

# **Contribution to the UK Government's White Paper on the Future Relationship with the European Union**

**June 2018**



## Foreword

On the 2 May 2018, following more than a year of requests from the Scottish and Welsh Governments for the engagement of the devolved administrations in the development of UK negotiating positions with regard to withdrawal from, and a future relationship with, the EU the UK Government tabled a proposal at the Joint Ministerial Committee (EU Negotiations) for the creation of a new Ministerial Forum (EU negotiations) to provide greater scope for detailed discussions of key policy issues.

Following the endorsement of this process by the devolved administrations, it was then reported in the media that the UK Government intended to publish a White Paper setting out the UK's desired future relationship with the EU.

The Scottish Government has sought to understand the emerging content of that paper and to seek an opportunity to influence it in a meaningful and constructive way. We have done so in spite of having had no sight of the full White Paper in draft, nor of emerging options for the negotiations and having secured no clarity on the UK Government position on key issues such as customs arrangements. At the date of publication of this document less than half a dozen draft chapters have been shared with the devolved administrations, and all of those within the ten days leading up to the Chequers meeting.

Our EU partners have called for a serious plan from the UK Government as to what the UK seeks from the future relationship. Domestic and international businesses, our public services, our institutions and our citizens all require clarity from the UK Government on its position. As a devolved government our ability to make the necessary preparations for Brexit is significantly hindered by a lack of information on the approach the UK Government wishes to take both in areas of devolved competence and in those areas that are major influences on devolved competences (for example the position of EU nationals, customs and regulatory alignment).

In the absence of detailed and meaningful discussion about coherent and clear proposals from the UK Government, the Scottish Government now feels compelled to set out our preferred position across the range of areas that will form the basis of the future relationship. This publication has been shared with the UK Government.

This document covers both the future economic and security partnerships, as well as cross-cutting issues and the institutional structure which will be required to support that future relationship. It is a considered and serious contribution which we believe would constitute realistic and workable proposals to protect the interests of Scotland, and the whole of the UK.

This paper draws on the wide range of publications from the Scottish Government setting out our position on Scotland's interests in the future UK-EU relationship.

Those interests have been fully set out elsewhere, including, in Scotland's Place in Europe (December 2016), the Scottish Government response to the Migration Advisory Committee (MAC) (November 2017), Scotland's Place in Europe: People,

Jobs and Investment (January 2018), Scotland's Population Needs and Migration Policy (February 2018) and in Scotland's Place in Europe: Security, Judicial Co-operation and Law Enforcement (June 2018), Economic Impacts of Scenarios for Scottish and UK Seafood Industries Post EU Exit: Scottish Government Policy Brief (June 2018), and Developing an Environment Strategy for Scotland: Discussion Paper (June 2018).

As the evidence we have already presented in Scotland's Place in Europe and other publications demonstrates, it is unequivocally in Scotland's economic interests to remain, at a minimum, within the European Single Market and Customs Union. Indeed, leaving that relationship could cost £2,300 a year for each person in Scotland. Furthermore that close relationship provides enormous social, cultural and environmental benefits, continuing the ability to attract people to make their lives in Scotland, contributing to our communities and addressing our serious demographic challenges.

A continuing close relationship with the European Union is what the people of Scotland voted for in June 2016. None the less, the Scottish Government has constantly sought to offer compromise proposals which, whilst respecting Scotland's democratic decision, also fully respect the democratic choices made elsewhere in the UK.

We will continue to work in that constructive spirit, outlining a case for a future which, we believe, works for Scotland, the UK and the EU.

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

## Table of Contents

### Introduction

- I. ***Economic partnership***
  1. Aims of the economic partnership
  2. Goods
  3. Agricultural, food and fisheries products
  4. Customs
  5. Services and investment
  6. Financial services
  7. Digital and broadcasting
  8. Transport
  9. Energy
  10. Horizontal measures: Civil Judicial Cooperation, State Aid and Competition Policy, Environmental Protection, and Climate Change
  11. Mobility framework
  
- II. ***Security partnership***
  1. Aims of the security partnership
  2. Law enforcement and criminal justice
  3. Foreign, security and defence
  4. Wider security issues
  
- III. ***Cross-cutting cooperation and standalone issues***
  1. Cooperative accords (science and innovation/culture and education)
  2. Fishing opportunities
  
- IV. ***Basis for cooperation***
  1. Governance
  2. Interpretation and application
  3. Dispute settlement

## Introduction

The Scottish Government has been clear that following the 2016 referendum, where the people of Scotland voted overwhelmingly to remain in the European Union, we believe that Scotland's future is best served by continued EU membership. If this is not possible, within the context of the outcome of the EU referendum, then we have been clear that the UK should remain within both the European Single Market and a Customs Union. Since Scotland did not vote for EU Exit, we believe there should be no detriment to the Scottish budget as a result of the decision.

As set out in [Scotland's Place in Europe](#) (2016) we also put forward options to allow Scotland to maintain our status in the European Single Market in the event that the rest of the UK should choose a different outcome. These differentiated options remain valid within the current context and, if the UK opts to leave the Single Market, we believe they should form part of the considerations within negotiations on our future relationship now that phase is getting underway.

## PART I – ECONOMIC PARTNERSHIP

### 1. Aims of the Economic Partnership

The Scottish Government's position is as follows:

- To retain membership of the European Union, *or failing that,*
- To retain membership of the European Single Market which supports free trade of goods and services, enabling Scottish business to continue to export goods and services across the EU without additional costs or barriers *and*
- To remain part of a customs union with the EU supporting free trade of goods within Europe and the application of the Common External Tariff for imports.

The European Single Market is an area presently comprising 31 countries, representing in excess of 500 million consumers, within which impediments to the free movement of goods, services, capital and persons have been, or are being, progressively eliminated. Adhering to these “four freedoms” therefore defines the core obligation of membership of the European Single Market, and it is only through membership that comprehensive access can be secured. The European Single Market is much more than a “free trade area”.

Free trade areas, and free trade agreements, typically involve the removal of formal barriers to trade – namely customs duties (tariffs) and quotas. What they do not generally provide for is the elimination of non-tariff, or technical, barriers to trade; that is, barriers to trade that result from the vast array of national regulations and laws that govern the production, distribution, marketing and sale of goods. Moreover, free trade agreements tend to cover only industrial goods. They do not typically include agricultural and food products, although more recently many cover market access for services. Outside the European Single Market, the international trade of basic agricultural and fish products is subject to bilateral agreements between individual EFTA or World Trade Organisation (WTO) member states and the EU. Such agreements set out the tariff and non-tariff (including technical measures) barriers that apply to trade.

By contrast, the European Single Market continues to eliminate these technical barriers to trade. This is achieved by a combination of “mutual recognition”, whereby national governments recognise the regulations in force in EU partner countries as equivalent to their own regulations, and harmonisation of standards in cases where they do not accept equivalence.

Continued EU membership has consistently been shown to be the best outcome for our businesses, our consumers, our workers, and for the economy as a whole. As set out in [Scotland's Place in Europe: People, Jobs and Investment](#) (2018), these benefits primarily come from the four key channels summarised below.

