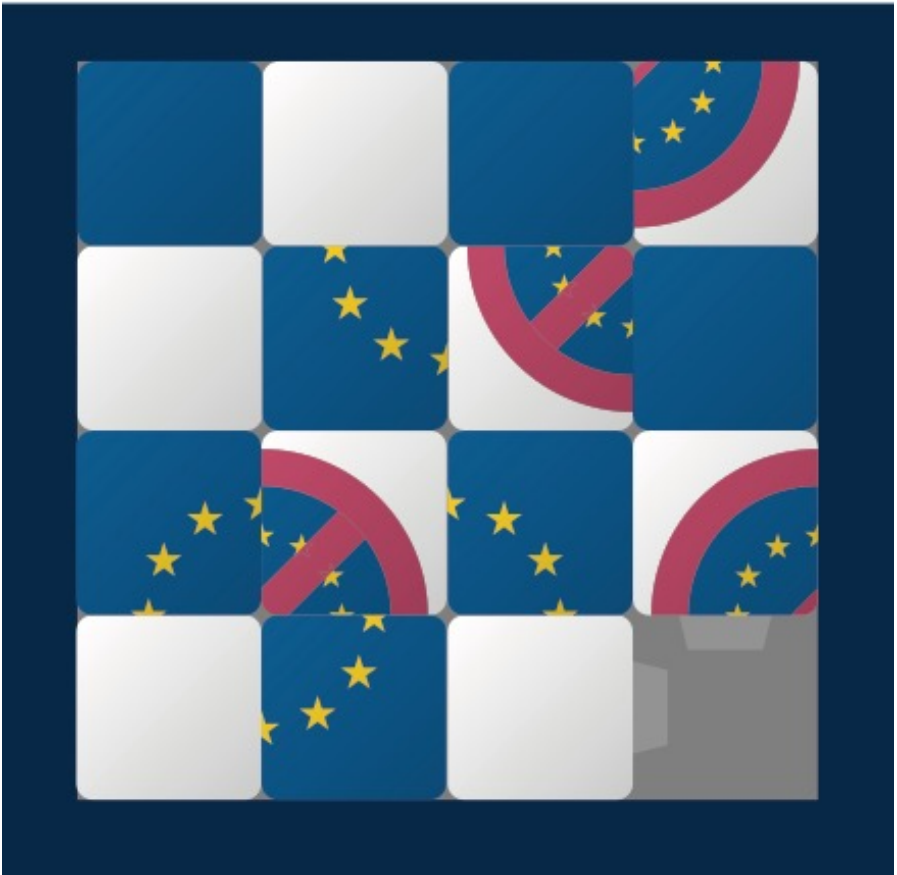


# Britain's Decision

Facts and Impartial Analysis  
for the EU referendum on 23 June 2016



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for the EU referendum on 23 June 2016

The David Hume Institute  
Centre on Constitutional Change  
The Hunter Foundation

Edited by  
Charlie Jeffery and Ray Perman  
Foreword by Sir Tom Hunter



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## Foreword

On June 23<sup>rd</sup> UK citizens, not politicians, will take a critical decision for the UK's future – whether we maintain a forty-one-year-old relationship with the EU or leave it. Re-engagement or divorce – which way do we go?

This decision is far too important to be left to the politicians alone to inform us. For the voter it's almost – at least it is for me – impossible to determine the facts and fallacies from both the Remain and Leave camps in order to understand the issues at hand.

That's why, with the David Hume Institute and the Centre on Constitutional Change, we commissioned impartial, factual analysis around the key questions facing voters in making their own minds up on the EU vote.

With the exception of the two chapters (6 and 7) which are clearly labelled 'Opinion' and give the arguments for and against the UK remaining in the EU, the academics commissioned by us to look at the individual aspects of the decision hold no side in the debate. They analyse the facts and the relative merits or demerits therein to help voters – me included – to make their decision. Where an academic expresses an opinion, not a fact, that is made very clear throughout this document.

This analysis assesses Britain's position within Europe and a portion of it takes a Scottish perspective on a range of issues, not least the potential impact of an EU exit on the composition of the UK.

Hopefully '*Britain's Decision – Facts and Impartial Analysis*' will play a small part in removing some of the obfuscation, hyperbole and bluster from this debate and enable an informed, constructive overview of the critical issues at hand for UK voters.

This is a major decision for us the UK voters and its important the debate leading to the vote is informed with the relevant facts and analysis – I hope in some small way '*Britain's Decision*' will help.

Good luck.

**Sir Tom Hunter**

Chairman

The Hunter Foundation

## How to use this book

*Charlie Jeffery and Ray Perman*

As Sir Tom Hunter has pointed out in his Foreword, the UK faces a momentous decision on 23 June – one which could have profound consequences for the country and its citizens for decades to come. Despite being a straight choice between two alternatives – to Remain a member of the European Union or to Leave – it is also a complex decision. The Union influences not only our economy, through trade and development, but the way we are governed, the way our rights are protected and many other aspects of our daily life.

Britain has been part of the EU, or its predecessor the European Economic Community, for over 40 years. During that time the Union has evolved to become bigger, geographically and in terms of the population within its borders, and deeper, moving into policy areas such as foreign affairs and defence, as well as its traditional industrial concerns.

Already at the time of publication (April 2016) the two sides in the referendum campaign are making detailed claims about what continued membership or 'Brexit' would mean for the UK. Some of these claims are quite dramatic – that we would face economic dislocation and years of setback were we to leave, or alternatively that, freed from the constraints of EU membership, we would enter a new age of opportunity and prosperity.

How do we make sense of these arguments and choose between them? Precedent is not a guide. No state has ever left the EU, so we do not have the experience of others to lead us. And, as Michael Keating points out in Chapter 8, where he considers alternatives to continued EU membership, we can't put the clock back to before 1973: the world has changed since then.

We have produced this book to help voters navigate their way through the debate. We have tried to make it as accessible as possible, but we cannot pretend it is easy reading. Some of the issues and relationships are dry and complicated and demand concentration in order to understand. Nor can we claim it is a definitive guide: often the authors point to uncertainties which prevent them from coming down unequivocally on one side or the other. We can't, alas, provide an easy check list – a series of boxes to tick which by the end of the book would enable readers to add up a score which would tell them which way to vote.

What we hope to do is provide a reference, so that when a claim is made you can go to the appropriate chapter to learn something of the background and the underlying facts – if they can be simply stated. Sometimes the author will be able to give an impartial expert opinion. Sometimes the circumstances are not clear enough to make that judgement. Here are some of the key challenges:

**Cameron's negotiation:** The choice is not between the status quo and leaving the Union, because the Prime Minister has negotiated a set of reforms to the relationship between Britain and the EU. The concessions he obtained enable him to campaign in favour of Britain remaining a member, but how important are they? What difference will they make and how enforceable and sustainable are they? In Chapter 5 Laura Cram describes the outcome of the negotiations and in Chapter 17 Daniel Clegg looks particularly at welfare, which was one of David Cameron's principal concerns.

**Sovereignty:** For many people the question of membership of the EU is a question of sovereignty – who makes our laws and the rules by which we have to live and work? Are they currently decided mostly in Brussels or in the UK, at Westminster or in the devolved parliaments? In Chapter 9 Tobias Lock tries to assess both the quantity and quality of the legislation made at both EU and national level. In Chapter 10 Aileen McHarg assesses how our human rights are impacted by the EU and the Council of Europe, an older and a wider organisation which Britain joined twenty years before we joined the EU.

**The economy:** As David Bell points out in Chapter 3, the UK is deeply integrated into the EU, both in terms of its trade and its labour market. We contribute to the EU budget, but we receive back a rebate and benefits in payments to agriculture and fishing, support for other industries or areas and research funding. There is a net cost to the UK, although it is unevenly spread, with England paying most and Wales being a net beneficiary. Could we escape this payment by leaving the EU? What do the experience of Norway and Switzerland tell us about life outside the EU?

**Jobs and prosperity:** How would our key industries fare outside the EU? In Chapters 11-15 we try to answer that question. It is not easy and would depend on many circumstances, some of which are bigger than the EU issue – the future growth of the world economy, or the course of currency exchange rates.

- **Financial services** is one of our most important sectors. Owen Kelly believes it is probably better inside the EU, but would certainly survive were Britain to leave.
- **Tourism** might suffer from fewer EU citizens coming to the UK and higher costs, but, thinks John Lennon, this might be offset by visitors from elsewhere, or 'staycationers' from the UK.
- **Inward investment:** David Eiser argues that it seems hard to dispute that EU membership is a part of what makes the UK and Scotland attractive to inward investment. But could we negotiate continued access to the single



market and preserve our attractiveness as the destination of choice for international investment?

- **Agriculture** depends heavily on EU subsidies and a Britain outside the Union would probably have to replace those payments, say Caitriona Carter and Andy Smith. **Fishing** interests, on the other hand, might be content to be outside the Union, but closing our territorial waters to boats from other countries might not be easy.
- **Trade:** To continue to trade freely we would have to replicate the myriad agreements that the EU has negotiated on our behalf, says David Comerford.

**Environment:** By leaving the EU could we escape environmental controls and legislation, as some Brexit campaigners claim? In Chapter 16 Andy Kerr looks at the possibilities and Britain's wider obligations under the Paris Agreement.

**Immigration:** High levels of net migration into the UK are seen by many people as a problem. Would leaving the Union free us from allowing EU nationals free access to the UK to look for work and claim benefits? As Christina Boswell points out in Chapter 18, it may not be that simple. In any case the EU is not the only source of immigrants. She predicts that within a few years we will see lower levels of EU immigration, but increased immigration from non-EU countries.

**Welfare and benefits:** Does the UK's relatively generous benefits system attract workers from the EU? Daniel Clegg in Chapter 17 points out that EU migrants account for around 10% of total expenditure on in-work tax credits and housing support despite representing only 6% of the workforce. However, the introduction of Universal Credit is soon to sharply reduce the value of all in-work benefits, and therefore also the savings from excluding a section of the working population from receiving them.

**Defence and foreign affairs:** External relations are relatively new responsibilities of the EU. How important is the Union in our security and influence in the world? In Chapter 19 William Walker looks at defence, while in Chapter 20 Juliet Kaarbo examines whether the UK would have more clout in the world or less, were we to leave the EU.

**The Scottish Question:** How much do opinions differ across the nations of the UK? In Chapter 4 Charlie Jeffery looks at the opinion polls and the possibility that the EU referendum might have implications for the UK constitution. In Chapter 21 Nicola McEwan examines the chances of the EU referendum leading to a second referendum on Scottish independence.

**To conclude:** It is for each of us to draw our own conclusions, however what is clear from the analysis is that neither of the two campaigns can rely on absolute facts to make their case. On the 'Remain' side we have only quasi-certainty of what will happen if we stay in – the reality is that the EU has changed and will continue to change in response to the needs of its newer members and the demands of those states which would like to become members. David Cameron may have secured a British opt-out from 'ever closer union,' but that process will inevitably change the EU.

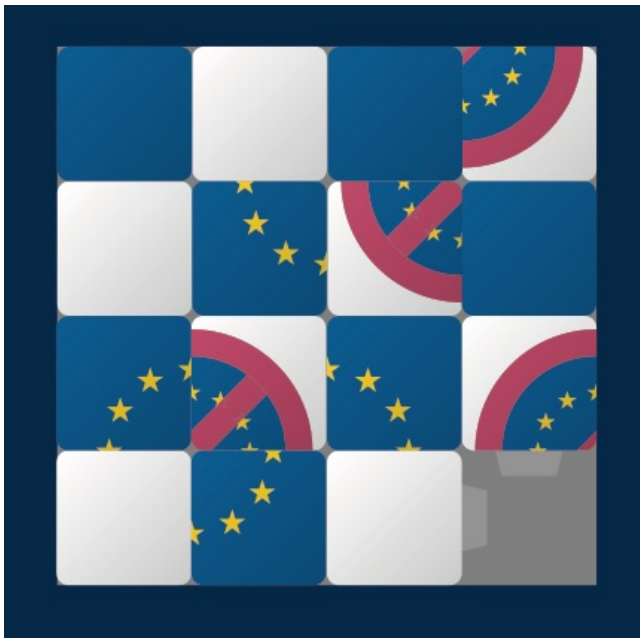
On the other an exit from the EU will undoubtedly lead to protracted and complex negotiations on multiple levels about our future relationship with the EU and with the rest of the world. The 'Leave' campaign can offer no certainty on that.

The complexity of analysing this as a single voter is no mean feat; we hope in some small way this book aids that analysis.

*Charlie Jeffery is Professor of Politics and Senior Vice-Principal at the University of Edinburgh. Ray Perman is Director of the David Hume Institute.*

## Section 1

# The Context



# Chapter 1

## How did we get here?

*Daniel Kenealy*

How did the UK end up having a referendum on its membership of the EU? Answering that question requires both a short-term and a long-term perspective. This chapter will recount our awkward relationship with European integration before considering the short-term dynamics that have triggered this referendum.

### **The Long Term: Britain as an Awkward European Partner?**

In the aftermath of World War II the US took a strategic foreign policy decision to underwrite the security of Western Europe. They did this as a result of an altered balance of power. Put simply, the war transformed Europe from the centre of global politics to a component in a new balance of power between the US and the Soviet Union.

Within Europe, France decided, in the early 1950s, to make a bold move. Foreign Minister Robert Schuman proposed a new institution: the European Coal and Steel Community (ECSC), which would place the coal and steel industries of Germany, France and several other European countries under international control. The aim was to take what were then considered industries essential to warfare and place them beyond the control of any one country. The underpinning idea was to make it less likely that any major European country could ever wage war against another.

Whilst Italy, Belgium, the Netherlands, and Luxembourg were content to join the ECSC, the UK opted to stay out. Within the British government a combination of factors came together to determine that outcome. In elite circles there was a strong belief that Britain remained, after World War II, a global power of the first rank, a status that would be compromised by joining new European institutions. This was coupled with a belief that Britain's rightful role was to serve as a bridge between Europe and the US, and Europe and the Commonwealth, a role that it could only play if it stood aside from European integration. In addition, given that the ECSC did not permit the nationalisation of its members' coal and steel industries, and given that the post-war Labour Government was committed to such nationalisation, it was politically difficult for Britain to join.

Britain thus stood on the sidelines as six European countries took the first step towards integration. A few years later, between 1955-57, those same six countries decided to establish the European Economic Community (EEC), which was a commitment to creating a single market in which goods, services,

people, and capital moved freely. This was the start of what today we call the European Union. It was driven by a desire to boost trade and economic growth. Once again Britain stood aside in 1957, driven largely by an understanding of its role in the world that did not allow it to tie its fortunes too closely to the Continent.

### **Knocking on the Door**

By the early 1960s Britain's economic growth and foreign direct investment was disappointing compared to the EEC six. As it became clear that we were lagging behind our Continental neighbours the government changed tack and attempted to join them. Governments led by both parties – Harold Macmillan's Conservatives and Harold Wilson's Labour – tried in vain to secure membership throughout the 1960s. The obstacle was French president Charles De Gaulle who, in an attempt to further his geopolitical aim of French leadership of a larger European bloc in global politics, twice said 'Non' to British membership in 1961 and 1967.

Eventually Britain's persistent knocking on the door of the EEC paid off. De Gaulle had departed the scene and, with the European balance of power shifting clearly and decisively in favour of West Germany, French president Georges Pompidou lifted his country's opposition to British membership. Membership was secured on 1 January 1973 under the Conservative Government of Edward Heath. But Heath lost power the following year and in 1975, shortly after joining, Britain held its first Europe referendum to decide whether or not it should stay in the EEC. The result revealed deep splits in the Labour party – then in government under Harold Wilson – but, with the leadership of all main political parties (even Margaret Thatcher's Conservatives), and all national newspapers backing membership, 67% voted in favour. The vote looked decisive, but in the event did nothing to settle 'the Europe Question' in British politics.

Almost from the outset Britain was an awkward member of the EEC. Immediately upon joining it sought to renegotiate the amount of money it paid to the EEC and to secure market access for New Zealand dairy products. In the 1980s then Prime Minister Thatcher began an ongoing battle with the EEC about Britain's budget contribution, securing the infamous 'rebate' to compensate for Britain's disproportionately low benefit from EEC agricultural subsidies.

### **Europe and Party Politics**

Despite these 'battles' the Conservative party were broadly in favour of Britain's membership throughout the 1980s. There was some Euroscepticism within the party but Mrs Thatcher was instrumental in the EEC's biggest leap forward since 1957, the Single European Act of 1986. The Act, which

promised to construct a true single market in goods, services, people, and capital by 1992 appealed to the market-based instincts of the Conservatives.

The divisions within the Labour party over EEC membership became more pronounced during the later 1970s. During these years it was the left of the Labour party – led by figures such as Tony Benn and Michael Foot – that voiced the loudest opposition to the EEC. In 1983, Labour entered the General Election with a campaign commitment to withdrawing. However, once Neil Kinnock had replaced Michael Foot as leader Labour became more moderate, leading to a party political role reversal by the 1990s as the Conservative party grew more Eurosceptic in contrast to their position in the late 1970s and 1980s.

Thatcher quickly turned against the EEC after the passage of the Single European Act. Disturbed by what she saw as a direction of travel towards some form of European super state – with a single currency and a more federal structure – she famously declared ‘No, No, No’ in the House of Commons to plans for further and deeper integration. Her *bête noire* during these years was the EEC Commission president Jacques Delors who became a symbol of power-grabbing European officials. *The Sun*, in November 1990, famously ran the headline ‘Up Yours Delors’.

Just a few weeks later Thatcher had left office in large part because of major divisions in her party on Europe. John Major, who was more sympathetic to the EEC than she had become by the late 1980s, replaced her. The ‘Europe Question’ would dog his seven-year premiership and he even resigned and put himself up for re-election as Conservative party leader in an attempt to silence the issue. Although he won that contest in 1995 it revealed a pronounced division within the Conservative party, a division that would grow once the party moved into opposition in 1997. During Major’s premiership Europe made big strides forward and Britain suffered a major humiliation with the forced exit from the Exchange Rate Mechanism (ERM). With the 1992 Maastricht Treaty the EU was born. Although Britain secured opt-outs from the single currency (the euro) and on some social policy legislation, the EU moved forward towards political union.

### **A more sympathetic tone**

The years of Labour government under Tony Blair and Gordon Brown saw a very different tone. Both were far more sympathetic to the EU than their Conservative predecessors. Blair signed Britain up for the social policies from which Major had won an opt-out and, along with French president Jacques Chirac, launched the European Security and Defence Policy. Blair was even happy to consider membership of the Euro, but Gordon Brown remained opposed. These were, generally, speaking years of friendlier UK-EU relations, with the UK championing the enlargement of the EU to the former Soviet states. During thirteen years of Labour Government the party political

positions became more concrete. Labour was the major party most firmly committed to Britain's EU membership. Although most successive Conservative party leaders continued to favour Britain's membership (at least in public), the party that they led grew more and more Eurosceptic, creating tremendous pressure on those leaders.

### **The Short Term: A Prime Minister losing control?**

This growing Euroscepticism within the Conservative party is perhaps the key short term trigger for the present referendum. Upon becoming leader of the party in 2005, David Cameron moved to withdraw his party's Members of the European Parliament from the mainstream centre-right party political grouping in Brussels. This was to win favour amongst the Eurosceptic wing of the party. Over the next decade Cameron faced pressure from three sources: from within his party, from the British electorate, and from developments within the EU itself. All three pushed him in a more Eurosceptic direction and towards his commitment to a referendum.

First, the Conservative party – both at the grassroots level and also in terms of its elected MPs – grew more Eurosceptic. Even those who were not overwhelmingly committed to getting Britain out the EU were keen to see the powers of the EU reduced and the Brussels-based institutions dramatically reformed. Second, within British politics a new electoral force emerged that posed a clear and present danger to the Conservative party. UKIP, led by the charismatic Nigel Farage, began to gain electoral success with its intensely Eurosceptic message. Farage managed to link fears about immigration and societal change to Britain's EU membership in a highly effective way. This created a pressure for Cameron to take on, and try to settle, the Europe Question.

Third, the EU itself was hit very hard by the global economic crisis that broke out in late 2008. The result was bailouts for several countries that used the Euro, new EU laws and institutions in the areas of banking and finance, and the possibility of far deeper integration amongst those EU members in the Eurozone. Calls to ensure that the City of London was protected from EU overreach and that Britain – and other non-Euro countries – could not be ganged up on and outvoted by Euro countries grew louder.

Those three factors – amongst others – pushed Cameron towards his commitment to renegotiate the terms of Britain's EU membership, and to negotiate changes to the way the EU works, before holding an 'in or out' referendum.

Since becoming party leader in 2005, Cameron has been led by his party on the EU question much more than he has led his party. He has adopted a 'kick-the-can-down-the-road' strategy, seeking to postpone the issue for as long as possible.

Having won a surprising majority in the 2015 General Election he could delay no more. He had staked his political legacy on winning a referendum that he did not especially want to have.

### **Conclusion**

Britain's EU referendum is the product of long and short term historical factors. The UK has never been a comfortable member of the EU. Britain stood aside during the early years of European integration, driven by a fundamentally different history to its continental partners, a different experience during World War II, and a different idea of its role in the world. These differences created national stories, which entrenched those differences in what we might call the national mind-set. Even after joining the EU in 1973 Britain has been an awkward partner, usually found opting-out of many key developments such as the Euro currency, the Schengen passport free area, and many policies in the area of justice and home affairs. Such a long term history may have made this referendum in some sense inevitable.

However, in the short term it is the internal politics of the Conservative party that have driven Britain to this point. A rising Euroscepticism within the party, coupled with the rise of UKIP, and developments within the EU that have pushed Britain into adopting a series of defensive positions, combined to pressure David Cameron into his strategy of 'renegotiate and referendum'. Whatever the result on 23 June Britain's long and complicated relationship with the continent of Europe looks set to continue. The referendum will not settle Britain's Europe Question.

*Daniel Kenealy is Lecturer in Public Policy and Deputy Director, Academy of Government, at the University of Edinburgh.*



## Chapter 2

### **Scotland in Europe: how do we interact with the EU? What are the benefits and drawbacks of being a 'region' and part of a member state?**

*Drew Scott*

#### **What is the Issue?**

In EU parlance Scotland is defined as a 'region' while the UK is the member state. Indeed a more accurate description of Scotland would be as one of the EU's 'legislative regions' – that is a regional tier of government that has the competence to enact laws over a range of policies within its own jurisdiction. That is, of course, precisely what the Scottish Parliament does. Under the 1998 Scotland Act legislative competence over a wide range of policies was devolved to the Scottish Parliament including economic development, economic assistance to industry, environmental policy, agriculture and fisheries and justice and home affairs.

As is well known, devolution was intended to enable the Scottish Parliament to design policies that better suited the needs and aspirations of Scotland's economy and society than those emanating from Westminster. At the same time, however, the exercise of legislative competence across the range of devolved competences was, and remains, subject to compliance with EU law. Under the EU Treaties each of the policy areas above, in whole or in part, falls within the legislative scope of the EU level of governance. Crucially because domestic law cannot conflict with EU law, EU membership effectively constrains the exercise of powers assigned to regional legislatures across the EU – including Scotland – in exactly the same way that national parliaments are also bound (this is the so-called 'supremacy' or 'primacy' doctrine of EU law).

At the UK level the issue of the overriding authority of EU law vis-à-vis national law is represented in the 'sovereignty' segment of the Brexit debate. But, as implied above, there is also a 'sovereignty' dimension to the debate here in Scotland. If the UK was to leave the EU, then just as a greater degree of constitutional sovereignty formally will return to Westminster, so too will greater 'sovereignty' in the form of increased powers over devolved matters flow to the Scottish Parliament.

#### **Why is this important and what relevance does it have for Scotland?**

The EU legislative process does not involve the EU's regions directly. While a Committee of the Regions was established at EU level in 1993 under the Maastricht Treaty, it has a purely consultative role. Instead under the Ordinary Legislative Procedure (OLP) EU laws are enacted jointly by the

directly elected European Parliament (comprising 750 MEPs with six from Scotland) and the Council of Ministers of the EU which comprises Ministers from the EU member states. It is commonplace for critics of the EU to depict this as a remote and unresponsive legislative arrangement. At a time when the electorate is seeking greater accountability and responsiveness from their politicians, the idea of power being exercised closer to the citizen is one that has considerable appeal. Therefore a claim that Brexit will end the obligation for UK and Scottish citizens to adhere to EU law and restore the sovereignty of the national or 'regional' (in the case of Scotland) parliaments is potentially a powerful one. As such it is a claim that deserves the closest scrutiny.

It is worth considering how the Scottish Government and Parliament represent Scotland's interests in EU legislative proposals within the current system before considering alternative scenarios. This can be divided into two avenues – representation to UK Government and Parliament on the one hand, and direct representation at EU level on the other hand.

### **Interests of devolved administrations**

In the wake of devolution it was agreed by the UK Government to establish procedures to ensure that the interests of each of the devolved administrations would be taken into account when the UK Government was formulating its position on EU legislative proposals that impacted on devolved competences. That commitment and the relevant procedures were formalised in an overarching inter-governmental Memorandum of Understanding and a range of policy-specific Concordats that together formed a set of rules and conventions binding upon the devolved and central governments respectively. At the centre of this system would be a Joint Ministerial Committee (JMC) which would be used to resolve conflicting positions of the respective governments if necessary. Nonetheless ultimate authority over UK policy towards the EU in all matters would remain with the UK Government.

At the same time the Scottish Parliament established the European and External Relations Committee whose remit included scrutiny of EU legislative proposals that impacted upon devolved competences. And while that committee mimicked in some ways the work of the House of Commons European Scrutiny Committee, it did not have the power of 'scrutiny reserve' of the Commons committee that theoretically prevents the UK Government from representing a UK position in Brussels until that Committee has reached a view on the matter. There are two further avenues of influence that may be used by the devolved administration regarding EU legislation. First under EU rules it is permitted for a Minister from a 'regional' government to attend meetings of the Council of Ministers and represent the member state provided that Minister has the authority to make decisions that bind the member state as a whole. Second under the evolving EU 'principle of subsidiarity' – which will be strengthened under the agreement reached between Prime Minister

Cameron and the other EU member states if the UK votes to remain in the EU – domestic parliaments (and this includes the Scottish Parliament) have a power to require the European Commission to review EU legislative proposals where these parliaments consider EU law to be unnecessary to achieve the aims being sought.

The second avenue used by the Scottish Government to influence EU laws and policies is direct representation to the EU Institutions in Brussels. In 1999 the Scottish Government established an office in Brussels that would represent its interests in the law-making process. Formally the Scottish Government's EU office is part of the broader UK Permanent Representation, although in practice its role is to focus on EU policy issues of direct relevance to Scotland and provide advice to the Scottish Government about EU legislative and policy developments that impact on devolved competences. This advice forms a key element in the formulation of the Scottish Government's input to the Whitehall EU policy process.

This system described has operated for 17 years and appears to have done so reasonably effectively. This is unsurprising insofar as for most of that time and over most of the EU legislative proposals impacting on devolved policies, the Scottish and UK governments have adopted broadly similar positions. This is not to suggest there are no divisive issues. Successive Scottish Governments have sought a greater degree of influence of UK policy towards the EU beyond devolved matters – including the recently concluded re-negotiations over the UK's terms of EU membership; negotiations that did not allow any significant input by the devolved administrations. Equally the Scottish Government has expressed its dissatisfaction over the UK Government insistence that Ministers from the devolved administrations can only attend meetings of the Council of Ministers with its express permission.

If the UK remains within the EU it is unlikely that the role 'regions' play in the EU legislative and policy processes will change significantly. Certainly there is no appetite to create a more powerful regional level of governance in the EU system. As a result the 'voice' that regions have in EU governance will continue to depend, in large measure, on the influence they are able to exert over their national government – influence that varies from country to country according to the domestic constitutions of each.

### **What are the arguments put forward by the 'Leave' campaigners?**

A key proposition of the 'Leave' campaign is that Brexit will lead to greater powers being assigned to the Scottish Parliament thereby increasing its capacity to enact laws better suited (than are EU laws) to the needs of Scotland's economy and society. Moreover Brexit would allow Scotland's universities to levy tuition fees on EU students (EU law prevents this although does permit tuition fees to be levied on students from elsewhere in the UK), and may provide a financial windfall to the Scottish budget with the cessation

of the UK contribution to the EU budget (although it would not be large, see Chapter 3).

It certainly is the case that Brexit would increase the legislative scope of the Scottish Parliament, although as we explain below the extent to which these increased powers could be exercised would depend crucially on the outcome of the Brexit negotiations between the UK Government the remaining 27 EU member states. As already noted, the Scottish Parliament cannot enact domestic laws over devolved policies where this would violate existing EU law. *If* the obligation to adhere to EU law is removed upon Brexit (and that is the key question), the Scottish Parliament would no longer be restricted by EU law in formulating and enacting domestic laws where it had competence so to do. This would be particularly true with regard to agricultural policy, fisheries policy and environmental policy – all of which are devolved under the 1998 legislation.

