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**Culture, Tourism, Europe and External Relations Committee**

# **Brexit - What Scotland thinks: summary of evidence and emerging issues**



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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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**Stuart McMillan**  
Scottish National Party



**Tavish Scott**  
Scottish Liberal  
Democrats





# Glossary of Terms

## Accession Countries

These are the countries which joined the EU since 2004. Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia joined in 2004, Romania and Bulgaria joined in 2007 and Croatia joined in 2013

## 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<sup>i</sup> 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.

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<sup>i</sup> The European Council is the meeting of Heads of State and Government of all 28 EU Member States.

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.

### **A8 Countries**

These are the countries which joined the EU in 2004 excluding Cyprus and Malta

### **A2 Countries**

These are the two countries which joined the EU in 2007 = Romania and Bulgaria

### **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

### **EEA Citizens**

All citizens who hold the nationality of a European Economic Area country meaning either an EU Member State or Norway, Iceland and Lichtenstein

### **EU citizens**

All citizens who hold the nationality of an EU Member State

## **EU28**

This is a reference to the European Union's 28 Member States

## **EU27**

This is a reference to the EU's Member States (excluding the United Kingdom) who will formulate the European Council's position on the negotiations for the UK's departure from the EU

## **EU15**

These are the Members of the European Union before the enlargement of 2004 which saw 10 new countries join the EU. The EU15 are Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and Sweden and the United Kingdom. When talking about EU migrants coming to the UK, the term EU14 might be used

## **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 Economic Area**

The EEA is currently made up of the 28 EU Member States and three other countries, Norway, Iceland and Lichtenstein.

## **European Free Trade Area**

The EFTA is an intergovernmental organisation set up for the promotion of free trade and economic integration. It has four Member States: Iceland, Liechtenstein, Norway and Switzerland.

## **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.

## Convener's Foreword

This second Report from the Committee – **Brexit: What Scotland Thinks** – brings together the views of over 150 different organisations and individuals from across Scotland and beyond. The Report identifies a number of critical questions and emerging issues about the scale of change ahead.

The evidence we heard pre-dates the Scottish Government's publication of its priorities in *Scotland's Place in Europe*. It was also submitted before the Prime Minister made her speech in Lancaster House on 17 January 2017. Both governments have now made their positions known although the ultimate outcome of the negotiations is still unclear.

The enthusiasm with which organisations and individuals responded to the Committee's call for evidence showed the seriousness with which Scotland views the consequences of the Referendum vote in which the UK voted to leave the EU but Scotland voted to remain. It's clear from the views expressed to the Committee that virtually all aspects of our lives in Scotland will be fundamentally affected by the decision to end the UK's membership of the EU. Whether that is the economy in Scotland, key industry sectors, our health and other public services, the Scottish legal system, our environment, citizens' rights or our schools and further and higher education system, all will be fundamentally changed.

The evidence received speaks for itself. It highlights the substantial questions that people have about the impact of leaving the Single European Market and the Customs Union and what will follow, with a strong desire to maximise the ability to trade, to avoid unnecessary tariff and non-tariff barriers, and not to impede the flow of goods through the introduction of new customs restrictions. There are also concerns about how we grow Scotland's population to offset the economic challenges of a disproportionately ageing population and fill skills gaps in our economy, without both retaining existing, and attracting new, people to Scotland from the EU27 and beyond. And people are worried that the rights, standards and norms that currently exist within EU laws relating to, for example, the environment, employment and social rights will be somehow weakened and the enforcement or compliance regimes made less rigorous.

The purpose of this Report was to summarise the views we've heard and set out what Scotland thinks. We will be publishing more reports shortly on issues such as the rights of citizens of other EU member states living and working in Scotland, and of UK nationals living abroad, as well as our priorities for the UK's and Scotland's new trading relationship with the EU after Brexit. Our conclusions on these matters will be published then, having taken the time to reflect properly on what both governments have now said.

For now, we call on all across Scotland to continue to engage with us and have their say, and for both governments to work with us to respond to the views expressed and answer the questions raised. The time for greater clarity is now.

**Joan McAlpine MSP**  
Convener, European and External Relations Committee

## Conclusions & Recommendations

1. The UK's withdrawal from the EU is perhaps the most significant constitutional change facing the UK in decades. Significant challenges for Scotland and the UK lie ahead.
2. To assist with our inquiry into the implications of the result of the EU referendum for Scotland, the Committee issued an open call for evidence in July 2016, shortly after the EU Referendum. With over 150 submissions received to date, from bodies representing a range of interests from agriculture and fisheries, industry, the law, academics, equalities groups, churches, trades unions, charities, local authorities, and youth groups, we are confident that the views expressed to us represent the views from key sectors in Scotland on withdrawal from the EU.
3. Many, but not all, of the submissions expressed a number of significant concerns and highlighted the sense of uncertainty that currently surrounds the debate about when and how the UK will leave the EU, and what follows both for the UK and for Scotland. A smaller number of submissions were more optimistic and set out a number of perceived opportunities.
4. This Report highlights a number of issues in each of the sections of this Report that have emerged from the written evidence. We also set out below a smaller number of overarching themes that span all of the subject issues we have covered in this Report.
5. **The overarching themes common across many of the submissions we received can be summarised thus: money, the law and people.**
6. Firstly, **on money**, in almost every section of this report, it is clear that the European Union's reach is both broad and deep through the wide variety of funding programmes that it provides. Whether that is financial support for regional development or infrastructure from the European Structural and Investment Funds, for innovation, research and development in various industry sectors or through bodies such as the European Investment Bank, the EU plays a hugely significant role in supporting a vast array of projects in Scotland.
7. Many submissions expressed concern about what will happen next, after the welcome, although limited, guarantee that has been provided by the UK Government for certain funding streams through to 2020. In all of the sections covered by this Report, a desire to understand what domestic arrangements will replace these EU programmes, how, and to what level, they will be funded, and who will take the decisions on the replacements comes across very strongly.
8. It is also apparent that, for example, in the areas of less favoured agricultural land or research funding in Scotland's higher education institutions and research communities, Scotland's current share of such EU funds compared to the rest of

the UK outstrips what would be provided if such calculations were made using a population-based formula.

9. The impact of withdrawal from the EU on Scotland's economy, the success of its businesses, its ability to attract inward investment, and on jobs and incomes was a key concern emerging from the evidence. The research produced by the Committee from the Fraser of Allander Institute highlighted the negative long-term implications of withdrawal from the EU for Scotland's economic growth. Businesses expressed concerns about the degree of uncertainty on the UK's future trading relationships. There was little evidence pointing to opportunities for Scotland resulting from withdrawal from the EU, except for perhaps some in the fisheries sector.
10. The second overarching theme is that of **EU law**. The UK Government has announced that it intends to introduce a 'Great Repeal Bill' to repeal the European Communities Act 1972 and provide for a process whereby individual pieces of legislation that are currently derived from EU law can be reviewed, then either retained, amended or repealed.
11. The scale of the challenge associated with this process is vast, with some submissions to us highlighting that over 2,000 EU regulations and over 1,000 EU directives that will need to be reviewed. The House of Commons' Library puts the number of directly applicable EU Regulations at over 5,000. The demands, therefore, that will be placed on both governments and both parliaments will be significant, raising issues of institutional capacity. There are also questions about what legislative route will be used as part of the review process and whether recourse to secondary legislation is preferred in the UK Parliament, thereby raising issues about the role of the Scottish Parliament.<sup>ii</sup>
12. This processes also raises many questions in the period to follow in relation to competences (such as farming and fishing) that were previously decided almost exclusively at the EU level but which are not reserved in schedule 5 of the Scotland Act 1998, as well as whether the overall shape of the devolution settlement in the UK is adjusted.
13. There are also questions surrounding the potential role for, and consent of, the Scottish Parliament to this process, both relating to the consideration of the 'Great Repeal Bill' itself and also during the review process that follows, as well as for any Withdrawal Agreement. These matters are currently being considered by the UK Supreme Court and the Committee therefore makes no further comment on such issues in this Report. The Committee intends to return to this area once the legal process is complete.
14. Many of the submissions received make reference to the perceived value of much of EU law and its enforcement processes, whether this is in the areas of

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<sup>ii</sup> The legislative consent convention does not provide for a role for the Scottish Parliament if changes are made via secondary legislation. The convention applies only to bills.

environmental protection, employment law or human rights and equalities. A number of respondents make it clear that they were concerned that such legislation could be weakened or discarded completely. However, a number of others make reference to possible opportunities to re-think the regulatory environment when the current body of EU law is reviewed. Examples here of the latter include reform of public procurement and state aid, and the VAT regime.

15. There are also a number of concerns expressed in the submissions on the timescale for the process of reviewing EU law and whether there will be a smooth transition to a new regulatory regime and one that avoids a 'cliff-edge' at the end of the process of negotiating Article 50. Affording Scotland's business sector, fishermen and farmers, and the research communities with time to prepare for change and also with a possible transition period comes across strongly in the evidence we have received.
16. What is very clear at this stage in our work is the strong desire for an open, transparent and participative process for any review of the current legislation which involves working closely with the types of organisations and individuals from whom we heard.
17. The final overarching theme we can identify is that of **people**. Whether a submission was highlighting the substantial proportion of employees from other EU nations and the economic contribution they make in many public organisations and private sector firms, or the value of EU27 students attending Scottish further and higher education institutions, we received a significant amount of evidence that stressed the importance of people in the debate. Many of the submissions we received also stressed the broader cultural benefits of EU27 citizens living, working and studying all across Scotland.
18. Scotland faces a more acute demographic challenge than many other parts of the UK both in terms of our disproportionately ageing population and the need for new citizens to boost the number of economic active people. Although taken as a whole, Scotland has fewer EU27 citizens than in rest of the UK (3.4% compared to 4.9% respectively), in many economic sectors (such as our health and social care sector, our university and research community, and in our farming, food, drink and tourism sectors), citizens of other EU member states represent a higher proportion of the workforce than many other parts of the UK.
19. The questions surrounding the immigration regime that may replace the current principal of freedom of movement of EU27 citizens and EEA nationals in either the UK or in Scotland are a dominant theme. The Committee will be providing further detail on these issues in a subsequent Report.
20. Finally, although covered by a further, separate Report from this Committee, the exact nature of the new relationship between the UK and Scotland, and the EU, will significantly influence much of how we proceed over the coming years. What decisions are taken at the conclusion of the Article 50 process and what new trading relationship is agreed will have major ramifications across many of the



issues covered in the various sections of this Report. The question of what form the UK's new trading relationships with third countries takes also raises issues of the potential role for the Scottish Government in being consulted during any new trade negotiations given the possible impact of such agreements on devolved services such as health, education and transport.

## Our View

21. The purpose of the report was—

- To provide a valuable summary of the 150 plus written submissions received by the Committee in response to the Committee's call for evidence, drawing together the views of individuals, bodies and organisations from across Scotland.
- To ensure that those who have engaged with the Committee by submitting written evidence feel that their submissions have been of value to the Committee and have informed the scrutiny of the implications of withdrawal from the EU.
- To highlight what those submitting evidence consider to be the key issues and an evidence base on key policy areas. A list of emerging issues for each policy area is identified.
- To reach some overarching conclusions on the implications of Brexit in relation to money, the law and people

22. The Committee is gratified with the level of engagement that has taken place with our inquiry to date and we are grateful to all of those who have provided evidence to us – providing, as it does, a detailed insight into what individuals, bodies and organisations across Scotland think about Brexit and its implications for Scotland.

23. As we said at the outset, this Report intended to provide a summary of 'what Scotland thinks'. This Report is therefore not the place for the Committee to make any definitive conclusions and recommendations on Scotland's preferred way forward. We also want to take time to assess the Scottish Government's recently published views and the comments made by the Prime Minister in her speech of 17 January 2017, and to take evidence on these. The Committee intends to publish a number of more detailed reports in the near future on issues such as our views on the different possibilities for a new trading relationship with the EU after Brexit and the rights of EU27 citizens in the UK and those of UK nationals in the EU27.

24. The Committee recommends that both governments give serious consideration to the themes that are emerging in this Report and the questions that need addressed, and work closely with this Committee and others in the Scottish Parliament to enable us to fulfil our scrutiny role.
25. The Committee welcomes the work already underway in the Scottish Government in relation to the key issues for Scotland resulting from Brexit which will need to be taken forward irrespective of the outcome of any negotiations between the Scottish and UK governments on the way forward. We look forward to further updates from, and engagement with, the Scottish Government on these matters.
26. As the process of withdrawal of the UK from membership of the EU has yet to formally start, we call upon all organisations and individuals in Scotland to build on the encouraging range of views we have heard on Brexit so far and have their say.

# Introduction

## Background

1. Following the result of the EU Referendum on 23 June 2016, the Committee launched an inquiry entitled [The Implications of the EU Referendum for Scotland](#). The purpose of the inquiry is to consider—
  - the implications for Scotland of the decision in the UK referendum to leave the EU;
  - the process by which the UK's future relationship with the EU is decided and how Scotland's interests are taken into account;
  - the implications for Scotland of the future relationship with the EU proposed by the UK Government;
  - the European and domestic processes by which the UK will withdraw from the EU and how Scotland's interests are represented in those processes
2. The Committee agreed to focus this Inquiry around **six broad themes** (effectively mini-inquiries), namely:
  - *Theme 1* – Scotland's future trade relationship with the EU: membership of the single market, a bilateral relationship, World Trade Organization rules;
  - *Theme 2* – Intergovernmental relations and the Scottish Government's role in negotiations
  - *Theme 3* – The impact of leaving the EU for the Scottish budget and expenditure plans
  - *Theme 4* – Options for Scotland's future relations with the EU and its Member State
  - *Theme 5* – The rights of EU27 Citizens in the UK and UK nationals in the EU
  - *Theme 6* – The domestic process of withdrawing from the EU
3. As part of the Committee's inquiry, it launched an **open call for evidence** in July 2016 and, at the date of publications of this report, has received over 150 submissions. This substantial evidence base has informed the Committee on the views of a range of organisations from sectors across Scotland on the implications for Scotland of the decision to withdraw from the EU.

## This Report

4. This Report summarises the views expressed to us in these submissions and draws out a number of emerging issues. **The Committee intends to publish further reports which will draw conclusions and make recommendations in relation to the key themes of the inquiry.**
5. This Report summarises the evidence received on a subject-by-subject basis, covering policy areas such as justice and home affairs, the economy, agriculture and fisheries.



# Justice and Home Affairs

## Policy background<sup>1</sup>

6. The EU's justice policies include both civil justice and police and criminal justice (PCJ). They are part of the EU's wider Justice and Home Affairs (JHA) programme, which includes asylum policy, border controls and immigration.
7. The EU's current civil justice policies cover a range of matters which have cross-border or internal market implications including—
  - child and family law with a cross-border dimension (e.g. access and custody; parental responsibility; and maintenance);
  - rules about which courts have jurisdiction for civil and commercial cases (e.g. rules which prevent parallel proceedings in more than one jurisdiction or Member State); and
  - reciprocal rules on the enforcement of national court judgments.
8. The EU's current PCJ policies cover a range of matters including:
  - EU agencies created to improve criminal justice and law enforcement within the EU such as Eurojust and Europol;
  - Rules which allow for the exchange of information on previous convictions, missing or wanted persons and to support criminal investigations;
  - The mutual recognition by Member States of other Member States' judicial decisions (this includes the European Arrest Warrant – EAW - which provides for a fast track extradition process between Member States);
  - Rules allowing for the freezing or confiscation of criminal property in one Member State where the alleged criminal is being prosecuted in another Member State;
  - Minimum rules for serious crimes with a cross-border dimension (e.g. money laundering); and
  - Minimum standards for availability of procedural rights, such as interpretation and translation.

## Lisbon Treaty opt-ins and opt-out

9. As a result of the 2007 Lisbon Treaty, which entered into force in December 2009, the UK is only bound by new EU civil and PCJ justice policies if it chooses to opt in.

10. The Lisbon Treaty also gave the UK an option, within a five year transitional period, to opt out of all (approximately 130) PCJ measures adopted before that Treaty entered into force. In July 2013, the UK Government notified the EU that it wished to exercise this block opt-out, although it simultaneously negotiated individual opt-ins to 35 pre-Lisbon PCJ measures on the basis that these were in the national interest.

### **Potential impact of withdrawal from the EU**

11. It is currently unclear what form withdrawal from the EU will take (and what sort of relationship the UK will be able to negotiate with the EU and/or individual Member States). Arguments have been made that leaving the EU could have a negative impact on criminal justice and policing in the UK, in particular in relation to:
  - the mutual recognition of criminal judgments and judicial decisions (especially the EAW);
  - the exchange of information between Member State law enforcement agencies and judicial bodies; and
  - the UK's participation in EU agencies such as Europol and Eurojust.
12. Others have, however, questioned the importance of the EU agencies and have argued that the impact will be minimal as it is in the mutual interest of both the UK and the EU to continue cooperation in this field.
13. Arguments have also been made that leaving the EU could have a negative impact on commercial matters (including dispute resolution) in the UK; and on child and family law with a cross-border element. Others have, however, argued that it may be possible to negotiate new agreements, or to fall back on other existing treaties or involvement in other international organisations (e.g. the Hague Conference on Private International Law).
14. Withdrawal from the EU will have a specific impact on Scotland's separate legal system with its own civil and criminal law, as well as its own courts, legal profession, prosecution service and police force. In addition, most PCJ matters are devolved under the Scotland Act 1998, as are most aspects of civil law.
15. Since Scotland has a separate legal system, specific Scottish issues will arise in relation to negotiations with the EU in the field of justice. Although the international relations are reserved to the UK Government and Parliament under the Scotland Act, the Scottish Government has responsibilities for observing and implementing international obligations, including EU legislation.
16. There are therefore arguments that there might be some scope under the current devolution settlement for certain forms of Scottish-specific cooperation in the field of EU justice (at least as regards non-reserved matters). However, there is currently little clarity on this point.

## Summary of evidence received

17. The evidence on JHA issues covered Scotland's future relationship with the EU on JHA issues; the implications of the various alternatives to EU membership for JHA issues; the legal considerations relating to the withdrawal process; and the position of EU citizens in the UK.

### Scotland's future relationship with the EU on JHA issues

18. Some respondents, such as the Law Society of Scotland and a joint submission from Professors Janeen Carruthers and Elizabeth Crawford of the University of Glasgow considered that a key benefit of EU membership was the harmonisation of rules and procedure across EU Member States. Professors Carruthers and Crawford argued—

” The construct of EU harmonised rules enables Scottish businesses and individuals to know where they may pursue legal proceedings, and be pursued, among the legal systems of the EU; further, to anticipate which country's law(s) will determine the dispute; and to enjoy the benefit of certain common procedural rules. Upon obtaining a judgment from the court of one EU Member State, the enforcement thereof in another Member State is greatly facilitated by the regulations currently in place. This basic system of reciprocity operates not only in the civil and commercial law sphere, but also in family law matters such as divorce and parental responsibility orders.<sup>2</sup>

19. The Commissioner for Children and Young People Scotland (“the Commissioner”), Tam Baillie, noted, for example, that the EU legislation for cross-border crimes, such as child pornography and human trafficking which harmonises legislation across the Member States.<sup>3</sup> The Commissioner also noted the benefits of EU initiatives, including Europol's European Cybercrime Centre, the European Commission's Strategy for a Better Internet for Children, the Missing Children Hotline and the Daphne Programme. The Commissioner considered that crucial child protection infrastructure is at risk following withdrawal, including the EU's law enforcement agency (Europol), the Judicial Cooperation Unit (Eurojust), the European Criminal Records System and the European Arrest Warrant.

20. The Church of Scotland's Church and Society Council also considered that there were key areas where EU coordination and cooperation was important. It stated—

” There are areas in which cooperation is required at European level, including policy around refugees, human rights and environmental protection. International judicial cooperation is an important tool in combating organised crime and human trafficking, it is necessary that arrangements of this kind, currently provided through Eurojust, can continue.<sup>4</sup>

21. Money Advice Scotland explained how harmonisation has benefitted EU consumers, noting that many consumer rights have a basis in EU law and the EU has also developed a common definition of consumer vulnerability.<sup>5</sup> It was concerned that rights of UK citizens could be lost following withdrawal from the EU—

” Many consumer rights in the UK also have a basis in EU law. With that in mind, the Committee may wish to seek assurances from the UK Government that there are no plans afoot to remove these rights from UK citizens in the event of EU withdrawal.

We would also note that the impact of membership within the EU often goes beyond legislation. For example, the European Commission was influential in defining consumer vulnerability.<sup>6</sup>

22. The Commissioner concurred with the view that the EU has brought benefits for consumers, noting that children benefit from EU legislation on TV advertising, marketing of products that could be mistaken for foodstuffs, toy safety, the nutritional safety and compensation of infant formula and data protection.<sup>7</sup>
23. The Chartered Institute of Personnel and Development (CIPD) and the Commissioner were supportive of the impact that the transposition of EU legislation had had on UK employment law, including the Working Time Directive and the Transfer of Undertaking and Protection of Employment regulations.<sup>8</sup> The CIPD also noted the importance of EU legislation in informing employment law and policy on issues including maternity leave, holiday pay entitlement, collective redundancy consultation and rights and insolvency. CIPD said—

” The impact of European laws and regulations in the workplace is significant and CIPD welcomes the clarity which these regulations provide. Complex issues like Working Time have been standardised and regulated on a European basis by the European Working Time Directive (WTD) and the Transfer of Undertaking and Protection of Employment (TUPE) regulations are at the heart of employment law. EU rulings on issues such as maternity leave, holiday pay entitlement, collective redundancy consultation and rights on insolvency are also at risk. These laws and rights all help to create fairer and more engaged workplaces, and provide clarity and continuity for employers. With Brexit all of these regulations, directives and applications of case law will need to be reviewed.<sup>9</sup>

### **The implications of the various alternatives to EU membership for JHA issues**

24. The potential alternatives to EU membership and the impact that they would have in relation to JHA issues and Scotland’s justice system was also addressed in some written submissions.
25. Dr Tobias Lock of the University of Edinburgh and the Law Society of Scotland explained the different models that future EU-British relations could follow



(Norwegian, WTO, Swiss, Turkish, Canadian, and “reverse Greenland”). Dr Lock noted that policy areas other than trade, such as justice and home affairs, the Common Foreign and Security Policy, research funding and regional funding schemes, will depend upon separate arrangements.<sup>10</sup> Dr Lock explained that “all of them [models for bilateral relations] require some degree of negotiation, so that it is impossible to predict the exact contours that the UK’s relationship with the EU would take even if one of the models is adopted”.<sup>11</sup> In this regard, the Law Society of Scotland considered “it is impossible to identify which relationship would be ‘best’ for Scotland as each option has political, legal, social and economic advantages and disadvantages”.<sup>12</sup>

26. Dr Lock considered that if no specific provision is made for Scotland in the EU-UK negotiations, Scotland could attempt to mirror or retain as much EU legislation as possible.<sup>13</sup> This would involve Scotland being part of the EU-UK trade settlement whilst retaining additional EU policies and standards. Dr Lock noted that such an arrangement would require amendments to the devolution settlement. He said—

” If no specific provision is made in an EU-UK deal, Scotland could attempt to adopt internal measures to mirror EU legislation. There would seem to exist practical limits to this, however. First, Scotland only has limited powers under the devolution settlement. It cannot, for instance, unilaterally replicate the EU’s data protection rules should the UK’s standards on this be less strict in the future. The same goes for employment rights or immigration policy or trade policy. Second, even if Scotland is capable of mirroring EU rules, this does not automatically mean that EU Member States will reciprocate. For instance, if Scotland is formally outside the EU (and the single market), but is willing to accept EU product standards as equivalent to Scottish standards (assuming that there would be such a thing), this does not automatically result in Scottish products being recognised in the EU. The same goes for professional qualifications or indeed the right of Scots to work in the European Union. Moreover, it would seem unlikely that Scotland would want to replicate all EU rules without further scrutiny in the absence of reciprocal promises from EU Member States.<sup>14</sup>

27. Dr Lock noted that an alternative solution could consist of enabling Scotland to keep as much EU law as possible in light of the UK’s future relations with the EU. He stated that this might require changes to the devolution settlement. For instance, it is conceivable that the Scottish Government and the UK Government might have differing policy positions on EU legislation on workers’ rights and the Scottish Government could seek the devolution of employment law in order to continue to reflect EU legislation.

### **The withdrawal process: legal considerations and domestic implications**

28. There was also a focus in the written submission on the implications of leaving the EU for the body of law in the UK that derived from EU legislation. A key concern

for some respondents, such as the Faculty of Advocates and the Law Society, was that withdrawing from the EU will remove a significant source of law from the UK's legal systems.<sup>15</sup> The Law Society cited the comments of Denning MR in this regard, who observed in *Bulmer v Bollinger* [1974] 2 All ER 1226—

” But when we come to matters with a European element the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. Parliament has decreed that the Treaty is henceforward part of our law. It is equal in force to any statute”.<sup>16</sup>

29. The Law Society of Scotland estimates that 2,029 regulations and 1,070 directives will need to be reviewed following withdrawal from the EU.<sup>17</sup> In its briefing paper on the subject, the House of Commons' Library uses a figure of around 5,000 EU regulations as directly applicable in all EU Member States.<sup>18</sup>
30. The Faculty of Advocates agreed that European legislation is “woven into the fabric of law in the UK” but it considers that it has not yet been possible to “...arrive at an uncontested estimate of what proportion of ‘UK’ law derives from the EU”.<sup>19</sup>
31. Many respondents considered that the current volume of EU law in the UK presents a risk of significant legal uncertainty in the post-withdrawal period.<sup>20</sup> The Law Society of Scotland considered this issue would be difficult to address before withdrawal negotiations are concluded because “it is likely that much of what the UK decides to retain will depend on the outcome of the withdrawal agreement and a new relationship between the UK and the EU”.<sup>21</sup>
32. The Law Society of Scotland, the Faculty of Advocates and Dr Lock agreed that transitional legislation would therefore be essential to ensure a ‘soft landing’ and stability in the period immediately following withdrawal.<sup>22</sup> It was proposed that such legislation should provide that EU law in force at the date of withdrawal will remain in force until repealed or replaced. The Law Society of Scotland commented that this approach would ensure “...there is more time for consultation and proper scrutiny by the UK Parliament and the Scottish Parliament, the Welsh and Northern Ireland Assemblies”.<sup>23</sup>
33. Respondents also commented on the domestic implications for decisions on how to deal with remaining EU law. Dr Lock noted that the process of reviewing the existence of EU law in the post-withdrawal period may give rise to important constitutional considerations about the circumstances in which a legislative consent motion will be required.<sup>24</sup> Some respondents, such as The Royal Society of Edinburgh, also observed that withdrawal from the EU will require changes to the Scotland Act, particularly regarding legislative compatibility with EU law in Section 29 and executive competence in Section 57.<sup>25</sup>
34. The Law Society of Scotland and Faculty of Advocates also noted that there will be a significant structural reassignment of the role of legal institutions in the UK in light of the fact that the Court of Justice of the European Union's decisions will

become persuasive rather than binding.<sup>26</sup> In this regard, the CIPD highlighted areas of law which are informed by EU rulings that it considers to be particularly important, such as maternity leave, holiday pay entitlement, collective redundancy consultation and rights on insolvency.<sup>27</sup>

35. The Law Society of Scotland also commented on how the negotiations should be conducted, advocating a “Whole of Government” approach that would ensure full engagement with the devolved administrations. The Law Society of Scotland explained that a revision of the October 2013 Memorandum of Understanding and Supplementary Agreements between the UK Government and devolved administrations would be required to facilitate this approach.<sup>28</sup>
36. Finally, on a broader matter, the Commissioner for Children and Young People noted that sixteen and seventeen year olds were not enfranchised in the referendum and yet the result will have ‘far reaching implications for this generation’.<sup>29</sup> The Commissioner explained how the EU has progressed recognition of the rights of children and made this a key policy priority. The Commissioner noted that the UK Government secured an opt-out from national application of the EU Charter of Fundamental Rights and expressed concern that “this could be the direction of travel” for the recognition, promotion and protection of children’s rights in the UK going forward.<sup>30</sup> The Commissioner encouraged the Scottish Government to ensure that future negotiations “reinforce these values, particularly on children’s rights” and to consult with young people on the implications of Brexit going forward.<sup>31</sup>

### The position of EU citizens in Scotland

37. A further issue emerging from evidence was that of EU citizens in Scotland following withdrawal from the EU. The Law Society of Scotland and Dr Lock noted that the position of EU27 citizens in Scotland would depend on the outcome of the withdrawal negotiations.<sup>32</sup> On the issue of acquired rights generally, the Law Society of Scotland explained that—

“... the EU Treaties make no specific mention of acquired rights nor are there any provisions which seek to protect acquired rights, notwithstanding the fact that EU law and the Treaties give individual rights”.<sup>33</sup>

38. In this regard, the Law Society of Scotland explained that the Vienna Convention on the Law of the Treaty stipulates that parties to a treaty are its signatories (i.e. the states), rather than the citizens of those states. It noted that clarity was needed from the UK Government as to the status of EU27 citizens after withdrawal has taken place.

