

LEGISLATIVE CONSENT MEMORANDUM
THE EUROPEAN UNION (FUTURE RELATIONSHIP) BILL

Introduction

1. The European Union (Future Relationship) Bill (“the Bill”) is expected to be introduced into the House of Commons on 30 December 2020. It is intended to implement elements of the future relationship agreements (“the FRA”) reached between the UK Government and European Union (“the EU”) and the European Atomic Energy Community on 24 December 2020, including the Trade and Cooperation Agreement (“the TCA”), the Civil Nuclear Agreement and the Security of Classified Information Agreement.

2. This Memorandum has been lodged by Michael Russell, Cabinet Secretary for the Constitution, Europe, and External Affairs under Rule 9.B.3.1 (a) of the Parliament’s Standing Orders. The final draft Bill can be found at the UK Government website.¹

3. This Memorandum relates to the Bill as introduced.

4. The Scottish Government continues to believe that the best option for both Scotland and the UK is to be a Member State of the European Union. This position is supported by the people of Scotland, as expressed in successive elections since 2016 and the 2016 referendum itself.² Reflecting these views, on 8 January 2020 the Scottish Parliament voted by 92 – 29³ against granting legislative consent for the EU (Withdrawal Agreement) Act 2020⁴ which implemented the agreement that removed the UK and Scotland from the EU.

5. The Scottish Government believes that the Parliament should similarly refuse consent to this Bill. The Scottish Government cannot support the FRA, which it considers will have a severe detrimental impact on Scotland both in its specific terms and as the culmination of the process of leaving the EU – a mistake of historic significance. The Scottish Government also cannot support a Bill of such importance being rushed through its legislative processes without the opportunity for proper parliamentary scrutiny in either the UK or Scottish Parliaments.

6. For these reasons, the Scottish Government recommends that the Scottish Parliament should not consent to the Bill.

7. The Scottish Government does not therefore intend to lodge a legislative consent motion in relation to the Bill. In line with Rule 9B.3.3(d) of Standing Orders, the Scottish Government’s reasons for not including a draft motion are set out in paragraphs 32-45 below. Instead, the Scottish Government intends to invite the Scottish Parliament to vote on a motion expressly denying consent to the Bill.

¹ [EU \(Future Relationship\) Bill - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

² On 23 June 2016 62% of voters in Scotland supported remaining in the EU, with a majority in support of remain in every Scottish council area.

³ [Official Report - Parliamentary Business : Scottish Parliament](#)

⁴ [European Union \(Withdrawal Agreement\) Act 2020 \(legislation.gov.uk\)](http://legislation.gov.uk)

Background

The UK's withdrawal from the EU

8. The UK Government notified the EU of its intention to withdraw from the Union on 29 March 2017. The withdrawal agreement initially concluded between the UK and the EU on 25 November 2018 was not approved by the UK Parliament, and the two year period set out in Article 50 of the Treaty on European Union was twice extended by agreement of EU Member States and the UK. Under the terms of the European Union (Withdrawal) (No. 2) Act 2019⁵, the Prime Minister issued a letter on 19 October 2019 requesting that a further extension until 31 January 2020 be granted, which it subsequently was.

9. The European Union (Withdrawal) Act 2018⁶ ("EUWA 2018"), passed by the UK Parliament in June 2018, provides for the consequences in domestic law of the UK leaving the EU. It ensures that current EU law as it stands on the day that the implementation period concludes, IP completion day, continues to have domestic effect following exit subject to certain changes, and provides Ministers with powers to ensure this retained EU law works effectively. EUWA 2018 required the legislative consent of the Scottish Parliament under the Sewel Convention. This was refused by the Parliament on 15 May 2018.⁷ However, the UK Government proceeded with, and the UK Parliament passed, the Bill without amendments to reflect the views of the Scottish Parliament, in breach of the Sewel Convention.

10. On 5 December 2018, the Scottish Parliament resolved that both a no-deal exit from the EU and the Withdrawal Agreement and Political Declaration, as presented to the House of Commons by the then Prime Minister, would damage Scotland and the nations and regions of the UK as a whole, and therefore recommended that they be rejected and that a better alternative be taken forward.⁸ On 5 March 2019, both the Scottish Parliament and the Welsh Parliament passed motions rejecting both the previously concluded Withdrawal Agreement and the possibility of leaving at any point without a deal.⁹

11. After further negotiations the UK Government and EU concluded a Withdrawal Agreement that would lead to Scotland as part of the UK leaving the EU on 31 January 2020. As previously noted, the Scottish Parliament voted to withhold consent to the Bill implementing this agreement.¹⁰ Despite this, the Bill was passed by the UK Parliament and received Royal Assent on 23 January 2020, to become the European Union (Withdrawal Agreement) Act 2020. Under the terms of the Withdrawal Agreement as implemented in domestic UK law by that Act, the UK left the EU and entered a transition period on 31 January 2020. That Act was passed by the UK Parliament contrary to the objections of the Scottish, Welsh, and Northern Ireland legislatures.

⁵ [European Union \(Withdrawal\) \(No. 2\) Act 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2019/23/contents/enacted)

⁶ [European Union \(Withdrawal\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted)

⁷ See <https://www.parliament.scot/parliamentarybusiness/Bills/105997.aspx>

⁸ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11826&mode=pdf>

⁹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11976&mode=pdf>

¹⁰ <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=12446&mode=pdf>

Negotiation of the future EU-UK relationship

12. The UK and EU began formal negotiation of a future relationship agreement in March 2020, after the UK Government published a document setting out its approach to the negotiations and the EU approved, through its normal procedure, a mandate for the Commission to negotiate on its behalf. The starting point, albeit non-binding, was the Political Declaration that accompanied the Withdrawal Agreement. A schedule for the negotiations was agreed between the two sides and published in April 2020. According to the Political Declaration to the Withdrawal Agreement, there was an aim to agree a fisheries framework agreement by July but that deadline was missed.