- **Trade** - EU membership allows Scottish companies to trade on an almost unrestricted basis within the world's largest Single Market, allowing them to grow their operations and create new jobs in Scotland.

- **Investment** - Unimpeded access to EU markets ensures Scotland remains an open economy that is attractive to inward investors.
- **Migration and Labour Mobility** - Free movement of people allows Scotland to attract the workers that our economy needs in order to fill skills gaps and help address the challenges of an ageing population. It also allows Scottish citizens to travel and work freely in the EU, helping them gain new skills and business contacts.
- **Productivity** - Having an open, internationally focused economy inside the European Single Market results in increased competition, specialisation, innovation and investment and in turn boosts Scotland's competitiveness and productivity.

Our current membership of both the European Single Market and the EU Customs Union, has enabled firms in Scotland to greatly expand their participation in global supply (or 'value') chains. These are networks of producers across the world which each contribute inputs, in the form of goods and services, to a production process. For instance, the production of an aircraft wing involves multiple parts crossing many European borders before the finished wing, never mind the aircraft, is complete. Any additional administration in this process at each border crossing, or challenges in accessing the labour requirements of aspects of these supply chains, would have a significant impact on the continuation of these processes.

## 2. Goods

**Continued membership of the European Single Market would ensure that the opportunities and costs of trade would remain at least as favourable as present, without the imposition of tariffs and non-tariff barriers (i.e. additional inspections, controls, or paperwork). The Scottish Government is also clear that the UK should remain aligned with the EU regulatory environment and wherever possible retain membership of relevant regulatory bodies and institutions which will facilitate future access to the European Single Market, including through membership.**

Membership of the European Single Market is important to the Scottish and UK economies but it will not, in itself, be sufficient to avoid the increased costs of trading with the EU 27. That objective would require that the UK is in a customs union with the EU. Membership of a customs union would provide continued frictionless trade of goods within Europe (no duty, quotas or customs processes and controls) and goods which enter the UK from outside the EU would continue to be subject to EU Rules of Origin requirements and the Common External Tariff.

**Manufactured goods are an important subset of the wider categorisation of 'goods' and are important to the Scottish economy alongside sectors such as agricultural produce and foodstuffs. While there are many similarities in trading patterns etc. between Scotland and the rest of the UK there are some significant differences in terms of the relative importance of various sectors and markets.**

The integrated nature of Scottish, UK and EU supply chains, with value added processes often carried out in the Scottish manufacturing sector, mean that the future economic viability of operators is especially sensitive to changes in customs and regulatory environments and both supply chains and manufacturing processes may need support to re-orient to other market opportunities if these can be found. The impact of the above in the Scottish context and the particular composition, destination and value of Scottish exports and imports must be recognised and steps taken to mitigate them in the development of any future UK trade arrangements. The Scottish Government would re-iterate that for the future success of this sector the benefits enjoyed through continued European Single Market and Customs Union membership is critical.

## 2.1 Tariff and Non-tariff Barriers

**The Scottish Government's objective is to retain membership of the European Single Market and remain in an EU Customs Union, such a mechanism would ensure that no new tariffs, rules of origin requirements or quantitative restrictions are placed on the import or export of goods to the EU from the UK, or into the UK from the EU.**

If membership of the European Single Market is not retained, the UK will need to negotiate a Trade Agreement with the EU. The resultant tariffs and non-tariff barriers would be expected to increase the administrative and compliance costs of exporting to or importing from the European Single Market. Such an approach would risk the introduction of a system of procedures and customs controls, including controls to check compliance with European standards and 'Rules of Origin' procedures. This would be more costly for business, could restrict business growth and companies may choose to relocate outwith Scotland and the UK, which would damage the economy.

Scottish companies who meet a range of specified customs related criteria are currently eligible to apply for Authorised Economic Operator (AEO) status under the EU Customs Code, which provides simplified passage into third countries where there are mutual recognition agreements with the EU. The UK would need to establish a similar process and establish its own system of AEOs as provided for by the Taxation (Cross-border Trade) Bill if outwith the current EU customs union. The Scottish Government will want to be involved in the development of any such system.

The EU's 'Most Favoured Nation' (MFN) tariffs, which are applied to countries trading with the EU in the absence of a free trade agreement, vary from 0% to over 70% across the range of goods. If the UK were to revert to default MFN tariffs these would have significant impacts across the supply chain, and could potentially have particularly significant impacts on key sectors, such as rendering beef and sheep 50% more expensive for EU importers of Scottish products. It would also result in smoked salmon exports to the EU facing 13% tariffs, as well as additional competition from price-sensitive markets and additional non-tariff barriers such as new requirements for Export Health Certificates, Certificates of Origin and primary and secondary processing plant approvals.

### **3. Agricultural, Food and Fisheries Products**

#### **3.1 Trade in agriculture, food and drink products**

**The Scottish Government's objective is to maintain ability to export Scottish Products and import inputs and ingredients for Scottish business, free from tariffs and non-tariff barriers.**

**We want to continue to trade (effectively) on the same terms as we do at present, including the absence of tariffs, recognition of standards, avoidance of non-tariff barriers and continuity in processes. This must include not only trade in final products but also trade in inputs such as seeds and other planting material, animal feed, pesticides, fertilisers and veterinary medicines.**

Food and drink alone accounts for Scotland's biggest non-energy export, and has generated a record turnover of around £13.5bn. Leaving the EU could have detrimental impacts on Scotland's Agricultural, Food and Drink sectors and related industries.

It is estimated that around 8,000 people employed in the food and drink sector are non-UK EU nationals and up to 22,000 non-UK seasonal migrant workers are employed on Scottish farms every year, particularly in the soft fruit and vegetable sectors.

Short of full EU membership, Scotland's interests would be best protected by remaining in the European Single Market and Customs Union. This ensures the smooth operation of trade, access to labour and skills, and to vital EU programmes, scientific advice and intelligence.

Leaving the European single market and customs union will cause significant disruption to trade in animals and plants, food and drink products, and agricultural inputs such as seeds, pesticides and fertilisers, due to the imposition of tariffs, non-tariff barriers and certain regulatory requirements.

Trade underpins food security so, as well as being vital for sustaining food processing and retail businesses in Scotland, tariff-free access to raw material imports from the EU is essential for Scottish consumers too.

We risk losing the common regulatory frameworks that help maintain food safety, animal and plant health standards, as well as reduce non-tariff barriers to trade.

The future relationship must make provision for Scotland (or the UK) to continue to adopt standards higher than those applying in the EU if we so wish (e.g. on food safety, animal welfare, plant health or the environment).

#### **3.2 Trade in Seafood Products**

**The Scottish Government's objective is to secure continued access to the European Single Market and Customs Union for Scottish seafood products,**

**with no imposition of new tariff or non-tariff barriers and maintenance of existing bilateral arrangements with third countries.**

We recognise that fisheries, both wild caught fish and aquaculture, and seafood are treated differently to other products under the current EFTA-EEA arrangements and as currently formulated do not benefit from zero tariffs on many seafood products. The negotiation of an additional agreement is therefore required to secure continued trade in seafood products with the EU on the same tariff free basis as at present.