### Emerging issues

39. From the evidence received to date, as summarised above, a number of emerging issues can be identified. These include—

- the extent to which, if at all, the UK's future relations with the EU will enable the UK and Scotland to continue to co-operate on initiatives such as the European Arrest Warrant, the mutual recognition of criminal judgments and judicial decisions and to be able to engage fully with bodies such as Europol and Eurojust to share information on policing or security matters;
- whether any new agreements can be put in place between the UK and the EU which enable, for example, commercial matters (including dispute resolution) in the UK, or in child and family law with a cross-border, element to continue;
- the extent to which, given our separate legal system, specific Scottish issues will be fully recognised to the satisfaction of the Scottish Parliament in any new agreement between the UK and the EU on justice and home affairs issues;
- what will happen to the rights of EU27 citizens in Scotland in terms of those they currently enjoy as part of the EU's framework of employment, parental and equalities law. This could include consideration of the merits or otherwise of a change to the devolution settlement in these areas at the point that these competences are returned to the UK after withdrawal from the EU;
- how the current volume of EU law in the UK will be dealt with given the risk of significant legal uncertainty in the post-withdrawal period. This will include consideration of the detail of any proposed 'Great Repeal Bill' and its implications for Scotland;
- what approach legal institutions in the UK may take in light of the fact that the Court of Justice of the European Union's decisions will become persuasive rather than binding;
- what status EU27 citizens currently residing in Scotland will have after the UK's withdrawal from the EU in terms of their ability to live and work here, and their acquired rights, along with consideration of similar issues for Scots living and working in other EU27 countries.

# Further and Higher Education, Schools & Skills

## Policy background<sup>34</sup>

40. The outcome of the referendum on whether the UK should remain in the EU has implications for various aspects of further and higher education in Scotland.

### Inward Student Mobility

41. EU27 citizens comprised 8% of the undergraduate student population at Scottish Higher Education Institutions (HEIs) in academic year 2014-15.
42. EU27 citizens at Scottish HEIs taking a full-time undergraduate programme are entitled to free tuition. Depending on exit negotiations, it may be that EU27 citizens will not be entitled to free tuition at Scottish HEIs in the future. While this might represent financial savings for the Scottish Government it could reduce significantly the number of EU27 citizens that choose to study in Scotland. This has implications for the cultural diversity of Scottish HEIs and for the Scottish economy, with Scotland losing the spending power of these students and their participation in the economy both during and after their studies.

### Erasmus

43. The Erasmus Programme is an EU-funded exchange student programme that has been in existence since the late 1980s. Its purpose is to provide foreign exchange options for students from within the European Union, with tuition fees and some living cost support provided.<sup>35</sup> Over 1,600 students from Scottish HEIs took part in a study abroad opportunity through Erasmus in academic year 2014-15. Advocates of the Erasmus programme highlight the opportunities it offers for enriching learning, enhancing employability and promoting greater understanding of different people and cultures
44. Erasmus programme countries include the current EU member states, the non-EU members of the EEA (i.e. Iceland, Liechtenstein and Norway), the Former Yugoslav Republic of Macedonia and Turkey. If, in the future, the UK was to leave the EU but remain an EEA member, it is possible that access to Erasmus could be maintained as a programme country on the basis of making financial contributions.

### Workforce mobility

45. EU membership brings with it free movement rights for workers. EU27 citizens represented almost 15% of the academic staff at Scottish HEIs in academic year 2014-15. Depending on the outcome of exit negotiations, EU27 citizens may in future need visas to work in the UK.

### Research funding

46. The current European Commission research programme, Horizon 2020, had allocated almost €202 million of funding to HEIs and research institutes in Scotland by 27 July 2016.
47. Soon after the referendum result, anecdotal evidence started to emerge that UK academics were either being removed from Horizon 2020 funding bids or asked to step down from the lead role in such bids. The European Universities Association has stated publicly its support for continuing to work with the UK on research in future.
48. Depending on the outcome of exit negotiations, there is still potential to have access to EU research frameworks. However, without EU membership, the UK will no longer have any influence over the way that research funding is allocated.

### Structural Funds

49. Another important source of EU funding comes from European Structural and Investment Funds (ESIF). Some of this funding is directed at priorities such as tackling youth unemployment, improving education and building business innovation. Universities Scotland has highlighted its concern about the implications from loss of access to this funding.

### Future Options

50. In the wake of the referendum, HEIs across the UK are pursuing, or being encouraged to pursue, a variety of policy options, including:
  - Exploring opportunities for campus development within other EU member states as a means of maintaining student and staff and their links to, and relationships with, UK HEIs.
  - Strengthening bilateral arrangements between the UK and HEIs in EU countries.
  - Continuing the focus on attracting international students to study in the UK and also expanding delivery of UK higher education overseas.
  - Develop a formal “Anglosphere” in which the UK builds on its current close working relationships with the USA, Canada, Australia and New Zealand.
  - Maintaining and enhancing international research collaborations.
  - Encouraging increased public investment in the UK research base.
51. Given that exit negotiations have not formally begun, it is not clear what the outcomes will be for the UK. It is, therefore, not possible to say for certain whether the policy options set out above could effectively replace the current ‘mixed economy’ offered through EU membership alongside other international collaborations.



## Summary of evidence received

52. The evidence received on further and higher education, schools and skills focused on the value of Scotland's relationship with the EU; the domestic implications and risks for the education and skills sector of withdrawing from the EU, the future relationship with the EU; and the position of EU staff and students in Scotland.

### The value of Scotland's relationship with the EU

#### Funding

53. Respondents from the UK's further, higher education and skills sectors strongly agreed that EU funding has contributed significantly to the sector's growth and international reputation.<sup>36</sup> The EU has a number of funding programmes that are relevant to the sector and many of these were highlighted in submissions, including: Horizon 2020 (a research and innovation programme worth €80 billion), Erasmus+ (a programme worth €14.7 billion to support education, training, youth and sport in Europe), as well as other funding from the European Research Council, the European Regional Development Fund and the European Structural Investment Fund. Many written submissions highlighted UK institutions' success in securing funding under these programmes.
54. In its submission to the Committee, The British Academy said "In humanities in 2017-2015, UK based-researchers won just over a third of all total funding that was available in the humanities and social sciences"<sup>37</sup> and that "The UK won 15.5% of all funding available under FP7 [The Framework Programmes were the precursor to the Horizon 2020 programme] and the UK is winning 15% of all funding available under Horizon 2020."<sup>38</sup> The Academy also noted that "Since the European Research Council was established in 2007, Scottish institutions have won 12% of the total grant value UK-based researchers have won."<sup>39</sup>
55. For the British Medical Association, a potential loss of EU funding was also an important issue. It noted that "Scotland's universities receive £88.8 million of research funding a year from EU sources."<sup>40</sup>
56. Universities Scotland also highlighted the importance of specific types of EU funding to Scotland such as EU Structural and Investment Funds, noting that "Scottish Higher Education Institutes currently receive around £5.5 million a year from European Regional Development Funds and about £1 million in European Social Funds."<sup>41</sup>
57. Submissions from stakeholders also explained how EU investment in the UK education and skills sector benefits the wider community and region, particularly in underdeveloped urban and rural areas. As the West of Scotland College Partnership explained, this is because the EU has funding programmes for regional development are specifically aimed at reducing economic disparities across and within Member States.<sup>42</sup>

58. The University of Strathclyde made the following observation in relation to the wider impact of EU funding in the sector—

” The importance of EU membership, in terms of the benefits derived from people, investment, and our research profile and international reputation go well beyond those which are directly measureable as impacts on the University – they have a real and irreplaceable social and economic impact on Glasgow, Scotland and beyond.<sup>43</sup>

59. In specific academic disciplines too, some submissions noted that there was a potentially disproportionate effect in Scotland of a withdrawal of EU funds. For example, the Institute of Physics noted that Scottish physics departments receive a higher proportion of research grants and contracts from EU sources than physics departments in each of the other UK nations, but this is not the case for comparable STEM subjects. It also stated that Scottish physics departments receive higher proportions of undergraduate, masters and PhD students from non-UK EU countries than physics departments in each of the other UK nations.<sup>44</sup>
60. The University of Highlands and Islands noted that the Highlands and Islands have been designated by the EU as a ‘Transition Region’ due to the economic challenges the region faces in terms of its remoteness, geography and sparse population.<sup>45</sup> The University has played a pivotal role in attracting investment from the European Structural Investment Fund into the region because the University ‘...remains the region’s highest priority in pursuit of a sustainable economic model’.<sup>46</sup> The University of Highlands and Islands explained that this funding has contributed to the roll out of superfast broadband and brought new skills, employment and other development opportunities to the region.

### Free movement of people

61. Some respondents emphasised the benefits that the free movement of people has brought to the Scottish school system. It was reported, for example, that a study by BiGGAR Economics found boarding pupils contribute £29.8 million to the Scottish economy.<sup>47</sup> The Royal High School Parent Council noted Erasmus+ provides valuable opportunities for teachers to undertake professional development abroad.<sup>48</sup> In this regard, Richard Tallaron explained that he and Elise Gay co-founded LFEE Europe in 1999, a teacher training centre in Edinburgh that facilitates immersion courses in France and Spain.<sup>49</sup> Mr Tallaron explained how the EU funds the courses his company provides and that these courses are designed to support teachers implementing the Scottish Government 1+2 policy on languages.
62. The benefits of the free movement of people for Further and Higher Education Institutes were also illustrated in the submissions received. For example, Colleges Scotland noted that Erasmus+ is the single largest source of funding that enables UK students to study or work abroad.<sup>50</sup> Its submission stated—



” 1,600 Scots go abroad to European countries with Erasmus every year. Erasmus is an EU student exchange programme and the single largest source of funding for Scottish/UK students wanting to study or work abroad.

Numbers of Scottish students taking up opportunities for outward mobility through Erasmus are going up. They have increased by 50% over the last seven years. The opportunity for student exchange within Europe enriches the learning experience, enhances employability and promotes greater understanding and respect of different people and cultures.<sup>51</sup>

63. The University of Edinburgh explained how the Erasmus+ programme facilitates a valuable cultural exchange. It said—

” EU students contribute to the diversity and richness of UK students’ experiences at university, and the wider community benefits from the different cultural perspectives these students bring with them.<sup>52</sup>

64. Peter Dayan, the Head of Department of European Languages and Cultures at the University of Edinburgh, explained that all students in his department spend a year abroad in order to fulfil course requirements.<sup>53</sup> The University of Strathclyde was also supportive of the Erasmus+ programme, noting that over 300 of its students and staff participated in Erasmus+ exchanges in the 2015-2016 academic year.<sup>54</sup>
65. The submissions also highlighted the extent to which the free movement of people has enabled many skilled workers to contribute to the UK higher education sector. The University and College Union reported that approximately 16% of staff in Scottish universities and higher education institutions are EU citizens and the figure is higher (24%) for research-only positions.<sup>55</sup> The sentiment expressed by respondents in the education and skills sector towards the contribution of EU staff and exchange programmes was overwhelming positive. The British Medical Association considered that the free movement of people has helped the UK to cement its position in “the vanguard of European medical research”.<sup>56</sup> The British Academy explained that “UK universities score highly in international rankings not least because they have been able to draw on an international talent pool”.<sup>57</sup> The University of Highlands and Islands commented that Erasmus+ is “...a key aspect of our development as an outward-looking, international organisation” and noted that “...it has a significant impact on participating students and staff”.<sup>58</sup>

### Research collaboration and knowledge exchange

66. Many respondents considered that EU funding and the free movement of people has also facilitated greater research collaboration and knowledge exchange between UK and European researchers.<sup>59</sup> Universities Scotland explained that collaboration is very important to the education and skills sector, as studies have shown that collaborative research on an international level is “1.4 times more impactful than research within national boundaries”.<sup>60</sup> The University of

Strathclyde considered this is a key reason why university rankings often focus on the proportion of academic staff who are international.<sup>61</sup>

67. The high level of existing collaboration facilitated by the EU in the education and skills sector was demonstrated in many examples provided by respondents. The University of Strathclyde explained that the EU's Framework Programme 7 (FP7) grants had funded 127 projects involving partnerships with over 900 organisations across Europe and the world.<sup>62</sup> It noted that a further 58 projects funded by Horizon 2020 to date have involved over 430 organisations.<sup>63</sup>
68. The Digital Preservation Coalition also noted that its field, digital preservation, "...is generally recognised as a global challenge".<sup>64</sup> In this regard, the Digital Partnership Coalition explained that it has "...benefitted at large from partnerships through and with the European Union" and the EU "has been a driving force for research and development in this field".<sup>65</sup>

### **The withdrawal process: domestic implications and risks for the education and skills sector**

#### **Immediate issues**

69. A key concern for some respondents was the potential loss of EU funding following withdrawal. The UK Treasury's commitment to underwrite the payment of funds won from the EU on a competitive basis, even when specific projects continue beyond the UK's withdrawal from the EU, was noted by respondents and welcomed.<sup>66</sup> However, further clarification was sought on the legal and practical implications of this commitment<sup>67</sup> and whether the guarantee will extend to research by not-for-profit agencies outside the higher education sector.<sup>68</sup>
70. Respondents also reported concerns about the immediate impact of the EU referendum on British academics' funding opportunities and international standing.<sup>69</sup> In this regard, the University and College Union noted anecdotal evidence of academics in Scotland being pressured to put their names further down the list of collaborating institutions so as not to harm the project's prospects of attracting funding.<sup>70</sup> The British Medical Association also cited anecdotal evidence of non-UK members questioning the UK's leadership of international research networks as a result of its intention to withdraw from the EU.<sup>71</sup>
71. Concerns were also raised about maintaining and attracting EU staff to academic institutions in the UK. The University and College Union noted that some Scottish institutions are providing free immigration advice to staff in response to concerns about the immigration status of EU staff, which it argued "shows the scale of the problem".<sup>72</sup> The British Academy noted it was aware of researchers turning down jobs in the UK or being offered jobs outside the UK following the referendum result.<sup>73</sup> In this regard, the University of Highlands and Islands noted it has already experienced an adverse impact of the referendum result on staff and students considering places at its institution.<sup>74</sup>

72. Many respondents were also concerned about the immediate impact of EU student enrolment on UK universities.<sup>75</sup> Universities Scotland explained that EU students in Scotland contribute €17 million a year in fees and €156 million in off-campus expenditure.<sup>76</sup> It was noted that the Scottish Government and Universities Scotland have made a joint statement confirming that EU27 citizens already in the higher education system, and those entering in August 2016, will be eligible to receive tuition support from SAAS for the duration of their course.<sup>77</sup> However, many respondents considered that the position in regards to undergraduate programmes from 2017 needs to be clarified urgently, as the admissions cycle is already open and prospectuses have already been published stating that undergraduate programmes for students of EU-domicile are free.<sup>78</sup> In this regard, the University of Edinburgh and Colleges Scotland suggested that transitional arrangements should be implemented,<sup>79</sup> as institutions will be contractually obliged to charge students the fees advertised for the duration of their course. The British Medical Association also considered any uncertainty over fees and visa requirements may have a particularly negative impact on longer degree programmes and professional qualifications, such as medicine.<sup>80</sup>
73. Small for-profit and non-profit enterprises that responded to the call for views, such as the Digital Preservation Coalition and LFEE Scotland, considered that the viability of their business in Scotland is severely at risk due to their reliance on EU funding and the free movement of people.<sup>81</sup> The Digital Preservation Coalition reported that its Board is considering options to leave the UK and the LFEE was concerned that it may not be able to continue to operate if the UK's participation in Erasmus+ is discontinued.
74. YouthLink Scotland and the Commissioner for Children and Young People Scotland considered it is important that young people contribute to the negotiations and agenda for withdrawal.<sup>82</sup> In this regard, YouthLink Scotland noted that the Scottish Government's Standing Council on Europe has no youth members. It considered that having young people directly represented on the Standing Council in this way would be a positive step.<sup>83</sup>

### Longer-term issues

75. In the longer-term, respondents were concerned about a potential short-fall in domestic funding compared to the projected expenditure for the EU's funding programmes.<sup>84</sup> In this regard, the British Academy noted that the UK's gross domestic expenditure on research and development as a percentage of gross domestic product (1.85%) is below the EU average (2.02%), including that spent by Germany (2.82%) and France (2.27%).<sup>85</sup> It therefore urged the UK Government to commit to funding at, or above, the EU average.
76. Many respondents were particularly concerned that the UK's participation in Erasmus+ programmes may cease, which would impact negatively on UK students and professionals' opportunities to develop foreign language skills and international experience.<sup>86</sup> In this regard, the British Academy noted that its

research found graduates and future executives who do not speak a foreign language or lack international experience may be disadvantaged in the jobs market.<sup>87</sup> The British Academy considered this may impact on UK's researchers' ability to participate in research collaboration.<sup>88</sup>

77. Indeed, respondents identified wider concerns about opportunities for UK researchers to engage in research collaboration as another major risk of withdrawal.<sup>89</sup> The British Academy considered that that research collaboration with partners in Europe “is critical to the UK's future research excellence.”<sup>90</sup> It explained that currently 60% of the UK's internationally co-authored research papers are with EU partners and that this benefits the UK because evidence of collaboration in research also increases its impact.<sup>91</sup> The British Academy considered that this 60% figure should be used to benchmark the UK's participation in research collaboration going forward. However, the University of Edinburgh explained why current levels of research collaboration may be difficult for UK researchers to maintain in the event of withdrawal. It said that—

” Even if all displaced Horizon 2020 funding is fully replaced and ring fenced, it is possible that UK researchers will be still be disadvantaged if industry partners perceive that their contributions are better leveraged through Horizon 2020, with a consequent net drain of industrial sponsorship from UK universities in favour of their European rivals.<sup>92</sup>

78. It was reported that the UK's withdrawal from the EU may also result in some research facilities leaving the UK. The Digital Preservation Coalition noted that its Board is considering options to leave the UK.<sup>93</sup> In a similar vein, the University of Edinburgh also expressed concern that the UK is headquarters to six major research infrastructures supported by the EU and hosts ten facilities that are headquartered elsewhere.<sup>94</sup> It therefore urged the UK Government to negotiate continued access to these facilities.
79. Respondents considered that regions which are dependent on the education and skills sector for economic development may also be affected by withdrawal if this results in a decline in EU funding and a restriction on the free movement of people.<sup>95</sup> The West of Scotland Colleges' Partnership explained that the UK's entitlement to future EU regional development aid is 'extremely doubtful' in the event of withdrawal.<sup>96</sup> It therefore raised concerns about the risk of a reduction in UK Government funding for regional development in real terms and urged the Scottish Government to take account of this when negotiating a baseline for Scottish funding.<sup>97</sup>
80. Respondents also highlighted particular subjects that may be disproportionately affected by withdrawal. For example, physics was highlighted as a subject that is highly reliant on EU and other international staff.<sup>98</sup> Universities Scotland also noted that EU students are more likely to study STEM subjects than their UK peers (33% vis-à-vis 23%).<sup>99</sup> In this regard, the University of Strathclyde noted that subjects with the highest growth in EU staff numbers are in subjects with the

greatest opportunities for partnerships and innovation (engineering, technology and business).<sup>100</sup> The British Academy and Peter Dayan, the Head of Languages at the University of Edinburgh, also expressed concerns about funding for language teaching and learning.<sup>101</sup>

81. The University of Edinburgh noted that in addition to EU research funding, it has also benefited from European Investment Bank loans to make large scale investments in its estates programme.<sup>102</sup> It considered that assurances should be made that the loan repayment conditions will remain unchanged and for the UK Government to negotiate continued participation in European Investment Bank loans in the future.<sup>103</sup>

### **Future relationship with the EU: alternatives to membership**

82. The West of Scotland Colleges' Partnership observed that "the absence of a clear and well-formulated forward plan for Brexit at a UK level is regrettable."<sup>104</sup> Despite this, both the Partnership and the British Academy considered the UK's withdrawal from the EU provides an opportunity for it to develop a new strategy for research and development.<sup>105</sup> The respondents noted that any future strategy for research and development will depend on the outcome of the withdrawal negotiations but should be based on key priorities for the sector.
83. The key priority for respondents in the UK's withdrawal negotiations is to maintain membership of the European Research Area.<sup>106</sup> The British Academy noted that the UK has played an influential role in the European Research Area's development to date, such that "bodies such as the European Research Council might not have come into existence without very strong UK support".<sup>107</sup> In this regard, Universities Scotland noted that it would ideally want the UK to negotiate continued access on the current terms to Horizon 2020 until the completion of the funding period and the ability to continue to shape the EU's research funding priorities in the future.<sup>108</sup>
84. A key benefit of the UK's influence has been over the development and priorities of major research programmes, such as Horizon 2020.<sup>109</sup> This in turn has influenced UK institutions' success in obtaining EU funding. The University of Edinburgh explained Horizon 2020 programme's research priorities and why it is beneficial to UK researchers. It said—

” Horizon 2020 and Framework Programme Funding is generally regarded as more amenable to supporting cutting edge research than other sources of funding available in the UK. There is a perception that other funding mechanisms would not support the breadth and scale of projects in multiple partners.<sup>110</sup>

85. Many respondents expressed a preference for the UK's future relationship with the EU to acquire 'associated country status' for EU funding programmes in order to continue to benefit from them.<sup>111</sup> They indicated that, in order to qualify for this

status, the UK would need to be a member of the European Free Trade Association.<sup>112</sup> On this, Universities Scotland said—

” In considering alternatives to EU membership, it is worth outlining the three broad mechanisms by which non-member states can currently access EU research funds.

1. *Associated Country status* - Thirteen ‘Associated Countries’ including Norway, Iceland and Switzerland contribute to the Framework Programme proportionally to their GDP to get the same status as EU Member States. Where funding is awarded on the basis of excellence it is possible for Associated Countries to see a net gain. However, this status is generally only open to countries that are members of the European Free Trade Association and current EU candidate nation. Furthermore, none of these countries have a role in the negotiations that shape EU research funding.

2. *Non-associated third countries* - Institutions and researchers from other countries can apply to Framework Programmes under the ‘openness’ strategy and in some circumstances receive direct funding. Depending on the exact scheme, third countries might have to provide matched funds.

3. *International Agreements* - The EU has international agreements for scientific and technological cooperation with 20 countries to have a framework for participation in joint projects, sharing of facilities, staff exchanges and organising specific events.

For Scotland to maintain and build on its world-class research, it is essential that Scottish universities retain as close a relationship as possible with the European Research Area. Universities Scotland therefore wants to see a mechanism negotiated with the EU that provides Scottish HEIs with access to the same funding opportunities as they currently enjoy (an issue complicated by the fact that the UK is a net beneficiary from this sector of EU funding) and the ability to participate in negotiations on future research programmes.

In considering what kind of mechanism might be negotiated, it is worth noting that following a recent referendum which effectively removed freedom-of-movement agreements with the EU, Switzerland was downgraded from ‘associate’ to ‘third country’ status and subsequently had to negotiate ‘partially associated’ status. This allows Swiss-based researchers to access the ‘excellence science’ pillar of Horizon 2020 and the Marie Curie mobility schemes, but not the ‘industrial leadership’ and ‘societal changes’ pillars, which have budgets of €17 billion and €29.7 billion respectively.

86. The University of Strathclyde and Universities Scotland cited the experience of Switzerland to warn that a ‘Hard Brexit’ could threaten access to the European



Research Area.<sup>113</sup> Their submissions noted that, following a referendum on immigration in 2014, Switzerland's status in relation to Horizon 2020 was temporarily downgraded to 'third country'. This impacted on Swiss academics' ability to influence and collaborate, such that Switzerland does not have access to some key elements of Horizon 2020. Indeed, projects co-ordinated by Switzerland were reported to have dropped from approximately 4% to less than 1% following the change to its status.<sup>114</sup>

### The position of EU staff and students in Scotland

87. Many respondents considered that the UK Government should prioritise the free movement of people in the education and skills sector.<sup>115</sup> In relation to those individuals who are already working in the UK higher education sector, the University of Edinburgh, the British Academy and the University of Highlands and Islands all called on the UK Government to allow them to remain with full entitlements.<sup>116</sup> In relation to EU27 citizens who gain employment in the education and skills sector after withdrawal, respondents raised concerns as to what immigration restrictions may apply to them. The University and College Union explained how changes to the immigration status of EU27 citizens could impact on the sector. It said—

Currently non-EU foreign nationals wishing to enter the country for work purposes need to have an offer of employment and for the offered salary to be over a threshold amount. Arrangements around the threshold are important for the higher education sector...The current threshold for tier two visas with indefinite leave to remain for non-EU citizens who are experienced workers is currently set at a minimum of £35,000. Many highly qualified university staff with post graduate degrees and many years' experience will not hit that benchmark.<sup>117</sup>

88. Universities Scotland agreed that "Scottish universities currently face very damaging restrictions on visas when it comes to the recruitment of non-EU international staff, through the Tier 2 route."<sup>118</sup> It noted that the UK Government has been trialling a Tier 4 visa programme, but that this is only open to four universities, none of which are Scottish.<sup>119</sup> The University of Edinburgh considered that the Tier 1 visa scheme should be expanded to include international academic staff and a Tier 1b visa scheme should be created for postdoctoral researchers.<sup>120</sup> The University and College Union and Colleges Scotland were also supportive of an exemption from the threshold for highly skilled staff in the education and skills sector.<sup>121</sup>
89. Respondents were also concerned with the potential impact on students. The University of Strathclyde noted that its EU students' main concern about withdrawal was the "...likelihood of being able to work in Scotland and the wider UK on completion of their studies".<sup>122</sup> Universities Scotland noted that EU graduates make an important contribution to Scotland's skills base because they are more likely to study STEM subjects, for which there is a skills shortage in

Scotland.<sup>123</sup> The University of Edinburgh expressed similar concerns, noting that “we expect that prospective EU students may reassess the attractiveness of UK universities if the UK no longer offers post-work study opportunities.”<sup>124</sup>

90. For NUS Scotland, one of the potential damaging effects of a reduction in the number of EU27 or international students studying in Scotland’s HE or FE institutions was on cultural diversity. It said that, as part of the wider community in which they are situated, universities and colleges play a key role in sharing the benefits of their European and international student population with the local community. NUS Scotland argues that through organised cultural events, targeted outreach programmes to schools, community groups and others, and daily interactions with local residents, a university contributes to a greater understanding of other nations, and their cultures, traditions and perspectives.
91. NUS Scotland highlighted research conducted by Universities Scotland which has shown the social, cultural and educational benefits to all students from a diverse international learning environment, many of which are lifelong.<sup>125</sup>

## **Emerging issues**

92. The key issues emerging from the evidence on further and higher education, schools and skills include the following—

- The potential impact on the budgets of Scotland’s further and higher education (FE/HE) institutions from a reduction in the number of students from the EU27 member states (dependent on whether students from elsewhere replace these), coupled with questions on what form of entry requirements may be put in place for international students from elsewhere;
- The scope or otherwise for some form of post-study work visa for EU27 graduates in Scotland, as well as for those from the rest of the world;
- The potential for Scottish FE/HE institutions to continue to participate in EU programmes such as Erasmus +
- The impact on research funding in Scottish FE/HE institutions and research institutes if the UK cannot continue to participate in Horizon 2020, and questions of what alternative forms of research funding will be available from UK funds and how this would work. This is coupled with the impact on the quality of the research work if the scope for collaboration with EU27-based institutes falls;
- According to evidence received from Universities Scotland (see paragraph 85-86), some of the options available to the UK for continued involvement in EU research programmes may require EFTA membership depending on what benefits from that involvement are prioritised.



- Workforce related issues in Scottish FE/HE institutions and research institutes in terms of the rights of current EU27 citizens working in Scotland and the ability of these institutes to attract teaching, research and support staff in the future.

# Agriculture, Food and Fisheries

## Policy background<sup>126</sup>

### Agriculture

93. For agriculture, one key impact of withdrawal from the EU is the departure from the Common Agricultural Policy (CAP). This will occur whichever future relationship is sought with the EU.
94. Almost 40% of the EU's budget is related to agriculture and rural development through the CAP. It provides an EU framework of regulation for direct payments to farmers, market support measures and rural development programmes to support the wider rural economy. The current system has evolved to support farm businesses to remain productive (via Pillar 1 funds), whilst also delivering on environmental outcomes (Pillar 1 greening and Pillar 2) and other development goals.
95. In the UK, EU farm subsidies currently make up around 50-60% of farm income. Therefore, the key question for farmers is the nature and scale of any further financial support for their industry.
96. The Chancellor of the Exchequer, Philip Hammond MP, announced<sup>127</sup> a commitment to the continuation of CAP Pillar 1 funding to the end of the Multiannual Financial Framework period (MFF) and the honouring of some Pillar 2 agri-environment scheme funding. This statement has provided some assurances to farmers and crofters in Scotland that they will be financially supported throughout the period of negotiation as the UK exits the EU.
97. From 2014 to 2020, Scotland would have received around €4.6 billion (£3.5 billion) under the CAP from the EU. The Scottish agriculture sector is heavily reliant on CAP funding, with support payments accounting for around two-thirds of total net farm income in Scotland.<sup>128</sup>
98. However, whilst the current level of agricultural funding under CAP Pillar 1 will be upheld by 2020, questions remain on how this money will come to Scotland – whether via the Barnett Formula or by some other means; as well as the commitment of some structural funds and elements of Pillar 2.
99. Outwith the CAP, another key issue for the agriculture and food sectors of withdrawal is what form any new trading arrangement with the EU takes for the UK and Scotland. This will shape vital issues such as the nature of any engagement with the Single European Market and any tariffs and regulatory non-tariff barriers that may apply. These will be a key negotiating area during the withdrawal process.

