



# SCOTLAND'S PLACE IN EUROPE:

Our Assessment of the  
Revised Withdrawal  
Agreement and  
Political Declaration



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**CABINET SECRETARY FOR GOVERNMENT BUSINESS AND  
CONSTITUTIONAL RELATIONS**

**SCOTLAND'S PLACE IN EUROPE: OUR ASSESSMENT OF THE REVISED  
WITHDRAWAL AGREEMENT AND POLITICAL DECLARATION ON THE FUTURE  
RELATIONSHIP BETWEEN THE EU AND UK**

**MINISTERIAL FOREWORD**

In the EU referendum in June 2016 there was an overwhelming majority in Scotland for remain.

In December 2016, notwithstanding that clear remain vote, the Scottish Government put forward compromise proposals to keep the whole of the UK in the Single Market and Customs Union, and if that did not prove possible, for a differentiated deal for Scotland to stay in the Single Market.

Both the vote for remain and those compromise proposals have, however, been ignored by the UK Government. The deal Theresa May negotiated with the EU would have been extremely damaging for Scotland and was rejected on three occasions by the House of Commons.

The current Prime Minister has negotiated a new *Withdrawal Agreement and Political Declaration* and in this analysis the Scottish Government sets out the impact of this new deal on Scotland.

In short, the deal means Scotland will be taken out of the EU, the Single Market and Customs Union, all against our will.

The backstop “insurance policy” to maintain an invisible border on the island of Ireland has been replaced by an upfront differentiated deal that gives Northern Ireland greater access to the Single Market than the rest of the UK.

Scotland will therefore not only lose the benefits of EU, Single Market and Customs Union membership, but will also be at a competitive disadvantage in relation to Northern Ireland.

In addition the deal does not “get Brexit done” as formal talks on a future trade deal have not even started. These negotiations are likely to be protracted and difficult with ongoing uncertainty for many years. And if not completed by the end of 2020, under the terms of the Withdrawal Agreement, the UK will at that point once again face a no-deal crash out unless an extension to the transition period had already been agreed.

Critically the Prime Minister’s new deal implies a weakening of previous commitments on workers’ rights and environmental standards, along with other level playing field policies. Not only will this undermine the interests of our citizens, it will greatly weaken the future trade and economic relationship to which our EU partners are likely to agree.

And the ending of freedom of movement of people will damage Scotland’s economic prospects, making it more likely our working population will fall and making it harder to recruit the NHS and social care staff we need. And, over the longer term, intensifying the serious demographic challenges facing our country.

The Scottish Government cannot support such a damaging deal. The deal itself, and the treatment of our Parliament and Government over the past three years, demonstrates why people in Scotland must have the right to choose their own future rather than having that future imposed by a Westminster government and Parliament which has ignored Scotland’s interests for far too long.

## Summary Assessment of the Revised Deal:

- Under a basic trade agreement of the type the UK Government wants to negotiate Scottish GDP is estimated to be 6.1% lower by 2030 compared to continued EU membership.<sup>1</sup> This equates to a cost to each person in Scotland equivalent to £1,600.
- No future relationship deal has yet been agreed. Rather than being avoided, a 'No Deal' crash out may well just be postponed until, potentially, as soon as December 2020.
- The Withdrawal Agreement and Political Declaration taken together make it clear that Scotland will be removed from the European Single Market and Customs Union. One of the unique features of the Single Market and Customs Union is that in combination they eliminate both tariff and non-tariff barriers, based on harmonised regulation and shared standards, therefore enabling the complex and dispersed EU and global just in time supply chains that are an important feature of our manufacturing sector.
- In 2018 around 6,900 companies operating in Scotland exported goods to the EU and around 11,000 companies were reliant on imports from the EU.<sup>2</sup> All are likely to be adversely impacted by a decision to leave the single market and customs union through a combination of higher costs, lost competitiveness and production and distribution delays. These impacts will in turn feed through to suppliers, jobs and the wider Scottish economy.
- Scotland will not only be removed from the European Single Market and EU Customs Union, it will be placed at a competitive disadvantage in relation to Northern Ireland.
- The deal undermines the UK Government's claim that EU fishing access to Scottish waters will be a matter for annual negotiation and that there will be no link between access to UK waters and access to EU markets. Access is explicitly connected to the wider economic relationship.
- This will not only directly damage our economic prospects, not least across rural Scotland, it could have serious adverse consequences for the viability of some of our remoter communities.
- There are significant risks for Scotland's services sector, given the increasing importance of the EU as an export destination for services, worth £5 billion to Scotland in 2017. Services make up 75% of the Scottish economy.
- Commitments have been weakened across a range of standards and rights derived from EU membership – for example in environmental protection and the rights of working people. The deal paves the way for a deregulation agenda by the UK Government.
- The deal ends freedom of movement of people. In a scenario of 50% less EU migration, the working age population will decline by almost 2% rather than the current projection of remaining flat. The proportion of children would decline by 12.8%.

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<sup>1</sup> Technical Annex, [Scotland's Place in Europe: People, Jobs and Investment](#)

<sup>2</sup> [HMRC Regional Trade Statistics 2018](#)

## 1. Introduction

1. The UK Government has reached an agreement with the EU on a revised withdrawal agreement and political declaration outlining the future relationship. That agreement consists of the **Withdrawal Agreement**, an international treaty between the UK and the EU which sets out the terms of the UK's departure, and the **Political Declaration** on the future relationship. The only substantial changes to the Withdrawal Agreement are in the context of the special arrangements for Northern Ireland contained in a protocol to that treaty. The political declaration has been revised to lower even further the UK Government's ambitions for the future relationship with the EU.
2. It remains far from certain that this deal will survive scrutiny in the House of Commons. The House of Commons refused to take a view on the agreement on Saturday 19 October, instead in order to seek to avoid a no deal exit on the 31 October by accident or design Parliamentarians voted for an amended motion which withheld consent unless and until implementing legislation is passed by the UK Parliament. The effect of this decision was to trigger the terms of the EU (Withdrawal) (No.2) Act – the 'Benn Act' – compelling the Prime Minister to request an extension to the 31 January 2020. However, subsequent to this the UK Government brought forward the EU (Withdrawal Agreement) Bill, - the legislation needed to implement the deal – although the Prime Minister's proposed accelerated timetable was rejected, the draft legislation was voted through its second reading on the 22 October 2019, paving the way for the detail to be considered.
3. On Monday 28 October 2019 the 27 EU Member States confirmed their intention to grant the UK an extension to the Article 50 period to the 31 January 2020, unless the Withdrawal Agreement is ratified and in that case can enter into force on the first day of the month following ratification. The Prime Minister wrote to the President of the European Council to accept that extension. Ratification of the deal in the UK would first require the passage of the EU (Withdrawal Agreement) Bill in the UK Parliament – in a manner which does not require any amendments to the negotiated agreement - and in addition the consent of the European Parliament.