But this would also raise the question of how these extended policy competences would be designed and/or financed. Take agricultural policy as an example. Presently Scotland's farmers are supported almost exclusively through the EU Common Agricultural Policy (CAP) – financial support that amounts to approximately €4 billion over the period 2014-20. If the UK exits the EU that support will end, and it will fall to the Scottish Parliament to design and implement a new policy of support for Scotland's farmers. In turn this will require a new funding settlement between the Scottish and UK governments to ensure this new agricultural policy can be financed. Similarly Brexit would result in fisheries policy being devolved to the Scottish Parliament. However it is unlikely the UK Government would regard policy over Scotland's fishing grounds as an issue solely for the devolved administration. Instead this is likely to be seen by Whitehall as an issue of international policy and, as such, reserved to the UK Government. Precisely how these consequences of Brexit would be resolved is unclear.

### **What are the arguments put forward by the 'Remain' campaigners?**

While not necessarily contesting that a consequence of Brexit would be to increase the scope of devolved powers, the 'remain' camp is likely to argue that the likely terms of a future deal between the UK outside the EU and the remaining EU member states would in effect mean these powers could not be exercised. This is because if the UK is to retain access to the EU single market – and advocates of Brexit concede this is important from an economic perspective – then, the argument goes, the UK (including the devolved administrations) will be compelled to (continue to) adhere to a wide range of EU laws and policies governing that single market. Moreover as a non-member of the EU, the UK no longer will have any influence over the nature of these EU laws and policies – like Norway or Switzerland, both of whom have

access to the EU single market, the UK will be obliged to implement EU laws without question.

The implication of that argument, and it is a powerful one, is that the drive for increased legislative sovereignty either at UK or Scottish Parliamentary levels is largely illusory. Indeed one way of explaining this is that while Brexit will result in an increase in absolute constitutional sovereignty over the laws that govern the country, if access to the single EU market is to be retained it will be accompanied by an erosion of relative effective sovereignty over a range of EU laws and policies where compliance is required.

### **Assessment of the balance of arguments**

Assuming that the UK Government would seek to secure a post-Brexit deal with the remaining EU member states that guaranteed access of British goods and services to the single EU market on terms identical to those prevailing today, the evidence suggests that policy 'gains' from Brexit to Scotland are largely illusory. If we examine the type of agreements that exist at present between the EU and non-EU countries that enjoy unrestricted access to the single market, which most commentators agree the UK would seek to replicate, these involve a combination of adherence to EU law and per capita contributions to the EU budget that are not significantly different from those the UK is required to accept as an EU member state. The significant difference of course is that as a member state the UK is able to exert legislative influence over these same EU laws and policies. Moreover there is concern that should the UK exit the EU, that EU policies would be less likely to reflect the UK's underlying economic philosophy and objectives and make the EU a more rules-bound, and possibly lower growth, market in which to do business.

In that scenario a loss of influence over EU policies would also be experienced in Scotland and with regard to distinctive Scottish issues. While one may criticise the existing channels through which the Scottish Government and Scottish stakeholders presently are able to influence EU policies – both via the UK Government and directly in Brussels – both channels do exist and may be accessed effectively.

I would therefore conclude that Brexit would be unlikely to significantly change the legislative parameters within which the Scottish Parliament presently operates over a range of policy areas – assuming the UK continued to seek unfettered access to the single EU market. The principal exceptions to this general comment are agricultural policy and fisheries policy. In both cases however new challenges would emerge, the outcome of which is uncertain. Moreover that influence presently exercised by Scotland over EU laws and policies would effectively cease to exist.

*Drew Scott is Professor of European Union Studies and Co-Director of the Europa Institute at the University of Edinburgh.*

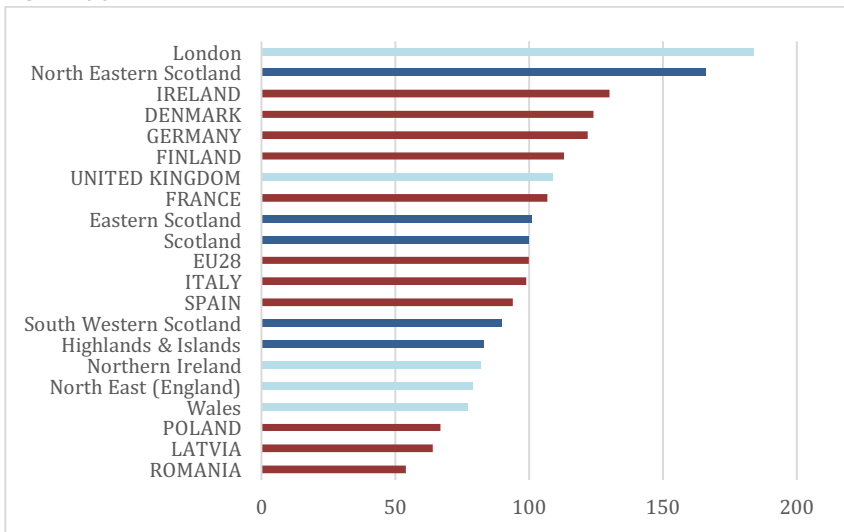
### Chapter 3

#### The economy: how closely is our economy aligned with the EU? What do we get out of it? – How much do we pay? How much do we receive?

David Bell

This chapter analyses the economic position of the UK – and particularly Scotland – within the EU. Its geographic position is clearly on the periphery. But at least on one important economic measure, it is right in the centre. Scotland’s GDP per head is exactly equal to the EU average. That of the UK as a whole is a little higher, at 109 (EU=100). We can see this from Figure 1 which shows an index of GDP per head adjusted for differences in purchasing power for a number of EU countries and regions. It includes not only Scotland as a whole, but also some of its regions (using the EU NUTS 2 classification.)

**Figure 1: GDP per head in 2013 (adjusted for purchasing power) Index EU = 100**



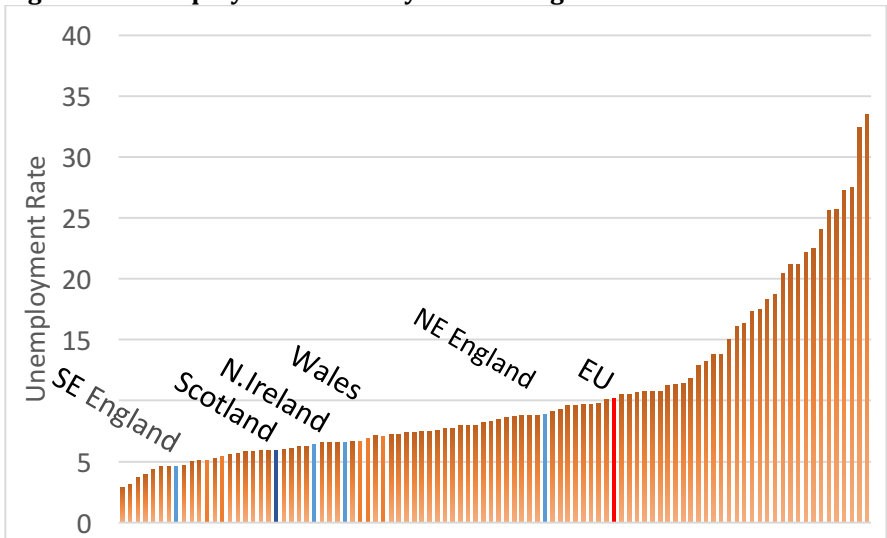
Source: Eurostat

Much of northern Europe has higher GDP per head than Scotland, while much of southern Europe and the countries that recently joined the EU from Eastern Europe have lower income per head. Within the UK, Scotland is also close to the middle of the GDP per head scale, higher than Wales, Northern Ireland and the North-East of England, but lower than the South of England, particularly

London. Within Scotland there is also a wide distribution of income, ranging from the north-east which is almost on a par with London, to the Highlands and Islands whose income is barely above 80% of the EU average. Based on GDP per head, Scotland occupies a central position both within the UK and in the EU as a whole. In EU terms, the Scottish economy is neither an unqualified success nor an unqualified failure.

Its labour market outcomes are, however, significantly better than those in most other comparable areas of the EU. Figure 2 shows unemployment rates for all of the subnational areas (known as NUTS 1 regions) that comprise the 28 member states during 2014, with the levels for Scotland and for the EU as a whole highlighted. With an unemployment rate of 5.2%, Scotland clearly has one of the lower unemployment rates among these regions. This relative strength is mirrored in other labour market indicators.

**Figure 2: Unemployment Rates by NUTS 1 Regions 2014**



However, showing how well or how badly the Scottish or the UK economy performs relative to other parts of the EU does not shed any light on their *integration* into the EU 'single market'. Market integration would be reflected in high levels of trade and by movements of capital and of labour between Scotland or the UK and the EU. Data on Scottish exports have to be treated with some care, but the Scottish Government statisticians make an effort to make these as accurate as possible.

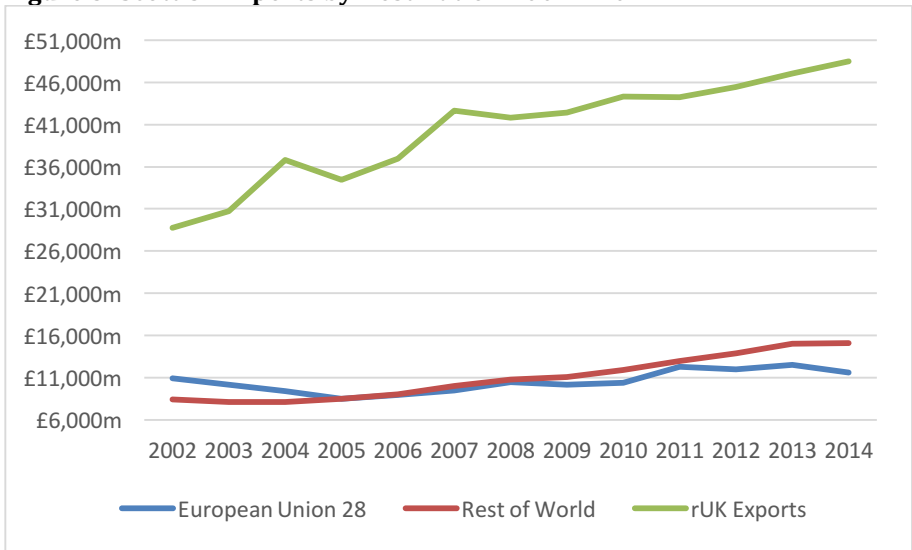
Figure 3 shows the value and destination of Scottish exports between 2002 and 2014. The possible destinations are the rest of the UK (rUK), the rest of the EU and the rest of the world. It is immediately clear that rUK is the major

market for Scottish exports and that it has grown significantly over the period. Exports to the rest of the world started from a much lower base, but have almost doubled between 2002 and 2014. In contrast to the growing value of exports both to rUK and to the rest of the world, exports from Scotland to the EU have stagnated. This pattern of weakening exports to Europe and rapidly growing exports to the rest of the world has also occurred for the UK as a whole.

It is striking that even though Scotland is part of the EU single market, the US is Scotland’s top international export destination. The weakness of exports to the EU may reflect the overall weakness of the European economy, the strength of the pound and competition from other markets. Even though foreign direct investment in Scotland is reasonably buoyant (see chapter 13), it does not seem that such investment is being used to make Scotland a platform for accessing EU markets in the same way that, for example, occurs in Ireland.

The export data do not capture the tourism market which was worth around £9.7 billion to Scotland in 2014: 1.1 million international visitors came to Scotland in the first half of 2015. Even though exports to the EU have been flat, increased visitor numbers from Europe have been driving increased tourist spending in Scotland which, like manufactured exports, add to foreign currency earnings.

**Figure 3: Scottish Exports by Destination 2002 – 2014**



Source: Scottish Government

<http://www.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication/ESSExcel>



Is Scotland integrated into the EU labour market? Like the rest of the UK and Ireland, Scotland received an influx of EU migrants starting in 2004 following the accession of a number of former Soviet bloc countries. These migrants boosted Scotland's population, which has now reached 5.3 million, its highest level since records began.

They also had a significant impact on the economy: most of the substantial economic research on their impact on the UK as a whole suggest that they:

- boost economic growth;
- make a substantial contribution to public services through the taxes they pay;
- are less likely than natives to be supported by the welfare system and
- have had only modest effects on the employment and conditions of native-born workers.

Has Scotland experienced the same increase in EU workers as other parts of the British Isles? Table 1 below shows the population of the UK's major cities and the breakdown between nationals, foreigners from the rest of the EU and foreigners from the rest of the world. For comparative purposes, it also includes the same data for London and Dublin. While it is clear that EU foreigners make up a significant proportion of the population in Scotland's more prosperous cities, Aberdeen and Edinburgh, their share is still significantly lower than that in London and in Dublin. This may reflect Scotland's accessibility and perhaps also the dominance of London within the UK economy. The London effect is less relevant to Dublin, which can to some extent differentiate its economic environment from that of the UK.

Weaker labour markets attract fewer migrants: the share of EU foreigners in the populations of Glasgow and Dundee is around half that in Aberdeen and Edinburgh. Interestingly, with the exception of Glasgow, all of the cities have approximately the same proportion of non-EU foreigners as EU foreigners in the population. Glasgow is the exception in having a significantly greater proportion of non-EU foreigners, perhaps a result of it having a larger share of migrants from the Commonwealth.

Edinburgh and Aberdeen have a higher share of EU migrants than many large English cities outside London, suggesting perhaps that they have a more cosmopolitan flavour? Nevertheless, their shares are less than cities where higher education plays an important part in the economy (Oxford, Cambridge). Higher education can make a significant contribution to the exchange of both people, ideas and technology. Another exception is Belfast, where linkages with the Irish Republic and absence of controls on movement are likely to influence the very high proportion of EU foreigners present. If Scotland was independent, the rest of the UK remained in the EU and the labour market continued as before, the proportion of EU foreigners in Scotland would increase by 14% in Edinburgh and 9% in Aberdeen – the shares of their respective populations born in the rest of the UK.

**Table 1: Nationals, Foreigners and Proportion of Foreigners (EU and Non-EU) Major Cities**

	Nationals		EU Foreigners		Non-EU Foreigners	
	000s	000s	%	000s	%	
<b>London</b>	6,407	914	11.2	853	10.4	
<b>Greater Manchester</b>	2,497	90	3.4	94	3.5	
<b>Dublin</b>	1,030	118	9.4	113	9.0	
<b>Birmingham</b>	958	49	4.6	65	6.1	
<b>Leeds</b>	700	24	3.2	26	3.5	
<b>Glasgow</b>	542	19	3.1	32	5.4	
<b>Leicester (greater city)</b>	421	25	5.2	33	6.9	
<b>Edinburgh</b>	420	29	6.0	29	6.0	
<b>Bristol</b>	388	23	5.4	16	3.7	
<b>Cardiff</b>	317	12	3.5	15	4.4	
<b>Newcastle-upon-Tyne</b>	254	8	2.9	17	6.1	
<b>Belfast</b>	203	71	25.4	5	1.8	
<b>Aberdeen</b>	195	14	6.3	14	6.4	
<b>Dundee</b>	138	5	3.1	5	3.3	
<b>Oxford</b>	121	15	9.9	15	9.9	
<b>Cambridge</b>	96	14	11.4	13	10.6	

*Source: Eurostat*

To complete the picture, it would be good to comment on the extent of Scotland’s imports from the EU and on the outflows of Scots working and living in the rest of the EU. Unfortunately, the data are wanting. While it is possible to analyse the UK’s trade balance with the EU (the UK had a £97 billion trade deficit with the EU in 2015) and the number of UK nationals living in the EU (around 1.8 million), no comparable figures are available for Scotland.

However, it is possible to estimate Scotland’s balance sheet with the EU – what Scots contribute to the EU budget and how much they get back. In the past, Scotland was a net beneficiary of EU largesse. This is no longer the case for a number of reasons:

- growth in the EU budget has been brought to a halt, partly through British pressure. In 2015, the EU budget was set at €141.2 billion (£110 billion).

This covers expenditure in all 28 member states. For comparison, the 2015-16 UK budget is £776 billion. The UK budget covers healthcare, education, welfare, pensions et cetera. In comparison the EU budget has a much narrower remit. It focuses on supporting: (1) activities promoting growth including research and development, (2) supporting fisheries, farming and the environment, (3) security and citizenship, (4) international aid and foreign policy

- EU regional aid has switched to the former Soviet bloc states following their accession. This is because current rules only allow for such aid to be given to new regions where GDP per head is below 75% of the EU average. In the UK only parts of West Wales, the Valleys and Cornwall qualify as 'less developed regions.' None of the constituent parts of Scotland currently qualify under that rule, while Figure 4 shows how far the relatively modest budget on regional aid (€51.1 billion) has to be spread across large swathes of southern and eastern Europe. Only the Highlands and Islands, Northern Ireland and a few regions of England qualify as a 'transition region' for very limited regional support. Much more significant to Scotland are the payments of around £600 million from the Common Agricultural Policy (CAP). In addition, Scottish universities and companies benefit from a small flow of research and development funding channelled through the Horizon 2020 funding stream.

Estimates of EU spending in the UK nations were made recently by the [Centre for European Reform](#). Although CAP is worth more than £2.2 billion in England, spending per head, at £32, is less than a third of that in Scotland. This reflects the greater importance of agriculture in the Scottish economy. Wales is in a similar position to Scotland, but CAP support is even higher in Northern Ireland, at £145 per head. Structural fund spending per head in Scotland only narrowly exceeds that in England. It is much higher in Wales where West Wales and the Valleys fall below the 75% criterion for full structural fund eligibility (see Figure 4).

**Table 2: Spending on CAP and on Structural Funds (per Year 2014-20)**

	England	Northern Ireland	Scotland	Wales
CAP total spending (£m)	2,184	317	614	353
CAP spending per capita (£)	31	145	96	96
Structural funds total spending (£m)	735	54	95	255
Structural funds spending per capita (£)	13	30	18	83

*Source: Centre for European Reform*

**Figure 4: Eligibility for Structural Funds Support 2014-20**



- Less developed regions (GDP/head < 75% of EU-27 average)
- Transition regions (GDP/head between 75% and 90% of EU-27 average)
- More developed regions (GDP/head >= 90% of EU-27 average)

Source: <http://ec.europa.eu/esf/main.jsp?catId=525&langId=en>

The Centre for European Reform also provides estimates of the fiscal deficit or surplus associated with EU transactions. These are shown in Table 3, again for each of the UK's nations. For the period 2014-20, the UK will pay around £16.9 billion into the EU budget each year. Almost a quarter of this will come

back through the rebate system originally negotiated by Mrs Thatcher's government. A further £5 billion comes back through the CAP, structural fund payments and various smaller funds including those supporting scientific and technological research. This leaves the UK with a net contribution of around £8 billion per year which equates to £15 million per week or £2.25 per person per week. Such figures are often used to create alarm, but are relatively minor in relation to the trade flows between Britain and Europe.

Using data on tax receipts from the constituent nations, it is clear that the largest contribution both in overall size and per capita is coming from England. In contrast, Wales is receiving more from the EU than it is contributing in tax receipts – around £503 million per year. And Scotland makes a small net contribution of £337 million per annum, which equates to £64 per person per year net contribution. This is tiny in comparison to Scotland's fiscal deficit with the rest of the UK, which was most recently estimated at £14.9 billion.

**Table 3: Net Annual Contribution to the EU Budget UK Nations 2014 – 20**

	UK	England	Northern Ireland	Scotland	Wales
<b>Gross payments (£m)</b>	<b>16,907</b>	<b>14,582</b>	<b>567</b>	<b>1,417</b>	<b>340</b>
<b>Less UK rebate (£m)</b>	<b>-3,844</b>	<b>-3,270</b>	<b>-102</b>	<b>-298</b>	<b>-172</b>
<b>Less public-sector receipts (£m)</b>	<b>-5,078</b>	<b>-3,217</b>	<b>-409</b>	<b>-781</b>	<b>-670</b>
<b>Net contribution (£m)</b>	<b>7,985</b>	<b>8,094</b>	<b>-56</b>	<b>337</b>	<b>-503</b>
<b>Net contribution per capita (£)</b>	<b>117</b>	<b>140</b>	<b>31</b>	<b>64</b>	<b>-164</b>

*Source: Centre for European Reform*

It is also worth noting that Norway and Switzerland, which are both nominally outside the EU, make a net contribution to the EU budget as part of their deals to be part of a free trade area with the EU. [According to the House of Commons Library](#), Norway contributed around £106 per capita in 2011, while Switzerland contributes around £53 per capita. The net contribution of each UK citizen to the EU budget was therefore not much higher than that of people in Norway, despite the fact that they are not members of the EU.

### **Conclusion**

So what does this all mean?

The economy of the UK and Scotland is relatively close to the EU average in terms of income per head: it, and most other regions of the UK, other than London and the South-east, are well short of any yardstick that would classify

them as some among the more affluent EU regions. Nevertheless, their labour markets are performing relatively well. Scotland's goods and labour market are not as heavily integrated with the EU as the rest of the UK and its exports to the EU have flatlined. It no longer qualifies for the regional assistance that was available in the past, though Scottish agriculture still receives a significant level of support from Europe. Finally, Scotland's 'account' with the EU is broadly in balance and is relatively small in relation to both its deficit with the rest of the UK and the size of the trade flows between Scotland and Europe.

*David Bell is Professor of Economics at the University of Stirling and a Fellow of the ESRC Centre on Constitutional Change.*

## Chapter 4

### **What do voters think about the EU and the referendum question? How does this vary across the UK?**

*Charlie Jeffery*

Scotland has long had a reputation for being less sceptical about European integration than the rest of the UK, and in particular England. At the level of political leadership that is obviously enough the case. Since the late 1980s when the Labour Party and the Scottish National Party each became unambiguously pro-EU parties, Scotland has lacked credible voices in mainstream politics prepared to pursue a Eurosceptical approach. That in part has to do with the weakness since then of the main forum the UK has had for airing opposition to the EU: the Conservative Party. Just as the Conservatives under John Major were tearing themselves apart over Europe, Scotland turned its back on the party, returning no MPs in Scotland in the 1997 UK election, and just one at every UK election since. The Conservative Party in the Scottish Parliament has not made a big issue out of Europe and more recently its leader, Ruth Davidson, has taken a clearly pro-EU position.

With Nicola Sturgeon, First Minister and leader of the SNP, and Kezia Dugdale, Scottish Labour leader, also clear in their support for EU membership (along with the minor parties in the Scottish Parliament, the Liberal Democrats and the Greens) Euroscepticism is cast to the margins. Its most prominent advocates are David Coburn, UKIP's one Member of the European Parliament in Scotland, Jim Sillars, the veteran anti-EU figure in the SNP, and one or two once prominent, former Labour MPs like Ian Davidson and Nigel Griffiths. The contrast of these with the vigour of Sturgeon, Dugdale and Ruth Davidson is striking. The mainstream in Scotland's political leadership is a pro-EU one.

#### **Implications for the UK's internal constitutional debate**

But there has always been some doubt as to whether ordinary Scots shared this pro-EU position. It was long thought that ordinary Scots were not that different in their views on the EU than people elsewhere in the UK. As we show below, they are. Scots are now significantly more positive about EU membership than people in England and Wales (though not, it seems, Northern Ireland). These differences matter not just for their impact on the EU referendum outcome on 23 June 2016, but also for their possible implications for the UK's internal constitutional debate.

The Brexit and Scottish independence debates have become firmly linked. Nicola Sturgeon, made this point shortly after the Scottish referendum when

she argued that any 'Leave' outcome in an EU referendum would need to be endorsed in each part of the UK, effectively claiming a Scottish veto over a UK decision to leave. Sturgeon has made the same point on a number of occasions since, and has gone further by tying the EU referendum outcome to the question of Scotland's continuing membership of the UK. Before the UK general election in May 2015 she said a second Scottish referendum would only be called if there were 'material change' in the conditions of Scotland's relationship with the rest of the UK. In a Brussels speech in June, shortly after the SNP's astonishing success in that election, she made clear that a UK vote to leave the EU overriding a Scottish preference to stay 'could be one scenario' producing such material change. And at the SNP conference last October, directing remarks at David Cameron, she made clear that 'in those circumstances, you may well find that the demand for a second independence referendum is unstoppable'. She has made a similar point on several occasions since, most clearly perhaps in a TV interview in February 2016: a second Scottish referendum would 'almost certainly' be triggered if Scotland votes to stay within the EU but the UK votes to leave. As Nicola McEwen discusses in the final chapter of this book there might in fact be a little more nuance underlying Sturgeon's words. But undeniably the stakes have been raised.

### **What Scotland (and England, Wales and Northern Ireland) think**

That is all the more the case given that people in different parts of the UK now have very different views on the EU. Table 1 below presents data from opinion polls conducted from September 2015 (when the referendum question wording: 'Should the United Kingdom remain a member of the European Union or leave the European Union?' was confirmed) to March 2016. The table sets out the headline findings of ten polls with all-England findings, fifteen Scottish polls, four from Wales and two from Northern Ireland. All had sample sizes of at least 1,000 respondents and all were conducted by reputable polling companies. 'Don't know' and 'wouldn't vote' responses have been excluded to provide a simple remain/leave split.

The table needs to be read with some caution. These are polls done in different places on different days by different companies. Only in Scotland and England has there been regular polling. Polling is especially patchy in Northern Ireland. This said, there is much to note. The four UK nations divide into two pairs. England and Wales appear split down the middle. By contrast Scotland and Northern Ireland are firmly in the 'remain' camp. Only one poll has recorded (just) less than a 60% majority in Scotland for remaining, with an average of Remain vote across all polls of over 65%. Northern Ireland (though with only two bunched polls) appears even more committed to remain.



**Table 1: Opinion polls conducted from September 2015**

	England		Scotland		Wales		Northern Ireland	
	Remain %	Leave %	Remain %	Leave %	Remain %	Leave %	Remain %	Leave %
<b>2015</b>								
10 Sept			64	36				
16 Sept	48	52						
24 Sept					53	47		
27 Sept			65	35				
30 Sept			72	38				
13 Oct			62	38				
16 Oct							81	19
21 Oct							67	33
1 Nov	54	46						
8 Nov	55	45						
11 Nov	46	54						
15 Nov	52	48						
16 Nov			75	25				
17 Nov	49	51						
4 Dec					49	51		
9 Dec			61	39				
<b>2016</b>								
13 Dec	49	51						
12 Jan			66	34				
14 Jan			64	36				
4 Feb			66	34				
7 Feb			70	30				
11 Feb					45	55		
16 Feb			66	34				
29 Feb	49	51	64	36				
6 Mar	48	52						
7 Mar			59	41				
9 Mar			61	39				
13 Mar	51	49						
17 Mar			65	35				
18 Mar					53	47		
<b>Average</b>	<b>50.1</b>	<b>49.9</b>	<b>65.3</b>	<b>34.7</b>	<b>50.0</b>	<b>50.0</b>	<b>74.0</b>	<b>26.0</b>

This mix of two ambivalent and two clearly pro-EU nations looks especially striking when compared with the outcome of the 1975 referendum on membership of the then European Economic Community (EEC) (Table 2). The rank order of Yes/Remain is upended. England in 1975 was more enthusiastic about membership of the EEC than Scotland is about membership of the EU now. And if we compare the 1975 outcome with the average polling scores from Table 1 there have been marked swings in opinion in all four parts of the UK (as set out in the final column of Table 2). England, Wales and Northern Ireland have experienced Damascene conversions, with Scotland also shifting substantially. And by far the most significant of these swings when weighted

by size of population is that in England. Weighted by its current 83.9% share of the UK's population, the 18.6% swing from Yes/Remain to No/Leave in England equates to a 15.6% swing across the UK as a whole. The UK-wide Yes vote in 1975 was 67.2%. The now very different pattern of opinion in England makes the UK as a whole an EU referendum marginal.

**Table 2: 1975 and Now**

	1975 Referendum		2015-16 Poll Average		Change 1975-2015-16
	Yes %	No %	Remain %	Leave %	No minus Leave
England	68.7	31.3	50.1	49.9	-18.6
Wales	64.8	35.2	50.0	50.0	-14.8
Scotland	58.4	41.6	65.3	34.7	+6.9
Northern Ireland	52.1	47.9	74.0	26.0	+21.9

**Does identity matter?**

There is a further dimension to this pattern of opinion which should be noted. Data from the 2014 *Future of England* survey, a periodic academic testing of public attitudes in England, but also conducted that year alongside parallel surveys in Scotland and Wales, suggests that national identity plays a significant role in shaping opinion on the EU in England. The 2014 survey used the so-called Moreno identity scale, which asked survey respondents in England to place themselves on a five-point scale with 'only British' at one end and 'only English' at the other, with intermediate points of 'more British than English', 'equally British and English' and 'more English than British' (the same scale was used for Scotland, substituting 'English' with 'Scottish', and similarly in Wales). Table 3 shows how responses to the remain/leave options in an EU referendum differed across respondents in different positions on the Moreno identity scale ('X' refers to English identity in England, Welsh identity in Wales and Scottish identity in Scotland).