100. The nature of the UK and Scottish future trading relations with the EU will also have impacts downstream in the important supply chains within the agriculture and food sectors in addition to those firms involved in primary production.
101. The terms of a UK exit will also affect a number of regulatory areas such as pesticides approval, approval for genetically modified organisms (GMOs) and plant and animal health regulatory regimes. All of these are currently harmonised at an EU level.
102. In addition to the question surrounding the levels of direct financial support and rural development funding after 2020 and the future regulatory regime, there are a number of other areas of uncertainty. These include—
- What kind of trade model, level of continued access to the Common Market and degree of protection from cheap imports can we expect in the future after Brexit?
  - What form of provision of market safety nets will be put in place?
  - Will the food and farming sector be able to continue to access the necessary people to meet its labour market needs (both permanent and seasonal staff)?
  - What will the UK's overall national farm policy, regulation and approach look like and how will this interact with the Devolved Administrations and devolved matters?
  - What kind of future CAP UK farmers will be competing with as the policy is currently being simplified and will be reformed for 2021?
103. There are a number of potential areas of opportunity that are also being discussed in relation to the agricultural sector, such as the scope for a simpler and more targeted approach to agricultural policy and support, incentivising farmers to government priorities and the potential for greater deregulation and innovation outside CAP. According to the NFU Scotland, Brexit “gives Scotland a unique opportunity to build a new domestic agricultural and rural policy which is adapted to Scotland's needs, is targeted at activity and innovation, that is easily understood and is simple to administer.”<sup>129</sup> The NFU Scotland has also said that, in relation to trading arrangements with third countries—
- ” The UK as an independent country may seek to continue to apply the same terms as under the EU's FTAs and Preferential Trade Agreements (PTAs) which are in place or are under negotiation. Or the UK may seek to renegotiate these agreements. A critical issue for UK farming is whether, and to what extent, the UK will seek a more liberal trade stance, lowering the tariff protection including that applied to sensitive agricultural products such as beef, lamb, dairy and fruit and vegetables.<sup>130</sup>

104. The food and drink industry in Scotland currently has seen an increase in its turnover of £14.3 billion in 2013 from £10 billion in 2007. The sector has a growth target of £16.5 billion by 2017.<sup>131</sup>
105. There are a range of matters that will need to be addressed in relation to Brexit and the food and drinks sector. These include issues relating to the existing and future workforce as, of the approximately 450,000 employees in the UK food and drinks sector, 130,000 were not born in the UK, with an estimated 39,000 of these in Scotland.<sup>132</sup>
106. The shape of future trade agreements will also be key in this sector too, given its reliance on exporting. The sector will also need clarity on the future of existing funding schemes as the CAP is a critical foundation of Scotland's food and drinks recent successes. Finally, as with agriculture more generally, the food and drink industry will need to be clear on the future regulatory framework and how the complex set of EU food/farming/health-based regulations will be superseded by national legislation and how this in turn will operate across the UK.

## **Fisheries**

107. As with agriculture, the key impact of withdrawal from the EU is the departure from the Common Fisheries Policy (CFP). The current CFP covers a number of policy areas including—
- *Fisheries management*: controls on how fish can be taken, with the goal of ensuring that fish stocks are healthy enough that the maximum sustainable amount of fish possible can be caught. The measures include technical regulations on what kinds of gear can be used and quotas for the amount of fish landed.
  - *Funding*: The EU provides funding to fishers and fishing communities for a number of purposes including supporting sustainable fishing and helping coastal communities to diversify their economies (e.g. through the European Maritime and Fisheries Fund). The UK was allocated €243.1 million in fisheries funding from 2014-2020, 46% of which (€108m) will be allocated to Scotland, a larger proportion of the UK total than the previous 41% under the previous European Fisheries Fund.
  - *Market organisation*: the CFP puts into place measures such as common marketing standards, common consumer information rules and competition rules, and provides market intelligence via the European Market Observatory for Fishery and Aquaculture Products.
  - *Import tariffs*: the CFP allows for import tariff reductions for certain fish and fish products from outside the EU to help increase supply at times when EU supply cannot meet the demand of fish processors.

108. Brexit will have a number of implications for fisheries management. While it is possible to identify some possible broad implications, the specific outcomes are highly uncertain. The following issues are likely to be important during and after the negotiations—

- *Control over a greater area of sea* - Norway and Iceland, for example, are responsible for fishing in their Exclusive Economic Zone (EEZ) up to 200 nautical miles from the coast. This contrasts with the situation in the EU, where Member States share access to fishing grounds from 12-200 miles from their coasts (with Member States having access to these fishing grounds via a series of quotas reached through agreement). Following withdrawal from the EU, the UK could take full responsibility for fisheries in the UK's EEZ. A key question will then be the extent to which the UK will as a result have greater access to fish.
- *Renegotiating the UK's share of fish quotas* – if Scotland and the UK were outside of the CFP, then there may be scope to re-open the issue of 'relative stability' and an argument that could be made for altering the current share of quota allocations in many fish stocks.
- *The degree to which the UK could exclude non-UK vessels* – one argument that has been made for withdrawal from the EU in this sector is that it would enable the UK to exclude EU fishers from the UK's EEZ. However, it is not clear the extent to which this would be feasible given the political tensions this may cause, the scope for retaliatory action, potential limitations from international law and what impact this may have on the ability to export into EU27 markets.
- *Cooperation with the EU and other countries on setting quotas* - After withdrawal from the EU, Scotland and the UK would need to cooperate with the EU on quota setting. Cooperation on sharing stocks is required, as many fish stocks are migratory and therefore cross EEZ boundaries. At present, the EU cooperates and negotiates with non-EU countries on behalf of Member States, with the outcome of negotiations on one stock often influenced by negotiations on another. After Brexit, Scotland and the UK will need to maintain a close working relationship with the EU to enable the effective management of fisheries and agree a mechanism for agreeing quotas and management measures with the EU and other countries.
- *A new UK fisheries policy and management system* - Scotland and the UK will also need to put in place a new policy and management system and it is currently unclear what any such schemes will look like in the UK and how that fits in with the devolved competences of the Scottish Parliament.

109. It is also important to note that a number of existing EU laws relate to the protection of the marine environment, the protection of which can deliver benefits to the management of fish stocks. For example, the Birds and Habitats Directives have contributed to the creation of a network of marine protected areas around the UK.

110. Decisions on the nature of the UK's future relations with the EU will have an impact on these regulations. For example, if the UK negotiates membership of the EEA, it may be required to continue to apply the Marine Strategy Framework Directive and Water Framework Directive, but not the Birds or Habitats Directives.<sup>133</sup> This is because EEA membership would mean that the UK would need to abide by certain rules and regulations to gain preferential access to the EU market, including many environmental ones but with several exceptions. Those covering Birds or Habitats are areas where the UK would, as a member of the EEA but not the EU, no longer be bound by EU laws.<sup>134</sup>

## Summary of evidence received

### Agriculture (food and farming)

#### Funding

111. A continuation of the currently anticipated levels of EU funding and a stable regime in the future was a dominant theme from the evidence received. The National Farmers Union (NFU) Scotland submission stated that the “next four rounds of CAP payments must be delivered as planned, and as budgeted for by farmers and crofters”, indicating that this will “provide an anchor of stability to negotiate future trading and domestic support arrangements.”<sup>135</sup>
112. The NFU Scotland's view was shared by others such as Shetland Islands Council who noted that Shetland agriculture derives about £9 million per year from support measures, much of which is EU funded. The Council warned that “Any loss of financial support will significantly reduce productive agriculture and would accelerate land abandonment.”<sup>136</sup> Consequently, the Council stated that it was essential that the alternatives to EU funds are identified as soon as possible so that continuing sustainable economic growth can be stimulated throughout the UK, including the remoter parts such as Shetland.
113. Of specific concern to some were the support programmes currently funded out of Pillar 2 of the CAP and those targeted at less favoured areas. The Scottish Tenant Farmers Association (STFA) noted that—
- ” Although the Chancellor of the Exchequer has stated that payments will continue until 2020, there is some doubt as to the level of funding available and no guarantee that Pillar 2, which is vital for less favoured areas, will continue. This will provide stability and reduce uncertainty in the short term.”<sup>137</sup>
114. The NFU Scotland agreed with this sentiment, noting that for the Less Favoured Area Support Scheme, approximately 70% is currently funded by the Scottish Government and Scotland as a whole enjoys a relatively higher share of funding under this scheme compared to other parts of the UK.

115. The STFA also said that when the UK withdraws from the CAP, the UK Government must provide sufficient replacement funding for the devolved Scottish Government to administer according to the needs of Scottish agriculture which has very different priorities and requirements from the rest of the UK.
116. The question of what financial regime would follow the UK's withdrawal from the EU and how any funds would be distributed across the UK was a key theme for some. The NFU Scotland's submission stated that, post-Brexit, the amount of money the UK decides to spend on farming and farming-related matters will have major consequences for Scotland. The NFU noted that—

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 [reproduced below]. This default option would result in a situation that could decimate Scottish agriculture and its vital food and drink sectors.<sup>138</sup>

**Table from NFU Scotland outlining a 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<br>8% or 9% |
| Scotland's Share            | 16%                  |  |
| England's Share             | 65%                  |  |
|                             |                      | Scotland's spend under Barnett               |
| Scotland in €'s             | <b>€ 589,036,012</b> | <b>€ 287,334,640</b>                         |

**Source: NFU Scotland**

**Note: the use of either 8% or 9% is dependent on whether you assume a Barnett share or a share based on the proportion of the UK's population living in Scotland.<sup>iii</sup>**

117. The table above highlights the considerable difference between the current share of EU funds that Scotland receives within the UK's overall share compared to that which might be the case if allocation within the UK was based in the Barnett formula; €589 million compared to €287 million.
118. NFU Scotland considered that agreement between the Scottish and UK governments should be reached as soon as possible on whether the Barnett

<sup>iii</sup> In advice from SPICe, Scotland's share of a fully devolved English programme budget would be 9.85%. However, this is the share that would be applied to an English budget. If the baseline figure is a UK figure, it would probably be best to go with a population share; 8.25%.

Formula could be bypassed in such a situation, in order to allow existing CAP principles to be adhered to (for example: working on the basis of non-historic allocations, or using criteria based on objective analysis). NFU Scotland said there must be a different methodology that retains at least the same level of funding going into Scottish agriculture as before.<sup>139</sup>

119. NFU Scotland also called on the Scottish Government to ring-fence the Pillar 1 funding that had been guaranteed under the announcement made by the Chancellor and give a commitment “that these funds will be delivered as budgeted, in recognition of the stability these payments provide to the industry.”<sup>140</sup>

### Trading models

120. The second dominant theme in the written evidence received to date from those in the food and farming sectors related to proposals for the UK’s new trading relationship with the EU27 and third countries.

121. The Scotland Food and Drink submission stated that—

” It is important that we secure ongoing access to the EU single market and priorities FTAs [free trade agreements] with third country markets (with the Scotland Food and Drink export strategy highlighting those 8 key target markets). Work must be undertaken to explore access to existing FTAs applicable to the EU. Smooth operational/paperwork requirements for import/export of goods to/from the EU are of huge importance.<sup>141</sup>

122. The STFA said that Scotland has developed a highly successful food and drink sector exporting all over the world. In its view, since most agricultural exporting takes place through the European single market, continued access to this market will be essential in preserving and expanding sales of food and drink. STFA believed that every effort should be made to ensure that access to the EU single market will be available post Brexit.<sup>142</sup> It concluded that—

” Future international negotiations on tariffs and market access for the UK’s agricultural produce must provide barrier free markets which will support a strong and competitive farming industry in the UK. Markets for UK farm produce must not be viewed as an expendable negotiating tool in future trade deals.<sup>143</sup>

123. NFU Scotland noted that overseas exports of Scottish food and drink products were worth £5 billion per year to Scotland. It agreed with the STFA that these sectors should not be seen as a “bargaining chip” in negotiations on any future deals on tariffs and market access.<sup>144</sup> Using government estimates, the industry body estimated that food and drink exports to the EU from Scotland were valued at £1.9 billion in 2015 – approximately 39% of the total value of Scotland’s overseas (non-UK) food and drink exports. When drink exports (dominated by whisky) are stripped out, food exports to the EU were valued at £724 million in 2015 – representing some 69% of Scotland’s overseas (non-UK) food exports.<sup>145</sup>



124. On farming, NFU Scotland noted that 60% of the UK's agricultural exports are to the EU. Included within this total amount is 90% of the UK's beef and lamb exports which go to the EU, and 70% of pork. In 2014, the UK exported £141 million worth of combinable crops and £383 million worth of lamb. Therefore, it is clear to NFU Scotland "that trade currently has a massive impact on our farming sectors and any sudden change could be damaging to current trade flows."<sup>146</sup>
125. NFU Scotland's submission did not indicate a preferred model for the UK's trading relationship with the EU, but said that ideally this would be one that gives "the best possible access to markets inside and outside of the EU whilst protecting the UK's very high standards." It also said that having influence over new EU rules and regulations was "also extremely important."<sup>147</sup>
126. NFU Scotland noted that some sectors of the agricultural industry vary considerably in what they need and want – for example, for sheep producers, trade with the EU is extremely important. However other producers, such as milk producers, prefer a more domestic approach. According to analysis published by the NFU in the UK, that unilateral trade liberalisation (reverting to the WTO default position) would be "the most damaging scenario for the profitability of British farming, adding a minimum of 20 per cent tariff." At today's price, NFU Scotland estimated that the effective tariff on fresh or chilled boneless lamb cuts, for example, would be 76.7% if preferential access to the EU is not secured.<sup>148</sup>
127. Shetland Islands Council's submission made similar points but noted that for its agricultural sectors, most if not all of its exported products (such as store lambs) went to the UK domestic market. Therefore, the question of whether Scotland stayed in the UK was an important question for the Council.<sup>149</sup>
128. This was also a point made by the Scottish Salmon Producers' Organisation (SSPO) in its submission which noted that the biggest market for its exports is the UK itself and that "we must maintain this as our strongest asset for the future."<sup>150</sup>
129. For the SSPO, five tests would need to be met if the organisation was to be satisfied on any new trading relationship with the EU thereby ensuring continued and future investment in the industry. The five tests are<sup>151</sup> —
- Free access to EU markets (same status as now)
  - Free movement of labour (certainly continuance of existing migrant labour)
  - Free movement of capital
  - A stable currency situation
  - Stable constitutional arrangements (within the UK)

## Regulatory framework

130. The current and future framework of regulations governing the industry was also a common theme in the submissions. NFU Scotland's submission states that the plan by the UK Government to repeal the European Communities Act 1972 and effectively transfer EU law into UK law, at least initially, would mean that current EU regulations will be influential but not binding. NFU Scotland argued that this could present an opportunity to develop a regulatory system that is more appropriate or sensitive to the Scottish context and which encompasses a range of production practices. Examples of where EU regulations could be applied more sensibly to the Scottish context would be, in NFU Scotland's view, sheep tagging requirements for hefted flocks; or CAP greening, which could be altered for much better environmental gains.<sup>152</sup>

131. Other farming organisations saw similar opportunities for regulatory reform. For example, the STFA said that future Pillar 2 grants should be subject to a maximum funding cap. It argued that—

” Traditionally SRDP funding has been front loaded with grants allocated on a first come, first served basis. This has resulted with some large farming businesses applying for and receiving huge grants for big projects, as a consequence funding has not been available for smaller businesses which would have received a proportionately larger boost for a much smaller injection of grant aid. In other words the jam could have been spread more thinly at the start of the scheme with the maximum funding cap raised towards the end should there be signs of an under spend. Capped farm infrastructure grants would benefit and maintain investment and competitiveness on family farms.<sup>153</sup>

## Workforce and labour markets

132. Many of the submissions that the Committee received highlighted the important contribution made by EU27 citizens to specific sub-sectors of the agriculture, food and drinks industry, and raised concerns regarding future labour market needs.

133. NFU Scotland noted that, for example, “there is not a single fruit farm in Scotland that could operate without access to overseas workers and there are many other farms and crofts which also rely on similar staff.”<sup>154</sup> NFU Scotland estimated that there are between 5,000 and 15,000 seasonal workers from the EU employed within the Scottish agricultural sector at any one time. It also said that the significant number of EU27 citizens employed within the food and drink processing sector cannot be ignored. For example, the submission from NFU Scotland quoted estimates from the Scottish Association of Meat Wholesalers (SAMW) that an estimated 50% of the workforce in some of Scotland's abattoirs and meat processing plants are non-UK nationals. The submission concluded that “with the Scottish red meat processing sector providing direct employment for approximately 2,700 people, the possible implications of the loss of this labour could be severe.”<sup>155</sup>

134. One recommendation proposed by the NFU Scotland was a re-introduction of the Seasonal Agricultural Workers Scheme (SAWS), which came to an end in 2012. It noted that—

” Take-up of the quota was very high and was 98 per cent when the scheme ended in 2012. The majority of workers coming into the UK under SAWS were students seeking to fund their education and did not attempt to stay in the UK. Such a scheme should therefore be considered separate of the wider debate around immigration.<sup>156</sup>

135. Scotland Food and Drinks’ submission made similar points, noting that there were around 39,000 non-UK born nationals currently working in the food and drink sector in Scotland and that it was “critical to reassure existing EU workers that their rights to work will be maintained” and that “we must ensure that any future UK/Scottish migration policy encourages EU27 citizens of all skills levels to work in the food and drinks industry.”<sup>157</sup>

#### Protected geographic indication status and rules on country of origin

136. The final issue emerging from the submissions received was the importance of the current protected status (geographical origins and protected names) of certain products. NFU Scotland argued that whatever trading arrangements may be developed following the UK leaving the EU, it will be vital that the provenance of Scottish produce is promoted. It said that exiting the European Union will present challenges in terms of the UK’s future trading relationship but that “opportunities can be taken now to build upon the fantastic Scottish and British brand – promoting this brand at home and abroad, and allowing the Scottish food and drink sector to grow and invest with focus on ambition, innovation and co-operation.”<sup>158</sup>
137. NFU Scotland concluded that unique geographical origins and protected names, such as Scotch Beef and Scotch lamb, “must be protected in the negotiation” process and that governments need to address this as an urgent priority, as, depending on the type of protection, food name protection sits in different baskets between UK Government (intellectual property) and the devolved authorities (consumer protection).<sup>159</sup>

#### Fisheries

138. The submissions received by the Committee in relation to fisheries were amongst the most favourable towards withdrawal from the EU. Some of the key issues emerging from the evidence are set out below.

#### Criticisms of the current CFP regime and proposed alternatives

139. Respondents providing evidence to the Committee were critical of many aspects of the current CFP. For example, the Scottish Fishermen’s Federation (SFF) described the end result of the CFP’s decision-making process as “... a distant,

centralised and monumentally complex process, which produces exactly what might be expected from such a structure – of a continuous stream of largely dysfunctional rules and regulations.”<sup>160</sup>

140. The same criticism was noted in the submission from Shetland Islands Council which considered that many in the fishing industry held these views because of the “blunt application of the CFP”.<sup>161</sup>

141. Similarly, Professor Philip Booth of St. Mary’s University in Twickenham said that—

” For the first time in 40 years, the UK will shortly have control of fishing policy. Whether or not, the UK joins the EEA, we will repatriate fishing policy. The EU Common Fisheries Policy has not been a great success (to say the least) and the UK has the opportunity to draw from economic theory and practical experience to develop better policy.”<sup>162</sup>

142. For the SFF, the possibility of Scotland being responsible for fisheries management and exploitation in its own Exclusive Economic Zone (EEZ) was of critical importance. It said that the result of just such a move would be that Scotland would “at last be a normal coastal state under international law, forging regulation, access and opportunity to fit our recovered rights.”<sup>163</sup>

143. Shetland Islands Council noted that the value of fishing to the islands was substantial, accounting for over £100 million per year in landings and £157 million per year when the supply chain and value added activities were taken into account. Replacing the CFP would, for the Council, come with a number of uncertainties that needed addressed, specifically—<sup>164</sup>

- Continued access to EU markets for exported fisheries produce from the UK
- How the UK is going to manage and control fisheries in the greater area of sea that it will have?
- To what extent will the UK be able to exclude non-UK vessels?
- Making sure that Scotland benefits to the full as the UK renegotiates a share of fish quotas.
- How vulnerable are our fishing rights to a trade-off when the UK is renegotiating wider trade deals with the EU?
- Having access to the necessary levels of UK financial support to develop the industry.

144. For Professor Booth, the starting point for a replacement to the CFP after withdrawal from the EU was to look at a tradable quota system with fishing rights offered in perpetuity to the quota owner in a system similar to that used in Iceland.

Professor Booth considered that there is “no obvious second-best solution worth considering.”<sup>165</sup>

145. The RSPB Scotland, whilst echoing some of the criticisms made by others of the CFP, did welcome some of the more recent reforms to the Common Fisheries Policy. It said that reforms—

” ... have included a move towards regional management arrangements and obligations to set scientifically-determined TACs and quotas in accordance with Maximum Sustainable Yield (MSY) – all based on an ecosystem approach to fisheries management. The new CFP also sees the gradual introduction of a ban on discards and a funding regime now geared towards aiding the transition to sustainability. These changes are to be commended and should not be lost as a result of changes to political arrangements following the “Brexit” vote.”<sup>166</sup>

146. The Scottish Wildlife Trust also commented on CFP matters in its submission. It said that—

” Post Brexit, it is essential that Marine Scotland is ready to replicate the role of the CFP and enforce a sustainable fisheries management plan. Marine Scotland should be responsible for: determining scientifically-based TACs and assigning quotas; monitoring and controlling fish exploitation in national waters; and establishing cross-border collaborations with neighbouring nations that share a common resource. Maintaining a productive fishing industry in Scotland is essential, but the impacts these activities can have on the health of the environment must be recognised. Securing Scotland’s fisheries for future generations is a priority and, therefore, sustainability must form the basis of all decision making.

When determining new TACs and assigning quotas, it is important the Scottish Government works closely with Regional Inshore Fisheries Groups and, where possible, uses regional information and knowledge to inform fish stock assessments and quota allocations. Brexit presents an opportunity to establish an open and transparent dialogue with relevant stakeholders and coastal communities on how Scotland’s fisheries are managed.”<sup>167</sup>

147. Some individual companies, such as Macduff Shellfish, also provided evidence to the Committee in addition to that of industry bodies. In its submission, MacDuff Shellfish stressed the importance of ensuring there was no “legislative gap” during any transition from an EU to a domestic regulatory regime. It warned that a legislative gap in the field of fisheries could have a significant impact on the health of some of the UK’s most economically valuable fish stocks if existing protection is removed and access is opened to all. For instance, it said, there could be an influx of vessels targeting quota stocks or into key UK shellfish fisheries. In the view of the company, vessel displacement into open access fisheries is already a

significant feature and risk to UK fisheries, and is leading to emergency stock protection measures around many parts of the UK coastline. The firm concluded by stating that this problem could be exacerbated if adequate national provisions are not in place upon the UK's departure from the EU.<sup>168</sup>

148. Macduff Shellfish also commented on the importance of EU funding streams, such as the European Maritime and Fisheries Fund (EMFF), for the company for projects such as vessel improvement, data collection, safety and welfare etc. It said—

” ...EMFF funding is currently being sought to assess the health of scallop stocks in the English Channel and develop a sustainable stock-based management regime. This resource provides an important funding stream for businesses of all sizes across the fishing sector looking to improve their operations and invest in the long-term health of stocks. If the UK withdraws from contributing to this fund, an equivalent national scheme should be established at the earliest opportunity.<sup>169</sup>

### Landing Obligations

149. Of specific concern to Shetland Islands Council – indeed its top priority in any process of reform – was the application of the Landing Obligation in an area of mixed fisheries. The Council noted that “the main and overwhelming Common Fisheries Policy threat to Shetland’s fishing industry at present is the Landing Obligation, which is likely to cause substantial damage in a white fish sector that operates in rich mixed species fishing grounds.”<sup>170</sup>
150. The main issue for the Council is that, in its view, there are abundant numbers of certain species which the fleet has limited catching quota for because the theoretical scientific limits for catching do not reflect the actual numbers of fish there (so-called “choke species”). The Council argued that without a practical intervention to identify how the Landing Obligation can work in a mixed fishing zone, vessels will have to tie up early in the year once these “choke species” quota levels have been achieved. The Council stated that “this will have potentially serious consequences for fishing businesses, staff and ancillary trades through loss of earnings”<sup>171</sup> and that time is getting very short to effect a change in this EU legislation before 1 January 2017.

### Emerging issues

151. Outwith the issue of tariff and non-tariff barriers, which will be the subject of a separate Report by the Committee, the key issues to emerge in relation to agriculture (food and farming) and fisheries include the following—

- The uncertainty of what agriculture or fisheries regimes will be put in place as a replacement for the CAP and CFP and how these will be managed within the UK, given the issue of how the devolution settlement will need to be revised when previously exclusive EU competences are repatriated after Brexit;
- As with the farming and food sector, the fishing industry has benefited from a number of EU-funded support schemes – such as to fund innovation in the sector – and similar questions on what financial schemes will be put in place within the UK and Scotland are raised in the evidence. Critical to the levels of funding Scotland can expect relative to current funds would be if there were to be any move towards the use of a formula based on population share (i.e. through use of the Barnett Formula);
- How will the schemes to provide for protected geographic indication status on certain food and drinks products be replaced;
- Whether withdrawal from the EU provides opportunities for the development of agricultural and fisheries policies that are more specific to Scotland's agricultural and fishing profile;
- What schemes will be put in place in relation to immigration more generally, as well as those covering seasonal workers, given the importance to the agriculture, food and fisheries sector of EU27 citizens and other international workers to the labour force in these economic sectors;
- The specific concern highlighted to the Committee from Shetland Islands Council regarding the application of the Landing Obligation and the reported tight timescale of 1 January 2017 to address some of the issues raised.



# Climate Change and the Environment

## Policy background

### Climate Change<sup>172</sup>

152. It is still too early to say what the impact of leaving the EU will be on Scotland's approaches to tackling climate change. However, the EU has established several frameworks and initiatives that set targets and approaches aimed at supporting EU-wide action on climate emissions and these have an influence on emissions from Member States. Examples include the EU-wide target to reduce climate emissions by at least 40% by 2030 and the Emissions Trading System (EU ETS) policy that seeks to curb emissions cost effectively from the energy and industrial sectors.
153. The UK and Scottish Government have each established legally binding climate change targets. The targets for 2050 set by Scotland, the UK and the EU are of similar ambition and, for 2030, Scotland and the UK have set goals that are more ambitious than those set by the EU.
154. Leaving the EU does not remove the UK or Scotland's legally binding targets. However plans to meet these goals rely on a mix of measures that include EU initiatives. Scotland's plans to meet the goals set out in the Climate Change (Scotland) Act 2009 rely on a mix of Scottish, UK and EU measures. In the transport and waste sectors, in particular, significant planned emission reductions are attributed to EU measures (e.g. vehicle standards to reduce emissions). Similarly the EU wide framework on energy has implications for domestic decisions on energy generation and efficiency that influences emissions.
155. In view of the role that EU approaches play in cutting emissions in the UK and Scotland, the UK Committee on Climate Change has highlighted how UK and Scottish policy would need to be developed or adapted to deliver UK and Scottish emission reduction goals.
156. The impact that leaving the EU may have on Scotland's approaches to tackling climate change is also likely to depend on the subsequent relationship that the UK and Scotland has with the EU, and the policy approaches adopted. A closer look at possible scenarios for future relationships with the EU highlights a range of potential implications for energy and climate policy. Participation in the European Free Trade Area (EFTA) and European Economic Area (EEA) would result in many of the EU energy and climate policies applying albeit some have suggested that the UK would lose its ability to shape the development of policies in this area that may subsequently apply through the EEA approach. Outwith the EU, EEA and EFTA Scotland could choose to develop a wide range of new or different approaches.



## Environment<sup>173</sup>

157. The environment is one of the key areas of shared competence where both the EU and the Member States may act. The EU was given authority to legislate in this area “in the recognition that there were significant benefits to solving some environmental problems multilaterally”.<sup>174</sup> The EU has legislated on a range of environmental issues including air quality, climate change, water quality, species protection and habitats protection.
158. The environment was added specifically as an EU competence in the Single European Act of 1986, and energy in the Lisbon Treaty of 2008. However, the EU adopted many environmental measures before there was any specific legal base, in order to facilitate the operation of the Common Market.<sup>175</sup>
159. The environmental principles enshrined in the Single European Act are now central to EU environmental law and provide that environmental action by the EU aims “to preserve, protect and improve the quality of the environment; to contribute towards protecting human health; and to ensure a prudent and rational utilization of natural resources”.<sup>176</sup> In addition, EU law provides that “preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay... [and that] environmental protection... shall be a component of the Community’s other policies”.<sup>177</sup>
160. As with most if not all of the subject areas covered by our report, it is too early to say what impact Brexit will have on environmental policy. Nevertheless, it is possible to identify certain issues that will need to be considered.
161. Firstly, the UK Government has recently made it clear that it intends to bring forward a ‘Great Repeal Bill’ which will have the effect, initially, of enshrining EU law into domestic law whereupon it can be retained, discarded or modified in due course. This raises a question as to the scope there is for current environmental standards and policies to be either weakened or strengthened. At present, EU enforcement mechanisms provide a strong incentive for the UK Government to take action on the environment where it might otherwise not.<sup>178</sup> Related to this is the issue of how the UK’s environmental legislative framework will be updated following withdrawal from the EU (particularly on the volume of legislation that needs to be reviewed and also what to do about EU Regulations that are currently directly applicable in the members states but, after withdrawal, could immediately cease to apply).
162. Secondly, many environmental matters such as climate change or the protection of wildlife are trans-boundary in nature. For that reason, the EU has taken a role in co-ordinating on such matters such as those covered by the Birds and Habitats Directives. One issue that may need to be considered is where Scotland and the UK fits into such trans-boundary co-operation and co-ordination after withdrawal from the EU, if at all. In addition, co-ordination within the UK on issues such as waste (which have been devolved from Westminster) may also need to be discussed.

