



The Scottish Parliament  
Pàrlamaid na h-Alba

**CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE**

**AGENDA**

**4th Meeting, 2017 (Session 5)**

**Thursday 2 February 2017**

The Committee will meet at 9.00 am in the Robert Burns Room (CR1).

1. **The implications of the EU referendum for Scotland: Scotland's Place in Europe:** The Committee will take evidence from—

Professor Anton Muscatelli, Principal and Vice Chancellor, University of Glasgow and Chair of the Standing Council on Europe;

Professor Sir David Edward, former Judge of the European Court of Justice, and Dame Mariot Leslie, former diplomat, Members of the Standing Council on Europe;

and then from—

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

2. **The implications of the EU referendum for Scotland (in private):** The Committee will consider evidence heard earlier in the meeting.
3. **EU Migration and EU Citizens' Rights (in private):** The Committee will consider a draft report.

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The papers for this meeting are as follows—

**Agenda item 1**

Note by SPICe

CTEERC/S5/17/4/1

PRIVATE PAPER

CTEERC/S5/17/4/2  
(P)

PRIVATE PAPER

CTEERC/S5/17/4/3  
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(P)

**Agenda item 3**

PRIVATE PAPER

CTEERC/S5/17/4/5  
(P)



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

**4<sup>th</sup> Meeting, 2017 (Session 5) Thursday 2 February**

**The EU referendum and its implications for Scotland**

**UK and Scottish Government proposals for Brexit**

This briefing pulls together the relevant sections from the SPICe Weekly Updates on the Scottish Government's proposals for [Scotland's place in Europe](#) and the Prime Minister's speech setting out the [UK government's negotiating objectives for exiting the EU](#).

### **Scottish Government's proposals for Scotland's place in Europe**

As reported in the last [Brexit update](#) before Christmas, on 20 December, the Scottish Government published its [proposals](#) for Scotland's place in Europe. The proposals cover why the European Single Market matters to Scotland and the possibility of the UK as a whole remaining in the Single Market through European Economic Area (EEA) membership. The Government's proposal then looks at the options for a differentiated proposal for Scotland retaining EEA membership whilst remaining part of the UK in the event the UK Government chooses to leave the EEA.

Chapter 3 of Scotland's place in Europe sets out how Scotland could maintain membership of the EEA while the remainder of the UK leaves. According to the Scottish Government:

"In the event that the UK Government does not pursue the option of retaining membership of the EEA, the Scottish Government is committed to exploring with the UK Government, in the first instance, the mechanisms whereby Scotland can remain within the EEA and the European Single Market even if the rest of the UK chooses to leave. This is essential if we are to ensure Scotland can continue to realise the substantial economic and social benefits from membership of the European Single Market and the "four freedoms" that lie at its core. However, as we set out later, we also consider that the proposal we put forward in this chapter could have benefits, not just for Scotland, but for the UK as a whole and for our European partners."

In terms of the proposal for Scotland's place in Europe, the Scottish Government states:

"What we propose in this chapter is an integrated solution for Scotland which ensures continued membership of the European Single Market, and collaboration with EU partners on key aspects of policy and participation in EU programmes such as Horizon 2020. This has been described by some as the "Norway option", but properly encompasses all of the EFTA countries which are also party to the EEA Agreement, including Iceland and Liechtenstein. Beyond the common aspects of these relationships (which relate to the implementation of the European Single Market), Scotland would also seek the opportunity to collaborate in a wider range of policy areas such as energy and justice, which would add to our ability to work with

European partners beyond a relationship based solely on free trade. Other differentiated options would also be open to Scotland instead of, or in addition to, the one discussed in this chapter, whereby Scotland could seek to remain part of particular EU policies and initiatives (i.e., Horizon 2020, Erasmus, Europol).”

Specifically the Scottish Government proposes that:

“The option we consider here does not require the UK to remain in the EU. In this section of the paper we consider the option of Scotland remaining part of the European Economic Area – in other words, Scotland would continue to participate in the European Single Market and uphold the “four freedoms” as part of its law. It is important to stress that this option does not require concessions either from the UK Government or the governments of the EEA Member States to permit Scotland to join the single market. Rather it requires agreement that Scotland should not be required to leave that market against the clear democratic wishes of a majority of our, and the EU’s, citizens.”

Chapter 4 of the Scottish Government’s proposal sets out how the Government believes the powers of the Scottish Parliament should be increased following Brexit and as part of that approach, the further devolution of powers the Government believes will be necessary to ensure that Scotland can meet the requirements of the differentiated position it has proposed.

The First Minister made a [statement](#) to the Scottish Parliament on the day Scotland’s place in Europe was launched and took questions from MSPs.

### **The Prime Minister’s initial response to the proposals**

Giving evidence to the House of Commons Liaison Committee on 20 December, the Prime Minister was asked about the Scottish Government’s proposals. She [told the Committee](#):

“First of all, the First Minister very courteously called me yesterday to tell me about the paper that was coming out. Obviously, I have not had an opportunity to look at the paper in detail yet, but I welcome the contribution to the debate. We have been encouraging the devolved Administrations to identify their particular concerns and priorities so that we can take that forward as part of the discussions we are having to ensure that we have a full UK view as we go into the negotiations. Obviously, I would expect the Welsh Government and the Northern Ireland Assembly to come forward with the particular concerns that they have, and we will be able to discuss these within the JMC structures that we have.

In response to a specific question from Pete Wishart MP, about the possibility of differentiated relationships, the Prime Minister said:

“What we will be negotiating is a United Kingdom approach and a United Kingdom relationship with the European Union. I think you have assumed an acceptance of differential relationships that I don’t think it is right to accept. When I became Prime Minister and first met the First Minister, I said that we would look very seriously at any proposals that came forward from the devolved Administrations, but there may be proposals that are impractical.

In terms of Northern Ireland, one of the key issues, obviously, is the question of the border, because it will be the one part of the UK with a land border with a country

remaining in the European Union. A lot of work is being done as to how we can ensure that the arrangement for the movement of goods and people across that border is not a return to the hard borders of the past.”

