Dr Sverdrup said—

” My understanding is that it would create some challenges for the EFTA countries to integrate a country that is not seen as a sovereign country ... We have some experience with the Faroe Islands that relates to that issue. It is an interesting suggestion in some senses, but it also raises issues about sovereignty and how such a move might affect the relationship with the UK in general.⁶⁴

68. Dag Wernø Holter of EFTA also confirmed the wording of the convention that a “state” can apply for membership and the process under which Scotland would have to seek membership, explaining that—

” The EFTA convention says that any state can apply for membership of EFTA. As to how that is interpreted, it is definitely not for the secretariat to judge. If you take one step further and look at the EEA agreement, it is inherent in its very structure that you cannot access it or be party to it without being either a member of the European Union or a member of EFTA.

” If Scotland wants to join the EEA by that path, the first question would be to reach an agreement on your relations with the UK. Secondly, the crucial question of statehood would have to be settled with EFTA. Again, it is not for the secretariat to have any opinion on that. Once a member of EFTA, you would have to apply to accede to the EEA agreement.⁶⁵

69. When the Committee visited Brussels in January 2017, it met the Head of the Mission of the Faroe Islands to the European Union, who told the Committee that the Faroe Islands were actively seeking membership of EFTA in order to access EFTA’s FTAs and that the Faroes had a letter of support from the Danish Government to EFTA. Dag Wernø Holter told the Committee that there was “no consensus within EFTA with regard to the possible admission of the Faroe Islands precisely because of formal legal reasons related to the issue of statehood”.⁶⁶ He said—

” The status of the Faroe Islands in the kingdom of Denmark must be clarified with Denmark—as you know, the Faroe Islands is not an independent state, but it has a certain autonomy within the kingdom of Denmark—and, secondly, the question of statehood has to be assessed by

the EFTA member states. So far, there have been no concrete, direct discussions either between the EFTA states or between EFTA and the Faroe Islands on that matter in any substantial way. There has been a clearly expressed interest on the part of the Faroe Islands, but EFTA has not yet responded formally to that.⁶⁷

EFTA and the customs union

70. The Scottish Government's paper recognises that EEA EFTA countries are not members of the customs union. It proposes that unless the UK Government opted to keep the whole of the UK in the customs union, then "Scotland, like the rest of the UK, would not be in the EU Customs Union."⁶⁸ The Scottish Government states that this "would mean that the border between Scotland and England would NOT be an external EU customs border, retaining unimpeded customs-free trade within the UK."⁶⁹
71. In relation to fisheries and agriculture, the Scottish Government points out that the EEA EFTA countries are not part of the Common Fisheries Policy (CFP) or the Common Agricultural Policy (CAP) and that agricultural and fish products imported into the EU from these countries are subject to tariffs. The Scottish Government argues that this would "give Scotland greater opportunity to develop and administer Scottish specific agricultural and fisheries policies."⁷⁰ The Scottish Government expects that responsibility for agricultural and fisheries policy will remain fully devolved to Scotland following the UK's withdrawal from the EU, and indicates that it would "press the UK Government to negotiate for tariff-free access to the European Single Market" for agricultural and fisheries products.⁷¹
72. Tore Myhre, told the Committee that part of the compromise when the EEA agreement was negotiated was to exclude agriculture and fisheries. This allowed Norway to protect its agricultural sector – which operated in harsh climatic conditions – using tariffs. Fisheries and seafood were not included as the Norwegian fisheries sector had been concerned about other EU countries accessing Norwegian fish quotas. However, this meant that there is no free trade of fish and seafood to the EU, with Norway being subjected to a number of quotas and tariffs. Thus fish farming and fish processing face barriers to accessing the EU market.
73. Norwegian consumers are also impacted by Norway being outside the customs union, with limits on importation and the need to complete customs declarations for goods purchased online from other countries.
74. Dr Sverdrup noted that, as Norway was not part of the customs union, it had to comply with rules of origin. He acknowledged that that increased transaction costs "but those are carried by businesses – and probably ultimately – by consumers."⁷² Tore Myhre reiterated that not being part of the customs union had "not been tremendously difficult" for Norway.⁷³ He explained that—

” A lot of practical procedures are now in place with the automisation and digitalisation of all the customs declarations, so we avoid the long queues at the border. However, it is a practical hurdle for companies. We know that many companies have set up storage spaces or branches in Sweden or other European countries to get around the challenge of not being part of the customs union.⁷⁴

75. As it is outside the customs union, Norway can agree trade agreements with other countries, although it has agreed the majority with other EFTA countries, including Switzerland. EFTA currently has 27 trade agreements covering 38 countries.⁷⁵ Dr Sverdrup explained that the EFTA states had a collective interest in negotiating trade agreements together—

” It is a bit easier to go out in the world saying that we are a European Free Trade Association, even though we are small countries.

” Most of those free trade agreements are signed after the EU has completed its agreements. During the past eight to 10 years, however, there have been a few instances when EFTA countries have completed negotiations before the EU, and we have discovered that that could be a bit beneficial.⁷⁶

76. Tore Myhre pointed out that if the UK decided to join EFTA, it would not “have to start from scratch in negotiating trade agreements with countries such as India, Singapore or Turkey.”⁷⁷ In addition, Dr Sverdrup noted that as the EEA EFTA countries have adopted the EU acquis, this facilitates the agreements in so far as standards are concerned. Dr Sverdrup said—

” To supplement what was said on the EFTA agreements, I add that you might be interested to learn that EFTA free trade agreements often have a part that is a common agreement, as well as a bilateral agreement. It is not so easy for new countries to enter into such free trade agreements. The EFTA free trade agreements are negotiated on the platform of the World Trade Organisation, and we also have to take into account the EU acquis that regulates standards et cetera. We are therefore not starting from scratch when we negotiate free trade agreements.⁷⁸

Adoption of EU legislation by EEA EFTA states

77. There is some provision for consultation with the EEA on the elaboration of legislative proposals through European Commission working groups, but EEA member states are not involved in the decision-making in the Council configurations. Dag Wernø Holter explained the arrangements—

” The main opportunity that was set up in the agreement for the EEA-EFTA states to participate in shaping decisions on new regulations and legislation relevant to the internal market is participation in the work of expert groups

and working groups under the European Commission in the preparatory stages. The EFTA secretariat is involved in that. We take part in its management and help the member states as they wish.⁷⁹

78. Marius Vahl of ETFA added that there were a large number of bodies “various councils, committees, subcommittees, expert groups, working groups and so on. I have tried to add up all the meetings, and it comes to more than 100 a year—it is quite a large machine.”⁸⁰ However, the EFTA officials recognised that due to the long negotiations from the point at which a proposal is prepared by the European Commission to the point at which it had been agreed between the European Council, the European Commission and the European Parliament “the outcome could be very different from what was discussed at the outset in the working groups of the expert groups under the Commission.”⁸¹

79. Dag Wernø Holter explained that the political engagement of the EFTA states then became important—

” As the EFTA states have no formal access to the discussions in that whole process, it is up to each EFTA member state to see whether it can influence the process by maintaining contacts at the political or official level with the relevant EU member states, members of the European Parliament or the Commission services.⁸²

80. In evidence to the Committee, the Scottish Trade Unions Congress (STUC) reflected on whether it would find it acceptable to have such limited involvement in the decision-making process for EU laws—

” We have done some fact finding with Norwegian trade unions and with the EFTA co-ordinating committee that does the social dialogue, and we have talked about what EFTA’s influence looks like and how EFTA members influence EU decisions. We received a clear indication from everyone that there are no opportunities to exert an influence. Never before have I heard so many people tell me so clearly that they have no influence over the rules that govern their lives. We would need to think hard about whether it would be acceptable to have no influence over the decisions that were made and the policies that were adopted.⁸³

81. In response to a question from the Committee on the lack of opportunity to have a “place at the table” where EU legislation is discussed and agreed by EU Member States, Sir David Edward observed that the “short fact” was that, “A state cannot have a full seat at the table unless it is a member of the EU”.⁸⁴ He observed that, “The idea that you can be on the island of Atlantis in the middle of the Atlantic Ocean but still be fully part of the system is for the fairies.”⁸⁵

The EFTA Court and the EFTA Surveillance Authority

82. The EEA agreement is dependent upon the equal and uniform implementation and application of EU laws and rules in all of the 31 EEA Member States. In the EU the Member States are supervised by the European Commission and the CJEU ensures that EU law is applied in the same way by all of the Member States. In the EEA, the EFTA Surveillance Authority ensures that the participating EFTA States – Iceland, Liechtenstein and Norway – respect their obligations under the EEA Agreement. The EFTA Court fulfils the judicial function within the EFTA system, interpreting the Agreement on the European Economic Area with regard to the EFTA States party to the Agreement.
83. The Surveillance Authority covers EU law, restrictions on state aid, ensuring that companies operating in the EFTA countries abide by the rules relating to competition. It also investigates infringements either on its own initiative, or on the basis of complaints, and can impose fines on individual undertakings and assess mergers between undertakings where certain thresholds are met. The EFTA Surveillance Authority has been allocated with specific tasks in supervising financial services, with powers to adopt certain defined decisions that are legally binding on national supervisory authorities and market operators (including credit institutions, insurance companies and investment firms) established in the EFTA States.
84. In evidence to the Committee, Sir David Edward explained the position of the EEA states in relation to EU law, the CJEU and CJEU case law—
- ” The EEA does not directly adopt EU law. Norway, Iceland and Liechtenstein are within the single market because the EEA agreement includes provisions that mirror the treaties. In so far as there is EU secondary legislation, that is international law adopted by the member states of EFTA by their own legislation. The relationship is not one of dependence.
 - ” On the other hand, the undertaking is that the EFTA states will incorporate the law of the EU in so far as it applies to the free movement of goods, persons, services and capital. It is important to realise that as an illustration of the way in which participation in the single market can take place without the commitment of membership of the EU or direct subjection to the law of the European Union or the jurisdiction of the Court of Justice of the European Union. As I said, you do not escape the case law of the Court of Justice or certain aspects of its jurisdiction.⁸⁶
85. Dag Wernø Holter told the Committee that, in concluding the EEA agreement, it was necessary to “find a solution to meet the requirement of the EU side to have a system for surveillance and judicial settlement of disagreements or disputes. As the EFTA countries weren’t prepared to accept EU jurisdiction or the EU system of surveillance we had to establish a separate set of institutions for that purpose.”⁸⁷ The EFTA Surveillance Authority and the EFTA Court were established to fulfil this

function, effectively mirroring the European Commission's responsibility for surveillance and the CJEU.

86. Dag Wernø Holter also explained that the “basic principle of the extension of the single market to the participating EFTA states is homogeneity of legislation.” He described the EEA agreement as a “well-functioning institutional set up” with the “constant incorporation of new legislation to ensure that we have a homogeneous legal area that regulates exchanges and economic activities.”⁸⁸ He said that—

” All legislation that is relevant to the single market, or for the areas that are covered by the agreement, was incorporated into that agreement when it was concluded in 1992 and 1994. The agreement itself has set up a system for the further incorporation of new relevant legislation into the agreement, along with adoption of such legislation on the EU side.⁸⁹

Financial contributions

87. The Norwegian Government participates in EU programmes such as the cohesion programmes, the Framework Programmes for Research and Development and other cross EU programmes related to education and cultural initiatives as a result of the EEA agreement. It also participates in the EU agencies. According to the Norwegian Government—

” Norway commits to making a yearly financial contribution to the relevant EU Budget. EEA EFTA states fund their participation in programmes and agencies by an amount corresponding to the relative size of their GDP compared to the GDP of the whole EEA. The EEA EFTA participation is hence on an equal footing with EU Member States.⁹⁰

88. Norway makes a financial contribution to support economic and social cohesion as well as EU programmes such as Horizon 2020 and Erasmus+. The most up-to-date figures show contributions for participation in EU programmes is averaged out at €447 million per year for the 2014-2020 period. The EEA contribution, which is directed towards the 15 countries with the lowest GDP in the EU, averages out at €391 million per year for the same period. This translates into a per capita contribution that is at the higher end of the contributions made by EU member states.

Transitional arrangements

89. The issue of potential transitional arrangements for Scotland if it moved from the current position as part of an EU Member State to being a member of EEA EFTA in its own right was discussed in evidence. Professor Anton Muscatelli, expressed his personal view that—

” ...given that we at least know where we are starting from, if we want to develop a transitional arrangement to avoid falling off a cliff edge, a

European Free Trade Association and European Economic Area solution is the best one for the whole of the UK.⁹¹

The economic implications of EEA EFTA for Scotland

90. In the Fraser of Allander Institute’s report for the Committee on [The Long-term Economic Implications of Brexit](#), it identifies the following key impacts on the Scottish economy of a “Norwegian model” of EEA EFTA membership, after a period of around ten years—
- Scottish GDP is expected to be between 2% and 3% lower than would otherwise be the case – equivalent to GDP being £3bn-£5bn lower in 2015-16 term⁹²;
 - Real wages are expected to be between 3% and 4% lower than would otherwise be the case; for someone on average full-time earnings in Scotland, this would be equivalent to a reduction of £800-£1,200 per year⁹³;
 - A 1-2% reduction in the employment level is expected; this is equivalent to the loss of around 30,000 jobs in the optimistic scenario.⁹⁴
91. Table 1 summarises the long-term (reached after around 10 years) change from the baseline position that would be implied under a ‘Norway’ model with an ‘optimistic’ and ‘pessimistic’ scenario.

Table 1: Norway model: long-term % changes relative to baseline

	Optimistic % change	Pessimistic % change
GDP	-2.0	-3.1
Exports	-4.4	-6.7
Real wages	-2.9	-4.3
Employment	-1.2	-1.8
Population	+0.8	+1.2

Source: Fraser of Allander Institute

92. The Cabinet Secretary argued that if Scotland remained in the single market then it might be more attractive to inward investors—

” Many companies that decide to invest do so if not on the basis of the access that we currently have to the single market then taking it into account. It follows from that, depending on the exact outcome, that the more akin our arrangement is to membership of the single market, the more attractive we will be to inward investors. It is not easy to quantify at this stage, but there would be a definite benefit from Scotland retaining such access. The same benefits would accrue to the rest of the UK were it to decide to remain in the single market but, if there is a differentiated outcome on the relationship to the single market, those with the relationship closest to the current one will be in a position of advantage.⁹⁵

The implications of EEA EFTA membership for internal borders

93. The Committee heard concerns in evidence about the potential for a hard border between Scotland and the rest of the UK. For example, in relation to the single market, NFUS questioned “if Scotland is to remain in but the rest of the UK comes out, where does that leave us in terms of cross-border trade?”⁹⁶ Similarly David Branch, Head of Business Development at Cochran UK, stresses the importance of a single market within the UK—

” Between 35 and 40 per cent of what we produce is exported, predominantly outside the EU, but most of our market is in England, although we are based in Scotland. Whatever arrangements there are in Scotland – ignoring politics – they need to be the same UK-wide. I accept that the UK is not going to be part of the European Union any more, but ending up with different regulatory arrangements, customs, tariffs and non-tariff barriers in Scotland and England would be a challenge.⁹⁷

94. The Cabinet Secretary recognised the importance of both the UK and EU markets in evidence to the Committee—

” That is not to say that we prioritise our trade with the EU at the expense of our trade with the UK. We are clear that we want to maintain our relationship with both vital partners—the two are not incompatible, in our view. We have heard from David Davis that there will not be a hard border between Northern Ireland and the Republic of Ireland, and I am confident that the same would be the case between Scotland and the rest of the UK, should Scotland be able to secure our relationship with the EU.⁹⁸

95. David Martin MEP told the Committee that the harder the Brexit, the more difficult it would be for Scotland to negotiate a differentiated solution. He said—

” If there is a soft Brexit, there is no need for a border between Scotland and England, even if one country is in the EU and the other is not. If there is a hard Brexit, my argument – my claim – is that we would need a hard border, which is where the difficulty would come.⁹⁹

96. Professor Muscatelli suggested that any solution found for the border between Ireland and its land border with the UK could provide a blue print for a solution for Scotland—

” In essence, a differentiated approach to visas and the right to work could be enforced at the workplace as opposed to at the border. The border around the British Isles would be a common travel area—that would be secured—but there could then be differentiated arrangements. That is the only approach that could be taken if Ireland were in that common travel area.¹⁰⁰

The UK Government's position

97. The Prime Minister's Lancaster House speech and the subsequent White Paper set out a "Plan for Britain". It includes a dozen principles which will "guide the Government in fulfilling the democratic will of the people of the UK".¹⁰¹ These are—

1. Providing certainty and clarity;
2. Taking control of our own laws;
3. Strengthening the Union;
4. Protecting our strong historic ties with Ireland and maintaining the Common Travel Area;
5. Controlling immigration;
6. Securing rights for EU nationals in the UK and UK nationals in the EU;
7. Protecting workers' rights;
8. Ensuring free trade with European markets;
9. Securing new trade agreements with other countries;
10. Ensuring the United Kingdom remains the best place for science and innovation;
11. Cooperating in the fight against crime and terrorism; and
12. Delivering a smooth, orderly exit from the EU.¹⁰²

98. The following section of the report focuses primarily on the UK Government's proposals in relation to its future trade relationships with the EU and other countries.