163. Thirdly, there is a raft of EU environmental policy areas that will need to be considered in relation to the impact of withdrawal from the EU on standards, regulatory enforcement, and future regulatory framework. These areas include—

- Air quality
- Emissions trading schemes – including the UK’s ability to continue in the scheme if it wished
- Habitats protection and the Birds Directive
- Nature Directives
- Water quality – including issues of urban waste water treatment, the Water Framework Directive, Bathing Water Directives and standards etc.
- Waste
- Chemicals regulation such as the REACH Regulation

## Summary of evidence received

### Future regulatory regime

164. Uncertainty around the nature of the regulatory regime for the environment and climate change was a key feature in many submissions. A typical example was that from umbrella body – Scottish Environment Link – which stated—

” Scottish Environment LINK members believe it is critical that the Scottish Government and elected Members of the Scottish Parliament work to ensure that the standards of environmental protection provided to Scotland by European law are upheld and enhanced, regardless of Scotland’s constitutional future.

Neither the UK electorate’s decision to vote in favour of leaving the EU, nor the Scottish electorate’s decision to vote in favour of remaining in the EU, changes the fact that Scotland and the UK are facing tremendous challenges in terms of environmental degradation. No change in political or constitutional structures alters the need for well-designed and well-enforced legislation to protect and maintain our precious natural environment.<sup>179</sup>

165. Other organisations such as RSPB Scotland<sup>180</sup>, the Scottish Wildlife Trust<sup>181</sup> and the Woodland Trust<sup>182</sup> shared these views.

166. One particular concern of the Scottish Association for Marine Science related to the enforcement of environmental standards and policy. It said that—

” Almost all UK (including devolved) legislation that helps to conserve marine (or maritime) species and habitats, to prevent pollution and to maintain

ecosystem function and resilience, derives from EU directives. As we understand the situation, there are no immediate plans to alter UK (or Scottish) legislation, but Brexit will remove a significant enforcement mechanism. Directives require regular reports to the Commission, with the possibility of infraction proceedings at the European Court of Justice (ECJ) and the imposition of fines for non-compliance. The UK is a signatory to regional conventions such as OSPAR4 and the international Convention of Biodiversity that also oblige us to maintain protection, and which deal with some of the trans-boundary issues, but these conventions have few teeth. Our concern is that when Scottish environmental monitoring and management proves expensive or inconvenient, it will be scaled back in the absence of the ultimate sanction of the ECJ.<sup>183</sup>

167. In that context, Historic Environment Scotland commented on its particular role in relation to various regulations on environmental impact assessments. It noted that the organisation is a Consultation Body under certain EU environmental protection directives – the Environmental Impact Assessment Directive 2011 (the ‘EIA Directive’) and the Strategic Environmental Assessment Directive 2001 (the ‘SEA Directive’). The purpose of these particular EU Directives is to ensure that the environmental effects of proposed developments and development policies are taken into account as part of the planning process and are subject to public scrutiny, and that environmental organisations, such as Historic Environment Scotland, Scottish Natural Heritage and The Scottish Environment Protection Agency, are provided an opportunity to offer advice.
168. Historic Environment Scotland commented that while the SEA and EIA Directives are both transposed into domestic Scottish legislation, “it is unclear at present whether any changes would be required following withdrawal from the EU.”<sup>184</sup>
169. Finally, in relation to how some of these matters will be discussed between the governments in the UK, Scottish Environment Link stated that, “given the devolution of environment policies to Scotland, it is imperative that UK deliberations for setting out the UK’s options involve not only the UK’s devolved administrations but allow input from stakeholders operating in Scotland, Northern Ireland, Wales and England.”<sup>185</sup>

## Funding

170. Funding from the EU for environmental and climate change initiatives was also a key feature in some submissions. Scottish Environment Link’s submission detailed the importance of EU funds for a number of its members and reported on a project proposal that had now been withdrawn. It said that EU funds have had a critical role in enabling research for our environment as well as implementing programmes for its protection and enhancement. The organisation also commented as follows—

” What is more, the impacts of a potential Brexit are already being felt across the environment sector. For example, earlier in 2016, two LINK members (RSPB and Plantlife) finalised a submission of an £11 million bid for EU LIFE+ funding to support the control and eradication of the invasive non-native species *Rhododendron ponticum* and restore the biodiversity and declining status of key Special Areas of Conservation (SACs). This bid has now been withdrawn due to the considerable uncertainties associated with LIFE funding beyond 2018. The project would have helped deliver both the Scottish Government’s strategy on *Rhododendron ponticum* and a key project in the Government’s Route Map for Biodiversity. While the organisations are rethinking the bid, the scale of the original project, which included significant parts of the Scottish west coast, is likely to be lost in the absence of alternative funding.

171. More generally, RSPB Scotland noted that Scotland currently received substantial amounts of funding for environmental initiatives from the EU in order to conserve, enhance and protect our natural environment. It said that—

” ...the Scottish Government should be asked to acknowledge the importance of this funding and give assurances that it is pressing the UK Government to ensure that the level of funding provided will not be reduced below existing levels. If such assurances are obtained, the Scottish Government must also commit to ‘passing on’ such funding to these environmental objectives in Scotland.<sup>186</sup>

172. In its submission, Scottish Natural Heritage (SNH) gave details of the main sources that it was using to meet its objectives on protected areas, species, access and greenspace, namely—

- LIFE – three live projects worth £7.3m with £3.65m coming from EU (an average of c. 750K of EU funds per year) – habitats & species work.
- SRDP Agri-Environment Climate Scheme (AECS) (a total of £360m over 5 years) - works benefitting protected nature sites and priority species and habitats to implement the Scottish Biodiversity Strategy and Routemap
- SRDP – AECS-IPA (Improving Public Access) Option (a total of £6m over 5 years) – countryside access improvements.
- SRDP ECAF (Environment Cooperation Action Fund) Scheme (a total of £10m over 6 years) for facilitating landscape-scale environmental projects by co-operating groups of land managers.
- ERDF (a total of £37m from 2016-2022) - Green Infrastructure Intervention.

173. SNH said that, overall, the value of the projects and schemes benefiting from EU funding that it is directly engaged in are worth £105 million. SNH’s contribution to these is £2.6 million and the EU contribution is circa £50 million (the balance is

from other partners). SNH is leading four of these projects worth £58 million, with £2 million SNH funds.<sup>187</sup>

174. The Scottish Association for Marine Science also raised similar issues relating to EU funds. It also noted that a consequence of withdrawal from the EU would be the change in the ability to influence the shape of EU research programmes and projects and to attract or retain scientists who might work on them.<sup>188</sup>

## Emerging issues

175. The following were among the key issues to emerge from the evidence on climate change and the environment—

- How Scotland and the UK will meet their legally binding climate change emissions targets which currently rely on involvement in a series of EU initiatives to reduce the emission of greenhouse gases;
- What future regulatory regime will replace the one emanating from EU legislation and whether this might be stronger or weaker compared to the regime at present;
- How various standards and policies would be enforced when the UK is no longer part of any EU enforcement process;
- How Scotland and the UK plan to tackle trans-boundary pollutants and other environmental concerns if they are no longer part of any co-ordinated EU approach;
- What level of funds will be available in Scotland for environmental and climate change research and projects, to replace the current levels of funding and myriad of funding streams such as Pillar 2 of the CAP, LIFE+, Agri-Environment Climate Scheme.

## Economy & Employment

176. This section of the report focuses on implications for the economy and employment matters. The issues of the UK's potential future trading relationships will be dealt with in a separate Committee report.

### Policy background

177. This section of the report considers a number of potential impacts of withdrawal from the EU on the Scottish economy and on employment matters.
178. In terms of economic impact, it is important to distinguish between the impacts that the withdrawal from the EU may have in the short-term, particularly during this period when the UK has held a referendum but has not yet triggered Article 50 or concluded any agreements at the end of that process, and those for the longer-term.
179. The main impacts to be considered include the implications of withdrawal from the EU on GDP, the labour market, the value of Sterling against other major currencies such as the euro or US dollar, on investment of both a domestic nature and Foreign Direct Investment (FDI), as well as some of the implications on specific sectors in the Scottish economy.
180. Withdrawal from the EU will also have implications on the transition away from a regulatory environment in the economy and labour market which is significantly defined by the EU, towards one which is set within the UK. This means issues of which legislation is retained, amended or repealed will need to be considered, covering a very wide array of subjects such as business regulation (e.g. on mergers and acquisitions), taxation, insolvency, employment law, product standards and norms, consumer protection, environmental protection, health and safety, procurement rules and state aid.
181. During any such process of reviewing what EU law to keep and what to amend or replace, there will be many challenges, but also possible opportunities. One such opportunity, which is commonly cited, is a recognition that the withdrawal process would mean that that UK is not restricted by the EU's currently regime for VAT and could therefore review this tax. Other potential opportunities are the move away from the EU's public procurement legislation and state aid rules.
182. Withdrawal also has implications for the UK and Scottish labour market, both in terms of possible changes to the regulatory environment and also on issues such as the freedom of movement of workers within the EU and freedom of establishment for the individual or passporting for finance firms.
183. A substantial component of UK employment law is grounded in EU law. EU employment law provides a minimum standard below which domestic employment law must not fall. In some cases EU law has entrenched, at an international level,

provisions that already existed in domestic law: sex and race discrimination and certain maternity rights, for example. In others, new categories of employment rights have been transposed into domestic law to comply with emerging EU obligations.

184. Finally, in this section of the report, as with many others, the current value of the EU's various funding streams and their contribution to economic development, business support, innovation and research and development. has to be considered. Questions of what domestic programmes will replace the current EU funds and how they would operate are at the forefront of much of the evidence received.

## Summary of evidence received

### Economic impacts

[Fraser of Allander modelling, OBR forecasts and other views on the long-term impacts on the Scottish economy](#)

185. As part of the Committee's efforts to understand the potential long-term impacts of withdrawal from the EU on the Scottish economy, the Fraser of Allander Institute (FAI) was commissioned to undertake economic modelling work, resulting in the publication of a report in October 2016.<sup>189</sup>
186. This was the first detailed analysis of this kind for Scotland – other economic modelling studies had looked at the UK as a whole and had tended to focus on overall economic impact, without considering the impact on different sectors in Scotland. The main results of the Fraser of Allander Institute's research are summarised below.<sup>190</sup>
- Under all modelled scenarios, Brexit is expected to have a significant negative impact on the Scottish economy, although the impact for Scotland is less severe than for the UK as a whole.
  - After around 10 years, a reduced level of trade with EU countries is expected to result in GDP being between 2% and 5% lower than would otherwise be the case and employment 1-3% lower.
  - This is equivalent to Scottish GDP being between £3bn and £8bn lower than would otherwise be the case after 10 years and employment between 30,000 and 90,000 lower after around 10 years.
  - The scale of impact varies depending on the scenario, with the WTO model suggesting the largest reductions in GDP and employment.
  - In percentage terms, the 'other primary' sector, which includes mining, refined petroleum and onshore oil and gas activities, faces the largest potential reductions in employment and output. After around 10 years, employment is

expected to be 3-8% lower than would otherwise be the case and output 4-10% lower.

- In absolute terms, the largest reductions are for the 'wholesale & retail trade; transportation & storage; accommodation, food services' sector – the number of jobs in this sector could be up to 25,000 lower after around 10 years than would otherwise be the case.
- Depending on the details of the Brexit outcome, there could be a modest positive offsetting effect as a result of reduced EU contributions, but this effect is small in comparison to the negative effects of reduced trade.
- Additional losses could result from a fall in labour productivity and an increase in tariffs for trade with EU countries.

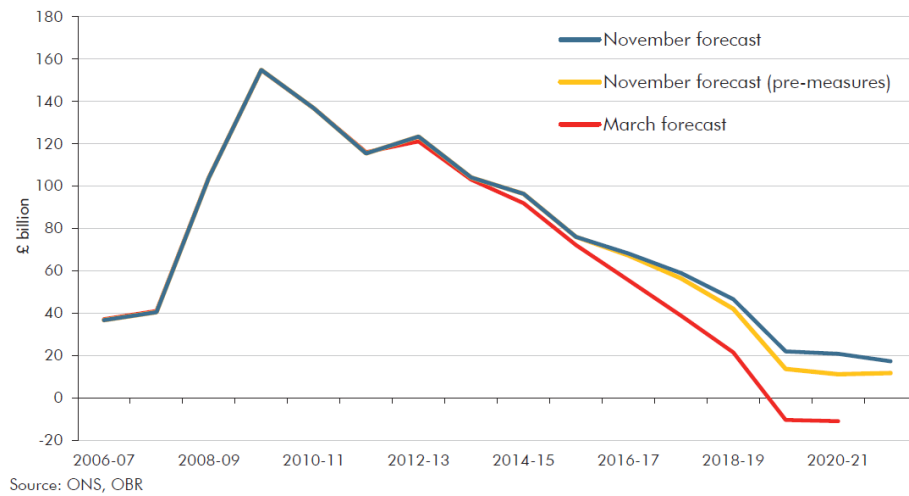
187. In addition to the above, a number of other bodies have published forecasts on the possible long-term impacts of Brexit. In its recent analysis published shortly after the UK Government's Autumn Statement of November 2016, the Office of Budget Responsibility (OBR) forecasts that, over the longer-term, the UK will run a deficit of £20.7 billion in 2020-21, compared to a surplus of £11 billion for 2020-21 that was forecast pre-Referendum in March 2016.<sup>191</sup>

188. In its analysis, the OBR states that it is not straightforward to predict what economic impacts over either the short- or the longer-term are a direct result of withdrawal from the EU. The OBR states that, in its view, non-Brexit-related effects on the UK's economy dominate in 2016/17 and diminish over time, whereas the Brexit-related effects are smaller this year and then increase over time.<sup>192</sup>

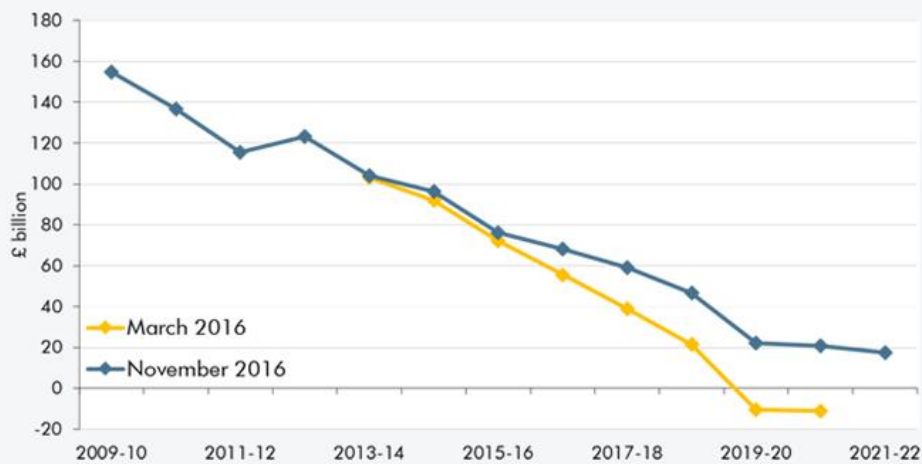
189. The following charts set out some of the OBR's forecasts over the longer-term for the UK's economy (comparing forecasts made in March 2016 –pre-referendum - to those in November 2016 – post-referendum).



Chart 1.1: Public sector net borrowing



Borrowing



Debt

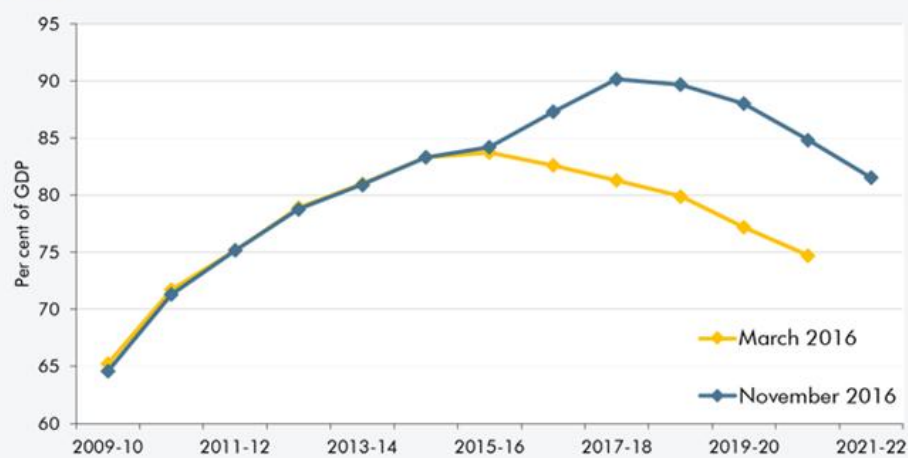
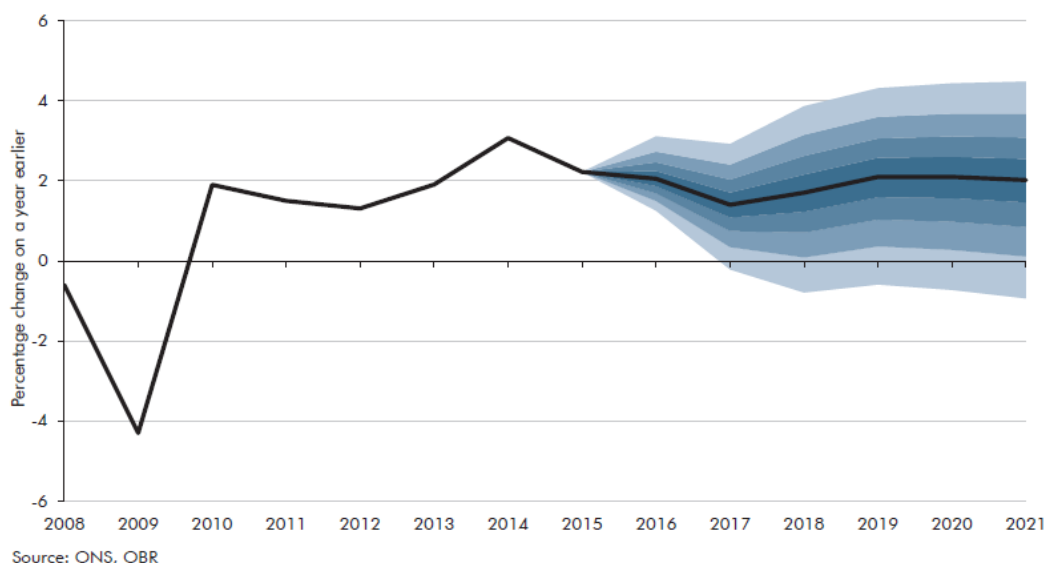


Chart 1.3: Real GDP growth fan chart



Source: OBR, Economic and fiscal outlook – November 2016<sup>193</sup>

190. Some of the respondents who sent the Committee submissions of evidence also set out their views on the possible long-term impacts of withdrawal from the EU on the UK's economy.
191. The CBI Scotland said that, if uncertainty around Scotland's relationship with the EU is prolonged, it will have "long-term impacts on the economic health of the nation".<sup>194</sup> The CBI noted that many Scottish businesses currently form a part of pan-European or international supply chains, providing a small component or specialised service as part of a process that produces a larger product. In its view, the complex nature of these supply chains means that planning can take place 3-5 years before the product comes to market. Similarly, international companies with subsidiaries in Scotland will make investment decisions a decade or more in advance. Scotland competes with other countries to attract that international investment. In its view, extended uncertainty about the UK's EU membership could make it less attractive to include Scottish companies in these long-term plans, with the effects being felt for many years.
192. Highlands and Islands Enterprise's submission set out a number of issues and challenges for the medium to longer term. It said that there are likely to be "many years of uncertainty" stemming from the complex and time-consuming process that will be necessary to negotiate new bilateral trade agreements with other countries.<sup>195</sup>
193. Similarly, the Scottish Trades Union Congress (STUC) also commented on the potential long-term implications of the UK withdrawal from the EU. It said that "the overwhelming consensus among serious economists is that Brexit will be

significantly detrimental to the UK and Scotland's long-term economic interests.”<sup>196</sup>

### Short-term impacts of Brexit

194. A significant number of submissions also commented on the more short-term effects that either have happened, or were forecast to happen, in the immediate aftermath of the Referendum and over the next 1-2 financial years.
195. CBI Scotland said that it was difficult to fully assess the immediate economic impact of the vote to leave the EU as there is still only a limited amount of data, but the consequences so far have been mixed in its view. The CBI's growth indicator (which covers around 75% of the private sector economy) showed only a “modest slowing in growth in the three months to July, with variation between sectors”. The CBI Scotland said that “manufacturing output recovered and, while retail sales fell on a year ago, retailers suggest this was more affected by bad weather than the referendum.”<sup>197</sup>
196. The Chartered Institute for Personnel and Development (CIPD) stated that Brexit was “already having a major impact on Scotland's economy, with revisions in Scotland's rate of economic growth already being factored in, and a rise in our level of unemployment from around 6.5-to-7% being predicted.” The CIPD said that Scotland had recovered well from the global financial crisis and our government, business and citizens had shown a great deal of resilience but, “clearly as a political and economic shock, Brexit is unwelcome”. CIPD concluded that the macroeconomic impacts are already feeding through into employment prospects.<sup>198</sup>
197. Oil and Gas UK's submission was more nuanced than some. It noted that withdrawal from the EU posed both risks and opportunities for the oil and gas industry. In the short term, Oil and Gas UK saw three main risks: distraction from managing its way through the ongoing global oil and gas downturn; a loss of influence over ongoing and future policy development in Brussels which could be detrimental to the sector; and uncertainty which will make it difficult for its members to make long-term investment decisions. However, Oil and Gas UK also said that the industry had “not felt a major, immediate impact as a result of the referendum” but continued to face “very challenging times as a result of the global downturn in our sector”. It stated that this was “irrespective of the referendum result”.<sup>199</sup>
198. The STUC's submission was more critical. It said that, whilst it will be the autumn before official GDP and labour market data begin to quantify the immediate impact of the referendum vote, initial survey data seemed to suggest that the short-term impact may be “at the more pessimistic end of the forecast spectrum”. The STUC noted that the UK Purchasing Managers Index and survey evidence, which showed a record collapse in business confidence, was broadly consistent with the Fraser of Allander Institute's recent post Brexit survey of Scottish businesses. However, the STUC submission did note that Claimant Count data for July 2016

suggested that there had been “no immediate Brexit induced dip in the labour market and July retail spending data registered an increase”.<sup>200</sup>

199. The STUC warned, however, that there—



...is a danger that an understandable focus on the short-term consequences might begin to obscure the prospect of significant long-term damage to the Scottish economy i.e. if a technical recession is avoided this year, some might claim that the damage due to Brexit has been limited/negligible. This will be hugely complacent and premature.<sup>201</sup>

200. In the social housing sector, the Scottish Federation of Housing Associations (SFHA) noted that in an atmosphere of almost complete uncertainty it was extremely difficult to predict whether any change as part of a post-Brexit deal will be positive, negative or neutral for SFHA members.<sup>202</sup> SFHA noted that, broadly speaking so far, “anecdotal feedback from our members suggests that they are not encountering widespread reluctance from the private sector (mainly the retail banks) to invest in social housing being delivered by housing associations”.<sup>203</sup>

201. On the other hand, the information technology industry association – ScotlandIS – submission said that its members were “very concerned” about the impact of the referendum result. A survey of its members showed that three quarters predicted that withdrawal from the EU would have a negative impact on sales and customer confidence, with 62% saying that overseas sales will be negatively affected and just under 49% saying that they expected the business environment to get worse or considerably worse over the next 12 months, compared to 5% that said it would get better.<sup>204</sup>

### The value of Sterling

202. One economic measure in particular was mentioned as having, in the short-term at least, an impact on business and that was the fluctuating exchange rate of Sterling versus other major currencies such as the euro or US dollar. Shortly before the referendum, Sterling was trading at around €1.3 to the pound. Currently, as of mid-January 2017, the exchange rate is €1.15 to the pound, with a low of €1.10 to the pound in mid-October and a high of €1.43 to the pound in December 2015.<sup>205</sup>

203. Industry Leadership Group Chemicals Sciences Scotland noted that whilst the weak pound may be positive for exports in the short term there was an on-going concern in the chemicals industry over the longer period.<sup>206</sup>

204. The construction industry body – Construction Scotland – stated that—



Since the decision to leave the EU, the value of the pound has fallen substantially. This has a direct and immediate impact on the cost of delivering projects. Construction Scotland would like to see stability and confidence on currency exchange rates.<sup>207</sup>

205. Festivals Edinburgh – the strategic body representing Edinburgh’s 12 major festivals – noted that the drop in the value of Sterling has had several immediate effects on costs and funding in this sector, including increased costs to artists and producers bringing international work to Edinburgh’s festivals and an increased risk of lower sponsorship commitment than before given the drop in the value of Sterling.<sup>208</sup>
206. CBI Scotland submission states that “some Scottish businesses have suffered as a result of the fall in the pound, and some have benefited”. The CBI said that there had been a significant improvement in the competitiveness of exports – helping externally-facing industries, but the price of imported goods and raw materials was increasing. In its view, this rise in the cost of imports was affecting Scottish businesses as diverse as printing presses faced with higher paper costs and logistics companies forced to renegotiate prices on bulk orders of vans. The CBI concluded that the increase will offset some – if not all - of the gain in export competitiveness, and will put upwards pressure on inflation.<sup>209</sup>
207. In its submission, the STUC warns that a lower pound also meant that the price of imports would increase contributing to rising inflation. The STUC stated that—

” ...it is widely assumed that the fall in the value of sterling – some 11% on a trade weighted basis – will prove beneficial to UK exporters. However, experience from the 2007-09 devaluation suggests that impact may be disappointing. Scottish exports tend to be higher value and less price sensitive than in the past and some goods exports are the end result of global supply chains; components become more expensive as sterling falls. The July inflation report showed an immediate uptick in factory costs. Exporters also need to continue to invest in facilities and innovation to remain competitive. If the survey evidence is correct and Brexit leads to an investment freeze, the fall in the pound is unlikely to be sufficient to boost exports.<sup>210</sup>

## Investment

208. The UK’s decision to leave the EU may also have implications on the level of investment in the economy and investor sentiment, both in the short- and long-terms. In its submission, the Royal Town Planning Institute (RTPI) said that—
- ” ... reduced economic confidence across the UK as a result of the EU referendum result is likely to impact private sector decisions on whether to invest or not in long term infrastructure and housing developments. While such decisions on the part of investors are often confidential for commercial reasons, anecdotal evidence from our members suggests a change in the operating environment. In particular, that investment decisions are being revisited and suspended as a result of falling confidence.<sup>211</sup>
209. Highlands and Island Enterprise reported a survey of members of its Business Panel in August 2016 which indicated the following<sup>212</sup>--

- More than half of businesses (55%) said that the EU referendum result had made them less confident about Scotland's economy;
- Around 45% of businesses were less optimistic about future business prospects following the EU referendum result; and
- Around a third of businesses stated that they were more likely to delay investment plans (16%) or be less likely to invest (15%) as a result of the referendum outcome.

210. In his submission, Professor Andrew Hughes-Hallett of the University of St. Andrews noted that one important point in relation to investment levels is that these are the means by which productivity growth enters into the economy. In his view, productivity growth is the only source for permanent increases in growth and employment (growth in available labour would help too, but Scotland's working population is static or shrinking). He concluded that a "loss of investment for Brexit reasons would inflict even greater long term damage to the Scottish economy than the current weak investment performance because the ability to incorporate productivity gains would shrink."<sup>213</sup>

211. Construction Scotland stated that—

” The uncertainty following Brexit and the actuality that UK will no longer be part of the EU/single market has led to concerns over reduced investor confidence in the UK. This reduced confidence may lead to reduced investment in private and public sector construction projects.<sup>214</sup>

212. Whilst the STUC said that “All potential Brexit scenarios are likely to damage, potentially seriously damage, Scottish trade and investment which will have negative effects for jobs, household incomes, productivity and innovation.”<sup>215</sup> In particular, in relation to Foreign Direct Investment, the STUC said that—

” Scotland's success in attracting Foreign Direct Investment (FDI) has probably been overstated in recent years, as the survey evidence often quoted by Scottish Ministers is based on the number not the value of new projects. FDI figures also treat the purchase of Scottish owned firms by foreign buyers as FDI, even if there is no new additional investment. However, over the longer term, FDI has been an important source of new employment in Scotland and has also contributed significantly to productivity growth. One factor making Scotland an attractive location is the access it has hitherto offered to the European single market. If this is lost, it is reasonable to assume that FDI will decline if not disappear. In the short term, the fall in the value of sterling will make it easier for foreign buyers to purchase UK firms as was witnessed recently by the sale of ARM.<sup>216</sup>



## Sectoral implications

213. In early September 2016, the Committee published its [1<sup>st</sup> Report on the Initial Evidence](#). Much of this was based on submissions of evidence – both written and oral – from a number of industry sectors, including food and drink, agriculture, fisheries, aviation, banking, and further and higher education. This section of the report summarises the more recent evidence we have received in writing from a range of industry sectors.