### **Reaction to the Scottish Government’s proposals**

Following the Scottish Government’s publication of Scotland’s place in Europe, a number of organisations published statements commenting on the proposals. Details of some of these responses are provided below.

The President of the [Law Society of Scotland](#) Eilidh Wiseman said:

“With all the uncertainty that followed the referendum result, the Scottish Government is to be commended for producing a thorough set of options which deserves proper consideration and analysis. Whatever the advantages or disadvantages of the various options, the paper provides an important contribution to the debate on Scotland’s future relationship with our European neighbours.

“The Scottish Government is also right to use this paper to set out how further devolution to the Scottish Parliament may be required. There are particular issues about our legal system and constitutional arrangements which will need careful consideration once EU powers are repatriated. It is clear the Scottish Parliament may need increased devolved powers affecting justice and home affairs, environment law, farming and research.

“It is vital for the UK Government to take the views of all devolved administrations into account. Last summer, the Prime Minister said she was committed to ensuring Scotland is fully engaged in UK Government discussions on its future relationship with the EU. We warmly welcomed that approach and the Scottish Government’s new paper certainly provides a basis for what we hope will be a thorough and constructive dialogue between the two administrations.”

For the [Faculty of Advocates](#), James Mure, QC, Convenor of the Faculty of Advocates’ International Committee, said:

“The Faculty notes with interest today’s detailed paper from the Scottish Government outlining its proposals for Scotland’s place in Europe. The paper calls for a fundamental review of the devolution settlement; seeks to maintain free trade and free movement within the Single Market; and looks for clarity on transitional arrangements. As the First Minister says, much will depend on all parties finding the political will to create practical solutions for Scotland. The Faculty and its members will be following developments closely, and will continue to contribute their expertise to the important debate about Scotland’s place in the UK and in Europe.”

For the [Confederation of British Industry \(CBI\)](#), Hugh Aitken, CBI Scotland Director, said:

“Firms are 100% committed to making a success of Brexit. To achieve this we need a close partnership between business and the Scottish Government, business and the UK Government, and both governments together.

“For many businesses the immediate priority will be understanding how easy it will be for them to trade in the future with the EU.

“The CBI is working closely with the UK and Scottish governments to deliver an outcome that helps to meet the needs of firms across the country, building a post-Brexit economy that spreads prosperity for all.”

For the [Scottish Trade Unions Congress \(STUC\)](#), Grahame Smith STUC General Secretary said:

“The STUC welcomes the publication of this paper by the Scottish Government which is a useful and serious contribution to the debate. It is positive that the Scottish Government has developed such a clear position setting out what they see as the best future relationship both Scotland and the UK could have with the EU. This is in stark contrast to the half-baked and conflicting positions that are emerging from the UK Government on this issue.

“The Scottish Government’s focus on social protections is welcome and trade unions are clear that maintaining the rights of workers for the long-term needs to be at the heart of this debate. It is also right, as the paper acknowledges, for the Scottish and UK Governments to consider what further powers need to be devolved to Scotland if workers and wider human rights are to be protected and we must strive to ensure that Scotland upholds international standards in this regard.”

“While a number of economic, diplomatic and legal issues remain, which will require significant work and political will to resolve, it is positive that the Scottish Government is taking a lead on behalf of people in Scotland. It is essential that we begin to consider in earnest what the future of our country will look like and we urge the UK Government to engage constructively in this debate.”

For [Universities Scotland](#), Professor Andrea Nolan, Convener of Universities Scotland and Principal of Edinburgh Napier University said:

“We welcome publication of this document as a clear record of the Scottish Government’s priorities and intentions in regards to the European Union. There are aspects of Scotland’s interests, as identified by the Scottish Government, that we strongly identify with including economic interest, solidarity and influence. We welcome the pragmatism in the Scottish Government’s approach and echo the call for all sides to use ‘imagination and flexibility’ in these unprecedented negotiations.

“The Scottish Government’s paper clearly sets out the importance of Scotland’s higher education sector’s relationships with Europe. Our priorities in the negotiations relate to the continued free movement of student and staff talent, and access to and influence over European research funds and collaborations. It is helpful to see these so clearly identified as one of the many priorities of the Scottish Government in this document. We urge the Scottish and UK Governments to find a way forward that supports universities as a welcoming space and a constructive partner for our European friends.”

For the [National Union of Students \(NUS\)](#) in Scotland, Vonnice Sandlan, President of NUS Scotland, said:

“We welcome the Scottish Government’s paper, which reiterates the importance of protecting the huge benefits that EU membership brings to our students, universities, and colleges – all of which have long prided themselves on being outward looking,

collaborative institutions. We know that international students – whether from the EU or elsewhere – make significant cultural, economic, and educational contributions to our universities and colleges, and to our country as a whole. Membership of the EU and mobility programmes like Erasmus+ bring great opportunities for Scottish students, who can currently study just as easily in Paris as they can in Paisley. But despite the importance of these schemes, the UK Government has failed to outline plans to protect them, creating huge risks for both inward and outward mobility.

“As the paper highlights, there’s now a very real risk that we lose the great benefits these opportunities bring if Brexit creates unnecessary additional barriers for students wanting to travel across Europe to study. Equally, we hope that this process presents an opportunity for Scotland to get new powers to further support international students to remain in Scotland after their studies, as referenced by the Government’s paper. In the shorter term, we’d also echo the Government’s concern that the negotiation process could create high levels of uncertainty for those students considering moving to Scotland on whether their status as a student will change if Brexit happens during their studies.

“Going forward, we look forward to working with the Scottish government and all those who have a desire to ensure that students and our world-class education system aren’t disadvantaged by the risks that Brexit presents – and ensuring a settlement that works. This absolutely must include securing the freedom of students to move through the EU to work and study, and exploring how we can ensure that international students in Scotland have the ability to remain in the country, contributing to society, after their studies. We hope the UK Government uses this as an opportunity to work meaningfully with the Scottish Government and stakeholders on these issues.”

For [Scottish Food and Drink](#), Chief Executive James Withers said:

"Our future relationship with the EU is a critical issue for Scotland's food industry. Nearly a third of our workforce are EU nationals, Europe is the destination for 80% of Scottish food exports and agricultural funding underpins large parts of our industry.