13. The Withdrawal Agreement included an option and process for extension of the transition period. In June 2020, the Scottish Government published a detailed document explaining the case for extending the transition period, including to help manage the impacts of the COVID-19 pandemic.¹¹ The Scottish and Welsh Governments wrote to the UK Government calling for extension – but the UK Government decided against this course of action.

14. Negotiations resumed following a ‘pause for reflection’ in August. Although agreement was apparently reached during the autumn in a number of areas, important differences remained on the ‘Level Playing Field’, fisheries and governance. Following engagement at senior political level between the Prime Minister and the EU Commission President, a Future Relationship Agreement was concluded between the two parties on 24 December 2020 in advance of the end of the transition period at 11:00 p.m. on 31 December 2020.¹² A Bill to implement that agreement, the European Union (Future Relationship) Bill, is expected to be introduced on 30 December 2020.

15. Normally this agreement would be ratified on the EU side by both the Council and the Parliament, but the EU has decided that the agreement should be given provisional effect from 1 January 2021 before detailed scrutiny by the European Parliament.

Involvement of the devolved administrations in the negotiations

16. In October 2016 the Joint Ministerial Committee, made up of the heads of the UK Government and devolved administrations, agreed terms of reference for a Joint Ministerial Committee on EU Negotiations (“JMC(EN)”) ¹³.

17. The terms of reference for the JMC(EN) set out that the four administrations should seek to agree the UK position for negotiations, but this has never taken place. Instead, the UK Government has taken all decisions on the UK position unilaterally whether those negotiations involved reserved or devolved areas of policy. The terms of reference also say the administrations in the committee should collectively oversee the negotiations, but that too has never taken place; again the UK Government has carried out the negotiations alone and has not, even on a confidential basis, engaged in collective discussion with the devolved administrations on matters within the

¹¹ [Coronavirus \(COVID-19\): the case for extending the Brexit transition period - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-covid-19/case-for-extending-the-brex-it-transition-period/pages/10/)

¹² [Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union)

¹³ [Microsoft Word - 20161024 JMCP communique CLEAN 1355.docx \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/attachment_data/file/531124/Microsoft_Word_-_20161024_JMCP_communique_CLEAN_1355.docx)

negotiations, such as prioritisation within the UK negotiating position or trade-offs within or between negotiating chapters.

18. The UK Government did provide some opportunities to devolved administrations to set out their views and priorities for the negotiations, and privately gave some limited factual readouts periodically during the process of the negotiations, albeit not at a level of detail which was required or would have been useful. The UK Government has not provided any information on the extent to which the devolved administrations' views were reflected in the UK's negotiating position and so the Scottish Government is not able to say what impact expressing its views had.

The Future Relationship Agreements

19. Under the previous Prime Minister, the UK Government aimed to strike a balance between the UK's autonomy to set its own rules and policies, and the international trade and other benefits that could be secured by continued collaboration with the EU. However, under the current Prime Minister the UK Government has prioritised autonomy even when this would mean foregoing trade and other benefits that a more collaborative approach could potentially have secured. It was always going to be the case that a deal negotiated by the current UK Government would be limited in scope and represent a significant loss in trade and non-trade benefits by comparison with being an EU member state or with an alternative form of future relationship.

20. The Scottish Government's preference, as set out in its published proposals¹⁴, was for a closer, more collaborative relationship with the EU which could have retained many of the existing benefits.

21. The main features of the FRA, the differences with membership of the EU and the impact on Scotland are set out in the table attached at **Annex A** to this Memorandum. This is an initial analysis of an agreement that Scottish Government officials only received on 25 December. The main points are:

- Scottish businesses' trading costs will increase substantially due to additional paperwork and procedures, making them less competitive. Premium Scottish products such as salmon, beef and lamb will require new export health certificates for exporting into the EU.
- For fishing, new quotas have been negotiated which the UK Government describes overall as transferring to the UK around 25% of the value of quotas in UK waters held by EU vessels. This outcome will only be realised in full after a transition period of 5½ years, and is unevenly spread across different fish stocks. For many key stocks Scottish fishermen will, in reality, have access to less quota now and for the next 5 years than they currently enjoy. There is also provision for trade in fisheries products to be constrained in the event that the EU's quota shares or access to UK waters are reduced in future.
- Scottish service providers will face new country-specific restrictions, delays and costs to offer their services in the EU: they may need to establish a local presence in the EU or obtain work permits, their employees may need to undergo re-certification as their UK professional qualifications may no

¹⁴ [Scotland's Place in Europe - gov.scot \(www.gov.scot\)](http://www.gov.scot/Scotland's-Place-in-Europe)

longer be recognised, and their ability to visit EU clients may be restricted by new immigration rules.

- Less effective internal security cooperation will mean that Scotland's police and judicial system will have reduced capacity and capability to combat criminality, including organised crime and terrorism.
- The Expert Advisory Group on Migration and Population predicts that migration into Scotland will fall by up to 50% with severe consequences for key sectors that depend on EU labour, such as distribution, hospitality, food processing, manufacturing and the public sector, including NHS Scotland and social care. Reduced EU migration will make Scotland poorer, both economically and culturally. People from Scotland will lose the right to move freely in the EU for work and leisure and to participate in the EU's political life.
- Scotland's ability to play a role in international environmental action, including on climate change and nature, will be severely reduced.
- Scotland and its students will no longer be able to participate in Erasmus, along with a number of other EU programmes which the UK decided to exclude from the deal. On the key science programme Horizon Europe, while it is included in the deal, the UK Government has not made clear the details, including the level of access which will be available.