### Energy

214. In its submission, Oil and Gas UK, noted the current level of uncertainty surrounding withdrawal from the EU and its implications. It considered that this process could bring both risks and opportunities, but, in its view, it is the detail of the UK's relationship with the EU and the rest of the world that will shape this.
215. Three short-term risks were identified by Oil and Gas UK: that Brexit will be a distraction at a critical moment for the industry and the falling oil price, that the UK's influence in Brussels will fall at a time when the European Commission is considering a number of key directives (such as the Hydrocarbons BREF) and that Brexit causes uncertainty when companies need to make long-term investment decisions.
216. Oil and Gas UK stated that it would welcome clear, early statements from government on fiscal stability and how regulation and access to EU markets and the internal energy market will be impacted. It also said it would welcome guidelines setting out the timetable for withdrawal, as well as possible issues and the priorities to be addressed in the negotiations.<sup>217</sup>
217. Moving onshore, the UK Onshore Oil and Gas Group stated that, as part of any negotiation, the UK will need to decide whether it is part of the EU's internal energy market and what the implications are for consumers and industry.<sup>218</sup>
218. Scottish Renewables' submission also commented on the importance of the EU's internal energy market (IEM). It cited the results of a study conducted by Vivid Economics in 2015 on behalf of the electricity System Operator, National Grid, which found that "the impact of the UK being excluded from the IEM could be up to £0.5 billion per annum in the 2020s".<sup>219</sup>
219. Scottish Renewables concluded that there is currently a lack of clarity about when the UK will leave the EU, and what any new relationship between the UK and the trading bloc will look like. Therefore, in its view, it is very difficult to assess how any future relationship between the UK and the EU would affect, either positively or negatively, the renewable energy sector in Scotland. Scottish Renewables believes it is important the UK Government keep in mind the priorities outlined by the CBI in the negotiations, as there are a number of issues relevant to the continued success of the renewable energy sector on Scotland.<sup>220</sup>

### Information Technology/Systems

220. ScotlandIS - the trade body of Scotland's digital technologies industry – noted that IT/IS firms in Scotland account for over 80,000 people, contributing more than £4.5 billion per year to Scottish GVA. About two thirds of businesses in the industry sector sell outside the UK and another 19% plan to do so in the future. A significant percentage of digital technologies companies are exporting to Europe.
221. In a survey of its members, ScotlandIS said that its members were very concerned about the impact of the EU referendum result, with three quarters predicting it will negatively impact sales and customer confidence. On exports, 62% of its members said that they anticipate a negative impact on their ability to increase sales overseas. Its members were split on the question of their ability to attract growth capital, with 53% expecting a negative impact compared with 47% predicting no change or a positive impact. 49% expect the business environment for their company to get worse or considerably worse over the next 12 months. 35% anticipate no change and 5% expect the business environment to get better.
222. 22% of respondents said that the referendum result has made them consider relocating their business and 23% consider opening offices in other geographies. The new locations for HQs or new offices mentioned were the US, and EU countries such as Ireland, the Netherlands, Belgium, Germany, France and Poland.
223. ScotlandIS also stated that—

” These survey results highlight the risks a major period of uncertainty and an exit from the EU are likely to have on profitability and growth across the digital technologies industry, which will impact the wider Scottish economy, and the labour market.<sup>221</sup>

224. It said that these results indicated that its members tended to prefer a post-Brexit scenario that is as close to the full EU membership and included access to the single market as well as free movement of labour. The trade body called on negotiators to reflect the needs of the industry, including access to the single market and the European talent pool, when agreeing the terms of the UK's new relationship with the EU.<sup>222</sup>

### Culture, Hospitality and Tourism

225. In its submission, VisitScotland stressed the importance of EU funding to support the work of SMEs in the tourism sector. It noted that it currently draws down £11.7 million in European Regional Development Funds for the programme 2015 – 2018, to support for SMEs in helping them internationalise their business.<sup>223</sup>
226. Creative Scotland – the public body for the development of arts, screen and the creative industries – also highlighted the value of EU funding, noting that around 40% of individuals and organisations who replied to a survey had previously



received EU funding in the past for various projects. Creative Scotland said that respondents to its survey “very strongly agreed that the involvement in EU funded projects opened up new networks and helped develop new partnerships.”<sup>224</sup>

227. Creative Scotland’s survey also highlighted a number of other concerns, including anticipated problems of accessing international markets and also the issue of touring work internationally with some respondents stating that uncertainty was already having a negative impact on trade. The body also noted issues with the rising costs from the recent depreciation of Sterling, specifically in relation to arranging international travel.<sup>225</sup>
228. Culture Counts noted that the EU is the largest export market for the UK creative industries, totalling 56% of all overseas trade in the sector (source: Federation of Creative Industries). It said that it is vital that Scotland and the UK is able to influence regulatory decisions which may have a bearing on future trading, such as current discussions around the Digital Single Market including copyright reform.
229. Edinburgh Chambers of Commerce’s submission noted that, in the hospitality sector, a very significant proportion of the workforce are EU27 citizens (for one of its members, 50% of full time and 75% of temporary staff are from mainland Europe, for another 75% of staff are EU27 citizens). It stated that many of these are un-skilled, meaning any move to a points-based immigration system would have a major impact on the ability of this sector to recruit.<sup>226</sup>
230. Their submission also noted that current EU regulations also ease the movement of heritage items and works of art which is important for museums and galleries in purchasing or exhibiting objects for their collections. Culture Counts said that there are streamlined processes for the import and export of works of art both within and outside the EU and any regulatory changes could bring extra bureaucracy and cost making it more difficult to mount international exhibitions.<sup>227</sup>
231. Museums Galleries Scotland (MGS) said that it was “not yet clear what the impact of Brexit will be as decisions are still to be made about how the UK will interact with EU member states in all areas.”<sup>228</sup> One area of uncertainty for it was the European Capitals of Culture (ECOC) programme. It said that although there are examples of cities which do not belong to EU member states becoming Capitals of Culture, it is not clear if this will be a possibility for cities from states which are former EU members. MGS notes that the programme guidance currently says the following “Every third year there is an ECOC from a candidate country/potential candidate to EU membership.”<sup>229</sup>
232. Festivals Edinburgh noted that the fall in the value of Sterling and weaker stock markets had resulted in increased costs to artists and producers of bringing international work to Scotland. It said that some of Edinburgh Festivals’ international partners were showing “increased caution” in committing to medium and longer-term collaborations because of the uncertainty about the status of partners from Scotland and the UK.<sup>230</sup> Festivals Scotland stated that “Scotland

must be able to influence EU regulatory, tax and trade tariff regimes that will influence future trade in the cultural and creative industries.”<sup>231</sup>

### Farming, food and drink

233. These sectors report annual sales of £14.3 billion and are a central component of the Scottish economy.<sup>232</sup> It is estimated that 80% of Scotland’s food and drink products are sold in the EU but what is not yet clear is how these will be affected by the changes which are taking place as a result of the referendum.

234. Scotland Food and Drink highlighted four priority areas to the Committee, namely concerns around the existing and future workforce, future trade agreements, future of existing finding streams and the future regulatory framework.<sup>233</sup>

235. At a more local level, some of the respondents commented on the importance of the food and drink sector in their locality. For example, Angus Council stated that “consideration should also be given to the impact on produce protected under PGI [protected geographic indication] status”. It noted that the UK has a total of 65 products with such status and, within Angus, the Arbroath Smokie has PGI status and a similar status for the Forfar Bridie is currently pending.<sup>234</sup>

236. In its submission, Macduff Shellfish noted that approximately 80% of its sales were made to markets in and across Europe. For the company, retaining access to the Single European Market was “imperative”.<sup>235</sup>

237. Finally, as outlined in a subsequent section, labour market and employment issues were particularly important to the farming, food and drink sectors, either for permanent employees or for seasonal workers. The Chartered Institute for Personnel and Development (CIPD) noted that “Scotland has a large number of Eastern European migrant workers in our farming, food processing and hospitality industries, all critical to our economy, with the majority being from Poland.” CIPD stated that “any significant shifts in the availability of these key workers can have a detrimental impact on our economy.”<sup>236</sup>

### Freight transport and ports

238. In its submission to the Committee, the Freight Transport Association set out a number of fundamental issues that it said needed to be resolved during the UK’s negotiations on withdrawal. These included—<sup>237</sup>

- The conditions and procedures for future trade with the Single Market and also which countries will be prioritised for new trade deals.
- What the UK’s customs tariffs will look like.
- Whether the UK should impose limits on the amount of diesel that can be brought into the UK in the fuel tanks of foreign registered vehicles, with a possible exemption for Irish registered vehicles.

- What special and distinctive measures may be put in place for trade between the UK and the Republic of Ireland, especially across the land border in Northern Ireland and also for the transit of Irish traffic through GB.

239. For the Scottish Ports Committee, the most immediate concern was that of the possible recreation of border controls. The Scottish Ports Committee said that priority should be given to ensuring that Scotland can trade with other EU countries without additional costs and delays.<sup>238</sup>

### **EU law and the future regulatory environment**

240. Many of the submissions providing views in the area of the economy commented on EU law and the future regulatory environment in particular. Some highlighted specific EU directives or regulations that were important to their sector, some highlighted the issue of enforcement and the current role played by the Court of Justice of the EU and some cited a number of opportunities that could be realised as a result of the process of withdrawal.

### **Sectoral observations on specific EU laws**

241. In its submission, the UK Onshore Oil and Gas Group (UKOOG) cited both environmental and internal energy market legislation as key to its interests. UKOOG stated that almost all the environmental regulations for onshore oil and gas are derived from 17 EU directives and that, currently the UK has “a good working relationship with the EU with respect to onshore oil and gas as the country is seen as the market leader with a gold standard of regulation and with considerable experience”.<sup>239</sup>

242. UKOOG’s view is that, if the UK (or Scotland) were to negotiate membership of an ‘energy union’, then it would not be unreasonable to expect that Scotland/UK will also need to agree to comply with related environmental regulation, in order to create a level playing field across the union. In these circumstances, UKOOG called for any changes to such regulation to be properly discussed and agreed across the energy union by its members.<sup>240</sup>

243. UKOOG also noted that, as part of the process of withdrawing from the EU, the Scottish and UK Governments will need to consider how to enshrine current EU legislation into law in the respective countries and how this is enacted via parliamentary procedures, in particular secondary legislation and statutory instruments. From a simple logistical viewpoint, it may be possible, in its view, to “save” current legislation in some form, however what is less clear is how this continues in line with the rest of the EU. Of particular interest to the onshore oil and gas sector is the legislation relating to best available techniques standards (BREFs), the requirement for environmental impact assessments and in particular the new EIA directive which has to be implemented prior to June 2018.<sup>241</sup>

244. For the offshore sector, Oil and Gas UK’s submission also called for more consultation with the industry on how regulation and access to markets and the

internal energy market will be impacted. It cited some ongoing concerns about specific EU legislation which, in its view, is potentially damaging to the industry. This included EU Emissions Trading Scheme reform, the Hydrocarbons BREF, the Large Combustion Plant BREF, and the gas quality amendment to the Interoperability Network Code.<sup>242</sup>

245. Submissions from other sectors of the economy, such as that from the Institute of Chartered Accountants in Scotland (ICAS) highlighted how extensive the reach of EU law is in some areas, citing relevant legislation relating to public procurement rules, state aid, financial reporting standards, corporate reporting, audit arrangements, pensions, tax and VAT, insolvency and charity law as all requiring consideration as part of the UK's withdrawal from the EU.<sup>243</sup>

246. ICAS concluded that—

” At this point in time, it is perhaps too early to focus on the detail. To pick and choose what parts of the complex European regulatory framework need amended is a vast undertaking and will take many years. Rather, the key priority at present is for the UK Government (assisted by the devolved administrations) **to establish a clear vision of what Brexit means for the UK, the EU and internationally**. This would provide assurance to stakeholders as to the intended direction of travel and hopefully help to manage some of the current uncertainty.<sup>244</sup>

247. ICAS's view is that the UK Government should aim to provide regulatory stability and commitment to international standards in these areas (where appropriate) and to aim for a suitable, even generous transition period and aim only to introduce a moderate level of significant change in sensitive areas until effective alternatives are demonstrated.<sup>245</sup>

248. The Chartered Institute of Taxation made similar observations, and cited a number of key directives such as the Interest and Royalties Directive, Merger Directive, Capital Duties Directive which will all cease to apply to the UK on withdrawal from the EU and repeal of the European Communities Act 1972.<sup>246</sup>

249. Even in more niche sectors of the economy, the Committee still received submissions highlighting how EU legislation influences many areas. The submission from TBR Global Chauffeuring firm cited a number of uncertainties which it says will have an effect on its operations, such as the Tour Operators Margin Scheme which enables VAT to be accounted for on its international services without TBR having to register and account for tax in every individual country.<sup>247</sup>

250. It is important to note that a small number of submissions were more positive in terms of the scope that Brexit offers in relation to rethinking the UK's regulatory environment. For example, Robert Durward of Cloburn Quarry Co Ltd stated—

” Not all Scottish businesses sell to the EU yet all are caught up in its damaging red tape. A flood of EU Directives has damaged our civil engineering, construction, transport, house building and healthcare sectors but they have also adversely affected practically every frontline goods and service provider.<sup>248</sup>

251. Similarly, Jim Cockram of Copernicus Technology Ltd said that not being in the EU will “make life more difficult” but that, overall, “this can all be overcome as long as we get good trade deals as part of the Brexit negotiations.”<sup>249</sup>

### The role of the Court of Justice of the EU

252. A small number of submissions, for example that from the Chartered Institute of Taxation, made particular reference to the role of the Court of Justice of the EU and how this may change.

253. The Chartered Institute of Taxation noted that “there is some uncertainty about the future influence of rulings of the Court of Justice of the EU (CJEU), which interprets EU law.” In its view, it is likely that withdrawal by the UK will require repeal of the European Communities Act 1972. In this case, the Institute believes that the UK may no longer be bound by CJEU rulings. As the Institute notes, there are likely to be practical issues about what will happen to appeals and cases already in motion, but as yet undecided. Going forward, the Institute believes that the UK and Scottish parliaments will be able to reverse the impact of judgments of the CJEU by legislating for a different interpretation, or making amendments where CJEU rulings have been incorporated into UK or Scottish law.<sup>250</sup>

### Procurement law and state aid

254. Two particular areas cited by a number of respondents whereby the UK’s withdrawal from the EU may enable the UK and Scottish parliaments to act differently than currently permitted under EU law are in public procurement and in state aid.

255. ICAS’s view is that EU’s procurement rules are “complex” and that this is “incompatible with achieving greater effectiveness” and it would welcome further simplification. Its members in business and practice reported that the public procurement process is “overly prescriptive and burdensome”.<sup>251</sup> In its view, current processes are slow and costly to implement and as a result, disadvantage small suppliers who do not have the resource to absorb this. In addition, ICAS states that the EU’s grant procedures are arduous and too detailed.<sup>252</sup>

256. ICAS also believes that the EU procurement thresholds are set too low, particularly for supplies and services which can range from as low as €80,000. In its opinion, there is minimal if any cost benefit to apply procurement rules at current levels, given their arduous administrative burden. Its preference is for the rules to be applied at a much higher threshold, at least €1m or even better, €5m. Secondly, ICAS says that tendering is based on the full life cycle rather than

annual amounts – again this is too low a threshold in its view and it brings in too many lower value projects.<sup>253</sup>

257. These views were shared by the Chartered Institute of Housing which stated that “leaving the EU or renegotiating Scotland’s position within the EU could present an opportunity for some positive changes, particularly in relation to procurement regulation which is currently overly complex, restrictive and time consuming.”<sup>254</sup>
258. In relation to state aid, ICAS’s view is that some form of state aid provisions would remain in place post-Brexit, as it is required both by membership of the World Trade Organisation (WTO) and the European Free Trade Association (EFTA). Its preference would be for a model which is simpler to operate, less rules based and where a higher threshold is set for example, exempting at least the smaller end of SMEs who are likely to have a much more limited impact on competition.<sup>255</sup>
259. The Chartered Institute of Public Finance and Accountancy (CIPFA) also make reference to state aid rules and how they may change, noting that these will need to be reviewed.<sup>256</sup> Similarly, the Scottish Federation of Housing Associations also commented that there may be opportunities for new flexible public funding mechanisms to be developed.<sup>257</sup>
260. Angus Council’s submission noted that “access to the EU market may prove to be conditional on acceptance of EU State Aid rules so that the UK cannot engage in practices that distort fair competition.” In its view, just because the rules allow financial aid to companies, that does not mean that government will avail themselves of the opportunity, as experience following the demise of the Regional Growth Fund in England has shown. It also notes that, outside the EU, the UK will be less able to influence the shape of the rules themselves.<sup>258</sup>
261. The Co-operatives UK group though did identify opportunities for this sector from reform of procurement law. It said that for co-operatives and social enterprises seeking to deliver commissioned public services, EU procurement regulations “have at times been problematic”. It noted that public commissioners often feel EU rules limit their legal ability to support the social economy because they stipulate short term open competitive tendering over social commissioning and the development of ‘public social partnerships.’ Their submission concludes though that “a new procurement framework could improve this”.<sup>259</sup>
262. Co-operatives UK did note, however, that the most recent EU rules for public service contracts specifically allow commissioners to reserve certain contracts for mutuals for three-year periods and this is something they would like to see implemented. The body also noted that EU public procurement rules are designed to create a level playing field for all businesses in the Single Market.
263. In its submission, the Royal Institute of Chartered Surveyors in Scotland said that, exempt from EU legislation and procurement processes following its exit, UK public procurement could look to use UK-based companies, labour and materials – providing support for industries that are evidently worried about future

infrastructure investment (due to the loss of EU funding) and development opportunities. However, RICS noted that current EU regulations would need to be replaced by UK created regulations to ensure bribery and corruption (which current EU regulations inhibit) do not re-materialise.<sup>260</sup>

264. Finally, the STUC's submission is more cautionary in terms of whether the impact of withdrawal from the EU on state aid/procurement reform should be viewed as an opportunity. It cautioned that—

” Another school of thought argues that free of EU constraints (e.g. state-aid requirements), Government intervention in the economy could be extended and improved through more robust and creative use of instruments like public procurement. This argument is something of a straw man – other nations manage to pursue more effective policy within the EU and possible outcomes (e.g. Norway option or bilateral trade agreement) would leave in place many of the same constraints.<sup>261</sup>

#### Reform of VAT

265. The other EU competence commonly cited in the submission as affording the possibility of reform after Brexit are the rules relating to VAT. In its submission, Reform Scotland argued that “with the UK voting to leave the EU, there is no reason why the UK Government cannot give a commitment to devolve VAT in full once we have formally left the EU.” It said—

” By assigning VAT revenue the UK Government recognised the benefit another tax would bring to the Scottish Parliament. However, without control over that tax, there is no ability for the Scottish Government to look at reform and encourage economic growth. If the argument has been accepted that VAT is a useful tax for Scotland to have, but it could not be devolved due to EU law, once the UK leaves the EU there is no reason why it could not be devolved in full.<sup>262</sup>

266. A number of other respondents also commented on the implications for the VAT system of the UK's withdrawal from the EU. The Chartered Institute of Taxation noted that withdrawal from the EU could mean the UK could make changes to VAT, either to retain alignment with the EU or to diverge. The Institute also argued that withdrawal from the EU means the UK could have more options, such as extending the scope of zero rating, lower rates and exemptions. The Institute suggested that this process may also mean that the UK or devolved administrations (if allowed) could introduce turnover taxes, although the body argues that these may be “impractical” due to cross-border arbitrage.<sup>263</sup>
267. Similarly, the Scottish Federation of Housing Associations noted that when it comes to tax law, VAT could “become a casualty of Brexit, perhaps a much welcomed one”. However, SFHA also noted that “VAT brings in such a huge amount of revenue for the UK Government that it is barely conceivable that it would not be replaced by a UK equivalent”.<sup>264</sup>



268. Finally, ICAS argued that VAT is a “relatively efficient tax” for governments to collect and it would be “probable” that the existing VAT would remain in place after Brexit, broadly unchanged. Over the longer term, some reform may occur. ICAS also noted that—

” Any value added system that is no longer an EU VAT as part of the single market will inevitably give rise to changing administrative burdens, much of which is undertaken by businesses. So, for instance, Intrastat and the collection of trade statistics, EC sales lists, and import and export rules would be affected. UK businesses required to register for VAT in EU member states may also find increasing levels of administration.<sup>265</sup>

### Employment law and the labour market

269. Another significant area for comment in many of the submissions was that of the implications of Brexit on the UK and Scottish labour market and also employment matters more generally.

270. Many submissions, as has been noted in other sections of this report, have made reference to the current levels of employment of EU27 citizens in various public and private sectors of the Scottish economy and what may happen to these employees after Brexit. Additionally, many respondents made observations on the question of what future immigration rules may be put in place and how those impact on an organisation’s ability to attract new employees and meet any future skills needs.

### Number of EU27 citizens employed in Scotland and their economic contribution

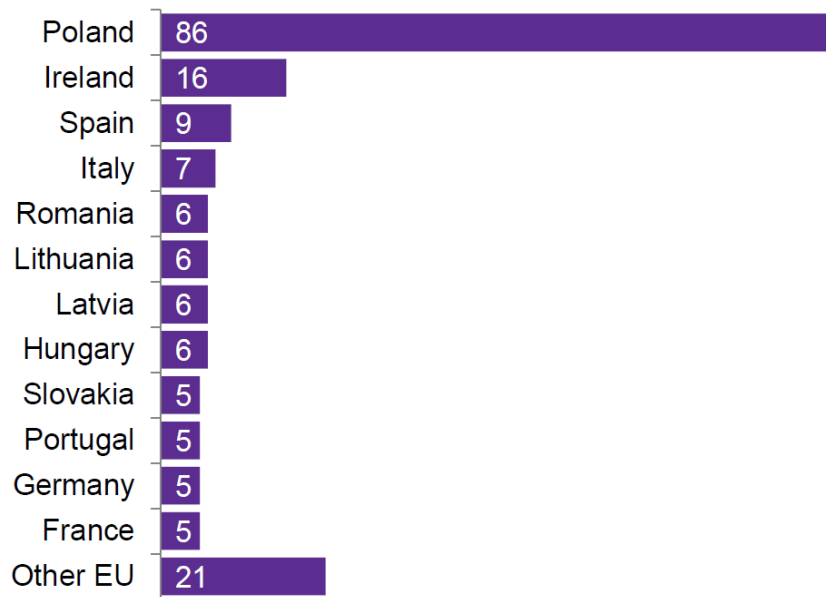
271. According to research<sup>266</sup> provided to the Committee by SPICe, there are an estimated 181,000 EU27 citizens in Scotland; the majority (119,000 or 66%) are from EU’s recent accession nations<sup>iv</sup>. Around half (86,000 or 47%) of the EU27 citizens resident in Scotland are Polish. Taken as a whole, EU27 citizens make up 3.4% of the Scottish population compared to 4.9% in the UK as a whole; see Figure 1 for data on citizens of EU27 states where the number resident in Scotland is estimated to be greater than 5,000.

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<sup>iv</sup> Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Malta, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.



**Figure 1: EU27 citizens in Scotland in 2016 by country ('000s)**



Source: SPICe analysis of APS Jan-Dec 2015, ONS

272. SPICe also estimates that 80% of EU27 citizens in Scotland are of working age, compared to 65% of the Scottish population as a whole and that those from EU accession countries have a higher employment rate than both other EU citizens and UK nationals in Scotland.
273. The research also shows that around a third of EU27 citizens in employment in Scotland are working in the distribution, hotels and restaurant sector, with 20,000 EU27 citizens working in the accommodation and food services, accounting for more than one in ten of all those working in this sub-sector. Additionally, the health and social work sector employs 12,000 EU27 citizens, accounting for 3% of total employment in this sector. In sectors such as agriculture, in addition to permanent employment, the role of EU27 citizens in providing seasonal labour is of particular importance.
274. SPICe estimates that a fifth (20%) of EU27 citizens working in Scotland are managers, directors, senior officials or in other professional occupations, and around a third (31%) are in unskilled 'elementary' occupations. Although they are more likely than UK nationals to hold degree level qualifications, around a quarter of EU27 citizens with degree level qualifications are working in unskilled occupations, compared to only 3% across the working age population of Scotland as a whole.
275. In its submission, economic consulting firm 4-consulting, set out its analysis of the economic contribution of EU27 citizens in Scotland. It argued that EU27 workers in Scotland are paid a higher average hourly pay (£13.20 per hour) than any other part of the UK outside of London (£15.31 per hour). Using their economic model

and underlying data published by the Scottish Government, 4-consulting estimated that the economic contribution of workers born in other EU countries was around £7.3 billion in Gross Value Added (GVA) each year.<sup>267</sup>

276. The following table is presented in the submission from 4-consulting, showing a number of Scottish labour market Indicators by country of birth.

| Labour market indicator | Population (Aged 16+) | Born in Other EU Countries | Rest of the Population |
|-------------------------|-----------------------|----------------------------|------------------------|
| In employment           | 2,576,000             | 128,000                    | 2,448,000              |
| Unemployed              | 165,000               | 8,000                      | 157,000                |
| Inactive                | 1,651,000             | 55,000                     | 1,597,000              |
| Economic activity rate  | 62.4%                 | 71.3%                      | 62.0%                  |
| Unemployment rate       | 6.0%                  | 5.8%                       | 6.0%                   |
| Employment rate         | 58.6%                 | 67.2%                      | 58.3%                  |

Source: 4-consulting, Quarterly Labour Force Survey (Jan-Mar 2016)

277. 4-consulting also noted that—

” The industrial pattern of employment and income suggests workers born in other EU countries play a disproportionate role in supporting tourism markets and export markets. It is not unreasonable to suggest that the role of EU workers in Scotland is focused more on international markets compared to the rest of the UK.<sup>268</sup>

## Sectoral comments

278. Many organisations made comments on labour market issues specific to their sector of the economy. For example, Oil and Gas UK called for clarity on the position of existing EU staff working in Scotland and the rest of the UK, and UK staff working elsewhere in the EU27.<sup>269</sup> This view was commonplace in many submissions.