Taking control of our own laws

99. The UK Government sets out its intentions to take "control of our own laws" and to "bring to an end the jurisdiction in the UK of the Court of Justice of the European Union."¹⁰³ It explains that, "Whilst Parliament has remained sovereign throughout our membership of the EU, it has not always felt like that". It states that, "Leaving the EU will mean that our laws will be made in London, Edinburgh, Cardiff and Belfast, and will be based on the specific interests and values of the UK."¹⁰⁴

100. The UK Government recognises that there will need to be a provision for dispute resolution with the UK in the future and refers to the mechanisms used in EU-Third Country agreements such as the "CETA Joint Committee" that has been established under the EU-Canada Comprehensive Economic and Trade Agreement. It acknowledges that the "actual form of dispute resolution in a future relationship with the EU will be a matter for negotiations between the UK and EU", but states that, "Any arrangements must be ones that respect UK sovereignty,

protect the role of our courts and maximise legal certainty, including for businesses, consumers, workers and other citizens.”¹⁰⁵

101. In evidence to the Committee, members of the First Minister’s Standing Council on Europe discussed the continuing need for the UK to comply with EU regulations in order to be able to trade with the EU. Professor Muscatelli told the Committee that he considered that there would be an ongoing need to “tether” UK business regulation to EU business regulation. He further explained that as 45% of the UK’s exports are to the EU, it is “in the UK’s interests not to diverge markedly otherwise those markets will collapse” and contended that “the UK will have to confront how it relates its business regulation to that of Europe.”¹⁰⁶
102. Sir David Edward told the Committee that “the idea that you divorce yourself entirely from this machine is simply not in accordance with the facts.” In reference to the continuing relevance of EU law, he stated—

- ” In the field of competition law, which is very important in the UK and the EU, British companies cannot divorce themselves from the jurisdiction of the EU authorities. That includes the European Commission and the European Court of Justice, in so far as their agreements have effect in the European Union as it remains. Because the Commission will have jurisdiction, so too will the Court of Justice. You cannot sell goods into the EU without complying with the EU standards.
- ” When there is doubt about the interpretation of those standards, the Court of Justice has jurisdiction in the EU to interpret the standards and provide the authoritative determination. Similarly, the Court of Justice has the ultimate jurisdiction to decide how the common customs tariff is to be applied.
- ” I would put it like this: you might escape the direct jurisdiction of the Court of Justice, but you will not escape the jurisprudence of the Court of Justice. The Court of Justice case law is still there.¹⁰⁷

103. Professor Oesch of the University of Zurich told the Committee that while Switzerland and the EU had agreed 20 main agreements and more than 100 secondary agreements, the “trade between Switzerland and the EU is governed first and foremost by World Trade Organization rules.”¹⁰⁸ He also explained that Switzerland had “developed another instrument to mitigate the negative consequences of not being a member of the EU or the EEA, namely the policy of autonomous adoption of EU law” since the late 1980s.¹⁰⁹ He stated that—

- ” According to the principle, Swiss laws should be aligned with EU laws as far as possible. Deviations from EU regulations and directives are, of course, possible but they should be chosen¹¹⁰ only if there are cogent political and/or economic reasons to do so. We estimate that 30 to 50 per

cent of all acts and ordinances at the federal level in Switzerland are influenced by EU law directly or indirectly.¹¹¹

104. Professor Church, Emeritus Professor of European Studies, University of Kent, told the Committee that the potential for the CJEU to have any role in any future framework arrangements was “extraordinarily controversial and delicate”¹¹² in Switzerland. Professor Oesch told the Committee that the impact of jurisprudence of the CJEU was already quite high in Switzerland. He explained that this was visible in three ways. Firstly, the Swiss Federal Supreme Court consistently follows the jurisprudence of the CJEU in interpreting the bilateral agreements for Switzerland. Secondly, when Switzerland autonomously adopts EU law it takes into the account the CJEU’s interpretation of, and rulings on, the parallel EU law. Thirdly, the Federal Council in Switzerland has favoured the CJEU being the final arbiter in a future institutional framework and the EU has agreed to base the negotiations on that proposal.
105. Dag Wernø Holter referred to the “the lack of independent mechanisms for surveillance and settlement of disputes” as being part of the EU’s concern in its relationship with Switzerland and suggested that “if there are to be discussions between the EU and the UK about agreement on a model, those aspects would be part of those negotiations.”¹¹³
106. It is also important to consider the supervision of the UK’s trade agreement from the perspective of other parties. Tore Myhre cautioned—
- ” If a Norwegian company wants to invest in the UK but knows that, in the event of a conflict or dispute, a UK court, which may not be neutral if the conflict is with a UK company, would have the last say, the investor will lose the predictability that we have at present with the surveillance and court system. Finding solutions to that would be very important.¹¹⁴
107. In addition, the Committee heard of the exigency to adopt EU standards, many of which are set out in EU law, in order to trade not only with the EU, but also with other parts of the world. The UK Government states that the Great Repeal Bill will preserve EU law where it stands at the moment and the UK Parliament, and the devolved legislatures where appropriate, will be able to decide “which elements of that law to keep, amend or repeal once we have left the EU.”¹¹⁵
108. In order to export to the EU single market, the UK would need to comply with the EU’s sanitary and phytosanitary standards (SPS measures). As a Member State it is currently fully compliant with those standards, but it would need to continue to adopt those standards after withdrawal from the EU. Professor Woolcock of the London School of Economics told that Committee that an issue might emerge in the future in relation to managing divergence in standards—
- ” If the UK keeps to the same standards, fine; nothing will change, that is true. However, it is a question of managing the divergence. Over time, the

EU might introduce new standards. They might not be significantly higher but they might be different. If the standards or regulatory requirements are different, the UK will have to adapt to those and prove that it is adapting to them to ensure full access to the single market.

” Let us take the famous chlorinated chicken example. EU rules say that you cannot use chlorinated wash to clean chicken carcasses. However, a lot of scientists say that that rule is not necessary. If the UK agricultural regulators say that it is not necessary and it is an additional cost for our farmers, we might not follow it. If that is the case, UK chicken exports would not be able to get into the EU market.¹¹⁶

109. Tore Myhre commented that while it had been important for fisheries and agriculture to be outside the EEA agreement from the Norwegian perspective, legislation on standards and veterinary products had become part of the agreement. He explained that this “is the biggest part of the regulations that we take in, and many are related to food safety standards so that we can sell our products freely.”¹¹⁷

110. Dr Marin Duran of the University of Edinburgh questioned the extent to which the UK might find it politically acceptable to adopt SPS measures. She asked—

” Why would you want to be in the situation where you just copy and paste those standards without having any say in them? It is legally possible, but is it going to be politically feasible as part of the negotiations to get into a situation that is basically the same as now, yet without having a say over anything? It is difficult to believe that that will be acceptable.¹¹⁸

111. As well as securing access to EU markets, the EU regulatory framework can also be important in securing access to third countries. Peter Hardwick of the Agriculture and Horticulture Development Board (AHDB) explained that for agricultural exports to China, EU regulatory standards were important—

” In the agriculture sector, certainly, we have worked hard at developing non-EU trade, which is growing quickly. However, even that is based on an EU regulatory framework that we are about to step away from. China is a good example. We do not have a trade agreement with China; we have technical agreements for each product that we ship to China. Those technical agreements, particularly in the agriculture sector, are all underpinned by EU regulation. The Chinese are very particular about detail, so if certification wording changes so that it no longer refers to the European regulatory framework but refers to a UK one, they will ask what that is and want to come to check. There is a risk of a hiatus. As I have emphasised to ministers, I am keen that we do not lose the momentum that we have at the moment on exports. There is a risk of that.¹¹⁹

112. Similarly, Ken Sutherland of Toshiba Medical Visualizations Systems Europe stated that there had been consolidation between certification for the EU and other countries under the medical device single audit programme and “under a Brexit scenario, the last thing that we want is a unique set of certifications for the UK as a market that is independent of both Europe and other markets in which we operate.”¹²⁰
113. The STUC told the Committee that it “would like the European Court of Justice to continue to have a role to play in the UK, because its findings have been good in defending workers’ rights.”¹²¹

Common Travel Area

114. The UK Government seeks to maintain the Common Travel Area with the Republic of Ireland, stating “we want to protect the ability to move freely between the UK and Ireland, north-south and east-west, recognising the special importance of this to people in their daily lives.”¹²² It commits to working “with the Irish Government and the Northern Ireland Executive to find a practical solution that recognises the unique economic, social and political context of the land border between Northern Ireland and Ireland.”¹²³
115. Professor Muscatelli agreed that “the only solution for Ireland as far as the movement of people is concerned is to maintain a common travel area.”¹²⁴
116. Dame Mariot Leslie reflected on the perception of borders that many hold, observing that—

” People often talk in a loose way about borders, jurisdictions and controls. When people say things such as, “It is a red line not to have a hard border,” they are usually talking about the visible, in-your-face appearance of a line across a bit of geography. They are talking about not having something that has got two flags around a bit of road and people in uniform on either side of it. Sir David Edward is absolutely correct to say that some of the difficult questions about one set of controls applying in one jurisdiction and another set applying in another cannot be avoided, and there will have to be a means of policing, controlling and enforcing that.”¹²⁵

117. Dame Mariot Leslie considered that the UK Government faced a conundrum as “It has to find a means of implementing such controls as are necessary without doing so via a geographical line that is very visible and that therefore has a political connotation of its own.”¹²⁶ She referred to the agreement between Sweden and Norway which allowed them to implement each other’s customs controls and controls on the movement of people. She explained—

” Some controls take the form of physical controls, such as lorries getting inspected, but they do not happen at a border crossing. A town or an office has been designated, and people who have goods in their lorry know that they will not be able to legally take them from one jurisdiction to the other

without inquiring whether they have to have a goods control. If they do, the lorry goes to the depot and gets controlled.

” It is perfectly possible—undesirable, but possible if we have Brexiting—to envisage controls like that between the north and the south of Ireland, with points of check that happen in other ways. A lot of the things that control criminality, fraud and movement of people, as well as contraband goods, weapons and so on, can take place via intelligence-led police action between two jurisdictions without somebody having to stand at a border and ask every car driver to wind down his window.¹²⁷

Ensuring free trade with European markets

118. The Prime Minister committed to pursuing a “new, comprehensive, bold and ambitious free trade agreement”¹²⁸ with the European Union. She said—

” This agreement should allow for the freest possible trade in goods and services between Britain and the EU’s member states. It should give British companies the maximum freedom to trade with and operate within European markets – and let European businesses do the same in Britain.¹²⁹

119. However, she made it clear that what she was proposing “cannot mean membership of the single market.”¹³⁰ She further explained that—

” European leaders have said many times that membership means accepting the “4 freedoms” of goods, capital, services and people. And being out of the EU but a member of the single market would mean complying with the EU’s rules and regulations that implement those freedoms, without having a vote on what those rules and regulations are. It would mean accepting a role for the European Court of Justice that would see it still having direct legal authority in our country.

” It would to all intents and purposes mean not leaving the EU at all.¹³¹

120. The UK Government states that it does not wish to adopt “a model already enjoyed by other countries” as the negotiation will not be about bringing two divergent systems together but rather finding the best way to continue the common systems and frameworks for trade which currently exist.¹³² It argues that—

” It is in the interests of the EU and all parts of the UK for the deeply integrated trade and economic relationship between the UK and the EU to be maintained after our exit from the EU. Our new relationship should aim for the freest possible trade in goods and services between the UK and the EU. It should give UK companies maximum freedom to trade with and operate within European markets and let European businesses do the same in the UK. This should include a new customs agreement with the

EU, which will help to support our aim of trade with the EU that is as frictionless as possible.”¹³³

121. In evidence to the Committee, Mr Hands, the Minister of State said that he was “reasonably optimistic” for the negotiation process. He said—

” We are ambitious for the sort of deal that we seek to achieve. The negotiation obviously has not started yet; you will know, convener, that we are triggering article 50 before the end of next month. The date is getting ever closer and we are looking forward to a successful, productive, fruitful negotiation. It is important to remember that the UK and the EU will remain friends and partners during and after the process; it is important that our co-operation continues not just on trade matters but right across the piece on things such as conflicts, security and counterterrorism.

” I am reasonably optimistic for that negotiation process. I am not pretending that it will be easy, but our objective is to come to good terms of departure and to have a full and comprehensive free-trade agreement with the EU that will come in right away.”¹³⁴

122. Although the UK Government indicates that it would like a new customs agreement with the EU, it also indicates that it will not be bound by the EU’s Common External Tariff or participate in the Common Commercial Policy in future in order that it “can take advantage of the opportunity to negotiate our own preferential trade agreements around the world.”¹³⁵ However, it will also mean that on the date that it withdraws from the EU – unless a transitional agreement provides for the EU’s trade agreements with third countries to continue – then it will lose the beneficial terms on which it trades with these countries and revert to WTO arrangements.

123. Mr Hands, the Minister of State, said that “being outside the customs union would clearly allow us a greater degree of flexibility to come to free-trade agreements with key partners outside the European Union” and described that as “one of the great opportunities that Brexit provides.”¹³⁶

124. Mr Hands, the Minister of State, also suggested that the UK might inherit some of the terms of the EU’s preferential trade agreements with third countries—

” It is about how we take over the EU side of the free-trade agreements with third-party countries. That will be part of the scoping-out discussions that we will have with third-party countries between now and when Brexit actually happens. As for which parts of those agreements we will want to take over, which parts we may seek to improve and which parts we will simply translate across, it is really too early, at this stage, to say. We are actively studying that at the moment.”¹³⁷

125. The UK Government's proposals will discontinue the UK's existing trade relationships both with the EU and with the 55 third countries with which the EU has PTAs, although new relationships can replace these over time as the UK agrees FTAs with other countries. Professor Ian Wooton of the University of Strathclyde told the Committee that, "It is quite troubling that we are now at a stage at which we have to disassemble a trading agreement that has been very successful for the United Kingdom and Scotland for decades."¹³⁸ Dr Matias Margulis of the University of Stirling emphasised that "what we are talking about in the short to medium term is a renegotiation of the market access that the UK currently enjoys, not additional trade deals."¹³⁹ He thought that the process would take years, if not decades, "just for the UK to achieve the market access that it currently enjoys and nothing in addition." Dr Gracia Marin Duran of the University of Edinburgh told the Committee that "the European Union has, despite its problems, been the most successful attempt at regional economic integration that we have seen in the WTO" and that trading on WTO terms will leave the UK worse off than it would have been trading in the single market or under any preferential trade agreement."¹⁴⁰

126. Professor Muscatelli noted a speech made by Lord Kerr of Kinlochard in which he had pointed out that the "atmosphere out there, whether we are looking at the United States or other parts of the world, is increasingly mercantilist and protectionist."¹⁴¹ He observed that—

” As a country, we must therefore not think that life outside the EU will be a bed of roses. There are not many countries out there that will enter into free-trade agreements that do not put their main interests at the top. We should not kid ourselves that trade discussions or negotiations with countries outside the EU will be easier than those with the EU.¹⁴²

127. The Committee heard a range of views from businesses on the prospect of leaving the single market and renegotiating trade agreements with third countries. The National Farmers Union Scotland (NFUS) said that from the outset that it had believed that "retaining access to the EU market without barriers or any new tariffs or obstacles to trade would be a major priority for our industry" and that "remaining in the single market would have been the easiest way to retain that."¹⁴³ Following the Prime Minister's speech, the NFUS explained that it was now focusing "on creating the best and the boldest free trade agreement with the rest of the EU that we can possibly get." As the 2015 export statistics showed that food and drink exports from Scotland to the EU were worth £1.8 billion in 2015, the future trading relationship with the EU was a major issue for the NFUS. It was also concerned that "an FTA that is not done correctly could result in an increase in food imports, which could be hugely damaging for our industry."¹⁴⁴

128. Ian Gatt, President of the Scottish Fisherman's Federation, recognised the importance of markets to the fishing and seafood sectors. He expressed a preference for being able to trade without tariffs, but indicated that low-impact

tariffs and tariff-free quotas would also be acceptable. He also identified the opportunities of other markets—

- ” Our sector certainly needs a market, as we largely export. The home market is important but the international market is important, too. Post-Brexit, we definitely need a trade deal so that we can trade with the EU, but there are also huge opportunities to trade with other importing and exporting nations across the world. Naturally, continued tariff-free access to the European market is absolutely our preferred option.
- ” In the event that that is no longer possible, it will be a huge benefit not only for the UK but for the EU to have a mutually beneficial trading relationship that involves low-impact tariffs and tariff-free quotas. There are opportunities even outside the customs union to access other markets, especially for fish and shellfish that we can freeze. Places such as India and Turkey spring to mind straight away. There are big populations there and there could be huge demand for Scottish produce.
- ” There are opportunities, but our huge caveat is that the key issue with Brexit is access to our resource. We do not want access to the single market to be traded against access to our fisheries zone. Access is key to our success post-Brexit. It means that, on day 1 after Brexit, we are in control of who comes into our waters and how much fish they are catching. That is key to the future prosperity of the industry.¹⁴⁵