The first column of figures shows the overall responses, so 37% chose remain, and 40% leave in England (the rest saying they did not know or that they would not vote). Wales went the other way with a 39:35 balance just in favour of remaining. Scottish respondents who gave a view did so by the clear margin of 48:32. The other columns look at the impact of identity. In the Welsh and Scottish cases national identity (either British or Scottish/Welsh) does not appear in any consistent way to structure attitudes on EU membership. But in England there is a very different picture. Strikingly, in the last four columns of Table 5 there is a clear, broadly linear relationship in England in which opposition to EU membership increases the more

English/less British the respondent feels. The more English respondents felt, the more likely they were to want to leave the EU; those feeling only Welsh/Scottish in Wales/Scotland were close to the average level of support for leaving the EU. So even though in absolute terms English attitudes on Europe are close to those in Wales (but not Scotland – see Table 1), they are distinguished in England from those in both Scotland and Wales by their clear association with English national identity.

**Table 3: National Identity and EU Membership**

		Total %	British only %	More British than X %	Equally British and X %	More X than British %	X only %
Vote 'Remain' in a referendum	England	37	52	56	39	29	20
	Wales	39	45	40	42	34	38
	Scotland	48	43	51	47	53	47
Vote 'Leave' in a referendum	England	40	33	27	37	51	63
	Wales	35	34	44	32	34	38
	Scotland	32	33	38	38	25	35

*Source: Future of England Survey 2014.*

**Whose ‘material change’ might we be talking about on 24 June?**

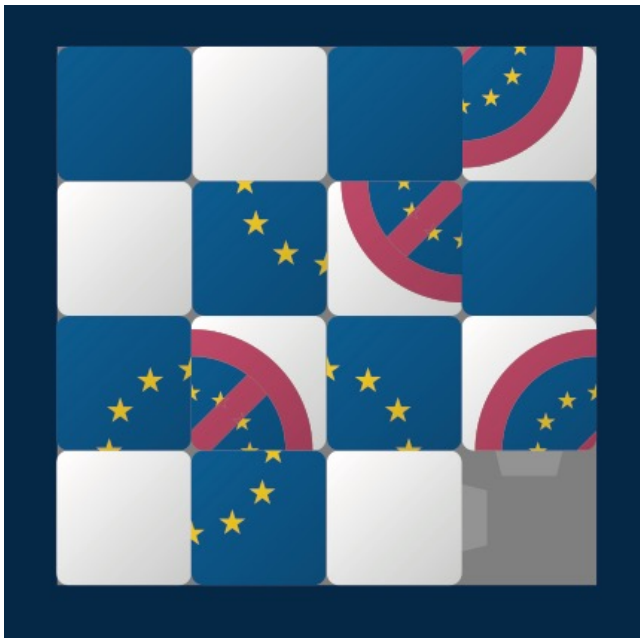
At this point we can return to the domestic implications of the EU referendum. We noted at the start of the chapter how the referendum could reignite the Scottish independence debate. For example, if England were to vote something like 54% to leave – as in the 11 November poll in Table 1 – an overall ‘leave’ outcome would be likely even if Scotland and Northern Ireland were strongly in favour of remaining, simply by English weight of numbers. So in that scenario Nicola Sturgeon might well be talking of material change and a second Scottish referendum.

But equally a slimmer English majority – a number of polls in Table 1 put the figure at 51-52% – could be outweighed by the clear preference in Scotland and Northern Ireland to stay. In that scenario we could expect a number of prominent voices complaining of England being kept in the EU against its will, and perhaps challenging the legitimacy of the result in a ‘reverse-Sturgeon’, calling for an English veto over the choices of those outside England. The incipient stirrings of an English nationalism, nurtured by the Conservatives in the 2015 UK general election campaign and – as Table 3 suggests – with a strong of dimension of Euroscepticism as a component, could well find a more robust platform, perhaps identifying a ‘material change’ in England’s relationship with other parts of the UK and seeking to redefine that relationship. Scotland may not be the only driver of change within the UK.

Of course, if everyone voted in line with the average of the polls of the last months the UK would just about remain in the EU, with no part of the UK opposing that decision, perhaps closing the issue down for a generation. But don't count on it.

*Charlie Jeffery is Professor of Politics and Senior Vice-Principal at the University of Edinburgh.*

## The Arguments



## Chapter 5

### **Cameron's negotiation: What has been agreed? What difference will it make? What will change in a 'reformed' Europe?**

*Laura Cram*

A 'new settlement' between the UK and the EU, was agreed at a meeting of the European Council on 18-19 February 2016. This settlement forms the basis on which the UK public will vote on the future of the UK's membership of the EU on 23 June. The settlement addressed the issues of economic governance, competitiveness, sovereignty and immigration.

#### **Why is this important?**

The UK has traditionally been known as an 'awkward partner' in relation to the EU. This is the second referendum on UK membership of the EU to take place. The first referendum, held in 1975, resulted in a 67/33 vote in favour of remaining in but also shaped relations between the UK and its partners for many years subsequently. That referendum reinforced the UK's awkward partner status. The current referendum on UK membership of the EU is important at three different levels.

First, at a broad UK-level the relationship with the EU has been a growing concern. The EU as an issue has traditionally divided most political parties. In recent years, however, it has been a particularly divisive issue within the governing Conservative Party. Pressure from parties such as UKIP, which have a particularly strong position on EU membership and have linked this position strongly with concerns about freedom of movement of peoples within the EU, have also played a significant role in pushing the issue of EU membership up the political agenda.

Prime Minister David Cameron's [Bloomberg speech](#) in January 2013 was, in large part, a response to these pressures. In his speech he highlighted the broader challenges facing the EU and put forward a vision for a new European Union. This vision was based on five key principles: competitiveness; flexibility; a two-way flow of power; democratic accountability and fairness for non-Eurozone members. The Conservative Party Manifesto for the 2015 UK General Election underlined the importance of this issue and included a commitment to an in-out referendum on EU membership before the end of 2017. The election of the Conservative Government in 2015 set in train a series of negotiations with the UK's EU partners in relation to the nature of the UK's membership of the EU. It is on the basis of this renegotiated position that UK citizens will vote in the referendum on 23 June 2016.

Second, within the UK there is not a shared view of the EU and the benefits or otherwise of membership. There is also little sense that devolved agendas were at the heart of the UK Government's renegotiation agenda nor of decisions taken about the referendum process. Leaders of the devolved administrations, for example, [requested](#) a pushing back of the referendum date beyond June 23. This was to allow a gap between the devolved elections in May and the EU referendum, and to avoid the confusion of agendas and issues around the two votes. The request was not accepted.

The different territorial positions on EU membership within the UK are particularly manifest in Scotland. Membership of the EU played an important role in the debate throughout the Scottish independence referendum campaign in 2014. While it would be an over-statement to describe Scottish voters as Europhiles or Euro-enthusiasts, it is fair to say that levels of Euroscepticism are considerably lower in Scotland (and to a lesser extent in Wales) than in England. Opinion polls consistently show a higher preference amongst Scottish voters, compared with voters from other parts of the UK, to remain in the EU than to leave (see Chapter 4).

The official Scottish Government position was from the outset that it did not support the Prime Minister's In/Out referendum. The preference of the SNP is to remain in the EU and to continue to improve and reform the EU from within, by making EU law and policies more relevant to Scottish people and businesses. No major political party in Scotland actively advocates voting to leave the EU in the forthcoming referendum. It is notable too that very different discourses on issues such as immigration (which is one of the key points of renegotiation with the EU) prevail in the different parts of the UK. This disparity of opinion and of policy position is particularly important given the delicate constitutional position in the UK. Much discussion has revolved around the potential for a second referendum on Scottish membership of the UK should a vote to leave the EU result on June 23, most particularly if Scottish voters have opted to remain (see Chapter 21).

Third, whatever the outcome of the referendum, this process has important ongoing implications for the relationship between the UK and the rest of the EU member states. There has been considerable movement amongst fellow EU member states to accommodate the new settlement for the UK. This has not been cost free. It has implications for future coalitions in the EU and further confirms the position of the UK as a peripheral, rather than a core member, of the EU. For some member states, for example Denmark, the UK pressure on issues like immigration has not been unwelcome. Likewise, other non-Eurozone countries were not opposed to clarifying the position of such states on important decisions. More abstract issues such as the UK's desire to opt out of 'ever closer union', for the most part got a free pass.

However, there was an overwhelming sense from the UK's EU partners that renegotiation was an unwelcome distraction at a time of extraordinary

challenge in the EU. While member states wanted the UK to remain, a growing sense emerged that this membership was not to come 'at any cost'. [Recent reports](#) reveal that more than 40% of the French public thinks that the UK should leave the EU. In an organisation that relies on consensus and cooperation, the full implications of the UK's renegotiation process for future relations with EU member states, assuming the UK remains a member, are yet to unfold. In the event of Brexit, of course, relations with the EU will continue to be of vital importance and new norms and relationship will have to be forged in the new context of Brexit and as an external negotiator.

### **What has been agreed?**

The UK's negotiating position was spelled out by Prime Minister Cameron in a letter to [Donald Tusk](#), President of the European Council, on 10 November 2015. Four areas of concern were identified:

- economic governance (protecting non-Eurozone states from discrimination);
- competitiveness (better regulation and reduction of administrative burden and compliance costs);
- sovereignty (exemption from the principle of 'ever closer union' and an increased role for national parliaments) and
- immigration (social benefits and free movement).

These areas are specifically addressed in the new settlement announced by the European Council, after lengthy negotiations, in February. The new settlement includes a range of commitments due to enter into force following notification that the UK public has voted for the UK to remain a member of the EU. This commitment is generally considered to be legally binding. While some elements of the EU legislative process cannot be guaranteed ahead, the commitment is generally accepted to have been made in good faith by the EU leaders and is expected to be implemented accordingly by the various EU institutions.

*Economic Governance* The settlement provides a two-way commitment. On the one hand it guarantees that as a non-Eurozone country the UK (and other non-Eurozone countries) cannot be discriminated against or excluded from important decision processes. Nor can these countries be expected to face financial penalties related to Eurozone 'bail-outs'. On the other hand these non-Eurozone countries may not impede further progress in the Eurozone. The position of the Bank of England as supervisor of financial stability in the UK is assured.

*Competitiveness* The commitment of the EU and its member states to enhance competitiveness and to complete the single market is reiterated. Specifically a commitment to decreasing the regulatory burden and compliance costs for businesses and to repealing any unnecessary legislation is made. The EU commits to pursue an active and ambitious trade policy. An



annual review of the existing body of EU legislation is to take place, with an eye to concerns for subsidiarity (that decisions are taken at the lowest possible level) and proportionality (that interventions are limited to the extent that they are strictly required). National parliaments and stakeholders will be involved in this process.

*Sovereignty* The commitment to 'ever closer union' will not include the UK and may not be allowed to justify moves to further political integration in the EU. The existing UK arrangements to opt-out or to opt-in to EU level measures in the areas of policing, immigration and asylum continue to stand. National security remains the responsibility only of the UK government. A so-called 'red card' procedure will be introduced. This will allow national parliaments to halt discussion of EU legislative proposals in the Council if the principle of subsidiarity is believed, by 55% of national parliaments, to have been breached.

*Immigration* The settlement addresses issues of access to free movement, particularly prevention of abuse or fraud and the assessment of potential threat. In relation to social benefits, an 'emergency brake', allowing limitation of full access to in-work benefits for new EU workers, may be instituted in cases in which a Member State is experiencing an 'exceptional situation' (currently this includes the UK). Member States may also index child benefits to the circumstances of the country to which they are being exported.

### **What difference will it make?**

The various 'Remain' and 'Leave' campaigns, have interpreted the new settlement through the lenses we might expect. For many of those in support of the UK remaining a member of the EU, the settlement resulting from David Cameron's renegotiations has resulted in a legally binding 'special status' that allows for a renewed and protected position for the UK in the EU, consonant with current UK Government priorities.

For those in favour of the UK's exit from the EU, or Brexit, the special status is unconvincing, representing a temporary compromise unlikely to be sustainable as the European integration process continues to move ahead and presents new challenges to the UK's ability to control its own affairs. An additional voice is also emerging – from those who broadly favour UK membership of the EU but feel that the renegotiations, focused on competition, deregulation and benefit restrictions for migrants, have moved the EU further away from the type of Union that they want to be part of. It is certainly the case that the binary in/out nature of the referendum and the renegotiations, conducted as they were only on the current UK Government's priorities, left little room for reflection about the nature of the EU.

The question of what type of EU people in the UK as a whole or its constituent parts want, or do not want, to be part of has not seriously been addressed in this process. In practice, the renegotiations will have little

impact on the vote on June 23. Indeed, the details of the package are already largely forgotten and the wider debate swiftly moved on to broader geopolitical security issues that did not feature significantly in the renegotiations and to the usual campaign hyperbole, threat and counter threat, from both camps. The renegotiation package and the new settlement were, however, essential to allow David Cameron to campaign for the UK to stay in the EU.

The referendum is unlikely to be the end of the issue, whatever the outcome. The UK's relationship with the EU has not been properly debated and will not be resolved by a referendum. Both the UK and the EU are constantly changing, a referendum will provide a snap-shot of public opinion, a static image unsuited to capturing two moving targets. Indeed, the repercussions of the referendum may further exacerbate shifts in internal relationships within the UK and at EU level.

*Laura Cram is Professor of European Politics at the University of Edinburgh and Senior Fellow on The UK in a Changing Europe programme.*

## Chapter 6

### OPINION

#### **The case for staying in: Why would the UK be better off in Europe?**

*Andrew Wilson and Kevin Pringle*

With the energy of Scotland's independence referendum still reverberating across the country, we go to the polls once again on a fundamental issue – do we remain in the European Union or leave? This truly is an age of political engagement and reform. In fact, an era of institutional challenge stretching well beyond conventional politics.

During the Scottish devolution referendum in 1997, the Princess of Wales was tragically killed in a car crash in Paris, and the public response to the Royal family's conduct shook the institution of British monarchy to its core. It came through that crisis and renewed itself in the life of the country – as it has done so often.

Many others have faced the same existential crisis of purpose and performance in a world where transparency is increasingly demanded by an ever more informed population. Westminster, the BBC, newspapers, banks, tennis, football and athletics have all faced into the storm, and have yet to emerge fully reformed. It is an era of change across all of the institutions we rely on to govern ourselves and live our lives. Navigating an epic period of reform, change and renewal is a major challenge for leaders and for us all.

It is in this context that the Scottish referendum was set. As with Europe, the binary choice suggested a far greater distance between the outcomes than pragmatic reality would actually have meant.

#### **Having your cake and eating it or 'the best of both worlds?'**

What the 'Yes' campaign was trying, but failing to articulate was a renewed relationship with the rest of the UK, Europe and the international community on a more equal basis. That, it was argued, would have better equipped Scotland to navigate the choppy waters that all countries face, and making the most of our many opportunities.

Critics may have called it wanting to have our cake and eat it, but what it consisted of was a rational balance between retaining mutually-beneficial links with the rest of the UK, and maximising self-government and freedom of manoeuvre for Scotland. So the 'Yes' side advocated retaining many shared assets and institutions, while also proposing far greater autonomy than we have any prospect of in current constitutional circumstances. Put another way, having your cake and eating it is just another way of saying 'the best of

both worlds' – which, ironically, was presented by the 'No' side as a positive reason to stick with a unitary state.

A similar approach could be argued of the 'Leave' campaign on the European question. They claim that the UK would retain the benefits of free access to the single European market, while ridding the country of the hassle and costs of contributing to its governance and processes that unquestionably look remote to many of its citizens. The 'Remain campaign' argue that it is all uncertain, that the costs are too great and that harm would be visited upon us.

Michael Howard, prominent 'Leaver' and close confidant and mentor of the Prime Minister, has even gone so far as to suggest that he wants a 'Leave' vote to strengthen the negotiating hand on the terms for staying in.

In reality, of course, the future is unknowable. As private citizens, we must rely our judgement, instincts and as much of a sense of likelihood as we can garner from a media and public discourse that can generate much heat and entertainment, but all too often far too little information. But then again, as with Scotland, some of the outcomes will always be unknowable. The question then is: is any of it worth the risk and the bother?

We both felt and still believe that for Scotland it most certainly was, and that the balance of possibility and risk was in favour of 'Yes.' A vast number of our fellow citizens agreed – more than 1.6 million – and the vote was far closer than many anticipated. Why then would we take what, on a cosmetic, level could seem a contradictory position on this issue: wanting to remain in the EU when we wanted to leave the UK?

### **The risks hugely outweigh those Scotland faced in relation to independence**

We think it is a balanced argument and issue, and that good people can disagree about it for the best of reasons and from the most positive motivations. We also think that the UK could survive outside of the EU. That is not and never has been the issue. But on core principle, we are against leaving and feel strongly that the risks hugely outweigh those Scotland faced in relation to independence, and for a prize that is much less certain or real.

For a start, we are talking about two entirely different constitutional constructs. The UK is a unitary state, albeit with a growing measure of self-government for Scotland, Wales and Northern Ireland and devolution elsewhere. By contrast, the European Union is a membership organisation for independent countries. It affects only some, albeit important, aspects of its members' national policies – the nation states have equal rights and status, retaining their sovereignty and pooling it on an agreed basis

In simple illustrative terms, George Osborne's macroeconomic policy applies more or less equally to Scotland, regardless of the fact that there is only one Conservative MP in Scotland. There is no Chancellor of the

Exchequer of a European government, imposing economic policy on the UK on the same basis.

In terms of effect, Scotland's growth performance – expected to be around 1.8% this year, compared to 2.2% for the UK – is primarily determined by the prevailing policy agenda of the Government at Westminster, as of course is the case for Britain as a whole.

Without minimising any of its recent difficulties, growth in the Republic of Ireland was 7.8% in 2015, topping that of all EU member states and even India and China. What that indicates is the ability of nation states to pursue different policies and achieve dramatically different outcomes, even within the constraints of EU membership. Our point is that such constraints will always be far less than those which come from being part of the same unitary state.

As civic nationalists, we want power to reside nearest to the people as possible. Democratic accountability should be felt as close to where it can be effectively and practically administered. But we all know that the world faces a huge number of colossal problems – economic, social and environmental – that are far bigger than any one country. Thus, we need to share sovereignty to retain it. Practical substance matters far more than symbolism. On this, the case for the EU remains compelling – carbuncles and all.

Historically, the concept of 'Europe' developed gradually – it was mentioned by Greek historian Herodotus in a geographical sense, and much later applied to a cultural definition of Latin Christendom around the 8<sup>th</sup> century. For over a thousand years, Europe had regularly been at war with itself in many forms of the most murderous kind, until the post-1945 rebuilding effort required a fundamental attempt to end that carnage. The European Union's greatest success has been the peace that we all too often take for granted.

### **We worry about the domino effect of the UK leaving**

No-one is saying that Europe would descend into war in the absence of the EU. But we are saying that there is nothing in the history of Europe to indicate that peace is its natural state of affairs – quite the opposite – and that therefore the lasting peace we have enjoyed cannot be divorced from the political structures put in place after World War Two, first and foremost the European Union.

In any event, we still live in a world of conflict which comes close to the EU's borders, and terrorist acts which occur within them. We believe that we are best served by being able to speak and act together through the European Union, against threats both internal and external.

We worry about the domino effect of the UK leaving, and the forces it would encourage elsewhere. The fact that Mr Putin in Russia is the only world leader hoping for a UK 'Leave' vote is telling.

On a practical level, bodies such as Europol and its justice equivalent, Eurojust, coordinate intelligence sharing and prosecutions across the EU. The European Arrest Warrant brings terrorists and other criminals back to face justice across EU boundaries – including one of the 21/7 bombing gang in London in 2005, who had fled to Italy. And the Schengen Information System, which the UK has now signed up to, enables the sharing of information about some 40,000 wanted criminals and missing persons in the EU.

In terms of the economy, we also know that access to European markets and the ongoing attempt to eliminate barriers to trade has improved the lives of millions. There are general benefits of EU membership – such as the fact that for every £1 we put into the EU, we get almost £10 back through increased trade, investment, jobs, growth and lower prices. And there are very specific benefits – being in Europe means that we get lower prices in the shops, because it's cheaper to trade and there is more competition and choice. EU action is making it cheaper to use your mobile phone abroad – abolishing roaming charges – and driving down the cost of flights.

### **The issue is the extent to which wealth is shared fairly across society**

We also advocate greater focus on more EU social and environmental initiatives in the years ahead – which have already delivered everything from paid holiday rights and maternity and paternity leave, to safer products, cleaner drinking water and cleaned-up beaches.

Europe is about quality of life as well as the economy – though, in truth, strengthening both go together.

What is provable from history is that the removal of barriers to the free movement of people, money and goods and services coincides with periods of greater overall prosperity and welfare. The opposite produces the opposite. Contrast the economic protectionism of the 1930s with the moves to free trade after the war. The issue is the extent to which the wealth is shared fairly across society – and that remains a matter for nation states (back to our 'friend', George Osborne) to a far greater extent than supranational bodies such as the EU, given the relatively limited role and powers they have.

Such is the fear abroad at present on the various security and migration challenges, as well as a sense of policy powerlessness post the financial crash, that retreating behind national barriers for insular reasons can sound appealing, rather than using sovereignty to help project the common good. But it would be ruinous for the very people who would hurt the most.

The arguments on migration are demonstrably bogus, given that the immigration rates in Switzerland and Norway (outside the EU) are far higher than that of the UK.

And the potential costs of leaving in terms of goods and export markets could be vast, as it is simply not credible to argue that the terms of access to the single European market for a 'Brexit' UK would or could be as good as

those obtained from being 'In'. That is one reason why we would want to see a future independent Scotland and the rest of the UK both firmly in Europe.

The SNP is our party, and it has changed its views about Europe over the years. Some of its prominent members have gyrated their perspective, and still do. We don't think that is a bad thing. 'Group think' can be damaging, and on questions like these the intellectual challenge of different views can produce better outcomes.

### **Europe's faults don't threaten the independence of any nation**

Without the independence referendum there would be no further devolution to Scotland, or the historic fiscal framework. That challenge makes the system reform and improve. Mistakes will always be made when reform is happening, but the risks of doing nothing are far greater.

Garret Fitzgerald, a clever and wily Taoiseach of Ireland, said in 1989 that he had 'come to the paradoxical conclusion that it is in the process of merging its sovereignty with other Member States in the Community that Ireland has found the clearest 'ex post facto' justification for its long struggle to achieve independence from the United Kingdom.' He did so because Europe had provided the greater economic and political stage that enabled Ireland to modernise and find its place in the world as a small, popular and ultimately successful country. This is the perspective we come from on this question.

We know Europe's faults, but they don't threaten the independence, never mind the existence, of any nation. Do the French, the Poles or the Swedes regard themselves as anything other than effective nation states? Do the dozen countries who joined the EU as they emerged from behind the iron curtain believe they have thrown away their hard won freedom? Of course not.

The case for Europe is about the obligations we have beyond our borders, and the gains we derive from working together. It is about common sense and a vision for the future. We believe that the people of Scotland have enough of both to choose the right way forward.

*Andrew Wilson is a former SNP MSP and is a Founding Partner of Charlotte Street Partners. Kevin Pringle was a senior special adviser to the then First Minister of Scotland, Alex Salmond, and was strategic communications director for the SNP from September 2012. He is now a Partner in Charlotte Street Partners.*

## Chapter 7

### OPINION

#### The case for Brexit

*Brian Monteith*

Imagine a country where food prices are 17% cheaper, where average annual energy bills are over £100 lower, where our once-famed fishing communities are revived and prosperous, where our politicians are able to help Scottish industries by awarding contracts locally or providing financial support. Imagine a Scotland that can benefit from new trade deals with lucrative markets that want our products but are currently difficult to penetrate. Imagine a Scotland that enjoys a democratic process where our elected representatives have the last word in deciding our laws.

That is just some of the benefits that Scotland could have if it were to be outside the European Union (EU). Some say it is too difficult or complicated, too risky and would cost jobs and lost investment. Having endured the Scottish independence referendum I smell the distinct bitterness of doom-laden scaremongering built upon unsafe suppositions and false assumptions.

There is no good reason why Scotland's participation in the EU, through its membership of the UK, should be considered as too complicated or too difficult to change. The issue is a relatively straightforward one. At the heart of the matter is the question 'to what extent does Scotland wish to control its own destiny – to control its own laws, its own taxes, its own economic and social policies?'

#### **The two unions – the EU and the UK – are not the same**

If Scots are genuinely interested in wanting to return *more control* to the local level at Holyrood, whether as a sovereign or devolved Parliament, then the only choice is to vote to leave the EU.

Before I go further let me explain that the two unions – the EU and the UK – are not the same, and thus it is possible to be against the former while supporting the latter.

The recent history of the UK's democratic governance is for its institutions to become more devolved with authority passing out from the centre to Edinburgh, Cardiff and Belfast. This has gone so far in Scotland that Holyrood will soon have substantial powers over taxation and welfare. By comparison the recent history of the EU is for more control, oversight and power to be determined at the centre and for the European Court of Justice to become the supreme court across the EU. Laws that Westminster has been willing to be determined by the Scottish Parliament in Edinburgh, such as minimum



pricing of alcohol, can be struck down not by politicians or judges in London but by justices in Luxembourg.

Anyone wishing to have greater autonomy for Scotland, and a greater local determination of Scotland's laws and affairs must, on the evidence of what would happen if the UK left the EU, accept that the optimum level of self government will be achieved if Scotland also lies outside the EU. This case holds for Scotland whether or not it leaves the UK. The reason for this is simple enough, under the terms of the Scotland Acts those matters that are not reserved to Westminster will automatically become the responsibility of the Scottish Parliament.

This means that under devolution, or full independence of Scotland from a UK that had left the EU, considerable new powers would transfer to Holyrood. With these new powers would also come financial responsibilities that would require fresh inter-governmental negotiations about redistribution to the Scottish exchequer of UK spending from the funds that would formerly have been sent by the UK to the EU for items such as fisheries and farming support.

Scotland would suddenly have the ability to adopt different policies from not only the EU but the UK that might be considered more appropriate to its local circumstances in competencies such as the environment, aspects of trade and industry, farming and fisheries.

I have yet to hear from any Scottish politician, *nationalist or unionist*, why having those policies given to the Scottish Parliament would be anything but a good thing.

### **Fishing and farming support would undoubtedly continue**

Under devolved arrangements Holyrood could prepare and introduce new regulations and management schemes for fisheries and farming that suited our topography and our environmental needs – rather than apply the lowest common denominator across the whole of Europe. Scotland would be able to revive its fishing communities and improve the fishing grounds by introducing a management scheme similar to those enjoyed by Norway and Iceland. Why should our fishing communities continue to be at the mercy of voracious EU fishing fleets that plunder our seas with industrial-scale trawling?

If there is a concern about the current investment made by the EU in fisheries and farming support or in the award of structural funds being lost following a Brexit it has to be understood that the EU does not have any money of its own, it only has the funds that national parliaments give it. Fishing and farming support would undoubtedly continue at least at current levels as it would be politically damaging for any party of government to do otherwise. Indeed a Scottish government could consider improving certain grants – and one thing would be clear – the responsibility for management and delivery of support would begin and end with Holyrood politicians. There

would be no disagreements over who attends EU negotiations and there would be no passing the buck on to the EU for mismanagement or delay of farming support. It could even be paid in advance more regularly if wanted.

Similarly, the regional financial support that is provided to Scotland through structural and cohesion funds costs the nation far more than is received back.

Research by Open Europe established that in the period 2007-13 in the Highlands and Islands a £203 million contribution to the EU brought in £188 million in grants; in the South West £1.1 billion bought £401 million, in Eastern Scotland £996 million brought £338 million and in the North East of Scotland £256 million delivered £89 million. A total of £2.53 billion elicited only £1.01 billion. In no part of Scotland were the receipts larger than the contribution. Indeed of 37 regions in the UK only two were net beneficiaries with 35 being net contributors.

Patently, the funding of existing projects could be afforded and thus continue after leaving the EU, while money could still be saved for investment in new infrastructure projects. All during a period where the EU budget will continue to retreat from spending in Scotland as the number of poorer member countries expand and take up a larger share of grants. Another option would be to reduce the taxes that take money away from productive economic activity to go through the EU for structural and cohesion funds.