279. In a similar vein, in the food and drink sector, Scotland Food and Drink noted that around 130,000 of the 450,000 people employed by the sector in the UK were non-UK nationals. Scotland Food and Drink said it was “critical to reassure EU workers that their rights to work will be maintained”. Scotland Food and Drink also noted that this issue was key in the farming sector which often relies on seasonal workers from the EU and beyond.<sup>270</sup>

280. Other sectors of Scotland’s economy also stressed their reliance on non-UK nationals. For example, Festivals Edinburgh said that the language and cultural skills and international networks of non-UK nationals are critical for sustaining high

quality intercultural exchange. It would like to see the position of EU27 citizens living and working in Scotland safeguarded and bilateral agreements entered into where necessary to ensure the continued right to live and work in Scotland. Festivals Edinburgh concluded that “any erosion in the rights of EU nationals to work in Scotland for Edinburgh’s Festivals will affect our ability to maintain world class programmes.”<sup>271</sup>

281. Similarly, in the tourism sector, VisitScotland said that its workforce comprised of around 12% of EU27 citizens and their role helped the body deliver effective media and marketing campaigns to priority markets in Europe and, with language skills, assist in welcoming visitors to Scotland.
282. For the building and construction industry, the submissions from the National Federation of Roofing Contractors (NFRC), Construction Scotland and the Scottish Contractors Group also stressed the value of EU27 citizens in the workforce. The former said that—

” ...restrictions on freedom of movement within the EU will have a profound impact on the construction industry. Should workers from EU countries be restricted from entering the UK, we could face a skills shortage in specialist construction sectors. Training workers in these skills takes time and planning. Over 95% of recently surveyed NFRC members stated this was their biggest concern over leaving the EU.”<sup>272</sup>

283. The Scottish Contractors Group<sup>273</sup> shared this view and also suggested that the system currently in place for workers outwith the EU could be adapted and extended to include EU workers. This could take the form of the establishment of a list of certain jobs where it is acknowledged there is a shortage of skilled workers and if workers from the EU have the necessary skills to perform these jobs, employers should have the ability to recruit them.
284. In the chemicals sector, Chemical Sciences Scotland (CSS) submission raised a number of similar issues. CSS noted the sector’s contribution to the balance of payments, with around £2.7 billion of exports annually (with scope for a significant increase) and accounting for around 25% of all Scottish manufacturing by turnover. CSS stated that the sector has the second highest Gross Value Added (GVA) per employee of any industry in Scotland at £181,700. Around 70,000 Scottish jobs are directly dependent on the chemical sciences sector. CSS commented that the sector’s ability to contribute to the Scottish Government’s priorities on investment, inclusivity, innovation and internationalisation will depend on the availability of a well-trained and diverse workforce including, but not limited to, STEM graduates.<sup>274</sup>
285. For ScotlandIS – representing the IT and information services sector – a loss of access to EU27 citizens was said to cause problems in filling the sector’s skills gap. It said—



With accelerating pace, the whole economy is turning to digital technologies to transform and differentiate their businesses. This nascent demand is driving up the demand for high-level digital technology skills even further. Demand is already outstripping the domestic supply. Our industry alone requires about 11,000 new people per annum to support expansion and replace people who are retiring or moving on to other sectors. However, only some 4,000-5,000 potential new entrants are created each year through traditional education and training routes. Restricting access to the EU labour market will only aggravate the skills shortage our industry is already facing.<sup>275</sup>

286. Similar comments were expressed in some of the submissions from organisations based in Scotland's more rural and remote communities. For example, Highlands and Islands Enterprise (HIE) said that businesses in the Highlands and Islands rely on overseas labour in a number of ways. In some sectors such as food and drink and tourism, HIE noted that EU27 citizens make up a significant proportion of the labour force in the area. Analysis by the Scottish Tourism Alliance cited by HIE showed that across Scotland as a whole 24% of employees in hotels and 30% in restaurants are migrant workers, many of them from Europe. Similarly, an estimated 39,000 EU27 citizens work in the Scottish food and drink industry. In other sectors, HIE noted that the ability to source the right skills from an EU labour market is important.<sup>276</sup>
287. In its submission, CBI Scotland was critical of the current debate in the UK on immigration. It said that "the net migration target, introduced by the UK government in 2010, has driven a narrow debate on migration in the UK that is centred on numbers". The CBI argued that the UK needs "to move away from a debate about a net migration target to one that ensures that those coming to the UK make a positive contribution to our economy and society."<sup>277</sup>
288. CBI Scotland said that an alternative to freedom of movement was needed but that a "generous system" must be put in place for EU27 citizens currently in the UK confirming their right to stay, reciprocated by all member states in the EU. It said that firms do not choose between investing in training for UK nationals or recruiting from overseas, they do both.<sup>278</sup>
289. Finally, in his submission, Professor Andrew Hughes Hallett of the University of St Andrews noted that one preferable option for the UK's new relationship with the EU would be to adopt a 'Continental Partnership' model whereby the UK/Scotland's single market membership (hence free trade and market access) is preserved although freedom of movement was suspended. Within this arrangement, Professor Hughes Hallett argued that it would then be in Scotland's interest to ensure that the labour movement clause is introduced to bring about a work permit scheme, rather than use a system of overall UK quotas. In his view, in this way, "Scotland would retain an ability to boost certain sectors of the economy, rather than go along with whatever comes out of the general UK agreement."<sup>279</sup>

## Employment law and employee rights

290. Much of the evidence received in this area is covered in the Equalities and Human Rights section of this report in the comments on the existing regulatory regime and the EU's framework of rights.
291. It is worth noting here, however, that a number of submissions make a particular point of highlighting the current framework of employment law and employee rights, much of which is set at the EU level. For example, the Chartered Institute of Public Finance and Accountancy (CIFPA) stated that "if the UK were to leave the EU then there would be an opportunity to remove policies that influence workers' rights, such as the WTD [Working Time Directive], from UK contracts". CIFPA said that the Scottish Government should consider the impact of withdrawal from the EU on staffing in the public sector, in particular the Health and Social Care services.<sup>280</sup>
292. Similarly, the Chartered Institute for Personnel and Development (CIPD) noted that the impact of European laws and regulations in the workplace is significant and CIPD welcomes the clarity which these regulations provide. It said that complex issues like Working Time rules have been standardised and regulated on a European basis by the European Working Time Directive (WTD) and the Transfer of Undertaking and Protection of Employment (TUPE) regulations are at the heart of employment law. EU rulings on issues such as maternity leave, holiday pay entitlement, collective redundancy consultation and rights on insolvency are also at risk it said. In its view, these laws and rights "all help to create fairer and more engaged workplaces, and provide clarity and continuity for employers."
293. CIPD stated that it is its view, as a professional body, the body of EU legislation should be retained in Scotland and the rest of the UK. It argued that the UK already has more flexibility than is sometimes realised over employment law, and has very different regulation on protection from unfair dismissal and on collective labour law to that in place in much of Europe, because these aspects are principally left to Member States. CIPD says that this degree of flexibility has enabled the UK to maintain one of the more lightly regulated labour markets in the OECD in terms of employment protection legislation. It noted that, on this measure, only the United States and Canada have lighter touch employment regulation than the UK. Overall the CIPD believed the UK's employment regulation framework provides the right balance in terms of providing flexibility for employers and employment protection for individuals. It concluded that "any attempts to use the decision to leave the EU as an excuse to water down or waive these fundamental workplace rights would, in its view, be counterproductive."
294. The CIPD stated—



As we have repeatedly argued the impact of regulation on productivity and business performance is overstated and exaggerated. There is no evidence

that a ‘Brexit bonfire’ of EU-based employment regulation would be good for Scotland and its workforce.<sup>281</sup>

295. This view was shared by the STUC in its submission, which concluded—

” The UK – and by extension Scottish – economies are among the least stringently regulated economies in the developed world and there is no dividend to be gained from pursuing a model based on further dilution of important protections for workers, consumers, communities and the environment. Indeed, the downside of hyper deregulation has been thoroughly exposed over recent years. The ability of the Scottish Government to pursue its policy of ‘inclusive growth’ would be seriously diluted in the context of further labour and product market deregulation.<sup>282</sup>

296. Similarly, Scottish Hazards told the Committee in its submission that it was concerned that with a continuing deregulatory agenda at UK Government level and loss of the protection and improvement driven by EU directives, the health and safety of Scottish workers would be at risk.<sup>283</sup> It called for reconsideration of the decision that Health and Safety remain reserved to Westminster and that the Scottish Parliament and Government work toward its full devolution.<sup>284</sup>

### **Value of EU funding for economic development and business support**

297. The final common thread in many of the submissions is that of the current value of EU funding programmes in financing economic development and business support. This issue has been covered in some detail in other sections of this report as well as in the Committee’s [Initial Report](#). The following represents a flavour of the more recent evidence received.

298. The submission from CBI Scotland is fairly typical of many in this regard. It stated that “new strategies will be required for domestic investment in the areas currently covered by European funds.” The CBI noted that Scottish businesses have welcomed the announcement of some protections for EU-funded projects agreed up to the UK Government’s Autumn Statement. However, the CBI said that clarification is urgently needed for funds that have not yet been allocated and that the future of agriculture, infrastructure, innovation, research and development will need to be explored. To avoid pauses in vital areas of Scotland’s growth, the CBI called on the Scottish government to work closely with the UK government to complete the majority of this work before departure from the EU, when the new economic landscape is clear.<sup>285</sup>

### **The European Investment Bank**

299. The CBI Scotland’s submission and others also made reference to the European Investment Bank (EIB). The CBI stated that the future of the UK’s involvement in collaborative projects and the EIB needed to be clarified.<sup>286</sup>



300. In a similar vein, Scottish Renewables stated that, for its sector, it was also important for Scottish renewable energy projects to continue to be able to access European support for infrastructure, such as EIB finance. For instance, Scottish Renewables noted that the EIB had recently agreed to provide £525 million for the construction of the Beatrice windfarm off the Caithness coast.<sup>287</sup>
301. According to the Scottish Federation of Housing Associations, the EIB had also been active in funding social housing. It said that historically, the EIB has invested heavily in this sector in the UK. SFHA noted that the UK's shareholding in the EIB relies on a complex set of rules that were drafted with little expectation that any shareholder in the EIB would ever cease to be a member state of the EU (The UK has an approx. 16% share in the EIB). SFHA said that it seems likely that "the UK's relationship with the EIB would have to form part of any Brexit deal, as opposed to being left untouched."<sup>288</sup>
302. Similar comments on the important role of the EU and EU funding more generally were made by the Royal Town Planning Institute.<sup>289</sup>
303. Finally, on a wider note, the Chartered Institute for Public Finance and Accountancy raised a question on the future of the existing EU funding arrangements post Brexit and what replaces them. CIPFA said that it—

” ... considers the current funding arrangements through the Barnett Formula are already no longer fit for purpose.<sup>v</sup> This is likely to be made more complex if the UK Government intends to replace existing EU funding across the UK and to try to make this work within existing arrangements that only cater for tax powers or Barnett formula funding as the mechanisms for providing for the Scottish Budget.<sup>vi</sup> CIPFA would advocate that these mechanisms need review, change or supplementing in the light of Brexit. In the longer-term CIPFA would advocate replacement of the Barnett Formula to meet clearly stated aims for distributing funding to Scotland, Wales and Northern Ireland.<sup>vii</sup> <sup>290</sup>

## Emerging issues

304. The key issues to emerge on the economic impact of withdrawal from the EU included the following—

- The need for further analysis and a more detailed understanding of both the short-term and long-term impact on the Scottish economy and labour market of withdrawal from the EU, including how to mitigate against the worst effects;

<sup>v</sup> CIPFA Briefing: Funding Devolved Government, 2014 <http://www.cipfa.org/cipfa-thinks/briefings-3>

<sup>vi</sup> The Scottish Parliament may need a new funding formula due to the implications of the UK voting to leave the European Union, MSPs have been told. STV News 28 July 2016 <http://stv.tv/news/politics/1362066-holyrood-may-need-new-funding-model-due-to-brexit-msps-told/>

<sup>vii</sup> CIPFA Manifesto 2015: <http://www.cipfa.org/cipfa-thinks/manifesto2015>

- How to address the widely cited uncertainty from many of the respondents across most sectors of the economy about the impact of withdrawal, including investor sentiment and confidence, and stability in the value of the pound;
- How to provide greater clarity and detail on the UK's future fiscal stability and how regulation and the question of the UK's future relationship with the EU single market and customs union will be addressed;
- What plans will emerge for allowing existing EU27 citizens currently working in Scotland's public and private sectors to remain, what reciprocal arrangements will be put in place for UK nationals working overseas and what new immigration regime will emerge, including the question of whether there is scope for a 'regional or sectoral variation', such as a work permit scheme for parts of the UK or for specific sectors of the economy;
- The plans for the future regulatory regime for the economy, for taxation and for businesses during the process of reviewing, retaining, amending or discarding current EU law. In particular, the plans for the future regime in the area of employment law and the rights of employees, much of which has its origins in EU law;
- Similarly, what will happen to much of the existing EU law in a number of key areas which has been cited as important to many sectors of the economy, such as environmental legislation, company law, accounting and reporting standards, and the internal market;
- What plans may emerge to reform, if at all, some of the existing areas of EU law such as on public procurement and state aid which, for some, represent an opportunity to think again. In a similar vein, what will happen to the system of VAT if the UK is no longer part of the EU;
- Finally, what domestic arrangements will be put in place beyond the current time-limited guarantee for replacements to the current EU funding programmes that support economic development and business support, and for the UK's current involvement with, and the benefits from, funding from the European Investment Bank?



# Health and Sport

## Policy background<sup>291</sup>

### Health

305. Although health care systems are a matter of national responsibility, other aspects of health care – reciprocal access to healthcare through the European Health Insurance Card (EHIC), pharmaceuticals, the working hours of doctors and mutual recognition of qualifications, for example - are regulated to a greater or lesser extent by EU law.
306. The EU also has a significant role in ensuring a cross-border approach to important public health issues, such as preventing pandemics and anti-smoking measures (e.g. the Tobacco Products Directive). There are therefore a number of regulations and directives that will need to be reconsidered as part of the UK's withdrawal from the EU.
307. Certain aspects of health policy are also dependent on the decisions reached by the UK and EU27 on their new relationship after UK withdrawal. For example, if the UK remains in the EEA it might be able to continue to participate in the EHIC (European Health Insurance Card) scheme, or, subject to negotiation with EU Member States, participate on a similar basis to Switzerland.
308. In Scotland, as in other parts of the UK, the NHS is a major employer of EU27 citizens as doctors, nurses, midwives, dentists, ancillary and support staff. It is estimated that, in the health and social work sectors in Scotland, there are some 12,000 EU27 citizens, accounting for 3% of total employment in these sectors, of which 8,000 are from the EU accession countries.<sup>292</sup> In England, there were 55,400 EU27 citizens working in NHS hospitals and community health services; around 5% of overall workforce.<sup>293</sup>
309. Finally, there are a number of pan-European initiatives and bodies with which the UK participates, such as the European Centre for Disease Prevention and Control. The UK is also host to the European Medicines Agency, based in London. Withdrawal from the EU may lead to a rethink of the UK's ability or desire to be part of any such initiatives and ability to host such EU institutions.

### Sport

310. The Lisbon Treaty made sport an area of EU competence. Detailed information on the EU's role in this area, including a Work Plan for Sport 2014-17, is available from the Europa website.<sup>294</sup>
311. When the Scotland and the UK leave the EU, one of the main sport-related impacts will be a loss of EU funding. For example, the Erasmus+ programme

funds grassroots sports projects and cross-border challenges such as combating match-fixing, doping, violence and racism.<sup>295</sup>

312. The impact of leaving the EU on professional sport will depend on the terms of the UK's exit. However, if free movement were to end, this could have a significant effect on football in particular, as players from EU27 countries could require work permits in future.

## Summary of evidence received

### Health

#### EU Funding

313. The importance of current EU funding and the prospects for alternative funding regimes was a key issue in many of the submissions received.

314. The Academy of Medical Sciences reported that Scotland performs particularly well, attracting more research funding per head of population than other parts of the UK. From 2007-2012, 789 Scottish organisations were involved in over 4,000 projects, receiving a total of €351m of EU funding from Framework Programme 7. The Academy of Medical Sciences concluded—

” Future access to this funding, and the benefits it delivers, is uncertain. In the event of complete disassociation from EU research programmes there would be a significant shortfall in the Scottish research funding landscape, shifting the balance within the interdependent ecosystem of public, private and charitable funding sources which support medical science. It is unclear how such a gap might be filled, and we urge the UK and Scottish Governments, and charitable funders, to consider how best to maximise the support for internationally collaborative research within existing portfolios. The UK Government's recent commitment to underwrite Horizon 2020 projects approved prior to the UK's departure from the EU is a significant and welcome step towards providing greater certainty for the research community in the short-term. It will be important for the Scottish Government to explore ways to build on this commitment and support Scottish research through the challenges ahead.<sup>296</sup>

315. The Academy also highlighted the complementary scope of EU research funding, noting that it frequently targets 'blue skies' research and niche research areas that were less well-served by UK funding sources, as well as encouraging engagement between academia and small-and-medium-sized enterprises. For example, the pan-EU GeoParkinson Study Group, led by the University of Aberdeen, receives EU funding for research which is examining the link between Parkinson's disease and environmental determinants.<sup>297</sup>

316. These views were shared by a wide range of other organisations such as Alzheimer's Research UK and the Genetic Alliance UK. The former stated that in

the historically underfunded field of dementia research, EU investment is particularly critical. It said that EU funding has become an important source of support for the research environment in the UK, and the loss of access to EU funding programmes could have a significant impact for major and pilot projects as well as grants for equipment for dementia researchers.<sup>298</sup>

317. Furthermore, Alzheimer’s Research UK noted that centralised EU-level funding facilitates international collaborations and centres of excellence that are a complement to UK funding streams, but which could not be easily replaced by a domestic funding stream. Therefore, it argued, access to EU funding must be maintained in order to provide the greatest opportunity to accelerate advances in the dementia research field.<sup>299</sup>

318. The value of collaboration with other countries that EU funding offers was also a point made by the Genetic Alliance UK. It noted that—

” Unlike common conditions, patient populations of individual rare diseases are low, and sometimes very low. There may be too few patients with any particular rare disease in a single Member State to be able to advance treatment and research. National and international research collaborations are invaluable: by collating and analysing large amounts of patient data from across the world it is possible to make meaningful progress with understanding a condition or the effectiveness of a new treatment.<sup>300</sup>

319. This was also the case for Alzheimer’s Research UK which indicated concerns regarding a possible loss of access to EU survey data. It said—

” Researchers in the UK currently benefit from the ease and reliability of ordering goods such as materials, equipment or biological samples as part of the Single Market. Should customs processes between the EU and UK be reintroduced, the speed and efficiency of research could be impeded. An associated increase in costs could also necessitate that a proportion of research funding be deflected away from research itself and towards administrative burdens.<sup>301</sup>

### Workforce and the labour market, and employment rights

320. The second major area, in common with many other sectors, is that relating to the labour market in the health sector, employment matters and attraction or retention of EU27 citizens in the current system.

321. The British Medical Association (BMA) stated in its submission that there are significant problems with recruitment and retention of all grades of doctor across Scotland and the UK. In its view, the EU’s policy of freedom of movement and mutual recognition of professional qualifications is critical. The BMA said that if the freedom of movement policy, or something similar, is not retained after leaving the EU, the gaps in the medical workforce may expand further, with “serious consequences for healthcare in Scotland and the wider UK”.<sup>302</sup> The BMA also

thought that withdrawal from the EU may deter EU27 students from coming to the UK to study medicine which could have a considerable impact on UK medical schools.

322. The BMA recognised that EU27 citizens exercising treaty rights who are currently in the UK have the right to permanent residence, as do their family members, after five years. It wanted this situation to continue once withdrawal takes effect and said that consideration should be given to introducing transitional rules into UK law to provide similar assurances for EU national health workers and their families as the UK moves towards Brexit.<sup>303</sup>
323. The General Medical Council's (GMC) submission makes similar points. It recorded that, as at 10 August 2016, there were roughly 21,584 doctors who qualified in other EEA countries practising in the UK. This represents around 9% of the approximately 240,000 doctors licensed to practise in the UK. Of this number, around 1,167 practise in Scotland, or approximately 6% of the workforce. The total number of doctors practising in Scotland is 20,400.<sup>304</sup>
324. The GMC's submission listed a number of concerns relating to the ability to retain and attract EU27 citizens in Scotland's health sector. For example, that of whether there would be a post-Brexit regime which allowed for the mutual recognition of professional qualifications if the UK was no longer bound by the Directive on the Recognition of Professional Qualifications, or whether the UK would be able to still use the Internal Market Information system to communicate with other medical regulatory authorities within the EEA.<sup>305</sup>
325. The Royal College of Nursing (RCN) also commented on this matter. The RCN noted that there are 33,000 EEA nationals registered with the Nursing and Midwifery Council. There are also a significant number of EU27 citizens working in the non-register health and care sectors. It observed that EU citizens (by birth or nationality) make up a higher proportion of non-UK residents in Scotland than the UK as a whole. The RCN's submission stated that there is a higher proportion (as a share of total migrants) of people from the EU8 Accession countries in Scotland than the UK equivalent. Proportionally, Scotland has seen a larger increase in the number of non-UK EU born inhabitants than the UK. In the RCN's view, "across the UK, there remains a shortage of nurses to ensure services are adequately staffed, and a lack of clarity on the future of EU nursing staff could be unhelpful to workforce planning."<sup>306</sup>
326. Finally, a member of the Health and Social Care Alliance in Scotland said in its submission—



Our organisation currently employs a number of nurses from elsewhere in the EU. Given the difficulties recruiting nurses at present, we are particularly concerned about the impact that leaving the EU could have on our staffing. We have a number of concerns regarding the status of these

staff after leaving the EU, and how our ability to attract and recruit staff will be affected in future.<sup>307</sup>

327. The RCN's submission also touched upon the issue of social and employment rights, many of which are enshrined in EU law. The RCN noted that membership of the EU provides all citizens of member states with a number of social and employment rights, including protection afforded to nursing staff from employment legislation such as the Working Time Directive, collective redundancy and Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as well as health and safety at work legislation. This was a point also made by the BMA and the GMC.
328. The RCN's view was that membership of the EU is not necessarily essential for the continuation of these rights, but its view was that the EU has promoted this agenda over several decades. It concluded that "it is unclear whether these rights will be affected once the UK leaves the EU."<sup>308</sup>

### Regulatory framework

329. In its submission, the Association of Medical Research Charities (AMRC) noted that Scotland is home to one of the biggest clusters of life sciences industry in Europe. The Scottish life sciences industry had a gross value added (GVA) value of over £1.6 billion in 2013. In 2014, spending on research and development in this sector represented 32.4% of the total Business Enterprise Research and Development spend in Scotland.<sup>309</sup>
330. For the AMRC, a key priority is continued alignment and compatibility with EU regulatory frameworks for medicines and medical devices to ensure patients continue to have timely access to new health innovations. In its view, this should include regulatory frameworks for special populations including orphan medicines for rare and very rare diseases; children and elderly people.<sup>310</sup>
331. ARMC argued—

” The single authorisation for medicines within the EU via the European Medicines Agency (currently located in London) allows approval for new medicines in all EU member states at once. If the UK, including Scotland, was no longer part of this, pharmaceutical companies would have to go through a separate process to authorise their products in the UK. This may disincentivise medicines development and slow down the development of new treatments in the UK. It is crucial that there is no negative impact on patients' ability to access new drugs.<sup>311</sup>

332. However, the ARMC also stated that, in future, as medical research advances, there may be opportunities to diverge from EU regulations – particularly where the EU is slow to uptake new and emerging technologies. In its view, an effective balance must be struck between the potential to reduce regulatory 'red tape' while still maintaining rigorous ethical standards.

333. The value of a harmonised system of regulation at the EU level was shared in other submissions, such as those from the Genetic Alliance UK and Alzheimer's Research UK. In its submission, Cancer Research UK stated that the new Clinical Trials Regulation, due to come into force at the end of 2018, represented a significant improvement on the current Directive. Importantly it provided for a new streamlined and coordinated system for approving trials that take place across different member states. Cancer Research UK's view is that the UK has played a key role in shaping this new legislation so that it works for research in the UK and enables us to effectively collaborate across the EU.
334. Cancer Research UK said that the Scottish Government should continue to work with the UK Government to ensure that the UK aligns with the new Clinical Trials Regulation and can take part in the coordinated, EU-wide system of trial approval. This will be necessary, in its view, for the UK to easily set up, and take part in, pan-European trials; attracting industry investment and bringing benefits to patients in the UK and the rest of the Europe. It concluded that "if the UK does not align with this regulation, it may find itself closed to such trials, which would be bad for patients and for inward investment in UK science".<sup>312</sup>
335. Both the BMA and the RCN's submission commented on the public health benefits of a regulatory framework at the EU level, with the BMA stating that, for example, EU legislation has led to significant improvements in the UK's health policy, including a revised Tobacco Products Directive which strengthens the rules around tobacco products and e-cigarettes; and regulations around artificial fats in food and the promotion of unhealthy food and drink products to young people.<sup>313</sup>
336. For the Genetic Alliance UK—

” The European Union's regulation of medicine in Europe, overseen by the European Medicines Agency (EMA – based in London), creates the largest single regulatory environment for developed nations' populations, with a population of 500 million. This infrastructure is attractive to pharmaceutical companies wishing to bring medicines to a significant market. The European Union can leverage this critical mass to provide incentives for the development of orphan medicines and for advanced therapy medicinal products.

States outside of the EU (such as Norway and Iceland) may still benefit from the EMA's regulatory environment, but they cannot have any influence in decisions made by EMA.

The UK's participation in the EU's centralised procedure for the evaluation of medicines gives a benefit at both ends of the product development pathway. For patients in the UK, we are part of the same market, which is usually either first or second (after USA) on the list of markets that an innovator would seek to launch their products in.<sup>314</sup>



337. This is also a point made by the Association of the British Pharmaceutical Industry in Scotland which stated that the industry and its current EU-wide regulatory framework, overseen by the European Medicines Agency (EMA), ensured timely patient access to innovative medicines, including early access through clinical trials, which supported NHSScotland in improving patient outcomes, particularly in cancer.<sup>315</sup>

## Sport

338. The Committee did not receive a significant number of submissions focussing on sport. However, two submissions did, covering ground similar to that from the health sector. For example, **sportscotland** said that it is not clear whether UK organisations will be able to access European funding opportunities and initiatives such as Erasmus+. In its view, these EU schemes have been a relatively small component of our funding to date. **Sportscotland** noted, however, that “this might also affect universities and further education, and therefore wider sports research.”<sup>316</sup>

339. In its submission, the Scottish Sports Association said that Brexit could have a number of effects relating to the free movement of people. For example, from visa implications, such as additional bureaucracy, additional cost, longer processing timelines, the challenges for current and future employment of non-British Scottish Governing Bodies (SGB) coaches and other staff, the challenges for SGB athletes/teams traveling to tournaments and the challenges for SGBs hosting tournaments.<sup>317</sup>

340. Employment issues were also raised by **sportscotland** which noted that—

” If freedom of employment is affected, it may become more difficult to attract candidates for specialist positions, particularly in high performance disciplines.<sup>318</sup>

## Emerging issues

341. The key issues raised in relation to health and sport included the following—

- There are significant concerns relating to the withdrawal of EU funding in the health and sports sectors. It is unclear what alternative regime will be put in place in Scotland and the UK;
- Also, many submissions noted that importance of EU27 citizens in the health and sports sectors and raised questions about the possibility of being able to retain and attract new employees. Many submissions also noted that much of the social and employment law in the health sector, such as the Working Time Directive, health and safety law, is currently enshrined in EU law;

- Of concern to many in the health sector, is the uncertainty of what will replace the currently harmonised regulatory system which, for some, is of real value in fostering collaborative research and in the development of new medicines and medical products.



# Equal Opportunities and Human Rights

## Policy background<sup>319</sup>

342. At present, there is little clarity about the impact of withdrawal from the EU on equalities and human rights. However, a number of issues will need to be considered as part of that process. For example, the free movement of workers is a fundamental principle enshrined in Article 45 of the Treaty on the Functioning of the European Union (TFEU). The UK Government has not been clear to date on what this means for EU27 citizens working in the UK.

343. Additionally, many of the EU equality directives concern employment, and some are contained in the Equality Act 2010. The main EU directives incorporated in the Equality Act 2010 are as follows—

- *Council Directive 2000/43/EC* implemented the principle of equal treatment between persons irrespective of racial or ethnic origin. The directive outlaws discrimination on grounds of racial or ethnic origin in the areas of employment, vocational training, goods and services, social protection, education and housing.
- *Council Directive 2000/78/EC* established a general framework for equal treatment in employment and occupation. The directive introduced protection from direct and indirect discrimination in employment in respect of age, disability, religion and belief and sexual orientation.
- *Council Directive 2004/113/EC* implemented the principle of equal treatment between men and women in the access to and supply of goods and services.
- *Council Directive 2006/54/EC* consolidated a number of previous directives and further implemented the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (consolidated 76/207/EEC, 86/378/EEC and 75/117/EEC, all as amended).

344. There also a number of other directives under the umbrella of equality and human rights—

- *Data Protection Directive* which contains privacy rights, transposed in domestic law through the Data Protection Act 1998.
- *Human Trafficking Directive 2011/36* on preventing and combating trafficking in human beings, and protecting its victims, puts into place minimum rules around the definition of criminal offences and penalties for people trafficking. It also requires that victims of trafficking are given help, support and protection.
- *Victims' Rights Directive* ensures that victims of crime and their family members have the right to information, support and protection. It also sets out procedural

rights for victims in criminal proceedings, and requires that EU member states provide appropriate training on victims' needs to professionals who are likely to come into contact with victims. In Scotland, the directive has been implemented by the Victims and Witnesses (Scotland) Act 2014 and the Standards of Service for Victims and Witnesses required under that Act.

345. One issue to be discussed is the extent to which UK Government retains, augments or reduces any equality or human rights protections as a result of Brexit.
346. In terms of human rights, consideration will need to be given to The Charter of Fundamental Rights of the European Union (Charter). The Charter entered into force with the Treaty of Lisbon in December 2009. The rights set out in the Charter stem from existing general principles of EU law but also common constitutional traditions and international human rights treaties such as the Council of Europe's European Convention on Human Rights (ECHR) and the United Nations human rights treaties. A broad range of civil, political, economic, social and cultural rights are included. The Charter also articulates rights which have developed in light of changes in society, social progress and scientific and technological developments such as rights in relation to data protection. The Charter groups the rights under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice.
347. The Charter is binding on the EU and its institutions, but can also bind EU Member States when they are implementing, derogating from or acting within, the scope of EU law. It can, therefore, have an impact at a national level. Some of the rights in the Charter are seen as legally enforceable, but some, particularly those in the solidarity chapter relating to economic and social rights, are more statements of principle which may only be invoked for the interpretation of areas in which the EU or the member state has legislated. The law is still unclear and is developing in relation to these rights or "principles".
348. Withdrawal from the EU is likely to mean that the Charter no longer applies to the UK or Scotland, and therefore a reduction in current and future human rights protections in areas within the scope of EU law.
349. The UK is also a member state of the Council of Europe (CoE), an intergovernmental body set up to promote democracy, human rights and the rule of law in Europe. All 47 Council member states must sign up to the European Convention on Human Rights (ECHR) which provides for the protection of a number of fundamental human rights (e.g. the right not to be subjected to torture; free speech; fair trial rights; the right to property; freedom of religion etc.).
350. The CoE is not linked to the European Union and should not be confused with the Council of the European Union which is the institution which represents EU member state governments.
351. Since the ECHR is not part of EU law, withdrawal from the EU will not affect it. The UK will still be bound by the ECHR and people will still be able to bring cases

to the European Court of Human Rights in Strasbourg. In addition, the ECHR will still be incorporated into UK law under the Human Rights Act 1998 (HRA) and the Scotland Act 1998, which means that people will still be able to bring actions in UK courts if they think that their ECHR rights are being infringed.