129. In response to questioning by the Committee, Ian Gatt acknowledged that he was concerned by the possibility that individual EU Member States would be keen to secure continuing access to UK waters and that this might be used as a “bargaining chip”. He stated that the Scottish Fishermen’s Federation was “absolutely clear that our having control of access to our fisheries should not be traded away for access to the market.”¹⁴⁶

130. When asked by the Committee about the sectors that would be covered by the free trade agreement with the EU, Mr Hands, the Minister of State, said—

- ” That remains to be seen. When I say that the deal will be comprehensive, I mean that we want to have as many sectors in the deal as we reasonably can, while keeping to the parameters of negotiating it within the timeframe. We have said that we want the deal to be the most comprehensive free-trade agreement that anybody has yet negotiated in the world. We want to have the maximum number of sectors in the deal that is consistent with negotiating, agreeing and delivering the deal and with having it ratified.¹⁴⁷

131. The Prime Minister has said that, “I am equally clear that no deal for Britain is better than a bad deal for Britain”.¹⁴⁸ However, the UK may have to revert to WTO rules unless it can agree a transitional arrangement with the EU. Professor Ian

Wooton told the Committee that, “As a country leaving Europe, we cannot look to the WTO to give us future trade deals.”¹⁴⁹ He said—

” We have to consider deviations from the multilateral route. Despite the fact that we are breaking with the common market that we have with Europe, we are going to have to consider free-trade agreements with other countries, in particular those in Europe but also other important trading partners. This is not going to be a quick fix. The comprehensive economic and trade agreement took five years, and the Canada-US trade agreement took almost 100 years to get sorted. After the two years of article 50, it is going to take a very long time to sort things out.¹⁵⁰

132. Professor Stephen Woolcock agreed that the WTO would be “a fairly poor alternative to preferential trade deals” currently enjoyed by the UK through its membership of the EU.¹⁵¹ He explained that while the WTO had been very successful in reducing tariffs on non-agricultural products, non-tariff barriers – especially in global supply chains – were not adequately covered in the WTO. The WTO did not offer preferential trade agreements but instead applied the principle of non-discrimination through most-favoured nation arrangements. In order to gain effective market access, “positive action in the form of regulatory cooperation, mutual recognition and some approximation of regulatory polices” is necessary.¹⁵² Professor Woolcock explained that—

” The single European market is the most advanced form of that approach, because it aims to facilitate trade while allowing the pursuit of legitimate policy objectives in the environment, health and safety, labour standards and so on. If you move out of that, you move into an area where UK and Scottish-based companies would be able to trade—people who talk about Brexit say, “You can always trade”, which is true—but at a disadvantage compared with your main international competitors.¹⁵³

133. Dr Matias Margulis emphasised that “Few countries have proposed policies to de-integrate their economies from the global economy in such a profound way and on purpose, as entailed by Brexit.” He argued that this presented “policy makers with the dilemma of how to steer a situation in which thick webs of economic interconnections and interdependence that have taken decades to build up are supposed to be unravelled.”¹⁵⁴

134. Scottish Chambers of Commerce told the Committee that following the Prime Minister’s Lancaster House speech there remained a lack of detail on the future FTA proposed by the UK Government with the European Union—

” The Prime Minister’s speech told us more about the starting point and where we are—it did not tell us any more about the end point. From that point of view, we are still lacking clarity and do not know where we are going to end up. We know what our priorities are, and we will continue to reinforce those with the Scottish Government, with the UK Government and

with our colleagues in chambers of commerce not just in the rest of the UK but across Europe.¹⁵⁵

135. The UK Government argues that it starts from a strong position in building its future customs arrangements with the EU and the rest of the world—

” As a large trading nation, we possess a world-class customs system which handles imports and exports from all over the world. We already have highly efficient processes for freight arriving from the rest of the world – the vast majority of customs declarations in the UK are submitted electronically and are cleared rapidly. Only a small proportion cannot go through so rapidly, for instance where risk assessment indicates that compliance and enforcement checks are required at the border.¹⁵⁶

136. Tim Reardon of the UK Chamber of Shipping stressed the lack of capacity in UK ports to deal with non-tariff barrier checks in particular. He stated—

” ... our concerns have focused clearly not so much on the tariffs that may apply to the importation and exportation of goods as on the procedures and formalities—the non-tariff barriers—that apply to traffic at ports when it is coming in and going out. Our concerns focus on the driver-accompanied roll-on, roll-off freight traffic that is carried on our ferries between the UK and its neighbours, which has seen phenomenal growth since it was freed from border controls at the end of 1992. The UK’s main artery with the continent—the Channel tunnel and the ferries through Dover—has seen traffic grow from 1 million heavy goods vehicles a year in 1992, which was the last year of customs controls, to 4 million trucks last year. Traffic on the main corridor to the Republic of Ireland through Holyhead has grown by 627 per cent in volume over that same period.

” Those ports have not got any bigger over that time. The reason why they have been able to carry the extra volume of traffic is that everything that used to have to stop in the port and await clearance now passes straight through. One can foresee a real choke threatening that traffic if every unit is required to stop and wait for approval from somebody in order to either leave the country and get on a ship or drive out through the dock gate on arrival.¹⁵⁷

137. As indicated earlier in this report, food and drink is the most important international export for Scotland. The impact of the new trading arrangements in relation to agricultural and fisheries products are therefore very important. The UK Government paper argues that as the UK is a net importer of agri-food goods, the UK and the EU will have a “mutual interest in ensuring continued high levels of market access in future.”¹⁵⁸ Similarly, as EU vessels caught 683,000 tonnes of fish (compared to 111,000 tonnes of fish caught by UK vessels), the UK Government argues that it will be in the interests of both parties to reach a mutually beneficial deal.

138. The Committee heard evidence from a wide range of sectors on the implications of leaving the EU. Of all of those sectors, agriculture proved to be one of the most challenging. Peter Hardwick of AHBD told the Committee that in trade agreements, agriculture was always “concluded at the end because it is the most difficult bit, and everybody recognises that.” As a consequence of that, he argued that he could not “see a solution that delivers what the sector needs if it includes tariffs.”¹⁵⁹

139. Peter Hardwick told the Committee that the food and drink sector was highly dependent on its trade with the EU and that “on-going tariff-free access to the EU was essential” for those exports. He stated—

” Of our exports, around 60 to 70 per cent, depending on the sector—the figure is as high as 90 per cent for the beef sector—are exported to the EU. On-going tariff-free access to the EU is essential for those exports. If we defaulted to so-called most-favoured-nation tariffs—that is rather a misnomer, because the tariffs could be as high as 65 per cent for beef and 50 per cent for lamb—that would be extremely damaging for us. Whatever model we come up with ... it is essential that we have tariff-free access to the EU.¹⁶⁰

140. Peter Hardwick also stressed the importance of avoiding increases in the cost of food imported to the UK if tariffs were to be imposed on agricultural and fisheries' imports. David Lonsdale of the Scottish Retail Consortium told the Committee that retailers would face a challenge if we “end up facing tariffs and non-tariff barriers” as they would need to decide whether to pass the costs on to consumers or to try and absorb some of the potential costs.¹⁶¹

Securing new trade agreements with other countries

141. The UK Government argues that, “By leaving the EU we will have the opportunity to strike FTAs with countries around the world.”¹⁶² It states that the UK will be a champion of free trade, “driving forward liberalisation bilaterally, as well as in wider groupings.”¹⁶³ An independent trade policy, without the need to reflect the interests of the EU Member States, will give the UK the “opportunity to strike deals better suited to the UK and to make quicker progress with new partners as well as those where EU negotiations have stalled.”¹⁶⁴

142. Mr Hands, the Minister of State, told the Committee that he was optimistic “that the negotiation will go well and end up well; we will get to a good agreement and be able to have frictionless trade and a comprehensive free-trade agreement with the EU that will suit the whole UK, including Scotland.”¹⁶⁵

143. The UK Government argues that it will aim to “increase significantly UK trade with the fastest growing and most dynamic export markets in the world.”¹⁶⁶ It points out that as the share of UK exports to the EU has declined from 54 per cent in 2000 to 44 per cent in 2015 the importance of other markets outside the EU has been

increasing in relative terms. The United States is the country to which the UK exports the most.

144. Dr Sverdrup noted that the EFTA countries “do not have free trade agreements with the biggest economies: the US, Brazil, Russia, China, Japan and India.” He explained that part of the reason for this would be the requirement to include agriculture in the negotiations. He stated that—

” ...to have free trade agreements with some of those countries would probably require the EFTA countries to open their agricultural sectors. We cannot expect to have free trade in fish without having free trade in meat, for instance, if we are negotiating with Brazil. There are some issues with linkages, which have—up to now, at least—been difficult to make, more because of domestic concerns than because of our partners.¹⁶⁷

Foreign Direct Investment

145. The UK Government also argued that the UK is an attractive destination for inward investment, ranking third globally for the amount of inward Foreign Direct Investment stock in 2014.¹⁶⁸ However, the Committee heard some concern about continuing inward investment to Scotland if the UK left the EU.

146. David Branch of Cochran UK stated that as a business they were concerned about inward investment into the UK, observing that they had “seen quite a drop-off in inquiries ... since the Brexit vote”, which he attributed to customers wanting—

” ...to see where their markets are going in the future - do we invest for growth in the EU or will there be retraction? – while overseas companies are deciding whether the UK is the best place to base their facilities.¹⁶⁹

Negotiating Free Trade Agreements

147. As indicated earlier in this report, the EU currently has PTAs with over fifty other countries. The UK Government recognises that the UK cannot agree new trade deals until after it has withdrawn from the EU. However, it indicates that, “Many countries including China, Brazil, and the Gulf States have already expressed an interest in enhancing their trade relationship” with the UK and that discussions have already started “with countries like Australia, New Zealand and India.”¹⁷⁰ The UK Government paper also notes that the new United States Administration has “said that they are interested in an early trade agreement with the UK.” Mr Hands, the Minister of State told the Committee that—

” Since the department’s formation last July, ministers have been to more than 50 different markets and have ensured that Scottish exports have a strong voice and that foreign direct investment comes to Scotland. In 2015, Scotland secured a total of 119 foreign direct investment projects, which makes it the second most attractive region in the UK, behind only London.

Our officials are engaging strongly in their own right and are working closely with SDI, and that is exactly what we want to see continue.¹⁷¹

148. While in the long term the UK may be able to negotiate trade agreements with a number of countries, it is clear that in the short term that UK businesses will face restricted opportunities to trade internationally on leaving the EU, and that the intervening period before a full range of new trade deals can be agreed may reduce the competitiveness of UK businesses and impact on market shares. It should be noted that the UK's relationship with the EU will influence how it trades with the rest of the world. Dr Matias Margulis told the Committee that "how Brexit is managed is very important to how the UK will trade with the rest of the world."¹⁷²
149. Peter Hardwick of the AHDB told the Committee that "we will lose that access to those markets on the day that we leave the European Union unless we have our own arrangement".¹⁷³ He also commented that the "real challenge will always be the time and resource to get each of those agreements in place."¹⁷⁴
150. Marius Vahl told the Committee that the time it took for EFTA to negotiate trade deals had ranged from one year to a decade. The Committee heard both in evidence and during its visit to Brussels that trade deals involved long and complicated negotiations, requiring reciprocity. For example, the Mission of Canada to the EU told the Committee that it took between 5-7 years to negotiate the CETA agreement, depending on whether the initial scoping of the agreement is included in the calculation of the time involved.
151. In addition to time, the Committee was told that resource and expertise would be important. Dr Matias Margulis stated that a practical challenge for the UK was its—
- ” ... preparedness and capacity to meet the task ahead ... policy makers face a Herculean task. The UK has not negotiated its own trade deals since the 1970s, and, as with all areas of work, trade negotiations require know-how and experience to be successful. We know from research that countries with more trade negotiation expertise and experience secure better deals for their businesses and citizens than countries with less negotiating capacity. That is the reason why the EU has been very successful at negotiating trade deals that serve its interest. Because the UK will be entering trade negotiations with the EU and other countries with far more capacity and experience, it will be at a disadvantage.¹⁷⁵
152. The UK Government explained that it has established a Department for International Trade "with a mission to drive up UK trade and investment."¹⁷⁶ The department has 2,700 staff working across the UK and 108 markets overseas.

153. Ian Duncan MEP told the Committee that it was important to enter the negotiations with a “have-your-cake-and-eat-it approach.”¹⁷⁷ He argued that—

” Going in with anything less than the biggest thing you want to have would be a very weak way of beginning a negotiation. That is exactly what the EU is doing now as it begins to examine those elements. For example, there is rightly much in the news on the question of EU citizens’ residence rights within the UK. There is a very strong move to have those rights recognised and taken out of the negotiations. That would be a good thing to have done. However, as the committee will be aware, Chancellor Merkel said a few days ago that it was now to be part of the negotiations.

” We cannot expect anything other than a hard negotiation from both sides at the beginning. We should not be in any doubt that both sides will have to negotiate from the hardest possible position. If we are to find a compromise that is good for the EU and good for the UK, we will need to find that common sweet ground in the middle. That is what we are looking for: the sweetest cake possible.¹⁷⁸

154. During its fact-finding visit to Brussels, the Committee was also told that relative power and size had a major impact on the outcome of trade agreements and that the UK would have to be prepared to accept compromise. In evidence to the Committee, Professor Gordon Masterton of the University of Edinburgh told the Committee that Brexit would present opportunities for other countries—

” Plenty of countries out there are right now quietly hoping that we lose market share because we become less than match fit for a significant period. That is the reality—we are in a competitive world. Some countries will see Brexit as an opportunity, not a threat.¹⁷⁹

155. In addition to the risk that businesses would lose access to markets when the UK left the EU and the EU’s PTAs, there was also the potential for imports to become more expensive for consumers. David Lonsdale of the Scottish Retail Consortium told the Committee that—

” As I understand it, the EU has a number of preferential deals with countries across the world—one might call them developing nations. We are talking about countries such as Bangladesh and Sri Lanka. It is not just about food; it is also about broader stuff that retailers sell in this country, such as clothing and footwear.

” We have figures that are based on an analysis of trading with Bangladesh last year that suggest that reverting to WTO rules would mean about £250 million-worth of additional tariff costs being implemented for imports into the UK of clothing and footwear from Bangladesh. Those are pretty hefty sums, particularly for developing nations. Regardless of what happens at the end of the day, we would like to think that this country will have equally good

preferential agreements with developing nations. Perhaps there will even be an opportunity to develop more of those.¹⁸⁰

156. Also, where UK products are part of a supply chain, this could prove to be very difficult. Tim Reardon, of the UK Chamber of Shipping, told the Committee that highly integrated supply chains were incompatible with border controls as the latter would introduce unpredictability and uncertainty—

” The key way to get a wider appreciation of the issue is for the debate to be focused on that overall supply chain and for there to be a recognition that this is not about a border control—it is about a supply chain with a border control sitting in the middle. The debate needs to be had in the proper context. For the decision’s consequences to be fully understood, it is important to look at it in the context of that overall supply chain. We are just a part of it but we can see the threat to the bits on either side that come from the interruption of the bit that we are responsible for.¹⁸¹

157. There was some recognition of the opportunities that trade deals with countries that do not currently have preferential arrangements with the EU presented. For example, Ken Sutherland of Toshiba Medical Visualization Systems Europe said that for his sector, “the biggest single market is the United States, not the European Union, although the EU market is huge and is available as a home market to companies working in Scotland – it is a fantastic opportunity.”¹⁸²

World Trade Organization membership

158. The UK Government states the UK’s “WTO membership will form the bedrock on which we will build our future trade relationships.” WTO membership “secures access rights to other members’ markets, provides a framework through which those rights can be enforced and provides a common rules-based approach to commerce across all WTO members that businesses can understand and rely on.”¹⁸³

159. The UK Government indicates that, “As part of leaving the EU the UK will need to establish our own schedules covering trade in goods and services at the WTO, providing clarity for UK businesses about their access to overseas markets around the world and also providing a clear basis for negotiating new trade agreements.” The work to establish schedules in a way that replicated the UK’s current position as an EU Member State is already underway according to the UK Government.

160. David Martin MEP, who sits on the European Parliament’s International Trade Committee, told the Committee that the Director General of the WTO had pointed out to him that the UK’s schedules are 40 years out of date and that it would take “years to update them.”¹⁸⁴ He highlighted the contrast between the UK Government’s position and that of the WTO, observing that—

” ... on the one hand, the Secretary of State says that there is no problem, but on the other hand the director general says that the WTO is in deep

conversation about how to handle the issue and expects it to take years. The idea that there is a simple option whereby we sign up to the WTO and everything is fine is clearly not a good one.¹⁸⁵

161. Dr Gracia Marin Duran told the Committee that—

” ...the UK remains a member of the WTO and already has WTO rights and obligations—it is not like a new entrant or an acceding country. The substantial part of the WTO rights and obligations that are of general application to all members—non-discrimination, rules on technical regulations, rules on sanitary and phytosanitary measures, trade-related intellectual property rights, and the dispute settlement understanding, as my co-panellists mentioned—will continue to apply to the UK after Brexit, unless it decides to leave the WTO.¹⁸⁶

162. However, Dr Marin Duran also identified three qualifications to that position. Firstly, the UK has jointly committed to the schedules of concessions with the other 27 Member States of the European Union and a legal question is raised about how those are dealt with. Specifically it concerns whether the UK needs to negotiate a new schedule of concessions for goods and services or whether it can adopt the one that currently applies to the EU. Secondly, the EU is the party to the Plurilateral Agreement on Government Procurement and not the Member States. Thus, when the UK withdraws from the EU it will no longer be a party to that agreement. Thirdly, the UK is likely to retain its rights and obligations under the WTO and will be responsible for exercising those rights and the performance of the obligations, a role which had previously been fulfilled by the EU. Thus, the UK will need to take up the role of exercising its rights and obligations under WTO law and participating in dispute settlement.