"The options published today, as well as helping to take the debate forward, recognise our industry's key issues. It also recognises the balance between ongoing trade with the rest of the EU and the critical importance of UK market access to Scottish producers.

"There is a long way to go in this debate, it is surrounded by complexity and these options politically are extremely challenging. However, the recognition of the food industry's key issues is welcome and we hope the UK Government's proposals, when they emerge, will do the same."

For the [British Medical Association \(BMA\)](#) in Scotland, the Scottish Chair Dr Peter Bennie said:

“Six months on from the referendum, there is still a deeply concerning lack of clarity around the future status of the EU nationals working in the NHS that our health service is heavily dependent on. These are our colleagues and our friends and the ongoing uncertainty they face is deeply damaging.

“It is welcome that the Scottish Government’s paper today seeks to protect the right of EU nationals to continue to work in Scotland, but it remains a real source of concern that the Westminster Government still refuses to clarify its intentions towards EU nationals who are already working in our health service.

“The last thing that the NHS in Scotland needs is for the recruitment and retention problems it already faces to be made significantly worse through any loss of medical staff caused by this ongoing uncertainty.

“We also welcome the attention paid to the importance of protecting academic research funding. Medical research plays a key role in Scotland’s economy and it is essential that it is not undermined through lost funding opportunities.”

For the [Scottish Wildlife Trust](#), Chief Executive Jonny Hughes said:

“We welcome the statement today from the Scottish Government that ‘Scotland has a moral and legal obligation to protect our country’s magnificent natural resources and we remain committed to maintaining, protecting and enhancing our environment.’

"Regardless of the shape of any future Brexit deal between the UK and the European Union, the Scottish Wildlife Trust believes that, at a minimum, the body of environmental legislation so carefully developed over decades by the EU and transposed into Scottish law must continue to be implemented in Scotland by the Scottish Government. This is vital if we are to safeguard vulnerable wildlife, ensure the health and productivity of our seas, and provide a quality environment which brings economic and well-being benefits for the people of Scotland.

"Today's statement from the Scottish Government is an important and very welcome assurance on long term investment to maintain environmental standards in what are politically uncertain times.”

For the [Royal Society for the Protection of Birds \(RSPB\)](#), Stuart Housden, Director of RSPB Scotland said:

“Over the last 40 years, the European Union has significantly influenced the state of Scotland’s environment – both positively through regulations such as the Nature Directives and negatively through unreformed agricultural subsidies. The outcomes that emerge from the coming negotiations, involving the Scottish and UK governments and the EU, have the potential to affect our environment and our wildlife for decades to come.

“Previously, RSPB Scotland has welcomed the Cabinet Secretary’s stated commitments to continue the full implementation and enforcement of European environmental law. Her welcome proposals, since the referendum, to consult on marine SPAs demonstrated that this commitment was meaningful – but must be maintained across all areas of policy affecting the environment, particularly agriculture and fisheries.

“Today’s paper correctly makes clear that the environment, and its protection, has benefited from European cooperation to date. RSPB Scotland strongly urges that the environment continues to be central to the negotiations, so as to maintain these benefits to the greatest possible extent.

“Like many organisations, we are already engaged in considering the environmental consequences of a range of “Brexit” options – and, as part of that process, will carefully assess the Scottish Government’s proposals. Our Trustees will wish to consider the results of this analysis and assess the impact of different options on our charitable objectives.”

For [Friends of the Earth Scotland](#), Dr Richard Dixon, Director of Friends of the Earth Scotland, said:

“We welcome these proposals from the Scottish Government, which clearly put protecting our environment and co-operation on reducing climate change emissions at the heart of Scotland’s position on Europe.

“If we really are embarking on the risky adventure of leaving the EU then this is a good set of proposals which safeguard many of the benefits of our current European membership including environmental protections, free movement of people and consumer rules that protect us from harmful chemicals in food and other products.

“The vote to leave the EU is a huge challenge to decades of progress on improving the environment and working together to tackle climate change. The Scottish Government has already made welcome commitments to maintain current environmental protections and to continue to work together on climate change, and these are strongly re-inforced in these proposals and in today's statements from the First Minister.”

The Scottish Council for Voluntary Organisations (SCVO) [tweeted](#) “We welcome efforts by @scotgov to keep Scotland as part of an outward looking & integrated Europe”.

### **Blog posts and newspaper articles**

A number of blog posts and newspaper articles were also published analysing the Scottish Government’s proposals.

European Futures - an academic blog from the University of Edinburgh and the Edinburgh Europa Institute published [four short blogs](#) in response to the Scottish Government’s proposals. The examined the proposals from the following perspectives:

- Challenges of Single Market Membership by Tobias Lock
- Free Movement of Goods and Services by Arianna Andreangeli
- Priorities for Scottish Business by Owen Kelly
- Shape of Proposed EFTA Relationship by Anthony Salamone

The Daily Telegraph [reported](#) comments by Charles Grant – a member of the Scottish Government’s Standing Council on Europe – made in an interview with the newspaper. According to the Telegraph:

“Charles Grant, who sits on the First Minister’s Standing Council on Europe, said it was “extremely difficult” to see how her plans were legally, politically or technically feasible.

In an interview with the Telegraph, he said Scotland staying in the single market without the rest of the UK would require the complete devolution of business regulation and that “clearly isn’t going to be on the cards in the foreseeable future.”

He said proposals for Scotland to stay in the EU's customs union, a more limited type of free trade area than the single market, without the rest of the UK would also mean customs checks at the border with England.

Among the other flaws he listed were Spain blocking any special deal and Theresa May being unwilling to sign up to a package of powers that would give Scotland "something like dominion status."

Daniel Kenealy from the University of Edinburgh writing on the London School of Economics blog suggested that the Scottish Government's proposals are [politically savvy and all-but-impossible](#). He wrote:

"It would be wrong to categorically label the proposal for Scotland to join the EEA via EFTA, whilst remaining part of a UK that is neither a member of EFTA nor a party to the EEA, as impossible..."

