Introduction

Open Scotland is the sister organisation in Scotland of Open Britain, the pro-European organisation established after the 2016 EU referendum. We are campaigning for the UK to continue to have a continuing close relationship with the European Union, including by staying in both the Single Market and the Customs Union and should seek to retain current co-operation on security, research and in a range of other areas. Open Scotland believes the best outcome of the Brexit negotiations would be one which protects the UK’s and Scotland’s prosperity, people, and partnerships across Europe. Although we are not campaigning for a second referendum, we do believe that it is important to keep an open mind on Brexit - and the vote to leave the EU - as the negotiations unfold. More information about our campaign can be found on our website.

Our Submission

In response to the call for evidence, Open Britain would note that Brexit is a wide-ranging subject which will have implications for the entire UK, including Scotland. The call for evidence asked for comments on the White Paper for Exiting the European Union as well as the two European Commission draft negotiating papers on the financial settlement and on citizens’ rights. Since the call for evidence, further negotiating positions have been published by both sides. Whilst Open Scotland has chosen to comment on some of these papers in more detail, in other cases we have commented more generally on the underlying issues at hand.

UK Government White Paper on Exiting the European Union

- At the time of publication of the White Paper in February, Open Britain compiled a lengthy background assessment briefing, which can be found here. We have outlined the key points from our assessment below, which can also be found in the link above.

- The White Paper outlines a specific choice to leave the Single Market and to let immigration policy dictate economic policy, running the risk of damaging our economy for generations to come and of leaving people poorer.

- The document has key omissions, not least over immigration policy, but confirms that the UK will not be able to deliver the “exact same benefits” as being in the Single Market and Customs Union outside of them, as UK Government Ministers have repeatedly claimed.

- There are key questions where much more information will need to be provided by UK Ministers, including over customs controls; the Irish border; transitional arrangements; and the implications of leaving with no deal at all.
• It is vital that the UK Parliament is given a meaningful vote at the end of the Article 50 process and that the devolved administrations are fully involved in the process, which despite warm rhetoric has not been demonstrated thus far.

**UK Government Brexit Negotiating Paper: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU**

Open Britain provided an in-depth assessment of the UK Government’s white paper on “Safeguarding the position of EU citizens in the UK and UK nationals in the EU” published on 26 June which can be found [here](#).

Open Scotland welcomes the greater detail provided by the UK Government in this paper, and the UK Government’s willingness to attempt to resolve the legal limbo which EU nationals in Scotland are currently facing. However, Open Scotland believes that it would have been much better if the UK Government had sought to end this uncertainty immediately after the EU referendum, by guaranteeing the existing rights of EU nationals living in the UK as opposed to making this a matter for the Brexit negotiations.

Many ambiguities remain in the UK Government’s proposal, including the fact that they appear to be making their offer contingent on a reciprocal offer from the EU27; uncertainties over the cost of applying for residence documents; as well as a lack of clarity as to whether EU citizens will be able to have continued access to UK public services (and how that impacts on Scotland where the responsibility for many of those public services are devolved). Open Scotland believes that the UK Government should approach negotiations with the EU on this topic in a constructive and generous spirit, rather than suggesting in any way that EU nationals are being used as bargaining chips.

Most of all, Open Scotland believes that we must ensure that Britain remains an open and tolerant country, both for EU citizens already living here and to new arrivals who will continue to be needed by our businesses and public services long into the future.

**European Commission Brexit Negotiating Positions**

**Judicial co-operation in civil and commercial matters**

Open Scotland believes that the UK Government needs to provide clarity on what the UK position will be on this point to provide certainty for Scottish businesses and consumers. A failure to provide clarity will impact on citizens across Scotland with commercial and civil interests in the EU27 and risks damaging Scottish business interests, especially for those businesses which trade extensively with the EU27.

**Goods placed on the market under EU law before the withdrawal date**

Open Scotland believes that the UK Government needs to do more than it has so far in explaining to companies across the UK and Scotland that they will not face any trade barriers post-Brexit to their largest market, where the UK Government has recently been calling for free and frictionless trade. This kind of trade is only possible
by staying in the Single Market and the Customs Union, something which Open Britain has long been advocating.

**Governance of the withdrawal agreement**

Open Scotland believes that the UK Government desperately needs to provide clarity on its own position on how it would like the withdrawal agreement to be monitored, as opposed to simply repeating the mantra that it “would like to end the jurisdiction of the European Court of Justice in the UK”. It is important that necessary mechanisms are in place to allow for the correct application and interpretation of the withdrawal agreement to provide legal safeguards for citizens and businesses. The European Commission has provided a clear position on this and now the UK Government needs to do the same.

**Ongoing police & judicial co-operation in criminal matters**

Open Scotland believes that the UK Government needs to publicly guarantee that it will negotiate to continue UK participation in programmes which have been vital for our national security across the UK, including the European Arrest Warrant and the European Criminal Records Information System, both of which play a key role in helping to keep the country safe.