163. Of these three issues, Dr Marin Duran identified the question concerning the schedule of concessions as being the most challenging. She explained that it was not clear “whether the UK will keep the tariff-rate quotas currently applied by the EU, which are bound in part III of the schedule, as well as the right that it currently has to subsidise agricultural production up to a certain level, which is bound in part IV of that schedule.”¹⁸⁷ She explained that—

” Those issues, as well as the tariff, are open to question if, instead of the customs union, the UK-EU relationship post Brexit moves into other forms of regional integration, such as a free-trade agreement, in which the independent parties keep their right to set external tariffs, so those would not be harmonised. That becomes an issue.¹⁸⁸

164. Dr Marin Duran explained that the WTO does not have a procedure for dealing with a situation when one member leaves an existing customs union. She considered that there were two legal options to resolve the situation—

” First, it could be argued that that member is modifying the schedule of concessions. That means that, if the UK decides to adopt a completely new trade regime from the one that is currently found at EU level, it will have to modify the schedule of concessions, which will clearly require a renegotiation, with all WTO members having a substantial interest in that new trade regime.

” The second option is if the UK does not want to substantially modify or amend the current trade regime to which it is bound at EU level but simply to continue to apply it as the UK. If that is the policy option that the UK Government decides to go for—although, as I say, there is not a clear procedure—it may be that it could make the argument that that is not a modification of the schedule that requires renegotiation with all the other members but simply a rectification of the schedule.¹⁸⁹

165. Mr Hands, the Minister of State was optimistic that the schedules would not pose a problem—

” In leaving the EU, we need to update the terms of our WTO membership as, at present, our commitments are applied through the European Union as a whole. The UK is a founding member of the WTO's predecessor organisation. We need to ensure that the UK has its own independent schedule at the WTO. At the moment, that will simply involve a transfer of the European Union schedules to the UK's name without any change.¹⁹⁰

166. The second option would involve “notifying the WTO of the rectification and hoping that no member objects.” If a member did object, it could take the UK through the WTO dispute settlement system.

167. Dr Margulis told the Committee that the specific concessions contained within the schedule, particularly those relating to agricultural subsidies, would be the most contentious issue at the WTO. He said—

” That is the issue that has led to stalemate in negotiations at the WTO. Therefore, it is not some minor issue that the UK could hope to deal with under the radar. It is the number 1 issue, so the UK would require a lot of political good will from other members to entertain the idea of negotiating a favourable share of the EU's concessions. That is if the EU is willing to give that, because you cannot make the assumption that it would be willing to give the UK part of its concessions under the WTO. It is really important to remember that this is going to be extremely politically contentious—much more so than the EU negotiations themselves. I think that it is a much more difficult task than the actual EU negotiations.¹⁹¹

168. Dr Margulis told the Committee that the UK would be dependent on the EU agreeing to give the UK any part of the concessions that it currently enjoys. For example, on the levels of agricultural subsidies, the EU can decide how much of

its current commitment it is willing to give to the UK and then the rest of the WTO members would need to accept that. Dr Margulis considered that other WTO members were “very likely to ask for some sort of compensation or to make additional demands because the UK will essentially be putting itself out there and will therefore be open to those kinds of demands.”¹⁹²

169. The impact of the UK reverting to WTO rules to trade would vary across sectors. Professor Wooton explained to the Committee that historically the significant reductions in tariffs resulting from the various trade rounds had been for manufactured goods. Agricultural tariffs remain high and non-tariff barriers – the sanitary and phytosanitary measures which set food safety standards and regulate food products – are significant.
170. In addition, when the UK leaves the EU, the UK’s access to the tariff quota that the EU had agreed with other countries will also need to be renegotiated. Dr Marin Duran raised the example of the tariff-rate quota (TRQ) for cheese explaining that, “If the UK leaves the EU, there is no reason why the US will need to continue to grant that preferential tariff to the UK, because it will no longer be a member of the EU, legally speaking.”¹⁹³ Dr Margulis highlighted the issue of the TRQ arrangements that the EU has with African and Caribbean countries as this could affect imports and the UK’s sizeable confectionary production sector. He explained that, “Should the UK leave the single market, it will disrupt those particular import TRQs and supply chains, which could be quite disruptive for existing supply chains for imports that go into the food and drink sector.”¹⁹⁴
171. Dr Marin Duran discussed the importance of the size of the markets concerned for trade agreements, noting that it could be challenging for the EU to negotiate another preferential TRQ with the US as “even though the UK economy is considerable and it has weight economically, it clearly does not have the weight that the EU has when it negotiates with the US.”¹⁹⁵ She stated—

” In considering how many concessions the UK will have to give other countries in order to keep what was agreed with the EU, and how far it is going to be able to do that, we need to bear in mind the size of the market. The WTO is about what you can get in exchange for what you can offer. Obviously, when you are negotiating as a trading bloc of 28 countries, what you can put on the table is more than you can when you are only one. That will be a practical challenge. As I say, it is a negotiation and not a legal problem, but it will be a practical challenge to negotiate as an individual country that has a market that is an important size but which is not equivalent to that of the EU 28.¹⁹⁶

172. Dr Margulis observed that it was a very “astute observation that there would be a lot of potential economic and political incentives for other WTO members to seek additional concessions from the UK”, and that it would be logical as the “UK has very little leverage because it wants to renegotiate its current level of access and needs to give more to get what it currently enjoys.”¹⁹⁷ In addition, he noted that the

UK would need to have its trade agreement with the EU approved by other WTO members.

173. In securing the agreement of WTO members, Dr Margulis cautioned that the WTO was an institution in “political paralysis” and that it was uncertain “when the WTO members would get around to dealing with any renegotiated concessions for the UK”.¹⁹⁸ He also emphasised the importance of alliances, stating that “what really matters for a country’s negotiating position at the WTO is alliances and having allies in the room.”¹⁹⁹ He suggested that this might prove difficult for the UK as it had alienated the EU countries and that “there are many reasons why many countries – especially developing countries – might have a lot of long-standing grievances against the EU.”²⁰⁰ He concluded, “The UK would not enter the WTO as a member with many friends and the ability to influence people”.²⁰¹

The long-term economic impact of trading under WTO rules

174. In the Fraser of Allander Institute’s report for the Committee on The Long-term Economic Implications of Brexit, it identifies the following key impacts on the Scottish economy of a WTO scenario, after a period of around ten years—

- GDP is expected to be over 5% (£8bn in 2015-16 terms) lower than would otherwise be the case and exports over 11% lower;
- Real wages are expected to be 7% lower, equivalent to a reduction of around £2,000 per year;
- The number of people employed is 3% lower (around 80,000 jobs).

175. Table 2 shows the predicted changes in exports, real wages, employment and population under a WTO scenario.

Table 2: WTO model: long-term % changes relative to baseline

	% change
GDP	-5.3
Exports	-11.3
Real wages	-7.2
Employment	-3.2
Population	+3.0

Source: Fraser of Allander Institute

Delivering a smooth, orderly exit from the EU

176. The UK Government recognises that “delivering a smooth, mutually beneficial exit will require a coherent and coordinated approach on both sides.” It indicates that it wants to “avoid a disruptive cliff-edge” and proposes that there is a “need for phasing in any new arrangements we require”.²⁰²

177. Mr Hands, the Minister of State stated that “By working together over the coming years, we can build a global Britain that works for all.” Ian Duncan MEP also stressed the importance of a united approach to the negotiations with the EU—

” Spain is one of those nations that are always at the edges ready to get involved, but it does not often join in. Last week, it did—it got straight in there and made it very clear that there will be no Scottish exceptionalism. That is the sort of division that can be exploited by the negotiators. We need to have a team UK approach to get the best deal, and I believe that we can get that deal. I believe that, with Edinburgh and London, London and Cardiff, Cardiff and Belfast and so on working in strong collaboration, we can get the best deal, but there is now a recognition that each of those nations is fighting for its interests as well.²⁰³

178. The UK government wants “to have reached an agreement about our future partnership by the time the two year Article 50 process has concluded.”²⁰⁴ After that, it believes that “a phased process of implementation, in which the UK, the EU institutions and Member States prepare for the new arrangements that will exist between them, will be in our mutual interest.”²⁰⁵ It suggests that the time needed to phase in the new arrangements may differ and acknowledges that the “interim arrangements that we rely upon are likely to be a matter of negotiation.”²⁰⁶

179. When the Committee visited Brussels, it heard that the European Commission was preparing for a withdrawal agreement to cover the following areas—

- The disentanglement of the UK from the EU budget and the financial liabilities involved.
- The rights of EU citizens
- The relocation of the European Banking Agency and the European Medicines Agency
- The resolution of the international agreements to which the UK is a party as a Member State of the European Union
- The border between Ireland and Northern Ireland.

180. While Article 50 provides for the withdrawal agreement to take account of the framework for the future relationship of the departing state with the European Union, it does not require that this be concluded as part of the agreement. In evidence to the Committee, Dame Mariot Leslie stated that the First Minister’s Standing Council considered it extremely important that the Prime Minister included reference to the framework for the United Kingdom’s future relations with the EU. She stressed that the Article 50 negotiations would focus on the conclusion of the UK’s existing relationship with the EU rather than the new one—

- ” The article 50 negotiations are about the separation—the divorce—and the settlement of financial, personnel and other administrative matters, but unless the Prime Minister or the British Government asks for a parallel process for the future framework, as is specified in article 50 of the treaty, the EU will not offer it to her.
- ” The European Commission is ready to work on the divorce settlement; it is not ready to work on a future framework as it has not yet consulted the EU 27 in any great detail. Unless the UK asks for it, pressure to do the two things in parallel will not exist. Even if there was such pressure, ... it will be extraordinarily difficult to do. I doubt whether very much will get under way before the French and German elections, so not until the autumn of this year, and then time is very short before the 2019 European Parliament elections.
- ” The divorce settlement will happen—the clock is ticking on that. A future framework, even if it is only a very broad set of heads of agreement, will be very difficult to negotiate politically in the remaining time.²⁰⁷

181. The NFUS told the Committee that it had “serious concerns about our capability to negotiate a bilateral deal that will suit all sectors of agricultural industry within the two-year timeframe.”²⁰⁸ Scottish Chambers of Commerce commented on the slow pace of negotiations at the EU level, saying—

- ” Many businesses’ expectations are realistic—in particular, those that have previously engaged at European level and know the glacial pace at which things operate, not only in Europe but internationally. Other businesses might have different expectations. Therefore, we need to ensure not just that we get the right deal at the end of the day, but that we have a flexible transitional arrangement through which businesses do not lose out. We cannot afford to lose businesses along the way to reaching a formal trade agreement with the EU.²⁰⁹

182. The evidence that the Committee heard from businesses stressed the importance of a transitional agreement for two main reasons. Firstly, to prevent a situation whereby there was a “cliff-edge” with the UK’s membership of the EU and the single market changing from one day to the next. Secondly, businesses were very concerned about the degree of uncertainty surrounding the exact terms of the UK’s future trading relationship with the EU, which they considered to be harmful to the business environment. Peter Hardwick told the Committee—

- ” Whatever arrangement we come up with, it is essential that we understand that we have a very good and easy relationship with the European Union that is, frankly, unique. If we step outside of that, we take a massive risk of falling off the cliff, as has been discussed recently, and there would be a number of direct consequences for our sectors in the UK.²¹⁰

183. A number of business organisations expressed a concern about the degree of uncertainty that they faced. For example, Professor Gordon Masterton and the Institution of Civil Engineers told the Committee that companies were operating in a field of uncertainty which represented the “worst business and investment risk possible.”²¹¹ He urged that there was a need to navigate through this period of uncertainty as quickly as possible.²¹² Derek Elder of the Engineering Policy Group Scotland told the Committee that “uncertainty was the most difficult thing for business in any sector to deal with.”²¹³ Ken Sutherland stated—

” I am quite glad that I am not looking for additional investment from my colleagues in Japan at present because, as a couple of the other witnesses have suggested, uncertainty is a problem. In the current situation—I do not know whether it is to do with our company in particular or the style of management from Japan—there is a concern about uncertainty and risk.²¹⁴

184. Mr Hands, the Minister of State, was confident that a “frictionless” trade agreement could be agreed within two year with the EU. He emphasised that this would also be in the EU’s interest as it had a trade surplus with the UK—

” That is our ambition and, by working together as a common UK effort, we can make that more possible to do within two years. That is our ambition, as well as to make sure that we get a deal that works for the whole of the UK, and not just that, but a deal that works for the EU. It is worth remembering that the EU has a very substantial trade surplus with the UK; we think that it will be strongly in its interest not to have tariffs and other trade barriers between the UK and the EU.²¹⁵

Withdrawal from the EU and the impact on the devolution settlement

185. The Committee commissioned Professor Alan Page of the University of Dundee to conduct research into the [Implications of EU withdrawal for the Devolution Settlement](#).²¹⁶ In his report to the Committee, he stated—

” In the absence of any amendment to the Scotland Act 1998, the UK’s withdrawal from the EU would not affect the distribution of legislative competences between the UK and Scottish Parliaments: the distribution would remain as set out in the Scotland Act 1998, as amended by the Scotland Acts 2012 and 2016. What in some cases are largely notional devolved competences, however, because of the impact of EU membership, would for the first time become real competences. It would thus be open to the Scottish Parliament to legislate in the devolved policy or subject areas currently governed by EU law.²¹⁷

186. Professor Page's research maps the reserved areas defined in Schedule 5 to the Scotland Act 1998 onto the EU competences set out in the EU Treaties (Articles 2-6 TFEU) in order to establish the policy responsibilities the Scottish Parliament would acquire in the absence of any amendment to the Scotland Act following the UK's withdrawal from the EU. His analysis shows that most existing EU competences are reserved to the UK Parliament. He states that "The UK Parliament would thus acquire the majority of the policy responsibilities that would fall to the UK following withdrawal from the EU, including those in respect of the free movement of goods, persons, services and capital, and the negotiation and conclusion of trade agreements with non-EU countries."²¹⁸ The policy responsibilities that would fall to the Scottish Parliament are principally those of justice and home affairs, agriculture, fisheries and the environment.