...But the proposal is all-but-impossible and the legal, political, and technical barriers standing in the way of it are high, and almost certainly insurmountable."

The Centre on Constitutional Change published three blogs following the publication of the Scottish Government's proposals. Kirsty Hughes from Friends of Europe asked whether the purpose of the Scottish Government's paper was [a springboard for an indyref2, a holding strategy while May's Brexit approach becomes clearer or a genuine goal of maximal differentiation](#). On the politics of the proposal, Kirsty Hughes wrote:

"The ball is in Theresa May's court for now. The Prime Minister has said she will consider the Scottish government's proposals. May could say 'no' very bluntly, as she effectively did in her October party conference speech – which would put Sturgeon on the spot in terms of her response and whether to call an indyref2 or not. Or May could, at least, wait until February, when the UK government may finally take an outline of its plans to Westminster before triggering Article 50 in March.

At that point, May could quite likely say, that she is aiming for maximum access to the single market, and might say she will ask for the UK to stay in the EU's customs union. She may also say she will look at some particular Scottish interests. Nicola Sturgeon then would have a choice – to wait and see how Brexit talks develop, and how the opinion polls shift once Article 50 is triggered – or to say May has not met Sturgeon's demands, and so call an indyref2.

Sturgeon is going to get little help from Scotland's opposition parties apart from the Greens. The LibDems in November, despite their position of wanting the UK to stay in the single market, have voted, with the Tories, against proposals for Scotland to have a differentiated deal. Labour abstained in November, but Labour's Brexit minister Keir Starmer – and leader Jeremy Corbyn – have made it clear Labour is aiming for access to not membership of the single market. So Labour support looks unlikely too.

Sturgeon's paper is a serious in-depth piece of analysis. It respects the original Scottish Parliament vote by 92-0 a week after the Brexit vote to explore options to stay in the EU or its single market. The Scottish Government has followed up and respected that vote – but the politics has moved on. A differentiated deal for Scotland looks highly unlikely. And while the ball is now in Theresa May's court – it is likely to be back in Sturgeon's very soon."

Professor Michael Keating echoed Kirsty Hughes' suggestion that the [ball was for now in Westminster's court](#) following the Scottish Government's publication. On the Scottish Government's proposals, Professor Keating wrote:

"In 70 closely argued pages, they represent the first attempt by any government in the UK to state exactly how it proposes to respond to the surprise vote in June. For its part, the UK Government has not even told us whether it wants to be inside the single market or the customs union, let alone how any deal might work out in detail.

Therein lies the main problem. The closer the UK remains to the European market, with its free movement of goods, services, capital and labour, the easier it will be for Scotland. If the UK goes for a hard Brexit, it becomes more difficult for Scotland to keep in both markets. The Scottish Government proposes to keep borders open in both directions but, whatever happens, there will be borders. This is the inevitable result of Brexit."

On the issue of new powers for Scotland that might be necessary in the event of a differentiated relationship with the EEA. Professor Keating wrote:

"A second set of proposals concerns the extra powers that Scotland might require. These cover devolved competences subject to European law, plus wide powers to meet single market regulations in economic and social matters. Scotland might also need power to negotiate agreements with the European Economic Area and other governments.

None of this is technically impossible but it would represent a radical transformation of the United Kingdom and require the agreement of Westminster. The Scottish Government accepts that it would need the UK Government to negotiate the deal on its behalf. With the Tories already deeply divided over its approach to Brexit, it is unlikely to welcome an additional complication unless it really thinks that the UK is in peril. The ball is now in Westminster's side of the court."

Professor Charlie Jeffery from the University of Edinburgh suggested the Scottish Government's proposals are [fairly mainstream in reflecting Scottish public opinion](#). Professor Jeffrey wrote:

"So now we have it. The Scottish Government document Scotland's Place in Europe sets out how the country might remain in the EU Single Market in the event of a hard Brexit.

We can expect some howls of outrage, assertions that what the Scottish Government proposes is legally impossible and, in any case, it's all a trick to move us to independence by the back door.

But what has been proposed is actually pretty mainstream opinion in Scotland. It is shared by many of those who see themselves as unionists and are committed to remaining part of the UK."

On whether the Scottish Government's proposals will gain traction, Professor Jeffrey wrote:

"Can these proposals fly? That's a matter less of law than political will. The UK has unusually malleable constitutional arrangements, with the sovereign UK parliament

able to do much as it will. The EU too has shown an ability to accommodate all manner of distinctive territorial arrangements.

Is the political will there? The UK Government has not sounded very accommodating towards special deals (except, perhaps, to Nissan).

But that may be a question of whether, amid the complexities of Brexit, which have clearly been much underestimated, the UK government has the bandwidth to negotiate special arrangements for Scotland alongside all else it has to do. I suspect it doesn't.

But there may be a solution to that. Give Scotland some set of additional powers, including the power to negotiate in external matters – more or less like those suggested in Scotland's Place in Europe – and leave it to the Scottish Government to negotiate the details of a deal with the EU itself. That way there's no need for a political bust-up, and Nicola Sturgeon, not Theresa May, would be responsible for the success, or otherwise, of the outcome."

Writing for EU Law Analysis, Steve Peers, a Professor of EU and Human Rights Law at the University of Essex provided some [comments on the Scottish Government's new proposals](#). On the Scottish Government's assessment of either UK remaining as a whole within the EEA or Scotland having a differentiated relationship, Professor Peers writes:

"The prospect of the UK staying in the EEA (or a comparable system) is legally much easier to arrange and negotiate than any Scotland-only approach to Brexit. However, as the report notes, EEA membership seems unlikely for political reasons, since the UK government seems unenthusiastic about any obligations regarding the free movement of people. On this point the report could have done more to address these concerns by discussing the possible use of the EEA safeguard clause. It could also at least have advocated participation in the EEA as an interim measure, given that the UK government in recent weeks has appeared increasingly open to the idea of some interim arrangement following Brexit in principle.

Equally – although the report does not discuss this – a Scotland-only approach has political problems, as neither the UK government nor the remaining EU seem willing to discuss the idea."

