

# CULTURE, TOURISM, EUROPE & EXTERNAL RELATIONS COMMITTEE

#SPICeBrexitWeekly

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# BREXIT UPDATE

SPICe weekly update



**NATCEN REPORT:  
UNDERSTANDING THE LEAVE VOTE**

**ARTICLE 50  
LEGAL CHALLENGE**

**UK PARLIAMENT RESPONSE TO THE  
DECISION TO LEAVE THE EU**

**SPICe**

The Information Centre  
An t-Ionad Fiosrachaidh

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The Scottish Parliament  
Pàrlamaid na h-Alba

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### About this paper

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union which are expected to formally begin early in 2017.

Ahead of the UK Government's triggering of Article 50, the updates will provide information on the UK Government's approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK's departure. Finally the update will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. This week's update provides more information on a report by British Future on the status of EU nationals in the UK, the second meeting of the Joint Ministerial Committee on European negotiations and the appearance of the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe at the House of Commons Scottish Affairs Committee.

## EU nationals living in UK should be given permanent residence

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On 12 December the think tank British Future published a report on the status of EEA nationals living in the UK. Informed by an inquiry, the [report concluded](#) that EU nationals already living in the UK at the point when Article 50 is triggered should be guaranteed the right to settle here permanently. The executive summary of the report states:

*“Support for settling the status of EEA+ nationals who have made their homes in Britain stretches across political parties and the divides of the referendum debate. Indeed, before the referendum the official Vote Leave campaign committed to “no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present”. The purpose of this Inquiry, then, was not to establish whether EU citizens should be able to remain in the UK with secured status – we believe that is a settled question, in the minds of the public, businesses and a broad coalition of politicians of all parties. Its aim was rather to move beyond that to determine how we make that happen in practice.*

*This is an unprecedented situation both diplomatically – no fully-fledged member state has left the European Union before – and domestically, too, with the Government needing to settle the immigration status of 2.8 million people. EEA+ nationals living in the UK are a diverse group of people in terms of countries of origin, length of residence, employment history and social backgrounds. Resolving their status will be the largest administrative task that the Home Office has ever undertaken, and current staff are already under considerable pressure from its routine workload. So this Inquiry has sought to find proposals that are fair and practicable, resolving the issue in ways that can minimise the administrative burdens and the costs for EEA+ nationals themselves, for employers and for the Government, in ways that we believe can command broad political, civic and public support.*

The inquiry reached a number of conclusions, these were:

1. As a fair and legally watertight cut-off date, after which changes to the settlement, citizenship and social rights of newly-arrived EEA+ nationals might apply, the inquiry recommends the day Article 50 is triggered or whatever legal mechanism the Government chooses to show it is leaving the EU.
2. Those EEA+ nationals who can show five years’ residency in the UK should be offered Permanent Residence as it currently stands. This approach would offer a clear status (and pathways to citizenship) for an estimated 1.8 million EEA+ nationals currently estimated to be living in the UK.
3. Permanent Residence as an immigration status is a consequence of the UK’s membership of the EU, so the UK Government will need to pass regulations automatically to convert Permanent Residence into a bespoke Indefinite Leave to Remain (bespoke ILR) for EEA+ nationals on the date that the UK leaves the EU.

4. The Inquiry recommends that EEA+ nationals who were qualified persons on the specified cut-off date, or who have Permanent Residence or bespoke ILR, keep their previous rights to family migration for a five-year transition period after the UK leaves the EU.

5. In relation to the social rights granted to EEA+ nationals in relation to their access to public funds (student loans, in- and out-of work benefits, social housing etc.) and fee status in further and higher education. It recommends that EEA+ nationals who were qualified persons on the specified cut-off date see these privileges continue for a five-year transition period after the UK leaves the EU.

6. It recommends that local authority Nationality Checking Services should be given the first-line responsibility for processing and approving Permanent Residence applications.

7. It recommends that Citizens Advice and other relevant organisations be funded to offer advice to EEA+ nationals who might struggle to apply for settlement, with some of this support targeted at the self-employed.

The publication of the report was covered in a number of media outlets including [the BBC](#), [the Guardian](#) and the [Daily Telegraph](#).