187. The Scottish Government argues that—

- ” ...in light of the removal of the rights and protections provided by EU law – and whatever the outcome of the Brexit negotiations – Scotland's interests within the UK demand that the powers of the Scottish Parliament be fundamentally revisited. This paper looks at three broad categories of powers that should now be considered:
- ” 1. Those powers that will be “repatriated” to the UK from Brussels and that currently sit within the Scottish Parliament's competence, for example fishing and farming. These must remain the responsibility of the Scottish Parliament.
- ” 2. Those powers to be “repatriated” that are not currently within the Scottish Parliament's competence and where devolution would allow the Scottish Parliament to protect key rights, for example employment law.
- ” 3. Powers, beyond those to be “repatriated”, to protect Scotland's interests, including those to support the differentiated solutions for Scotland proposed in this paper: for example, powers over immigration, powers to conclude international agreements in areas of Scottish Parliament responsibility, and a range of powers that would be required for the Scottish Government to meet the regulatory and administrative requirements of continued European Single Market membership.²¹⁹

188. The Scottish Government also argues that “whatever the outcome for the UK and/or Scotland in terms of the European Single Market, Scotland's interests within the UK demand a fundamental review of the devolution settlement – this arises as a result of the removal of the protections provided by EU law for the devolved institutions and the rights of citizens.”²²⁰ The Scottish Government states—

- ” As part of this, the Scottish Parliament must retain responsibility in already devolved areas like farming and fisheries – there must be no question of re-reserving or qualifying powers already devolved. The powers of the

Scottish Parliament should also be increased so that it takes responsibility for “repatriated” competencies [sic] in reserved areas, such as employment law, in order to protect fundamental rights. However, the need to consider further devolution goes beyond repatriated powers. New powers to support Scotland’s interests, and any differentiated relationship with Europe, will also be required.²²¹

189. Mr Mundell, the Secretary of State, said that—

- ” First, I am not looking to take away any powers that are currently exercised by the Scottish Parliament or the Scottish Government. We will seek to ensure that we can agree an arrangement, across the UK, on how agriculture will operate in the post-EU world. That will mean that there will, inevitably, have to be agreement among the Governments in the UK about ensuring common approaches to, for example, animal health. There are a number of areas in which there are common interests, so we need to find out what is the best common approach. That might be through what are sometimes referred to as framework agreements, in which the four Governments might come together and reach agreement. That is the position that we are in as regards the process.
- ” So far, several hundred powers and specific responsibilities have been identified that will come back to the UK. I want to proceed in an orderly fashion, considering the consequences and the implications in relation to each area.
- ” Essentially, there are three ways in which matters will be taken forward. First, some powers will come directly to the Scottish Parliament; secondly, there are areas, in none of which power is currently exercised by the Scottish Parliament, that will go directly to Westminster; and, thirdly, there will be areas in which there will be some form of shared responsibility.²²²

The UK’s EU budget contribution and EU funding

190. The UK is a net contributor to the EU budget, although it does receive an abatement – commonly known as a rebate – under the Financial Correction Mechanism.
191. European Union funding is allocated through its Multi-annual Financial Framework (MFF). The current MFF runs from 2014 to 2020 and has total funding of €960 billion. The negotiations are already underway for the next seven-year MFF and the UK’s withdrawal from the EU will have significant implications for the latter’s budget, requiring financial adjustments or increases in contributions from other Member States.
192. The contributions of each Member State to the MFF is based on three calculations: Traditional Own Resources (based on a customs tariff); a VAT-based calculation; and a Gross National Income-based calculation. Professor David Bell

submitted written evidence to the Committee showing that in 2015 the UK's gross contribution to the EU was 19.6 billion (£377 million a week), although £9.2 billion was received back from the EU. The rebate was worth £4.9 billion and area-based policies received £3.5 billion.²²³ Of the area-based policies, £2.5 billion was received through payments under the CAP and the Agricultural Fund for Regional Development. The European Regional Development Fund (ERDF) and the European Social Fund (ESF) accounted for another £1 billion. Professor Bell notes that—

” Thus, excluding the rebate. 80.9% of the money received by the UK from the EU was allocated to area-based policies. This proportion averaged 83.6% between 2010 and 2014, implying that 2015 was not an outlier relative to recent history.”²²⁴

193. While it is the UK as the Member State that contributes to the MFF, the Scottish Government calculated a notional figure for the Scottish Government's contribution drawing on figures contained in Government Expenditure and Revenue Scotland 2015-16.²²⁵ The Scottish Government's calculation for 2015-16 is summarised in Table 3 below

Table 3: Scotland's net contribution to the EU

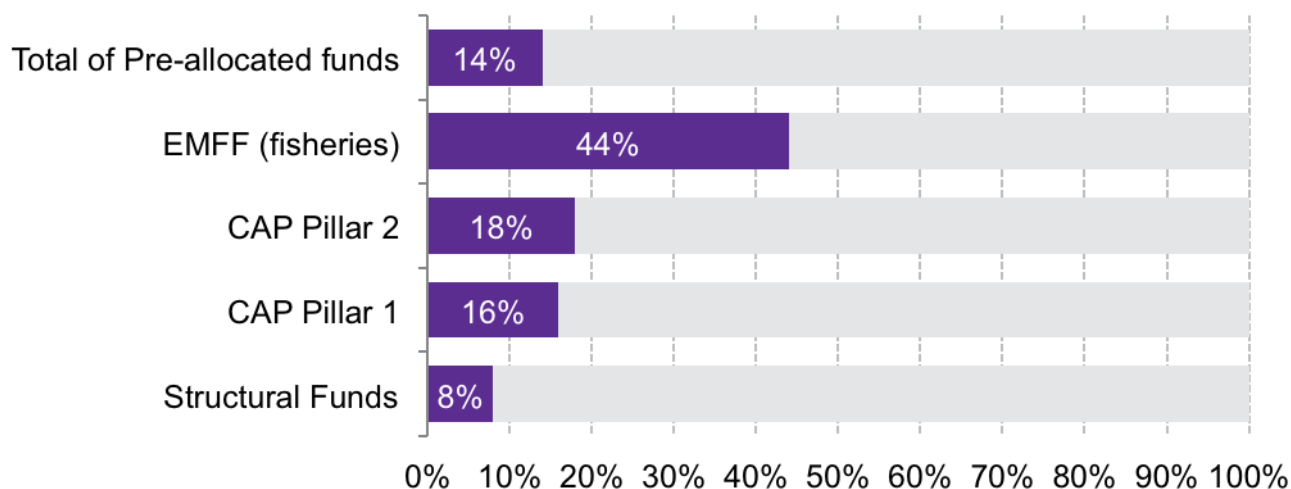
Gross contribution to the EU budget (including North Sea in GDP estimates)	1,138
Public sector EU receipts	-610
Net contributions to EU budget (including North Sea)	528

Source: SPICe²²⁶

194. In each of the four years from 2012-13 to 2015-16, Scotland is assessed as having made a net contribution of over £0.5 billion, with a net contribution of £528 million in 2015-16. However, it should be noted that the above figures only take account of public sector transactions and higher education institutions – which are classified as private sector, not for profit bodies – are not included. These bodies are significant recipients of EU funding, receiving £94.1m in EU payments in 2014-15.

195. Figure 4 shows Scotland's share of the UK's funding received from the EU for the period 2014-2020.

Figure 4 – Scotland's share of the UK 2014-20 funding



Source: Office for National Statistics (2015)

196. Distribution of area-based funding is largely the responsibility of the devolved governments, and the UK's withdrawal from the EU raises many questions about future funding scenarios. Professor David Bell commented—

” The UK government is about to embark on a series of negotiations that are likely to involve the dismantling and/or redesign of existing area-based policies. Whether they will continue into a post-Brexit world will depend first, on whether the UK government is willing to sacrifice them as part of its negotiation strategy, and second, on whether the UK government takes the view that they are an appropriate use of scarce public resources. Obviously these decisions will be of special interest to the devolved governments.²²⁷

197. Professor Bell also stated that there was a question as to whether the UK would continue to maintain funding mechanisms following withdrawal from the EU. For example, he said—

” Some argue that we should go down the New Zealand route as far as agriculture is concerned and effectively not protect our agriculture industry at all. Equally, others argue that the structural funds have not been effective in achieving the objectives that they were intended to achieve and that the case for retaining them is not strong.²²⁸

198. Professor Bell pointed out that if there was a decision to retain funding mechanisms in the same policy areas, then there would then be further questions relating to the amount of funding allocated for each of those policy areas, how it would be divided between the four constituent nations of the UK. Professor Bell said—

” ...possibilities for that include passing the money through the Barnett formula, allowing the devolved Assemblies and Parliament to retain more tax revenue or having some objective metric that determines how much each part of the UK gets. Remember that, in the past 20 years or so, Scotland’s economy has outperformed that of other parts of the UK. Now only west Wales and Cornwall qualify for the highest levels of support whereas, in the past and under the previous rules, the Highlands qualified.

” If the money is divided, who sets the rules about how it will be distributed? The EU has worked with the devolved Assemblies and Parliament in some instances to, in effect, determine who gets what. Scotland has gone its own way on agriculture policy and so on. In the past, the devolved Administrations have had considerable sovereignty as far as the administration and general running of the area-based funding.²²⁹

199. A written submission from the NFUS noted the potential impact on agriculture if future funding was delivered through the Barnett formula—

” Should the existing Barnett formula be used rather than another means of farm support budget allocation, then the implications for agricultural support in Scotland are severe. If future funding is delivered via the Barnett Formula, Scotland’s share of support would be cut from some 16 per cent of the overall UK total to 8 or 9 per cent, as illustrated in the table overleaf. This default option would result in a situation that could decimate Scottish agriculture and its vital food and drink sectors.²³⁰

200. Table 4 below, provided by the NFUS, sets out the possible funding split under the Barnett Formula.

EU Budget Allocation		Barnett Budget Allocation
UK CAP Pillar 1 Budget 2020	€ 3,591,683,000	DEFRA Barnett Allocation in 2020 8% or 9%
Scotland’s Share	16%	
England’s Share	65%	
		Scotland's spend under Barnett
Scotland in €'s	€ 589,036,012	€ 287,334,640

Source: NFUS

201. Professor Bell pointed out that calculations based on per capita allocations were not necessarily useful in relation to areas such as fishing and farming as Scotland is a large geographical area and has a long coastline.

202. Professor David Heald of the University of Glasgow told the Committee that the critical issue in relation to any powers repatriated from the EU would be the

- ” If you look at the public expenditure statistical analysis on a per capita basis, you see that the index for Scotland is about three times the size of the index for England. There is significantly higher expenditure in Scotland on agriculture, fisheries and forestry than there is in the UK on average and it is particularly higher than the expenditure in England.
- ” If the money that the UK will not send to Brussels sticks in the Treasury and Scotland is to get functions that were previously run by Europe, the question is how Scotland gets the money to finance those functions—that seems to be the critical, central issue.²³²
203. The agricultural sector was identified as an area which would face specific challenges. Professor Bell pointed out that, as the UK’s main agricultural markets are currently in the EU, any future reduction in its subsidies – which are currently between a third and a half of its income – would drive prices up and make it hard for it to compete with European producers. If in the longer term the UK sought trade deals with other countries within the WTO, there might be pressure for it to reduce its subsidies for agriculture.
204. The challenges of using the Barnett formula as the mechanism for providing agriculture spending to Scotland was highlighted by Professor Heald. He explained that—
- ” When the Scottish Parliament got responsibility for railways, there was a block transfer. The existing spending on rail in Scotland was moved into the block—it was transferred in—and the Barnett formula was applied to increments.
- ” The obvious problem with that approach is that, given all the uncertainties, it would put farmers into competition with nurses in spending priorities. We cannot just say that Barnettising means that we will get only the population proportion. On past precedent, the existing spend would be moved into the Barnett formula-into the block-and then the Barnett formula would be used according to the fiscal framework for subsequent changes. The problem is that, because of all the uncertainties that we are talking about, agriculture would be quite unpredictable.²³³
205. Professor Bell explained that if agriculture was put into the Barnett formula then any subsequent changes in spending on agriculture in England would be applied to Scotland. This would then create a situation in which “if the money going to England is not increasing but there are reasons to try to increase the amount of money going to agriculture in Scotland, you would be raiding other budgets in Scotland to make that happen.”²³⁴
206. The fiscal framework between the UK and Scotland is not statutory, although Professor Heald observed that it had operated relatively consensually. Professor Heald emphasised the importance of thinking about “the relationship between

Heald emphasised the importance of thinking about “the relationship between taking on the functions and getting the finance” for policy areas repatriated from the EU in the future. He explained that there could be “all sorts of arrangements whereby the UK Government had control of agriculture, fisheries and food in a policy framework sense, but where delivery was done by the devolved administrations and by the Department for Environment, Food and Rural Affairs for England.”²³⁵ This could include directing funding via annually managed expenditure outside Barnett. However, he stressed the importance of only “taking on policy control or agriculture if the financial arrangements were to come at the same time”.²³⁶

207. Professor Bell identified the impact that trade negotiations might have on devolved policy areas. He explained—

” Trade negotiations with the US could involve arguments that direct payments to farmers in the UK should be reduced—or eliminated, because they do not exist in the States. US farmers could say that competition would not be fair and ask that direct payments to farmers be reduced. That would have an effect on what could be done locally to develop agriculture policy in Scotland.²³⁷

208. In response to a question from the Committee, Professor Bell stressed the importance of collecting evidence on the Scottish economy in order to represent its interests in the future—

” I would be trying to get information on the issues that seem critical to me and that we have been discussing, such as whether the structural funds will continue and whether agricultural support will continue and, if so, how it will be organised and funded. That is the first set of questions. I would go through the Scottish economy sector by sector. Assuming that we will enter into trade negotiations with country X, I would consider what its strengths are and what it would expect from the bargaining, because there will be give and take—the UK will not just get what it wants. Going through the Scottish economy sector by sector is an important exercise to think about in the relatively short term.²³⁸

209. In relation to a question on the future funding of agriculture, Mr Mundell, the Secretary of State for Scotland told the Committee that—

” I am absolutely committed to ensuring that Scotland does not lose out. We now want to consider and develop what the support and policy will be in future. We are at the early stage of developing that.

” For the reasons that I set out and because of the distinct needs of Scottish agriculture, I am absolutely committed to ensuring that Scotland does not lose out. However, there are a number of options for the replacement of the common agricultural policy. I think that it is important that those discussions

take place, as that process begins tomorrow. It is also important to be in dialogue with NFU Scotland, and Andrea Leadsom will meet its new president tomorrow.²³⁹

Intergovernmental relations

Introduction

210. Intergovernmental relations (IGR) is an issue that has gained more prominence in the Scottish Parliament since the end of Session 4. At that point in time, the focus was on the discussions and negotiations between the Scottish and UK governments on the devolution of new powers under what became the Scotland Act 2016, and the associated agreement on fiscal matters (the Fiscal Framework).
211. The ability of the Scottish Parliament to be informed about those negotiations in order to hold Scottish Ministers to account resulted in a [Written Agreement](#) between the Parliament and Scottish Government. This has resulted in an improved flow of information to the Parliament and its committees on the work of the various formal intergovernmental fora such as the Joint Ministerial Committee (Plenary) and its various committees: the Joint Exchequer Committee, Finance Ministers' Quadrilaterals and the Joint Ministerial Group on Welfare.
212. In the aftermath of the vote to leave the EU, a new intergovernmental forum – the Joint Ministerial Committee for European Negotiations – or JMC(EN) was established to provide a forum for ministers from the UK Government and the three devolved administrations to discuss the Brexit process.
213. The following terms of reference were agreed for the JMC(EN):²⁴⁰
- Through the JMC(EN) the governments will work collaboratively to:
- discuss each government's requirements of the future relationship with the EU;
 - seek to agree a UK approach to, and objectives for, Article 50 negotiations; and
 - provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and,
 - discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.

Memorandum of Understanding on IGR

214. In addition to the above terms of reference for JMC(EN), the functioning of the joint ministerial committee apparatus is set out in a Memorandum of Understanding (MoU) between the UK Government and each of the three devolved administrations. The MoU provides for the establishment of a Joint Ministerial Committee of representatives from the four UK administrations. It also sets down various guidelines, protocols and principles on communication and cooperation that administrations should adhere to. The MoU is not a legally binding document.
215. MoUs are reviewed periodically; the most recent published version dates from October 2013.²⁴¹ In advance of the EU Referendum, it was agreed that the MoU needed to be reviewed and updated to accommodate the transfer of new powers to the Scottish Parliament under the Scotland Act 2016
216. In December 2014, at the plenary of the Joint Ministerial Committee, the then Prime Minister and the territorial First Ministers agreed to commission work on a revised MoU. As the communiqué from that meeting notes—
- ” Ministers noted that the constitutional landscape has changed fundamentally since the Memorandum of Understanding was agreed between the UK government, Scotland, Wales and Northern Ireland in 2000 and agreed to commission work on a revised Memorandum of Understanding.²⁴²
217. Despite indications in March 2016 that the publication of a revised MoU was imminent, at the time of writing – almost one year later – it has yet to be published.
218. The vote on Brexit intensified the need to review the MoU and the IGR apparatus but, aside from the establishment of the JMC(EN) to cover European negotiations, it is not yet clear whether any changes to the current structure will be put in place to manage IGR over the period of the negotiations following the triggering of Article 50 or beyond.

Three phases

219. This section of the report focused on the scrutiny of the arrangements for intergovernmental relations in the three distinct phases of negotiations.
220. Firstly, there are those discussions and negotiations currently underway between the UK Government and the devolved administrations in the JMC(EN) and the plenary meetings of the JMC, as well as bilateral meetings between ministers, to discuss the UK's approach to the triggering of Article 50. These have been underway since the UK decided to leave the EU on 23 June 2016. These discussions are expected to take place up to the point where the UK Government formally notifies the EU of its intention to leave. Such notification is expected by

March 2017, following a successful passage of the European Union (Notification of Withdrawal) Bill in the UK Parliament.

221. Secondly, once the UK Government has notified the EU of its intention to withdraw from the EU under Article 50, and this has been accepted, a process of up to two years of negotiations with the EU will begin on a withdrawal agreement, possibly alongside discussions on what the UK's new relationship with the EU looks like. During this period, it is not clear what form the intergovernmental relationship will take in terms of the extent to which the UK Government conducts these negotiations alone, or involves the devolved administrations.
222. Thirdly, the UK Government's White Paper on exiting the EU sets out – as two of its 12 principles – its desire to ensure free trade with European markets and secure new trade agreements with other countries.²⁴³ Whilst the UK remains a member state of the EU, it cannot enter into formal agreement with a third country on any new free trade agreement. However, exploratory discussions can, and are, taking place between UK ministers and those from a wide range of countries including the USA, India, Canada, New Zealand and Australia. According to public comments from the UK Secretary of State for International Trade, Rt Hon Liam Fox MP, UK trade ministers have visited 55 countries, promoting UK exports of goods and services and encouraging investment” and at the same time, “...exploiting new trade opportunities and discussing the possible shape of new agreements once we have left the EU.”²⁴⁴
223. Similarly, it is not clear what form the intergovernmental relationship will take in terms of the extent to which the UK Government conducts these trade negotiations alone, or involves the devolved administrations.