4. The Scottish Government continues to support another public vote including the option to remain. On the 23 October 2019, the First Minister of Scotland held a joint press conference with the First Minister of Wales in which she set out the preferred next steps: *“I am clear - for reasons that will be obvious when I turn to the impact of the deal in Scotland - that the extension now secured should not just be long enough to scrutinise a bad bill for a week or two longer. It should in my view be long enough to allow a General Election or a referendum – or perhaps more realistically, the former leading to the latter.”*<sup>3</sup>
  
5. Amidst the widespread discussion of process and parliamentary activity, there has been little focus on the substance of the implications of the agreement reached by the UK Government. The overall impact has changed little between this ‘deal’ and the one secured by the previous Prime Minister, but the changes that have been made confirm that the UK Government is seeking a much more distant, or looser, relationship with the EU than one which would be consistent with a “soft” Brexit, for example if the UK was to remain in the Single Market and Customs Union. Those changes reinforce and lay bare that Scotland, and the UK, are being faced with a hard Brexit deal that will hit jobs and living standards. It will take us out of the European Single Market – a market that is eight times the size of the UK alone. It is a deal which will see companies in Scotland facing increased impediments (or frictions) to trade with their EU counterparts. It will make it harder to attract the workers that our country needs to support growth, support the NHS and social care sector, and to fill skill gaps in our economy.
  
6. Under a basic trade agreement of the type Boris Johnson wants to negotiate Scottish GDP is estimated to be 6.1% lower by 2030 compared to continued EU membership.<sup>4</sup> This equates to a cost to each person in Scotland equivalent to £1,600. Furthermore, it does not end the possibility of an even more damaging No Deal exit at a later date through a failure to reach agreement on the terms of the future relationship. No future relationship deal has yet been agreed and

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<sup>3</sup> <https://news.gov.scot/speeches-and-briefings/fm-press-conference-with-welsh-fm-london>

<sup>4</sup> By 2030, modelled as Free Trade Agreement. See the Technical Annex in Scotland’s Place in Europe: People, Jobs and Investment for the assumptions made on exports, productivity and Foreign Direct Investment <https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/>.

even if the Withdrawal Agreement were passed, if those talks on the future break down we will effectively face crashing out all over again – possibly as soon as December 2020 at the end of the agreed Transition Period. Far from ‘Getting Brexit Done’, this deal and the UK Government’s approach to the future relationship is only a pathway to years of negotiation, debate and uncertainty with significant negative economic and social implications for Scotland.

7. Recent EU trade agreements with third countries have taken many years to negotiate. The often used example of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) took seven years to negotiate and has so far only been applied provisionally and in part as it is still pending full ratification by some EU member states. The negotiations for the Japan-EU FTA began in 2013 and came into force on 1 February 2019. The EU process for negotiating a trade agreement is complex, and entry into force depends on the type of agreement reached and the extent to which it touches on Member State competences beyond areas of exclusive responsibility<sup>5</sup> of the EU as a whole. A complex agreement of the type originally envisaged by the UK and the EU would not only require the consent of the European Parliament and approval by the European Council but also require ratification in EU member state parliaments. It is highly unlikely such a complex agreement could be reached before the end of 2020 therefore raising the very real prospect of a no-deal Brexit occurring at that point.
  
8. In November 2018 the Scottish Government published *Scotland's Place in Europe: assessment of UK Government's proposed future relationship with the EU*<sup>6</sup> setting out an analysis of the then proposed Withdrawal Agreement and Political Declaration. This new document considers the revised agreement with the EU and updates that analysis. The Scottish Government’s assessment of the former Prime Minister’s deal was that it would have an equivalent impact to a standard Free Trade Agreement (FTA) on the Scottish economy. The revised agreement reached by the Prime Minister simply removes any pretence that the future negotiations will

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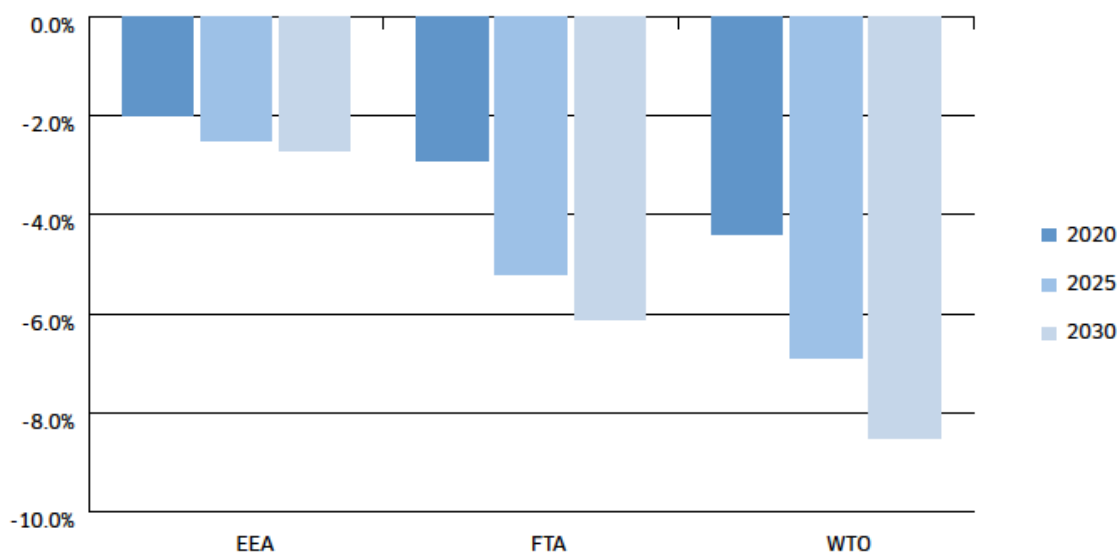
<sup>5</sup> ‘The Negotiating Process’ EU Fact Sheet :

[https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156063.pdf](https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156063.pdf)

<sup>6</sup> <https://www.gov.scot/publications/scotlands-place-europe-assessment-uk-governments-proposed-future-relationship-eu/>

seek a close relationship, therefore our existing assessment of economic impact is largely unchanged and instead reinforced by the growing weight of evidence that Brexit has already damaged the UK's economy.