Following publication of the British Future report, Professor Steve Peers, a member of the British Future inquiry team wrote a blog [Bargaining Chips No More: The Status of EU and UK citizens after Brexit](#) on the EU Law Analysis website.

Fraser Nelson, Editor of The Spectator magazine and also a member of the British Future inquiry team [wrote on the magazine's website](#):

*“Britain needs its EU nationals. We’re not accommodating them as a favour to Poland. It ought to be unthinkable that we might use the French, German and Polish workers who have so enriched British life as bargaining chips. About 150,000 of them work in health and social services; they make up about a quarter of the workforce in our food manufacturing sector. Britain is stronger and more highly-skilled after years of accepting the best immigrants any country could wish for.*

*But I’ve written lots about this: journalists can point to problems, but we seldom outline solutions. That task was taken by British Future, a group set up to tackle the problems of migration, integration, opportunity and identity. It set up the taskforce, paid the lawyers, assembled the panel and did the job too important to wait for government. The uncertainty that surrounds these EU nationals and their families, never intended by any politician who advocated Brexit, can be ended with a nod from the Prime Minister.”*

## **NatCen Report - Understanding the Leave vote**

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A report published by NatCen on 7 December examined the ‘real’ reasons behind the Brexit vote. The report, [Understanding the Leave Vote](#), reached [6 key findings](#) which are reproduced below:

### **Identity politics played a role**

The Leave victory was not about objective demographics alone. Matters of identity were equally, if not more strongly, associated with the Leave vote – particularly feelings of national identity and sense of change over time.

### **Voters not persuaded by arguments about economic risks**

The Leave campaign resonated more strongly with the public. There was a greater sense of certainty about what impact leaving the EU would have on immigration and independence. People were less persuaded by the Remain campaign’s focus on the economic risks.

### **‘New voters’ leant towards Leave**

The Referendum attracted a group of ‘new voters’ who did not participate in the 2015 General Election. A majority (60%) of this group voted Leave.

### **The vote split across traditional party lines**

The Referendum was not decided along typical party political lines. It is clear that Conservative supporters rejected the position of their party leader, David Cameron.

However, the position of Conservative MPs was better understood by the public than that of their Labour counterparts. Conventional left-right politics do not help explain the Referendum vote. The public splits across party lines and people’s broader social values were more helpful at explaining the result.

### **Turnout favoured Leave**

Turnout played a potentially decisive role. Those who said they leant towards Remain in the runup to the Referendum were more likely to not vote (19% vs. 11% of Leave supporters). If turnout among supporters of both sides had been equal the vote would have been closer still.

Leave brought together a broad coalition of voters

The Leave campaign’s success was underpinned by a broad-based coalition of voters which is much more wide-ranging than the ‘left behind’. This included three main groups; affluent Eurosceptics, the older working class and a smaller group of economically disadvantaged, anti-Immigration voters.

## Second Meeting of Joint Ministerial Committee on European Negotiations<sup>i</sup>

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On 7 December, the second meeting of the Joint Ministerial Committee (European Negotiations) took place in Westminster. The meeting was chaired by the Rt Hon David Jones, Minister of State for Exiting the EU.

According to the UK Government's [official communique](#) from the meeting

*“Ministers discussed their priorities relating to law enforcement, security and criminal justice, civil judicial cooperation, immigration and trade. There was a follow up discussion from the last meeting of JMC(EN) on Market Access.*

*Ministers agreed that officials should now take forward joint analysis across the range of issues being considered by JMC (EN) and captured in the work programme, Ministers agreed to continue to engage bilaterally ahead of the next meeting in January.”*

The Scottish Government was represented at the meeting by the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell; and the Cabinet Secretary for Justice, Michael Matheson. According to the Scottish Government's [press release](#) from the meeting:

*“Living standards, home affairs and membership of the single market, and the importance of freedom of movement to the Scottish economy were central matters raised by Minister for UK Negotiations on Scotland's Place in Europe Michael Russell during the second meeting of the Joint Ministerial Committee (European Negotiations) today in Westminster.*

*Justice Secretary Michael Matheson also attended the JMC (EN) to seek assurances that there will be urgent work done to secure continued co-operation with European partners on key justice and security issues. Mr Matheson told the JMC (EN) it is vital the current direct and positive relationships between police, the crown office and other parts of the Justice system with European institutions is preserved and strengthened.”*