Negotiations in advance of Article 50 – views expressed to the Committee

224. In the immediate aftermath of the EU Referendum and upon taking up her new position, the UK's Prime Minister, Rt Hon Theresa May MP, visited Scotland and met the First Minister in July 2016. Speaking after the meeting, the Prime Minister said—

- ” I'm willing to listen to options and I've been very clear with the first minister today that I want the Scottish government to be fully engaged in our discussion.
- ” I have already said that I won't be triggering Article 50 until I think that we have a UK approach and objectives for negotiations - I think it is important that we establish that before we trigger Article 50.²⁴⁵

225. In advance of the plenary meeting of the Joint Ministerial Committee that followed in October 2016, the First Minister wrote to the Prime Minister noting—

” It will not be acceptable for the devolved administrations to simply be consulted on UK Government plans. We must have meaningful input into the decision making structure and the formation of negotiating positions.²⁴⁶

226. The First Minister also called for a clearly mapped out work programme of involvement with the Devolved Administrations, supported by a rigorous timeline, to ensure progress keeps pace with the requirement to agree a UK position.²⁴⁷

227. In his evidence to the Committee also in October 2016, Mr Mundell, the Secretary of State, also commented on these matters. He said—

” Although we may have different views, it is vital that the UK Government and the Scottish Government work constructively together to secure Scotland's interests.²⁴⁸

228. Mr Mundell, the Secretary of State, stated that he had “no doubt that the Scottish Government's voice”²⁴⁹ would be heard during the process of deliberating on the trigger of Article 50 and that a “work programme will be brought together by the respective administrations”²⁵⁰ for the JMC(EN) to take forward.

229. Mr Mundell, the Secretary of State, was also asked by the Committee for confirmation that the devolved administrations would know what final position the UK Government took in advance of the triggering of Article 50. He replied that he “would anticipate that, yes”,²⁵¹ indicating also that this would also include the devolved administrations being able to influence the shape of any proposed deal²⁵² with the EU and that this would be in advance of meetings of the UK Cabinet or any other processes that are being followed by the UK Government.²⁵³

230. At the time of writing, two meetings of the plenary of the JMC have taken place since the Brexit vote, on 24 October 2016 in London and 30 January 2017 in Cardiff, chaired by the Prime Minister. There have also been a number of meetings of the JMC(EN), chaired by Rt Hon David Davis MP, Secretary of State for Exiting the EU.

231. It is fair to say that views on the progress of the discussions in these meetings are mixed and often dependent on which government is being asked. The UK Government described the most recent meeting of the JMC (Plenary) as “constructive”²⁵⁴ and the agreed official communiqué stated—

” Consideration of the proposals of the devolved administrations is an ongoing process. Work will need to be intensified ahead of triggering Article 50 and continued at the same pace thereafter.²⁵⁵

232. On the other hand, in a letter to a committee of the Scottish Parliament, the First Minister wrote that, at the JMC (Plenary), she had “highlighted the lack of progress

towards agreeing a common position on the triggering of article 50, which was a fundamental part of the remit of the JMC(EN).²⁵⁶ She indicated that the JMC(EN) was not working in practice as had been anticipated and that she had expressed “intense disappointment”²⁵⁷ that there had been no firm commitment to hold a plenary of the JMC prior to the triggering of Article 50. The First Minister also called for there to be “a meaningful way”²⁵⁸ for the Scottish Government to be involved in the formulation of new trade agreements.

233. In his evidence to the Committee in February 2017, Mr Russell, the Minister for UKNSPE made a number of observations on the functioning of the JMC apparatus for intergovernmental relations since the EU Referendum. He said—

” We have seen some movement since the first meeting from the chair, David Davis. I pay tribute to him because I think that he has tried to ensure that he is a conduit both for what is discussed in the meeting to the UK Government and from the UK Government back into the committee. That is the role that he wishes to play. An extension of that role is to ensure that that happens during the negotiating process.

” We and the Welsh Government have raised the issue of participation in the negotiations on issues of devolved competence. We have not yet entered into full discussion of that, although it is on the agenda. It is important that we have representation in that process.²⁵⁹

234. He was, however, critical of a number of aspects of the intergovernmental process on triggering Article 50. Firstly, he expressed concern that Prime Minister had made her intentions known regarding the outline of her plans for Brexit in a public speech before any discussions in the JMC. He said—

” I think that there was great disappointment that the Prime Minister did not wait to present her Government’s outline of plans until after they had been discussed with the JMC (European negotiations), which took place 48 hours after she made her speech. There will be similar concern today when the Government’s white paper appears—as, apparently, it will—that it has not been discussed with the JMC(EN) or even the JMC plenary.²⁶⁰

235. He and his officials also outlined difficulties over a number of aspects of the functioning of the JMC system, including that there is “no clear timeline” as yet available for the triggering of Article 50, that papers for the meetings of the JMC(EN) arrive “sometimes very late in the day” making it a challenge to be able to use them and that dates of meetings are not known about far enough in advance making it both difficult to prepare and also notify this Parliament under the terms of the Written Agreement on IGR.²⁶¹

236. Additionally, as noted by a Scottish Government official—

” ... it is not so much the timing of the meetings that is the issue, but the lateness of papers and our not knowing what those papers will cover. That

makes it very difficult to brief properly—and to think properly—before we go into the JMC meetings.

” The other issue is the work programme. It has been an uphill struggle to get a work programme that involves genuine discussion of some of the key strategic issues that are of importance to us, especially given that article 50 will be triggered very soon. Those issues include the single market and the customs union. As the minister said, we have tended to find out information through speeches rather than from discussions with officials. Those are the two main issues.²⁶²

237. Looking ahead, Mr Russell, the Minister for UKNSPE expressed his views on what he perceived as the critical priorities during the intergovernmental discussions on Article 50 and, in particular, what he expected to see in any formal communication from the UK Government to the EU to notify the latter of its intention to leave the EU.

238. He said that the UK Government needed to make its views clear in the JMC on each of the proposals set out by the Scottish Government in its paper, Scotland's Place in Europe.²⁶³ He commented that over the course of the final few weeks before Article 50 is set to be triggered that—

” We want to know what the UK Government says: we want to know whether a particular proposal will be accepted or rejected and whether a proposal should be the subject of bilateral discussion between me and David Davis or someone else.²⁶⁴

239. As indicated earlier in the report, Mr Russell, the Minister for UKNSPE also emphasised the need for a commitment that a differentiated solution will be put on the agenda for the negotiation with the other member stated in the Article 50 letter of the associated documentation. He concluded by noting—

” The crucial moment in that is the triggering of article 50. That will tell us not just the starting point that the UK has—it may be high level, we do not know—and also how we will have been involved in that. If the UK Government submits and publishes an article 50 letter which JMC(EN) has not seen and has not been involved in discussing in whatever way—locked in conclave for days to look at it—I think that that will say something pretty significant. That is what happened with the Prime Minister's speech on the single market and with the white paper. If it were to happen a third time—particularly in the JMC(EN)—I think that we would say to ourselves that there is no genuine attempt here. That is a crucial moment.²⁶⁵

240. In his letter to the Committee updating it on the JMC(EN) that was held on 8 February, Mr Russell, the Minister for UKNSPE indicated that no joint communiqué had been agreed following the meeting. He also stated that—

” Whilst I am glad that it has since started I am concerned about the overall flow of information from the UK Government and its engagement with the Scottish Government and I noted these sentiments in relation to the Article 50 process and, in particular, the timing and approach to the triggering of Article 50.²⁶⁶

241. In her evidence to the Committee, Dame Mariot Leslie, a member of the Scottish Government's standing council on the EU and a former senior diplomat and Permanent Representative to NATO also commented on the intergovernmental discussion on Article 50. Making a personal observation, she stated—

” The Scottish Government was the first constituent part of the United Kingdom to get its paper out and say quite plainly what it wanted and the options that it saw. It was extraordinarily unfortunate that the Prime Minister's speech seemed to set that aside when it had not been considered in any detail at the joint ministerial committee.

” As I understand it, the Scottish Government's paper is still under consideration in the joint ministerial committee, but with the clock ticking and the British Government's timetable for its article 50 notification being the end of March at the latest, I find it hard to see how serious and sincere attention could be given to the paper and all its details along with all the other things on the agenda.²⁶⁷

242. Professor Anton Muscatelli agreed, stating—

” I echo what Dame Mariot said. In the run-up to the triggering of article 50, it is really important that discussions are intensified on what arrangements might be possible within the UK. I say that because there are so many moving parts in the negotiations that, unless you can at least have some traction and begin to join some of those parts within the UK, it will be much more difficult to do that in the more dynamic environment of the negotiations after the triggering of article 50.

” I gather from the previous meeting of the JMC plenary that there was a commitment from the Prime Minister to intensify scrutiny of the proposals, and I would certainly encourage that. This is a critical time.²⁶⁸

243. Shortly prior to appearing before the Committee on 22 February, Mr Mundell, the Secretary of State wrote to the Committee as he was “concerned that some of the commentary on this subject has overlooked the considerable efforts we are making to engage with the Scottish Government and to more fully understand and analyse their proposals and to ensure we get the best deal for Scotland and the whole of the UK outside the EU.”²⁶⁹

244. He proceeded to explain that the UK Government's focus was “on the technical work necessary to understand the viability of the proposals as well as the Scottish Government's underlying objectives in “Scotland's Place in Europe”.

245. Mr Mundell, the Secretary of State referred to the meetings that had taken place, and indicated that following the JMC(P) on 30 January “we instructed departments to intensify our engagement with Scottish Government officials to deepen this understanding and forge a constructive dialogue between the UK and Scottish governments.”²⁷⁰ Subsequently, in February six meetings at official level had taken place. Mr Mundell, the Secretary of State, said that—

” Work is progressing well. Officials have established two work streams, one discussing the proposals on trade, customs and single market membership, the other examining free movement. Directors from three UK Government Departments and the Scottish Government have held two meetings to give strategic oversight to the work and four workshops of senior officials across our two governments have been held. Further discussions are planned for the coming weeks.²⁷¹

246. In evidence to the Committee, Mr Mundell, the Secretary of State, told the Committee that he refuted the suggestion that there was a lack of respect on the part of the UK Government. He said—

” I completely refute that. First, as I set out in my letter, there have been six substantive meetings in the past couple of weeks involving Scottish Government and UK Government officials that have looked in detail at the proposals in the Scottish Government’s paper. They have looked at how some of the proposals could be progressed in order to achieve the outcome in different ways and at the legal basis of those proposals. That is substantive work. I have to say that I find offensive—and I raised this issue at the previous JMC(EN) meeting—the way in which Mr Russell dismisses the efforts of officials in both the UK and Scottish Governments who are doing sterling work in taking forward a difficult task. Of course we are going to have political disagreements, but to dispute the fact that substantive work is going on to consider the Scottish Government’s proposals is simply not correct.²⁷²

247. Mr Mundell, the Secretary of State also set out the wider engagement with the Scottish Government and recorded the multilateral or bilateral meetings that had taken place. He said that—

” Attempts in some quarters to present this engagement as “meaningless” grossly misrepresents the objective of the UK Government. Our objective is to seek a deal with the EU that works for the whole of the UK and all its constituents [sic] parts. Both of Scotland’s governments have clearly and publicly committed to engaging with each other as we proceed with this work to ensure Scotland’s interests are reflected in our negotiations with the EU. That must remain our priority, and I am confident that in pursuing this we will determine that there are similar drivers behind our respective approaches.²⁷³

248. Mr Mundell, the Secretary of State told the Committee that the Scottish Government's paper had influenced the UK Government—

” What I can say is that the process has been evolving through the Prime Minister's speech and the white paper. An area that is included in the Prime Minister's 12 priorities as a direct result of input from Scotland—and the Prime Minister has acknowledged that—is item 10, which is about ensuring that the UK remains “The best place for science, innovation”. There was very strong representations from Scotland about that issue, which has shaped how the Prime Minister has set out her priorities and is included in the white paper.

” The white paper and the Prime Minister's speech reflect a whole range of views that are in the Scottish Government's paper, including issues to do with workers' rights and the sharing of information on criminal justice and security. There is a huge amount of common ground.

249. Following Mr Mundell's letter and appearance before the Committee, Mr Russell, the Minister for UKNSPE wrote to the Committee to set out the Scottish Government's position. He said that the Scottish Government's objectives in Scotland's Place in Europe were “crystal clear” and it therefore was not obvious “what Mr Mundell means when he says he is seeking to understand our objectives.”²⁷⁴

250. He also emphasised that—

” Despite the deadline for triggering Article 50 being a little over five weeks away – and it may take place earlier – and the clear mandate for the Scottish Government's position on a differential deal for Scotland there has been no commitment whatsoever from the UK government, in any meeting that has taken place, that the views of the people of Scotland, the Scottish Parliament or the Scottish Government will be put forward as part of the UK negotiations with the European Union.²⁷⁵

251. Mr Russell, the Minister for UKNSPE acknowledged that the number of meetings in the previous two weeks had increased, but commented that “UK Government officials have revealed very little of their own thinking on policies which are essential to taking forward the proposals in Scotland's Place in Europe.”²⁷⁶

Negotiations during the process of withdrawal – views expressed to the Committee

252. The triggering of Article 50 by the UK Government and the acceptance by the EU of the contents of the UK Government's letter heralds the start of a process of negotiations on withdrawal. Article 50(3) of the TFEU states that the Treaties shall cease to apply to the (Member) 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 (of the TFEU), unless the European Council, in agreement with

the Member State concerned, unanimously decides to extend this period. Essentially then, unless otherwise agreed to, there is a two-year window for the UK to agree the terms of its withdrawal with the EU.

253. As noted in earlier sections of this report, the withdrawal agreement may primarily cover the “divorce” arrangements between the EU and the UK and the future FTA would be a separate agreement. For the Committee, in the context of IGR, the question is what form of relationship the Scottish Government will have with the UK Government during the latter’s negotiations with the EU on withdrawal and any framework for a future relationship. Will the Scottish Government be informed and/or consulted within the JMC structure as negotiations proceed and/or will there be some form of co-decision process about any deal? Will UK ministers and officials represent the UK alone in any high-level or technical discussions with the EU or will Scottish Ministers and their officials participate in meetings with the EU whilst following an agreed UK negotiating position (as is the case now in some meetings of the Council of Ministers)?

254. There have also been suggestions – for example, by the Prime Minister in her speech at Lancaster House– that the broad approach towards the UK’s new relationship with the EU may also have variations for specific industrial sectors. She said—

” ... we do not seek membership of the single market. Instead we seek the greatest possible access to it through a new, comprehensive, bold and ambitious free trade agreement.

” That agreement may take in elements of current single market arrangements in certain areas – on the export of cars and lorries for example, or the freedom to provide financial services across national borders – as it makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years.²⁷⁷

255. The question for the Committee is who will pick what sectors of the public and private sector are the focus of any more bespoke arrangement within the overall comprehensive free trade agreement with the EU envisaged by the UK Government?

256. On the question of the possible involvement of the Scottish Government in the UK/EU negotiations after the triggering of Article 50, Mr Russell, the Minister for UKNSPE has suggested in evidence to a Westminster committee that this is something that still needs to be discussed between the various governments in the UK. He has said—

” There has been no consideration of the involvement of the devolved Administrations in the process of negotiation, although it was raised at the

last JMC plenary, in actual fact by the First Minister of Wales. It will be an issue now that needs to be discussed.²⁷⁸

257. Furthermore, he stressed that government ministers should also make themselves accountable to their respective parliaments during the process of negotiations—

” The role of parliamentary Committees here [Westminster], in Belfast, in Cardiff and European Parliament committees is quite crucial. It is absolutely obvious that the committees of the European Parliament will insist upon knowing what is taking place, and of course they have a yes/no vote at the end of the process. In the last week I have given evidence to the Scottish Parliament committee, to this Committee, and to a House of Lords Committee, and I am quite happy to enter into those discussions from time to time—even the nature of discussions that we have had on occasions in this Committee—in order to ensure that there is that knowledge of what is taking place.

” I entirely accept that negotiations should not take place with a running commentary, but that does not mean negotiators should not be accountable to parliaments. They should be; that should happen. It may be useful for the Committee on some occasion to have the principal members of JMC (EN) together giving evidence, which might give an interesting contrast of view.²⁷⁹

258. Similarly, the First Minister has said—

” As the UK is the EU Member State it will be for the UK Government, not the Scottish Government, to negotiate directly with the other 27 Member States. Therefore, we expect the UK Government to honour its clear previous commitment to involve Scotland in the development of the UK position prior to the triggering of Article 50, to consider the options now advanced and to guarantee that Scotland will be fully engaged in the discussions going forward.²⁸⁰

Discussions on future free trade agreements – views expressed to the Committee

259. Finally, in addition to the issue of the potential for the involvement of the Scottish Government in negotiations prior to and after the triggering of Article 50, there is the question of whether there is also a role in any discussions being taken forward by the UK Government on future free trade agreements.