**Chart 1: Change in Scottish GDP (%) by 2030 - Relative to a baseline of a Full EU Membership<sup>7</sup>**



9. The Fraser of Allander Institute's (FAI) latest economic commentary report<sup>8</sup> published on 23 October 2019 makes clear that Brexit uncertainty has already had a damaging impact on economic growth in Scotland. They estimate that the Scottish economy is around 2%, or £3 billion, smaller than it otherwise would have been in the absence of a vote to leave the EU. FAI state that the nature of the 'deal', and in particular the intention to move to one of the 'hardest' forms of Brexit means that the long-term challenges for the Scottish and UK economies will be considerable.

## 2. Revised Withdrawal Agreement

10. The substantive changes to the Withdrawal Agreement exclusively relate to the renegotiated Protocol on Northern Ireland. However, these changes will have a substantial impact on the rest of the UK, including Scotland. The provision elsewhere for a general Transition Period remains, this would be based on a *largely*

<sup>7</sup> Source: Scottish Government Global Econometric Model (SGGEM)

<sup>8</sup> <https://www.strath.ac.uk/business/economics/fraserofallanderinstitute/publications/commentary/>



status quo transition during which the UK remains subject to EU law, trade with the EU – and trade under the terms of EU-Third Country FTAs if those third countries agree - continues on the same basis as at present, as does wider cooperation and collaboration within a range of EU programmes. The UK will, however, cease to have a right to institutional representation during this period, except in limited circumstances with EU agreement. This means that UK Members of the European Parliament will no longer sit in the European Parliament, and the UK Government will no longer have a seat or vote in Council and European Council meetings.

11. The revised Withdrawal Agreement maintains a commitment to both parties negotiating in good faith<sup>9</sup> to put in place a future relationship based on the Political Declaration of 17 October 2019 by the end of the transition period. This was previously acknowledged by the UK Government as an obligation as to the conduct of the parties, rather than an obligation to achieve a particular result. However, the current draft of the UK Government's EU (Withdrawal Agreement) Bill section 31, seeks to limit future negotiations to the scope identified in the Political Declaration by requiring a statement of objectives for the future relationship with the EU to be made to the UK Parliament alongside placing a specific obligation on Ministers that any statement of objectives must be consistent with the Political Declaration. This appears to be intended to commit any future Government to a future relationship based on the current UK Government's red lines on ending freedom of movement, and ceasing single market and customs union membership.

### ***Northern Ireland Protocol***

12. The previous agreement contained a "backstop" as a set of provisions which would come into effect if needed in the event that the future relationship was not agreed failed to adequately ensure an open border on the Island of Ireland consistent with the Good Friday Agreement. The revised protocol does not make any changes to the operation of the Common Travel Area. The new arrangements will, to all intents and purposes, apply irrespective of the future relationship. Furthermore the revised Protocol no longer makes provision to create a single customs territory

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<sup>9</sup> Article 184 of the Withdrawal Agreement

encompassing the whole of the UK. Instead while Northern Ireland is to remain legally part of the UK's customs territory, a set of provisions on the transit of goods between Great Britain, Northern Ireland and the EU (Republic of Ireland) will apply.

13. For goods moving from Northern Ireland to the Republic, the EU's Union Customs Code (customs rules) apply as if Northern Ireland is in the EU: i.e. there will be no tariffs or restrictions, limiting the need for customs checks or controls. For goods moving directly from Great Britain to Northern Ireland, some customs checks will apply, but will not be subject to the EU tariff unless the good is deemed to be "at risk" of being moved into the EU afterwards. The text creates a presumption that goods are deemed "at risk" unless it is established that they meet certain (as yet undefined) criteria through an (as yet undetermined) process. The Joint Committee between the UK and the EU, established to oversee the Withdrawal Agreement, will determine which goods should be considered "at risk" by the end of the transition period, and how those provisions will be implemented.
14. There is no significant change in this for Northern Ireland compared to the previous proposed agreement in respect of interaction with the EU, however they are now in an even more distinctively different position compared to the rest of the UK. Northern Ireland will abide by the rules of the European Single Market, in areas such as technical regulation of goods.
15. Although some checks already exist between Scotland and Northern Ireland, e.g. on animal exports to protect animal health between the islands of Britain and Ireland, there will be further checks for goods like agri-food. The removal of a commitment by the UK as a whole to align with EU standards – other than in Northern Ireland - could have significant consequences for ongoing trade with the EU, particularly if the UK Government weakens the standards set by the EU, for example on animal and plant health, and food safety, or weakens such standards either for ideological reasons or when negotiating trade deals.
16. In this respect, the House of Commons Library make this point when comparing the new deal with that negotiated by Theresa May: *"The most significant over-arching*

*difference between the October 2019 proposals and those set out in the November 2018 WA is that the previous 'backstop' maintained a much more complete and encompassing set of relations on goods between the EU and the UK (although it also would have raised barriers for economic relations as it did not cover trade in services, movement of people/workers, movement of capital, transport services etc). However, that potential relationship also came with much more alignment with EU law and standards, and therefore potentially restricted the UK's ability to diverge from such standards and pursue an independent trade policy should it wish to."*<sup>10</sup>

17. More detail on the issue of alignment – the Level Playing Field – is discussed later in this document.

### ***Implications for Scotland's relative competitive position***

18. **Northern Ireland businesses will have easier access to the European Single Market and the UK Government has guaranteed that Northern Ireland businesses and farmers will continue to have “unfettered access” to the rest of the UK market:** The Scottish Government fully and unconditionally supports the Good Friday Agreement and the maintenance of an invisible border on the island of Ireland. However, in principle, as with the previous backstop, this proposal provides Northern Ireland with the opportunity for a competitive advantage over Scotland. It removes the need for product standard and safety checks on goods at the border between Ireland and Northern Ireland because both will be part of an "all-island regulatory zone", while Scottish businesses face greater “friction” at the border with the EU – and at the border with Northern Ireland. The requirements for third countries to comply with regulations of the European Single Market are substantial, and represent a real cost to business.
19. The Prime Minister told the House of Commons that this was a “good arrangement” for Northern Ireland<sup>11</sup>, “*eliminating any need for associated checks at the border*”, whilst also ensuring “*unfettered access for goods moving from Northern Ireland to*