The Scottish Government provided a quote from the Minister for UK Negotiations on Scotland's Place in Europe following the meeting. Michael Russell said:

*“This is the second time the JMC (EN) has convened since the end of October, and while the frequency of meetings is welcome, and while we had the opportunity to press the importance of membership of the single market to Scotland, the lack of detail from the UK Government remains deeply concerning.*

*“It only follows that since the UK Government yesterday announced intentions to publish their Brexit plan, the Scottish Government can also expect to see the promised work plan, which is yet to materialise. Scotland cannot merely be treated*

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<sup>i</sup> The Joint Ministerial Committee (EU Negotiations) is a forum to continue the UK Government's work on Brexit with the devolved administrations in Scotland, Northern Ireland and Wales. The first meeting of the group took place on 9 November.

*as an interested party: Scotland deserves the right – and appropriate time – to contribute meaningfully to a proposition that will impact us all.*

*“The Justice Secretary Michael Matheson also attended today’s JMC (EN) to discuss the matter of home affairs, justice systems and security. Scotland has had a separate legal system for centuries, and sets a solid precedent that two systems can work side-by-side.*

*“Mr Matheson was clear that while today’s meeting was a helpful initial discussion, individual measures – such as public safety and security – need to be seen as a single package to best secure the fundamental freedoms the people and businesses of Scotland want to continue to enjoy.”*

## Article 50 legal challenge

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As reported in [last week’s update](#), on 5 December, the UK Government’s appeal against the decision of the High Court to prevent Article 50 being triggered by use of the Royal Prerogative began at the Supreme Court. The hearing lasted four days finishing on Thursday 8 December 2016. All the relevant papers, including daily transcripts of the case are available on the [Supreme Court website](#).

A decision on the case will be announced in the New Year.

Whilst the Supreme Court case was continuing, Professor Alan Page from the University of Dundee published a blog on the Centre on Constitutional Change website examining [The Miller case and the devolution settlement](#).

Professor Page examined the case being made both for UK Parliament and Scottish Parliament consent being required before Article 50 before Article 50 can be triggered. He suggested that whilst the UK is likely to have difficulty in persuading the Supreme Court that it can proceed without UK parliamentary approval:

*“The Scottish Government is likely to have much greater difficulty in persuading the Supreme Court that not only is the UK Parliament’s consent is required but so too is that of the Scottish Parliament.*

*There is first the difficulty that the Scotland Act reserves international relations, including relations with the European Union; these are matters for the UK Parliament rather than the Scottish Parliament.*

*Secondly, there is the difficulty that, notwithstanding the fact that it has been recognised by statute, the Sewel convention is a political rule not a legal rule, i.e. a rule which is not justiciable in the courts.*

*As a political rule it is a matter ultimately for the Scottish Parliament’s Presiding Officer and, in the absence of legislation at Westminster, it is not immediately obvious how the question arises.”*

Following the conclusion of the Supreme Court hearing, The UK Supreme Court Blog (a blog written by solicitors and barristers specialising in litigation and with an interest of

the work of the UK Supreme Court) published [The Article 50 appeal has been heard: what next?](#)

## Scottish Parliament Committee consideration of Brexit

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The Scottish Parliament's Culture, Tourism, Europe and External Relations Committee continued its inquiry into [the implications of the EU referendum for Scotland](#) on 8 December when it held a [roundtable evidence session](#) on EU migration. The Committee heard from Professor Christina Boswell (University of Edinburgh), Lorraine Cooke (Convention of Scottish Local Authorities), Angela Hallam (Scottish Government), Professor Rebecca Kay (University of Glasgow), Kirsty MacLachlan (National Records of Scotland), Colm Wilson (Fife Migrants Forum) and Professor Robert Wright (University of Strathclyde).