Other reforms could be considered: the Water Framework Directive, designed for the parched earths of Southern European states but applied equally in rain-drenched Scotland, could be amended, reducing manufacturers costs and reviving local industries without impacting on trade with the EU.

All of these changes would be for the Scottish Parliament to decide and be democratically accountable to the people for those decisions.

### **Direction of travel for the EU is towards greater common control**

Alternatively, if for whatever reason Scotland were subsequently to become independent, it would enjoy all these same benefits and arguably more. But were an independent Scotland to then apply to the European Union for membership and be accepted it would be expected that those competencies recently gained would then revert back to the previous EU arrangements from whence they came. The likelihood of further EU demands on Scotland, related to membership of the Eurozone, the Schengen Treaty and a more expensive membership payment cannot be discounted.

With the direction of travel for the EU being towards greater common control of fiscal management, police and armed forces command, foreign relations and welfare policies Scotland would have left one devolving union – where powers are being gained – only to enter into an even less democratic and unaccountable centralising union where it would have little clout. If the

UK can lose 72 out of 72 votes that it has contested at the European Council to prevent ever closer union then what would Scotland's chances be?

Whether as part of the UK or as a sovereign independent nation, Scotland would gain in its democratic responsibility and accountability from leaving the EU.

It is said that there is great risk in leaving the EU, that Scotland's trade with the EU supports nearly 350,000 jobs – but the Scottish Parliament's own information centre (SPICE) studied the evidence and established the figure was closer to 81,000 jobs directly related and a further 69,000 jobs indirectly associated. These are still large numbers but they do not take account of two considerations, the first is the cost to existing Scottish and British jobs from being a member of the EU, and the second is that no account is taken of new jobs that can be generated by new trade.

### **Establish Free Trade Agreements with countries around the world**

In the scaremongering that is presented over jobs and economic activity no allowance is made for the damage to business from higher energy costs on industrial processes (such as steel production) or EU rules that can limit economic activity. No consideration is given to how a financial transaction tax would not just hit the City but impact financial services in Aberdeen, Dundee, Edinburgh and Glasgow.

Estimates of the regulatory burden placed on all British businesses – whether they export or not – by the UK Treasury and economists such as professors Tim Congdon and Patrick Minford have shown a drag on GDP in a range between 4%-12% which translates into jobs not being created and economic prosperity being held back in Scotland as well as the rest of the UK.

Likewise, opportunities for new jobs are ignored. For instance India, like much of Asia, is a lucrative market for Scotch Whisky, despite the high tariff of 150% that is placed on the import of blends and single malts. The EU negotiations with India to establish a free trade agreement that could reduce that and other tariffs has been in deadlock for nearly seven years and shows no sign of progressing. Were the UK to leave the EU it would have every incentive to establish Free Trade Agreements with countries around the world, not least the emerging markets like India, and to do so quickly. With the tariffs on whisky and other products reduced the possibility to grow those exports would become highly attractive and the opportunities to expand production and create more jobs in distilling, bottling and packaging could be realised. Similar new trade deals with countries like China and the US, that have not yet been concluded because the EU insists in turning such agreements into regulatory processes rather than trade deals would offer similar potential.

For some unionists there is another argument against Brexit, namely that a British vote to leave the EU will result in the break up of the UK if Scotland votes to remain. The argument goes that such will be the Scottish public's grievance about being taken outside the EU that it will demand a second referendum on independence and then vote to leave the UK so that Scotland can rejoin the EU.

Supporters of EU membership peddle this scenario from their Project Fear playbook to discourage unionist EU-sceptics and doubters from voting to leave because they believe they would not dare put the union of Scotland and England at risk. Paradoxically, the more Scots unionists that vote for Brexit the closer the margin between leave and remain will be. With polling at the time of writing breaking through the 40% barrier for Scottish support to leave the EU as the arguments are better heard, the likelihood of a second referendum reduces as the facility for a grievance melts away.

### **Europe is not the EU**

Finally, Europe is not the EU. Many of the benefits that are alleged to be available only through EU membership, such as the Erasmus student exchange programme, scientific research grants and even interrail travel, are in fact enjoyed by other countries that are not EU members and would remain open to the UK and thus Scotland.

There is no need for a White Paper on what life outside the EU will look like. The key is that we will be able to decide for ourselves and we have yet to choose how we use the benefits of taking control of our destiny. Neither Norway, Switzerland or Canada are perfect models, for one thing they are not as important to the EU trading partners as the UK, but they show what the minimum potential is.

True solidarity is born of sovereignty and to achieve such positive relationships Scotland should be outside the EU.

Whether it is security, jobs and trade, science and education, fishing and farming, energy or the environment the greater risk is staying in the EU. No one can predict with any certainty what the costs and existential challenges will be as the EU lurches from one crisis to another of its own making compared to leaving and being able again to make decisions for ourselves in partnership with our neighbours.

*Brian Monteith is a former member of the Scottish Parliament 1999-2007, and international public relations consultant. He is currently seconded by Global Britain to serve as Head of Press at Leave.EU*

## Chapter 8

### What are the alternatives to EU Membership?

*Michael Keating*

UK withdrawal from the European Union would not automatically put the clock back to 1973 because the world has changed since then. International trade is subject to regulation under the World Trade Organisation (WTO) and regional trading blocks. It would therefore be necessary to decide on the country's participation in the global trading order. There are several alternatives to UK membership of the EU but choosing among them would depend on what one dislikes about the EU and what the reasons for leaving are.

The EU is a free trade area, with no tariffs on goods. Yet it is more than this. It is a single market, in which there is free movement of goods, but also of services, capital and labour. Product standards are harmonised or subject to mutual recognition, under which if a product is recognised in one state it can be marketed in all the others. Public procurement tenders must be open to firms in all member states. There is a common external tariff and the EU negotiates international trade agreements on behalf of all its members. The EU has also expanded its competences into other areas such as environmental and labour market policy, which expand on and support the single market; these are called 'flanking policies'. Competition policy, enforced by the European Commission and the European Court of Justice, sustains market order.

The EU has also extended its competences into security cooperation, justice and home affairs, research and territorial cohesion. There are programmes for cooperation in social policy matters, providing a 'social dimension' alongside the market vision of Europe. Some countries have adopted the Euro, which entails the loss of control over monetary and exchange rate policy. All except the UK and Ireland are committed to the Schengen area of passport-free travel.

Finally, the EU is a political union, with common institutions, whose laws are binding within member states, thus constraining national sovereignty. Members have to accept the *acquis communautaire*, the existing body of law and policies, although the UK has secured some opt-outs from new policies.

Opponents of membership object to different aspects of this. Some are concerned with restoring full sovereignty to the UK. In the modern world, formal sovereignty may not be the same as effective sovereignty, meaning the ability effectively to run our own affairs unconstrained. Some are concerned with the economic issues, arguing that the EU is a declining bloc and that the

UK is paying too much for it. Others want to do away with European regulations on business or in social matters like employment and labour market regulation; Others again want to limit immigration and the free movement of labour.

Alternatives to EU membership can be seen under two headings. The first is to 'go it alone', with no privileged partnership with the EU. The second seeks a special arrangement to retain the European single market while eliminating the other aspects of the EU and restoring national sovereignty.

### **Go it Alone**

Some advocates of go it alone argue that the WTO provides sufficient rules for world trade, preventing unfair competition or protection. This would restore sovereignty and allow the UK to control the movement of labour. There would be some tariff barriers and, although these would generally be low, they could affect vehicle exports to the EU. Non-tariff barriers would remain and there would be no mutual recognition of product standards.

There would be no free trade in services; so financial services providers might opt to set up subsidiaries in EU countries in order to remain in the single market.

At present the UK does not negotiate trade deals, within the WTO or bilaterally with other countries outside it; that is done by the EU. As a non-member the UK would be able to represent itself in negotiations and press its own priorities but could have less weight than the EU in facing up to other global economic giants. In recent years, world trade negotiations have stalled after the breakdown of the Doha round in 2008 and the emphasis has moved towards regional trading blocs such as the North Atlantic Free Trade Agreement (NAFTA), Mercosur (in South America) and the EU itself.

### **A Free Trade Agreement with the EU**

As a non-member, the UK could sign a free trade agreement with the EU and so retain free access to European markets. There would be no common institutions or policies and the UK would be free to make its own laws in most fields. Free trade agreements, however, do not usually include free trade in agriculture and services (a particular concern for the UK) or free movement of labour. Non-tariff barriers to trade would remain. EU countries would have a strong incentive to sign a free trade agreement with the UK, as it is an important export market, but they would not want the UK to undermine their competitiveness.

So it is likely that they would insist on the social and environmental regulations that currently exist. If the UK wanted to keep full access to the single market (which has been a priority for successive governments), it would have to make a deeper arrangement of the kind provided by the European Economic Area or the deal with Switzerland.

## **The EEA or Norwegian option**

The European Economic Area (EEA) is based on the European Free Trade Area (EFTA), founded by the UK in 1960 as an alternative to the European Economic Community (EEC, now the EU). Within two years, the UK itself had decided to join the EEC and was eventually followed by all EFTA states except Norway, Iceland, Switzerland and Lichtenstein. The EEA was set up in 1994, to link Norway, Iceland, Lichtenstein and the EU (Switzerland voted against). It is a free trade area but excludes external relations, agriculture, fisheries, transport, general budget contributions, regional policy and monetary policy. It does provide for free movement of labour on the same terms as the EU.

Norway is the principal EFTA/EEA country, having twice voted against EU membership. Norway's agreement with the EEA does not allow for EU law to be directly applicable, in contrast to the situation in EU member states. This formal sovereignty is, however, constrained in practice. EEA countries on accession have to accept the whole body of relevant EU law, accounting for much of the *acquis communautaire*. Technically, they are not obliged to accept future EU laws but the scope for opting out is limited and they then risk exclusion from the whole relevant field. There is provision for consultation with EEA before EU laws are adopted, there is some participation in working groups and there is an EEA Joint Committee.

Non-EU states, however have no vote on the adoption of EU laws. An EFTA Surveillance Authority polices EEA rules and the arrangement is updated annually to take account of new EU laws. There is an EFTA Court but it tends to follow the decisions of the European Court of Justice (ECJ). EU regulatory agencies interpret the rules and apply them across the EEA, which has caused problems and delays in EEA countries, for example in relation to financial services. It is estimated that some three quarters of EU regulations are applicable to Norway.

Norway has chosen to join the Schengen free travel area, which allowed it to keep its free travel area with the other Nordic countries. It participates in European foreign and security policy and the Dublin agreements on police and asylum, again without a say in the making of policy. As part of its association with the EU it contributes to programmes for social and economic cohesion across the EU but does not receive funding back in return. Norway also has a set of bilateral agreements with the EU.

The EEA option would thus restore formal sovereignty to the UK, but in practice it would have to follow EU rules without having a vote on their adoption. It is in any case not clear that the UK would be allowed to join EFTA and thereby get into the EEA. In negotiations with the EU, EFTA has to speak with a single voice and, at present, Norway is the dominant member. The UK, however, would be many times larger than the other three together and could overwhelm them. UK membership of EFTA/ EEA could also cause problems

for the EU, as the UK would be a more significant player. It could also set a precedent for other EU member states seeking a looser relationship without all the obligation of membership. Membership of EEA would require the agreement of all EEA member states, including the remaining 27 EU members.

### **The Swiss option**

Switzerland decided, by referendum, not to join the EEA but has a bilateral relationship giving it access to EU markets. Altogether, 120 treaties were signed in 2000 and 2004 but further agreements have not followed because the EU sees them cumbersome and time-consuming and prefers over-arching arrangements like the EEA.

The agreements include free trade in goods but not in services or agriculture and are less extensive than the EEA on 'flanking policies' such as social provisions, environmental and consumer and employment matters. There are no requirements for a financial contribution to cohesion, but Switzerland does make payments to the new member states of eastern and central Europe.

The Swiss arrangement lacks the common structures of EEA and consultation on the development of EU policies is less intense. There are joint committees but their functions are more limited than in the case of the EEA. The agreements apply only to existing EU policies so that, unlike Norway, Switzerland is not bound to future EU decisions. The various Swiss agreements are linked so that, if one side reneges on one agreement, the other side can suspend others. Switzerland, unlike Norway, does not have to transpose EU laws but does have to have its own legislation to the same effect; the easiest way often just to transpose EU law anyway. Switzerland is not formally bound by decisions of the European Court of Justice (ECJ) but in practice, its Joint Committee with the EU incorporates ECJ rulings.

Like Norway, Switzerland has to accept free movement of labour and to adopt policies on labour regulation such as the Working Time Directive. A referendum in 2014 narrowly decided to restrict free movement, which triggered a crisis as the EU refused its request to give legal effect to the referendum. The immediate consequence was Switzerland's suspension from the EU research programme (Horizon 2020). Switzerland was later partially re-admitted, but the issue remains unresolved.

### **Balancing the options**

It is difficult to quantify the economic loss or gain of the various options as that could depend on the details, on future developments in world trade and on decisions that UK governments might take in the future. Concern has been expressed that any outcome that leaves the UK out of the single European market would harm trade and investment. Others have argued that, freed from a preferential relationship with Europe, the UK could more successfully



compete in global markets. Some have argued that, free of the EU, the UK could pursue a market-based strategy of competition founded on low taxes and less regulation, but that is essentially a political choice.

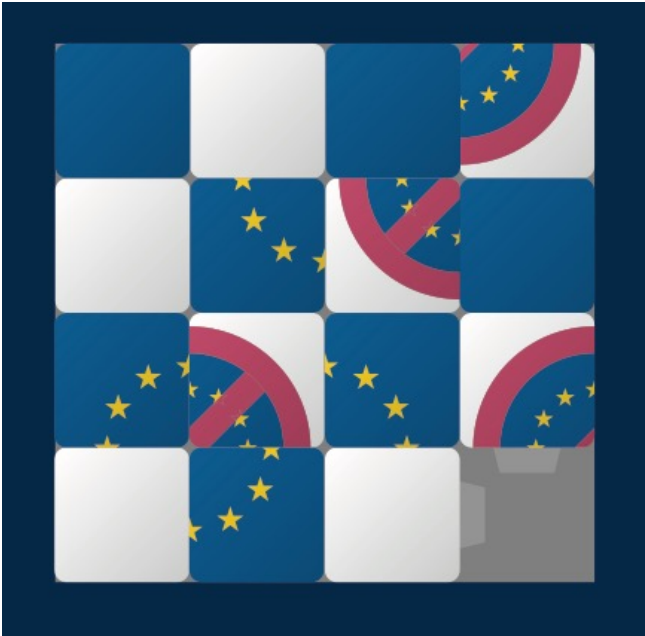
The Norway/ EEA and Swiss options would restore formal UK sovereignty but leave it subject to European decisions. It would not be subject to the common agriculture or fisheries policies but would be obliged to accept free movement of labour. The EEA would provide for free trade in services, while the Swiss option would not.

The 'Go it Alone' options would restore more of UK sovereignty but it would lose access to the single European market and would have to negotiate international trade agreements on its own.

None of the options would leave the UK as a completely free actor, since it will always be subject to international trading rules of one sort or another. That is an inevitable fact about the modern, interdependent world.

*Michael Keating is Professor of Politics, University of Aberdeen and Director of the ESRC Centre on Constitutional Change.*

# How Europe affects us: what Remain means, what Leave means



## Chapter 9

### Legislation: who makes our laws – Brussels, Westminster or Holyrood?

*Tobias Lock*

Arguments around sovereignty are at the heart of the debate on whether the UK should leave the EU. Those advocating a ‘Leave’ vote on 23 June contend that many laws applicable in Britain are not made by directly elected and fully accountable MPs and MSPs, but by unelected and unaccountable bureaucrats in Brussels. Leaving the EU would in their eyes enable Britons to take back control of their own destiny. By contrast, those arguing to stay in the EU, point out that Britain has not lost sovereignty, but instead shares it with other Member States. They also highlight the necessity to have some common regulation in a common market and highlight the role played by the directly elected European Parliament and by accountable national ministers voting on laws in the Council of the EU.

So, who makes our laws – Brussels, Westminster or Holyrood? The short answer is that they all do. In what precise fields and to what extent depends upon the competence that each entity – Scotland, the UK and the EU – has.

#### **Parliamentary sovereignty as a starting point**

It is best to start with the parliament at Westminster, which is sovereign. In the words of the famous Victorian constitutional lawyer A. V. Dicey this means that Parliament has ‘the right to make or unmake any law whatever’. This means that in theory Westminster can legislate on any matter and in whichever way it pleases. However, Parliament decided to limit its own powers in two ways: first, by passing the European Communities Act 1972 and thus allowing for EU law to be applicable in the United Kingdom; and second, by devolving certain powers to Scotland, Wales, and Northern Ireland.

Parliamentary sovereignty means that Parliament can take these powers back whenever it so chooses. However, there may be a legal and political price to pay: repealing the European Communities Act 1972 would be in breach of the UK’s obligations under the EU Treaties (as long as the UK remains a member of the EU); and repealing devolution legislation might be politically extremely unpopular in the devolved parts of the UK. It might well lead to renewed calls for independence, particularly in Scotland.

#### **Who does what?**

The EU is governed by the principle of ‘conferral’. This means that it can legislate only on those questions that the Member States gave it power to legislate on. The EU’s powers are therefore based on an exhaustive list of

competences. Some of these are exclusive, which means that the Member States are prevented from legislating on a specific point. Examples are the rules on customs tariffs; the common commercial policy, i.e. trade with the outside world; and competition law. Most EU competences, however, are shared with the Member States. This means that the Member States may legislate as long as the EU has not legislated. As soon as (and for as long as) Union legislation has come into existence, the Member States can no longer legislate.

For the EU to be allowed to legislate based on a shared competence, the EU must comply with the principle of 'subsidiarity'. It needs to show that the objectives of the legislation cannot be achieved by the Member States individually; and that they can be better achieved by way of EU legislation. An example would be rules on product standards: for products to be traded freely in the single market, it is often necessary that there is a common product standard. Otherwise there might be differing rules in each Member State. This shows that 28 pieces of Member State legislation cannot achieve the aim of creating a single market; and that one piece of EU legislation can do this better. The vast majority of EU legislation is based on shared competences; examples include environmental law; the internal market; agriculture and fisheries; consumer protection; and energy.

Under the EU's ordinary legislative procedure, EU legislation is proposed by the European Commission and then voted on by the European Parliament and the Council of the European Union. The European Parliament is directly elected by the citizens of the EU Member States. Each Member State has a specified number of MEPs, which proportionately decreases with a Member State's size.

The UK has 73 MEPs, six of whom represent Scotland. The Council of the EU comprises a minister from each Member State; the votes in the Council are weighted to take account of the differences in population between the Member States. The Council usually adopts legislation with a qualified majority. This means that a Member State can be outvoted and legislation can be adopted against its will. However, in some cases the Council must vote unanimously (e.g. when making anti-discrimination law); and sometimes the consent of the European Parliament is not needed, but it is sufficient if it is consulted (e.g. when laying down the rules on EU citizens' right to vote in municipal elections).

The powers of Holyrood are defined by the Scotland Act 1998, which has devolved certain powers to Scotland. The Scottish Parliament may legislate in any area that has not been 'reserved' by Westminster. Important powers for the Scottish Parliament include Scots law (criminal and civil, but also court procedures); health; and education. Westminster can, in theory, legislate in these areas as well, but this is not normally done.

## **What shape and effect does EU law have?**

EU law appears in different guises. There are the EU Treaties (e.g. the Lisbon Treaty), which have been agreed by the Member States and ratified by their parliaments. They contain some of the basic rules of the EU, such as rules on the free movement of goods, services, people, and capital. Individuals can rely on these rules directly, e.g. a company based in Edinburgh can provide services in Spain on that very basis, and vice versa.

Then there is EU legislation, which can take two different forms: first, regulations, which are directly applicable. Their effect is therefore comparable to that of national law. For instance the regulation on air passenger rights can be directly relied upon by individuals to claim compensation if a flight has been cancelled without good reason. Second, there are directives. EU directives are not directly applicable, but must be implemented by the Member States through national legislation. In the UK, directives are mostly implemented by way of secondary legislation, i.e. so-called statutory instruments made by government ministers and not parliament. Directives need implementation because they typically spell out the aim of what needs to be achieved, but leave the question on *how* this is achieved to the Member State. This allows Member States to update and adapt existing legislation and thus integrate EU law into their legal system. For instance, the Working Time Directive was implemented into UK law by way of the Working Time Regulations. Other Directives have been incorporated into Acts of Parliament. An example are the EU's anti-discrimination Directives that have been incorporated into the Equality Act 2010.

## **In how far does EU law constrain Westminster and Holyrood?**

EU law takes primacy over conflicting national law. This means that neither Westminster nor Holyrood are allowed to legislate contrary to European Union law. For Holyrood this is expressly laid down in the Scotland Act, which stipulates that an Act of the Scottish Parliament is *ultra vires* (and therefore not law) if it is not compliant with EU law. For Westminster, it follows from the case law of the European Court of Justice and of the UK's highest court (formerly the House of Lords; now the Supreme Court) that so long as the European Communities Act 1972 is in force, Acts of Parliament must not contradict EU law. If they do, they are deemed inapplicable in so far as the contradiction goes.

It follows from this, that both Holyrood and Westminster are best advised not to legislate in a way that is contrary to EU law. In this sense, the influence of EU law goes further than the division of competences would suggest. Even where Westminster or Holyrood have legislative competence, that competence must be exercised within certain limits set (mainly) by the EU Treaties. For instance, Holyrood would not be allowed to pass legislation in the education sector that discriminates against EU nationals. As a

consequence, people from other EU Member States studying at Scottish universities cannot be charged higher university fees than Scottish students as this would discriminate against them on the basis of their nationality. This would be clearly prohibited by EU law. Another example would be Westminster legislating on stricter standards for animal welfare than required by EU legislation. Stricter standards are allowed, but they must not be used to prevent meat that was produced in accordance with (lower) EU standards from being imported into the UK. If Westminster legislation prevented such imports, it would contravene EU law and would have to be dis-applied as far as producers from outside the UK are concerned. It could be applied, however, to British producers.

### **What proportion of our laws are made in Brussels?**

Having established that some of our laws are made in Brussels, some in Westminster, and some in Holyrood, an important question remains: how much of our law is made by the EU? It has proven difficult to put an exact number on this. The (politically independent) House of Commons Library suggests that in the period from 1997 to 2009 6.8% of acts of Parliament and 14.1% of statutory instruments had a role in implementing EU law. These numbers do not present a complete picture, however. On the one side, they say very little about the extent to which these pieces of legislation are determined by EU law: for instance, an Act of Parliament might be used to implement an EU directive, but it might additionally deal with a large number of issues that have nothing to do with EU law; or a statutory instrument might do nothing but 'copy and paste' an obligation under EU law into UK law. So the influence of EU law on British law might be less than the numbers suggest.

On the other side, however, these numbers do not take into account directly applicable EU law at all. There are thousands of EU regulations in force and the EU Treaties themselves create some directly effective law. At the same time, not all EU regulations in force affect the UK, e.g. EU rules on olive farming are not relevant here. Moreover, these numbers say nothing about the extent to which the legislators in Westminster and Holyrood are constrained by EU law.

In addition, while these figures may give us an idea of the quantity of EU laws in place, they say very little about the qualitative impact these rules may have on sovereignty. Many of them are purely administrative or technical rules, e.g. on the exact conditions under which farming subsidies are paid. This consideration strongly suggests that not all laws are of equal importance. Arguably criminal law or tax law are more important to people's daily lives than rules concerning the interoperability of rail systems. If the UK were not a member of the EU, such rules would most likely be made by Whitehall ministries or the Scottish government instead of Brussels.

### **Assessment: quality is more important than quantity**

Hence it is difficult to say with precision to what extent the UK has handed sovereignty over to the EU. One indication of the importance of legislation might be people's responses to what they consider 'the most important issues' facing the UK. In February 2016 – the time of writing of this contribution – the top ten according to an Ipsos/MORI poll were immigration, healthcare, the economy, Europe, housing, education, unemployment, defence/foreign affairs/terrorism, inequality, and crime (in this order). Apart from immigration – where European law makes it almost impossible to deny a worker from another EU Member State to take up a job in the UK – and the obvious 'Europe', none of these issues are directly related to European law-making.

The EU has very little or no legislative competence in the fields of healthcare, economic policy, housing, education, unemployment, defence or foreign affairs, and crime. Admittedly, EU law may constrain national law-making in these fields, but does not replace it. Of course, EU law may be relevant indirectly. For instance, the EU has powers to pass anti-discrimination legislation, which might help to alleviate inequality. On the other hand, proponents of the campaign to leave the EU would argue for instance that high levels of immigration lead to housing shortages and are thus closely connected. They might also argue that EU rules negatively affect the economy. But looking at the quality rather than the quantity of EU laws and how they affect day-to-day life in Britain, it is perhaps fair to conclude that laws made in Brussels have some impact in the UK, but that the UK (and Scotland) have by no means completely surrendered all law-making powers to the EU.

*Tobias Lock is Lecturer in EU Law and Co-Director of the Europa Institute at the University of Edinburgh.*

## Chapter 10

### Human Rights: would our rights be better protected in or out of Europe?

*Aileen McHarg*

To understand the implications of Brexit for fundamental rights protection, it is important to distinguish between two legal Europes. The primary human rights regime in Europe is the European Convention on Human Rights (ECHR) – a treaty drawn up by the Council of Europe, which is an older organisation than the EU with a much wider membership. The UK ratified the ECHR in 1951, and since 1966, UK citizens have been able to take cases alleging breaches of Convention rights to the European Court of Human Rights (ECtHR) in Strasbourg. In 1998, the ECHR was incorporated into the UK's legal systems by the Human Rights Act (HRA) and the devolution statutes, thereby enabling Convention rights to be enforced in UK courts as well.

There is an unfortunate tendency in the media and political debates to conflate the ECHR and the EU. For instance, the Vote 'Leave' campaign on its website claims that "EU judges have ... overruled UK laws on issues like ... whether prisoners should be allowed to vote." It was, however, the ECtHR, *not* the European Court of Justice (ECJ) which ruled, in 2005, that the UK's blanket ban on prisoner voting was contrary to the Convention – and the ban actually remains in place.

If the UK withdraws from the EU, this will not have any direct effect on our obligations under the ECHR or domestic human rights statutes. People will still be able to rely on Convention rights before the UK and Strasbourg courts. Nevertheless, EU membership does have implications for human rights protection in the UK. Although it is primarily an economic organisation, the EU does have a human rights dimension, and in recent years, EU law has become increasingly important as a supplementary source of human rights protection – in some circumstances providing stronger protection than the ECHR.

#### **The role of fundamental rights in EU law**

Fundamental rights were first recognised by the ECJ as forming an integral part of EU law in the 1970s. The court drew upon Member States' constitutions, and international human rights instruments like the ECHR, to identify rights forming part of the 'general principles' of EU law. The aim was to reassure Member States – concerned that the supremacy of EU law over national laws would weaken constitutional protections for rights – that the EU would itself respect rights. Thus, the court gave effect to human rights standards when interpreting EU law and when reviewing the validity of



decisions and legislation made by the EU institutions. However, the general principles are also relevant when determining the compatibility of Member State actions with EU law, and are enforceable in the national courts as well as the ECJ. Rights recognised in EU law could therefore be used when interpreting national laws, and to challenge the validity of national laws and policies, where Member States were implementing, or acting within the scope of, EU law.

In 2000, the EU took a further important step to increase the visibility of human rights by adopting its own Charter of Fundamental Rights. Initially, the Charter was declaratory only, but in 2009 the Lisbon Treaty gave it equal legal status with the EU Treaties. This means that, like the general principles, the Charter is binding on both EU institutions and Member States when acting within the scope of EU law, although it does *not* extend the competence of the EU to adopt legislation. The content of the Charter overlaps with, but is much broader than, the ECHR, recognising 50 rights in six categories: dignity; freedoms; equality; solidarity; citizens' rights; and justice. In particular, it includes various social and economic rights which are not included in the ECHR, and it gives much stronger protection to equality rights. However, not all rights recognised by the Charter are directly enforceable. Some can influence the interpretation of legislation, but cannot be used to invalidate EU or domestic measures, and it is for the courts to determine on a case-by-case basis what legal effect particular Charter provisions may have.

Respect for human rights is also recognised more generally as one of the EU's founding values. Applicant states must therefore demonstrate a high standard of human rights protection, which in practice means that they must be signatories to the ECHR. In addition, the voting rights of existing Member States may be suspended in the event of serious and persistent breach of human rights. While there is no explicit requirement on existing Member States to remain parties to the ECHR, withdrawal from it could raise concerns about their compliance with the founding values. The EU has also its own Fundamental Rights Agency, established in 2007, which provides information on fundamental rights protection within the EU, and the Lisbon Treaty provided for the EU itself to become a signatory to the ECHR, in order to further entrench human rights protections and allow the EU institutions to be challenged before the ECtHR. However, this has not yet been achieved.