The Bill

Contents of the Bill

22. The draft Explanatory Notes¹⁵ accompanying the draft Bill set out the UK Government's view of its purpose, and the approach taken to incorporation (at paragraph 24):

The principal purpose of the Bill is to implement the Agreements. This is primarily done by way of detailed, specific provisions and amendments to existing legislation to meet the UK's commitments under the Agreements. The Bill also includes a general provision requiring existing domestic law to be modified to give effect to the Agreements, but only so far as necessary to implement the Agreements. The Bill also provides a delegated power to be used to make further provision to give effect to the Agreements. In the event that the Agreements are not ratified and provisional application comes to an end, the Bill enables the termination or suspension of domestic legal provisions that give effect to the Agreements.

23. Detail of the structure and provisions of the Bill is at **Annex B**. The Scottish Government received a draft copy of the Bill very late on 28 December 2020, and has therefore only been able to provide an initial analysis of its provisions and the effects on devolved competence. This is particularly challenging due to uncertainty inherent in the approach the Bill takes to giving effect to the treaty in domestic law. It is the Scottish Government's understanding that the UK Government has carried out an assessment of where it considers the FRA can be implemented administratively or

¹⁵ Available here: [20201229 Draft gov.uk EU Future Relationship Bill Explanatory Notes .pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521229/20201229_Draft_gov.uk_EU_Future_Relationship_Bill_Explanatory_Notes_.pdf) (publishing.service.gov.uk)

using existing statute – for example, UK Ministers already hold wide-ranging powers in areas such as fisheries and animal health – and where, by contrast, specific new powers or duties are needed. Parts 1 and 2 of the Bill make such specific new provisions, in the areas of security and trade and other matters.

24. However, in case it were to transpire that further implementation is needed for which Parts 1 and 2 did not make provision, Clause 29 provides for the implementation of the FRA to the extent it is not implemented elsewhere in the Bill itself or cannot be implemented administratively or through other domestic legislation. Clause 29(1) modifies any existing domestic law as necessary to give effect to the agreements (this general modification of enactments is referred to in the Explanatory Notes as the “gloss”). The operation of the gloss is subject to clause 29(2) to (4). First, the gloss will be subordinate to any other legislative implementation of the FRA (whether under this Bill or otherwise). Second, the date that domestic law is deemed to be modified by the gloss will depend on whether or not the relevant part of the FRA will be provisionally applied. Despite these limitations this provision is of potentially wide ranging and uncertain effect, including its effect on devolved competence.

25. In addition to the general implementation of the FRA by clause 29, and the specific implementation discussed elsewhere in this Memorandum, the Bill confers very wide ranging powers for UK and devolved administration Ministers to implement the FRA by secondary legislation. Clause 34 confers a power on Ministers of the Crown, a devolved authority, or a Minister of the Crown *and* a devolved authority acting jointly to implement the FRA or to otherwise deal with matters arising out of it. That much of the agreement will have to be implemented at a future date through wide-ranging delegated powers again reflects the short timescale that has led to the Bill’s production and introduction. However, there is no statutory requirement for consent when UK Ministers intend to use these powers in devolved areas.

26. Clause 32 confers a power on UK and devolved administration Ministers to make regulations dealing with the initial application of the agreements, including where such application is delayed beyond the end of the transition period as a result of the provisional ratification of the FRA by the EU. This power would enable Ministers to undo the implementation of the FRA if it is not ratified by the EU.

27. Clause 33 confers a power on UK and devolved administration Ministers “in connection with, the suspension, resumption or termination of” the FRA. This power would be necessary, for example, should either the UK or the EU exercise their option to terminate the FRA set out in Article 8 of the FRA. The Explanatory Notes state that the power would also be available to implement any remedial measures under the FRA.

28. The exercise of the powers in clauses 31, 32 and 33 by the Scottish Ministers are subject to the meaning of “devolved competence” provided in Part 2 of Schedule 5.

Requirement for legislative consent

29. The Bill is a relevant Bill within Rule 9B.1.1 of Standing Orders as it makes provision applying to Scotland for purposes within the legislative competence of the

Parliament and alters the executive competence of the Scottish Ministers. The UK Government's position on legislative consent is set out in the Bill's Explanatory Notes¹⁶ and at **Annex C** to this memorandum, and some reserved provisions will also have an impact on devolved matters. The areas that the UK Government believes that consent is required for include powers for Scottish Ministers to implement the agreement (clauses 31 – 33), the general implementation provision (clause 29) and specific provisions on criminal justice cooperation, product safety information and social security cooperation (see **Annex C**). The Scottish Government considers clause 30 (interpretation of agreements) also makes provision within the Parliament's legislative competence in so far as it concerns the implementation of the international obligations contained in the FRA for devolved matters and would therefore require legislative consent.

Provisions within the legislative competence of the Scottish Parliament

30. Most of the Bill concerns devolved matters, as can be seen from the amendments made to the law in detailed areas of criminal justice cooperation, product safety information and social security cooperation, and the Explanatory Notes to the Bill and as set out in detail in **Annex C**.

Provisions altering the executive competence of the Scottish Ministers

31. This Bill contains a number of provisions that will alter the executive competence of the Scottish Ministers. In particular, clauses 31 to 33 and Part 2 of schedule 5 confer powers on the Scottish Ministers to make provision to implement the FRA

Scottish Government view

32. The Scottish Government continues to believe that the best future for Scotland is to become an independent country and Member State of the EU. The Scottish Government also believes that the best position for the UK is to be a Member State of the EU. The people of Scotland have consistently expressed their support for this position. People in Scotland voted overwhelmingly to remain in the EU in 2016. The significant majority of both the members of the Scottish Parliament and Scotland's members of the House of Commons favour remaining in the EU.¹⁷ Multiple election results since the 2016 referendum have reflected the overwhelming view within Scotland that the country should remain within the EU.