352. Although, withdrawal from the EU will not directly affect the UK's relationship to the ECHR, there is a question mark as to whether Brexit might make it easier for the UK to withdraw from the ECHR in the future. Although there is some disagreement on this point, some commentators take the view that membership of the EU requires states to sign up to the ECHR. Consequently, the argument is that leaving the EU would also make it more straightforward for the UK to leave the ECHR as the European Commission would not be able to argue that the UK has breached the EU's treaties.
353. The UK Government has plans to replace the Human Rights Act (HRA) with a UK Bill of Rights. The Conservative Party published proposals to reform human rights law in the UK in October 2014. There was some suggestion that this policy could be scrapped post Brexit, but this was followed by the new Secretary of State for Justice, Liz Truss MP, stating that the UK Government was still committed to replacing the HRA.

## Summary of evidence received

### Regulatory regime and the EU's framework of rights

354. One of the main areas for comment from the respondents was that of the value of the current regulatory regime and the existing framework for equalities and human rights in the EU. Concerns were expressed by some about the uncertainty that Brexit is having on the future regulatory framework and whether the process could result in a diminution of rights.
355. ENGENDER's submission was typical of these. It said—

“ As negotiations to exit the EU are undertaken, and Scotland seeks to both influence and understand the implications of these, the potential impact on human rights and equality law must be taken into account. EU member states are bound by the legal frameworks set out below and held accountable for upholding them at the European Court of Justice. At present, this means that the UK's equalities law cannot be less robust than the underpinning EU framework. When the previous UK Government was contemplating scrapping some parts of the Equality Act as part of its “Red Tape Challenge”, it was prevented from doing so by the EU equalities framework. Clearly, this is no longer the case and the UK Government's plan to proceed with scrapping the Human Rights Act is perhaps an extremely alarming bellwether of their approach to anti-discrimination law.<sup>320</sup>

356. This view was shared by Culture Counts in its submission. It concluded that “Any post-Brexit agreements must ensure no regression of existing human rights protections.”<sup>321</sup> Similarly, Stonewall Scotland stated that whilst existing UK equalities legislation goes further than EU requirements, it is underpinned by this framework, and “it is important that these protections are not weakened after a withdrawal from the EU”.<sup>322</sup>
357. In his submission, Tam Baillie, Children and Young People’s Commissioner for Scotland said that he echoed the views of the Committee on the Elimination of Racial Discrimination that the EU Referendum campaign was “marked by divisive, anti-immigrant and xenophobic rhetoric and that many politicians and prominent political figures not only failed to condemn it, but also created and entrenched prejudices, thereby emboldening individuals to carry out acts of intimidation and hate towards ethnic or ethno-religious minority communities and people who are visible different.” The Commissioner shared the conclusion that, for example, in relation to a replacement of the HRA with a British Bill of Rights, such a move may lead to decreased levels of human rights protection in the UK and he shared the view that the UK Government should undertake meaningful and broad public consultation on its plans.<sup>323</sup>
358. The Commissioner’s submission also set out a number of current EU Directives and Regulations that he considered were important pieces of legislation in the area of children’s rights. These included Directive 2011/93/EU on combatting sexual abuse and sexual exploitation of children and child pornography’ which harmonises around twenty criminal offences against children. It obliges the UK to provide assistance and support, taking the child’s best interests into account and to adopt measures allowing professionals to report suspicions that a child is a victim of child sexual abuse or exploitation. It also links to Framework Decision 2009 315/JHA279 on exchanging criminal records information between Member States. This allows authorities to access the criminal records of convicted persons and collaborate across borders to combat child abuse images. The Commissioner said that this “has made a major contribution to bringing EU legislation in line with the UNCRC and its General Comment 13”.<sup>324</sup>
359. Mr Baillie also highlighted the importance of co-operation at EU level on justice and policing, through Europol, Eurojust, participation in the European Arrest Warrant scheme etc. as important measures in child protection.<sup>325</sup>
360. The value of the European Arrest Warrant was also highlighted by ENGENDER in the context of domestic violence. Its submission states—



The introduction of European protection orders has ensured that protection orders imposed by courts in Scotland are upheld by other member states and vice versa, providing legal protection to women and children who have experienced domestic abuse. The European Arrest Warrant means that perpetrators of rape, sexual assault, and other forms of gender-based violence are more likely to stand trial in the member states in which they

committed their offence. It is vital that this same level of protection is maintained in Scotland.<sup>326</sup>

361. ENGENDER was also concerned about a potential diminution or loss of rights relating to equal pay that were part of the EU framework. It observed that the original provisions of the Equal Pay Act 1970 which preceded the UK's accession to the EEC in 1973 were much weaker than those subsequently guaranteed by the Equal Pay Directive. For example, the Equal Pay Act only gave women the right to make equal pay claims, it did not oblige employers to pay women and men equally. Nor did it address the lack of value attached to women's work that compared to that of men in terms of skill and responsibility.<sup>327</sup>
362. ENGENDER argues that, following a period of inaction by the UK Government, in spite of its obligations, it was the European Court of Justice that forced the UK to comply with EU law and amend the Equal Pay Act accordingly. In its view, many thousands of women and groups of women have since invoked European law and taken equal pay claims to the European courts on the basis of equal pay for work of equal value. It argues that, given women's over-representation in the part-time workforce, an extremely important precedent within this was that a judgement that overruled a UK employment tribunal and found that part-time workers must be paid equally to full-time workers under the terms of the Equal Pay Act. This meant that claims of indirect sex discrimination, as well as direct discrimination, have since been consistently brought under the Act.<sup>328</sup>
363. Both the Commissioner and ENGENDER also commented on the EU's role in relation to maternity and paternity rights. ENGENDER noted that EU legislation and case law have significantly strengthened the substance of women's maternity rights in the UK. ENGENDER concluded that "regardless of the outcome of the referendum, it is vital that we do not lose hard-won ground on maternity rights."<sup>329</sup>
364. For ENABLE Scotland, one key issue is that of the European Social Charter (ESC). Its submission notes that there are a number of rights guaranteed under the Charter which directly benefit people with a learning disability. It notes that the ESC is a framework which outlines the rights of EU citizens, including the European Convention on Human Rights (ECHR), the Charter of Fundamental Rights, Economic European Labour Law and Social and Regional rights. In its view, when the UK withdraws from the EU, these rights will no longer apply unless brought into UK law.<sup>330</sup>
365. The Scottish Council for Voluntary Organisations (SCVO) submission stated that some of its members had also expressed a concern about the possible fate of the ECHR and rights and protections afforded to people with disabilities. In particular, the coverage provided through the various directives and regulations that gave rights to disabled people when travelling or those that provided for improved web accessibility for public sector websites were cited, alongside EU law covering equal treatment in employment.<sup>331</sup>

366. Finally, ENGENDER's submission highlighted that EU law also provides legal basis for core concepts such as 'direct discrimination', 'indirect discrimination', 'harassment', 'sexual harassment', and 'positive action'. It noted that protections such as equal treatment of men and women in a number of fields, rights for pregnant workers, maternity and paternity rights, anti-discrimination directives, directives tackling domestic violence, therefore, will no longer apply to Scotland and steps should be taken to guarantee they will not be lost. ENGENDER argued that—

” Where this is not constitutionally possible, for instance with regards to areas of employment law, we urge the Scottish Government and Scottish Parliament to make the case to the UK Government or to push for the devolution of relevant powers.<sup>332</sup>

## Rights of EU Citizens

367. Another main theme from many of the respondents is that of the rights of EU citizens and EEA nationals living and working in another member state. The submission by Professors Sarah Craig, Maria Fletcher and Nina Miller-Westoby of the University of Glasgow was typical of many.

368. In their view<sup>333</sup>, EU27 citizens and EEA nationals in the UK derive a range of rights from EU law for themselves and their family members. The sources of these rights can be found in primary EU law (TEU and TFEU and Charter of Fundamental Rights), secondary EU law (the 'Citizen's Rights Directive' (2004/38/EC), a number of Regulations on coordinating social security rules,) and the case law of the Court of Justice of the EU. Together they make up the *acquis* of EU law in this area. In Scotland (and the rest of the UK) these EU law-derived rights are given effect by domestic legislation (e.g. The Immigration (European Economic Area) Regulations 2006).

369. The range of rights conferred by EU law upon EEA nationals extend beyond pure immigration-related rights (e.g. entry and residence) and include, for instance, rights to access education, rights to set up and run a business and rights of access to public services. The principle that underpins the application of these rights is 'non-discrimination on the grounds of nationality.' Recipients of these EU-law derived rights are in effect exempt from the application of UK immigration controls.

370. The continuation of these rights or otherwise is ultimately dependent on the outcome of the negotiations between the UK and the EU. A key question raised in this submission is whether rights that have accrued to i) EEA nationals in the UK and ii) UK nationals in other EEA states continue to be protected (legally recognized and enforced) in UK law following withdrawal from the EU.

371. In the view of Professor Craig et al, the 'acquired rights' principle in international treaty law (Art. 70 Vienna Convention) does not offer additional protection to ensure the continuity of rights acquired by EEA nationals in the UK, or of UK



nationals in the EU post withdrawal from the EU. They argue that there appears to have been some confusion around this issue in some campaign literature in the run up to the referendum. To avoid that confusion it may be preferable, in their opinion, to use the term ‘accrued’ or ‘attained’ rights. Any continuity of rights pertaining to EU citizenship post EU–withdrawal would need clear protection in any withdrawal agreement between the UK and the EU or failing an agreement at that ‘external level’, in domestic legislation.<sup>334</sup>

372. Professor Craig and her colleagues argue that the UK Government should adopt domestic legislation to provide automatic right of indefinite stay in the UK for EEA nationals, with a standstill clause to protect the rights of EEA nationals in the UK that have accrued as of the date of withdrawal of the UK. This would allow for these persons to qualify for permanent residence (pursuant to current EU law) presumably within a set period of time. They also support the view that the relevant date for the change of status of EEA nationals in the UK and UK nationals in EEA states and the application of any protection for those same persons should be the date of leaving the EU.<sup>335</sup>

373. The Law Society of Scotland submission makes similar points. The Society stated—

” Some commentators have claimed that the Vienna Convention on the law of the Treaty is supportive of the idea that acquired rights do attach to EU citizens in the UK following the UK leaving the EU, however, the Vienna Convention provides that the termination of a Treaty “does not affect any right, obligation or legal situation of the parties created through the execution of the Treaty prior to its termination”. The misinterpretation which has arisen concerns the use of the word “parties” these are the “states parties” which are signatories to the Vienna Convention rather than those states’ citizens. Therefore the Vienna Convention does not provide a basis for stating the EU citizens have acquired rights in relation to the UK nor that UK citizens have acquired rights in other Member States of in the EU.<sup>336</sup>

374. Furthermore, the Law Society argues that, in respect of acquired rights, Article 50 (3) of the TEU provides that the Treaties will cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification of the intention to leave unless the European Council in agreement with the UK unanimously decides to extend this period. Its view is that the EU Treaties make no specific mention of acquired rights nor are there any provisions which seek to protect acquired rights, notwithstanding the fact that EU law and the Treaties give individuals rights (Case – 26/62 Van Gend en Loos).<sup>337</sup>

375. In addition to the above issues, the submission from Professors Tom Mullen (University of Glasgow) and Aileen McHarg (University of Strathclyde) makes the following observation. They noted that immigration is a reserved matter under the devolution settlement. It will therefore be for the UK government to determine the future position of EU27 citizens in Scotland in the event of withdrawal from the EU,



subject to the terms of the withdrawal agreement. However, as the submission also points out, certain matters pertaining to EU27 citizens resident in Scotland are within the competence of the Scottish Parliament. For instance, EU27 citizens have the right to vote in Scottish Parliament and local government elections, both of which are now matters within devolved competence. Accordingly, in their view, the Scottish Parliament could choose to maintain the voting rights of resident EU27 citizens. Similarly, the Scottish Parliament could choose to maintain the privileged status of EU27 citizens in relation to higher education.<sup>338</sup>

## **EU Funding**

376. The importance of the current EU funding to projects in the equalities and human rights fields was also a feature of many submissions. The submission from ENABLE Scotland was typical of these, comment on funding for citizens with disabilities.

377. ENABLE Scotland notes that access to European Structural Funds, which support many employment programmes to help people who have a learning disability into work, are now at risk, and it doesn't yet know how long it have to plan for something different.<sup>339</sup> ENABLE Scotland stated—

” ENABLE Scotland is exposed to funding loss from the European Commission for employment services. ENABLE Scotland is seeking assurances from European funding sources as to its sustainability and/or our eligibility to request funding in the future. In tandem with this the UK and Scottish Governments must work together to outline how they will mitigate loss of funding to organisations like ENABLE Scotland.

We are deeply concerned about the impact of UK withdrawal on the European Structural Funds (ESF). ENABLE Scotland Employment Services are currently partly funded through ESF; All in Edinburgh and Local Authority ESF- matched tenders are supported.

The continuation of ESF funding is unknown and not guaranteed. ENABLE Works have funding committed in 2016/17 and recurring until 2018/19 but uncertainty beyond this.<sup>340</sup>

378. Similarly, Inclusion Scotland noted that although article 50 has not yet been triggered, people and funding are already being impacted by the prospect of future withdrawal. The larger scale impacts in Scotland are likely to be in the areas of funding and social cohesion. It argues that—

” The loss of EU funding would have a particular impact on the provision of employability support and skills training which is of vital importance to all equalities groups including disabled people. Other funded programmes like Erasmus are also under threat. There may also be a loss of sources of international funding (for example Inclusion Scotland's partner organisation, Disability Action Northern Ireland, lost \$5million from a funder based in

New York). As a Disabled People's Organisation we will also lose access to European Networks trying to advance disabled people's rights.<sup>341</sup>

## Emerging issues

379. The issues relating to equal opportunities and human rights that have emerged from the written submissions include—

- what the UK's new relationship with the EU will mean for the current regulatory regime and framework of equalities law and human rights, including whether there would be any diminution as a consequence of Brexit;
- whether the withdrawal process results in any re-think of the current arrangements within the UK in relation to equalities law and human rights and the question of further devolution of competences;
- what rights will EU27 citizens and EEA nationals living and/or working in the UK enjoy after withdrawal and the corresponding issue of UK nationals in other EU27 or EEA countries;
- what alternative source of funds will replace those currently provided by the EU for projects in the equalities and human rights fields in Scotland.

# Constitutional Matters and the Process of withdrawing from the EU

## Policy background

380. The decision to leave the European Union represents perhaps the most significant constitutional change in the UK in generations. Both the decision to leave and the process to be followed raise a number of important constitutional matters.

## Withdrawal process and the UK's new relationship with the EU

381. Firstly, there are questions around how the UK withdraws from membership of the European Union. While the EU Referendum provided a clear indication that a majority of the UK electorate wished to leave the European Union, neither the question put to the electorate nor the provisions of the European Union Referendum Act 2015 under which the Referendum took place, set out how or when withdrawal should take place. As a consequence, the questions as to how and when the process of withdrawal from the EU should commence has become a key issue of debate.

382. Article 50 of the Treaty on European Union (TEU) sets out the process by which a Member State withdraws from the European Union. Article 50(1) provides that: "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements." Article 50(2) provides that "A Member State which decides to withdraw shall notify the European Council of its intention".

383. Before the referendum, the then Prime Minister suggested that, in the event of a decision to leave, he would make a formal notification under Article 50 more or less immediately. After the Referendum, he indicated that this would be a decision for his successor. In her speech to the Conservative Party conference on 2 October, Theresa May, the new Prime Minister, advised that Article 50 would be triggered before the end of March 2017. To date, that remains the position of the UK Government.

384. Once Article 50 has been invoked, a "withdrawal agreement" in the form of a treaty will be negotiated and concluded between the EU and the UK (within two years unless the EU agrees to extend the process). The agreement will set out the arrangements for the UK's withdrawal, taking into account the framework for the UK's future relationship with the European Union. If there is no agreement the EU Treaties will simply cease to apply in the UK at the end of that two-year period. In effect, the UK will no longer be a member state of the EU.

385. In terms of the withdrawal agreement itself, it is anticipated that this will, as a minimum, divide up the properties, institutions and pension rights, and deal with budget payments. In its submission, the Institute of Chartered Accountants Scotland (ICAS) estimates that the extent of the UK's liability for the pensions of

EU officials (i.e. civil servants) and others is €60billion.<sup>342</sup> It will also cover the rights of UK citizens in the EU and vice versa and make arrangements for the transfer of programmes and activities under EU institutional jurisdiction to the UK.

386. In addition to a withdrawal agreement, the UK will also need to negotiate a new relationship with the EU. There has also been discussion about the relationship in any transitional period between the withdrawal agreement and the new relationship agreement, and whether they should take place at the same time, or whether some form of transitional agreement can be put in place.

387. Following withdrawal from the EU, the UK Government has said that it plans to negotiate a number of international agreements with third countries (such as the USA, People's Republic of China and India) when such arrangements are no longer covered by the UK's membership of the EU. Whilst the UK remains a member of the EU, it cannot conclude any such trading agreements. At this stage, it is not clear whether or how the Scottish Government will be involved in the discussions on future trade agreements.

388. The programme of work involved in negotiating the UK's withdrawal from the EU, the future relationship with the Union, new trade agreements with third countries and the question of the repeal of EU law will place substantially increased demands on ministers – both in the UK and Scottish governments – and on the civil service, raising questions of institutional capacity.

### **The role of the UK Parliament**

389. The question of the UK Parliament's role, if at all, in the triggering of Article 50 is currently a matter being considered by the UK Supreme Court. It would not be appropriate to rehearse any of the arguments that may be made by the various parties to the case or to speculate on the outcome.

390. At this stage, we can note that the UK Government's position is that it can invoke Article 50 as an act of royal prerogative and that this is the matter at the centre of the case currently being considered by the Supreme Court. The case was heard between 5-8 December 2016, with a decision of the Court expected in early January 2017. The Lord Advocate, along with a number of others, has been granted the right to intervene in the case.<sup>343</sup>

### **The question of EU law**

391. The European Communities Act 1972 is an Act of the Parliament of the United Kingdom which legislated for the accession of the United Kingdom to the European Economic Community (the Common Market), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) and also legislated for the incorporation of European Union law (then Community law) into the domestic law of the United Kingdom.

392. It enables, under section 2(2) of the Act, UK government ministers to lay regulations before the UK Parliament to transpose EU Directives and rulings of the

European Court of Justice into UK law. It also provides, in section 2(4), that all UK legislation, including primary legislation (Acts of Parliament) have effect "subject to" directly applicable EU law.

393. In October 2016, Theresa May announced plans for a 'Great Repeal Bill' to be included in the next Queen's Speech. There is little detail currently available, but it appears this Bill is intended to remove the European Communities Act 1972 from the statute book following completion of Brexit negotiations. It would also incorporate current EU law into an Act of Parliament and then allow the UK government to decide if or when to repeal, amend or retain individual measures in the future, following withdrawal from the EU.
394. It seems the UK government intends to introduce this Bill into Parliament in 2017, but it will not come into force until after a withdrawal agreement is concluded and the UK has actually left the EU.
395. The rationale for the 'Great Repeal Bill' is the near impossibility for the UK Government to review, repeal or amend the entire body of EU legislation within the two-year timetable for the Article 50 process. The UK Government's approach of incorporating all EU law into domestic law will enable subsequent governments to undertake this task in slower time during the years following UK's departure from the EU.
396. Research produced by Professor Alan Page for the Committee raised a number of important questions that will need to be covered as part of the review, repeal and amending process. Firstly, what legislative routes would need to be approached depending on whether the EU law in question was directly applicable, has direct effect or whether it was required to be transposed into domestic law? There is very little detail so far on how the subsequent process of amending and repealing EU law (now domesticated) will be undertaken. But it is suggested that through its 'Great Repeal Bill' the UK Government will seek to get the UK Parliament to confer upon UK Ministers substantial powers to repeal or amend domesticated EU legislation.
397. Concern has been expressed by some that this might be permitted by way of subordinate legislation which would not allow for same level of parliamentary scrutiny. Professor Page has suggested, for example, that it would be difficult to see the relationship between EU law and UK law being unpicked without wide subordinate law making powers. However, he pointed out that in many cases the transposition of EU law was carried out on a UK-wide basis. If that was to apply in relation to the repeal of EU law in relation to devolved areas, he queried whether the Scottish Parliament would be made aware of such moves. In his research for the Committee, Professor Page said—



Were obligations to be transposed by UK Act of Parliament the Scottish Parliament's consent would be required, but if they are transposed by subordinate legislation its consent is not required. The situation could thus

arise in which the UK legislated extensively in areas devolved to Scotland without seeking the consent of the Scottish Parliament as there would be no requirement of its consent in relation to subordinate legislation altering the effects of EU law in the devolved areas. In my view, this represents a significant potential gap in the framework of Scottish parliamentary control over UK law making in the devolved areas, which the Scottish Parliament should be alert to the need to close should UK Ministers be given the power to revise EU law in the devolved areas.<sup>344</sup>

### **The roles of the Scottish Government and the Scottish Parliament and the question of legislative consent**

398. One issue explored by this Committee during the since the EU Referendum is the issue of the extent to which the Scottish Government is involved in discussions and negotiations that take place, before and during the process of triggering Article 50, and also in the parallel discussions that are likely to take place on what the UK's future relationship with the EU looks like and wider international agreements on trade and other matters. This then raised the question of the Scottish Parliament's relationship with the Scottish Ministers and the role of the legislature in holding the executive to account for its intergovernmental activities in these matters.
399. At the recently convened Joint Ministerial Committee (JMC) Plenary comprising of the governments of the UK, Scotland, Wales and Northern Ireland, it was agreed that a new sub-committee of the JMC (Joint Ministerial Committee European Negotiations, JMC(EN)) would be formed and would meet on a monthly basis to facilitate intergovernmental discussions and agree a programme of work.
400. The process being followed – to trigger Article 50, to agree a withdrawal agreement and to pass a 'Great Repeal Bill' also raises the question of legislative consent. The matter of whether the Scottish Parliament's consent is required to trigger Article 50 is current part of the aforementioned case currently before the UK Supreme Court. It would therefore not be appropriate to rehearse any of the arguments that may be made by the various parties to the case or to speculate on the outcome.

### **EU competences and questions around the devolution arrangements**

401. Professor Alan Page was commissioned by the Committee to carry out research on the implications of withdrawal from the EU for the devolution settlement. As part of this he identified the areas of EU competence that fall within areas of devolved policy. He concluded that most existing EU competences are reserved to the UK Government and Parliament, including the free movement of goods, persons, services and capital and the negotiation and conclusion of trade agreements with non-EU countries. He further suggested that, 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. However, in some cases, notional competences would become real

competences. As such, the Scottish Parliament would acquire power to legislate in policy areas where its role at the moment is essentially to implement EU law, such as agriculture and fisheries, the environment and climate change, but also in relation to Justice and Home Affairs.

### **A differentiated agreement for Scotland**

402. The final issue that needs to be considered is whether there is scope for Scotland to be given some form of differentiated relationship with the EU after withdrawal. Such a question has both political and legal considerations.
403. Some commentators have speculated on whether and to what extent Scotland could seek to negotiate a different settlement from the rest of the UK in the event that the Scottish Government and the UK Government could not agree a negotiating position. On the other hand, in her speech to the Conservative Party conference on 2 October, the Prime Minister seemed to reject this notion stating that: “We will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom”, adding “there is no opt-out from Brexit”.<sup>345</sup>
404. For her part, the First Minister has indicated that she intends to seek a specific deal for Scotland, have special access to the single market and the freedom to have distinctive immigration policies.<sup>346</sup>
405. Such a debate raised a number of constitutional matters that will need to be considered. It is too early to speculate further on whether any such differentiated agreement for Scotland is legally or political feasible as this will be dependent on what form of differentiated agreement is being considered, as well as the view of the UK Government and the EU27 countries on any such arrangement.

## **Summary of evidence received**

### **Article 50: the process and timetable for withdrawal**

406. Many of the submissions commented on the proposed process of withdrawal and the likely timescales. One key issue raised was the scope for uncertainty and the impact this may have on organisations and individuals. In its submission, CBI Scotland said—

” For businesses to continue to have confidence to invest in Scotland, the UK government must outline its intentions as soon as possible. Business understands that it will take time for the UK government to set out the detail of its plan, and it is important that the plan it eventually presents meets the needs of the diverse array of stakeholders affected by this decision. However, the level of uncertainty in the business community means that some clarification is necessary early. This is an urgent priority. A decision over the timetable for the invocation of Article 50 is a key part of the outline business needs, as is the process for developing and communicating the



principles that will underpin the negotiation of a new relationship with the EU.<sup>347</sup>

407. In the CBI's view, if uncertainty around Scotland's relationship with the EU is prolonged, "it will have long-term impacts on the economic health of the nation."<sup>348</sup> The organisation points out that many Scottish businesses currently form a part of pan-European or international supply chains, providing a small component or specialised service as part of a process that produces a larger product. The complex nature of these supply chains means that, in its view, planning can take place 3-5 years before the product comes to market. Similarly, CBI Scotland argue that international companies with subsidiaries in Scotland will make investment decisions a decade or more in advance. It notes that Scotland competes with other countries to attract that international investment. CBI Scotland concludes that "extended uncertainty about the UK's EU membership could make it less attractive to include Scottish companies in these long-term plans, with the effects being felt for many years."<sup>349</sup>
408. This view was shared by other business and commercial interests. For example, in its submission, Oil and Gas UK notes that it is currently consulting its members and that there are "a great many uncertainties at this point".<sup>350</sup> In its view, the Scottish and UK governments must consult constructively with the industry, be open about the process of withdrawal
409. Argyll and Bute Council told the Committee that the question of the potential impact of withdrawal was "currently unanswerable at any level" and that it recognised the future legal difficulties ahead.<sup>351</sup> It considered that the negotiations should be done "as quickly as possible".<sup>352</sup> However, if negotiations are required to take longer to get the best results, this was acceptable.
410. As with those industry and commercial interests who made submissions, the Council stated that it was important that local authorities be involved. It stated that "Whatever withdrawal process is established must involve those levels of governance currently involved in delivery of EU funding and where the impact of policy and funding changes will be felt most."<sup>353</sup> This was a view shared by COSLA in its submission, which stated, "We feel that our contribution is particularly important on this matter as Local Government is not a stakeholder but one of the two tiers of government that make up the governance of Scotland."<sup>354</sup>
411. For the Law Society of Scotland, a key concern was the need to avoid disruption. Its submission to the Committee states that withdrawal from the existing law and policy issues will "require great care" in order to avoid this.<sup>355</sup>
412. Professor Tom Mullen (University of Glasgow) and Professor Aileen McHarg (University of Strathclyde) in their joint submission make it clear that, in their view, it is not yet possible to say how long it will take to complete negotiations as this will be dependent in part on the future relationship with the EU that is agreed.<sup>356</sup> They concluded that it is—

” ...impossible to predict with any degree of accuracy what the time scale for negotiations will be. It is possible that a Brexit date will be set once some major issues have been resolved but when others have not been. There would then have to be post-Brexit negotiations over these unresolved issues. An analogy might be drawn with the dissolution of Czechoslovakia, where agreement was reached to dissolve the state in just six months, but negotiations continued over the precise terms of separation for a further seven years.<sup>357</sup>

413. The possibility or desirability for delay is also a point made by Usdaw. Its submission outlines concerns that the negotiation process may take more than 2 years to complete.<sup>358</sup> Usdaw argues that it is likely that, within the two year negotiation period outlined within Article 50, negotiators will not have the time or ability to comprehensively negotiate proper outcomes on a range of regulations relating to the retail sector as well as the thousands of other topics up for discussion.<sup>359</sup> It concluded that—

” Usdaw does not want to see negotiations take place within a backdrop of an absolute two year time limit and believes that the UK Government should seek an agreement that whilst negotiations will be completed as quickly and efficiently as possible, no conclusion will be reached until comprehensive negotiations have been concluded.<sup>360</sup>

414. Finally, in his submission, Dr Tobias Lock of the University of Edinburgh, set out some of the complexity of the negotiations on withdrawal, including on the question of the outcome and the number of agreements or treaties that may be required under the process. Dr Lock states that, unless a special relationship for Scotland is negotiated, Scotland is likely to leave the European Union with the rest of the UK. Its relations with the rest of the EU would therefore depend upon the UK's future relations. That future relationship is subject to negotiations between the UK and the rest of the EU. In Dr Lock's view, unless the outcome of these negotiations is that there should not be a future 'special relationship' between the EU and the UK, these negotiations will result in at least one further international treaty between the EU and the UK.<sup>361</sup>

415. He further stated that “there is a debate as to whether this treaty can and should be negotiated alongside the withdrawal agreement or whether the UK's terms of withdrawal need to be settled first.” In his view, “the latter solution might result in the UK leaving the EU without a ‘deal’, which might necessitate an interim relationship before a final EU-UK deal could be struck.” Given that Article 50 TEU requires the withdrawal agreement to take into account ‘the framework for [the UK's] future relationship with the Union’, a good argument can be made, in his view, that the negotiations for this relationship should be taking place in parallel.<sup>362</sup>

## The role of the Scottish Government in the process of withdrawal

416. CBI Scotland's submission makes it clear that it considers that the Scottish Government and the other devolved administrations have to have a role. It stated that—

” Ensuring that the needs of Scotland and other devolved nation governments are represented in the discussions on the UK's future is critical. The implications for all regions and nations of the UK must be understood by all who have a role in negotiations with the EU.<sup>363</sup>

417. Furthermore, CBI Scotland suggested that “All devolved nation governments should be able to nominate senior civil servants to work in the Department for Exiting the European Union and provide a liaison point for those business with operations in the devolved nations.”<sup>364</sup>

418. This suggestion is also supported by Dr Tobias Lock of the University of Edinburgh. His submission stated that—

” This necessity of cooperating with Scotland internally suggests a need to coordinate in advance while negotiations are ongoing (and indeed beforehand). The key question is how this could be done. It is suggested that specific channels of communication be opened up between the two parliaments and between the two governments. This can be done through new structures or existing ones, such as the Joint Ministerial Committee. An inclusion of Scottish government officials in the negotiating team would be appropriate at least where questions touching on Scottish powers are concerned. Given that successful implementation of any withdrawal arrangement would need the support of the Scottish Parliament, it would equally make sense to consult the Scottish Parliament already during the process of negotiation in order to minimise possible frictions at the implementation stage.<sup>365</sup>

419. Dr Lock's submission drew a distinction between the external representation of the UK vis-à-vis the EU and its Member States when negotiating a withdrawal and a new relationship and the internal implementation of these negotiations under UK domestic law.