### **UK government's negotiating objectives for exiting the EU**

On 17 January, Prime Minister Theresa May made a [speech](#) at Lancaster House in London in which she set out the government's negotiating objectives for exiting the EU. The top line from the speech which was heavily trailed in the run-up was that the UK will leave the Single Market. The Prime Minister also used the speech to confirm that both the House of Commons and House of Lords would get a vote on the final deal before it comes into force.

The speech focussed on 12 objectives which were:

1. Provide certainty about the process of leaving the EU
2. Leaving the EU will mean laws will be made in Westminster, Edinburgh, Cardiff and Belfast
3. Strengthen the Union between the four nations of the United Kingdom
4. Maintain the Common Travel Area with Ireland

5. Control of immigration coming from the EU
6. Rights for EU nationals in Britain and British nationals in the EU
7. Protect workers' rights
8. Free trade with European markets through a free trade agreement
9. New trade agreements with other countries
10. The best place for science and innovation
11. Co-operation in the fight against crime and terrorism
12. A smooth orderly Brexit

On Single Market membership, the Prime Minister said:

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

But I want to be clear. What I am proposing cannot mean membership of the Single Market.

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

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

And that is why both sides in the referendum campaign made it clear that a vote to leave the EU would be a vote to leave the Single Market.

So we do not seek membership of the Single Market. Instead we seek the greatest possible access to it through a new, comprehensive, bold and ambitious Free Trade Agreement.

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

Related to Single Market membership, the Prime Minister suggested Britain might want to retain partial membership of the Customs Union arguing that as long as the UK could do its own external trade deals by being exempt from the Common External Tariff and Common Commercial Policy it would look to retain Customs Union membership. She said:

“Now, I want Britain to be able to negotiate its own trade agreements. But I also want tariff-free trade with Europe and cross-border trade there to be as frictionless as possible.

That means I do not want Britain to be part of the Common Commercial Policy and I do not want us to be bound by the Common External Tariff. These are the elements of the Customs Union that prevent us from striking our own comprehensive trade

agreements with other countries. But I do want us to have a customs agreement with the EU.

Whether that means we must reach a completely new customs agreement, become an associate member of the Customs Union in some way, or remain a signatory to some elements of it, I hold no preconceived position. I have an open mind on how we do it. It is not the means that matter, but the ends.”

The Prime Minister also confirmed that as a result of leaving the Single Market, the United Kingdom would not “be required to contribute huge sums to the EU budget” though there might be some areas where the UK would wish to participate in EU programmes for which a financial contribution would be necessary.

On the effect of Brexit for the four nations for the United Kingdom the Prime Minister was clear that in the future as a result of Brexit “our laws will be made in Westminster, Edinburgh, Cardiff and Belfast. And those laws will be interpreted by judges not in Luxembourg but in courts across this country.”

In addition, the Prime Minister suggested that Brexit might lead to additional powers for the Devolved Administrations, though she added these couldn’t be at the cost of the internal functioning of the UK market:

“Part of that will mean working very carefully to ensure that - as powers are repatriated from Brussels back to Britain - the right powers are returned to Westminster, and the right powers are passed to the devolved administrations of Scotland, Wales and Northern Ireland.

As we do so, our guiding principle must be to ensure that - as we leave the European Union - no new barriers to living and doing business within our own Union are created,

That means maintaining the necessary common standards and frameworks for our own domestic market, empowering the UK as an open, trading nation to strike the best trade deals around the world, and protecting the common resources of our islands.

And as we do this, I should equally be clear that no decisions currently taken by the devolved administrations will be removed from them.”

The Prime Minister reiterated her view that Brexit had to mean returning control of immigration to the UK , whilst acknowledging that the UK will continue to need immigration from the EU. She also said she hoped that the future of EU citizens in the UK and UK citizens in other EU countries could be addressed soon though she suggested that not all EU member states were prepared to agree to this:

“Fairness demands that we deal with another issue as soon as possible too. We want to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states, as early as we can.

I have told other EU leaders that we could give people the certainty they want straight away, and reach such a deal now.

Many of them favour such an agreement - one or two others do not - but I want everyone to know that it remains an important priority for Britain - and for many other member states - to resolve this challenge as soon as possible. Because it is the right and fair thing to do.”

Finally the Prime Minister said she would be seeking a smooth and orderly Brexit though she ruled out seeking a transitional deal:

“But there is one further objective we are setting. For as I have said before - it is in no one's interests for there to be a cliff-edge for business or a threat to stability, as we change from our existing relationship to a new partnership with the EU.

By this, I do not mean that we will seek some form of unlimited transitional status, in which we find ourselves stuck forever in some kind of permanent political purgatory. That would not be good for Britain, but nor do I believe it would be good for the EU.

Instead, I want us to have reached an agreement about our future partnership by the time the two-year Article Fifty process has concluded. From that point onwards, we believe a phased process of implementation, in which both Britain and the EU institutions and member states prepare for the new arrangements that will exist between us will be in our mutual self-interest. This will give businesses enough time to plan and prepare for those new arrangements.

This might be about our immigration controls, customs systems or the way in which we cooperate on criminal justice matters. Or it might be about the future legal and regulatory framework for financial services. For each issue, the time we need to phase-in the new arrangements may differ. Some might be introduced very quickly, some might take longer. And the interim arrangements we rely upon are likely to be a matter of negotiation.

But the purpose is clear: we will seek to avoid a disruptive cliff-edge, and we will do everything we can to phase in the new arrangements we require as Britain and the EU move towards our new partnership.”

The Prime Minister used the conclusion of her speech to warn other EU Member States against punishing Britain to ensure no other country is tempted to leave the EU. On the possibility of a punitive deal, the Prime Minister said:

“That would be an act of calamitous self-harm for the countries of Europe. And it would not be the act of a friend.

Britain would not - indeed we could not - accept such an approach. And while I am confident that this scenario need never arise - while I am sure a positive agreement can be reached - I am equally clear that no deal for Britain is better than a bad deal for Britain.