33. The Scottish Government has sought throughout the process of withdrawal from the EU, and throughout the transition period, to make constructive suggestions to secure some of the benefits of membership outside the EU, recognising the outcome of the referendum of 2016 across the UK as a whole. The Scottish Government published comprehensive proposals for either the UK or Scotland to continue to enjoy membership of the Single European Market and the Customs Union in December 2016.¹⁸ The Scottish Government has consistently argued for a future

¹⁶ See Annex A of the Explanatory Notes, above.

¹⁷ 52 of 59 Scottish seats (47 SNP; 4 Liberal Democrats; 1 Independent).

¹⁸ [Scotland's Place in Europe - gov.scot \(www.gov.scot\)](http://www.gov.scot)

relationship that preserves the deep ties that bind Scotland and the UK to other Member States to our mutual benefit.

34. The Scottish Government has also adopted a constructive approach – where that has been possible – with the UK Government on withdrawal legislation, both primary and secondary, in an attempt to ensure that what is produced is legally effective and reflects, as far as possible, Scottish interests and concerns. The Scottish Government has also committed to develop a range of common UK frameworks to replace EU structures where necessary, and work on this is ongoing.

35. Unfortunately, the UK Government has not engaged constructively with the Scottish Government – or others – in seeking a future relationship that would be in the best interests of the UK or Scotland. For example, it rejected calls from the Scottish Government and many others to request an extension to the transition period as a consequence of the COVID-19 pandemic.¹⁹

36. The result is the inadequate and damaging FRA that is to be implemented in the Bill. The Scottish Government cannot support the FRA or the Bill for the following reasons:

- i. the content of the FRA itself; and
- ii. the inadequate opportunity for parliamentary scrutiny of the FRA and the Bill.

Content of the Future Relationship Agreement

37. In the Legislative Consent Memorandum accompanying the introduction of the Bill for the European Union (Withdrawal Agreement) Act 2020, the Scottish Government noted that '[t]here is widespread concern that only the narrowest and most superficial FTA [Free Trade Agreement] could be agreed by the end of 2020.'²⁰ Unfortunately, this has been borne out. As anticipated then, the FRA fails to ameliorate or substantially mitigate the loss of the substantial economic, social and other benefits afforded to members of the EU.

38. The table at **Annex A** sets out the features of the FRA, the detrimental consequences for Scotland, and the difference from EU membership.

39. These detrimental consequences will affect businesses that are already severely affected by COVID-19 and could result in widespread business closures and job losses over and above those resulting from COVID-19 alone. The Scottish Government has already published detailed analysis of the potential impact on the economy of an exit based on the type of deal the UK government favours; previous Scottish Government modelling of an EU-UK FTA estimated that Scottish GDP could be around 6.1% lower by 2030 compared to EU membership under a similar scenario, around £9 billion.²¹ The UK's Office for Budget Responsibility also estimates that a

¹⁹ <https://www.gov.scot/publications/covid-19-case-extending-brexit-transition-period/>

²⁰ https://www.parliament.scot/S5_Bills/SPLCM-S05-29.pdf par.39.

²¹ [Scotland's place in Europe: people, jobs and investment - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotland-place-in-europe-people-jobs-investment-2020/pages/1-1-introduction.aspx)

trade deal with the EU would mean the UK's GDP would be 4% lower in the long run compared with remaining in the EU.²²

40. In short, this agreement is bad for Scotland, compared to both continued EU membership and alternative forms of future relationship, and no responsible government could recommend support for this agreement or consent for the implementing legislation.

Insufficient time for proper legislative scrutiny

41. In addition to the defects in the FRA compared to alternative possible agreements, the Scottish Government believes that the time available for scrutiny of this legislation in both the UK Parliament and the Scottish Parliament is manifestly inadequate, especially in light of the significance of the decisions involved in this legislation. This is essentially bypassing parliamentary scrutiny and democratic accountability and is unacceptable. The Scottish Parliament has only a single day available to it to consider this Bill, only hours after it has been published. Both houses of the UK Parliament will also sit for only one day in total to consider this legislation.

42. This timetable reflects deliberate decisions by the UK Government which first insisted on an inadequate transition period in the Withdrawal Agreement, then refused to extend it, even in the face of the COVID-19 pandemic. The Scottish Government has previously argued that an extension to the transition period was necessary and desirable because:

- it would allow the economy more time to recover from COVID-19 before experiencing the additional negative impact of ending the Brexit transition;
- the COVID-19 pandemic has prevented government, business and citizens from preparing adequately for what will be the most significant change to our external trade policy for half a century; and
- proper democratic and technical scrutiny and implementation of the UK's putative new relationship with the EU is simply not possible within the allotted time constraints.

43. The Scottish Government regrets that the UK Government refused to take the prudent course of action and request an extension to the transition period of up to two years, under the terms of the Withdrawal Agreement.

44. Given the timescale fundamentally undermines parliamentary democracy, the Scottish Government would recommend that legislative consent to the Bill is refused on this ground alone, even without the significant other arguments against the FRA and the Bill. Moreover, the Scottish Government considers that the Scottish Parliament and other devolved legislatures should have been given more time to consider the broad provisions proposed to achieve incorporation (as set out in paragraphs 24 – 28 above).