260. In its paper the Scottish Government stated that it—

” ... will need to take part in trade negotiations that impact on devolved competences. It will also need the ability to speak in international forums and to secure agreements with other countries. This could be achieved either through an arrangement with UK Government or by virtue of an independent international legal personality.²⁸¹

261. In their evidence to the Committee, the Cabinet Secretary, and his officials spoke relatively positively of the level of engagement so far between the Scottish Government and the UK Government on future trading arrangements. Speaking of his discussions with the UK Secretary of State for International Trade, the Cabinet Secretary said—

” ... we have agreed to have further meetings. That agreement was easier to achieve than agreement in many other areas with the UK Government. However, we had that willingness and we agreed that we will have further meetings.²⁸²

262. He also talked about working “in conjunction” with the UK Government during the process of discussions with third countries on free trade agreements whilst the UK Government negotiates the withdrawal of the UK from the EU.²⁸³

263. His officials also spoke positively of discussions at official level on future trade matters, with one such official telling the Committee—

” What we are seeking to do—quite successfully so far—is to work with the Department for International Trade to understand what it is working on and to see how best we can provide input to that work and ensure that Scotland’s interests are represented. The dialogue with the department at official level and, as the cabinet secretary mentioned, between ministers has been relatively good so far, and I certainly hope that that continues.²⁸⁴

264. The Cabinet Secretary also drew on the experience of Canada in its negotiations with the EU on the EU-Canadian Comprehensive Economic and Trade Agreement where the Canadian negotiating team comprised representatives of both federal and provincial governments. He told the Committee that in his view—

” It is almost our standing position that we want to have the maximum possible role. You are right about Canada. It is a confederal system, in which the provinces have substantial powers. A UK Government of whatever political persuasion and a Scottish Government of a different political persuasion might have very different priorities. I am not by any means likening Scotland to a province, but if a confederal country such as Canada can take a substantial cue from the needs of its provinces, we should be able to do that in the UK.

” [...] As I said, though, our position has always been to maximise the role of Scotland in any situations like this.²⁸⁵

265. This is also an issue on which the First Minister has commented. In her letter to the Finance Committee following the JMC of 30 January 2017, she said that there is a need for the UK and the devolved administrations to work together on future trade agreements and that the latter must be involved in a “meaningful way” in the formulation of any new provisions.²⁸⁶

IGR arrangements on trade in other countries

266. The above section of the report makes reference to the structure of the Canadian negotiating team for the EU-Canadian CETA deal. This is a matter on which the Committee itself took evidence in September 2016 when it heard from representatives of the Québec Government's Office in London. Giving evidence to the Committee, Christos Sirros, the Agent-General, said—

” On a general basis, even before the negotiations with the EU on CETA, there has been an ongoing permanent mechanism called C-commerce—Canada commerce—that brings together officials from the various provinces on the issues that are being negotiated by Canada. Up until the CETA negotiations, Canada was the only Government represented at the table when it negotiated international treaties, but the Government's positions were fed by ongoing consultations with the provinces. Negotiations and compromises that had to be made at a level that went beyond the officials—as you probably know, a lot of these things come down to a political decision where somebody has to make a decision on what you give and what you get—would be referred back to each of the provinces on a political level.

” The CETA negotiations were quite a different kettle of fish and, for the first time, enacted something that Québec has been asking for for the past 30 years. I am certain that the process has not yet been recreated in other negotiations subsequent to CETA. I do not know which ones we have been involved with, although Canada is engaged in the trans-Pacific partnership agreement. CETA was an important milestone for us. For the first time in history, all the provinces were present at the table and participated directly in the negotiations through one recognised chief negotiator—the Canadian chief negotiator—who interfaced with the EU's chief negotiator. Each of the provinces had representation in the room when the negotiations were taking place.²⁸⁷

267. The Committee has also considered how the respective governments in Belgium operate in relation to trade matters and trade agreements, noting that the country has a complex federal structure which allocates power to three regions and three linguistic communities, with institutionalised power-sharing at the federal level.

268. In relation to trade agreements, all treaties must be ratified by all parliaments in Belgium. If one refuses to approve the treaty, the Belgian state cannot ratify it, as was the case for a period during the process of consideration of the EU-Canadian CETA.

269. Belgian regions and communities such as Flanders and Wallonia also have extensive powers externally. The communities and regions operate under the principle of *in foro interno, in foro externo*: for every exclusive competence on the internal level, the federated entity also enjoys competence on the international level, so long as its positions do not contravene federal positions. However,

international bodies often only recognise one voice from Belgium which necessitates a high degree of intergovernmental coordination. Ultimately, the Belgian regions and communities can conclude international treaties in relation to their exclusive competences. At present, Flanders is a partner in more than 600 treaties and other agreements.²⁸⁸

¹ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi.

² Scottish Government 2016. [Scotland's Place in Europe](#), p.vi.

³ Speech by the Prime Minister, 17 January 2017. Available at:

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

⁴ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#)

⁵ The Institute for Fiscal Studies, "[The EU Single Market: the Value of Membership versus Access to the UK](#)" August 2016, p.11.

⁶ ONS 2016. UK Perspectives 2016: Trade with the EU and beyond. <http://visual.ons.gov.uk/uk-perspectives-2016-trade-with-the-eu-and-beyond/>

⁷ House of Lords, European Union Committee, 5th Report Session 2016-17 "Brexit: Options for Future Trade", p.8.

⁸ House of Lords, European Union Committee, 5th Report Session 2016-17 "Brexit: Options for Future Trade", p.9.

⁹ Export Statistics Scotland 2015:

<http://www.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication>

¹⁰ Culture, Tourism, Europe and External Relations Committee. *Official Report*, 1 December 2016, Col 2.

¹¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col 3.

¹² <http://www.margaretthatcher.org/document/107219>

¹³ [Types of trade agreements, briefing paper by Professor Michael Keating, 3 October 2016](#)

¹⁴ Treaty on the Functioning of the European Union. Accessible at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

¹⁵ European Commission 2013. [The EU's bilateral trade and investment agreements – where are we?](#)

¹⁶ [Types of trade agreements, briefing paper by Professor Michael Keating, 3 October 2016.](#)

¹⁷ [Types of trade agreements, briefing paper by Professor Michael Keating, 3 October 2016.](#)

¹⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 20.

¹⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col. 23.

²⁰ [Culture, Tourism, Europe and External Relations Committee, The EU referendum result and its implications for Scotland: Initial Evidence, 1st Report, 2016 \(Session 5\), paragraph 141.](#)

²¹ [Macduff Shellfish](#), Written submission

²² [National Federation of Roofing Contractors](#), written submission.

²³ [National Federation of Roofing Contractors](#), written submission.

²⁴ [CBI Scotland](#), Written submission.

²⁵ [Copernicus Technology Ltd](#), written submission.

²⁶ [Scottish Financial Enterprise](#), written submission.

²⁷ [Ben Thomson](#), written submission.

²⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 12.

²⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col

22.

³⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 22-

23.

³¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col

41.

³² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col

23-24.

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- ³³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col 29.
- ³⁴ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi
- ³⁵ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi
- ³⁶ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi.
- ³⁷ Scottish Government 2016. [Scotland's Place in Europe](#), p.2
- ³⁸ Scottish Government 2016. [Scotland's Place in Europe](#), p.3
- ³⁹ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi.
- ⁴⁰ Scottish Government 2016. [Scotland's Place in Europe](#), p.vi.
- ⁴¹ Scottish Government 2016. [Scotland's Place in Europe](#), pp.24-25.
- ⁴² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 7.
- ⁴³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 8.
- ⁴⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February, Col 6.
- ⁴⁵ Scottish Government 2016. Scotland's Place in Europe. pp.25-26.
- ⁴⁶ Scottish Government 2016. Scotland's Place in Europe. pp.27.
- ⁴⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 29.
- ⁴⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 29.
- ⁴⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 29.
- ⁵⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Cols 8-9.
- ⁵¹ Scottish Government 2016. [Scotland's Place in Europe](#), p.28
- ⁵² Scottish Government 2016. [Scotland's Place in Europe](#), p.28
- ⁵³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 33.
- ⁵⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 1 December 2016, Col 32.
- ⁵⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col 2.
- ⁵⁶ Scottish Government 2016, Scotland's Place in Europe, p.28
- ⁵⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 3.
- ⁵⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 4.
- ⁵⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 2.
- ⁶⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 4.
- ⁶¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 3.
- ⁶² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 3.
- ⁶³ Scottish Government 2016. [Scotland's Place in Europe](#), p.29
- ⁶⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 14.
- ⁶⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Cols 28-29.
- ⁶⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 30.
- ⁶⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 29.
- ⁶⁸ Scottish Government 2016. [Scotland's Place in Europe](#), p.30.
- ⁶⁹ Scottish Government 2016. [Scotland's Place in Europe](#), p.30.
- ⁷⁰ Scottish Government 2016. [Scotland's Place in Europe](#), p.30.
- ⁷¹ Scottish Government 2016. [Scotland's Place in Europe](#), p.30.
- ⁷² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 7.
- ⁷³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 7.
- ⁷⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 7.

⁷⁵ For a list of the EFTA countries trade agreements, see <http://www.efta.int/free-trade/free-trade-agreements>

⁷⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 10.

⁷⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 13.

⁷⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 16.

⁷⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 26.

⁸⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 23.

⁸¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 27.

⁸² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 2.

⁸³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 14.

⁸⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 12.

⁸⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 12.

⁸⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Cols 11-12.

⁸⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 22.

⁸⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 25.

⁸⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 22.

⁹⁰ Norwegian Ministry of Foreign Affairs. [Norway and the EU – partners for Europe.](#)

⁹¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 5.

⁹² It should be noted that this refers to onshore Scottish GDP only.

⁹³ Based on 2015 Annual Survey of Hours and Earnings (median, gross full-time earnings of £27,710 in Scotland).

⁹⁴ Note the modest rise in population may – at first glance – seem somewhat counterintuitive. However, as we will see later, the negative shock is greater in the rUK which makes Scotland a 'relatively' more attractive location to move to.

⁹⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 1 December 2016, Col 8.

⁹⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 6.

⁹⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 29.

⁹⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 1 December 2016, Col 3.

⁹⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 29 September 2016, Col 63.

¹⁰⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 12.

¹⁰¹ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#). p. 5.

¹⁰² UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#). pp.5-6

¹⁰³ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#). p.13

¹⁰⁴ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#). p.13

¹⁰⁵ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#). p.15

¹⁰⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 7.

¹⁰⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 4.

¹⁰⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 3.

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- ¹⁰⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 3.
- ¹¹⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 3.
- ¹¹¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 2.
- ¹¹² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 6.
- ¹¹³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 33.
- ¹¹⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 19.
- ¹¹⁵ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.10
- ¹¹⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 14.
- ¹¹⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2017, Col 15.
- ¹¹⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2017, Col 15.
- ¹¹⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 25.
- ¹²⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Cols 21-22.
- ¹²¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Cols 15-16.
- ¹²² UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#) p.22.
- ¹²³ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.22.
- ¹²⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 12.
- ¹²⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Cols 13-14.
- ¹²⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 14.
- ¹²⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 14.
- ¹²⁸ Speech by the Prime Minister, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>
- ¹²⁹ Speech by the Prime Minister, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>
- ¹³⁰ Speech by the Prime Minister, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>
- ¹³¹ Speech by the Prime Minister, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>
- ¹³² UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.35.
- ¹³³ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.8.
- ¹³⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2016, Col 4.
- ¹³⁵ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.46.
- ¹³⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2016, Col 7.
- ¹³⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2016, Col 8.
- ¹³⁸ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 1.
- ¹³⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 4.

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- ¹⁴⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 5.
- ¹⁴¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2017, Col 16.
- ¹⁴² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 2 February 2016, Col 16.
- ¹⁴³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 4.
- ¹⁴⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 4.
- ¹⁴⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 7.
- ¹⁴⁶ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 8.
- ¹⁴⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, col 19.
- ¹⁴⁸ Speech by the Prime Minister, 17 January 2017. Available at: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>
- ¹⁴⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 3.
- ¹⁵⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 3.
- ¹⁵¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 3.
- ¹⁵² Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 3.
- ¹⁵³ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 4.
- ¹⁵⁴ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 3 November 2016, Col 4.
- ¹⁵⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 26 January 2017, Col 18.
- ¹⁵⁶ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.46.
- ¹⁵⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 22.
- ¹⁵⁸ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.41.
- ¹⁵⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 27.
- ¹⁶⁰ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 15.
- ¹⁶¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Col 18.
- ¹⁶² UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.51.
- ¹⁶³ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.51.
- ¹⁶⁴ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p. 55.
- ¹⁶⁵ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col 19.
- ¹⁶⁶ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.52.
- ¹⁶⁷ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 17 November 2016, Col 16.
- ¹⁶⁸ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.54.
- ¹⁶⁹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 24 November 2016, Cols 21-22.
- ¹⁷⁰ UK Government. [The United Kingdom's exit from and new partnership with the European Union White Paper](#), p.55.
- ¹⁷¹ Culture, Tourism, Europe and External Relations Committee, *Official Report*, 22 February 2017, Col 13.
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- ²²¹ Scottish Government 2016. [Scotland's Place in Europe](#), p.1-2.
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http://www.parliament.scot/S5_Finance/General%20Documents/2017.02.07_Letter_from_FM_to_Convenier_on_JMC_30_January.pdf

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Glossary of Terms

Article 50 of the Treaty on European Union

The European Treaties, as amended by the Treaty of Lisbon, include a provision for the first time setting out how a Member State might leave the European Union should it wish to do so.

Article 50 of the Treaty on European Union sets out how a Member State can withdraw from the European Union.

Article 50 of the Treaty on European Union states:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. 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.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Use of Article 50 is the legal basis under the Treaties for withdrawal of a Member State.

As a result of Article 50(2), the Brexit withdrawal agreement (if there is one) will be decided by a 'super qualified majority' vote among the other 27 EU Member States, without the UK.

The qualified majority is defined in Article 238(3)(b) as at least 72% of the participating members of the EU Council, comprising at least 65% of the population of those Member States.

Competences

Describes who has the power to act in a particular policy area. The EU has competences conferred on it by the EU Treaties.

Under this principle, the EU may only act within the limits of the competences conferred upon it by the EU Member States in the Treaties to achieve the objectives provided in them.

Court of Justice of the EU

The Court of Justice ensures that EU law is interpreted and applied in the same way in all EU Member States. It settles legal disputes between national governments and EU institutions. It can also, in certain circumstances, be used by individuals, companies or organisations to take action against an EU institution for an alleged infringement of their rights.

Customs Union

The EU's Customs Union applies a common tariff to all goods entering from outwith the EU. As a result of this common tariff, individual Member States are unable to adopt their own independent trade policies. Instead, the EU has competence for negotiating trade agreements on behalf of the Member States.

The three EEA countries – Norway, Iceland and Lichtenstein are not part of the Customs Union

European Economic Area

The European Economic Area provides for the free movement of persons, goods, services and capital through three of the four member states of the European Free Trade Association– Iceland, Liechtenstein and Norway – and all 28 member states of the European Union (EU).

European Free Trade Association

The European Free Trade Association is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway, Switzerland.

EFTA Court

The EFTA Court fulfils the judicial function within the EFTA system, interpreting the Agreement on the European Economic Area with regard to the EFTA States party to the Agreement.

EFTA Surveillance Authority

The EFTA Surveillance Authority monitors compliance with European Economic Area rules in Iceland, Liechtenstein and Norway, enabling them to participate in the European internal market

European Commission

The European Commission is the executive of the European Union. It consists of 28 appointed members, one from each member state. The Commission is headed by a President, currently Jean-Claude Juncker. It is a politically independent institution that represents and upholds the interests of the EU as a whole and is the driving force within the EU's institutional system

European Council

The European Council consists of the Heads of State or Government of each of the 28 Member States along with its President and the President of the European Commission. The role of the European Council is "to provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof" (Article 15 TEU).

The European Council does not exercise legislative functions but is the body that would agree Treaty changes and general Union policy. Decisions of the European Council shall generally be taken by consensus

European Directives

A form of EU legislation which is binding as to the result to be achieved but leaves Member States to decide on the method of achieving that result. The method is decided by member states when they transpose the Directive into their own domestic legislation.

European Parliament

The European Parliament is the only directly elected body in the EU. It represents the people of the EU and, shares legislative and budgetary power with the Council of the European Union. The European Parliament has been directly elected by the citizens of the member states since 1979. Elections by universal suffrage take place every five years.

European Regulations

A form of EU legislation, these are binding and directly applicable in all Member States

Single Market/Single European Market

This refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services. The four freedoms are: free movement of goods, free movement for workers, right of establishment and freedom to provide services, and free movement of capital.

There are no customs duties, tariffs or quotas on trade in goods between Member States. The single market also aims to create a level playing field by removing non-tariff barriers such as regulations or technical specifications.

World Trade Organization

The World Trade Organization deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.

Trade terms:

Common market	A customs union that additionally allows for free movement of labour and capital.
Customs union	A FTA in which partner states additionally have a common set of policies on imports from non-partner states, including agreement on a common level of tariffs on all imports from third countries.
Economic union	A common market that additionally includes the adoption of a common currency and/or the harmonization of monetary, fiscal and social policies.
Free trade agreement	Agreement that aims to reduce or eliminate trade barriers between its signatories.
Free trade area (FTA)	Group of countries which have signed a free trade agreement to reduce trade barriers between each other. There is generally no common external tariff for imports from third countries.
Non-tariff barrier (NTB), also known as non-tariff measure	Measures other than tariffs that have the effect of restricting trade including: <ul style="list-style-type: none">• Quantitative restrictions on imports and exports such as import quotas.• Import and export licensing.• Product standards.• Conformity assessments such as technical, sanitary and phytosanitary measures.
Preferential Trade Agreements	Agreements between two or more countries to discriminate favourably in their treatment of goods and/or services traded amongst themselves.
Rules of origin	Criteria needed to determine the national source of a product.
Single Market	This refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services. The four freedoms are: free movement of goods, free movement for workers, right of establishment and freedom to provide services, and free movement of capital.
Tariff	A tax or duty to be paid on a particular class of imports or exports, generally imports. Tariffs are defined according to the rate, the classification and the valuation of the goods being taxed.
Tariff Rate Quotas	Tariff rate quotas exist to allow lower tariffs within established quotas for exports, and higher rates for quantities outside the quotas.