### **Criticism of EU Fundamental Law**

The major focus for criticism of EU fundamental rights law in the UK has been the EU Charter. In fact, the UK, along with Poland, negotiated an additional Protocol to the Lisbon Treaty declaring that the Charter did not extend judges' ability to strike down their national laws or administrative decisions for incompatibility with fundamental rights, and in particular that the economic and social rights contained in the Charter would not be legally enforceable in

relation to them. At the time, this was described as an “opt-out” from the Charter. However, it is clear that that it does not prevent the Charter having legal effect in the UK. In 2011, the ECJ relied upon the Charter to prevent the UK returning an Afghan asylum seeker to Greece, where his asylum claim should have been dealt with under EU law, because failures in the Greek asylum system meant that there was a risk of him being subjected to inhuman and degrading treatment.

More recently, the UK courts have struck down provisions in two UK statutes (the State Immunity Act 1978 and the Data Protection Act 1998) for incompatibility with Charter rights. In both cases, the rights which had been breached were also protected by the ECHR. However, EU law gave the applicants much stronger remedies. Under the HRA, if a court finds that an Act of the UK Parliament is incompatible with Convention rights, the most it can do is to issue a ‘declaration of incompatibility’. This does not affect the validity of the statute and effectively leaves it up to the UK Parliament to decide whether to amend the law to bring it into line with the ECHR. By contrast, because EU law has supremacy over domestic laws, the effect of a breach of the Charter is to invalidate the offending statute. The courts, rather than the UK Parliament, therefore have the last word in deciding how far rights should be protected.

The Charter has been criticised by Conservative politicians on both sides of the Brexit debate. For instance, the Justice Secretary, Michael Gove, included amongst his reasons for wishing to leave the EU the fact that the UK is subject to “an unaccountable European Court in Luxembourg which is extending its reach every week, increasingly using the Charter of Fundamental Rights which in many ways gives the EU more power and reach than ever before.” The Prime Minister, David Cameron, also expressed concern about the use of the Charter in his November 2015 Chatham House speech, in which he promised to “make it explicit to our courts that they cannot use the EU Charter as the basis for any new legal challenge citing spurious new human rights grounds.”

As yet, no proposals have been published to implement this promise, but in any case, focus on the Charter is to some extent misdirected. It is already clear that it does not itself create new rights; rather its legal effect derives from the ECJ’s pre-existing commitment to rights protection as part of the general principles of EU law – something which the UK cannot change unilaterally. Instead, the significance of the Charter has been to raise the profile of EU fundamental rights law, thereby encouraging litigants to bring cases alleging breaches of human rights, and judges to be more assertive in finding such breaches.

The real objections to the effect of EU fundamental rights law in the UK are twofold. First, it raises concerns about the transfer of sovereignty from the UK to the EU, and about loss of democratic accountability in the transfer of power

to make decisions about rights from politicians to judges. Whereas the HRA was carefully crafted to strike a balance between increased protection for fundamental rights and preservation of the ultimate sovereignty of the UK Parliament in relation to questions about rights, the ability to bring rights claims under EU law disturbs that constitutional equilibrium. EU fundamental rights law also intensifies concerns about loss of sovereignty because it is much more difficult for the UK to influence the development of judicially-protected rights than to influence EU legislation. More generally, the protection of human rights underlines the political rather than purely economic character of the EU. As a source of rights enjoyed by EU citizens, it has more of the characteristics of a supranational state, rather than purely a forum for inter-governmental co-operation.

The second objection to EU fundamental rights law is more technical, namely that it confuses the protection of human rights at national level. Different human rights regimes apply depending upon whether issues are governed by EU law or purely by domestic law, which can lead to anomalous results. Further complications arise because, as already noted, it is not always clear when rights recognised in EU law will be legally enforceable, nor is it always easy to determine whether an issue falls within the scope of EU law. In addition, even when the same rights are protected by both EU law and the ECHR, they are not always interpreted in the same way.

### **Safeguards for human rights in the UK**

Defenders of EU fundamental rights law, by contrast, argue that it provides a valuable additional safeguard for human rights in the UK, and point out that it also serves as an important check on abuse of power by the EU institutions. Indeed, the ECJ has been increasingly willing to strike down EU decisions and legislation on fundamental rights grounds, as well as to review Member State actions. Nevertheless, defenders also argue that the court has been relatively cautious in its development and application of fundamental rights, particularly in relation to the social and economic rights which have been of most concern to the UK.

So what would be the implications of Brexit for fundamental rights protection in the UK? It would undoubtedly reduce the opportunities for challenging government decisions and legislation on human rights grounds and the remedies available for rights breaches. This would be less significant in relation to the devolved legislatures, which are more tightly bound by the ECHR than the UK Parliament. But at both UK and devolved level, it would reduce the range of rights which may be relied upon, thereby increasing the freedom of both sets of institutions to determine for themselves which, and how best, rights should be protected. Brexit could also have an indirect effect on rights protection under the ECHR. It would remove one potential obstacle to withdrawal from the ECHR, and might embolden human rights-sceptics

within the UK government to press ahead with plans to replace the HRA with a British Bill of Rights.

Whether this would lead to better or worse protection for human rights is a matter of judgment. All human rights regimes necessarily involve value choices which are sometimes controversial. For instance, while people on the Right tend to criticise the EU for excessive protection of social rights, those on the Left often argue that it gives too much weight to economic interests. Ultimately the question comes down to who one trusts to make better decisions about rights most of the time: EU or UK courts; judges or politicians?

*Aileen McHarg is Professor of Public Law in the University of Strathclyde.*

## Chapter 11

### How would our industries be affected? Financial Services

*Owen Kelly*

#### **Why is this important?**

The UK is unusually good, as a country, at financial services. The industry employs over 2.1 million people, many in high-value, well-paid jobs. That is over 7% of the UK workforce, producing nearly 12% of total economic output, contributing £66 billion in taxes and generating a trade surplus of £67 billion. Most of the jobs in the UK financial services industry are outside London, so while the City of London is the flagship, it is by no means the whole picture. Large numbers of people work in financial services in Edinburgh, Glasgow and many other places. So the industry is a big part of the UK economy, providing many services that are essential to any modern society. Not only banking, for example, but also pensions, savings and insurance, all of which are features of everyday life for most people.

And these services are as essential to the economies of other EU countries as they are to ours. The UK is a very large exporter of financial services and the EU, taken as a whole, is our biggest single export market. It is reasonable to take it as a whole because access to the market is an important issue in the Brexit debate and it is controlled at EU, rather than national, level.

That single market is underpinned by a common framework for regulation, although differences in taxation and legal systems mean that the markets for most retail financial services are national rather than EU-wide. That is the main reason that people in one EU country do not, as a rule, open bank accounts or take out insurance with companies based in another. Compensation schemes to protect savings, for example, operate at national level, under an EU framework. But in many important ways, the EU has created a single market for financial services, particularly in relation to investment and commercial finance. It has also applied common standards of regulation across the EU and this facilitates intra-EU business as well as creating an international standard to compete with other large trading blocs like the US and China.

A central feature of the single market, which may or may not continue for the UK outside the EU, is what are known as 'passporting rights'. Put simply, these allow a provider of financial services to operate throughout the EU from a single base. So, for example, a company can be based in Scotland but sell its products and services throughout the EU, without setting up offices in every country. If the UK negotiates a new relationship that retains these rights, the impact of leaving the EU could be diminished. The agreement with the

European Economic Area means that some non-EU states have these rights, as part of the overall package; and Switzerland has secured some of these 'passporting rights' by bilateral negotiation.

### **What special relevance does the issue have for Scotland?**

Scotland, like the UK, has a large and successful financial services industry. The industry employs about 100,000 people directly, and another 100,000 indirectly. It contributes about 7% of Scotland's GDP and is a major exporter. So the reasons why the issue matters at UK level apply equally in Scotland.

Scotland is particularly successful in pensions, insurance and investment management. These services are, in different ways, subject to the passporting arrangements outlined above and they could be affected if the UK loses the relevant rights. It is not easy to predict what the impact would be in terms of jobs. Setting up a subsidiary in another EU country and serving EU customers from there might not, in some cases, be too difficult. After all, non-EU companies do it as a matter of course, if they want to serve the EU market. But the big purchasers of investment management services, such as pension funds and the wealth funds of sovereign countries, have a great many choices as to where to put their money and a low tolerance of regulatory uncertainty, which would be inevitable while the terms of the UK's new relationship with the EU are negotiated.

Scotland, and the UK as whole, are also well-placed to take advantage of the next big step towards a single market for financial services, the Capital Markets Union. This is a plan to create a single market for capital investment, so that businesses can attract investment, directly, from savers and other investors throughout the EU. Outside the EU, the UK could not be part of this unless it negotiates some involvement and it certainly would not shape its rules.

### **What are the arguments put forward by 'Remain campaigners'?**

The key arguments, relating to financial services, put forward by those in favour of remaining in the EU are:

- it is the only way of ensuring the UK's continued participation in the EU single market;
- a vote to leave will initiate a period of uncertainty, duration unknown, about the UK's relationship with the EU and with other trading partners. Customers will take their business elsewhere, if they can, until the uncertainty is resolved. Nobody can expect them to put their interests at risk while the UK sorts itself out. They may never come back and establishing the UK as a competitive jurisdiction outside the EU will take time;
- the passporting rules allow non-EU companies to sell their services throughout the EU from a single base. If the UK is not a member of the EU

and does not negotiate participation in the single market from outside (in which case it would have to comply with the rules but with no say in making them), non-EU companies will not be able to use it as an entry point to the EU market. Companies who do so already (and there are quite a few) will move elsewhere; and no new ones will arrive in the UK in future;

- businesses in the EU would find it more costly and complicated to secure funding and other services if London becomes less accessible and the same would apply for UK businesses if barriers to the single market for corporate financial services are introduced;
- the UK financial services industry benefits disproportionately from the trade deals negotiated by the EU as it is larger than that of any other EU member state. Without EU clout, the UK could not get the same preferential terms. The US has already said as much;
- a vote to leave the EU will create financial instability and diminish the value of sterling. While some providers of financial services, like hedge funds and investment banks, can make money from such situations, it will be bad for savers, mortgage holders and users of other financial services.

### **What are the arguments put forward by 'Leave' campaigners?**

There are relatively few arguments specific to financial services put forward by those in favour of Brexit, who tend to rest on arguments of principle about trade in general. However, the key arguments put forward at the time of writing are:

- the UK can become more internationally competitive outside the EU and could therefore trade more with countries like China and India. This could be coupled with a bilateral agreement with the EU in order to ensure that financial services in the UK can access the single market;
- a significant amount of financial services regulation originates from the EU which has a disproportionate effect on the UK, which has the largest financial services industry in the EU;
- regulatory diversity is good. Competition between jurisdictions leads to better outcomes for economies and customers. So reverting to a position where the UK is an independent, stand-alone jurisdiction, gives more choice to international investors;
- the UK could cut better trade deals on its own. It would have an independent voice at the World Trade Organisation, for example;
- the EU is shrinking as a proportion of the global economy and growth in financial services will come from Asia and other places in the coming years. Leaving the EU will allow the UK to offer services to customers in those places without the constraints of EU regulation on operational matters;

- the skills and capacities of the UK in financial services would still attract business, whether in the EU or out. Moreover, the advantages of time zone (which allows the working day in the UK to overlap with financial markets in Asia and the US) and English law (the legal system frequently used in financial services) will be unaffected.

### **What is my impartial assessment of the balance of the arguments?**

The consensus within the UK financial services industry is, all the evidence shows, that leaving the EU will be costly, disruptive and damaging. But some will accuse the industry of looking only to its own interests, and point to other matters they see as more important, such as sovereignty or national pride; and others will say the consensus within the industry is just plain wrong and that the opportunities presented by leaving are greater than the risks. In trying to reach a balanced view, let us consider these two criticisms of the industry consensus, rather than take it at face value.

For all its well-documented failings, the international financial services industry is built on the widely-accepted belief that some sort of truth is describable and measurable by reference to numbers and objective analysis. There may be an element of self-interest in some of the views expressed by the industry and its representatives. But financial markets are hard-nosed and those who participate in them have to make judgements based on evidence that is as objective as it can be. If they fail to do that, and bring to bear instead political or metaphysical concepts such as sovereignty or national destiny, they will lose their credibility with (equally hard-nosed) investors and clients. So while the interests of the financial services industry are by no means the same as those of any single country, there are reasons to take what it says seriously.

The criticism that the industry is just plain wrong is hard to justify in the short-term but more plausible in the long-term. It is as certain as anything in this debate that the UK financial services industry would suffer in the short-term from the uncertainty that would follow a vote to leave the EU and by changes in its relationships with customers in the EU and elsewhere. Some companies could make profits from these things, but they would be hedge funds and other operators on the financial markets in a position to take advantage of volatility, not mainstream providers of services to non-financial customers. It would be reasonable to expect fewer jobs in the UK financial services industry in the years following a Brexit.

The outlook beyond the early years following a Brexit is less certain. On the one hand, the Capital Markets Union could come into being and boost the EU financial services industry, coinciding with a recovery in the Eurozone and these things, together, could create a successful and open market that the UK simply has to be part of, at whatever cost to an outsider negotiating entry (as



it would then be). This would leave the UK having to comply with EU regulation and other requirements but having no say in their drafting.

On the other hand, it is theoretically possible that the UK could create a regulatory jurisdiction that would be more attractive to international financial services than competitors, including an EU still labouring to stabilise the Euro. Much would depend, in that case, on the kind of arrangements that could be made with other large markets for financial services, such as the US and China. There is, however, a contradiction in the argument that the UK should leave the EU in order to create a separate jurisdiction, more attractive to non-EU countries, but nonetheless comply with EU regulation in order to remain in the single market.

All things considered, if one were voting purely in the interests of the financial services industry and its employees (and few people will be), one would vote to remain in the EU and then, cathartically invigorated, deploy the UK's unequalled expertise in financial services in shaping the EU market for the better. That seems to offer the best prospect for the continued success of the industry.

*Owen Kelly is a former Chief Executive of Scottish Financial Enterprise.*

## Chapter 12

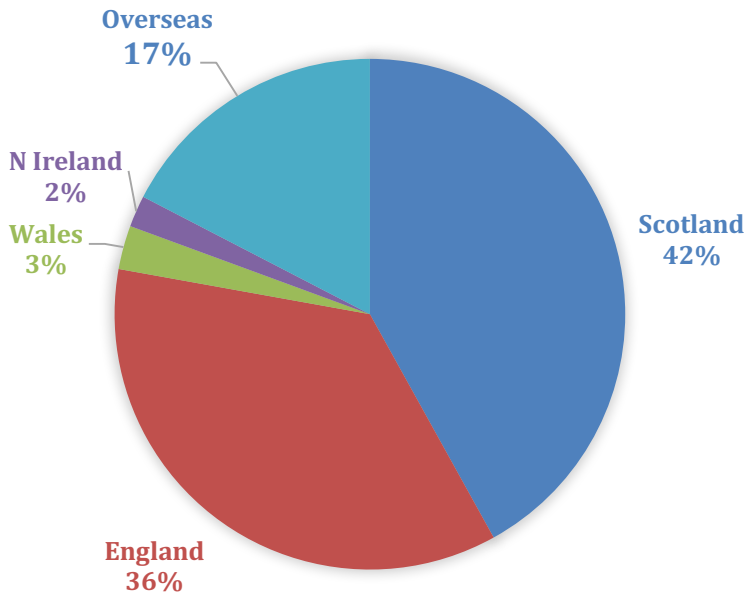
### How would our industries be affected? Tourism

*John Lennon*

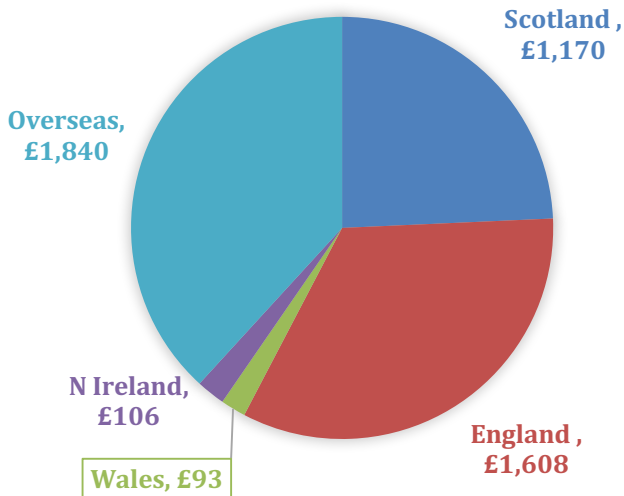
Tourism is an important industry for Scotland and a vital employer. Tourist visitor expenditure accounted for £9.7 billion in 2014 – £4.7 billion from overnight visitors and £5.0 billion by day trippers. Economically the sector is responsible for approximately 5% of total Scottish Gross Domestic Product. It is an industry that creates employment in our cities, rural areas, coasts, highlands and islands. It is vital to the survival of many communities accounting for about 7.7% of total employment in Scotland or approximately 196,000 jobs.

The chart below indicates the origins of the main visitors to Scotland for the most recent year of complete statistics.

#### Where do Scottish tourists come from?



## Who spends most? (£m)

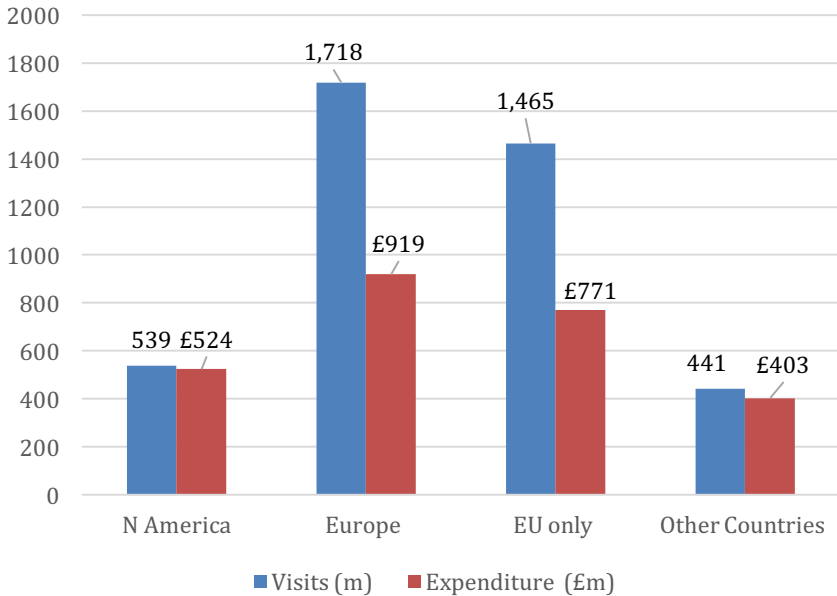


Source: *Main Origins of visitors to Scotland (2014)*

Clearly, the importance of domestic tourism (primarily originating from England and Scotland) is evident in terms of visits and spending. However, overseas visitors, whilst a relatively smaller proportion of the total, tend to stay longer and have a relatively high level of expenditure. Visitors from the EU account for just over 54% of visits just under 42% of expenditure and (see chart below).

Continued membership of the EU or exit will impact on tourism, however, this will be affected by a range of factors and influences – not least the relative strength of sterling against the Euro and other major currencies. A strong pound makes Scotland less attractive to visitors from key markets such as the EU and US. But it also makes overseas holidays more attractive to Scottish residents, who see their spending power increase as a consequence. However, exchange rates apart, factors as diverse as safety / security, effective marketing and cost / ease of access all impact on travel behaviour. Scotland has long experienced a tourism balance of payments deficit (i.e. more Scottish residents will spend money overseas than tourists coming to Scotland spend here). Therefore, the impacts of membership or exit merit further consideration for Scotland as a destination as well as for Scots as enthusiastic international holiday purchasers.

## Overseas visitors



*Source: Origins of International Visitors to Scotland (2014)*

### **Tourism impacts of continued EU Membership**

EU membership has certainly benefitted ease of travel, both into and out of the UK. The relative cost of air travel particularly has decreased since the UK entered the EU. The removal of restrictive air service agreements and the development of an Open Skies policy in the EU has increased competition in air routes helping to drive down prices. This is important since some 87% of international visitor travel to Scotland by air; a statistic that continues to rise. There is no doubt that the single aviation area has given airlines the freedom to fly across Europe and increase destinations, opening Scotland to a greater number of potential markets.

From a security perspective airlines and other elements of tourism undoubtedly benefit from closer cooperation across EU boundaries. Similarly, in areas such as compensation for delayed flights, Scottish consumers benefit from EU directives and legislation improving consumers rights to compensation. In terms of health care, access to free services across much of the EU also benefits outbound travellers and Scottish holidaymakers. It should be noted however that European Health Insurance scheme giving tourists access to state healthcare in participating countries was an initiative of the

European Economic Area rather than the EU. However some degree of renegotiation would be inevitable following a Brexit. EU membership also provides those with second or holiday homes abroad with levels of protection, although ownership rights and taxation are determined at national levels.

At a macro level the UK (and Scotland) benefits from tariff-less trade in some areas – not least food and beverages which constitute essential tourist purchases. These lower material costs can be passed on to tourists improving the value offer in a country with relatively high levels of VAT, which apply to the majority of tourism purchases (e.g. accommodation, food, retail etc.) and significant levels of air passenger duty (APD). Such costs are fundamental elements in holiday pricing and are increasingly transparent internationally. Indeed, discussions of typical tourist charges are ubiquitous in media and online reviews about destinations.

In the EU, caps on mobile telephone roaming fees (due for complete abolition in June 2017) benefit tourists to Scotland as well as outbound Scottish travellers. This cost advantage is important since the EU is the favoured destination for 76% of UK holidaymakers with the Balearics and Spain remaining the most popular destinations, whilst the EU is the most significant destination for business trips, accounting for some 68% of business travel.

At an environment level EU regulation of many areas but not least; bathing water quality and the reduction in sewage pollution around the UK and Scottish coast has been a positive benefit enjoyed by residents and visitors alike.

### **Tourism Impacts of ending EU Membership**

The uncertainty surrounding UK exit and the arrangements in respect of post exit transition would almost certainly impact on the value of Sterling. A weaker pound has a direct impact on spending power overseas, making the cost of visiting or holidaying abroad in the EU and elsewhere more expensive for Scots.

International travel to Scotland is dominated by air, 87% access the country in this way thus cost and frequencies are important factors in maintaining a buoyant inbound visitor market. The UK began promoting the 'open skies' argument before many other members of the EU and original air access agreements were signed with Ireland and Holland in the 1980s. However, if Scotland were no longer a member of the EU new service agreements would have to be negotiated for a range of destinations and visitor-generating markets within the EU.

Competition would reduce and air fares could rise again, making Scotland a more expensive destination to access. On the positive side, this may generate increased domestic (Scottish and English) demand for Scottish holidays as EU destinations become less easy and more expensive to access.

The prospect of leaving the EU has generated significant resistance amongst the air travel sector. The Chief Executives of Ryanair, Easyjet, Qantas and Heathrow and Stansted airports have all drawn attention to the relative costs of a UK exit. Similarly, tour operator Thomas Cook, identified a range of cost and related advantages of continued EU membership. The continued availability of affordable air travel would depend upon the extent to which a post-EU UK could replicate its exiting access to the EU single aviation market. Whilst this is possible, the delay required by renegotiation (with up to 27 EU member states) could be considerable. Of course, the UK would seek to maintain open skies, but with such access to EU treaties come EU rules that have to be obeyed and payments that have to be made.

Scotland post-EU would lose many of the travel benefits enshrined in EU law and directives. These would include compensation for delayed or cancelled flights and entitlement to care and assistance such as subsistence and accommodation in the event of severe delays. Currently, Scottish citizens enjoy the benefits of free or reduced cost treatment in other EU countries as a result of European Health Insurance. In the event of an EU exit such agreements would have to be renegotiated and there is no guarantee of the same cooperation across boundaries. Scottish holidaymakers will benefit from the abolition of mobile telephone roaming charges from next year, however in the advent of an EU exit it is likely the mobile operators would seek to increase charges.

The arrangements for financial protection of package holidays in respect of the collapse of a tour operator or holiday company predate EU membership; but consumer protection has been enhanced with pressure from Brussels. The UK commitment to protection is unlikely to be ignored, however companies will possibly find it easier to lobby government for a rules relaxation. Indeed, Scottish holidaymakers in a post-EU environment would not benefit from the Package Travel Directive which is due to be implemented in 2018. That provides substantial rights in respect of the majority of travel purchases, notably in respect of increasingly popular 'DIY Holiday' products. Scottish owners of holiday homes within the EU could be subject to host national level renegotiation of asset protection and taxation (which would undoubtedly be different as non EU nationals) thus change of some sort would be probable.

Vacation employment and rights to work in the EU following Brexit, would be more difficult for Scots as new regulations would have to be created and it is likely that new work options will be more restrictive and bureaucratic. For some, this would be compensated by the much discussed revival of duty free buying which was lost in 1999. The reintroduction of reduced tariff tobacco, wine and spirits is seen by some as a tangible benefit of Brexit. However, we would lose the legal right to purchase virtually unlimited amounts of duty paid goods from EU countries on return to the UK/ Scotland.

In terms of the environment and specifically bathing water purity and sewage control (an area that has seen significant improvement during the period of EU membership to date), it would be interesting to see if the UK or Scottish government would have the determination to keep the pressure on water and other companies to maintain standards.

The period of transition following exit from the EU would impact on the value of sterling and potentially offer in-bound tourists' better value for money as sterling would potentially decline against other major currencies. This could partially dilute other tax burdens on tourists such as; VAT on accommodation, food, beverage etc. and air passenger duty (APD). However, it is accepted that reduction in APD is an intention of the current Scottish Government. Conversely, the loss of relatively cheaper food and beverage imports from the EU to the UK would be passed on to tourists in the form of food and drink costs. Thus the relative price of a Scottish holiday would appear less competitive in an already crowded destination marketplace.

Uncertainty, which is not good for exchange rates, is also not good for business and business locations. If Brexit catalysed a relocation of corporate headquarters it is probable that business and conference traffic to the UK (and Scotland) would diminish.

The uncertainty following a majority vote for exit from the EU, would impact on the value of sterling and the value of Scottish tourists' spending money in overseas destinations. This by default could make 'staycations' more attractive for Scots and English visitors. Furthermore, there are some that argue a distinct stand alone and identifiably independent UK would serve to attract more international visitors. However, the rich heritage and iconography of Scotland is already established and has served to attract visitors during the current period of EU membership. A further claim made by those in tourism favouring exit is that we would benefit from tourists from the Commonwealth (Australia, Canada, New Zealand, India and Pakistan are cited in particular). This has to be seen against the earlier analysis of overseas visitors to Scotland and the relatively limited significance of these nations. It is tenuous to suggest that non-EU status alone would catalyse significant inbound tourism from such nations.

## **Conclusion**

Tourism to Scotland is impacted by a wide range of factors as the nation attempts to build profile and appeal in a highly competitive marketplace. Business and markets dislike uncertainty and tourism is no different. The tourism generating market of the EU is too important to compromise and the potential price impacts of an exit from the EU make it the less attractive option. Scottish outbound holiday makers would face cost rises and the period of transition and renegotiation following potential exit would create uncertainty. The loss of the regulatory frameworks and legislation impacting

on a range of products from beach water to package holidays undoubtedly protect our tourism environment and consumers and their loss would be substantial.

*John Lennon, is Assistant Vice-Principal and Director of the Moffat Centre for Travel and Tourism Business Development, at Glasgow Caledonian University.*



## Chapter 13

### How might inward investment to be affected by Brexit?

*David Eiser*

#### **What is inward investment?**

Inward investment (sometimes called inward Foreign Direct Investment) refers to the overseas operations of a multinational. Inward investment can include the establishment of foreign branches and subsidiaries, and the acquisition of foreign firms.

Inward investment is often seen as a good thing. Most obviously, it creates (or sometimes safeguards) jobs and raises incomes in the recipient country. It may also raise productivity in the recipient country, by introducing new technologies and working practices. But sometimes, inward investment may have more limited benefits. Acquisitions may result in profits being expatriated overseas. And there have recently been some high profile cases of inward investing companies which make fairly minimal corporate tax contributions to the governments of the countries that they invest in.

#### **How important is inward investment to the UK and Scotland?**

The UK has consistently been one of the world's top recipient countries of inward investment. According to data from both the OECD and EY's *Global Investment Monitor*, the UK has been the largest recipient of inward investment in the EU since the establishment of the single market in 1993.