²² [Economic and fiscal outlook – November 2020 \(obr.uk\)](https://obr.uk/economic-and-fiscal-outlook-november-2020/)

45. The last-minute nature of this agreement and the absence of clarity on its full meaning and impact is entirely in keeping with the UK Government's approach to exiting the EU. Legal provisions to implement such a significant international treaty, which will underpin the UK and Scotland's relationship with their neighbours, allies and major trading partners, should be carefully drafted to ensure they are effective in achieving their aims and provide clarity for business, individuals and devolved administrations affected. The Scottish Government cannot recommend that the Scottish Parliament consent to a Bill for which so little time has been given to the Scottish Parliament to consider its effects on devolved competence.

Draft legislative consent motion

46. Under Rule 9B.3.3(d) of the Parliament's Standing Orders, if a member of the Scottish Government does not propose to include a draft motion in the Memorandum, the Memorandum must explain why not. Paragraphs 32-45 above set out the Scottish Government's reasons for not including a draft motion in this Memorandum for the purposes of that rule.

Conclusion

47. The Scottish Government recognises that the UK has now left the EU, despite the wishes of the people, Parliament, and Government of Scotland. The Scottish Government believes that agreement with the EU on a future relationship that safeguards the interests of the UK and Scotland is now essential. The FRA is not that agreement and the relationship it envisages will be damaging to Scotland's interests in the short, medium, and long term. The Scottish Government does not therefore support the UK Government's agreement, and cannot invite the Scottish Parliament to give its consent to the Bill that implements it.

48. The Scottish Government also deprecates the time for parliamentary scrutiny in both devolved legislatures and the UK Parliament, and believes that the approach to implementation in the Bill means that the full implications and impact of the agreement cannot be known with the clarity required for such an important piece of legislation.

49. Despite the UK's withdrawal from the EU, it remains important that the Scottish Government continues to represent the views of the people of Scotland on this crucial issue, and continues to respect their clearly and repeatedly expressed wish to remain within the EU. The Scottish Government will also argue constructively for the UK to have a more beneficial relationship short of full membership with the EU, as well as preparing for Scotland to resume full membership of the EU as an independent country.

50. The Scottish Government does not anticipate that the position expressed by the Scottish Parliament will receive any meaningful recognition or respect from the UK Government. Nonetheless, the Scottish Government firmly recommends that the Scottish Parliament not give its consent to the European Union (Future Relationship) Bill.

SCOTTISH GOVERNMENT
December 2020

ANNEX A: Summary of EU-UK future relationship agreement – impacts on Scotland

When Scotland was part of EU	UK's negotiated deal	Impact of UK's deal on Scotland
<p>Economy overall Part of EU's deep and wide economic integration.</p>	<p>Less close, narrower relationship to EU, the world's largest single market area.</p>	<p>Scottish Government modelling estimates that Scotland's GDP could be around 6.1% lower (£9bn in 2016 cash terms) by 2030 compared to EU membership. The UK's Office for Budget Responsibility estimates (Nov 2020) that a trade deal with the EU would mean the UK's GDP would be 4% lower in the long run compared with remaining in the EU.</p>
<p>Trade in goods Full access to EU's Single Market and participation in the EU's Customs Union.</p>	<p>Outside Single Market and Customs Union. Zero tariffs and quotas agreed, but various new non-tariff barriers such as increased border checks and new criteria for exporting goods into EU apply, despite the Prime Minister stating on 24 December that 'there will be no non-tariff barriers to trade'.</p> <p>Rules of Origin bilateral cumulation only (no 'diagonal' cumulation), although the UK Government did manage to secure full bilateral cumulation for both originating and processed content. For some products there are also more generous transitional arrangements for example, electric vehicles will be tariff-</p>	<p>Scottish businesses' trading costs expected to increase substantially due to additional customs and borders paperwork (even if electronically filed) and procedures, making them less competitive. New delays at the border including new customs formalities are expected to cost Scotland and rest of the UK businesses £7bn annually. Just-in-time supply chains of perishable products such as seafood may be jeopardised. Premium Scottish products such as salmon, beef and lamb will require new export health certificates for exporting into the EU.</p> <p>In order to qualify for tariff-free access, Scottish goods will need to meet Rules of Origin requirements. Some industries, especially food, may simply be unable to do this, where core ingredients such as sugar or cocoa derive from outside the UK and EU. Other businesses, for example in chemicals or manufacturing may have to examine their supply chains to check that they meet percentage thresholds for content. Such restructuring may have disruptive impacts for business relationships and global supply chains including for developing countries.</p> <p>Scottish companies will no longer be able to export seed potatoes, to the EU at all, because the EU will not grant them listed status from 1 January, due to lack of alignment of rules.</p> <p>While the agreement puts in places some measures to encourage the parties to minimise technical regulatory divergence and encourage the use of international</p>

	<p>free if they contain at least 40% originating content until the end of 2023 and at least 45% until the end of 2026.</p> <p>No Protocol on the mutual recognition of conformity assessment results – some provisions for self-certification in relation to low-risk products (where this practice already exists). Agreement to specific facilitations on medicinal products, motor vehicles, organics, wine and chemicals to streamline assessments in these sectors.</p> <p>On animal and plant health (sanitary and phytosanitary or ‘SPS’), no equivalence measures agreed.</p> <p>On customs the agreement provides for mutual recognition of Trusted Trader Schemes (AEO), allowing for streamlined customs procedures for eligible traders. Otherwise there are limited facilitation measures.</p>	<p>standards, products subject to regulatory standards will now have to be certified separately for the EU and UK markets adding cost and complexity for businesses.</p> <p>UK-based product testing bodies will no longer be allowed to certify that products meet EU rules. Separate UK and EU chemicals registration systems will mean that businesses will be required to register themselves and their products in both the UK and EU jurisdictions, adding more costs. The UK will not have access to EU chemicals data – which the chemicals industry believes will cost UK businesses £1 billion in new registration costs.</p> <p>Scottish exports to Northern Ireland will face new controls. Consumer prices may rise and jobs across sectors will inevitably be affected.</p> <p>Not all businesses will be eligible to use the arrangements to simplify customs administration such as the trusted trader scheme. There are no arrangements for phasing, meaning new customs formalities for Scottish goods moving to the EU will apply from 1 January giving businesses very limited time to prepare.²³</p>
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²³ The UK Government has announced it would phase in these processes for EU goods being imported to the UK over a six-month period.