420. He argued that for the external side, foreign affairs (including those with the EU) are reserved and that this means that the withdrawal negotiations are a matter for the UK Government, which will also ratify the withdrawal treaty and any other treaties governing the future relations with the EU. In his view—

” There is not much evidence in UK constitutional law that Scotland would need to be involved directly in these negotiations (though it might be politically opportune given the internal dimension). Moreover, it is not clear whether the EU and its Member States would be willing to negotiate with Scottish representatives in this regard.<sup>366</sup>

421. In relation to internal discussions, Dr Lock said that “a withdrawal from the EU, by contrast, will require involvement of the Scottish government and parliament.”<sup>367</sup> This is due, in his view, as a result of the interplay between any question of repeal of the European Communities Act 1972 and devolved competences.
422. Professors Mullen and McHarg also comment on this issue. Their submission stated that “there are no express statutory obligations on the UK Government to consult the devolved administrations over the UK negotiating position or the terms of withdrawal from the EU.”<sup>368</sup> How to involve the Scottish Government is, in their view, for the UK government to decide.
423. Professors Mullen and McHarg noted the comments made by the Prime Minister that she would not trigger the formal exit process until she had agreed a “UK approach” with leaders in Scotland, Wales and Northern Ireland and highlight that the UK Government’s website states that the responsibilities of the Secretary of State for Exiting the European Union include “working very closely with the UK’s devolved administrations, Parliament, and a wide range of other interested parties on what the approach to those negotiations should be.”<sup>369</sup>
424. Their view was that “it is unlikely that the promise to “agree a 'UK approach' with leaders in Scotland” is legally enforceable, so if there is disagreement between the UK Government and the devolved administrations over the negotiating position or the timing of the Article 50 notice we can expect that ultimately the UK Government will impose its view.” However, in their view, the Scottish Parliament and Scottish Government should press for as much consultation as possible with them on these matters.<sup>370</sup>

### **The question of EU law**

425. The submission from the Law Society of Scotland put the question of the scale of the challenge ahead in reviewing, amending or repealing EU law into context. The Society points out that EU law currently covers 20 areas of policy and law. It estimates that, in total, omitting decisions there are over 2,029 Regulations and 1,070 Directives from the EU.<sup>viii</sup> Most EU legislation, excepting that subject to the UK’s opt outs, has been implemented in the UK either directly, by the UK Parliament, or through the devolved arrangements.<sup>371</sup>
426. In its view—




The need to maintain stability in the law, repeal legislation and prepare new legislation to fill in gaps arising from leaving the EU will comprise a significant part of the domestic legislation which is passed at or following withdrawal. Bearing in mind the public interest in maintaining consistent application of the law, the useful aspects of the freedom, security and justice legal framework, appropriate recognition and enforcement of

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<sup>viii</sup> Note that the House of Commons’ Library puts the figure at over 5,000 EU Regulations directly applicable in all member states.

citizens' rights, CJEU pending cases, immigration, residence, citizenship and employment status and the impact of the UK's exit on the devolved administrations it is clear that a wholesale repeal of the law which has emanated from the EU over the years would be problematic, difficult to implement, and unduly disruptive.<sup>372</sup>

427. The Law Society proposed that domestic legislation is passed to ensure a “soft landing” in terms of legal change.<sup>373</sup> In principle laws with direct effect (Treaties and Regulations) will cease to apply once the withdrawal agreement is in place, the UK is no longer a member of the EU and the European Communities Act 1972 has been repealed. However, in its view, it would be inappropriate to include in any new law the wholesale repeal of direct effect provisions without making some alternative arrangements. The Law Society considers that these arrangements would ensure clarity and stability in the law and prevent legal uncertainty.
428. Similarly EU law with indirect effect (directives) has already been transposed into domestic legislation. The Society notes that this has been through primary or secondary legislation either at UK level or through the Scottish Parliament. That law will continue, in its view, to be part of the UK and Scots Law until and unless it is specifically repealed. Many statutory instruments deriving from EU directives have been enacted under Section 2 of the 1972 Act and so would be repealed once the Act is repealed unless explicitly retained.<sup>374</sup>
429. For the Law Society, considering such a large body of law in lead up to the UK's withdrawal from the EU would be a difficult task. The policy objective should be, in its view, to retain existing EU law at point of exit and then repeal or amend in the post exit period when there is more time for consultation and proper scrutiny by the UK Parliament and the Scottish Parliament, the Welsh and Northern Ireland Assemblies.<sup>375</sup>
430. Usdaw, the trade union, also made comments in this area. It argued that—  
 ... as much legislation as possible should be left un-amended in the event of a withdrawal from the EU. In this scenario, Usdaw is in favour of retaining the European Communities Act 1972 whilst only repealing the relevant sections to remove the nation from the European Union. Maintaining the remainder of the Act would ensure that all secondary legislation reliant on the Act would be retained. Usdaw is deeply concerned that if the entire Act is repealed, any secondary legislation that has been passed under the Act will disappear in line with the *Watson v Winch* decision.<sup>376</sup>
431. Furthermore, Usdaw stated that if it was not possible to leave the EU and retain the ECA 1972, it “believes that the UK Government must pass supporting legislation that would protect all secondary legislation reliant on ECA 1972.” Usdaw argued that since the UK joined the EU, there have been tens of thousands of pieces of legislation passed as Statutory Instruments under s2 ECA

1972. In its view, supporting legislation to protect these Statutory Instruments must be passed prior to, or as part of, any moves to repeal the ECA 1972.<sup>377</sup>

### **The roles of the Scottish Government and the Scottish Parliament and the question of legislative consent**

432. As outlined in the section above on the policy background, discussion on constitutional matters and the withdrawal process raises questions around the issue of legislative consent either for the process of triggering Article 50 or on matter of a 'Great Repeal Bill'.

433. At this point, the Committee makes the following observation—

**The question of the process by which Article 50 is triggered is currently being considered by the UK Supreme Court. For this reason, it would not be appropriate to rehearse the arguments that may be made in the Court or to speculate on the likely outcome. However, a number of written submissions we have received (prior to the case in the UK Supreme Court being live) do comment on such matters. The Committee simply refers the reader to the various submissions which are already in the public domain. In doing so, the Committee is not making any comment on the issues raised in these submissions or necessarily endorses the views expressed by the respondents.**

434. The following submissions make reference to the matter of legislative consent in some depth in the written evidence received from:

- Dr Tobias Lock, University of Edinburgh;
- Justin Borg-Barthet (University of Aberdeen), Maria Fletcher (University of Glasgow) and Clare-Frances Moran (Napier University)
- Professor Tom Mullen (University of Glasgow) and Professor Aileen McHarg (University of Strathclyde).

### **EU competences and questions around the devolution arrangements**

435. In his research for the Committee, Professor Alan Page notes that 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. This would extend some of the areas of devolved power and it would thus be open to the Scottish Parliament to legislate in the devolved policy or subject areas which are currently areas of EU competence.<sup>378</sup>

436. Although most existing EU competences are reserved to the UK Parliament, a number, such as justice and home affairs, agriculture, fisheries and the environment fall to the Scottish Parliament.



437. As the submission from Justin Borg-Barthet, Maria Fletcher and Clare-Frances Moran notes, the Scottish devolution settlement is based partly on law and partly on politics. Their view is that the law on the subject takes “a very black and white view of devolution, giving the Scottish Parliament certain powers, but Westminster remains the most significant legislator and political actor on the part of the Scottish people, as part of the British polity”. The areas which are likely to be affected by EU negotiations illustrate some tension between devolved and reserved powers, and thus competence to negotiate. Agriculture and fishing is devolved, while trade and industry is reserved. Economic development is also devolved, however, connected areas such as immigration, employment law and equality are reserved.<sup>379</sup>
438. A number of submissions received make comment on this matter. For example, UNISON Scotland’s submission indicated that the current debate on the options that may exist for Scotland’s relationship with the EU after withdrawal from the EU may “spark further consideration of the need for further devolution and there have already been calls for a more federal UK.” UNISON Scotland stated that “employment law is an obvious area for re-consideration post-Brexit.”<sup>380</sup>
439. This is an observation shared by Dr Lock of the University of Edinburgh who noted that there may be a range of possibilities for Scotland to consider in relation to what happens to EU competences after Brexit if no specific provision is made in an EU-UK deal. One alternative, in his view, would be to enable Scotland to keep as much EU law as possible in light of the UK’s future relations with the EU.<sup>381</sup>
440. Dr Lock noted that this alternative might require changes to the devolution settlement. For instance, it is conceivable, he suggests, that Scotland might want to keep EU rules on workers’ rights whereas Westminster might want to reduce certain rights. As Dr Lock observed, employment law is currently a reserved matter so Scotland would not be able to retain EU standards without a change in the devolution settlement.<sup>382</sup>
441. He also suggested that other policy areas might include Justice Cooperation or Universities (research and student exchanges). In his view, if the UK chose not to participate in this type of cooperation, it could allow Scotland to make its own arrangements and pay the relevant contributions to the EU budget. He concluded that “this solution would therefore see Scotland as part of a UK-EU trade deal with participation in additional policies and a retention of certain EU standards” noting that “it would, however, require some flexibility to accommodate this at the UK level.”<sup>383</sup>
442. The submission by Professors Mullen and McHarg provides a similar exploration of a range of options for EU competences, noting that if VAT policy were no longer to be subject to EU law, this would remove the major objection to it being devolved to the Scottish Parliament.<sup>384</sup>
443. The merits of adjusting the current devolution arrangements as a consequence of Brexit is not a view taken by Usdaw in its submission. It stated that “Ushaw does



not foresee any reason to amend responsibility for those powers currently listed under the devolution agreement as a result of Brexit.” In its view, until the outcome of negotiations are known, it will not be clear which current EU competences are likely to be restored to be determined within the UK. Until this becomes clear, Usdaw does not believe that a position can be taken on the implications to the devolution agreement of any return of powers from the EU.<sup>385</sup>

444. Finally, in its submission, COSLA’s starting point for a debate on the return of EU competences is that “if powers are repatriated from the EU we would be keen that the principle of Subsidiarity is fully applied so they are devolved to the local level – particularly if prior EU accession these were local rather than national powers.”<sup>386</sup>

### **A differentiated agreement for Scotland**

445. **Before outlining some of the evidence taken in this area, it is important to note that the preparation of this Report took place before the Scottish Government published its proposals (in *Scotland’s Place in Europe*) in December 2016. The Committee will look at these proposals in more detail in the near future. This section of the Report, therefore, does not take into account any of the views contained within the Scottish Government’s report.**

446. **The Report was also produced in advance of the speech by the Prime Minister on 17 January 2017. The Committee will also be reflecting on the contents of that speech and any further information issued by the UK Government in the near future.**

447. The final area explored by a number of respondents is that of the scope for a differentiated arrangement for Scotland relative to that for the rest of the UK’s future relations with the EU. A number of submissions explored the historic agreements that were put in place when Greenland left the EU (an autonomous country within the Danish Realm but no longer part of the EU), the arrangements that the Faroe Islands have (also not part of the EU but are part of the Danish Realm), the approach taken when the Republic of Cyprus joined the EU (and the situation of Northern Cyprus) and the situation when the former GDR (not previously part of the European Community) acceded to the Federal Republic of Germany upon reunification.<sup>387</sup>

448. These examples and others were explored in some depth by one of the Committee’s advisers – Professor Sionaidh Douglas-Scott – in a research briefing produced for the Committee.<sup>388</sup>

449. Professors Mullen and McHarg’s submission sets out the advantages and challenges of a series of options for some form of differentiated agreement, such as the so-called ‘reverse Greenland’ concept, Scotland entering into an Association Agreement with the EU going beyond any post-Brexit agreement entered into the UK or Scotland continuing to be bound by EU law in areas of devolved competence. They conclude, however, by stating—

” While Scotland remains part of the UK, the most straightforward way of protecting Scotland’s relationship with the EU and its place in the single market would be to persuade the UK Government to negotiate a close relationship with the EU for the UK after Brexit. However, this may also prove to be challenging.<sup>389</sup>

450. The submission from Dr Tobias Lock of the University of Edinburgh also explored a range of suggestions and set out the merits or otherwise of each ranging from an independent Scotland being part of the EU, Scotland remaining part of the UK but having some special status with the EU, Scotland leaving the EU along with the rest of the UK but retaining EU law in place to Scotland having a seat on the EU’s Committee of Permanent Representatives).<sup>390</sup>
451. **Finally, many of the submissions made particular reference to the scope or otherwise of a differential relationship for Scotland specifically in the context of the Single Market and set out the advantages and challenges of different models such as EFTA EEA, the Swiss arrangement, and continued membership of the Customs Union. These submissions are not covered here as they are part of a separate report from the Committee on International Trade.**

## Emerging issues

452. The key issues to emerge from the written evidence on constitutional matters and the process of withdrawing from the EU included—

- The exact process of, and timing for, withdrawal of the UK from the EU. This included the discussions with the EU, intergovernmental arrangements within the UK, the role of the Scottish Government in these discussions and arrangements and how the Scottish Government plans to inform and consult with the Scottish Parliament throughout;
- following withdrawal from the EU, whether the Scottish Government will have a role in discussing the UK Government’s plans for further trade agreements with third countries and how the Scottish Government plans to inform and consult with the Scottish Parliament throughout any such discussions;
- Dependent on the outcome of the case currently before the UK Supreme Court, whether there is any role envisaged for the Scottish Parliament in relation to legislative consent to a bill to trigger Article 50, any legislation that is considered in the UK Parliament upon withdrawal or the ‘Great Repeal Bill’;
- What legislative process will be followed and how the UK Government will consult with the Scottish Government during any process for the wholesale review, amendment or repeal of EU law after Brexit. This includes questions of whether such a process involves primary and/or secondary legislation (there

being no provision to seek the consent of the Scottish Parliament under the terms of the current convention);

- What process will be followed for the return of areas of EU competence (current in a mixture of reserved and devolved areas) and associated funding streams and where such powers will eventually both within the UK and within Scotland;
- The scope or otherwise for any differentiated arrangement for Scotland's future relationship with the EU alongside that of the UK including, in particular, the matter of the Single Market and Customs Union.

- <sup>1</sup> Extract from SPICe Research Briefing – Executive Summary, *Brexit: Impact on the Justice System in Scotland*, SB16/83, 27 October 2016
- <sup>2</sup> Professor J M Carruthers and Professor E B Crawford, Written submission, page 2.
- <sup>3</sup> The Children and Young People's Commissioner Scotland. Written submission, page 5.
- <sup>4</sup> Church of Scotland. Church and Society Council. Written submission, page 3.
- <sup>5</sup> Money Advice Scotland. Written submission, page 1.
- <sup>6</sup> Money Advice Scotland. Written submission, page 1.
- <sup>7</sup> The Children and Young People's Commissioner Scotland. Written submission, page 8.
- <sup>8</sup> Chartered Institute of Personnel and Development. Written submission, page 2; The Children and Young People's Commissioner Scotland. Written submission, page 8-9.
- <sup>9</sup> Chartered Institute of Personnel and Development. Written submission, page 2.
- <sup>10</sup> Dr Tobias Lock. Written submission, paragraph 8.
- <sup>11</sup> Dr Tobias Lock. Written submission, paragraph 4.
- <sup>12</sup> The Law Society of Scotland. Written submission, page 2.
- <sup>13</sup> Dr Tobias Lock. Written submission, paragraphs 27-28.
- <sup>14</sup> Dr Tobias Lock. Written submission, paragraph 27.
- <sup>15</sup> Faculty of Advocates. Written submission, page 1; Dr Tobias Lock. Written submission, paragraph 31; Professor J M Carruthers and Professor E B Crawford. Written submission, page 1; The Law Society of Scotland. Written submission, page 7-10.
- <sup>16</sup> The Law Society of Scotland. Written submission, pp 8-9.
- <sup>17</sup> Ibid, pages 8-9.
- <sup>18</sup> House of Commons' Library, *Legislating for Brexit: directly applicable EU law*, 12 January 2017. Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7863>
- <sup>19</sup> Faculty of Advocates. Written submission, page 1.
- <sup>20</sup> The Law Society of Scotland. Written submission, pp. 7-8; Faculty of Advocates. Written submission, page 1; Dr Tobias Lock. Written submission, paragraph 32; Professor J M Carruthers and Professor E B Crawford. Written submission, page 3.
- <sup>21</sup> The Law Society of Scotland. Written submission, p13.
- <sup>22</sup> The Law Society of Scotland. Written submission, page 12; Faculty of Advocates. Written submission, page 1; Dr Tobias Lock. Written submission, paragraphs 31-32.
- <sup>23</sup> The Law Society of Scotland. Written submission, page 12.
- <sup>24</sup> Dr Tobias Lock. Written submission, paragraphs 33-34.
- <sup>25</sup> Scotland Act 1998; Dr Tobias Lock. Written submission, paragraph 34; The Law Society of Scotland. Written submission, pp 7-8; Faculty of Advocates. Written submission, page 3; Royal Society of Edinburgh. Written submission, page 4.
- <sup>26</sup> Faculty of Advocates. Written submission, page 3; The Law Society of Scotland. Written submission, page 8.
- <sup>27</sup> Chartered Institute of Personnel and Development. Written submission, page 2.
- <sup>28</sup> The Law Society of Scotland. Written submission, pp 1-2.
- <sup>29</sup> The Children and Young People's Commissioner Scotland. Written submission, page 2; See also Together. Written submission, page 2.
- <sup>30</sup> The Children and Young People's Commissioner Scotland. Written submission, page 3; See also Together. Written submission, page 2.
- <sup>31</sup> The Children and Young People's Commissioner Scotland. Written submission, page 3.
- <sup>32</sup> The Law Society of Scotland. Written submission, page 14; Dr Tobias Lock. Written submission, paragraph 21.
- <sup>33</sup> The Law Society of Scotland. Written submission, page 15.
- <sup>34</sup> Extract from SPICe Research Briefing – Executive Summary, *Brexit: Higher Education in Scotland*, SB16/79, 13 October 2016.
- <sup>35</sup> European Commission. Available at: [http://www.erasmusprogramme.com/the\\_erasmus.php](http://www.erasmusprogramme.com/the_erasmus.php)
- <sup>36</sup> See for example: British Medical Association. Written submission, page 3; University and College Union. Written submission, page 2; Scottish Council of Independent Schools. Written submission, page 2; Richard Tallaron. Written submission, page 1; Colleges Scotland. Written submission, pages 1-2; Peter Dayan, Written submission, page 1; Universities Scotland. Written submission, page 1; University of Edinburgh. Written submission, page 1; University of Strathclyde. Written submission, page 1; University of the Highlands and Islands. Written submission, page 1.
- <sup>37</sup> British Academy. Written submission, page 18.

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- <sup>38</sup> British Academy. Written submission, page 17.
- <sup>39</sup> British Academy. Written submission, page 1.
- <sup>40</sup> British Medical Association. Written submission, page 3.
- <sup>41</sup> Universities Scotland. Written submission, page 1.
- <sup>42</sup> West of Scotland College Partnership. Written submission, page 4.
- <sup>43</sup> University of Strathclyde. Written submission, page 2.
- <sup>44</sup> Institute of Physics. Written submission, page 1.
- <sup>45</sup> University of Highland and Islands. Written submission, page 1.
- <sup>46</sup> University of Highland and Islands. Written submission, page 1.
- <sup>47</sup> Scottish Council of Independent Schools. Written submission, page 2.
- <sup>48</sup> Royal High School Parent Council. Written submission, page 2.
- <sup>49</sup> Richard Tallaron. Written submission, page 1.
- <sup>50</sup> Colleges Scotland. Written submission, page 2.
- <sup>51</sup> Colleges Scotland. Written submission, page 2.
- <sup>52</sup> University of Edinburgh. Written submission, page 9.
- <sup>53</sup> Peter Dayan. Written submission, page 1.
- <sup>54</sup> University of Strathclyde. Written submission, page 1.
- <sup>55</sup> University and College Union. Written submission, page 1.
- <sup>56</sup> British Medical Association. Written submission, page 3.
- <sup>57</sup> British Academy. Written submission, page 4.
- <sup>58</sup> University of Highlands and Islands. Written submission, page 5.
- <sup>59</sup> See for example: British Medical Association. Written submission, page 3; University and College Union. Written submission, page 2; Colleges Scotland. Written submission, pages 1-2; Peter Dayan, Written submission, page 1; Universities Scotland. Written submission, page 1; University of Edinburgh. Written submission, page 1; University of Strathclyde. Written submission, page 1; University of the Highlands and Islands. Written submission, page 1.
- <sup>60</sup> Universities Scotland. Written submission, page 2.
- <sup>61</sup> University of Strathclyde. Written submission, page 7.
- <sup>62</sup> University of Strathclyde. Written submission, page 2.
- <sup>63</sup> University of Strathclyde. Written submission, page 2.
- <sup>64</sup> Digital Preservation Coalition. Written submission, page 1.
- <sup>65</sup> Digital Preservation Coalition. Written submission, page 1.
- <sup>66</sup> British Academy. Written submission, page 8; Universities Scotland. Written submission, page 2.
- <sup>67</sup> British Academy. Written submission, page 8.
- <sup>68</sup> British Academy. Written submission, page 8.
- <sup>69</sup> University of Strathclyde. Written submission, page 5.
- <sup>70</sup> University and College Union. Written submission, page 2.
- <sup>71</sup> British Medical Association. Written submission, page 4.
- <sup>72</sup> University and College Union. Written submission, page 1.
- <sup>73</sup> British Academy. Written submission, page 13.
- <sup>74</sup> University of Highlands and Islands. Written submission, page 6.
- <sup>75</sup> British Academy. Written submission, page 3; Colleges Scotland. Written submission, pages 1-2; University and College Union. Written submission, page 2; University of Edinburgh. Written submission, page 9; Universities Scotland. Written submission, page 5; British Medical Association. Written submission, page 1.
- <sup>76</sup> Universities Scotland. Written submission, page 5.
- <sup>77</sup> University of Strathclyde. Written submission, page 8.
- <sup>78</sup> Universities Scotland. Written submission, page 6; British Academy. Written submission, page 3; University of Strathclyde. Written submission, page 9; University of Edinburgh. Written submission, page 9.
- <sup>79</sup> University of Edinburgh. Written submission, page 9; Colleges Scotland. Written submission, page 2.
- <sup>80</sup> British Medical Association. Written submission, page 1.
- <sup>81</sup> Digital Preservation Coalition. Written submission, pages 1-2; Richard Tallaron. Written submission, page 1.
- <sup>82</sup> YouthLink Scotland. Written submission, page 2; Commissioner for Children and Young People Scotland. Written submission, page 2.
- <sup>83</sup> YouthLink Scotland. Written submission, page 3.
- <sup>84</sup> University of Highland and Islands. Written submission, page 6.
- <sup>85</sup> British Academy. Written submission, page 16.

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- <sup>86</sup> Richard Tallaron. Written submission, page 1; Royal High School Parent Council. Written submission, page 2; Peter Dayan. Written Submission, page 1; University of Edinburgh. Written submission, page 9; University of Highlands and Islands. Written submission, page 5.
- <sup>87</sup> British Academy. Written submission, page 7.
- <sup>88</sup> British Academy. Written submission, page 8.
- <sup>89</sup> University of Highlands and Islands. Written submission, page 6; University of Strathclyde. Written submission, page 3; British Academy. Written submission, page 8.
- <sup>90</sup> British Academy. Written submission, page 8.
- <sup>91</sup> British Academy. Written submission, page 8.
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## Annexe A

### Written submissions of evidence

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/100259.aspx>

Anjo Abelaira  
Academy of Medical Sciences  
Argyll and Bute Council  
Alzheimer's Research UK  
Angus Council  
Association of Medical Research Charities  
Association of the British Pharmaceutical Industry  
Margaret Beveridge  
Professor Philip Booth  
Justin Borg-Barthet, Maria Fletcher, Clare Frances Moran  
British Academy  
British Medical Association  
Built Environment Forum Scotland BEFS  
Ian Campbell CMG, Honorary Visiting Professor, School of Law, Liverpool University  
Cancer Research  
CBI Scotland  
Chartered Institute of Taxation  
Chemical Sciences Scotland CSS  
Stephen Murray Chesine  
The Chartered Institute of Public Finance and Accountancy  
Children & Young People's Commissioner Scotland  
Church and Society Council  
CIH Scotland  
Chartered Institute of Personnel and Development CIPD  
Cloburn Quarry Co Ltd  
Colleges Scotland  
Co-operatives UK  
Copernicus Technology Ltd  
Construction Scotland  
COSLA  
Sarah Craig, Maria Fletcher and Nina Miller-Westoby  
Creative Scotland  
Professor E B Crawford and Professor J M Carruthers  
Culture Counts  
Christian Dadomo and Noëlle Quénivet, UWE, Bristol  
Peter Dayan  
The Digital Preservation Coalition  
East of Scotland European Consortium (ESEC)  
Ecometrica

Edinburgh Airport  
Edinburgh Chamber Of Commerce  
John Edward  
Kirsty Egan  
ENABLE Scotland  
Engender  
Ethnic Minorities Law Centre, and the Perth & Kinross Association of Voluntary Service (PKAVS)  
Faculty of Advocates  
Festivals Edinburgh  
4-Consulting  
Fraser of Allander Institute  
General Medical Council  
Genetic Alliance UK  
Rob Gibson  
Brian Griffiths  
Dr Anja Gunderloch  
Professor Andrew Hughes Hallett  
Health and Social Care Alliance Scotland  
The Highland Council  
Highlands and Islands Enterprise  
Highlands & Islands European Partnership  
Historic Environment Scotland  
David Hogg  
Institute of Chartered Accountants of Scotland (ICAS)  
Institute of Physics  
Inclusion Scotland  
Morag Keith  
Lang2Tech  
The Law Society of Scotland  
Dr Tobias Lock  
Helen McAvoy  
Macduff Shellfish  
Jane McLaren  
Ian Martlew  
Dr Tom Mathar  
MB and GP anonymised  
Money Advice Scotland  
Professor Tom Mullen, University of Glasgow and Professor Aileen McHarg, University of Strathclyde  
James Murphie, Advocate and Dr Michelle Weldon-Johns, Lecturers at the University of Abertay  
Museums Galleries Scotland  
National Farmers' Union Scotland (NFU Scotland)  
National Federation of Roofing Contractors  
The National Trust for Scotland



National Union of Students Scotland (NUS Scotland)  
North Ayrshire Council  
Oil & Gas UK  
Brendan O'Leary  
Dr Maria O'Neill  
Irene Oldfather and Sir Graham Watson  
Onshore Oil and Gas Industry  
PCS Scotland  
Hanna Pennig  
People's Postcode Lottery  
Rail Freight and Scotland  
Research Councils UK  
Reform Scotland  
Professor Richard Rose  
Royal College of Nursing Scotland  
The Royal High School Parent Council  
Royal Institution of Chartered Surveyors  
The Royal Society  
Royal Society of Edinburgh  
RSPB Scotland  
The Royal Town Planning Institute  
Scotland Food and Drink  
ScotlandIS  
Scottish Association for Marine Science  
Scottish Chambers of Commerce  
Scottish Child Law Centre  
Scottish Contractors Group Secretariat  
The Scottish Council of Independent Schools (SCIS)  
Scottish Council for Voluntary Organisations (SCVO)  
Scottish Credit and Qualifications Framework Partnership  
Scottish Environment LINK  
The Scottish Federation of Housing Associations  
Scottish Fishermen's Federation, Brexit and the fishing industry – the central message  
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Scottish Natural Heritage  
Scottish Ports Committee  
Scottish Renewables  
Scottish Salmon Producers' Organisation  
Scottish Sports Association  
Scottish Tenant Farmers Association  
Scottish Trades Union Congress  
Scottish Wildlife Trust  
Scottish Women's Aid  
Scottish Women's Convention  
Scottish Youth Parliament

Shetland Islands Council  
Social Enterprise Scotland  
Dr Nikos Skoutaris  
SportScotland  
Stonewall Scotland  
Strathclyde Centre for Environmental and Governance (2 submissions)  
Andrew Syme  
Richard Talleron, LIFEE  
TBR Global Chauffeuring  
Ben Thomson  
Together: The Scottish Alliance for Children's Rights  
Transform Scotland  
George Yarrow  
UNISON Scotland  
Universities Scotland  
University and College Union  
University of Edinburgh  
University of Strathclyde  
University of the Highlands & Islands  
Usdaw  
VisitScotland  
Volunteer Scotland  
West of Scotland Colleges' Partnership  
West of Scotland European Forum (WOSEF)  
The Woodland Trust Scotland  
YouthLink Scotland