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<sup>10</sup> Briefing Paper: The October 2019 EU-UK Withdrawal Agreement, House of Commons Library (17 October 2019): <https://researchbriefings.files.parliament.uk/documents/CBP-8713/CBP-8713.pdf>

<sup>11</sup> House of commons Hansard [Prime Minister's statement](#) 19 October 2019; column 572

*the rest of the United Kingdom's internal market". The Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove MP agreed that Northern Irish businesses will have easier access to the European Single Market than businesses in the rest of the UK<sup>12</sup>. The Secretary of State for Foreign and Commonwealth Affairs, the Rt Hon Dominic Raab MP, described the deal as a "win for Northern Ireland business"<sup>13</sup> and also a "cracking" one for Northern Ireland businesses:<sup>14</sup> *"overall, what Northern Ireland businesses get is remaining part of the UK customs territory, no infrastructure at the border with the Republic and frictionless access to the single market. It is a cracking deal for Northern Ireland businesses."**

20. Overall the broad consensus of economic analysis is, that the less that the UK, and Scottish, economies are 'aligned' with the EU the greater the economic damage, and this analysis is confirmed by the Scottish Government's own economic modelling as set out in its Scotland's Place in Europe publications.<sup>15</sup>
21. There is significant uncertainty as to how the economic impact may play out, but some scenarios might include<sup>16</sup> Scottish business losing market share compared with direct competitors with a Northern Ireland base. In addition there is a risk that the corporate structures, investments and wider supply chains that underpin Scotland's existing international trade may be re-organised to take advantage of Northern Ireland's preferential access to the single market, and to mitigate the risks associated with UK regulations diverging from the EU.

### **3. Revised Political Declaration on the Future Relationship**

22. The revised Political Declaration has been altered to provide for a looser relationship between the UK and the EU following the end of the transition period. With the Backstop arrangements no longer applying to Great Britain as well as

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<sup>12</sup> Scottish Parliament, [Finance and Constitution committee](#) 21 October 2019, Evidence on Brexit

<sup>13</sup> [Andrew Marr show](#), interview 20<sup>th</sup> October 2019

<sup>14</sup> Speaking on the Today Programme, [reported in the Guardian](#) 18 October 2019

<sup>15</sup> [Scotland's Place in Europe: People, Jobs and Investment](#). January 2018

<sup>16</sup> [UK Government Explainer](#) for the New Ireland/Northern Ireland Protocol and Political Declaration on the future Relationship 18 October 2019 (para 17)

Northern Ireland via a UK-EU customs arrangement, there is now a significant risk that Great Britain will have far less favourable terms of trade with the EU compared to Northern Ireland following the end of the transition period.