The EU is Scotland's most significant export market for seafood products, accounting for 69% of Scottish seafood exports in the first 9 months of 2017. The UK as a whole is a net importer of seafood products, with a trade deficit of £1.45 billion in 2016. Most of our fisheries imports come from outside of the EU. However, Scotland is a net exporter to the EU, with a trade surplus of £496 million in 2016 (compared to England's £386 million deficit). Similarly, Scotland is a net exporter to the rest of the world, with a trade surplus of £576 million (compared to England's trade deficit of £1.8 billion). Overall, salmon was Scotland's, and the UK as a whole, largest food export in 2017, estimated to be worth £620 million in Gross Value Added (GVA) and supporting over 12,000 jobs across the supply chain.

Due to consumer tastes, and the unavailability of particular species in UK waters (such as tuna and warm water shrimp), the UK trade deficit cannot be alleviated by redirecting exports to the domestic market and we will still be heavily reliant on international trade and access to markets.

A Scottish Government commissioned [report](#) (published in June 2018) examines hypothetical scenarios for the UK's exit from the European Union that include changes to fishing quota shares and international trade arrangements to assess their impact on the Scottish seafood sector.

It finds that, short of a highly unlikely scenario of fully global free trade and renegotiated quotas based on zonal attachment principles (i.e. quotas which take account of the geographical location of fish), all of the plausible scenarios modelled would leave Scotland worse off than the current situation as a member of the EU. It also found that any potential benefits from increased fishing quotas would reduce with increasing tariff and non-tariff measures once the UK leaves the European Single Market and the Customs Union. This would also significantly affect the aquaculture industry.

As with other food and drink industries, the seafood processing industry is heavily dependent on EU labour. In Grampian, for example, 70% of the seafood processing workforce are EU nationals. Ongoing access to labour is, therefore, essential.

### 3.3 Protected Food Names

**The Scottish Government objective is that existing protected food names continue to be legally protected in the UK and in the EU respectively, and for there to be a clear basis for third country applications from the UK to be made for new protected food name status in the future.**

EU membership allows participation in three EU Protected Food Name schemes (PFN). Under these schemes a named food or drink registered at a European level will be given legal protection against imitation throughout the EU, including from exports outside the EU.

The UK currently has 74 Geographical Indications / PFNs, including 14 registered products in Scotland.

By volume and value, Scotland has some of the largest Protected Food Names in the EU, with high value products such as Scotch Beef and Scottish Farmed Salmon accounting for around £700 million in sales, and Scotch Whisky accounts for around a quarter of UK food and drink exports. The EU also protects a range of its PFNs elsewhere in the world through bilateral negotiated agreements with third countries.

We recognise that with no overarching bilateral agreement with the EU in place, UK protected food could apply individually for recognition by the EU as a Protected Designation of Origin, Protected Geographical Indication or Tradition Specialities Guaranteed. However, it would be simpler and more certain to ensure that there is continued seamless recognition and protection for existing protected food names, both for UK PFNs in the EU and EU PFNs in the UK, through a single negotiation in advance of leaving the EU.

#### 4. Customs

**Membership of the EU has enabled firms in Scotland to expand greatly their participation in global supply (or value) chains which, even after allowing for the cost and time spent shipping parts across the world, can be a more efficient and effective production model for companies to import components from the best sources of supply.**

In developing and negotiating future trade arrangements it will be essential to understand and take into account the composition, destination and value of Scottish exports and imports as well as the complexity of global supply chains through which international trade is increasingly carried out.

**Even small disruptions to the supply chain for Scottish manufacturers could have significant impacts, for instance some sectors report that delays of as little as 8 minutes in crossing the border would render that supply chain unworkable.**

Without the customs union, customs processes will apply to all UK Trade with EU Member States. This is likely to require the UK to create new arrangements at borders, significantly increasing transaction costs. New measures would be required to administer Rules of Origin and other Customs checks and goods exported to Europe would be subject to External Tariffs and Quotas, as well as Rules of Origin procedures which require companies to provide the origin of all the components of products, and proving that goods meet EU standards.

As well as disrupting and slowing trade flows, increased checks at border inspection posts would require additional resources for documentary checks, physical checks, sampling of products and/or certification.

**The only solution which would not provoke damaging disruption to the supply chain into and out of the UK is to remain in the Customs Union, as the Scottish Government has advocated.**

## **5. Services and Investment**

The service sector accounts for around 34% of Scotland's EU exports (18% in 2002). Services are crucial to the Scottish economy and account for over 70% of GDP. Maintaining the same opportunities across the European Single Market as currently exist is vital to maintaining our economy, and to enabling future growth in the sector.

The European Single Market provides the freedom to establish a company and/or provide or receive services in another EU country. For services, the single market includes:

- Rights to establish operations in other EU countries
- Harmonisation and mutual recognition of rules, regulations and standards
- Consistent application and enforcement of rules

**Mutual recognition of professional qualifications (MRPQ) enables professionals to move and work freely across Europe. The Scottish Government's objective is to see that recognition and the associated information exchange systems continue to operate and support the effective recruitment of qualified professionals in Scotland.**

In Scotland, MRPQ underpins the ability of employers in Scotland to recruit skilled European professionals across a range of regulated professions. Changes to the EU-wide system for mutual recognition of qualifications for a wide range of healthcare professionals for example could have profound effects on workforce recruitment and retention.

The recognition of professional qualifications in the EU is governed by EU Directives. MRPQ supports free movement within the EU by enabling regulated professionals to have their professional qualifications recognised by other countries in which they wish to work.

'Automatic' recognition of qualifications applies to seven listed professions (nurses, midwives, doctors, dental practitioners, pharmacists, architects and veterinary surgeons). This depends on harmonised minimum training conditions as set out specifically in the Directive (i.e. duration and content of undergraduate training programmes).

A 'general' system of recognition applies to a wide range of other regulated professions including finance / accountancy, engineers and teachers. In principle, access to regulated profession is granted to any individual who can demonstrate

they are fully qualified in their home country. This is considered on a case by case basis and EU member states have some discretion in terms of granting access.

Separate specific legislation applies for lawyers, sailors, statutory auditors, insurance intermediaries, some transport operators, commercial agents, and those linked to activities involving toxic products.

Furthermore MRPQ is reliant on access to, and exchange of information between member states and the Internal Market Information (IMI) system is one such system which supports this. It enables competent authorities to exchange information to support mutual recognition i.e. providing alerts and notifications, enabling qualifications to be verified.

This system is generally restricted to Members States, with limited exception for some third countries where certain conditions, including data protection, are met.

## **6. Financial services**

**The Scottish Government's objective is to see the Scottish financial and professional services industry continue to flourish and grow with continued access to the European Single Market, through continued use of the passporting system.**

The financial and professional services industry is a vital contributor to the overall success of the Scottish economy and has a large impact on economic growth. Scotland is the most important UK financial centre outside London and the South East.