Because we would still be able to trade with Europe. We would be free to strike trade deals across the world. And we would have the freedom to set the competitive tax rates and embrace the policies that would attract the world's best companies and biggest investors to Britain. And - if we were excluded from accessing the Single Market - we would be free to change the basis of Britain's economic model.

But for the EU, it would mean new barriers to trade with one of the biggest economies in the world. It would jeopardise investments in Britain by EU companies worth more than half a trillion pounds. It would mean a loss of access for European firms to the financial services of the City of London. It would risk exports from the EU to Britain worth around £290 billion every year. And it would disrupt the sophisticated and integrated supply chains upon which many EU companies rely.

Important sectors of the EU economy would also suffer. We are a crucial - profitable - export market for Europe's automotive industry, as well as sectors including energy, food and drink, chemicals, pharmaceuticals, and agriculture. These sectors employ millions of people around Europe. And I do not believe that the EU's leaders will seriously tell German exporters, French farmers, Spanish fishermen, the young unemployed of the Eurozone, and millions of others, that they want to make them poorer, just to punish Britain and make a political point.

For all these reasons - and because of our shared values and the spirit of goodwill that exists on both sides - I am confident that we will follow a better path. I am confident that a positive agreement can be reached.”

### **Presentation of the Brexit plan in the House of Commons**

Following the Prime Minister's speech, the Secretary of State for Exiting the European Union, David Davis [updated](#) the House of Commons on the Government's plans for exiting the European Union. In his speech, the Secretary of State reiterated the position taken by the Prime Minister earlier in the day. He told the House:

“Today, the Prime Minister is setting out a plan for Britain. It is a plan to ensure that we embrace this moment of change to build a confident, global trading nation that seizes the new opportunities before it, and a fairer, stronger society at home, embracing bold economic and social reform. It is a plan that recognises that the referendum vote was not one to pull up drawbridges and retreat from the world, but rather a vote of confidence in the UK's ability to prosper and succeed.

It is a plan to build a strong, new partnership with our European partners while reaching beyond the borders of Europe, too, forging deeper links with old allies and new ones. Today we set out 12 objectives for the negotiation to come. They answer the questions of those who have been asking what we intend while not undermining the UK's negotiating position. We are clear that what we seek is that new partnership: not partial EU membership, not a model adopted by other countries, not a position that means we are half-in, half-out.”

In his intervention, Peter Grant MP asked the Secretary of State whether he had read Scotland's place in Europe and asked for an undertaking that the paper will be properly and thoroughly discussed at the Joint Ministerial Committee meeting (to be held on Thursday 19 January). The Secretary of State said he had read Scotland's place in Europe and added:

“It has been my privilege to chair the Joint Ministerial Committee on EU Negotiations on which Mike Russell broadly represents the Scottish Government's position. I gave him an undertaking that we would debate that paper at the next JMC (EN), as it is known in Whitehall jargon, and that is what we will do. I have been very careful not to comment publicly on it because, as I said, we want to give it the most open debate

possible. There are parts of it with which I disagree and parts with which I agree. On the question of the protection of workers' rights or the maintenance of our terrific universities, I am entirely on side with the paper. I suspect that Mr Russell might be surprised by how pro-devolution I am. Nothing will be taken away from the devolved Administrations and, indeed, we have to decide what passes to them from the European Union. That will be a rational debate based around the interests of the United Kingdom and of Scotland. The hon. Member for Glenrothes (Peter Grant) must take it as read that we will take very seriously the idea that we do not allow any part or nation of the United Kingdom—Scotland, Wales, Northern Ireland or England—to lose out in this process. We are determined in that.”

Joanna Cherry MP asked the Secretary of State about the potential for special sectoral deals citing comments by the European Commission's Chief negotiator Michel Barnier:

“At the weekend it was reported that Michel Barnier, the EU's negotiator, was prepared to contemplate a special deal for the City, and the UK Government have indicated in the past that they might look at special sectoral deals for the City and for Nissan. Does the Secretary of State accept that there is scope for the differentiated deal that the Scottish Government seek if he and his Prime Minister have the political will to support it?

In response David Davis said:

“This is very unusual for the hon. and learned Lady, but she has not quite got Michel Barnier's statement right. What he is reported to have said, although I think he subsequently denied it, is that he saw that there would be risks to the financial stability of the European Union if it did not maintain open access for the City of London. The hon. and learned Lady was also wrong in saying that we had talked about special deals for any sector. We have not. [Interruption.] The aim of the British Government is to ensure that the whole economy succeeds as a result of this policy, not just one part of it; and that includes Scotland.”

### **Reaction to the Prime Minister's Brexit plan**

Following the Prime Minister's speech, a number of organisations published statements commenting on the proposals. Details of some of these responses are provided below.

The President of the [Law Society of Scotland](#), Eilidh Wiseman said:

“The UK's exit from the EU has many significant aspects including economic, financial, legal, social, and cultural, which will affect every person living in the British Isles. With this in mind, the Prime Minister's statement provides some welcome detail on a number of issues which the country will need to consider as Article 50 is triggered and the negotiations start on the UK's withdrawal from the EU.

“It is crucial that the UK Government continues to engage with the devolved administrations and civic society to ensure their and our interests and priorities are seriously considered. We are grateful to the Secretary of State for Scotland who has met with us and our member law firms, listening to our concerns and those of businesses more generally. We are keen to maintain that engagement with both the UK and Scottish governments over the coming months.

“As the negotiations move forward, it is vital we ensure stability in the law and maintain, so far as possible, close collaboration in freedom, security and justice measures. That is why we strongly welcome the Prime Minister’s intention to continue to work with the EU on cross border crime and law enforcement issues. There also needs to be an agreed path for recognising and enforcing citizens’ rights including the rights of parties with pending cases before the Court of Justice of the EU”.

Carolyn Gardner, the Director-General of the [CBI](#) said:

“Today the Prime Minister changed the landscape. Ruling out membership of the Single Market has reduced options for maintaining a barrier-free trading relationship between the UK and the EU. But businesses will welcome the greater clarity and the ambition to create a more prosperous, open and global Britain, with the freest possible trade between the UK and the EU.

“The pressure is now on to deliver these objectives and achieve a smooth and orderly exit.