On the role played by EU citizens in the Scottish labour market, Professor Robert Wright told the Committee:

*“First, there is a big skills mismatch between their education level and what EU migrants are doing—it is huge. There is a lot of variability and a lot of regional variation, but those are just numbers and they can be commented on.*

*The other point is that there is very little evidence of significant social mobility among this group: Ireland has done a lot of research that shows that there is hardly any social mobility there at all. Because of that, a lot of people return to the country that they came from. That was the choice made by a lot of EU migrants when the recession in Ireland hit really hard. It is not the case that somehow they get here and take low-skilled jobs because that is all they can get. Of course they have aspirations, but the data says that for the vast majority of those people those aspirations are not realised. What do they do? They are stuck in those jobs—the poverty trap, as you call it—or they return home.”*

Professor Boswell set out how the UK's system for employing non EEA citizens currently works:

*“There are five tiers. Those that are most relevant to a post-Brexit scenario include tier 2, which covers a range of different programmes, including intra-company transfers and the shortage occupation list, which defines the occupations that face acute shortages. There is a special list for Scotland, but it is very minimally used.*

*It is very important to think about tier 2, because expanding it is one obvious route for trying to expand possibilities for recruiting EU nationals post-Brexit in the tier system. There is an opportunity there for Scotland to try to identify particular occupations or sectors that will face acute shortages and which need to preserve a flow of EU nationals into them. Tier 2 tends to cover skilled or highly skilled people.*

*Tier 3 covers the low skilled, but it has not been activated since the points-based system was set up. That is because of EU enlargement, which is seen to fill the requirement for low-skilled migration.*

*Tier 5 covers temporary migrants—people should correct me if I am wrong, please. At the end of November, there was a House of Commons debate on seasonal agricultural workers, which members might have followed. I think that there is likely to be a move to try to expand seasonal worker schemes post-Brexit precisely to fill the shortages that will emerge as a result of stopping free movement. We expect to see very strong lobbying from affected sectors. There is already a mobilisation of the agricultural lobby to try to put in place a replacement scheme.*

*In general, there could be an expansion of the tier system. Bespoke programmes or systems could also be put in place specifically for EU nationals, which give them preferential treatment. Those are the two scenarios that are most likely to emerge. A points-based system is less likely. I think that there could potentially be a fresh talent scenario, because there will be an interest in providing incentives for EU students to continue to come to UK universities.*

*We have to consider the full range of possible options for post-Brexit immigration schemes and not be too fixated on the points-based system and fresh talent. We should look at the occupational and sector-based schemes, as well.”*

On use of the points based system following Brexit, Lorraine Cooke from COSLA told the Committee:

*“Our fears about the points-based system are that it is focused on restricting and reducing migration—that is its primary focus—and that it lacks flexibility. There are a lot of examples of points-based systems, including in Canada. We have the Scottish shortage occupation list—as Christina Boswell says, there are a couple of occupations on it—but it lacks the flexibility to reflect Scotland’s needs and the needs of local areas. Our issue is that the system is creating more barriers. Over the years, the bar has risen for the shortage occupation list. Social care used to be on it but, with qualifications and suchlike, salary scales have risen and it has come out of tier 2.*

*That would be our issue: that lack of flexibility and the focus on reducing migration in general. To go back to Professor Kay’s point about the importance of the wider benefits that people bring with them, we were responding to the Migration Advisory Committee inquiry on impact on services, so we sent out questions to local authorities and their response was overwhelmingly positive. There are some issues, such as English as an additional language in schools, but a lot of the feedback that we got was about the benefits that people brought with them. As Professor Kay said, there is the example of small schools that have been able to remain open because of migrant families.”*

On the possibility of different immigration systems within the UK, Professor Boswell told the Committee:

*“There has been quite a lot of debate about the idea of a devolved points-based system. Indeed, you might recall that during the EU referendum, Michael Gove wrote a letter to the First Minister suggesting that, in the event of Brexit, Scotland could have a similar devolved regional points-based system. It would appear that Theresa May’s Government favours such a devolved approach less.*

*The fresh talent initiative was an example of a devolved policy. That could be explored again; indeed, I know that there are moves to reinstate it. The third precedent in the UK would be a Scottish shortage occupation list where, in principle at least, Scotland would have leverage to identify additional occupations that face acute shortages. That is a possible devolved scheme.”*

## **The UK Parliament’s response to the decision to leave the European Union**

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As reported in last week’s update, on Wednesday 7 December, the Official Opposition decided to use its debating time to debate the [Government’s plan for Brexit](#).