The financial services sector is one of the most heavily regulated sectors of the modern economy, and the EU has, up to now, provided a framework within which UK regulation of the financial sector has been designed, applied, and supervised.

The financial services 'passport' enables UK financial institutions to access the European Single Market and provide services cross-border without being subject to duplicate regulation or supervision, and allows EU companies to provide services to UK customers.

The passport is based on the 'home' country of a financial institution (where that firm is registered) supervising that firm and applying the EU's 'single rulebook'. The passport allows a firm to provide services cross-border and to use branches without being subject to duplicate regulation or supervision.

The passporting system is built on the assumption that banks and financial services firms authorised in any member state of the EU will have met the same, common standard and therefore can be treated as if they were locally authorised and is underpinned by close regulatory co-operation between national supervisory authorities across the EU.

Financial services companies from countries outside the EU and EEA cannot access the passporting regime. To do so they must either establish a regulated business

inside the EU or EEA or apply for a licence under the domestic licensing regime of each individual country in which they wish to offer services. Such licences do not confer any rights to offer cross-border services.

Scotland's best interests would therefore be best protected by remaining in the European Single Market. Remaining a full member would enable Scottish financial services companies to operate throughout the EU without additional regulatory or authorisation requirements, and for European businesses to do likewise in Scotland.

As the Scottish financial services sector is heavily reliant on EU nationals retaining free movement of labour is important to enable the sector to continue to contribute to the economy and grow further.

## **7. Digital and Broadcasting**

**We want to ensure there is no wide divergence from EU common standards. By retaining common standards and approaches, we can interact and transact with our key EU and UK partners as seamlessly as possible.**

**It is important we do not lose out on opportunities to collaborate with other European regions, to drive digital innovation. We encourage people from Europe to work in our digital technologies sector, which is essential to Scotland's growth and global competitiveness.**

### **7.1 Supporting our Digital and Technologies Sector**

We are committed to supporting Scotland's digital economy and ensuring the wider economy reaps the unprecedented opportunities of digital technology. The Scottish Government's ambition is for Scotland to be a world leader in tech innovation. That means creating the conditions for our companies to thrive as well as attracting high-calibre overseas talent and investment.

The development of a digital single market is opening up more opportunities for trade, investment and employment. Scotland is well placed to take advantage of those opportunities and the Scottish Government is concerned that leaving the European Single Market would endanger those.

Brexit raises particular concerns about Scottish businesses being able to continue online trade with established EU markets - and the loss of potentially 500 million consumers who generated £600bn worth of sales in 2017.

The importance of digital skills to the Scottish economy cannot be over-stated. The supply of technical skills and digital expertise, a challenge in normal circumstances, is likely to be exacerbated by EU Exit. The digital tech external market is extremely competitive, and this may become more difficult should the supply of EU nationals be restricted.

**Scotland's digital and mobile infrastructure and connectivity should not lose out in the future because the UK is leaving the EU and the Scottish**

**Government will continue to press for an in-principle agreement from the UK Government that it will continue to invest in our connectivity, including matching any funding that might have been available through EU membership. This includes ensuring that Scottish customers are not adversely affected on price in the event that zero mobile roaming charges cannot be sustained by the industry once the UK exits the EU.**

## 7.2 Intellectual Property and Broadcasting Regulation

**The Scottish Government's objective is to maintain certainty and clarity around the intellectual property rights of cultural and creative practitioners when trading within the European single market.**

The EU's copyright regulations provide creative industries stakeholders with certainty over their rights when trading and working collaboratively in the European single market. The ability to work internationally supports the development of the sector. Continued convergence post-Brexit would address the Scottish Government's concerns around rights.

The elements of the Audiovisual Media Services Directive that support the promotion of European content are of particular interest to Scottish film and television producers; it supports industry to sell productions in the European single market. The Scottish Government's position is that the provisions of EU broadcasting regulation should be preserved in the post-EU Exit EU-UK trading arrangements.

## 8. Transport

**The Scottish Government's objective is to maintain and improve physical access to European countries and allow transport operators and service providers registered in the UK to operate across the EU and vice versa.**

### 8.1 Road

Scotland has some of the largest road haulage companies operating in the UK and they transport a range of goods including those from key growth sectors for the Scottish economy – such as food and drink. Many of these goods are time sensitive (such as shellfish) which would be negatively affected by even short delays. Efficient access to the UK and European markets is thus vital for Scotland and its ambitions for economic growth.

If continued membership of the Single Market is no longer possible then it is likely that the UK will not be able to access the community licenses system following EU Exit, which grants UK hauliers access to EU27 countries and vice versa. The existing alternative to community licenses is the European Conference of Ministers of Transport (ECMT) permits system, but the number of permits available through ECMT is likely to be limited and may not be sufficient to cover all UK hauliers making international journeys to EU27 countries. Therefore, a new UK/EU access agreement for road haulage would be desirable.

As set out for aviation below, there is a risk that any such new agreement would be more restrictive than current arrangements. In particular it would likely be difficult to retain existing 'cabotage' rights (the ability for a road hauliers from one member state to operate in other member states), and this could be disruptive to the movement of goods due to the number of road hauliers operating on a 'cabotage' basis being proportionately higher in the UK. It could also negatively impact on some Scottish road hauliers ability to carry goods internationally within other EU27 countries.

For a number of reasons, including demographic changes, there is a current shortage of HGV drivers in the UK the road haulage industry is predicting a shortage of between 35,000 to 60,000 HGV drivers by 2020 across the UK. The Road Haulage Association estimates that there are currently 60,000 EU drivers working in the UK at the moment, so these shortages could become significantly worse if access to EU drivers were to be reduced upon EU exit. In addition, any deterioration in pay and conditions within the sector could further exacerbate this situation.

Migration is also necessary to have sufficient skilled workers within the construction industry to continue delivering major transport infrastructure projects, such as the Queensferry Crossing.

## 8.2 Maritime

Ports are crucial gateways, supporting many of our vital industries. The ease and speed with which freight passes through ports must be fully protected under future arrangements. Any negative impact, through increased and variable journey times as a result of Brexit could disproportionality impact Scottish logistics, freight and shipping services given the peripheral nature of some of these and narrow window for delivery.

The capacity and operations at the port of Dover are crucial for Scotland's real-time delivery systems. It is estimated that 80% of Scottish seafood exports to Europe are through Boulogne Sur Mer via Dover. Deliveries have to arrive by 8am the following day, for onward distribution, with only 1 hour and 15 minutes capacity for delays.

It is becoming increasingly hard for ports to prepare to adapt to any changes as a result of an exit from Europe where there remains uncertainty over future arrangements. Customs checks and the overall efficiency of ports is a another key element of minimising administrative arrangements. Shippers and forwarders with no experience of EU customs declarations for the past 24 years must be allowed time to familiarise themselves with any new process introduced as a result of leaving the EU.