<p>Trade in services Full access to the EU's Single Market with free movement of people, services and capital.</p>	<p>Outside the Single Market and no freedom of movement increases regulations and barriers to exporting UK services to EU.</p> <p>The parties have made mutual commitments to promote market access with some sector-specific commitments for telecommunications, delivery and maritime transport services but these will not guarantee UK firms' access to the EU market for services (e.g. legal services) as these provisions are subject to a list of exceptions listed in annexes. These vary from one Member State to another.</p> <p>The parties agree to allow visa-free short-term business visits for the provision of services, but these are subject to restrictions. For example, independent professionals must possess a degree and six years' experience to qualify for access, and some sectors still remain closed to them. They may still be required to apply for visas or work permits.</p>	<p>Scottish service providers will face new country-specific restrictions, delays and costs to offer their services in the EU: they may need to establish a local presence in the EU or obtain work permits, their employees may need to undergo re-certification as their UK professional qualifications may no longer be recognised, and their ability to visit EU clients may be restricted by new immigration rules.</p> <p>Professionals e.g. those practising law, engineering and architecture in Scotland may lose opportunities to sell services in the EU. For example, UK nationals will not be able to sell actuarial services in Italy or construction services in Cyprus. They will not be able to be surveyors in Bulgaria and will need to be resident to provide legal advice in the Czech Republic even if advising on Scots law.</p> <p>Financial services, constituting 9.4% of Scotland's economy and employing 62,000 people, face ongoing uncertainty under a patchwork of partial and temporary equivalence decisions about their access to EU markets, which may mean they need to do further costly restructuring.</p> <p>The agreement does not address the fundamental issue of whether judgments of UK courts will be enforceable in the EU – creating uncertainty for UK lawyers and their EU clients.</p> <p>There is still no decision from the EU Commission on UK data protection regime adequacy. Although the deal contains agreement on a bridging mechanism on data adequacy for six months, all businesses, in particular e-commerce, still face ongoing uncertainty over managing customer data.</p>
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	<p>The agreement sets up a framework for the mutual recognition of professional qualifications, but no new qualifications will be recognised from day one.²⁴</p> <p>On financial services, market access is subject to a complete carve-out for prudential measures. No regulatory cooperation annex agreed although the EU and UK have agreed to work on a memorandum of understanding. Separately the EU and the UK will be responsible for assessing the equivalence of the other parties' regulatory framework for financial services, via unilateral time-limited decisions.</p>	
<p>Fisheries Participation in the EU's Common Fisheries Policy and the EU's Single Market.</p>	<p>The UK has reached agreement allowing EU vessels access to UK waters for a transition period of 5½ years of access to, and transferring what the UK Government has stated to be around 25% of the fish quota which the EU wanted to</p>	<p>Contrary to UK Government promises to the industry to “take back control of our waters”, EU fleets will retain rights of access to UK waters (including some parts of the 6-12 nautical mile zone, to which the UK Government specifically and repeatedly committed to exclude access) without annual negotiation. A set of new fish quotas has been negotiated which the UK government describes overall as transferring to the UK around 25% of the value of quotas in UK waters held by EU vessels. This outcome compares with the UK's request for 80%, will only be realised in full after a transition period of 5½ years, and is unevenly spread across different fish stocks. We are still</p>

²⁴ Citizens falling within the scope of the Withdrawal Agreement will still be able to rely upon the protection it provides for mutual recognition of professional qualifications.