Following the debate, the House of Commons agreed the following amended motion by 448 votes to 75:

*“That this House recognises that leaving the EU is the defining issue facing the UK; notes the resolution on parliamentary scrutiny of the UK leaving the EU agreed by the House on 12 October 2016; recognises that it is Parliament’s responsibility to properly scrutinise the Government while respecting the decision of the British people to leave the European Union; confirms that there should be no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the European Union after Article 50 has been triggered; and calls on the Prime Minister to commit to publishing the Government’s plan for leaving the EU before Article 50 is invoked, consistently with the principles agreed without division by this House on 12 October; recognises that this House should respect the wishes of the United Kingdom as expressed in the referendum on 23 June; and further calls on the Government to invoke Article 50 by 31 March 2017.”*

### **House of Lords European Union Committee – Inquiry reports**

During the current week, [the House of Lords EU Committee will publish six reports on Brexit in six days](#). According to the Committee:

“The reports will identify key issues across a broad range of policy areas, making recommendations to the Government on what it should prioritise in Brexit negotiations.”

The first report on [UK-Irish relations](#) was published on 12 December. According to the Committee’s [news release](#) announcing publication:

“The Committee concluded that any negative impact of Brexit on the UK economy is likely to be replicated, or even magnified, for the Irish economy. The Committee agreed that the unique nature of UK-Irish relations requires a unique solution, and calls on the UK and Irish Governments to negotiate a draft bilateral agreement, incorporating the views and interests of the Northern Ireland Executive, which would then need to be agreed by the EU as part of the final Brexit negotiations, with key aspects including:

- Continuation of the current open land border between the UK and Ireland

- Maintenance of the Common Travel Area, the right of free movement within it for UK and Irish citizens, and their right to reside and work in both countries.
- Retention of the right to Irish (and therefore EU) citizenship for the people of Northern Ireland.
- A customs and trade arrangement between the UK and Ireland if the UK leaves the customs union.
- Reaffirmation by both Governments of their commitment to the Belfast/Good Friday Agreement and continued support for cross-border cooperation.”

The second report on [options for trade](#) was published on 13 December. The Committee’s [news release](#) outlined the key findings from the report. Firstly, the Committee concluded there are 4 post Brexit trading options open to the UK, these are joining the European Economic Area; remaining in a Customs Union with the EU; negotiate a Free Trade Agreement with the EU or trade with the EU under World Trade Organisation rules.

The Committee concluded that a transitional agreement is required between the UK leaving the EU and a new trading agreement being established. According to the Committee:

*“The report recognises that the Government is seeking a bespoke agreement with the EU post Brexit, but concludes that tailoring existing trade models is difficult. It notes that a FTA with the EU would take longer than two years to negotiate.”*

It concludes that:

- The Government will need to agree a transitional trade arrangement between the UK leaving the EU and full implementation of new trade terms;
- Temporary extension of participation in the customs union could be one important element of this; and
- The Government should establish a clear ‘game plan’ for a transitional arrangement at the outset of negotiations under Article 50.”

The Chairman of the House of Lords EU External Affairs Sub-Committee, Baroness Verma, said:

*“It is unlikely that a bespoke EU trade agreement can be agreed within Article 50’s two-year period, so a transitional deal is vital for protecting UK trade, and jobs that rely on trade”*

*“The Government should focus on trade with the EU and its World Trade Organisation (WTO) schedules. Deals with non-EU countries are contingent on the outcome of these negotiations, and need to be sequenced accordingly”*

*“The complexity of the issues and the tight timetable require a significant scale-up in capacity in government departments and clear leadership across Whitehall”*

[Lord Whitty](#), Chairman of the EU Internal Affairs Sub-Committee said:

*“While an FTA would provide the greatest flexibility, and no commitment to freedom of movement, there is no evidence that it could provide trade on terms equivalent to membership of the Single Market.”*

Further reports will be published during the course of the rest of the week:

- Brexit: acquired rights – Wednesday 14 December
- Brexit: financial services – Thursday 15 December
- Brexit: future UK-EU security and policing cooperation – Friday 16 December
- Brexit: fisheries – Saturday 17 December

### **Scottish Affairs Committee**

On 7 December, the House of Commons Scottish Affairs Committee took evidence from Michael Russell, the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe and Professor Anton Muscatelli, Chair of the Scottish Government's Standing Council on Europe.