Changes to port infrastructure and IT systems to accommodate any new customs arrangements will also likely require long lead-in times, and so it is imperative that ports know what is required so they can plan effectively.

There may also be a requirement for additional checks on cargos arriving in Scottish ports where these would previously have been undertaken at their arrival in EU ports

before transshipment to the UK. It will be important to minimise any additional regulations and administrative burdens for Scottish ports that may make EU ports become a more attractive alternative.

Given much of the legislation surrounding the shipping industry is set at an international level through the International Maritime Organisation (IMO), there will still be a requirement for most of the existing regulations to remain in place.

The UK shipping sector will also need to be able to compete with other shipping centres for skilled marine personnel. The UK visa regime for non-EU nationals at present makes this particularly difficult, an extension to EU nationals would cause significant challenges.

### 8.3 Aviation

**Maintaining and improving physical access for airline operators registered in the UK to the EU and vice versa will be crucial.**

Any post-Brexit aviation arrangements that are more restrictive than current market access for aviation could reduce the availability of flights from the UK to international destinations.

In the absence of full EU membership, physical access for aviation would best be protected by continued membership of the single aviation market. Membership (or associate membership) of the European Common Aviation Area (ECAA) could be a method of achieving this and this would require accepting CJEU jurisdiction.

An alternative method for maintaining access for air operators could be new bi-lateral UK/EU agreements in air services and aviation safety. However, there is a significant risk that any new agreement would be more restrictive than current access and it is particularly unclear whether it would maintain UK-owned airlines ability to operate intra-EU operations following EU Exit.

In response to this risk easyJet has established new European-based airline (registered in Austria) so it can continue its European operations after Brexit as UK carriers look to minimise disruption and maintain flights within the continent from 2019 onwards. The establishment of “easyJet Europe” will allow the airline to continue to operate flights within European countries, even if the UK and EU fail to sign a deal that preserves all the benefits of the single aviation market.

Conversely non-UK owned airlines like Ryanair were concerned about operating intra-UK routes after Brexit (for example; Edinburgh-Stansted and Glasgow-Derry) and have sought a UK Air Operator Certificate (AOC) to continue operating domestic UK air routes in the event of losing the right to fly intra-UK.

## 9. Energy

**The Scottish Government's objective is to retain membership of the European single market and through its membership of the internal energy market and to maintain access to any EU funds which support Research and Development and energy infrastructure investment.**

**Through participation in the internal energy market we can ensure security of supply, promote competition and reduce costs for consumers in Scotland by allowing efficient trading of electricity and gas through interconnectors.**

### 9.1 Internal Energy Market

The Scottish Government believes that the UK should seek to remain in the internal energy market (IEM) or ensure close participation with the IEM after leaving the EU.

Scottish Government Participation in the IEM brings significant benefits to the GB electricity system - promoting competition and reduce costs for consumers in Scotland by allowing efficient trading of electricity and gas through interconnectors.

The Scottish Government is concerned that there may be higher consumer costs and risks to security of supply as a result of new tariffs or customs duties, dislocation of trading arrangements or new regulations and legal requirements. The UK Government should seek to minimise these impacts throughout the transition period and under new partnership arrangements.

The UK should seek to secure continued participation in, and influence over, the design and delivery of energy market regulation via pan-EU agencies such as the Agency for the Co-operation of Energy Regulators (ACER), European Transmission System Operators (ETSO), the Council of European Energy Regulators (CEER) and others.

The continued trade in electricity is increasingly important to the Scottish energy system as we advance in the transition to a decarbonised and increasingly decentralised electricity market. For example, existing and proposed interconnectors between continental Europe and GB, currently operating under the IEM arrangements, can provide flexibility which helps manage the increasing penetration of renewable power generation. While there are ways in which the charges imposed on such interconnections could be improved, these major infrastructure projects (such as the proposed NorthConnect interconnector) are far more likely to materialise through a continuation of the current arrangements such as Projects of Common Interest and the Connecting Europe Facility.

### 9.2 Long Term Energy Goals and Policy Stability

The Scottish Government's energy policy goals – to develop a whole-system approach and stable transition towards energy decarbonisation, with fair and open competition delivering the lowest possible costs for consumers – could be put at risk if the current market and regulatory alignment were to be altered unnecessarily.

Disruption and delay caused by Brexit negotiations and legislative requirements may stall or inhibit advances in technology and new regulatory approaches – this should be avoided or minimised where possible.

Access to any funding initiatives that support collaboration and research and development funding should be maintained and given a renewed emphasis under the terms of Brexit.

Scotland's energy sector has benefited from EU funding for energy infrastructure projects and research and development, particularly in the pursuit of new, low carbon technologies and enabling infrastructure – such as offshore wind, marine renewables and integrated hydrogen solutions.

There are several EU funding streams which provide support in the form of grants or loans for energy projects. These include European Structural Funds, Horizon 2020, and the European Regional Development Fund. Losing access to these funding streams would undoubtedly have an effect on the scale and quality of energy research, innovation and investment – and put the achievement of our long term energy goals at risk. For example, tidal company Scotrenewables were awarded €10 million in Horizon 2020 funding for their FloTEC project while Nova Innovation were awarded €20 million in Horizon 2020 funding for their project Enabling Future Arrays in Tidal (EnFAIT).

## **10. Horizontal Measures**

### 10.1 Civil Judicial Cooperation

**The Scottish Government's objective is to ensure that civil judicial cooperation arrangements will continue to ensure mutual recognition and enforcement of judgements in civil and commercial cases. If there is to be any new civil judicial cooperation arrangement between the UK and EU Member States, then Scotland's separate legal system must be taken into account.**

**It is especially vital that those measures that enable the mutual recognition of and enforcement of judgements are preserved. Specifically these are:**

- **Brussels Ia, which deals with jurisdiction and the recognition and enforcement of judgements in civil and commercial matters; and**
- **Brussels IIa which sets out rules on jurisdiction, recognition and enforcement of judgments on matrimonial matters and judgments on parental responsibility for children.**

Currently the UK benefits from the EU's legal framework of civil judicial cooperation measures which underpin the operation of the single market by addressing the practical legal issues arising from the free movement of people, goods, services and capital across borders, including divorce, children, commercial contracts and disputes. The value of these measures remains even if the UK leaves the single market. The main pieces of EU legislation, which include Brussels Ia (civil and commercial matters) and Brussels IIa (family law) in this area underpin cross-border

arrangements with other EU Member States, recognising that Scotland has a separate legal jurisdiction.

## 10.2 EU State Aid Regime and Competition Rules

**The Scottish Government position is that it is in Scotland and the UK's best interest to remain within the European single market and the customs union. On this basis, the Scottish Government is in favour of continuing to implement the EU State aid regime or the closest possible replication of existing State aid and competition rules within UK law to ensure that continued participation in the European Single Market.**

**The Scottish Government believes that whatever EU-UK agreement is reached, there should be a mechanism that enables the UK to track EU case law in order to remain sufficiently close in interpretation so as not to disrupt continued and unfettered access to the European single market.**

The state aid and competition regime that underpins the European single market ensures a level playing field for exporters and protects consumers. EU State aid rules are concerned not only with international trade policy but also in ensuring undistorted competition, and are significant in terms of access to the European single market and trade.