	<p>retain but which the UK claimed according to the zonal attachment approach.</p> <p>If after that period the UK denies the EU access to UK waters, the EU can as 'compensation' impose tariffs on UK fishery products including aquaculture products. If either side breaches the fisheries agreement then, subject to proportionality and independent arbitration, the other side can impose tariffs on any goods and could even suspend the whole trade heading of the EU-UK agreement. Either side can terminate the Fisheries agreement at any time, which automatically also terminates other parts of the agreement on trade more widely, aviation and road transport.</p> <p>A range of new non-tariff barriers and certification requirements will increase costs and damage the competitiveness of Scottish seafood.</p>	<p>analysing the detail, but initial investigation suggests the extra value to the Scottish industry will actually be significantly less than the 25% figure would suggest, when loss of Hague preference, and fish that are unlikely to be caught ('paper fish') are taken into account. For many key stocks Scottish fishermen will have access to less quota now and for the next 5 years than they currently enjoy. Future fisheries negotiations after the initial transition period will now take place against the background that trade in fisheries products can be constrained if the EU's quota shares or access to UK waters are reduced – a linkage which the UK had wanted to avoid.</p> <p>A range of new non-tariff barriers and certification requirements will increase costs and damage the competitiveness of Scottish seafood, with significantly increased complexity to export or land seafood into the EU; with any delays in obtaining certification, or at the border, significantly impacting on product value.</p> <p>Non-quota sectors, such as crab and lobster, and Scotland's aquaculture industry will face these new costs while seeing no benefit from quota changes. Accessing EU labour will be significantly more complex across seafood industries, with seasonal EU labour unobtainable.</p>
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<p>EU programmes Participation in EU's programmes.</p>	<p>UK will no longer have access to EU funding determined by specific economic, social or environmental need.</p> <p>UK only negotiated access to a limited number of EU programmes, namely: Horizon Europe; Copernicus; Euratom Research and Training Programme; and International Thermonuclear Experimental Reactor (ITER).</p> <p>UKG decided not to participate in Erasmus+, having previously indicated a desire for participation in elements of the scheme on a time limited basis, and despite Scottish and Welsh Government representations on the matter.</p>	<p>Scotland has received EU programme funding worth £5.6 billion since 2014. Scotland will lose access to all of the EU's pre-allocated programmes that provide for example funding for agriculture, fishing, or rural development. Scotland also loses access to key competitive bid programmes such as environmental programme LIFE, audio-visual funding programme Creative Europe, and the European Territorial Cooperation programme.</p> <p>Due to the UK Government decision not to take up the option to participate, Scotland will also no longer be able to participate in Erasmus+, which has benefitted over 2,000 Scottish participants a year (students, and also school children, adult learners, teachers, and sport and community groups). This is due to a 'value for money assessment which the UK Government has not shared with the Scottish Government. Erasmus is proven to improve participants' self-confidence, language learning, cultural awareness, and employability. The proposed UK Government Turing Scheme will have a much more restricted scope.</p> <p>Scottish institutions will be able to participate in Horizon Europe for research funding as an associated country. The Declaration accompanying the deal text indicates on Horizon Europe that:</p> <ul style="list-style-type: none"> • The UK will have associated status, and what looks like the right to participate in all aspects thereof (apart from the European Innovation Council Fund, which provides grants and loans); • UK participating entities will have the right to exploit the intellectual property arising from their activities (this had been a controversial issue, in relation to 3rd countries, in the EU budget negotiations); • It is the joint intention to adopt the protocol at the earliest opportunity with the aim that UK entities should be able to participate in the programmes from the outset; and; • Duration is for the life of the programme, or of the seven year budget, whichever is the shorter.
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<p>Law Enforcement and Judicial Cooperation in Criminal Matters (Internal Security) EU cooperation to investigate and prosecute crimes, including access to shared law enforcement databases.</p>	<p>Loss of access to some key databases and reduced participation in EU's law enforcement and judicial cooperation agencies. Loss of access to alerts system SIS II, and to the European Arrest Warrant system. Loss of access to the European Judicial Network database of contacts, which was heavily used by Scottish partners.</p>	<p>Less effective, slower and more cumbersome law enforcement and judicial cooperation in criminal matters will mean that Scotland's police and judicial system will have reduced capacity and capability to combat criminality, including organised crime and terrorism.</p> <p>The loss of access to the SIS II database means Police Scotland will no longer have access to real-time or immediate alerts from EU partners on wanted or missing persons.</p> <p>On surrender, EU Member States will be entitled to refuse to extradite their own nationals to Scotland.</p> <p>Scotland will also lose access to the European Judicial Network, a tool heavily used by Scottish prosecutors, enabling them to collaborate with their European counterparts.</p> <p>The agreement does include provision for cooperation with EU law enforcement bodies Europol and Eurojust, the exchange of criminal records, streamlined procedures for the transmission of evidence, biometric/crime scene information and vehicle registration data within specific deadlines. In some cases, cooperation will be through the use of existing EU tools and measures (such as Prüm and ECRIS). In other instances, however, cooperation will be via alternatives to, rather than participation in, the various EU Justice and Home Affairs tools and measures and will therefore be slower and more difficult than as a member state.</p>
<p>People Freedom of movement of people across EU with their social security rights protected. EU citizenship for all UK nationals.</p>	<p>End to freedom of movement, less social security protection. No EU citizenship rights. Withdrawal Agreement protects some rights of EU citizens resident in the UK before end of transition period and vice versa.</p>	<p>The Expert Advisory Group on Migration and Population predicts that migration into Scotland will fall by up to 50%. EU citizens in Scotland will be subject to the UK's new points-based immigration system. This has severe consequences for key sectors that depend on EU labour, such as distribution, hospitality, food processing, manufacturing and the public sector, including NHS Scotland and social care. Reduced EU migration will make Scotland poorer, both economically and culturally. People from Scotland lose the right to move freely in the EU for work and leisure and to participate in the EU's political life.</p>

<p>Environment and Energy Scotland shares in, and has opportunity to influence, the EU's high standards on environmental protection. EU cooperation on environmental/sustainability goals. Scotland participates fully in the EU Emissions Trading Scheme (ETS) and EU internal energy market (IEM).</p>	<p>No longer benefit from strong, common environmental standards and a level playing field. Loss of access to some databases and reduced participation in collaborative action on environment and climate change. No longer directly part of the EU's internal energy market and outside of the EU Emissions Trading System (ETS), with no linked UK ETS scheme.</p>	<p>Scotland is committed to maintaining high environmental standards through the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, and intends to stay aligned with EU rules where possible and practicable to do so. However, protections risk being impaired by both the loss of participation in EU frameworks, systems and collaborative programmes, and by the threat to devolved competency in these areas posed by the United Kingdom Internal Market Act 2020.</p> <p>Scottish firms will no longer benefit from a guaranteed level playing field on environmental standards with firms from the EU-27 and the rest of the UK. Leaving the EU ETS, and indeed failing to agree a linking system to it which was the UKG's stated aim, means Scotland is now outside of the world's leading carbon market. This means operating only within the smaller UK carbon market, which may impact on the cost of carbon abatement and consumer bills. Loss of direct access to the EU internal energy market will mean less efficient trading of electricity. Consumer prices for energy are likely to be impacted, though not yet clear to what extent.</p>
<p>Overall Governance Stable EU system. Long-term certainty for businesses.</p>	<p>Overarching governance framework has been agreed. Review clause allows either party to initiate a review of the trade aspects of the agreement after four years.</p>	<p>The EU and the UK agreed to create a joint body, called the Partnership Council, to efficiently manage the Agreement.</p> <p>The Partnership Council is co-chaired by a Member of the European Commission and a representative of the UK at ministerial level. It meets at least once a year, but can meet more often at the request of either the EU or the UK. It will comprise representatives of the EU and the UK and non-governmental technical experts can also be invited to attend where appropriate Any decision is taken by mutual consent between the EU and the UK.</p> <p>The Partnership Council oversees the attainment of the objectives of the Agreement. The EU or the UK can refer to the Partnership Council any issue relating to the</p>