In fact, there are a number of different sources of data on inward investment globally, and a number of different ways of measuring inward investment. But all major independent sources confirm the UK as the Number One destination in Europe for FDI in 2014 across the three main measures of success: the number of inward investment projects; the financial value of these projects; and the value of accumulated stock of inward investment.

Scotland is the most successful UK region outside of London at attracting inward investment. Between 2005-14, inward investment generated 37,000 jobs in Scotland according to EY's *Global Investment Monitor*; more than in any region outside London. Data provided to us by Scottish Development International (SDI), Scotland's inward investment agency, indicates that Scotland received some 208 inward investment projects between March 2014 and March 2016. These projects created or safeguarded 17,000 jobs and secured £10 billion of investment.

Business services and IT accounted for a large proportion of these projects and jobs created. But the majority of the capital investment was accounted for by investments in the energy sector – both the renewable energy sector and

oil and gas. And around 2,600 jobs were created in manufacturing as a result of inward investment.

The US has consistently been the top source country for investment into Scotland, both in terms of the number of projects and jobs created. In recent years Norway has also been a major investor in Scotland, particularly in the energy sector. Inward investment from France, Germany and the Netherlands has created almost 2,000 jobs in Scotland in the past two years. Scotland has also attracted investment from Ireland, Australia and Canada, but recently has had little success in attracting investment from emerging markets such as China and India, which have invested heavily in other parts of the UK.

### **How important is EU membership in generating inward investment for the UK and for Scotland?**

What makes the UK so successful in attracting inward investment? Some of its advantages have little to do with the EU. That English is the language of international commerce is clearly an advantage. The UK's legal and regulatory system makes it relatively easy for foreign investors to own or start-up businesses. The UK has relatively well developed capital markets, making it easier for businesses to raise funding. And perhaps too the UK's relatively flexible employment law is also an attraction to inward investors.

But the UK's membership of the EU single market is another big advantage. Many firms investing in the UK from outside the EU are seeking a European base from which to distribute products without the barriers they face when conducting trade from their home markets. Membership of the EU single market effectively expands the size of the UK market.

Some evidence for the importance of EU membership on levels of inward investment to the UK can be drawn from surveys. EY's 2015 'UK attractiveness survey' suggests that around 72% of investors consider access to the European single market as important to the UK's attractiveness as a destination for foreign direct investment. *fDi Markets*, the *Financial Times'* database of inward investment projects suggests that around 2,500 of 11,500 inward investment projects to the UK since 2003 specified Europe (or a particular part of Europe) as being the end-market for their investment.

There is anecdotal evidence as well. For example, the Secretary General of the Indian Chambers of Commerce was quoted in the *Financial Times* as saying that 'Indian companies viewed the UK as a gateway to the EU market and thus Brexit "would create considerable uncertainty for Indian businesses engaged with the UK and would possibly have an adverse impact on investment and movement of professionals to the UK"'.

But quantifying the precise effect of EU membership on inward investment in the UK is difficult. Some studies have found evidence that the establishment of the common market in the EU had attracted inward investment from the US to the UK that might otherwise have been located in other European

countries. But other studies have found more difficulty in estimating the magnitude of this 'EU effect' on inward investment to the UK.

For Scotland specifically, we have no data on the importance of EU membership in influencing the attraction of inward investment. Of the 208 inward investment projects in Scotland between 2014-2016, 47 provided information to SDI on their motivations for investing in Scotland. While a large number of these mention the importance of proximity to markets and customers generally, none mention Europe or EU membership specifically (workforce skills and domestic market growth potential are also seen as important factors in influencing the decision to invest).

### **What might be the effects of Brexit on inward investment to Scotland?**

The impact of Brexit on inward investment to Scotland will depend in part on what sort of trade deal the UK Government manages to negotiate with the EU. Many people have argued that Brexit is unlikely to result in the sudden imposition of new tariffs on exports from the UK, and thus Britain's attractiveness for companies targeting the EU market will not be dented.

This is probably true to an extent. In the longer term however, it would be in Britain's (and Scotland's) interest to push for further reductions in the barriers to trade with the EU, particularly in services, which has accounted for a large proportion of inward investment in Scotland in recent years. But outside the EU it would clearly be difficult, if not impossible, for the UK to push forward these negotiations.

Brexit might also diminish the attractiveness of the UK and Scotland for inward investment in other ways too. Inward investing firms rely on an adequate supply of skilled labour. Around 100,000 EU nationals are now employed in Scotland, equating to 4% of all those employed. Some sectors, especially food and drink and tourism, are particularly reliant on EU migrants as a source of labour. If Brexit were to lead to a reduced labour supply from EU nationals, this may diminish the attractiveness of Scotland as a location for inward investment, regardless of the final destination of any output.

The argument made by some Brexit supporters that Brexit would enable the UK to negotiate more favourable trade terms with non-EU countries seems fairly optimistic. Such deals would have to be negotiated on a case-by-case basis, and there are few examples of countries making bilateral trade deals of anything like the scope that EU member states share. Furthermore, following Brexit the UK would not inherit the EU's existing bilateral trade deals with non-EU states, so it would have to start from scratch. It therefore seems unlikely that any such trade reorientation would stimulate sufficient additional inward investment to compensate for that lost as a result of Brexit.

Might any existing inward investment projects in Scotland be at risk as a result of Brexit? One argument is that manufacturing activities are relatively easier to relocate than service activities. Manufacturing is capital intensive,

and machinery can be moved relatively easily across borders. A trained workforce in a service industry however might be more difficult to relocate. This argument is undoubtedly too simplistic. But in recent years, much of the employment created by inward investment to Scotland has been in business services and IT (heavily reliant on a skilled workforce), while most of the capital investment has been in the renewable energy and offshore energy sectors (where Scotland's geographic advantages will not be undermined by Brexit).

### **Concluding points**

Inward investment has been one of Scotland's economic success stories in recent years. The potential effect of Brexit on levels of inward investment to Scotland is highly uncertain for at least two reasons. We don't really have a very clear idea how important Britain's EU membership is in influencing existing levels of inward investment to Scotland. And we don't know exactly what sort of deal the UK Government would be able to negotiate with the EU (on the movement of goods, services and people) following Brexit.

But it seems hard to dispute that EU membership is a part of what makes Scotland attractive to inward investment. Brexit would almost certainly lead to a temporary slowing of inward investment flows to Scotland, as the UK's position with the EU (and perhaps Scotland's position with the UK) are renegotiated. If the UK was able to negotiate favourable trade terms with the EU then Brexit might not have a major impact. But outside the EU, it would be much harder for the UK Government to influence the terms under which future trade negotiations are taken forward.

*David Eiser is Research Fellow in Economics at the University of Stirling.*

## Chapter 14

### How would our industries be affected? Agriculture and fisheries

*Caitríona Carter and Andy Smith*

Farming and fishing are frequently associated with timeless images of Britain, its rural idyll, and its reputed individualism. Indeed, many of these images of 'Britishness' are frequently invoked by those wanting to leave the EU. As we recount below, however, agriculture and fisheries in Scotland and the UK are also modern industries that have been structured by public policies, notably those of the EU. Indeed, comparison of these industries is stimulating because although nearly all the key actors within British agriculture favour remaining in the EU, this position is much less evident for fisheries.

#### **Agriculture: A CAP that fits**

In the UK, the Common Agricultural Policy (CAP) is regularly derided by opponents of the EU as being ineffective, expensive, bureaucratic and bad for the environment. Although many spokespersons from the world of farming also criticise certain aspects of this policy, the vast majority underline that it has played a vital role in the development of British agriculture.

Throughout its history, the CAP's aim has been to generate sufficient farm produce within the EU, but also to ensure that farmers stay on the land for reasons which extend beyond production concerns. This policy initially clashed with that of the UK because, except for during the two World Wars, British agriculture had always been governed by a liberalism that encouraged imports of cheaper foodstuffs and left British farmers exposed to the whims of world markets. Fuelled by the Empire and subsequently by the Commonwealth, this foreign provision of food prompted a decline in domestic production. By contrast, the CAP and its initial emphasis upon price support mechanisms played a major role in intensifying British agriculture to such an extent that the country is now 62% self-sufficient. Specifically, the UK now imports £40 billion of foodstuffs (of which 70% from other EU states) and exports £20 billion, 62% of which are destined for the rest of the EU. Indeed, this interdependence is even greater in some sectors e.g. 38% of British lamb is sold on the Continent.

Nevertheless, today's CAP intervenes less directly in agricultural markets than it once did. Since the early 1990s, price support has been largely replaced by annual 'single farm payments' made to farmers on the basis of farm size, land quality or livestock numbers. Amounting to more than £2.5 billion per annum, these payments continue to structure the British

agricultural industry and, according to most experts, provide it with the stability that a return to a free market approach would not provide.

What is less often flagged is that the CAP is also, and always has been, a social policy. From this angle it has consistently aided farmers in hill areas and 'marginal lands', and thereby the beef and sheep industries. Moreover, it has subsidised the set-up costs of young farmers, training, research and diversification into farm tourism or food processing. In addition, since the late 1980s such farming-specific measures have been supplemented by rural development initiatives throughout the UK which, for the period 2014-20, will be financed by the EU to the tune of £4.1 billion. In a nutshell, contemporary British agriculture is deeply dependent upon the CAP and, more profoundly still, public intervention. Indeed, it is highly unlikely that a UK government outside the EU could support its farming financially any less than the CAP currently does.

Of course, this does not mean that the CAP is not criticised, and this from two angles in particular. The first concerns its 'efficiency'. Critics argue that EU support to farming comes at the cost of bureaucracy and negative outcomes. Form-filling and delays are often ascribed to the EU, and this despite UK/Scottish governments being responsible for much of the CAP's implementation. But, proponents of remaining in the EU argue that trading from outside the EU would inevitably mean more bureaucracy, controls and, above all, the reintroduction of tariffs. Moreover, they add, to continue to export to 'Europe', a whole series of EU food quality and safety norms would still have to be respected, and this without British stakeholders having an opportunity to influence them 'upstream'.

An even deeper criticism of the CAP is that it has chiefly financed large and wealthy farmers who have 'got fatter' on this public money. The latter charge is often also linked to the negative environmental consequences of intensive agriculture. These were plain for all to see as of the 1980s: ripping out of hedgerows, deterioration of soil quality, threats to food safety (e.g. 'mad cow' disease). Supporters of EU agricultural policy counter that since the late 1980s, it has increasingly contained a strong environmental protection element.

Notwithstanding these two areas of controversy which extend beyond agriculture *per se*, the CAP as a whole has clearly become an institutionalised part of Scottish and UK industry. Not only do key representatives of the UK's farming organisations (the National Farmers' Union of England and Wales (NFU), the NFU of Scotland, the Farmers' Union of Wales and the Ulster Farmers' Union) unanimously support the 'Remain' camp to avoid uncertainty and protect their short-term interests, they clearly believe in the legitimacy of EU scale policies whose content they have shaped considerably. As with so many British stakeholders, this support for the EU has often been undercut by sniping criticisms of their 'Continental' counterparts. Nevertheless, most

British farmers would be reluctant to suddenly have to live without them and fend for themselves in a purely British polity they fear would be even more hostile to farming.

### **Fisheries: jumping ship?**

As has been pointed out by one of Scotland's main fishing organisations, the Scottish Fishermen's Federation (SFF), the fishing industries in both Scotland and the UK are acutely affected by EU membership. This is because under the rules of the Common Fisheries Policy (CFP), the territorial waters of the Member States are shared and treated as 'European' for fishing purposes. The CFP has therefore had overall responsibility for managing all European fisheries, including addressing problems of collapsing fish stocks, over-fishing, fish discards and market organisation. For a long time, the CFP was heavily criticised for failing to meet its responsibilities. Indeed, it has probably been one of the most denounced EU policies, and this by a range of different public officials and stakeholders, including politicians, fishermen, environmental social movements and scientists alike.

However, this criticism has more recently decreased as the CFP has been reformed and moved away from a 'command and control' top-down management style by the European Commission, towards more participatory regional approaches. In 2004, new Regional Advisory Councils (RACs) were created for different sea regions, e.g. the North Sea RAC. These were soon being applauded by their members as successful arenas where fishers, scientists, environmental groups and other community-based organisations could tackle pressing fisheries' problems together. In particular, RACs created new opportunities for exchange over how to balance ecological goals of protecting marine ecosystems and fish stocks with economic and social goals of protecting the fishing industry. Additionally, new long term conservation plans were put in place to help recover key stocks – like the Cod Recovery Plan. It is now generally agreed, even by opponents of the CFP, that these new approaches are beginning to work as stocks slowly recover, alongside the UK industry's gross profits.

This being said, unlike their farming counterparts, the main UK and Scottish fishing organisations have been reticent to adopt formal positions on the referendum vote. Instead, it has been environmental social movements who have expressly spoken in favour of remaining in the EU to continue building momentum towards consolidating sustainable fisheries management in all European waters, including those of the UK. The arguments for remaining in the CFP are that marine issues transcend borders and that their successful management depends upon international cooperation and clear rules.

Even if this policy has many problems, it nevertheless provides a coherent framework for improving ecosystem management which can and must continue to be worked upon in a direction favourable also to UK fishing interests. Proponents of 'Remain' argue further that the reformed CFP European Maritime and Fisheries Fund has a budget of £190 million to which UK businesses and local communities can apply, e.g., to add value to products. Similarly, they point to the vital role of EU markets for the export of UK seafood, in particular high value products such as prawns, lobster or crab. Imposition of new trade barriers following a Brexit would, they argue, seriously disrupt markets at a critical point when stocks and sales are recovering after years of collective efforts by many in the industry and beyond.

By contrast, those in favour of 'Leave' blame the CFP for failing to address fundamental problems facing the industry. From this viewpoint, the CFP will always be a bureaucratic and centralist policy that has been poorly managed in the past and continues to be so. RACs have not been given the necessary powers to take key decisions for handling a mixed fishery. Far better, they say, to set up a genuinely regional system of co-management of UK fisheries, accompanied by UK R&D funding, facilitating the technological and social innovation necessary for creating a genuine sustainable industry. A core argument made by these CFP critics is that Brexit would allow the UK to regain its lost control over its territorial waters, including its northern fishing grounds. A reassertion of UK authority over these grounds through regional management structures would, it is argued, provide the best opportunity for the UK industry to grow and adapt.

Several uncertainties facing the fishing industry's future in a Brexit scenario have been mentioned by both proponents and opponents alike. Even though the UK may assume its formal responsibility for managing the seas up to 200 nautical-miles from UK coasts, it is not at all certain that this would result in a ban of non-UK vessels from these waters as suggested by some. Actually, it is far more likely that it would not, for the prosaic reason that the fish are unaware of British marine territorial borders: key stocks fished, such as cod, mackerel and herring are highly mobile species – and consequently so are fishers. A central feature of UK fishers' practice is to fish both inside and outside British waters. Approximately 20% of landings by UK vessels are in ports outside the UK. Additionally numerous non-UK vessels have long-standing historic rights of access into British waters which would have to be respected, both from a legal point of view, but also from a practical one.

If the UK government restricts access, it risks a reciprocal response. Finding themselves limited to fishing in their own waters – and hence fishing reduced resources – UK fishers might be encouraged to over-fish immature stocks or make arguments in favour of higher quotas. The mismatch between the scales of fishing behaviour and the scales of management are therefore



not resolved by a Brexit. On the contrary, as now, negotiation would be necessary to agree quotas for fishing vessels sharing resources. If outside the CFP, this would likely be bi-lateral or tri-lateral negotiation between the UK, the EU and other non-EU countries, such as Norway. This form of negotiation has already been criticised, even by CFP opponents. The risk is that quotas are initially agreed, but that states decide afterwards to set a higher quota, thus threatening a collapse of stocks for all.

In short, the very idea of sustainable fisheries and ecosystem management of shared marine resources relies on international cooperation between states – and this would not change were the UK to exit the EU or indeed the CFP.

### **Conclusion**

Current problems and challenges facing both the farming and fishing industries in the UK will not automatically be resolved by a UK exit from the EU. Rather, the interdependent nature of these industries and their markets means that policy solutions would still require to be negotiated with other European countries and the EU. Whereas most farm leaders prefer to negotiate within the EU, their counterparts in fisheries are either ambivalent or undecided.

*Caitríona Carter is Research Professor in Political Science at Irstea, Bordeaux.  
Andy Smith is Research Professor at the Centre Emile Durkheim, University of Bordeaux.*

## Chapter 15

### How will our industries be affected? Trade

*David Comerford*

A large part of the purpose of the EU is the Single Market and Customs Union. This is essentially a free trade area in Europe, with no internal tariffs, and with common standards and regulations that serve to minimise non-tariff barriers to trade. Non-tariff barriers are practices and rules like restrictive government procurement procedures, state aid, product standards, consumer protection rules, health & safety rules, and other administrative requirements. Although these practices and rules could be motivated by a valid need, they are barriers to trade because they have the effect of excluding non-domestic firms from a particular market. The EU's Customs Union involves the application of a common external tariff on all goods entering the European market. The EU is itself a member of the World Trade Organisation (WTO) and as the EU is a single customs union with a single trade policy and tariff, the European Commission speaks for all EU member States at almost all WTO meetings.

Iceland, Norway and Liechtenstein, together with the EU, form the European Economic Area (EEA), and participate in the EU's single market (but not in the customs union). Likewise, Switzerland participates in the EU's single market through bilateral treaties. The EEA agreement and the EU-Swiss treaties have exceptions, for example on agriculture and fisheries. In order to access the single market, EEA members have to adopt some of EU law and contribute financially to the costs of the single market. And while these costs are not the full costs of full EU membership, as non-EU countries, these EEA members do not receive any of this funding back via EU policies or development funds.

The EU's internal market also formalises restrictions on production, like the protected geographical indication (PGI). These restrictions are used to promote and protect the names of traditional agricultural products and foodstuffs. For example, Stornoway Black Pudding was granted protected status in 2013. One of the most important of such protections for Scotland is that of Scotch Whisky, and under a trade agreement between the EU and the USA in the early 1990s, the US agreed not to use the description 'Scotch' except for whisky from Scotland, while the EU reciprocated by agreeing not to use the description 'Bourbon' except for American produced whiskeys.

To summarise, the EU aims to facilitate trade within Europe. Economists typically agree that trade enhances the economic output and economic wellbeing of a nation, by allowing specialisation and enhancing product

variety. Therefore, this issue is important because, if membership of the EU does successfully facilitate trade between its constituent nations, and if a Brexit would damage this trade for the UK, then we can expect economic costs due to the loss of this trade.

### **What are the arguments put forward by 'Leave' campaigners?**

Campaigners to leave the EU do not dispute the argument that a loss of trade could be economically costly. Indeed the Vote Leave campaign in their '[Our Case](#)' document, explicitly states that *"the EU and its Single Market process have brought some gains"*. Rather, the argument of 'Leave' campaigners is that leaving the EU would not damage trade. This is because they argue that the single market does not work as well as it should, *"the system is rigid, very slow, hard to fix when it goes wrong, and very costly"*; that the EU's common trade policy restricts the UK's ability to trade with the rest of the world *"We regain our seats on international institutions like the World Trade Organisation so we are a more influential force for free trade and international cooperation. ... EU institutions should stop blocking Britain from making trade deals outside Europe"*; and that a UK-EU free trade deal, perhaps via EEA membership or via bilateral deals like Switzerland, would be straightforward *"We negotiate a new UK-EU deal based on free trade and friendly cooperation"*.

### **What are the arguments put forward by 'Remain' campaigners?**

Campaigners to remain in the EU respond to these claims in two ways. The first is to say that, yes, damages associated with Brexit could be avoided if the UK did a trade deal with the EU which [replicated the costs and benefits of current EU membership](#). For example the *"benign outcome would ... be dependent on ministers signing a trade deal with the bloc that severely limits the UK's ability to make its own bilateral trade deals with other non-European countries. Britain would also have to continue to make contributions to the EU's budget. ... benign scenarios involve retaining aspects of EU membership: continued high immigration, restrictions on our ability to make trade deals with non-EU countries and continuing to pay money to Brussels"*.

The second response that remain campaigners make is that leaving the EU would be a disaster, such as ["Brexit could cost £100 billion and nearly one million jobs"](#). These estimates of large costs (£100 billion is around 5% of GDP) are based on analysis where a disruptive Brexit leads to a scenario in which a UK-EU free trade deal cannot be agreed, tariffs and non-tariff barriers are erected, and in which large falls in UK-EU trade are seen.

### **The balance of the arguments**

It is easy to dismiss some aspects of the above two characterisations of the 'Remain' arguments. The first argument, even under its own assumptions, comes down to a political choice – perhaps there are many who would like to

leave the EU even if the bilateral arrangements which replace it replicate all its costs and benefits. And the second argument seems hyperbolic – certainly in the medium to long term. The level of trade neither creates nor destroys jobs: if Brexit were to lead to a large fall in the UK's external trade, then of course employment would decrease in the UK's export industries; but it is not only exports that would fall – imports would also fall, and domestic demand for goods that were previously imported would take up the slack in employment as these would then need to be produced domestically.

The arguments that trade promotes efficiency and welfare follow from economic theories that have produced models that allow various scenarios to be quantified. And researchers at the Centre for Economic Performance (CEP) at the London School of Economics have [studied the effects of Brexit](#) on trade and hence upon economic efficiency and welfare in such models. They find that, even when countries have comprehensive trade deals such as EEA membership, their trade with the EU is still less than it would be under full EU membership. This is due to, in particular, non-tariff barriers that are higher than under full EU membership. And minimising non-tariff barriers are very important for the UK given the pattern of its trade, since they weigh particularly heavily upon trade in services. The UK is a net exporter of services, especially financial services, to the EU, and a net importer of goods, which (by the nature of goods versus services) are proportionally less affected by non-tariff barriers, from the EU. The net effect estimated in the CEP study for Brexit under a favourable EEA type UK-EU trade deal, is a cost of around 1% of GDP.

The authors then go on to describe how this estimate is likely a lower limit for the cost of Brexit, for various reasons e.g. dynamic effects from trade upon growth; and the likelihood of such a favourable deal being negotiated (especially since the current internal tensions within the EU provide an incentive for no 'sweet' deals to be given – *pour encourager les autres*). It is consistently found that, by reducing trade, Brexit would lower UK living standards.

### **What special relevance does the issue have for Scotland?**

Scotland's exports to European Union countries made up 42% of its international exports in 2014, which is similar to the figure for the UK as a whole. We would therefore expect Scotland-EU trade to be affected by a UK exit from the EU in a similar manner to the UK-EU trade previously discussed. Further we would expect the macroeconomic implications of this impact upon trade to also be similar in Scotland as in the UK as a whole. So does Brexit have any special relevance for Scotland?

It does if we view Scotland as a country rather than as a region of the UK. The small countries of northern and western Europe are among the most prosperous regions on the planet. This is a prosperity that is based (among

many other factors) upon an openness to trade. And in trade terms these countries look very different from Scotland.

Scotland's trade with the rest of the UK dwarfs its international trade. Scotland's total trade (exports and imports) in the latest (2012) figures is 66% with the rest of the UK, and only 34% with the rest of the world. To see how concentrated this is, consider three small north-west European countries which could be compared to Scotland: Ireland, Norway and Denmark. The largest trading partner of both Ireland and Norway is the UK, but their trade with the UK only accounts for 21% and 16% respectively of their total trade. Denmark's largest trading partner is Germany, but its trade with Germany only accounts for 18% of total trade. Scotland's trade is anomalously concentrated with its largest partner. Its high performing international comparators have much more diversified trade.

Brexit is estimated to reduce trade with the EU, and some of this trade will be diverted internally as well as to the rest of the world beyond the EU. Therefore we can expect Brexit to increase the share of Scotland's trade that is conducted with the rest of the UK, further increasing the concentration of Scotland's trade with its largest trading partner, and causing further divergence between the trade diversity exhibited by Scotland and that exhibited by other north-west European countries. So on this one measure, Brexit would seem to be harmful to the goal of matching Scotland's economic performance with its natural comparators.

[Economists have developed a framework](#) for thinking about small country regions in a globalising economy that fits the changing number of countries in the world over the past two centuries. In the early stages of globalisation, once it is technologically possible to engage in high levels of international trade, but when national borders are still a strong impediment, these locations prefer to be peripheral regions in a large country or empire, because this is the way to achieve high levels of trade and the economic gains that follow. However once multilateral institutions like the EU, which enable trade integration by international agreement, are in place, then national borders are less of an impediment and these locations can prosper as small countries. This framework can be used to explain the generally high levels of support for remaining in the EU from supporters of Scottish independence: multilateral institutions like the EU are the basis for small country prosperity.

If Brexit is the start of an unravelling of the process that has built the multilateral international institutional architecture of globalisation since the end of World War II, then its implications for Scotland are stark. We may be moving from a world in which multilateral international institutions ensured that the trading interests of small countries were protected; towards a world more akin to the age of empires in which large countries accumulated a free trade zone which they could dominate, and trade outside this zone was very difficult. In the multilateral globalised world, independence may be an

economically rational policy for Scotland, since it could be a small country in a multilateral organisation like the EU. But in the empires world, with no EU-style multilateral organisations, Scottish independence would likely be extremely costly economically, and the optimal choice is more likely to be as a peripheral region in a new British empire.

*David Comerford is a researcher in economics.*

## Chapter 16

### **Energy and Climate Change: How important is the EU for addressing the climate challenge?**

*Andy Kerr*

The UK's Secretary of State for Energy and Climate Change, Amber Rudd, recently argued that energy bills in the UK would soar by £500 million a year if the UK left the EU. This figure was strongly disputed by leave campaigners, amongst whom is her Minister of State at the Department for Energy and Climate Change, Andrea Leadsom.

At the heart of this dispute about energy costs is the collective response over many years by the EU to improve the quality of the environment, with particular focus on the challenge posed by human-induced climate change, and to shape energy policy. This has involved extensive interventions by the EU with Member States with the aim of helping them develop a system of clean, efficient energy to provide power, to heat and cool homes and businesses, and for mobility.

These interventions mean that UK energy and climate change policies are closely entwined with EU-wide regulations. The recent dispute by the UK Ministers is whether these regulations are adding unnecessary costs to UK households and businesses: whether directly, through taxes; or indirectly, through the additional regulatory burden on businesses and the public sector.

This chapter explores these claims and counterclaims by the 'Leave' and 'Remain' campaigners. It seeks to answer the question of whether the EU is important for addressing the challenge of climate change, which is determined largely by national and international energy (and land use) policies; and the extent to which this imposes a burden on the UK that could be avoided by the UK leaving the EU.

#### **What is the Issue?**

EU Directives, transposed by the UK Government into UK legislation, affect all aspects of the way in which we produce and use energy, from the UK's building regulations to air quality standards for power stations. This outcome stems from the key underpinning treaties of the EU to which the UK has signed up, such as the Maastricht (Treaty of European Union) and Rome (Treaty of the Functioning of the European Union) Treaties as amended by the Lisbon Treaty. Article 3 of the Treaty of the European Union states the objectives of the EU and defines the principle for sustainable development for Europe "...based on economic growth and price stability, a competitive social

market economy aiming at full employment and social progress, and a *high level of protection and improvement of the quality of the environment*".

The Treaty for the Function of the European Union goes further and states that the Union has an objective "to deal with regional or worldwide environmental problems, and in particular combating climate change". It requires the EU *to preserve and improve the environment*. This Treaty also sets out the framework for EU energy policy, which is framed explicitly around the need to integrate these environmental considerations. The specific objectives for the EU energy policy are to: ensure the functioning of the energy market; ensure security of energy supply in the Union; promote energy network interconnection; and "*promote energy efficiency and energy saving and the development of new and renewable forms of energy*". In other words, the EU co-develops policy on energy and climate change with Member States.

However, apart from certain specific circumstances, the EU cannot adopt any measure that affects a Member State's right to determine the conditions for exploiting its energy resources; its choice between different energy sources; or the general structure of a Member State's energy supply.

### **Why is this important?**

These entwined treaties mean that UK energy policy is set within a wider framework that aims to support European objectives for delivering a clean, efficient energy system. At the heart of this framework is an obligation to improve the environment – whether involving considerations of local air quality or worldwide climate change.

This wider EU framework has driven extensive changes in the UK energy system. For example, the most polluting power stations have been forced to fit pollution abatement measures to reduce their local air pollution or face mandatory closure. This has driven the closure of many old coal-fired power stations in recent years, including Cockenzie Power Station in East Lothian.

Renewable energy targets for Member States have driven the expansion of renewable energy in the UK. The UK agreed with the EU to meet a target of 15% of total energy needs (including electricity, heat and transport energy) from renewable sources by 2020. Until this point, the UK had been a laggard in the EU in developing renewable sources of energy. This target has driven the extensive development of regulatory frameworks in the UK to increase the role of renewables, with some success – particularly in renewable electricity – but at the cost of substantial public subsidies paid through consumer bills.