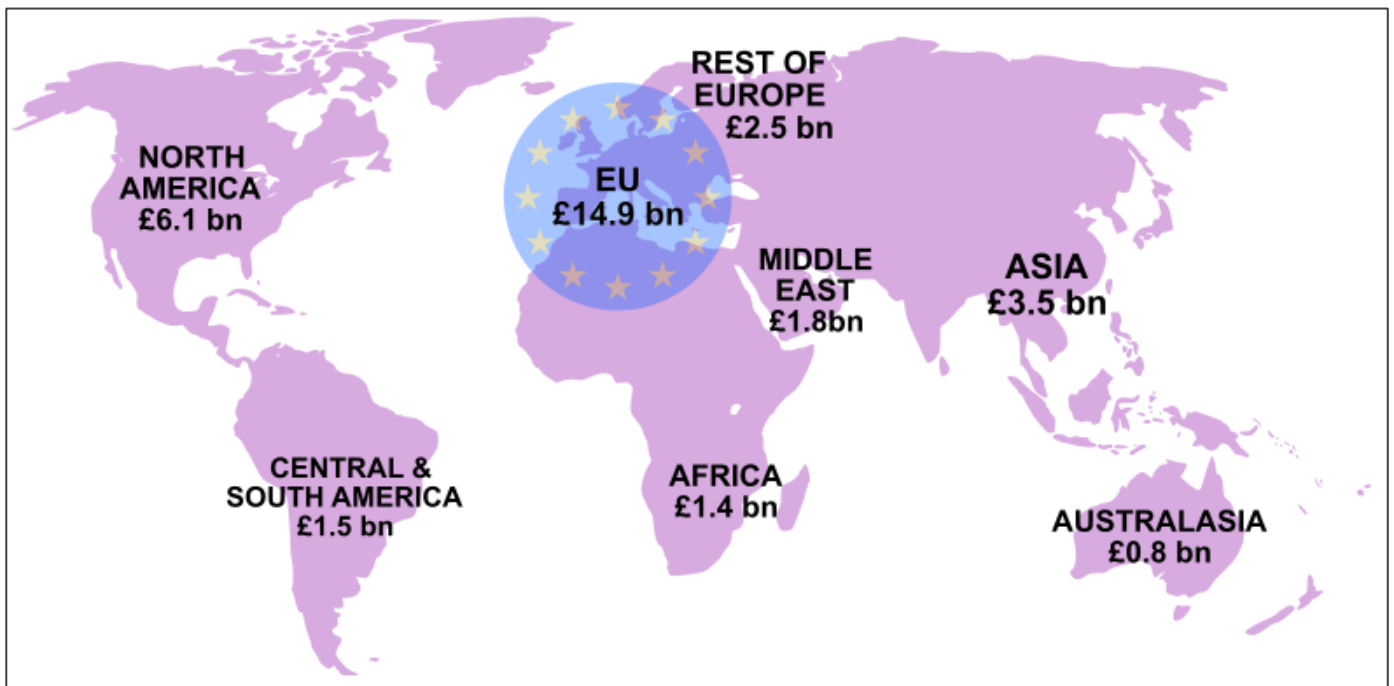
### ***Impact on the economy***

23. At the core of the change, is the current UK Government desire to build the future relationship around a free trade agreement. Language in the political declaration has therefore shifted from “as close as possible” to an “ambitious” relationship and references to the single customs territory have been replaced with references to cooperation on VAT. While this political declaration is more explicitly a standard FTA style approach compared to the previous declaration, which sought to suggest ways in which negotiations could seek a closer relationship, the Scottish Government assessment was that in reality Theresa May’s proposal would have resulted in similar overall impacts on the economy as an FTA when compared with EU membership. The new deal now explicitly confirms that is the goal of the UK Government.
24. Alongside tariffs in any new FTA (acknowledging that the overall trend in modern FTAs is to eliminate the majority of these) one of the key issues for future trade arrangements is non-tariff barriers. These include divergent regulations, and requirements for businesses to demonstrate compliance with standards in the export market. These can be highly significant in particular for small businesses, in so far as they create significant additional administrative burden and cost. It is more often these barriers which cause the limiting friction in trade. One of the unique features of the European Single Market and Customs Union is that in combination they eliminate all such frictions based on harmonised regulation and shared standards, therefore enabling the complex and dispersed just in time supply chains that are an important feature of our economy.
25. The revised Political Declaration text appears to envisage the possibility of reduced levels of UK-EU regulatory alignment, compared to the previous text which suggested at least some areas of alignment via a Common Rule Book. For

example, the removal of a UK commitment to consider aligning with EU rules on Technical Barriers to Trade and Sanitary and Phytosanitary (SPS) matters, in preference now for close alignment *in so far as that is designed to achieve a level playing field for businesses*, expands the potential for EU and UK regulatory approaches to diverge over time.

26. By 2030, our previous modelling indicates<sup>17</sup> that, under an FTA, GDP would be around £9 billion lower than if we stayed in the EU, that is equivalent to £1,600 per person in Scotland than if we remained in the EU. The EU is the largest single market for Scotland’s international exports, with exports worth £14.9 billion in 2017, supporting directly and indirectly hundreds of thousands of jobs across Scotland. Further to which, in 2017, Scotland exported around £3.6 billion to countries with which the EU has an FTA. This trade accounted for a further 13% of Scotland’s international exports.

**Figure 1. Destination of Scottish International Exports 2017 (£ Billions)<sup>18</sup>**



<sup>17</sup> See the Technical Annex in Scotland’s Place in Europe: People, Jobs and Investment <https://www.gov.scot/publications/scotlands-place-europe-people-jobs-investment/>.

<sup>18</sup> Export Statistics Scotland 2017 ( <https://www2.gov.scot/Resource/0054/00545619.pdf>).

### ***Impact on key business sectors***

27. In 2018 around 6,900 companies operating in Scotland exported goods to the EU and around 11,000 companies were reliant on imports from the EU.<sup>19</sup> All will be potentially impacted by a decision to leave the Single Market and Customs Union through higher costs, a loss of competitiveness or production delays. These impacts will in turn feed through to suppliers, jobs and the wider Scottish economy.
28. Overall, the Political Declaration still falls far short of the Scottish Government position, moving further away from frictionless trade and instead suggesting greater focus on regulatory autonomy. The revised Political Declaration makes a strong statement about regulatory autonomy and sovereignty, stating that both parties “*will retain their autonomy and ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives*”. The text on regulatory aspects rolls back from ‘ensuring’ to ‘promoting’ compatible regulatory approaches, where possible. The old Political Declaration included a commitment by the UK to “*consider aligning with EU rules in relevant areas*”, however this text has been removed in the new Political Declaration. All of this indicates a far more distant economic relationship, which will significantly damage Scotland’s trade with the EU.
29. There are a number of avenues by which Brexit is anticipated to impact **Scotland’s vital food and drink sector**. These can be both direct (e.g. increased costs to trade and £ depreciation) and indirect (e.g. supply chain and delayed transportation). One of the key drivers for growth in the food and drink industry has been trade. In 2018 overseas exports of food from Scotland were valued at around £1.6 billion, of which £1.1 billion (around 2/3rd) went to countries within the European Union. Likewise, the EU represents the largest single regional export market for Scotch whisky, valued at around £1.4 billion in 2018 – equivalent to around 30% of total scotch exports. Food and drink processing employed around

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<sup>19</sup> HMRC Regional Trade Statistics <https://www.gov.uk/government/statistical-data-sets/regional-trade-statistics-interactive-analysis-second-quarter-2018>

44,200 people in 2017 and contributed £3.6 billion in gross value added (GVA) to the Scottish economy.

30. **Seafood accounts for 57% of Scotland's overall food exports and has a value of £916 million.** Whereas seafood exports from England only account for 6% of their overall food exports (valued at £567 million) – as such, **seafood exports as a proportion of food exports is also almost 10 times higher in Scotland than England.** Any disruption to the flow of seafood products is therefore going to have a much greater impact on our economy and food industry.
31. Like the previous Political Declaration there is a commitment to agreeing a new fisheries agreement between the UK and the EU, including provisions on access to waters and quota shares, by the end of the transition period. This is explicitly connected to the wider economic relationship, suggesting a link between such an agreement and market access. This remains therefore a key risk to Scottish interests, and undermines the UK Government's claim that such arrangements would be a matter for annual negotiation once the UK is an independent coastal state, and that there will be no link between access to UK waters and access to EU markets.
32. Marine Scotland seafood trade modelling published in 2018<sup>20</sup> included a scenario in which the UK enjoyed free trade agreements with the whole world, which while highly implausible, highlighted that the UK and Scotland were more or less already maximising trade opportunities in relation to seafood – in other words membership of the EU is not preventing the UK from accessing major markets such as the USA or China because tariffs on seafood products we export are generally low.
33. With regards to **trade in services and digital trade** in the Political Declaration there is no change to the text of these provisions compared to the previous agreement. However the overall approach has been revised to be based on only a "Free Trade Agreement", with weaker language on the closeness of the relationship. The same shortfalls with regards to trade in services in the previous

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<sup>20</sup> [Assessing the impact of alternative fish trade agreements post-Brexit: research](#) (June 2018)



agreement still apply. In addition, considering that barriers to trade in services typically arise from domestic regulation in other countries - and the experience of free trade agreements is that they only reduce some of these barriers rather than eliminate them – reference to a free trade agreement as the basis of the relationship limits the scope for trade in services. For example, rights of establishment, regulatory compliance, mobility and mutual recognition of professional qualifications are barriers only partially addressed in recent FTAs, even those considered until now ‘best in class’.