In any future trading scenario the EU is likely to require significant State aid discipline from the UK. The detail of the State aid and competition agreement reached as part of any future market access agreements will have significant implications for Scotland's future trading relationship with Europe.

## 10.3 Environmental Protection, Standards and Regulation

**The overall priority for Scottish Ministers in the EU-UK negotiations is to maintain, protect and where possible enhance current levels of environmental protection, standards and regulation in order to deliver benefits to our natural environment, our communities and our economy.**

As set out in the discussion paper published by the Scottish Government in June 2018, [Developing an Environment Strategy for Scotland](#), Scotland must be able to maintain its distinctive approach to environmental protection, seeking to maintain equivalence with EU standards and meeting international standards and being free to exceed these where appropriate;

Scotland should continue to be able to participate in EU initiatives which are of mutual benefit, potentially including chemicals, radioactive waste, EU carbon markets, data sharing, and potentially European Environment Agency; and

Funding and resources currently delivered by the EU to support delivery of Scotland's ambitions for the environment and climate change must be maintained.

High environmental standards and effective environmental regulations help protect and enhance our stock of natural capital, including our air, land, water, soil and

biodiversity and geological resources, which are fundamental to a healthy and resilient economy.

Equivalence in environmental standards and regulation also helps avoid non-tariff barriers to trade. Ensuring the ability to maintain equivalence with evolving EU standards will support on-going participation in EU initiatives and help support trade between Scotland and the EU by minimising non-tariff barriers.

Scotland already has more ambitious policies in a number of areas than other parts of the UK, such as the circular economy and climate change, even within EU frameworks. Scottish Ministers should continue to have scope to set higher standards where appropriate, desirable or necessary.

#### 10.4 Climate Change

**In relation to climate change the Scottish Government's objectives are to remain part of EU-wide collective target-setting and effort-sharing in the area of emission reductions and to retain access to EU funding and agency resources, such as scientific expertise, advice and intelligence.**

The Scottish Government believes that climate change should be at the forefront of the UK Government's thinking as it prepares to leave the EU, and steps must be taken to ensure continuing support for decarbonisation and climate research, and to allow the UK and Scotland to maintain its direct role in helping to shape the EU's climate diplomacy.

Through the UK's membership, Scotland has benefited from being a direct part of the EU's considerable diplomatic clout in climate negotiations. This has provided a powerful platform for projecting our domestic climate leadership internationally – an influence that cannot be allowed to diminish outside the EU.

The Scottish Government believes it is vital to protect the UK's access to any funds that support our climate change objectives. Currently the Multiannual Financial Framework 2014-2020 ensures that at least 20% of the European budget (as much as €180 billion) is climate-related expenditure, and Scotland has historically been successful in accessing competitive funding from EU sources such as LIFE (environment and climate) and Horizon 2020 (innovation).

EU carbon reduction mechanisms and frameworks are central to Scotland's domestic measures to cut our own emissions.

Continued participation in the EU Emissions Trading System (EU ETS) is key to Scotland's climate change ambitions - it is recognised in the [Climate Change Plan for 2018-32](#) as the single largest mechanism for delivering reductions from the traded sector (energy intensive industry and the power sector which accounts for 35% of Scotland's emissions). The EU ETS provides certainty on emissions reduction, clear carbon price signals, creates a level playing field, allows industry to determine the most cost effective route to decarbonisation, and provides protection against carbon leakage.

Given that regulation of emissions to protect the environment is largely a devolved matter, we expect the Scottish Government to take decisions for Scotland, post-EU Exit. In particular the regulation of industrial greenhouse gas emissions, which is currently delivered through the implementation of the EU ETS (and the Fluorinated Greenhouse Gas and Ozone Depleting Substances Regimes), has been recognised by UK and Scottish Ministers as one of the 24 policy areas returning from the EU with Brexit which intersect with devolved competence. Scottish and UK Government officials have discussed whether common frameworks are needed in these areas post EU-Exit, and we have stressed that where a common UK approach might be necessary or desirable, this must first be established with our consent. The Scottish Government expects that any UK common framework for industrial greenhouse gas emissions regulation (whether this is continued participation in the EU ETS, developing a UK ETS or an alternative approach), respects both letter and spirit of the devolution settlement and requires the consent (as a minimum) of Scottish Ministers.

## 11. Mobility Framework

**With regards to the Withdrawal Agreement, the Scottish Government's objective is that the rights of existing EU citizens in Scotland and Scottish citizens in other EU Member States are protected, this includes any persons arriving during the transition period. In terms of the future relationship, our objective is to retain free movement of people as part of Scotland's continued membership of the European Single Market.**

We want the United Kingdom to remain in the European Single market and continue to benefit from the free movement of people, because this is the only way to absolutely guarantee the on-going rights of EU citizens and their family members, and Scottish people living and working elsewhere in the EU. We also believe this is the only way to meet Scotland's unique needs within the UK and to continue to enable Scotland to benefit from migration.

The Scottish Government set out its position on freedom of movement in [Scotland's Place in Europe](#) (Dec. 2016). The Scottish Government is clear that ending free movement of people in the UK will have a negative impact on individuals, families and Scotland's wider economy and society as a whole. Ending free movement will mean a significant reduction in the rights and benefits that EU citizens in the UK, and UK citizens in EU countries, currently enjoy.

As set out in the discussion paper published by the Scottish Government in February 2018, [Scotland's Population Needs and Migration Policy](#), Scotland's economy needs sustained, long-term growth in the working population. Scotland should have competence over certain aspects of immigration policy - for example the post study work visa - in order to better meet our particular economic needs.

## PART II – SECURITY PARTNERSHIP

### 12. Aims of the Security Partnership

The Scottish Government believes in a safe, just and resilient Scotland. The effects of leaving the EU will be complex and far-reaching. Our aim in this area is to maintain the status-quo as far as is possible and to maintain the close, direct links we have with the EU to keep our citizens' safe and with access to justice.

On 4 June 2018, we published [Scotland's Place in Europe: Security, Judicial Co-operation and Law Enforcement](#). That paper set out why maintaining a close relationship with the EU in the area of security, judicial and law enforcement is vital for Scotland. It also highlighted the importance of taking account of the fact that Scotland has a separate criminal justice system, and that our law enforcement agencies should maintain direct links with their EU counterparts.

### 13. Law Enforcement and Criminal Justice

**The Scottish Government's primary objective in the negotiations is to retain the status quo. Should there be a new security treaty between the UK Government and the EU, as proposed by the UK Government, then all existing cross border measures should be maintained. Any new arrangements between the UK and the EU on law enforcement and security must respect Scotland's separate and independent justice system as well as protect and enable continued direct links between our independent justice agencies and their EU counterparts. Similarly, any new arrangements must also recognise the independent role which the Lord Advocate has as head of the criminal prosecutions system and system of investigation of deaths in Scotland.**

The Scottish Government greatly values the current relationship the UK has with the EU on security, law enforcement and criminal justice. The suite of EU co-operation measures is greater than the sum of its component parts and the loss of any one measure would affect, perhaps to an extent which cannot be fully predicted, the effectiveness of the suite of instruments of criminal justice co-operation as a whole. Therefore, it is vital that current status quo is fully maintained.