“Businesses want to make a success of Brexit but will be concerned about falling back on damaging WTO rules.

“They stand ready to support the negotiations to get the best possible deal for the UK by ensuring that the economic case is heard loud and clear.”

Liz Cameron, Chief Executive of [Scottish Chambers of Commerce](#), said:

“The Prime Minister has set out her starting point for negotiations to achieve the UK’s exit from the European Union. This helps to define the context of the discussions with the EU which will take place over the next two years but ultimately, we still cannot know what the outcomes of those negotiations will be.

“Businesses that we speak to recognise this and are rightly focused on the day to day challenges of running their businesses rather than the political machinations of Brexit. They know that there are a number of possible scenarios for what the UK’s future relationship with the EU might look like and are preparing for these eventualities.

“The UK’s future relationship with the EU is important to us and it is clear from our members that they value a free trading relationship with the EU, without tariff and non-tariff barriers.

“in addition, future migration to Scotland must be sufficient to meet the particular economic and skills needs of Scottish businesses, whilst at the same time guaranteeing the right of existing staff to remain and work here.

“However, Brexit must not dominate the political debate to the exclusion of all else. Businesses need the UK and Scottish Governments to focus on their job of ensuring that our domestic economy is strong and healthy and conducive to the growth of business, whatever our future relationship with the EU might be.”

The [NFU Scotland's](#) Parliamentary Officer Clare Slipper wrote:

“For the Scottish farming and food industry, access to the EU market without barriers and any new obstacles has always been a priority. Next to the rest of the UK, Europe remains the largest destination for Scottish food exports and a market that offers a good opportunity for growth.

Now that we know the Prime Minister has ruled out remaining within the Single Market, what will become of utmost importance to the Scottish agricultural industry is that the Prime Minister achieves her objective of a bold and ambitious free trade agreement with the EU.

NFU Scotland wants barrier and tariff-free trade as well as the freedom to set our own appropriate rules for farming. With the UK and Scottish Governments both now having set out their opposing stalls, for NFU Scotland there will be a renewed focus for discussions with the both governments on a number of vital issues.

Will the future trade arrangements allow Scottish producers the best possible access to EU markets, and could this be in the form of a ‘special deal’ as has been suggested for the automotive and financial services industries? With freedom of movement clearly still presenting a sticking point, will we retain and secure access to a competent and reliable workforce? And will the negotiation allow the appropriate agricultural policy to be developed in the UK that provides appropriate funding levels and flexibility in policy-making that recognises Scotland’s unique agricultural systems. It must also ensure that there is a fair share of the risk and reward across the whole supply chain?

The Prime Minister argued today that her position was the most “economically rational”, as it would increase trade and therefore job and growth-creation. Whereas for the Scottish Government, it views remaining within the Single Market as essential to securing “Scotland’s economic, social and cultural interests”.

For NFU Scotland members, profitability is king. Scottish producers are ready and waiting for the opportunities that Brexit can provide, but this must not be at the expense of the provenance of Scottish produce; nor result in cheap imports driving down standards of production.”

Nicola Dandridge, Chief Executive of [Universities UK](#), said:

"We welcome the prime minister's commitment to ensuring that the UK remains open to international talent. It was good also to hear her talking about the international strength of our university system and the importance of continuing to collaborate in cutting-edge research and innovation.

"The UK's university system is indeed world-leading. Much of this success is due to our ability to attract talented students and staff from around the world and the world-class research we produce with international partners.

"There are currently nearly half a million international students at UK universities, with over 125,000 of them from EU countries. 16% of academic staff at UK universities are from EU countries, while 12% are from non-EU countries.

"Brexit negotiations must ensure that the UK is still open to EU and international students and that we can continue to access valuable and collaborative European research networks. It was encouraging to hear that the prime minister would like to see the UK continue to play a role in certain EU programmes.

"Brexit poses many challenges, but with the right Government support, universities can play a central role in the UK's economic success and global influence outside the EU. This will, however, require reforms to our current immigration system to ensure that the most talented international students, researchers and university staff can come to the UK and are welcomed, regardless of their nationality."

Grahame Smith, [Scottish Trades Union Congress \(STUC\)](#) General Secretary, said:

"At last we are hearing some proposals coming from the UK Government on Brexit and it is useful that we are finally gaining some clarity on what the future might hold. Very disappointingly that future will be outside the single market and as a consequence the fundamental right of workers to free movement will be lost. It is to be welcomed that Theresa May has indicated her support for protecting employment rights across the UK and trade unions will continue to hold her to this promise. While she made some positive statements on EU nationals, it is also clear that the status of EU nationals is far from guaranteed and they may still be used as a bargaining chip within the negotiations, an unacceptable approach to people's lives and indeed could put in jeopardy some key public services which depend on EU labour.

"It is disappointing that Theresa May has now ruled out continuing membership of the single market, a decision which will almost certainly create difficulty for some key industries within the UK and Scotland. It is also worrying that the UK seems to be seriously considering a future as a tax haven, where low tax and low regulation are the main drivers of the economy. This model will do little to raise the fortunes of workers in Scotland, across the UK as a whole, or indeed across Europe and will not support the high quality public services that we need."

"The Prime Minister's pledge to put the final Brexit deal to Parliament is again to be welcomed, but seems the minimum to be expected within a Parliamentary democracy. It is clear, that if negotiating priorities now exist that these should be debated and voted upon by Parliament. The key proposal around membership of the single market should be subject to the normal democratic scrutiny and debate. It is simply unacceptable that a decision of this magnitude should be taken by the Prime Minister alone.

### **Analysis of the Prime Minister's Brexit plan**

The House of Commons Library's blog, [Second Reading](#) analysed what the Prime Minister's speech meant for the role of the UK Parliament in the Brexit process. The analysis states the commitment to give a vote on the Brexit deal is a new commitment:

"Theresa May announced that both Houses of Parliament will get a vote on the final Brexit agreement. This is a new commitment: under the Constitutional Reform and Governance Act 2010 (CRaGA), most treaties don't require a vote or even a debate in Parliament. This could imply a vote on whether or not the Government should ratify a signed Brexit agreement. Or it could imply a vote on the package outside CRaGA on a resolution of both Houses."