During the evidence session with Michael Russell, he was asked by the Committee Chair about the Scottish Government's intentions with regard to the European Union:

***Chair:** Thank you for your opening statements. Can I start with a couple of very brief questions as to where we are? At the very beginning of this process, following the referendum on EU membership, the First Minister stated that she would take all possible steps and explore all options to give effect to how people in Scotland voted. I think that was clearly understood as securing a continued place within the European Union. Is this still pretty much the Scottish Government's intention?*

***Michael Russell:** Absolutely, it is the Scottish Government's intention to do so. The Scottish Government believe they do so with a triple mandate. The first mandate essentially comes from the result of the referendum in Scotland, which was 62% to remain and 38% to leave, so there is a clear majority to remain. The second part of that mandate comes from the Scottish elections in 2016 where the SNP was elected to Government. I was elected in Argyll and Bute on a manifesto that specifically said—and it is not often that politicians remember every word of their manifestos—that the triggering of another independence referendum could come in circumstances if Scotland was dragged out of Europe against its will. The third part of that is a mandate from the Scottish Parliament. On 28 June, the first debate after the referendum result, the Scottish Parliament asked, indeed mandated, the Scottish Government to take all the necessary steps and to look at the options for retaining our relationship with Europe.*

*One of the jobs I have been asked to do is to help develop those options, which are broadly an undifferentiated option, we just leave with the rest of the UK—that would be unacceptable and would not answer the mandate or the tests that the First Minister has set—to move forward with an independence referendum, the draft legislation of which is being consulted on, or to find a differentiated option. It is the work that is continuing on those that will result in the publication of some more detail later this month.*

***Chair:** We know very little about the Government's intentions for withdrawing from the European Union and details have been sketchy and patchy but we have started to get a few basic themes about some of its thinking. In your view, is it possible with the Government's main intention, which obviously is still to take the*

*UK outwith the European Union, that Scotland could somehow secure its place within Europe with the UK being out?*

**Michael Russell:** *That is exactly the issue that we are now examining. The JMC (EN) has been established and no doubt you will want to talk about the effectiveness or otherwise of the JMC structure. The next meeting is immediately after this meeting and will be the second meeting. The Scottish Government need to find and are looking for a way to secure the relationship that it has been mandated to try to secure. I don't think anybody expects that to be an easy process but two things are very clear. One is the view that comes from the EU that the UK must follow due constitutional process, so we must find a way in order to influence the UK's stance to include the options that Scotland wishes. The second very clear thing is that we must make people aware, widely in Europe and elsewhere, of the Scottish situation and what Scotland requires. It is not simply a matter of politics. There is a huge matter of the economy in this.*

*There is a variety of phrases for single market membership: the Welsh use the phrase "full and unfettered access"; I think the Labour Party at Westminster uses a very similar phrase about "tariff free access". Essentially, being able to be involved means respecting the four freedoms and of those, important as they are, the most important to Scotland is freedom of movement and without freedom of movement Scotland would have a very considerable problem.*

**Chair:** *We are familiar with the First Minister's tests, which she has reiterated several times, and we heard from you that the five tests are central to the Scottish Government's views on what a continuing relationship with the European Union would be. Could you talk a little bit more about what the vision of that type of relationship would be, whether that is within the UK or without?*

**Michael Russell:** *I think we have to start with the assumption that there is nothing exactly like that at present but then there has never been a departure from the EU in this way. Greenland is another question but a very different question. I don't think precedent in this matter helps us at all. What we have to do is to look at the range of substate arrangements that exist in Europe—and I think there are over 30 of them—to ask if any of those work, could they be adapted; to look at the range of involvements in the single market. The EEA situation is one that we will consider. I don't want to declare for any of them because there is a range of options that we will be publishing but it is quite clear that there are possibilities in order to do that and it is to be involved with, to have access to, to observe the single market that becomes a really big issue. There is a parallel issue of the customs union.*

*You could look at a spectrum of options that start with full membership and flow all the way to complete lack of involvement with any of the European institutions. I think you have to look at this and say: what are the things we need to achieve, where does that fit on that spectrum and how can we create the circumstances in which that works? It will require goodwill, and we have entered into discussions with the UK in goodwill. It will require a lot of discussion with European and other partners. It will require a recognition of the need for differentiation, but differentiation will happen anyway. Barnier's objectives, as you know, include issues around borders, which concerns Northern Ireland and Ireland, the issue of*

*Gibraltar and the Cyprus issue. There will be differentiation no matter, but there may have been differentiation promises made. We don't know because they haven't been published. The principle of differentiation appears to me to have been accepted. What we now need is to put flesh on those bones. That is what we are engaged in and we hope the United Kingdom will work with us on that matter."*

The Minister also confirmed that the Scottish Government planned to publish its proposals for Scotland's place in Europe "in the run-up to Christmas".