Meanwhile, EU rules on vehicle efficiencies have driven global vehicle manufacturers to meet successively enhanced efficiency standards for petrol and diesel engine vehicles, whilst also encouraging the use of sustainable biofuels. And EU frameworks have driven improvement in efficiencies of "white goods" – domestic appliances such as washing machines and fridges –



by forcing consistent energy labels to be used across the EU. This is calculated to save households over 400 Euros per year.

### **What special relevance does this issue have for Scotland?**

Since devolution, Scotland has embraced change in the production and use of its energy by building on the UK regulatory frameworks that emerged to meet EU climate and energy obligations. Scotland has expanded renewable sources of electricity from around 10% to over 50% of its electricity consumption over the past 15 years, with the aim of meeting 100% of its net demand by 2020. At the same time, housing across Scotland has been made much more efficient through targeted application of energy efficiency measures such as insulation. This has only been possible because of the UK renewable electricity and energy efficiency targets, with associated public subsidies, which support Scottish ambitions.

Scotland aims to be a world-leader in meeting the challenge of climate change by developing a clean, efficient energy system. Its Climate Change Act (2009) sets a framework for radical changes in the production and use of energy (and land) over the next 35 years.

When this Scottish ambition aligned closely with that of the UK Government, Scotland could use the UK frameworks and financial support mechanisms to support its ambitions. However, over the past year, the current UK Government has undertaken an 'energy policy reset'. This has put the focus on the short-term affordability of energy over environmental or efficiency considerations, coupled with a desire to use gas and nuclear for electricity production and gas for heating. This energy reset has hit business and investor confidence in the UK's commitment to clean energy. It also makes it much more difficult for Scotland to deliver its own ambitions for a clean, efficient energy system. In this situation, the role of the EU in co-developing energy and climate policy with Member States provides a powerful counterweight to the UK Government's current approach to energy policy.

### **What are the arguments put forward by the 'Remain' campaigners?**

The key arguments put forward by the pro-EU campaigners revolve around:

- The importance of the emerging EU-wide energy market which, through trade liberalisation and competition, is expected to bring down energy prices for consumers.
- The power exerted by the EU bloc of countries on global consumer product manufacturers – whether of white goods or vehicles – and associated energy efficiency measures in Europe, such as energy labeling, which leads to substantial lifetime cost savings to vehicle owners and householders.

- The role of the EU in ensuring energy security for all Member States, through the collective response to energy suppliers, such as Russia, which seeks to use and price its supply of gas for maximum political impact.
- The key role of the EU in driving the UK to clean up its energy system, from forcing air polluting power stations to close, to developing an array of renewable energy sources for electricity, heating and transport.

### **What are the arguments put forward by the ‘Leave’ campaigners?**

The key arguments put forward by the anti-EU campaigners regarding energy and climate change issues revolve around:

- The additional cost imposed by the various energy regulations co-developed by the EU, such as requiring the UK to increase the penetration of renewable sources of energy, which requires public subsidies; or imposing energy efficiency regulations such as energy labeling, which they argue should be left up to the market.
- The misplaced focus by the EU on climate change and the environment as a key factor in government policy on energy (or indeed in other policy areas): for example, various ‘Leave’ campaigners have suggested we should resort to the ‘cheapest form of energy, which is coal’.
- The loss of sovereignty associated with having energy and climate policy co-developed by the EU, thereby taking it out of sole UK jurisdiction to determine our own energy future.

### **What is the balance of arguments?**

There is little doubt that the EU has played a key role over the last two decades in the development of energy and climate policy in the UK. Renewables targets, coupled with air quality standards for fossil fuel power stations, set at EU level have driven major changes in the UK’s power sector. Air pollution and greenhouse gas emissions targets, through for example the EU-wide Emissions Trading Scheme, have forced environmental considerations onto company boards of industrial facilities across the UK. Products from vehicles to white goods have become dramatically more efficient as a result of EU regulations. And energy systems, from electricity to gas networks, are becoming more interconnected between Member States.

Whether these changes in the UK’s energy system are seen as positive, which will generally be the case for ‘Remain’ campaigners, or negative, which will generally be the case of ‘Leave’ campaigners, typically depends on wider political views about the relative importance of climate change and the environment as a priority for government action; and the extent to which governments should intervene or allow the free market to operate. In other words, ‘Leave’ campaigners are more likely to view government intervention negatively, because they believe it imposes unnecessary costs on households

and businesses to deliver outcomes that a functioning market system should deliver; and to see climate change and environmental improvement as of lesser importance compared with economic factors.

A key assumption of the 'Leave' campaigners appears to be that if the UK leaves the European Union then all the UK's obligations to renewable energy and energy efficiency standards will be redundant. However, the UK has also signed up to United Nations commitments under the UN Framework Convention on Climate Change (UNFCCC), most recently by signing the Paris Agreement in December 2015. Meeting the obligations of this Agreement will require the UK to develop a clean, efficient energy system by around mid-century, regardless of whether the UK is part of the EU or not.

The Paris Agreement is more onerous than the energy and climate-related obligations by the EU on the UK. In other words, the UK will also need to revoke these global climate agreements to which it has signed up in order to avoid imposing radical changes in its energy system over the next 35 years. And, should the UK both leave the EU and renege on its UN commitments, but still wish for preferential access to the EU single market through an EFTA agreement, it will still need to abide by the *EU acquis communautaire*: the UK will still need to abide by rules and regulations governing the single EU market, including many environmental and energy rules, but with less influence over their content.

In conclusion, the EU has played a key role over the past two decades in helping the UK to address environmental issues and efficiency of energy use, ranging from local air pollution to climate change. However, leaving the EU will not allow the UK to unpick these changes without also reneging on global UN agreements. And the UK will still need to abide by many energy and environmental regulations to enable preferential access to the EU single market.

*Andy Kerr is Executive Director of the Edinburgh Centre for Carbon Innovation at the University of Edinburgh.*

## Chapter 17

### **Welfare: The proposed restrictions to benefits for migrants and the referendum debate**

*Daniel Clegg*

Access to welfare payments for those coming from elsewhere in Europe to work in the UK has been central to recent debates on Britain's EU membership. In 2014 the Prime Minister claimed that welfare is a 'big financial incentive' for workers to migrate to the UK, particularly if they are low skilled. And he committed to making restrictions on access to UK benefits for other Union citizens – and for those from other European Economic Area (EEA) countries and Switzerland, to whom the same rules apply – one of the main planks of future renegotiation of Britain's relationship with the EU.

By the time of the letter to Donald Tusk, President of the European Council, setting out the UK's negotiating demands the Government had two main objectives on welfare:

- requiring that workers from other European countries live here for four years before having access to in-work benefits and social housing, and
- ending the possibility for Union citizens to receive child benefits for children who live in another member state.

These were easily the most controversial of the UK's demands, vigorously opposed both by governments of countries with large numbers of nationals currently in the UK and by defenders of core single market principles.

Despite going less far than the UK Government hoped, the final deal opens the way for substantial changes to the status quo on access to welfare for people moving across borders for work within the single market. The deal provides for child benefits in future being indexed on the cost of living in the child's country of residence, so migrant workers with families remaining in poorer member states will receive less support. On in-work benefits, compromise was reached on the creation of an 'emergency brake' mechanism exempting member states experiencing inward migration pressures from some of their equal treatment obligations for a period of seven years. With this brake 'pulled' entitlements to in-work benefits for migrants would increase progressively from the date of their first employment and attain parity with nationals only after a period of four years.

#### **Why are benefits for migrants being restricted?**

The political importance of these agreements is clear. Opinion polling consistently finds that the benefits European migrants can claim is seen in the UK as the single most important area for change in the how the EU functions,

crucial for some two-thirds of the population. This is why the Government made the issue the centrepiece of the renegotiation, and why the principle of restrictions is supported by the other main political parties in Westminster.

Proponents of restrictions also frequently cite two main policy objectives. The first, implied by Cameron's 2014 speech, is to reduce the financial inducements to move to the UK for work and help lower net migration, an explicit objective of government policy since 2010. The second is to increase fairness relative to the existing situation, where EU migrants become potentially eligible for some benefits as soon as they enter the UK labour market. Less openly discussed, but strongly suggested by repeated references to the proportion of total UK benefit expenditure on EEA nationals, is that these restrictions will limit the perceived fiscal burden arising from some European migration to the UK.

An almost entirely neglected dimension of the proposed restrictions is their impact on poverty and deprivation. For all the talk of Britain's 'universal' welfare system being a draw, in-work benefits are in fact targeted at working households with the lowest incomes. And limiting the access of newly arrived EU migrants to these benefits will only aggravate the frequently precarious nature of their living conditions, often characterised by unsatisfactory accommodation in the private rented sector, high levels of housing mobility and interrupted schooling for children.

### **Is policy in Scotland different?**

The restrictions to welfare benefits for EU migrants appear to be quite sharply at odds with the general thrust of current public policy in Scotland border. The Scottish Government has in recent years articulated a distinctive pro-immigration stance, arguing that Scotland's economic and demographic needs are ill-served by the restrictive policy pursued by the Westminster Government. The need for increased numbers of migrants of working age has particularly been emphasised. If limiting access to some benefits was successful in reducing levels of migration, it would run counter to the stated aims of Scottish policy.

Even with no effect on migrant numbers, the restrictions would undermine current Scottish policy priorities in other ways. The Scottish Government promotes an inclusive model of citizenship, projecting Scotland as a welcoming country at ease with a highly multinational and multicultural population. This posture would be hard to square with a benefit policy that explicitly discriminates on grounds of nationality. The Scottish Government has also made fighting poverty and inequality one of its central aspirations. It sees improving the value and take-up of welfare benefits – which it prefers to frame as social security – as key instruments in that goal. By disentitling a section of the population living on low income, restrictions on access to

benefits for EU migrants would undercut the Scottish Government's social policy.

The Scottish Parliament is currently gaining new powers on welfare under the Scotland Act 2016. Among these will be the possibility to top up aspects of some benefits which remain formally reserved to Westminster, such as tax credits and the future Universal Credit. But it remains unclear if a Scottish government would have power to reverse or relax restrictive measures for migrants resulting from revised EU legislation following the referendum. And even if they could, this would depend in practice on the Scottish and UK governments surmounting formidable political and governance obstacles to effectively sharing powers in areas where their fundamental policy objectives diverge.

### **What do the 'Remain' and 'Leave' campaigns say?**

Disagreement between the 'Remain' and 'Leave' campaigns over the welfare restrictions the UK Government has negotiated has crystallised around three issues; the magnitude of the changes that are foreseen, how binding they will prove to be and their likely impact, especially on the scale of European migration to the UK.

The 'Remain' camp has understandably talked up the 'tough new restrictions' on access to the UK welfare system. It argues that as the prospect for any deal on limiting access to in-work benefits was widely questioned, the Government has scored a major diplomatic victory. The 'Leave' camp suggests, by contrast, that the welfare demands were modest to start with and have only been agreed by other European governments after being heavily watered-down. While one side presents the welfare deal as proof of Britain's ability to defend its interests from within the EU, the other holds it up as evidence for the fundamental impossibility of doing so.

The 'Leave' campaign further argues that the welfare restrictions might not make it unscathed into EU legislation, and complain that important aspects of their implementation – like authorisation for use of the emergency brake – are subordinated to future decisions by European institutions. The spectre of the arrangements being declared unlawful by the Court of Justice of the European Union (CJEU) is also raised. The 'Remain' campaign insists that the deal as it has been negotiated is legally binding and cannot be unpicked without the UK's consent.

The potential impact of the changes on future migrant numbers has been the source of considerable dispute. While some on the 'Remain' side are openly sceptical, David Cameron has argued that the restrictions will 'make a difference' to migration to the UK. Open Europe, the think tank that takes credit for inspiring the government's negotiating demands in this area, argues that the changes will especially dissuade low-skilled migrants from coming to the country to work. The 'Leave' campaign counters – somewhat ironically,

considering how fixated Eurosceptics have traditionally been on the dangers of 'welfare tourism' in the EU – that benefits play little role in migration decisions, and that planned increases to the UK minimum wage will anyway negate any effect of benefit restrictions. They argue that leaving the EU is the only sure way to 'regain control of our borders'.

### **So which side is right?**

Each side is to some extent right to about the welfare measures. The 'Remain' camp is correct that Cameron has won major concessions, especially on in-work benefits. While EU rules have long allowed migrants to be treated differently from nationals when unemployed or economically inactive, for workers the principle of non-discrimination has always been inviolable. If the emergency brake mechanism is adopted, this will change. But precisely because this would clearly conflict with principles enshrined in the European treaties this part of the deal is legally very insecure, as the 'Leave' camp maintain. The CJEU, in particular, is not bound by a political deal negotiated between governments, and if a challenge to the legality of the emergency brake was brought before it there is every chance that it would be upheld.

By contrast, each side is largely wrong on whether the benefit changes or 'Brexit' can help to limit migration. Against some claims from within the 'Remain' camp, there is no hard evidence suggesting that migration decisions are based on the accessibility and value of social benefits, with factors like the availability of jobs and language playing a much greater role. But, equally, there is little prospect that leaving the EU would give the UK 'full control' of its borders, as the 'Leave' camp asserts. All meaningful precedents of trade deals concluded between non-member European states and the EU have depended on these countries accepting free movement of labour, and there is little reason to think that any EU-UK trade agreement giving full access to the single market would be fundamentally different.

What of the objective of limiting the perceived costs of European migration to the UK? If the benefit restrictions were adopted and migration levels remained stable there would indeed be a fiscal benefit for the government; EU migrants would pay the same tax and national insurance but receive less in benefits. The scale of this windfall would likely be trivial, though. Firstly, numbers of child support claims for children resident abroad are vanishingly small, less than half of 1% for Child Benefit and even less for Child Tax Credit.

Secondly, while EU migrants account for around 10% of total expenditure on in-work tax credits and housing support despite representing only 6% of the workforce, the assertion that a large proportion of spending goes to recently arrived migrants – who would be affected by the emergency brake – has not been backed up by reliable statistical evidence and is widely contested. Finally, the introduction of Universal Credit is soon to sharply reduce the value of all in-work benefits, and therefore also the savings from

excluding a section of the working population from receiving them. So while they may inflict considerable hardship on families they do hit, the changes will affect few people and save very little money overall.

This leaves the question of fairness. Tax credits and housing support are non-contributory, means-tested benefits, requiring that claimants demonstrate need rather than a specific record of employment or national insurance payments. Poor British people can receive in-work benefits irrespective of whether they have worked before, or indeed of their ability to prove any level of past 'contribution to the country'. Should this really be different for poor migrant workers legally resident and paying tax in the UK simply on the grounds of their nationality? Different people would no doubt give different answers, suggesting the fairness issues are rather less clear-cut than their presentation by the Government has often implied.

**Conclusion: what will change?**

For all the political heat they have generated, the proposed restrictions on access to welfare benefits would probably do little to fundamentally change those aspects of Britain's relationship to the EU that most exercise British voters. But it is far from clear that 'Brexit' would either. The Scottish Government articulates different policy priorities in this area, but the option that is best aligned with these is the status quo – and that option is not on the table.

*Daniel Clegg, is Senior Lecturer in Social Policy at the University of Edinburgh.*



## Chapter 18

### Migration: would limiting the free movement of labour be good or bad?

*Christina Boswell*

Immigration consistently features as one of the major concerns of British voters. According to IPSOS-Mori, 44% of the population consider immigration to be the most important issue facing Britain today, making it the top concern. Other surveys suggest that over three-quarters of UK residents want to see a reduction in immigration. Public apprehensions tend to revolve around the perceived burden of immigrants on public services; the effects of immigration on unemployment and wages; and concerns about the social and cultural impacts of large-scale immigration.

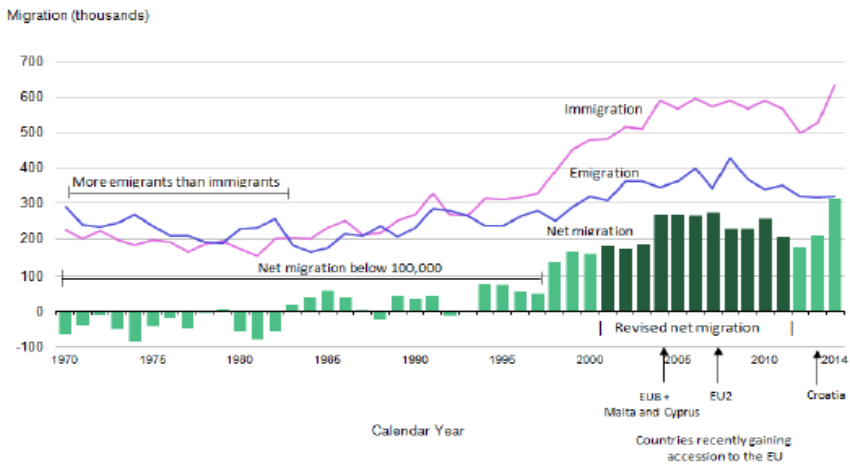
Over the past decade, concerns about immigration have been increasingly linked to the UK's membership of the European Union. EU law enshrines a principle of 'free movement', meaning that nationals of EU member states are entitled to seek a job and work in any other member country. They are also entitled to equality in access to employment, wages and social security. This right is limited to those who move for work purposes – it does not extend to those who relocate to take advantage of unemployment benefits. In the case of countries newly joining the EU, member states may impose a temporary restriction on their access to the labour market, lasting up to seven years.

In the early decades of the UK's membership, EU immigration remained relatively low, indeed more Britons went to live and work in Europe than EU nationals came to the UK. However, in 2004 when eight central and east European countries (the A-8) joined the EU, the UK together with Ireland and Sweden decided to allow immediate labour market access for the newly acceding countries. The decision was made on the grounds that labour migrants would benefit the UK economy at a time of nearly full employment and economic growth; moreover, it was projected that levels of immigration from the A-8 would remain relatively low.

However, the A-8 accession prompted a substantial increase in EU immigration. Figures from the Office of National Statistics suggest that A-8 immigration rose from around 45,000 in 2004 to over 100,000 by 2007/8. Currently, A-8 immigration is back down to just over 60,000. However, other flows from the EU have become more significant. Over half of EU immigration (120,000) is now composed of nationals of the 'old' EU member states, primarily those from southern European countries hit by recession. At the same time, there has been a small but steady increase in immigration from Bulgaria and Romania (currently around 50,000 per year), whose nationals were permitted access to the UK labour market in 2014.

Overall, EU immigration currently now stands at around 250,000 per year. If we subtract the number of EU nationals leaving the UK, we reach a figure for *net* migration of almost 180,000 per year. This accounts for almost half of all net migration to the UK. These figures have become especially prominent in the context of the Conservative Party’s net migration target. In 2010, David Cameron pledged to reduce net migration to the UK from the *hundreds* of thousands to the *tens* of thousands. The Government has consistently failed to hit this target, with current net migration standing at over 300,000, higher than the peak of 2007/8. Indeed, levels of net migration are higher than at any time recorded.

### Net migration into the UK: 1970-2014

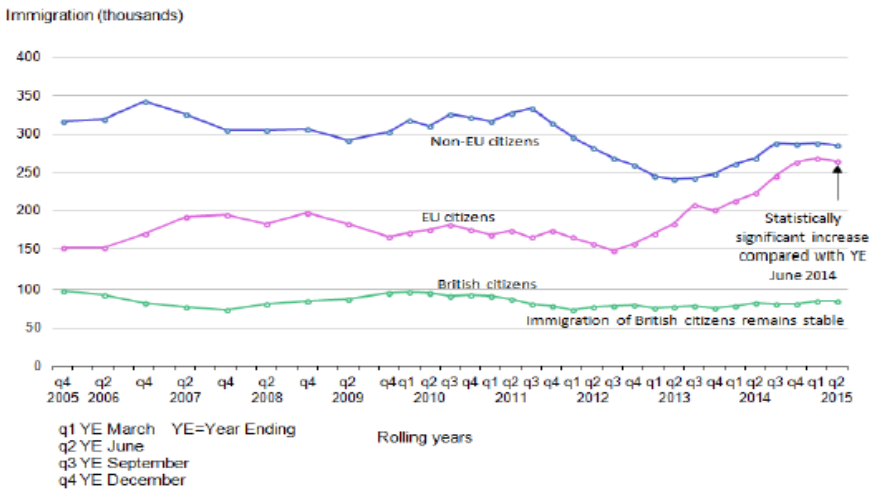


Source: Office of National Statistics.

The situation in Scotland is somewhat different to that of the rest of the UK. Both SNP and Labour-Lib Dem governments have aspired to raise, rather than reduce, the level of net migration to Scotland. This is mainly because of demographic considerations. Sustaining net migration at around 24,000 per year (including net migration from the rest of the UK) is seen as an important way of offsetting population ageing and reversing population decline. In fact, net migration to Scotland since 2004 has contributed to a steady increase in the overall population, with the highest increase consisting of Polish immigration. Census figures show that between 2001-2011, the number of Polish residents rose from around 2,500 to over 50,000, now overtaking Indian nationals as the largest foreign-born group in Scotland.

This pro-immigration position is not necessarily consistent with public opinion in Scotland. Surveys suggest that the majority of Scottish residents favour a reduction in immigration. However, the level of anti-immigrant sentiment in Scotland is less pronounced than the average UK, and the issue is less politically sensitive. This may be partly because – despite the substantial increase in immigration in the late 2000s – levels of immigration remain relatively low compared to other parts of the UK. The 2011 census revealed that Scotland’s foreign-born population stands at around 7% of the population, compared to 13.8% in England. The lack of political visibility may also be because immigration is not a devolved competence: Scottish governments are not held to account for immigration policy, and the issue is not a major topic of party political debate between the main Scottish parties.

### Where do UK immigrants come from?



Source: Office of National Statistics.

At the UK level, the concern to limit immigration has become one of the main arguments marshalled to justify Brexit. Pro-‘Leave’ campaigners argue that EU membership impedes the UK from meeting its immigration policy goals. EU rules on free movement undermine British sovereignty by obliging the UK government to accept high levels of EU migrants seeking work. They argue that the UK will only be able to regain control of immigration policy outside of the EU. Once Britain has left, it will be able to pursue a more selective immigration policy, for example only admitting those with much needed skills. UKIP has even suggested that leaving the EU would enable the UK to meet a much more ambitious net migration target of 30,000.

Pro-‘Leave’ campaigners have also suggested that the UK would regain sovereignty in other areas of immigration policy. For example, it is often claimed that the UK would be able to implement more effective border control, becoming more effective in stopping irregular flows from Calais, or inflows of suspected terrorists. We should note, however, that the UK is not a member of the Schengen agreement on passport-less travel, and so currently has full control of its borders. Another argument is that the UK will be exempt from a series of EU Directives on immigration and asylum. Here we need to observe that the UK has no obligation to participate in any common measures on immigration and asylum: indeed, the government can choose unilaterally whether to opt in to legislation on a case-by-case basis.

Those in favour of the UK remaining in the EU fall into two main groups. The first of these accepts the need to reduce immigration, but argues that Brexit is not an effective route for achieving this goal. They agree that EU immigration is too high, but disagree that Brexit can fix the problem. One reason they give is the difficulty of negotiating access to the common market without accepting EU rules on the free movement of workers. Other countries benefiting from free trade in goods and services – including Norway, Iceland and Switzerland – have been obliged to accept EU rules on the free movement of persons, which is seen as a corollary of the other ‘freedoms’ (see Chapter 8).

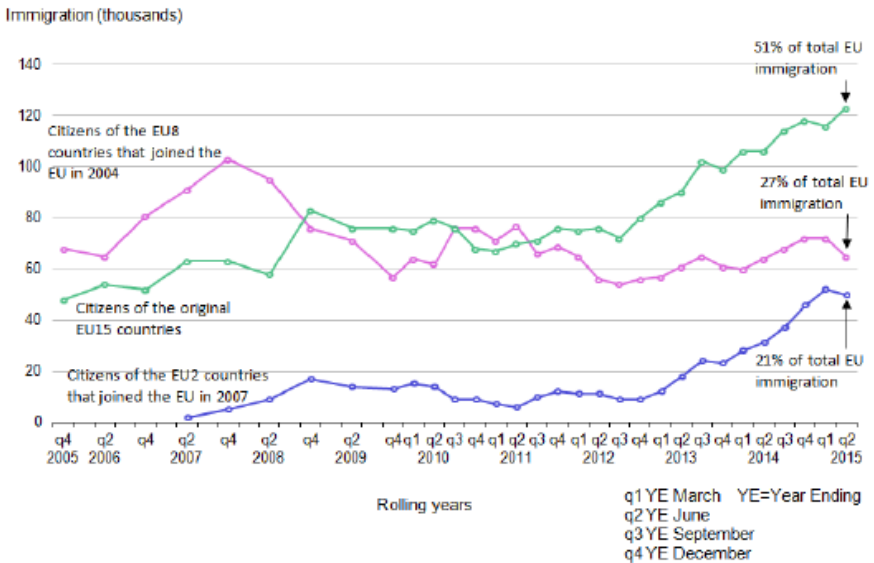
Moreover, pro-EU campaigners have suggested that the UK might lose its influence over other important aspects of European immigration policy. The UK has voluntarily opted in to a number of instruments that are considered to be in the national interest, such as the Dublin Convention for determining which member state is responsible for assessing asylum applications, and the EURODAC database of asylum applicants. The Labour Government opted into EU Directives on minimum standards for asylum procedures and reception of asylum seekers, as well as the definition of who qualifies for asylum (although the Conservative Government is less keen on participating in these measures). The UK has also actively participated in measures to combat irregular migration, including Directives on carrier and employer sanctions, anti-trafficking measures, readmission agreements with non-EU countries, and it has participated in joint naval patrols in the Mediterranean.

Furthermore, pro-‘Remain’ proponents suggests that should the UK restrict EU immigration, UK nationals living in other EU countries might face retaliatory measures. If the UK puts a quota on EU immigration to the UK, British pensioners retiring to Southern Spain, or UK engineers relocating to Germany, are likely to suffer similarly restrictive measures.

Instead, this camp claims that other measures short of Brexit will be more effective in reducing EU immigration. The most prominent alternative is to reduce welfare benefits for immigrants. The assumption here is that EU immigrants are attracted to the UK because of generous social and welfare

system. Reducing their entitlements to benefits will thus lead to a reduction in inflows. The Conservative Government has already reduced access to out-of-work benefits – and this has been relatively uncontroversial from the perspective of EU law, given that free movement provisions are designed to promote the mobility of *workers*. However, the Government has sought to go further, pressing for a ban on EU immigrants accessing in-work tax credits, and limiting their ability to export child benefit to children living outside of the UK.

### Origin of EU citizens coming into the UK



Source: Office of National Statistics.

Prime Minister David Cameron was able to negotiate a deal along these lines at the European Council meeting in February 2016. EU member states agreed that a country could impose an ‘emergency break’ lasting up to seven years on EU immigrants accessing in-work credits in their first four years of residence. The agreement also permits member states to index exported child benefit to the rates of the country of residence. It should be noted, however, that there is limited evidence that these benefits act as a magnet for EU immigrants. Thus many critics have suggested that the concessions are largely symbolic.

The second group in the ‘Remain’ camp rejects the notion that EU immigration should be reduced. EU immigrants, they argue, have made an important contribution to the UK economy. They are net contributors to the welfare state, they augment GDP, and they fill important shortages in the

labour market. In the case of Scotland, EU immigration also plays an important role in offsetting declining and ageing populations. Moreover, EU immigrants fill jobs that UK nationals are either unwilling or unable to take up – because they don't have the required skills, live in the wrong area, or are put off by poor conditions and wages. Indeed, ONS statistics suggest that 58% of EU nationals coming to the UK to work already have a job offer before they get here. This begs the question of what effect a ban on EU immigration might have on the economy. If EU nationals are filling so many jobs, then a significant restriction of immigration would create serious labour shortages, with damaging effects for those sectors most reliant on foreign labour: manufacturing, food and drink processing, cleaning, food preparation and hospitality, and health.

What this all suggests is that the focus on EU membership as the key to resolving the immigration problems may be misplaced. First, because the UK is unlikely to secure a deal that combines full access to the common market with an exemption to rules on free movement. Second, because even if the UK could negotiate such a deal, the demand for foreign labour is likely to remain unchanged, placing pressure on any government to ensure an adequate inflow of labour immigration. The current government's difficulty in reducing even non-EU immigration demonstrates how difficult it is for pro-business administrations to reduce economically beneficial forms of immigration.