34. **There are significant risks for Scotland to this approach for trade in services, considering the importance of the EU as an export destination for services, worth £5 billion to Scotland in 2017 and that services make up 75% of the Scottish economy.**

35. The majority of services trade by Member States is carried out within the Single Market, which presents additional risks for Scottish service suppliers. No free trade agreement in the world provides the degree of freedom of movement in services that is lost by leaving the single market and it is difficult to see how such a loss could be made up.

36. While the Political Declaration speaks of **facilitating eCommerce** without “unjustified barriers”, there remains an absence of detail about how this could be achieved, with the UK operating outside of the digital single market. It remains unclear to what extent there would be divergence from the EU, for example, in relation to eCommerce, the Country of Origin principle and on geo-blocking. As the digital economy expands, the Scottish Government’s priority is to ensure greater access for Scottish businesses and consumers to European markets. In 2017, Scottish exports of Technology, Digital and Media services represented 9.6% of our total exports to the EU, resulting in over £1.4 billion of trade. As Scotland’s total international export of Technology, Digital and Media services was £3.3 billion, the EU represented over 42% of our total trade for the sector. It is vitally important that our high-exporting tech sector has continued Single Market access, regulatory certainty and access to high-skilled digital talent from EU countries. Scotland must

continue to be an attractive destination for locating, growing and investing in tech companies.

### ***Level Playing Field***

37. The new Political Declaration maintains the question of the so called ‘grand bargain’ still very much at the centre of the future relationship in relation to the Level Playing Field: “*The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties.*” However, the fact that the text now talks about an FTA suggests that the level of economic integration envisaged would be lower than before, and therefore will entail a commensurately lower requirement on the Level Playing Field (LPF) front by reference to international principles and rules rather than an aspiration to dynamic alignment between the EU and UK.
38. There is a risk that there are divergent interpretations of the Political Declaration on this front between the UK and the EU, the UK Government consider that they are seeking an FTA and therefore FTA-style commitments to non-regression in level playing field areas, in essence aspects of those policy areas that bear a strong causal link to competitiveness in trade and investment. The EU however considers the UK is a large economy, in close geographical proximity to the EU and may require therefore more robust than standard LPF commitments for the same level of trade offer that a more distant third country might be offered.
39. This reinforces the point that talks to secure a future trade relationship are likely to be difficult with a high possibility of either a breakdown (and therefore a “No Deal” outcome at the end of 2020) or an extension to the transition period. As a third country the UK will be in a weaker negotiating position than it is now as a member of the EU. This further emphasises that there is no sense that approving the Withdrawal Agreement means “getting Brexit done”.
40. The Political Declaration commits both parties to maintaining the existing standards as the basis for future negotiations. The range of LPF measures remains the same

“state aid, competition, social and employment standards, environment, climate change, and relevant tax matters.” However, those LPF commitments are explicitly linked to distortion of competition, as would be expected in an FTA, and the bar for negotiations is set high. We should expect a lot of emphasis to be placed on the mechanisms by which each party implements and enforces its commitments.

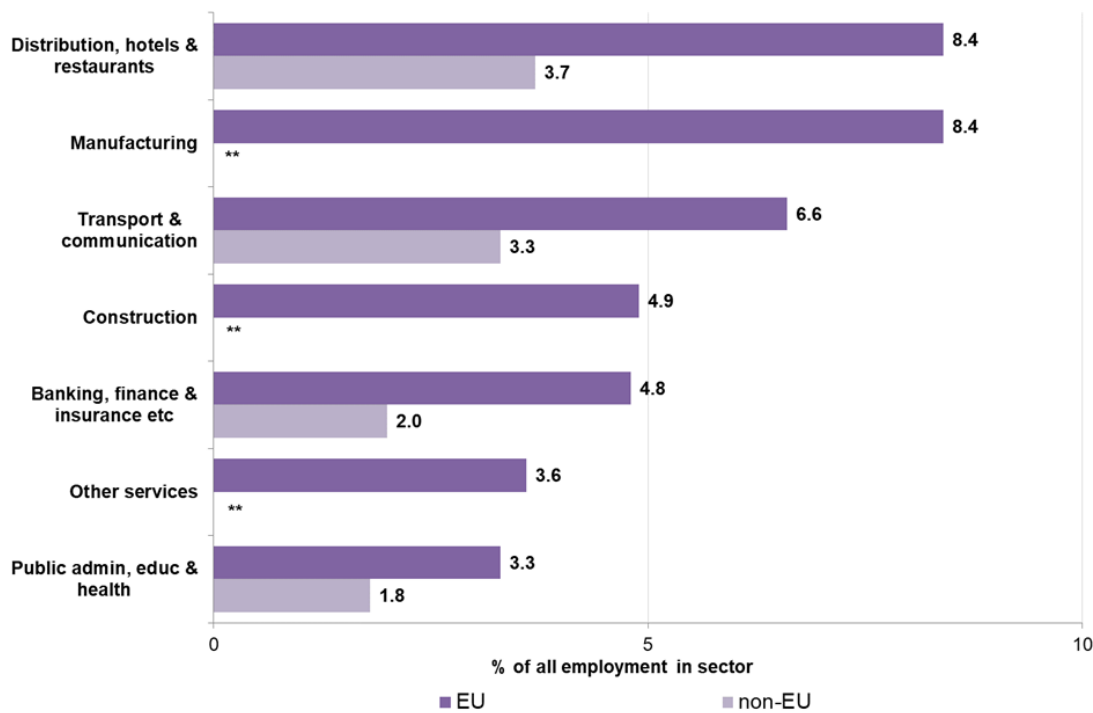
41. Removing the binding commitments on **environmental protection** from the Protocol on Northern Ireland in the Withdrawal Agreement, and now restricting them to the non-binding Political Declaration only, potentially opens the door to UK Government divergence from EU standards, as well divergence from Northern Ireland, who will be bound to continue to dynamically align with certain areas of EU environmental regulation under the protocol arrangements. The Political Declaration also remains disappointingly weak in relation to **Human Rights**, and in particular fails to pay sufficiently explicit regard to the importance of continuing UK compliance with, as opposed to respect for, the European Convention on Human Rights (ECHR). ECHR rights are central to the EU legal order and directly inform the Charter of Fundamental Rights, which provides valuable concrete enforcement mechanisms. As such they are essential features of any future “level playing field”, including in relation to international trade deals. Compliance will be a necessary pre-requisite for future co-operation.
42. It also remains unsatisfactory that there is no explicit reference to human rights in the general introductory commitment “*to safeguard the rules-based international order, the rule of law and promotion of democracy, and high standards of free and fair trade and workers' rights, consumer and environmental protection*”. While human rights is acknowledged as a shared value, normal practice would be to include human rights alongside democracy and the rule of law as primary values which inform both domestic systems and international relations. The omission must therefore be regarded as significant.
43. In sum, set against the Prime Minister’s comments about ‘taking back control’ and recent statements by UK Government Ministers that they wish to seek areas to reduce ‘red tape’, there is a concern that this statement of intent for the future