The [evidence session](#) can also be viewed on [Parliament TV](#).

The evidence session informed the Committee's [Scotland's place in Europe inquiry](#), on 14 December the Committee will hear from David Mundell, the Secretary of State for Scotland.

The session will examine the UK Government's position on Brexit and their engagement with the Scottish Government on this issue. It will also look at how Scottish interests will inform the development of the Government's priorities for the UK's future relationship with the EU. The evidence session can be viewed on [Parliament TV](#).

Ahead of the evidence session with the Secretary of State, the Chairman of the Committee Pete Wishart [said](#):

*"In our previous session, the Scottish Government were direct in expressing their position on the way forward after Brexit. They see a differentiated solution, allowing Scotland to keep strong links with Europe and rights including freedom of movement, as the only acceptable outcome. We expect the Minister to explain not only how he plans to engage with the Scottish Government, but how their view will inform the negotiating position of the UK. We are still in the dark about the Government's plans, the time has come for them to set out their stall.*

*We must express our disappointment that David Davis, the man who will be leading Brexit negotiations for the UK, continues to refuse our invitations and explain in person how he will represent Scottish views at Brexit talks. As a committee we have a right to scrutinise Government policy that has an impact on Scotland. There are few instances where the impact will be felt as surely as the results of Mr Davis' negotiations."*

## **House of Commons Education Select Committee**

On 8 December, the House of Commons Education Select Committee published [written evidence](#) it received as part of its inquiry into the impact of exiting the European Union on higher education. In total the Committee received 190 submissions. According to the Committee:

*"Submissions come from a diverse range of universities, including Cambridge, Sheffield Hallam, UCL and Birkbeck, businesses such as Zurich, individual students and academics."*

## UK Intergovernmental Relations

On 8 December, the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) published [The Future of the Union, part two: Inter-institutional relations in the UK](#). The report concluded that Inter-institutional relations in the UK must be strengthened in light of the vote to leave the European Union. According to the Committee [news release](#):

*“The underdeveloped nature of inter-institutional relations has been brought into sharp focus as a result of the outcome of the EU referendum and PACAC recommends that reform is now needed to ensure there is meaningful engagement with the devolved administrations during the negotiations on the UK’s withdrawal from the EU.*

*Chair of the Committee, Bernard Jenkin MP, says:*

*“The time pressure of negotiating our withdrawal from the EU now forces the machinery of intergovernmental relations in the UK to be imbued with a sense of purpose. We cannot go on with the notion that the devolved administrations are treated as an afterthought by Whitehall, particularly as all the devolved administrations are run by different political parties. It is, therefore, vital that the UK government’s commitment to engage with the devolved administrations is meaningful and not simply a tool to allay the concerns of the Scottish and Welsh Governments and the Northern Ireland Executive.”*

A [summary of the report](#) is also available.

## Is a sector-by-sector Brexit possible?

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Writing on the UK and Europe blog page, Professor Christopher Grey from the School of Management, Royal Holloway, University of London examined whether a [sector by sector Brexit is possible](#). Professor Grey concluded that agreeing such a deal was unlikely noting:

*“The idea of a sector-by-sector deal of this sort might seem appealing, but it has very grave problems. One is simply whether the EU would agree to such an arrangement, and there is no reason whatsoever to think that they would. What it amounts to is a form of ‘cherry-picking’ in which the UK selectively accesses the single market. There is certainly no precedent for a deal of this sort.*

*But even if that could be negotiated, it would give rise to massive problems for the UK. One would be about which sectors should get single market access. If automotive, then why not pharmaceutical or aeronautics? If financial services then why not educational services? In the end, a sector-by-sector deal would morph into soft Brexit, so why not negotiate that?”*

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