As a final thought, it is quite likely that levels of EU immigration will in any case decline over the coming decade. As we saw, the highest flows are from southern European countries affected by the financial crisis. These flows are likely to recede as their economies pick up. Polish immigration is already on the decline, and Romanian and Bulgarian immigration remains relatively modest. Instead, my prediction is that within a few years we will see lower levels of EU immigration, but increased immigration from non-EU countries. Concerns about immigration will not go away; but the furore over EU free movement will recede.

*Christina Boswell is Professor of Politics and Director of Research, School of Social and Political Science, University of Edinburgh.*

## Chapter 19

### Defence and security: continuity or discontinuity, order or disorder?

*William Walker*

#### **UK security: is the EU relevant or irrelevant?**

On 23 November 2015, David Cameron presented to the House of Commons the National Security Strategy and Strategic Defence Review (SDSR) that his Government had prepared since taking office. The Review spoke of many and diverse threats in a turbulent world. It highlighted ‘the increasing threat posed by terrorism, extremism and instability ... the resurgence of state-based threats ... the impact of technology, especially cyber threats ... and the erosion of the rules-based international order’. This profusion of threats required a ‘full-spectrum approach’, drawing upon all of the UK’s resources and international ties to protect the country and sustain its influence abroad.

The SDSR was completed before Cameron had decided on the EU referendum’s date and the stance that he and his Government would adopt in the coming debate. The desire to sit on the fence was understandable. Nevertheless, the SDSR’s authors went to remarkable lengths, under ministerial instruction, to keep the EU out of the document. It contained no reference to the European Union’s role in pacifying the Continent and handling the Cold War’s aftermath. Nor was there reference to its various security instruments including the Common Defence and Security Policy in whose development – and constraint – the UK had played a part. It was as if involvement in the EU, and the EU itself, were irrelevant to the UK’s defence and security interests.

To Brexit’s advocates, the SDSR’s omissions accurately reflect a preference, and a reality, acknowledged by all British governments. The EU’s chief purpose is economic. NATO, the special relationship with the US, cooperation in intelligence gathering, the nuclear deterrent and a competitive defence industry are the bedrock of the UK’s security. The country’s departure from the EU would have little effect on its security and the means of its attainment. Furthermore, allies would damage their own interests if access to the UK’s extensive capabilities and experience were reduced.

It follows, they argue, that there would be continuity in the nation’s defence and security relations following a decision to leave the EU. But there would be discontinuity, of a positive kind, when freed from the EU’s constraints. Above all, the UK could assert full control over immigration, thereby reducing vulnerability to international terrorism.

After Mr Cameron had opened his campaign to keep Britain inside the EU, his government abandoned the SDSR's neutral tone and began talking up the security benefits of EU membership. The Defence Secretary spoke of Britain being safer inside the EU than outside, of the EU's ability to 'do things that NATO cannot', including in the field of counter-terrorism, and of the importance of being involved in 'these big partnerships'. The military's desire to stay with the EU was also made plain in a letter to *The Daily Telegraph* signed by thirteen retired senior officers, including four former chiefs of the defence staff. 'NATO is the most important alliance for maintaining Britain's national security. But the other, increasingly important pillar of our security is the EU'. They cited the EU's collective imposition of economic sanctions that had helped to halt Iran's nuclear weapon programme and ensured that 'Vladimir Putin would pay a price for his aggression in the Ukraine'.

### **A shock to the international security system?**

These expressions of concern about Brexit do not adequately explain why the prospect of the UK's leaving the EU is regarded abroad with such dismay. Neighbours and allies are looking upon Brexit as a form of secession with graver consequences than the secession entailed by Scotland's bid for independence. In that case, a small nation was bidding to leave a large state, a circumstance that had direct consequences for only a handful of other states, Spain prominent among them.

In contrast, Brexit would involve a large and influential state leaving one of the post-war world's primary international institutions – an institution that for all its shortcomings embodied liberal democracy, the rule of law and the ambition to eliminate war on a continent that had suffered so grievously from it. Furthermore, Brexit would be occurring when the EU was fragile and struggling to contain forces of xenophobic nationalism. Unlike in the Scottish case, the interests of every government, and every established political party, would be affected if the UK left the EU and emboldened politicians seeking a similar outcome.

At its most apocalyptic, I have heard talk of the UK's departure from the EU delivering a geo-strategic shock to the West, sapping confidence when its purpose and influence were being challenged by Russia, China and other powers, and when its central player – the US – was afflicted by internal division and erratic leadership. The West's principal military alliance, NATO, would not be immune. In a BBC interview on 15 March, the Head of the US Army in Europe emphasised the need for NATO and the EU to remain strong and 'show solidarity'.

The standard riposte from Brexit's supporters is that such claims do not reflect realities and are part of the Government's 'project fear'. Furthermore, the EU's problems are self-inflicted, arising from an ill-conceived monetary union, failure to control borders, bureaucratic centralism and a lack of



democratic accountability. The UK will be better able to look after its interests outside this dysfunctional institution, and should not await its demise. These arguments may chime at home, but they are unlikely to dispel anxiety in foreign capitals.

### **Compounding the shock**

The case for continuity of defence and security policies also rests on the grand assumption that the UK's exit from the EU would not destabilise the UK. Especially if narrow, a vote for leaving the EU would be followed by a period of introspection, even crisis, in government that could last for months and possibly years. It might also encourage fragmentation.

Political leaders in Scotland and Wales have already said that they would challenge the right of the UK Parliament, driven by the English majority, to remove their nations from the EU. Although the Scottish Government is currently wary of holding another referendum, fearing its loss, Brexit could hasten the day when Scotland leaves the UK. In Ireland there are grave concerns, north and south of the border, that the Good Friday Agreement might be jeopardised, bringing fresh division and violence to the island. A former Northern Ireland Secretary, Peter Mandelson, has spoken of the EU's 'fundamentally stabilising presence in Ireland's recent history'.

More than Brexit, the UK's break-up would have direct consequences for its defence and security. NATO would be affected especially if Scotland became a sovereign state with its own foreign and defence policies and carried out the threat to remove nuclear weapons from the bases at Faslane and Coulport. Various other issues that surfaced during the Scottish referendum debate, including the apportionment of military assets, access to test ranges, and Scotland's participation in NATO, would also have to be addressed.

Indeed, a double shock could be delivered if Brexit were followed, possibly within as little as a decade, by the UK's own demise. Governments abroad would face, in effect, a double secession – the UK leaving the EU and Scotland leaving the UK – begging questions about the stability of states and their international moorings, and about capacities to maintain institutional loyalties and balances of power inside and outside Europe.

Furthermore, it might then be difficult to fend off a challenge to the UK's right to keep its permanent membership of the UN Security Council with its attendant veto powers, a right that could no longer be assumed if the UK's boundaries and personality had changed. It is easy to imagine Russia, China and emerging powers seizing the opportunity to change the Security Council's permanent membership, partly to reduce the West's representation within it.

## **Defence, security and the economy**

The Prime Minister's foreword to the SDSR opens with these words. 'Our national security depends on our economic security, and vice versa. So the first step in our National Security Strategy is to ensure our economy is, and remains, strong.' A few months earlier, he had succumbed to American pressure to hold to the NATO target of 2% of GDP for defence spending when its reduction had been planned in the drive to reduce the financial deficit. Launched when the Treasury's forecasts for UK economic growth were still optimistic, the SDSR encompassed an ambitious programme involving Trident's renewal, expansion of capabilities across the Armed Services, increased investment in intelligence gathering and cyber-security, and an enlarged expeditionary force to strengthen the UK's abilities to 'disrupt threats in the most challenging operating environments worldwide'.

The SDSR does not hide the Treasury's anxiety over the Government's ability to meet these objectives even in good economic times. It would become acute if, as the CBI has warned, Brexit delivered 'a serious shock to the economy' resulting in a reduction of GDP and loss of tax revenues. If this happened, last November's SDSR would have to be rewritten. Some shrinkage of the UK's defence and security capabilities would be unavoidable.

## **Implications for Scotland**

Defence is a reserved matter under the Scotland Act. After a vote to leave, negotiations with the EU and its member states on defence issues would be run from London. Foreign governments, for their part, would regard the UK's government and military institutions as their main interlocutors. Like it or not, the Scottish government would find itself on the periphery of these negotiations.

Scotland would, however, be involved where it possessed devolved powers, as on policing, that are relevant to the fight against organised crime and terrorism. Future relations with Europol, through which member states cooperate in combatting these scourges, would be a particular concern. All governments would be keen to ensure that Scotland and its cities were as well protected as anywhere else against the kinds of attack witnessed in Paris and Brussels. On security issues where there are devolved powers, however, London will still expect, and be expected abroad, to take the lead.

It is hard to work out what this all means for Scotland's relationship with the rest of the UK. What is certain is that, even without Brexit, the political, security and economic landscape facing the country in another bid for independence would be markedly different, and probably less encouraging, than was imagined in 2014. Substantial parts of *Scotland's Future*, the Scottish Government's manifesto for independence, would have to be rewritten. On all sides and at all levels, the advantages and disadvantages of independence would have to be reassessed, especially if the UK had left the EU and if the

EU's internal turmoil had intensified. An independent Scotland's prospects for joining the EU, NATO and other international organisations would also be affected, in whichever direction.

### **Encouraging disorder**

Brexit's advocates claim that there would be more continuity than discontinuity in UK defence and security policies, and in relations with the US and other allies, following the UK's departure from the EU. They may be correct, in the short run at least. However, the primary question is whether Brexit would bring greater political order or disorder to Europe and within the UK.

Futures can be imagined in which Brexit would result in a stronger, more united UK and stimulate a collective effort, led by France and Germany, to reform the EU to prevent further disaffection. They are implausible. It is more likely that Brexit would weaken the UK, increase governmental discord, and intensify strains in relations between its nations and its regions. Abroad, it would strengthen the forces of dissolution that already threaten the EU's survival, risking a return to conflict and violence.

Over the centuries, disorder on the European Continent has exposed the British state and people to the greatest danger. Isolation has never brought protection and war has often followed. Brexit's supporters need to explain how the British state can foster stability in Europe from a position outside the EU.

*William Walker is Professor Emeritus of International Relations, University of St Andrews.*

## Chapter 20

### Foreign affairs: would the UK have more clout in the world – or less?

*Juliet Kaarbo*

#### **What is the issue?**

If the UK leaves the EU, what would be the consequences for the UK on the world's stage? Would being out of the EU diminish the UK's international stature and influence or would it make little difference, beyond the UK's changed relationship with the EU? What would be the international and foreign policy consequences for the Scotland if there is a Brexit?

#### **Why is this important?**

Given globalisation, no country is an island in world politics (even if it is actually an island like Great Britain and geographically separated from others) because the world is interconnected – economically, culturally, and in terms of security – a country's relationships with other international actors have significant consequences for the country and its citizens. The UK's economic and security interests depend on the influence it has over others. UK foreign policy is also about values. If UK citizens want to promote equality, human rights, and justice in the world, the UK must have the capabilities and stature to pursue those goals. Whether or not Brexit will affect the UK's role in the world is therefore an important question for voters' consideration. This question is related to but goes beyond the effects of a Brexit on the UK economy, trading relationships, immigration and security (issues addressed in other chapters).

#### **What special relevance does the issue have for Scotland?**

The outcome of the Brexit referendum could have significant consequences for Scotland and Scottish residents in terms of international relations. If the UK leaves the EU, the chance for another Scottish referendum on independence increases. And the debate over independence would be changed by a Brexit. The 2014 choice was between staying in a UK that was part of the EU versus going it alone and risking the loss of EU membership. This uncertainty and the prospect of being a small state without influence was a key part of the 'No' side's argument. In a future post-Brexit referendum on Scottish independence, the 'Yes' side would propose EU membership as a key benefit for an independent Scotland. And EU membership for Scotland may be more likely under a Brexit plus independence scenario. If Brexit leads to an independent Scotland, then Scotland's standing in the world would change

significantly – it would be a sovereign state, with all the challenges and opportunities that come with independence.

The international relations aspect of the Brexit debate looks somewhat similar to debate over Scottish independence. Those against Scottish independence argued that Scotland would be too small to have influence and that it would set a dangerous precedent. Those against Brexit are also making claims about size and precedence with regard to the impact on the UK's influence in the world.

### **The 'Remain' campaign arguments**

One key theme for the remain campaign is that EU membership amplifies the UK's capabilities and its potential to have influence in the world. This argument is about both size and collective effort. In the EU, the UK benefits from the EU's combined military and economic strength. With this combined size, the argument goes, comes influence and the ability to talk with other major powers, such as the US and China, on a more equal basis. A large military force can be useful in deterring aggression; a large economy can support military might and can better utilise economic sanctions and foreign aid as tools of influence. The EU's size also gives it the ability to shape others' preferences and influence others' actions through non-coercive means. The remain campaign argues that leaving the EU would render the UK a middle power, at best. Its size would be a fraction of the EU and it would be without the combined economic, military, and normative weight to secure and promote its interests and values in the world. Middle powers may be more vulnerable to the preferences of larger powers and may need to compromise more because of their dependence on bigger states.

In addition to the issue of size, the remain campaign argues that coordinated action from inside the EU makes its international influence more effective. If the EU agrees on sanctions, for example, all its member-states are on board, providing no loopholes. If the UK alone wants to sanction another state and the EU is not part of this, EU states can undermine UK efforts through continued trade with the target of the UK's sanctions. Coordination means that the UK can share economic and human costs with other EU countries, reduce risks, and increase the likelihood of operational success. Pressure to bring errant countries into line can also be more effective from many states speaking with one voice. The 'Remain' campaign argues that this coordination is not a restriction of sovereignty; norms of consensus for EU external actions mean that the UK does not have to act against its own preferences. Thus, the remain campaign argues EU membership provides benefits from both size and coordinated effort. It even enjoys a sort of double representation as part of the EU, since UK interests are represented by both the UK foreign secretary and the EU High Representative at international summits.

Another major theme around the UK's clout in the world concerns the type of world that Brexit might create, and how this world would affect UK interests and values. Some on the 'Remain' side argue that Brexit may set a dangerous precedent for further disintegration in the EU. If the UK leaves, others might follow, putting the 'European project' itself at risk. This would not be good for the UK, the remainers believe. The EU and the post-World War II unification of Europe was in the UK's economic and security interests all along, arguably bringing peace and prosperity to a region with a history of conflict. Abandoning this effort might lead to a world that is not favorable to the UK.

Brexit might also weaken the EU's growing international role, risking its ability to address issues such as human rights violations, terrorism, and migration crises – issues that affect the UK. More generally, a weakened EU may change the broader international order and global distribution of power. A frailer EU might weaken NATO, shifting even more power to China, India, and other emerging powers. This future global system could be very different from the past, bringing more conflict and be disadvantages to the UK, the remain side argues.

For these reasons the UK's most important strategic allies (e.g. the US, Australia, Canada, and NATO leaders) oppose Brexit. Others' perceptions of the UK can affect the UK's reputation and status and the remain side warns of the risks for future cooperation with key strategic partners. Some have also argued that Brexit might be seen as a sign of weakness by states such as Russia, North Korea, and Syria, thus undermining UK attempts at influencing those states.

### **The 'Leave' campaign arguments**

The 'Leave' campaign has not focused much on foreign policy implications of Brexit, beyond the benefits it sees for immigration and trade. 'Leave' supporters have, however, argued that a UK out of the EU would enjoy sovereign independence to pursue its own foreign policy, unconstrained by the EU. They argue that there would be little difference in the UK's position in the world. The UK would continue to be a member of key international organisations, such as the United Nations and the World Trade Organisation. The UK would remain in NATO, which the 'Leave' campaign sees as more important and less problematic than the EU as a coordinating body for UK security policies. The UK would still enjoy its 'special relationship' with the US, which the leave campaign sees as a cornerstone of UK foreign relations. The UK could still cooperate with the EU in collective action, but it would have more freedom for how and when it would pursue common policies.

Being out of the EU, the 'Leave' side argues, would not render the UK isolated and without capabilities for influence. It has many foreign relations assets including its extensive diplomatic corps and intelligence service, networks of relations provided by the Commonwealth, and healthy bilateral relationships with major powers and rising powers. In addition, the UK maintains one of the largest and most effective militaries, which would not change with Brexit. Any collective response to terrorist threats or humanitarian crises, for example, could still benefit from UK participation and even leadership. Even if other states are currently against Brexit, it will be in their interests to cooperate with a UK outside the EU. The distribution of power in the world is already changing and the UK's status in or out of the EU will not likely alter the rise of emerging powers or the pivot of power toward Asia. The leave campaign argues the UK will be better able to deal with these shifts in global politics with the independence of action that Brexit would provide.

The leave campaign also believes that UK interests and values will be better served outside the EU because of the difficulties the EU itself has in pursuing coordinated efforts. It is inadequate in responding to international crises, according to the leave campaign. That NATO had to intervene in the migrant crisis, they argue, demonstrates the EU's inability to address global problems effectively. Others go further, arguing that the EU produces conflicts rather than preventing them. Its pursuit of a relationship with Ukraine, for example, dragged the EU into the Crimean crisis, according to the 'Leave' side. They also suggest that plans to build a European army are endangering relationships with NATO. The more isolationist tendencies in the 'Leave' campaign propose that the EU's economic and migration problems create a drain on UK foreign relations. By distancing itself from these problems, the UK can better protect its interests and values.

### **Assessing the arguments**

A country's influence in the world is shaped by many factors. The size of economic and military capabilities is important for a state's international clout, but capabilities do not rigidly determine influence. In or out of the EU, the UK would be able to influence others and would remain an important European actor.

A state's international influence is also a product of its identity, domestic politics, and leadership. Compared to other EU member-states, the UK never had a strong European identity, and thus leaving the EU will not create much dissonance. Yet a Brexit will make the development of a more European identity less likely. The UK's other identity, as a faithful ally to the US, is not as strong as it was in the past, given the US's attention toward Asia and concerns in the UK public over recent US foreign policy. How the UK sees itself vis-à-vis others is likely to be debated over the coming years anyway, but Brexit would

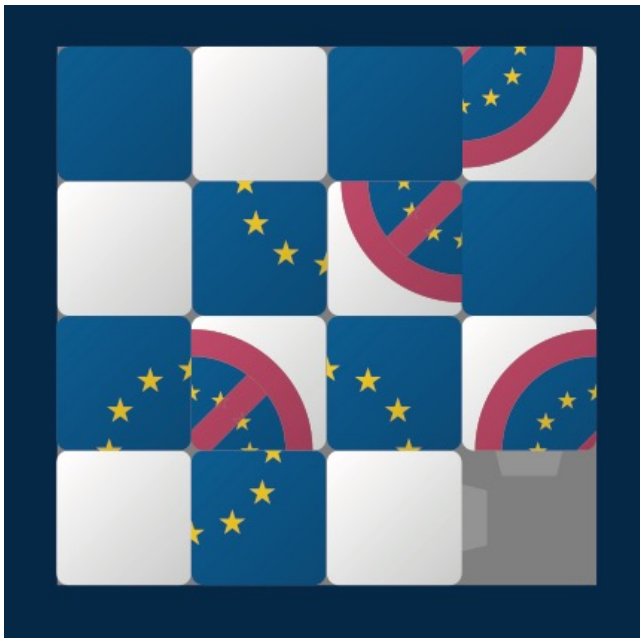
accelerate this process. How a Brexit will shape domestic politics, including public opinion and party politics, is another important factor that would affect future UK foreign policy. EU membership has long been an issue that has divided the Conservative party, but it is unclear if consensus would emerge after Brexit or if another foreign policy issue would replace it. Divisions within most political parties and within the public over the UK use of force have been growing in recent years and may become more significant if the UK is choosing military force outside of the EU. Leaders are important players that manage all these changing internal and external landscapes and UK leaders' orientations to foreign affairs and skill in international negotiations will also shape the UK's influence in the world.

As Prime Minister David Cameron has argued, sovereignty does not necessarily mean power and influence. But neither does capability on its own. UK foreign policy faces critical challenges in the coming years and international clout is by no means guaranteed. In or out of the EU, the UK will need to work with others to meet these challenges. The choice for UK voters in the Brexit referendum is about the context in which they want the country to try to exercise influence, not about whether more influence will be had in or out of the EU.

*Juliet Kaarbo is Senior Lecturer in the Department of Politics and International Relations at the University of Edinburgh.*



## The Scottish Question



## Chapter 21

### How does the EU referendum affect the debate over Scotland's constitutional future?

*Nicola McEwen*

In September 2014, Scots voted by a clear majority to remain within the United Kingdom. Less than two years on, might a vote for the UK to leave the European Union trigger a second independence referendum and the potential break-up of the UK?

Campaigners for the UK to remain in the EU have pointed to such a prospect as an element of their Brexit nightmare scenario. Former Prime Minister John Major warned that *'no-one should ignore the threat that if the UK-wide vote is to leave, Scotland may demand another referendum on independence. The UK out of the EU and Scotland out of the UK would be a truly awful outcome'* (Telegraph, 19 March 2016). His successor in office, Tony Blair, was even more unequivocal in asserting his opinion: *"if the United Kingdom votes to leave Europe, Scotland will vote to leave the United Kingdom"*.

First Minister, Nicola Sturgeon, also raised the stakes, suggesting that it would be a *'democratic outrage'* if Scotland were to be *'taken out of Europe against our will'*. Without committing herself or her government, she suggested that it would be *'almost inevitable'* that such a scenario would generate an overwhelming demand for a second independence referendum. Likewise, the SNP's Europe spokesman, Stephen Gethins MP, suggested that a situation in which Scotland is taken out of the EU against its will would represent *'a fundamental breakdown in what should be a partnership of nations and it is highly likely that this would trigger an overwhelming demand for a second Scottish independence referendum'* (BBC, 26 January 2016).

For some, the prospect of Brexit triggering a second independence referendum is a threat; for others, it may be an opportunity, or a necessity. To evaluate the credibility of the claim, we need to break it down into its component parts. Would Brexit change the nature of the Union to which Scots gave their consent in 2014? Would it generate demand for a second independence referendum? Would Brexit increase the prospects of Scottish independence?

#### **Would Brexit change the nature of the Union deal?**

Nicola Sturgeon has previously noted that, as First Minister of Scotland, she would only seek a second referendum if there was a *'material change'* in circumstances or public opinion. There is a strong case to make that Brexit would change the terms of the deal endorsed in the 2014 independence

referendum. The UK's EU membership was not an explicit element of the independence referendum campaign. The dominant EU-related issue was whether Scotland would have to reapply, and on what terms. Nonetheless, the UK to which Scots gave their consent was an EU member state, and its EU membership was part of the bigger picture. The UK Government's 'Scotland Analysis' paper on the EU and International Issues, presented in the run-up to the referendum two years ago, argued that Scotland benefited from the UK's voting strength and influence within the European Union, generating direct benefits for Scotland with respect to budget contributions, fisheries, agricultural subsidies and the Structural Funds, as well as access to the single market. The impact of a Brexit on the UK's relationship with and influence vis-à-vis the rest of Europe and the wider world is difficult to predict. But the nature of these relationships would be altered in some form by Brexit, and would arguably represent a material change of circumstances since September 2014.

### **Would Brexit trigger demands for a second independence referendum?**

Such a material change was only one of the possible preconditions suggested by the First Minister as leading to a second independence referendum. The other was a material change in public opinion – in other words, evidence of sustained popular demand for independence, measured in consistent majority support in opinion polls and/or mass mobilisation for change.

In nations within states, we can often retrospectively pinpoint the catalyst that provoked a strengthening in their demand for independence. That may be a single event, or a series of events, that contributed to a grievance undermining the legitimacy of the constitutional status quo, and helping to mobilise demand for change. The patriation of the Canadian constitution in 1982, in the face of the unanimous opposition of the Quebec National Assembly to its provisions, represented a clear catalyst in the resurgence of the Quebec sovereignty movement. In Catalonia, the rejection by the Spanish Constitutional Court of substantial sections of the Catalan statute of autonomy gave rise to a radicalisation of attitudes within Catalonia towards independence. The Scottish independence referendum in 2014 was unusual in largely taking place in the absence of a grievance against the Union.

It is difficult to identify such catalysts in advance, but there are some indications to suggest that Brexit could mobilise more Scots behind the independence cause. At time of writing, every opinion poll conducted within Scotland has suggested that Scots will vote to remain in the EU by a sizeable margin (see Chapter 4). Indeed, there appears to be markedly more support in favour of the *European* Union than the *Anglo-Scottish* Union. Table 1, drawing on a survey by Panelbase carried out in January 2016, reveals both the opportunity, and the constraint. The demographic profile of supporters of the EU, at least with respect to their occupational class, is different from the

profile of independence supporters. Whereas the latter were disproportionately working class, the former are disproportionately in managerial or professional middle class occupations. If the UK were to vote to leave the EU, it could open up a new constituency of support for independence among middle class Scots.

Consistent with other polls, the Panelbase data suggest that Scots remain divided on the issue of independence, with a slight majority still inclined to vote against. But when confronted with the prospect of Brexit, there is some evidence of increased demand for a second referendum. Moreover, support for independence increases by around 5 percentage points – enough to produce a small majority for independence in the event of Brexit. But the shift is not dramatic. Just 20% of those who voted No in 2014 would favour a new independence referendum in the event of Brexit, and just 14% would change their vote, while 86% remain firm in their opposition to independence. Even when confronted with the prospect of UK withdrawal from the EU, a class divide in support for independence remains evident. For most middle and upper class Scots, support for the Anglo-Scottish Union seems to trump support for the EU.

**Table 1: Referendum Votes**

		Social Class		2014 Referendum Vote	
		ABC1	C2DE	I voted Yes	I voted No
Independence Referendum (if tomorrow)					
Yes	47	38	54	92	7
No	53	62	46	8	93
EU Referendum (if tomorrow)					
Remain	65	74	56	72	60
Leave	35	26	44	28	40
If Brexit, support another referendum on Scottish independence?					
Yes	47	42	51	82	20
No	40	46	34	8	66
Don't know	13	12	14	11	14
If Brexit, support Scottish independence?					
Yes	52	44	58	91	14
No	48	56	42	9	86

Source: Panelbase/Sunday Times, Jan 2016 (Exc. don't knows/undecided)

## **Would Brexit increase the prospects of Scottish independence?**

Opinion polls are useful for painting a picture, but we should be extremely cautious in reading too much into attitudes and declared voting intention under hypothetical scenarios. This is especially so when trying to identify what consequences a vote to leave the EU could have for the UK's constitutional future. Contested constitutional change is always uncertain, as was evident in the 2014 indyref, but at least then there was an independence prospectus that could be debated. As the forthcoming referendum is a vote to endorse the UK's EU membership, we know little or nothing about what a rejection of that membership would entail. A vote to leave could see the UK embroiled in fractious or protracted negotiations that lead to a total withdrawal from both the EU and the internal market. Or it could see the UK successfully and smoothly negotiate a new partnership with the rest of the EU, with continued unfettered access to European markets but without the perceived disadvantages of ever closer union. Social attitudes and political behaviour are shaped by events, not hypotheticals.

If there has been little attention given to what the alternative to Brexit would look like, there has been even less attention given to what independence would look like were Scotland to be a member of the EU while the rest of the UK was not. This would, of course, be subject to multiple sets of negotiations – between the UK and the EU; between Scotland and the rest of the UK; and between Scotland and the EU – but it is unlikely that the independence prospectus presented in advance of the 2014 referendum would be a viable option. Then, the White Paper, *Scotland's Future*, had envisaged a form of independence that maintained a range of institutional, economic, cultural and inter-governmental connections with the rest of the UK. The proposed currency union received most attention, but the plans also included a common travel area and labour market, a strategic energy partnership, defence and security co-operation, a common research area, cooperation in some aspects of public service delivery, cross-border functional bodies, continuation of the 'National' Lottery and a joint venture between the BBC and a new Scottish broadcasting corporation. However one regarded the feasibility of these arrangements in 2014, it is unlikely that a partnership of this nature would be compatible with Scottish EU membership if the rest of the UK withdraws. Scotland's likely position within the EU would also come under scrutiny. A future Scottish Government seeking to negotiate EU membership within the context of ongoing or recent negotiations on the UK's withdrawal may face stricter terms, for example, in relation to the single currency, the budget or compliance with fiscal rules.

None of this is to suggest that the decision on the UK's future vis-à-vis the EU is without consequence for Scotland's future within the UK. Without doubt, a decision to *Leave* could have all sorts of unintended consequences, not least with respect to the territorial composition and future of all of the British Isles

(the impact on the island of Ireland may be even more pressing). The effect of these consequences for Scotland's constitutional future is far from straightforward. It may represent a material change of circumstances and may even generate increased demand sufficient to justify initiating a second independence referendum. But it would force the architects of independence to confront some complex and difficult issues over the kind of independent Scotland they could deliver.

*Nicola McEwen is Professor of Territorial Politics at the University of Edinburgh and Associate Director of the Centre on Constitutional Change*