Annexe A – Minority view

The text in this annexe represent the views of two members of the Committee: Jackson Carlaw MSP and Rachael Hamilton MSP. It set out their alternative conclusions on the UK Government's proposals.

The UK Government's proposal

The UK Government has developed an ambitious proposal to maintain a close trading relationship with the EU and to develop and deepen the UK's trade with other countries in the world.

The UK Government is right to identify a need to develop a future trading relationship that is not based on any existing model as the UK and the EU are deeply intertwined in their trading relationships and a pre-existing model would not be sufficient to allow those trading relationships to continue. That would be to the detriment of the economies of all of the EU Member States as well as the UK.

The Prime Minister's commitment to pursuing a "new, comprehensive, bold and ambitious free trade agreement" with the EU will ensure that Scotland and the UK can continue to trade in goods and services with the EU without tariffs or non-tariff barriers being imposed, thus reflecting the key interests of businesses in Scotland. The EU has a trade surplus with the UK so it will be in the EU's interests to ensure that there is frictionless trade between the EU and the UK in order that its own trade and businesses are not harmed.

A new customs agreement with the EU will ensure that UK companies are not subject to rule of origin requirements and that keys sectors and their supply chains are not impacted. Freedom from the EU's Common External Tariff and participation in the Common Commercial Policy will allow the UK to negotiate independent trade agreements with third countries to replace the preferential trade agreements that currently exist between the EU and other counties. These new trade agreements can be better suited to the UK's economy and there is less risk that negotiations will stall as the UK will be negotiating on its own behalf, rather than 28 different countries.

The UK Government has the objective of agreeing a frictionless comprehensive free trade agreement with the EU within two years and proposes phasing arrangements to ensure that there is a smooth transition. This can provide certainty and security to businesses.

The UK has a network of offices in over 100 countries that provide a sound base for further developing the UK's trading links, and Scotland can benefit from these.

Annexe B – Extracts from the minutes

Extracts from the minutes of the Culture, Tourism, Europe and External Relations Committee and associated written evidence and supplementary evidence

6th Meeting, 2016 (Session 5), Thursday 22 September 2016

1. Decision on taking business in private: The Committee agreed to take items 4 and 5 in private.

2. The implications of the EU referendum for Scotland: intergovernmental relations: The Committee took evidence from— Professor Nicola McEwen, Professor of Territorial Politics; Associate; Director, Centre on Constitutional Change, University of Edinburgh; Akash Paun, Fellow, Institute for Government; Christos Sirros, Agent-General, and Frédéric Tremblay, Director of Political and Public Affairs, Québec Government Office in London.

3. The implications of the EU referendum for Scotland: intergovernmental relations (in private): The Committee considered the evidence heard earlier in the meeting.

8th Meeting, 2016 (Session 5), Thursday 29 September 2016

1. The implications of the EU referendum for Scotland: The Committee took evidence from— Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe, and Frank Strang, Deputy Director, External Affairs, Scottish Government.

4. The implications of the EU referendum for Scotland (in private): The Committee considered the evidence heard earlier in the meeting.

10th Meeting, 2016 (Session 5), Thursday 3 November 2016

1. The implications of the EU referendum for Scotland: future trade relationships: The Committee took evidence from— Professor Ian Wooton, University of Strathclyde; Professor Stephen Woolcock, London School of Economics; Dr Matias Margulis, University of Stirling; Dr Gracia Marin-Duran, University of Edinburgh.

2. The implications of the EU referendum for Scotland: future trade relationships (in private): The Committee considered evidence heard earlier in the meeting.

11th Meeting, 2016 (Session 5) Thursday 17 November 2016

1. The implications of the EU referendum for Scotland: future trade

relationships: The Committee took evidence from— Dr Ulf Sverdrup, Director, Norwegian Institute for International Affairs; Tore Myhre, Director, and Anne Louise Aartun Bye, Assistant Director, Confederation of Norwegian Enterprise; Dag Wernø Holter, Deputy Secretary General, and Marius Vahl, Head of EEA policy coordination, European Free Trade Association.

12th Meeting, 2016 (Session 5) Thursday 24 November 2016

1. The implications of the EU referendum for Scotland: future trade

relationships: The Committee will take evidence from— Professor Clive Church, Emeritus Professor of European Studies, University of Kent; Professor Matthias Oesch, Chair of Public Law, European Law and International Economic Law, University of Zurich; and then from—

Professor Gordon Masterton, Chair of Future Infrastructure, University of Edinburgh and former President of the Institution of Civil Engineers, Institution of Civil Engineers; Peter Hardwick, Head of Exports, Agricultural and Horticultural Development Board; David Branch, Head of Business Development, Cochran UK; Derek Elder, Chair, Engineering Policy Group Scotland; Ken Sutherland, President, Toshiba Medical Visualization Systems Europe; David Lonsdale, Director, Scottish Retail Consortium; Tim Reardon, Policy Director, UK Chamber of Shipping.

2 . The implications of the EU referendum for Scotland: future trade

relationships (in private): The Committee will consider evidence heard earlier in the meeting.

13th Meeting, 2016 (Session 5) Thursday 1 December 2016

1. The implications of the EU referendum for Scotland: EU nationals and their rights:

The Committee took evidence from— Keith Brown, Cabinet Secretary for the Economy, Jobs and Fair Work, George Burgess, Deputy Director- EU and International Trade and Investment Policy, and Russell Bain, Team Leader - Analysis and Policy, Scottish Government.

2. The implications of the EU referendum for Scotland: The Committee took evidence (via video conference) from— Ian Duncan MEP..

3. The implications of the EU referendum for Scotland (in private): The Committee considered the evidence heard earlier in the meeting.

3rd Meeting, 2017 (Session 5), Thursday 26 January 2017

1. EU Migration and EU Citizens' Rights (in private): The Committee will consider a draft report.

2. The implications of the EU referendum for Scotland (not before 10.00 am): The Committee will take evidence, in roundtable format, from— Ian Gatt,

President, Scottish Fishermen's Federation; Claire Slipper, Parliamentary Officer, National Farmers Union Scotland; Helen Martin, Assistant Secretary, Scottish Trades Union Congress; Garry Clark, Head of Policy and Research, Scottish Chambers of Commerce; Alastair Sim, Director, Universities Scotland; Marina Sinclair-Chin, Head of International, Law Society of Scotland; Heidi Vistisen, Member of Scottish Executive Committee, National Union of Students; Fiona Ross, Convener of External Affairs Committee, Scottish Youth Parliament.

3. The implications of the EU referendum for Scotland (in private): The Committee will consider evidence heard earlier in the meeting.

4th Meeting, 2017 (Session 5), Thursday 2 February 2017

1. The implications of the EU referendum for Scotland: Scotland's Place in Europe: The Committee will take evidence from— Professor Anton Muscatelli, Principal and Vice Chancellor, University of Glasgow and Chair of the Standing Council on Europe; Professor Sir David Edward, former Judge of the European Court of Justice, and Dame Mariot Leslie, former diplomat, Members of the Standing Council on Europe;

and then from—

Michael Russell, Minister for UK negotiations on Scotland's Place in Europe, and Ian Mitchell, Deputy Director External Affairs, Scottish Government.

2. The implications of the EU referendum for Scotland (in private): The Committee will consider evidence heard earlier in the meeting.

3. EU Migration and EU Citizens' Rights (in private): The Committee will consider a draft report.

5th Meeting, 2017 (Session 5), Thursday 9 February 2017

1. The EU referendum and its implications for Scotland: the impact of leaving the EU for the Scottish Budget: The Committee took evidence from— Professor David Heald, Professor of Public Sector Accounting, University of Glasgow; Professor David Bell, Professor of Economics, University of Stirling.

2. The EU referendum and its implications for Scotland: the impact of leaving the EU for the Scottish Budget (in private): The Committee considered the evidence heard earlier in the meeting.

6th Meeting, 2017 (Session 5), Wednesday 22 February 2017

1. The EU referendum and its implications for Scotland: The Committee will take evidence from— Rt Hon Greg Hands MP (via video conference), Minister of State for Trade and Investment, UK Government; and then from— Rt Hon David Mundell MP, Secretary of State for Scotland, UK Government.

2. The EU referendum and its implications for Scotland (in private): The Committee will consider evidence heard earlier in the meeting.






8th Meeting, 2017 (Session 5), Thursday 2 March 2017

1. Determining Scotland's future relationship with the European Union (in private): The Committee considered a draft report. Various changes were agreed to and a means by which the views of various Committee members can be included. The Committee agreed to publish the report in due course.
































Annexe C – List of written evidence

The EU referendum and its implications for Scotland list of written evidence received

-  [Anjo Abelaira \(23KBpdf\)](#)
-  [Academy of Medical Sciences \(132KB pdf\)](#)
-  [Argyll and Bute Council \(KB pdf\)](#)
-  [Alzheimer's Research UK \(283KB pdf\)](#)
-  [Angus Council \(234KB pdf\)](#)
-  [Association of Medical Research Charities \(155KB pdf\)](#)
-  [Association of the British Pharmaceutical Industry \(250KB pdf\)](#)
-  [Margaret Beveridge \(67KBpdf\)](#)
-  [Professor Philip Booth \(324KB pdf\)](#)
-  [Justin Borg-Barthet, Maria Fletcher, Clare Frances Moran \(241KBpdf\)](#)
-  [British Academy \(316KB pdf\)](#)
-  [British Medical Association \(270KB pdf\)](#)
-  [Built Environment Forum Scotland \(BEFS\) \(172KB pdf\)](#)
-  [Ian Campbell CMG, Honorary Visiting Professor, School of Law, Liverpool University \(155KB pdf\)](#)
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-  [Children & Young People's Commissioner Scotland \(402KB pdf\)](#)
-  [Church and Society Council \(238KB pd\)](#)
-  [CIH Scotland \(92KB pdf\)](#)
-  [Chartered Institute of Personnel and Development \(CIPD\) \(139KB pdf\)](#)
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-  [Colleges Scotland \(331KB pdf\)](#)
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-  [Culture Counts \(177KB pdf\)](#)
-  [Christian Dadomo and Noëlle Quéniwet, UWE, Bristol \(305KB pdf\)](#)





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-  [East of Scotland European Consortium \(ESEC\) \(184KB pdf\)](#)
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-  [Edinburgh Chamber Of Commerce \(149KB pdf\)](#)
-  [John Edward \(243KBpdf\)](#)
-  [Kirsty Egan \(81KBpdf\)](#)
-  [ENABLE Scotland \(134KB pdf\)](#)
-  [Engender \(152KB pdf\)](#)
-  [Ethnic Minorities Law Centre, and the Perth & Kinross Association of Voluntary Service \(PKAVS\) \(KB pdf\)](#)
-  [Faculty of Advocates \(475KB pdf\)](#)
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-  [Brian Griffiths \(218KB pdf\)](#)
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-  [Andrew Hughes Hallett \(216KB pdf\)](#)
-  [Health and Social Care Alliance Scotland \(99KB pdf\)](#)
-  [The Highland Council \(607KB pdf\)](#)
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-  [David Hogg \(152KB pdf\)](#)
-  [Institute of Chartered Accountants of Scotland \(ICAS\) \(155KB pdf\)](#)
-  [Institute of Physics \(143KB pdf\)](#)
-  [Inclusion Scotland \(150KB pdf\)](#)
-  [Morag Keith \(257KB pdf\)](#)
-  [Lang2Tech \(117KB pdf\)](#)
-  [The Law society of Scotland \(277KB pdf\)](#)
-  [Dr Tobias Lock \(180KB pdf\)](#)
-  [Helen McAvoy \(129KB pdf\)](#)
-  [Macduff Shellfish \(207KB pdf\)](#)
-  [Jane McLaren \(13KB pdf\)](#)
-  [Ian Martlew \(257KB pdf\)](#)
-  [Dr Tom Mathar \(153KB pdf\)](#)
-  [MB and GP \(anonymised\) \(171KB pdf\)](#)
-  [Money Advice Scotland \(155KB pdf\)](#)
-  [Professor Tom Mullen, University of Glasgow and Professor Aileen McHarg, University of Strathclyde \(178KB pdf\)](#)

-  [James Murphie, Advocate and Dr Michelle Weldon-Johns, Lecturers at the University of Abertay \(211KB pdf\)](#)
-  [Museums Galleries Scotland \(71KB pdf\)](#)
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-  [National Federation of Roofing Contractors \(204KB pdf\)](#)
-  [The National Trust for Scotland \(102KB pdf\)](#)
-  [National Union of Students Scotland \(NUS Scotland\) \(179KB pdf\)](#)
-  [North Ayrshire Council \(208KB pdf\)](#)
-  [Oil & Gas UK \(155KB pdf\)](#)
-  [Brendan O'Leary \(302KB pdf\)](#)
-  [Dr Maria O'Neill \(212KB pdf\)](#)
-  [Irene Oldfather and Sir Graham Watson \(87KB pdf\)](#)
-  [Onshore Oil and Gas Industry \(157KB pdf\)](#)
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-  [The Royal Town Planning Institute \(189KB pdf\)](#)
-  [Scotland Food and Drink \(704KB pdf\)](#)
-  [ScotlandIS \(221KB pdf\)](#)
-  [Scottish Association for Marine Science \(225KB pdf\)](#)
-  [Scottish Chambers of Commerce \(39KB pdf\)](#)
-  [Scottish Child Law Centre \(267KB pdf\)](#)
-  [Scottish Contractors Group Secretariat \(148KB pdf\)](#)
-  [The Scottish Council of Independent Schools \(SCIS\) \(KB pdf\)](#)
-  [Scottish Council for Voluntary Organisations \(SCVO\) \(163KB pdf\)](#)
-  [Scottish Credit and Qualifications Framework Partnership \(116KB pdf\)](#)
-  [Scottish Environment LINK \(284KB pdf\)](#)
-  [The Scottish Federation of Housing Associations \(146KB pdf\)](#)
-  [Scottish Fishermen's Federation, Brexit and the fishing industry – the central message \(126KB pdf\)](#)
-  [Scottish Fishermen's Federation, Scottish fishing – synopsis of actions \(229KB pdf\)](#)
-  [Scottish Hazards \(201KB pdf\)](#)
-  [Scottish Natural Heritage \(145KB pdf\)](#)

-  [Scottish Ports Committee \(66KB pdf\)](#)
-  [Scottish Renewables \(232KB pdf\)](#)
-  [Scottish Salmon Producers' Organisation \(194KB pdf\)](#)
-  [Scottish Seniors Alliance \(SSA\) \(154KB pdf\)](#)
-  [Scottish Sports Association \(107KB pdf\)](#)
-  [Scottish Tenant Farmers Association \(77KB pdf\)](#)
-  [Scottish Trades Union Congress \(257KB pdf\)](#)
-  [Scottish Wildlife Trust \(330KB pdf\)](#)
-  [Scottish Women's Aid \(173KB pdf\)](#)
-  [Scottish Women's Convention \(190KB pdf\)](#)
-  [Scottish Youth Parliament \(217KB pdf\)](#)
-  [Shetland Islands Council \(347KB pdf\)](#)
-  [Social Enterprise Scotland \(164KB pdf\)](#)
-  [Dr Nikos Skoutaris \(219KB pdf\)](#)
-  [SportScotland \(74KB pdf\)](#)
-  [Stonewall Scotland \(122KB pdf\)](#)
-  [Strathclyde Centre for Environmental \(1 of 2\) \(276KB pdf\)](#)
-  [Strathclyde Centre for Environmental Law and Governance \(2 of 2\) \(335KB pdf\)](#)
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-  [Richard Talleron, LIFEE \(82KB pdf\)](#)
-  [TBR Global Chauffeuring \(329KB pdf\)](#)
-  [Ben Thomson \(186KB pdf\)](#)
-  [Together: The Scottish Alliance for Children's Rights \(250KB pdf\)](#)
-  [Transform Scotland \(171KB pdf\)](#)
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-  [The Woodland Trust Scotland \(72KB pdf\)](#)
-  [YouthLink Scotland \(229KB pdf\)](#)

Annexe D – List of supplementary written evidence

The EU referendum and its implications for Scotland list of supplementary written evidence received

-  [Law Society Scotland \(127KB pdf\)](#)
-  [Scottish Financial Enterprise \(234KB pdf\)](#)
-  [Charles Goerens MEP \(131KB pdf\)](#)
-  [Professor Damian Chalmers \(National University of Singapore and London School of Economics and Political Science\) \(113KB pdf\)](#)
-  [Professor Eleanor Spaventa, Chair in European Law, School of Law, Durham University \(262KB pdf\)](#)
-  [Scottish Women's Convention \(697KB pdf\)](#)