relationship points towards the UK Government seeking a weakening of the international obligations on the UK as an objective standard. Instead it paves the way for a deregulation agenda by the UK Government, although the Scottish Government can – and has committed to - unilaterally maintain and where possible exceed such standards within areas of devolved competence.

### ***Population Impacts***

44. The section on ‘mobility’ is identical in wording to the same section of the November 2018 Political Declaration, including the reference to the UK Government choosing to end free movement. The Scottish Government’s previous assessment was that when compared to mobility provisions in existing free trade agreements, what the UK Government and EU have agreed to consider does go beyond any previous FTA with a third country, outside the European Economic Area and European Free Trade Area. However, it is still far short of what we gain from free movement in the single market, even in terms of the concept of short-term mobility. That remains the case.
  
45. Inward migration has made an overwhelmingly positive contribution to Scotland’s economy and society, but this deal does not take account of Scotland’s distinct needs on migration. In a scenario of 50% less EU migration, the working age population would decline by 1.9% rather than the current projection of declining by 0.2% and the proportion of children would decline by 12.8% in the next twenty-five years.

**Chart 2 - Non-UK nationals as a percentage of all sector employment in Scotland, 2018<sup>21</sup>**



46. Among other sectors which are highly reliant on EU migrant workers, as we have previously highlighted the Care Sector is very reliant on EU citizens<sup>22</sup>. In 2018 the UK Migration Advisory Committee concluded that EEA migrants contribute more to the health service and the provision of social care in financial resources and through work than they consume in services. They accepted that the care sector would face even more serious problems if EEA migration was restricted. Yet this is precisely the scenario that this sector faces. In seeking to revise the Political Declaration, the current UK Government has done nothing to revise that approach and take account of Scotland’s needs.

47. The latest 2018-based National Population Projections were published in October 2019 and project how the population of Scotland may change in the next twenty-five years, based on past trends. Free movement has enabled people from across the EU to live, work and study in different countries. Scotland has benefitted

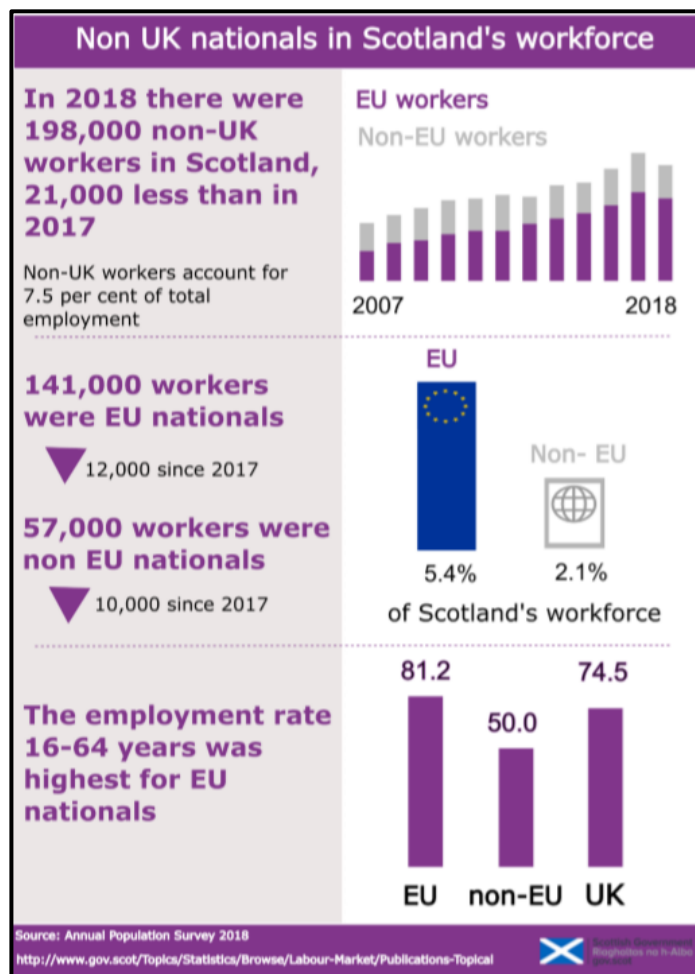
<sup>21</sup> Annual Population Survey, <https://www2.gov.scot/Resource/0054/00547444.pdf>

<sup>22</sup> EU workers in Scotland's social care workforce: contribution assessment: <https://www.gov.scot/publications/contribution-non-uk-eu-workers-social-care-workforce-scotland/pages/1/>

economically and culturally from the people who have chosen to make their home here and to make a positive contribution.