If we cannot retain access to all current measures, then we should seek to retain as much of the current package of measures as possible. On individual Criminal JHA measures, our top priorities would be to retain:

- Maintenance of **European Judicial Network** – which enables interactions with EU member state officials to assist individuals in Scotland.
- The **European Arrest Warrant** ensures that criminals can be identified and brought to justice swiftly.
- The EU database measures such as **European Criminal Records Information System (ECRIS)**, the **Schengen Information System II (SISII)** and **Prüm** allow rapid information sharing and effective co-operation between police and prosecutors of Member States in the prevention, investigation and prosecution of crime.

- The **Swedish Initiative** which is a catch-all information sharing directive. No longer being party to it will impact on every other information sharing measure we use to exchange information and intelligence with other Member States.
- **Asset Recovery/Confiscation measures** which allow the confiscation of assets derived from serious and organised crime.

### 13.1 Co-operation with the EU

**The Scottish Government's objective is to ensure that the current level of co-operation can continue as this is essential in ensuring the safety and security of people. We would agree to on-going compliance and keeping pace with data protection requirements in order to allow law enforcement data sharing to continue, given these tools are vital in the fight against terrorism and cross border crime. We would also accept CJEU jurisdiction on these matters, if this is needed to secure ongoing criminal co-operation.**

Refusal to accept CJEU jurisdiction and failure to secure third party access to EU databases significantly damage any chance of retaining access to law enforcement and security measures. That would lead to a diminution in the level and nature of co-operation between the UK and the 27 remaining Member States for structural, legal, political and practical reasons that would most seriously impact our ability to keep people safe and secure. The EU has made clear, in their slide on *the EU-UK Possible Framework for the Future Partnership Discussions*, that on police and judicial cooperation in criminal matters that the UK will be considered as a 3<sup>rd</sup> country outside Schengen.

### 13.2 Access to EU Agencies

**The Scottish Government's objective is to maintain the status quo, and this includes our current access to EU agencies.**

**Europol** membership which gives law enforcement officers and specialists direct and instant access to secure Europe-wide information sharing systems that extend their reach in tracking down individuals and tackling crime. Police Scotland currently has an officer embedded in the UK Liaison Bureau to ensure expediency and operational efficiency in Scottish cases. We would want to see this level of direct contact and cooperation maintained.

Access to the **European Judicial Co-operation Unit (Eurojust)**, which coordinates and facilitates the investigation of cross border crime within the EU and associated evidence gathering, is also vitally important. Losing access to this agency means that the UK would no longer have a voice in influencing negotiations about the future structure and operation of Eurojust or matters that affect Eurojust such as engagement with Europol.

### 13.3 Access to EU Databases

**The Scottish Government's objective is to maintain as far as possible access to EU databases. We accept that currently, no third country has full access to any of the justice and security EU databases, which is one of the reasons why**

**we have repeatedly argued that ongoing EU membership is in the best interests for Scotland and the UK.**

**We welcome the UK Government's recent commitment to continue to apply current EU law on data protection to the highest possible standard. However, we do not think this will secure the access required to maintain the status quo.**

EU cross-border measures work together as a package by allowing rapid data and information sharing. Access to EU databases is vital for these measures to be used effectively. Scotland's separate prosecution service, police and courts have extensive direct links with relevant authorities in other EU countries, helping to speed up justice processes and the exchange of information.

Following exit from the EU, the UK will attain third country status and stands to lose access to EU databases such as the Schengen Information System. EU privacy law prohibits the processing of its citizen's data outside of the EU, unless it is transferred to a location which is deemed to have adequate privacy protections in line with those of the EU. But no third country currently has full access to any of the justice and security EU databases.

#### **14. Foreign Policy, Security and Defence**

**The Scottish Government's objective would be to see no reduction in the current benefits we receive from the close cooperation on external security that we currently receive as a member of the EU.**

**For example, in the UK Government's future partnership paper *Foreign policy, defence and development*, they proposed retaining existing reciprocal consular support arrangements where either the EU or the UK is not represented in a third country. The Scottish Government would want to maintain the scope and level of coverage for citizens abroad.**

Scotland should be empowered to have a stronger and more clearly articulated voice on the international stage. This is essential to ensure the Scottish Parliament and Scottish Government can play a stronger role in decision-making on issues within their responsibilities or which affect their interests, and to enhance their ability to promote Scottish products and businesses internationally.

##### **14.1 International Development**

**The Scottish Government's objective is to see DFID continue as world-leading in terms of commitment and delivery on the ground and that the UK's exit from the EU does not diminish that commitment, delivery and world-leading role. This includes ongoing commitment to the UN's 0.7% of GDP target. In negotiating any future trade deals with developing countries following the UK's exit from the EU, the UK Government must take a "do no harm" approach to set up new fair trade deals.**

In general terms, the Scottish Government is strongly supportive of the UK's current commitment to the UN 0.7% Overseas Development Aid target and want to see that

that commitment continue post-Brexit. It is important that aid spend by UKG, whether by DFID or via the increasing role of other UK Departments, will clearly be designed to promote the economic development and welfare of developing countries, and that there is no reversion to a tied aid policy. The reiteration by the UK Government that aid spend must be 'in the national interest' has also been particularly disappointing – the Scottish Government has made clear its hope that aid spend by the UK Government, whether by DFID or via the increasing role of other UK departments, will clearly be designed to promote the economic development and welfare of developing countries – not the UK's own national interest, now or post-Brexit.

## 15. Wider Security Issues

### 15.1 Counter-terrorism

**As with other crimes, terrorism and violent extremism do not respect borders and therefore international collaboration is vital. The Scottish Government's objective is therefore the same as with other security and law enforcement measures; to maintain the status quo and Scotland's direct links with relevant authorities in other EU countries.**

EU measures have helped strengthen intelligence led policing and maintaining access to cross-border co-operation and information systems is vital in the fight against counter terrorism and organised crime. Scotland's separate and independent prosecution service, police and courts have extensive **direct** links with relevant authorities in other EU countries, helping to tackle cross border crime, combat terrorism and speed up justice processes and the exchange of information.

### 15.2 Asylum

**The Scottish Government's objective is for the UK and Scotland fulfil their role as good global citizens in line with international obligations, to engage with international partners in offering asylum to those in need. Current standards and protections much be maintained for refugees and asylum seekers, for example the specific rights set out in the Reception Conditions Directive for basic living standards.**

Asylum issues are currently entirely reserved and will remain so post Brexit. However, Scottish institutions have competence in areas such as health, language support, legal aid and education. A number of EU Directives cover operational aspects of the asylum process, some of which the UK Government has signed up to. A Common European Asylum System (CEAS) has been developed over a number of years.