**Ongoing judicial & administrative procedures**

Open Scotland believes the UK Government’s position, published on 14th July, does little to address the uncertainty surrounding ongoing legal proceedings involving the Court of Justice of the European Union (CJEU) and the UK. The paper accepts that a certain number of pending cases will continue to fall under the jurisdiction of the CJEU, but does not clarify to which cases this will apply. It also does not address the issue of how judgements in such cases will continue to be enforced once the UK has left the EU. It also fails to clarify which ongoing administrative proceedings involving EU institutions, bodies, offices and agencies will be affected. The UK Government’s position merely restates the complex issues created by the UK’s exit from the EU, without providing detailed solutions. In general, the UK Government’s position paper raises many more questions than it answers.

Open Scotland calls on the UK Government to explain precisely what it is prepared to accept in the negotiations on this issue to provide necessary legal clarity to current and future UK plaintiffs. Any cliff-edge scenario at the time of withdrawal would lead to the creation of a legal black-hole for citizens and businesses alike.

**Nuclear issues & Euratom**

Open Scotland believes that the UK Government’s position provides very limited information about their priorities when it comes to nuclear materials and safeguarding issues. The position includes very few details about the future of the UK’s relationship with Euratom or any future Nuclear Cooperation Agreements with non-EU countries, instead describing future aspirations but failing to provide any concrete solutions.
The document discusses, at length, the need for close co-operation between both the UK and the EU on issues of nuclear materials and safety, but fails to clarify how the UK Government is planning to achieve this co-operation outside of Euratom. As the UK Government has repeatedly stated it wants the UK to leave Euratom at the same time as it leaves the EU, including that fact in the Article 50 notification letter, these are serious issues on which the public deserves more information.

**The European Union Withdrawal Bill**

Open Britain’s assessment of the EU Withdrawal Bill can be found [here](#). In Summary:

- The bill could grant UK Government Ministers broad ‘Henry VIII clause’ powers to change laws as they see fit through secondary legislation in the form of statutory instruments. These Henry VIII powers are not subject to normal Parliamentary scrutiny. The Vote Leave slogan from the referendum of ‘Take Back Control’ must not be transformed into an excuse for a naked UK Government power-grab that puts at risk the hard-won rights and freedoms of Scottish citizens. This includes, in a no-deal scenario, the possibility for ministers to take away the rights of EU nationals in the UK, without full scrutiny.

- Questions will be raised over whether the UK Government, Parliament and the Civil Service have the capacity to deal with the sheer volume of legislation which will need to be debated as part of the withdrawal process.

- The bill will remove the Charter of Fundamental Rights, raising huge concerns over existing rights enjoyed by citizens and crossing the red lines of both the Labour and the Liberal Democrat parties, despite the UK Government’s claim to be seeking greater consensus.

- The UK Government has conceded that it has not been able to cost the impact of the withdrawal bill on businesses, providing further uncertainty for employers, employees, shareholders and investors across Scotland.

**Further Issues**

**The Ratification Process**

Open Scotland believes that the UK Parliament needs to be closely involved in the negotiations and that the final deal should be presented to both Houses of Parliament at the same time as it is presented to the European Parliament (likely to be October 2018), which will provide enough time for scrutiny and further negotiation if required. Open Scotland is also of the opinion that the UK Government should look to extend the negotiations if it becomes apparent that reaching an agreement will not be possible within the two-year timeframe allowed by Article 50.

**Transitional Arrangements**

Open Scotland welcomes the fact that the Government spelled out in its White Paper that it was committed to “avoiding a disruptive cliff-edge”. Open Scotland believes
that it is essential that the UK maintains maximum stability during any transition period and agrees quickly what these transitional arrangements will be.

**Funding Blackhole**

In their White Paper, the UK Government only promises to honour funding for projects signed after the Autumn Statement 2016 “*if they provide strong value for money and are in line with domestic strategic priorities*”. Open Scotland believes that this could mean billions of pounds in funding could be denied to beneficiaries from the following funds (which are not covered by HMG guarantees):

- the European Regional Development Fund;
- the European Social Fund;
- the Youth Employment Initiative;
- the European Agricultural Fund for Rural Development;
- the European Maritime & Fisheries Fund;
- the European Regional Development Fund (CAP Pillar 2).

**Conclusion**

Open Scotland are increasingly concerned about the hard Brexit path on which the UK Government has embarked. Despite the vote to leave the European Union, the choice of the destination was not on the ballot paper. Open Britain and Open Scotland strongly believe that the UK, and Scotland, are best served by staying in the Customs Union and the Single Market and are campaigning for us to do so. The UK Government need to provide a lot more information on the Brexit talks as these unfold and to take the long-term economic needs of the country into consideration, the consequences of which will be felt by future generations for years to come.

Representatives from Open Britain and Open Scotland would be available to provide any further evidence - oral or written - if required to do so by the committee.