48. The UK population is projected to grow faster than Scotland's in the principal projection and in both of the additional EU migration variants. In the scenario of 50% less EU migration, the UK population would grow by 7.7% over the next 25 years, compared to 1.0% for Scotland. The Scottish Fiscal Commission uses the 50% less EU migration variant projection in their economic and fiscal forecasts. The Commission has warned of the specific risk to Scotland of reduced migration on the size of the tax-paying working age population repeatedly in their forecasts, stating:

*“The size of the population aged 16 to 64, which makes up most of the working age population, is very important for the economy and the public finances. These individuals are more likely to be working and will be generating the highest tax receipts, for example, in income tax.”*



## ***Other Impacts***

49. The majority of the revised Political Declaration is unchanged, and therefore our assessment produced in November 2018 continues to apply<sup>23</sup>. This includes the relationship with the EU on **security, justice and policing**, where the Scottish Government is concerned at the likely gap and loss of operational capability which will emerge as a result of UK Government red lines, and the fact that leaving behind membership of the EU necessarily involves a different relationship with the EU's tools and agencies.
50. As we have said previously, we acknowledge that this is an area where the UK Government and the EU have a shared interest in as close a relationship as possible. However, it is also clear that the future relationship in the area of policing, security and justice cooperation will reflect the extent of commitments to EU rules, and the degree of oversight of the Court of Justice of the EU (CJEU), which the UK is prepared to make.
51. The revised Political Declaration reinforces our concern at the likelihood of loss of access to a wide range of security, law enforcement and criminal justice tools and databases such as the Schengen Information System (SIS II) the live alert system for missing or wanted people (which includes those subject to a European Arrest Warrant), and the European Criminal Records Information System (ECRIS), used daily by Police Scotland for the reciprocal sharing of information with EU member states.
52. Neither of these are referenced in the revised text despite our concerns having been raised regarding their omission in the first Political Declaration. Scottish operational partners benefit from direct links to their EU partners in Europol and Eurojust, both of which have been vital for the rapid exchange of information to fight cross border crime. The UK Government's red lines remain significant obstacles to maintaining the access and capability afforded by EU membership. There continues to be no mention in the political declaration of the importance of recognising the

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<sup>23</sup> [Scotland's Place in Europe: our assessment of the UK Government's proposed future relationship with the EU.](#) November 2018

Scottish specific considerations including Scotland's separate criminal justice system as well as the role and functions of the Lord Advocate.

53. Furthermore that assessment in 2018 also highlighted that the political declaration provides little comfort that the **opportunities and benefits afforded by participation in EU competitive funding and collaboration programmes** will be maintained at current levels as part of the future relationship. Scotland has a strong track record in attracting over 11% of all EU funding won competitively by UK organisations through the current funding programme for research, science and innovation - Horizon 2020.
54. Scotland also regularly secures around 12% of the UK total of Erasmus+ funding, a programme supporting over 4 million Europeans to study, train, gain experience and volunteer abroad, while both sending and receiving proportionally more students through the scheme than any other country in the UK. While the Political Declaration still indicates that these programmes, and their successors, are to be open to the UK to continue to participate, there are no guarantees of the UK's terms of access. Decision making could rest solely in the hands of the UK Government, based on their willingness at future stages to pay into the funds on yet to be agreed terms.

#### **4. Conclusions and Next Steps**

55. It continues to be the case that under the revised deal negotiated by the UK Government Scotland would be taken out of the European Union, the most successful and developed international partnership in the world, in direct contradiction to Scotland's democratic will. The UK Government have failed to force the House of Commons into a choice, which we consider to be false, between this deal or a no deal exit on the 31 October 2019. Our assessment of the revised deal, underlines the negative impact for Scotland of EU exit for Scotland. It remains our responsibility as a Government to be clear that this is not good enough for Scotland. Neither a bad deal nor no deal are acceptable and the Scottish Government



continues to believe that the choice should be put to the people in a public vote with the option to remain.

56. The entire Brexit process has demonstrated the best outcome for Scotland is to be an independent full member of the European Union rather than be subject to decisions made by the UK Government which are clearly not in Scotland's interests, or in line with the views of the majority of people in Scotland. The Scottish Government is therefore committed to holding a new independence referendum, so that the people of Scotland have the opportunity to determine their own future.

## ANNEX: COMPARISON OF EU MEMBERSHIP VERSUS PRIME MINISTER'S DEAL

	EU membership	Prime Minister Johnson's Proposed Brexit deal
<p><b>Scotland better or worse off?</b> (£) - in 2016 cash prices</p>	<p>Growth remains on track (baseline - no change)</p>	<p>Scotland's GDP would be around <b>6.1% (£9 billion) lower</b> than if we stayed in the EU, equivalent to <b>£1,600 per person</b> in Scotland than if we remained in the EU. (by 2030, modelled as <i>Free Trade Agreement</i>)</p>
<p><b>Imports and exports</b> Last year more than <b>6,800</b> Scottish companies exported goods to the EU &amp; more than <b>11,000</b> relied on imports from the EU</p>	<p>Full access to EU market</p>	<p><b>More border checks</b> and regulatory requirements for goods will be inevitable outside single market and customs union, and service exports will be substantially restricted</p>
<p><b>Services</b>, which account for three quarters of Scotland's economy</p>	<p>Full access to EU market</p>	<p><b>Limitations to service suppliers' ability to operate</b> cross border, meaning export of services will be severely hindered</p>
<p><b>People</b> Without EU migration, Scotland's working age population is projected to <b>decline by 3.7% to 2043</b></p>	<p>Free movement of people, to contribute to meeting Scotland's need for workers for example in research, health, care, and remote rural areas</p>	<p>Will include an <b>end to free movement</b>, with severe implications for key economic, health and care sectors, plus long term effects on Scotland's population growth and age profile</p>
<p><b>Social and Environmental Standards</b> EU standards play a crucial role in delivering Scotland's environmental and climate change ambitions</p>	<p>High standards and protections, for example for the environment, food safety, animal welfare, health and safety, equality and working conditions. At least 20% of expenditure in the European budget is climate-related with a planned increase to 25% in the new budget for 2021 – 2027</p>	<p><b>No</b> legally binding international <b>commitment</b> that the UK will maintain <b>the same high standards in future</b></p>
<p><b>Innovation &amp; Collaboration</b> Almost <b>€650 million</b> of Horizon 2020 funding has been secured by Scottish organisations since 2014; and <b>over 2,000</b> Scottish Higher Education students take part in Erasmus+ each year.</p>	<p>Scotland to continue to benefit from EU funding programmes and initiatives such as Horizon 2020 and Erasmus+</p>	<p><b>Little guarantee that these opportunities and benefits will be maintained</b> fully as part of the future relationship post-Brexit. There are differing levels of potential access under this deal, however it will be impossible to fully replicate the level of access we currently have</p>



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ISBN: 978-1-83960-313-6

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Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS656602 (10/19)