		<p>implementation, application and interpretation of the Agreement. The Partnership Council is assisted in its work by specialised committees and in some areas by technical working groups. These include a range of specialised committees on trade (e.g. on SPS, TBT, Services, Investment & Digital Trade) and on other issues including the level playing field, energy, transport, social security coordination, fisheries, law enforcement & judicial cooperation and participation in EU programmes.</p> <p>If disputes which are brought to the Committees or the Partnership Council cannot be resolved consensually, they may be referred to an independent tribunal. For certain disputes which cannot be referred to the independent tribunal, the EU and UK could use trade remedies in the form of tariffs or they could choose to suspend parts of the agreement.</p> <p>It will be vital that Scotland has meaningful representation within these Governance structures. The Scottish Government may also wish to have a role in selection of the UK's list of arbitrators particularly in sectors covered by the Agreement where Scotland has particular technical expertise.</p>
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ANNEX B

EUROPEAN UNION (FUTURE RELATIONSHIP) BILL– STRUCTURE AND PROVISIONS

1. The contents of the Bill are set out below for ease of reference. The Explanatory Notes to the Bill²⁵ set out the approach to incorporation (at paragraph 24):

The principal purpose of the Bill is to implement the Agreements. This is primarily done by way of detailed, specific provisions and amendments to existing legislation to meet the UK's commitments under the Agreements. The Bill also includes a general provision requiring existing domestic law to be modified to give effect to the Agreements, but only so far as necessary to implement the Agreements. The Bill also provides a delegated power to be used to make further provision to give effect to the Agreements. In the event that the Agreements are not ratified and provisional application comes to an end, the Bill enables the termination or suspension of domestic legal provisions that give effect to the Agreements.

2. The Explanatory Notes provide further detail on the clauses to the Bill. Clauses 29 – 33 provide the general implementation provision and general powers for UK and devolved administration Ministers to make provision to implement the agreement by secondary legislation. Clauses 29 and 31-33 require legislative consent.

3. Clause 29 gives legal effect to the FRA is by providing that existing domestic law is to have effect with such modifications as are required for the purposes of implementing the FRA as a whole as well as the Civil Nuclear Agreement and the Security of Classified Information Agreement, only to the extent that the agreement is not otherwise implemented (for example by other provisions in the Bill).

4. Clause 31 confers implementation powers exercisable by any “relevant national authority”, that is to say, a Minister of the Crown, a devolved authority, or a Minister of the Crown acting jointly with one or more devolved authority. The power can be used to implement the FRA, the Civil Nuclear Agreement and the Security of Classified Information Agreement as well any other future supplementing agreements. The power can also be used for the purpose of dealing with “matters which arise out of or related to” the FRA. The power can also be used to “re-implement” any aspect of the agreement already implemented.

²⁵[20201229 Draft gov.uk EU Future Relationship Bill Explanatory Notes .pdf \(publishing.service.gov.uk\)](#)

European Union (Future Relationship) Bill

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ANNEX C

PROVISIONS FOR WHICH UK GOVERNMENT CONSIDERS LEGISLATIVE CONSENT IS REQUIRED

(UKG does not consider consent is required for those clauses in *italics*; note the Scottish Government view on Clause 30 and the footnote on Part 4)

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Clause 5 - Requests for information made by member States

Clause 6 - Interpretation of the criminal records provisions

Clause 7 & Schedule 2 - Passenger name record data

Clause 8 - Disclosure of vehicle registration data

Clause 9 & Schedule 3 - Mutual assistance in criminal matters

Clause 10 - Accreditation of foreign service providers

Clause 11 – Member States to remain category 1 territories

Clause 12 – Dual criminality

Clause 13 - Category 1 territories not applying Trade and Cooperation Agreement to old cases

Part 2 Trade and other matters

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Clause 15 – Disclosure of non-food product safety information to Commission

Clause 16 – Offence relating to disclosure under section 14(4)(b)

Clause 17 – General provisions about disclosure of non-food product safety information

Clause 18 - Interpretation of sections 14 to 17

Clause 19 & Schedule 4 - Use of relevant international standards

Clause 20 – Disclosure of information and co-operation with other customs services

Clause 21 - Powers to make regulations about movement of goods

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Clause 27 - The EU and Euratom and related organisations and bodies

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Part 3 General Implementation

Clause 29 – General implementation of agreements

Clause 30 - Interpretation of agreements [Note the Scottish Government considers this within devolved competence]

Clause 31 - Implementation power

Clause 32 – Powers relating to the start of agreements

Clause 33 – Powers relating to the functioning of agreements

Clause 34 - Funding of PEACE PLUS programme

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Clause 36 - Requirements in part 2 of CRAGA

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* These entries summarise the position for Part 4 and do not necessarily represent the position for all clauses in that Part.

This Legislative Consent Memorandum relates to the European Union (Future Relationship) Bill (UK legislation) and was lodged with the Scottish Parliament on 29 December 2020

EUROPEAN UNION (FUTURE RELATIONSHIP) BILL – LEGISLATIVE CONSENT MEMORANDUM

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