On what might happen in the event Parliament rejects the Brexit deal, the blog explains:

“Under the existing procedures applicable to all treaties, a vote against ratification in either House would mean the Government has to explain to Parliament the reasons why it nevertheless wishes to ratify. The Lords can only vote against ratification once. If the Commons votes against ratification this process could be repeated indefinitely – potentially going beyond the two-year cut-off point and resulting in the UK leaving the EU without any agreement at all. Furthermore, under the existing procedure, Parliament cannot amend the Brexit agreement(s), but can only accept or reject them.”

The UK in a Changing Europe published a response to the Prime Minister’s speech with [analysis from the groups Fellows](#).

Professor Anand Menon, director of The UK in a Changing Europe, said:

“Mrs May’s ambition for the UK to be able to enjoy tariff free trade with the EU whilst enjoying the freedom to sign its own trade treaties implies a subtle and complex relationship with the customs union. Her ability to achieve the ambitions she set out will ultimately hinge on what her partners are willing to give her, and whether they can successfully complete the Article 50 negotiations beforehand.

“More broadly, we can now start to think about the substantive impact of Brexit on our country. The Prime Minister stated that she wanted Brexit to result in a Britain that is stronger, fairer and prosperous. But to know if these ambitions are being achieved, we need a framework against which to monitor and measure them. We will be publishing our outline ‘four economic tests for Brexit’ later this month.”

On the implications for the different parts of the United Kingdom of the Prime Minister’s speech, Dr Jo Hunt, said:

“The Brexit process has put the Union of England, Scotland, Wales and Northern Ireland under strain. A majority in both Scotland and Northern Ireland voted to remain in the EU, and the Parliaments in both Scotland and Wales have expressed a wish to stay in single market. The UK is certainly divided. Though she outlined the opportunities for the devolved administrations to feed into the Government’s position, the Prime Minister restated clearly that foreign affairs is a matter that is reserved to the UK Government, and so for it to ultimately determine.

“The novelty in the speech from a devolved perspective was an explicit acknowledgement that powers returning from Brussels will go not just to Westminster, but some will also be passed to Edinburgh, Cardiff and Belfast. The detail of what goes where still has to be worked out, as will the machinery to enable coordination of decision making, to minimise the creation of obstacles to living and trading across the UK.”

On the Prime Minister’s proposals for the UK’s future relationship with the Customs Union, Professor Iain Begg, said:

“There must be strong doubts about whether EU countries will be willing to accept her rather odd position on the customs union. She wants the UK not to be bound by the EU’s common commercial policy or the common external tariff – cornerstones of any, not just the EU, customs union – yet to have some sort of customs agreement or

associate membership. This is wishful thinking and is likely to be seen by others as exemplifying Boris Johnson's principle of having your cake and eating it."

Professor Steve Peers, writing for the EU Law Analysis blog suggested that the speech had set Britain on the [wrong course](#). According to Professor Peers:

"Overall, while the speech contained some welcome parts, it made fundamentally the wrong decision about the country's future."

Professor Peers welcomed the statement that it will continue to be in the UK's interests that the EU succeeds after Brexit and also welcomed the commitment on the future of EU citizens. On the proposal that the UK would wish to collaborate with the EU in certain areas, Peers wrote:

"The interest in continued collaboration on research, police cooperation and foreign policy is also welcome, since the UK still has joint interests with other Member States in these fields. But it is content-free: what exactly would the UK like to participate in? How does this square with her assertion that the UK will not be involved with 'bits' of the EU?"

In contrast, Professor Peers was critical of the decision to leave the Single Market and he suggested the EEA option of retaining Single Market access whilst operating out with the Customs Union would have been beneficial in facilitating increased trade with new partners outwith the EU:

"It is true that inside the EU's customs union, the UK cannot sign its own trade deals with non-EU states. But the UK could seek to remain in the single market (like Norway) but leave the customs union. Indeed, Norway and other EEA countries have a number of their own trade agreements. In effect, this would be the best of both worlds – maintaining the maximum possible access to the EU's internal market via means of full participation, while simultaneously having the freedom to sign additional trade deals with non-EU countries."

On the Prime Minister's commitment to give Parliament a vote on the final deal, Professor Peers wrote:

"She 'concedes' that parliament will vote on the final deal, but this is not much of a choice – a free trade deal or nothing – unless there is an option to negotiate a different deal (not enough time) or to stay in the EU on the basis of another referendum on the exit terms (ruled out by the government). In any event, it's not a real concession: the Constitutional Reform and Governance Act of 2010 makes a form of parliamentary control a legal requirement in principle for most treaties. She made no commitment for a full Act of Parliament to approve the final deal – even though one is required for even minor changes to EU Treaties, and even for the approval of some EU legislation.

So May seeks credit for doing something she was anyway legally required to do."

Finally, on the role of the role of the devolved administrations, Professor Peers wrote:

"The Prime Minister states that 'we will put the preservation of our precious Union at the heart of everything we do' and that she will 'strengthen our precious Union'. However, her plan necessarily rejects the detailed suggestions of the Scottish

government from December (discussed here) for the future EU/UK trade relationship. So not only is the Scottish (and Northern Irish) public's view on the desirability of Brexit overridden, but also the Scottish government's later views on how Brexit should take place are ignored. The Scottish government paper can hardly be 'considered' if it has already been overruled.

There's a pledge not to weaken existing powers of devolved bodies, but there will surely be battles ahead over which level of government should exercise powers over devolved competences returned from the EU. Conversely, there's no suggestion of any granting any additional devolved powers, which might have been appropriate to address the obviously highly divergent views of Scotland, Northern Ireland and the rest of the UK. There's another pledge to maintain the Common Travel Area between Northern Ireland and the Republic of Ireland, but this is content-free.

In short, there's nothing here to 'strengthen' the Union at all. Its 'preservation' depends solely upon the continued argument that Scotland would be worse off outside the UK's economic union – while simultaneously maintaining that the UK is better off outside the European version of the same.”