## **PART III – CROSS-CUTTING COOPERATION AND STANDALONE ISSUES**

### **16. Cooperative Accords**

#### 16.1 Science and innovation

**Scotland seeks to continue participation in Horizon 2020 (and its successor Horizon Europe) as a key programme for international research and innovation collaboration.**

**The Scottish Government’s objective is that any future agreement with the EU on science and innovation reflects the priorities and strengths across the whole of the UK, including in Scotland. We would wish to remain an active and influential participant in future framework programmes for research and innovation. We would also expect continuing access to EU research facilities and infrastructure needed to support collaboration.**

The current framework programme for research and innovation, Horizon 2020, is particularly important for Scotland as we achieve “a higher level of income per capita (€55 per capita compared with a UK average of €40) than all of the other nations [in the UK]” according to Technopolis’s 2016 report for the Royal Society.

International co-operation across the EU and beyond, supported by research mobility, will be vital if Scotland and the UK are to continue to maintain and improve our science, research and innovation excellence. As well as continuing to access funding programmes like Horizon 2020, access to expertise and facilities, there is a huge value in being able to shape and influence them as we currently do as a full member of the EU.

It will be critically important that the “ambitious science and innovation agreement with the EU” reflects priorities across the whole of the UK, including in Scotland. We have been actively contributing to shaping Horizon Europe, future priorities for the wide range of innovation funds, and will continue to engage with European partners on its development and delivery.

#### 16.2 Education

**The Scottish Government’s objective is to maintain the possibility for students and academics who are EU nationals to live and study in Scotland, and for Scottish students and staff to work and study in the EU.**

We are proud that Scotland is a destination of choice for students and academics from elsewhere in the UK, EU nations and all over the world.

We are keen for EU nationals to continue to study or work at universities in Scotland and have been actively encouraging them to do so. We have now confirmed that eligible EU students already studying here, starting a degree in the autumn this year or next year [2019] will continue to be eligible to receive free tuition. There has been no change so far to the right of EU nationals to reside in the UK. Scotland as part of the UK remains part of the EU, and EU nationals working and studying in Scotland

continue to be able to exercise their rights under EU Freedom of Movement until the UK's departure from the EU. We welcome the agreement in principle between the UK and EU on the 19 March 2018 that has given us more clarity on the rights of EU citizens living in the UK at the time of exit. However, this agreement is far from the legal certainty we have been calling for and we will continue to press the UK Government to confirm its immigration policy both during and after a potential transition period.

**Our shared preference is to continue to participate as a full member of Erasmus Plus for its broad educational, cultural and economic benefits for Scottish and European students.**

We wish to secure the fullest possible participation in the programme in the next Multiannual Financial Framework. We will also aim to secure improvements to the future Erasmus Plus programme to ensure it is more inclusive and fully accessible to all students, regardless of their background.

### 16.3 Culture, Creative Industries and Historic Environment

**Non-Governmental Organisations in the whole UK have consistently highlighted the importance of Creative Europe and other EU programmes that benefit organisations in Scotland.**

UK organisations are respected and valued partners in Creative Europe projects. The UK's expertise in leading projects adds value and capacity to transnational cooperation. Stakeholders (including the British Council in relation to cooperation in education projects) have noted that there is goodwill amongst their counterparts in the EU27 for the UK to continue to participate in the programmes.

The transnational partnerships that are supported by Creative Europe and the cultural collaboration and exchange that they facilitate are the unique selling points of the programme and the most important benefits that Scottish organisations tell us that they gain through them. Replacing this framework would be very difficult.

### 16.4 Regional cooperation

Elements of the EU's budget around cohesion are important to Scotland's future place in Europe.

For example, Scotland has been a leading partner in the Vanguard Initiative, an inter-regional vehicle for promoting smart specialisation. Looking to the next seven year EU Budget – the Multi-Annual Financial Framework - the work of the Vanguard Initiative has led to the €1 billion "inter- regional innovation investment component" being introduced as part of INTERREG in the commission's proposals.

Scotland co-lead one of the five major pilot projects and would want to see strong UK support for the Regional Innovation Investment instrument, and through the MFF negotiations and the UK-EU negotiations the Scottish Government would want to ensure that it is possible for third countries to participate in projects funded under this programme.

## 17. Fishing Opportunities

**The Scottish Government's objective is to obtain the best access agreements that maximise benefits for Scotland.**

As set out in [Scotland's Place in Europe](#), the Scottish Government considers EU membership in the best interests of Scotland. However if we are not able to remain in the EU we propose that the UK remain a member of the European single market and the EU customs union, an option which would not include membership of the Common Fisheries Policy (CFP).

This exclusion of fisheries from the EEA arrangements means that the Scottish Government needs to position itself to ensure Scotland gets the best possible outcomes for our fisheries interests from the well-established international fisheries management arrangements.

It is the view of the Scottish Government that all negotiations on future access should take place in the well-established Coastal States fora under the auspices of the UN Convention on the Law of the Sea (UNCLOS). Access for EU fleets post-EU Exit, will be decided annually through bilateral agreement and sensitive to the priorities of both parties, as is currently the case between the EU and Norway, and the EU and Faroes.

The baseline position in UK-EU negotiations must, therefore be no fixed levels of access for EU vessels to the Scottish zone, with access forming part of annual coastal state quota negotiations. Preventing permanent, unpaid for access for EU fleets to the Scottish zone is crucial to Scottish fisheries interests. We also urgently want to see UK Government proposals to replace the vital contribution that European Maritime and Fisheries Fund monies have made to the sustainable growth and success of marine industries in Scotland.

**Current relative stability shares of quota of jointly managed stocks should be maintained at the point of exit. Shares thereafter should be open to variation between coastal states through negotiations.**

As with access arrangements, the Scottish Government firmly believes that all negotiations on quota should take place in the well-established Coastal States fora under the auspices of UNCLOS.

We are clear that, regardless of the outcome of Brexit negotiations, the guiding principles of fisheries policy should be sustainability and the setting of quotas in line with scientific advice as required by UNCLOS.

Trade in quota currently exists between Member States and there is no reason to assume that this will cease after Brexit.

It is only right, however, that Scottish communities and industries be the principle beneficiaries of our resource-rich waters.

There is a strong expectation on the part of Scottish fishing communities that their interests will be protected in the Brexit negotiations and not “bartered away” to secure other UK interests. We support and endorse that position.

**Furthermore the Scottish Government believes that Hague Preference should be maintained through any negotiated outcome**

Hague Preference is a long standing convention. It is a clear recognition of both the reality of fish stock distribution and the importance of these stocks to communities in the UK which are particularly dependent on fishing.

Regardless of our future relationship with the EU, the rationale and imperative for the outcomes delivered by Hague Preference will remain.

As a minimum, therefore, the UK Government must ensure that existing relative stability shares, inclusive of Hague Preference, be maintained when the UK leaves the EU. That position should then become the baseline from which future annual negotiations are conducted.

**Finally, the Scottish Government wishes to see continued cooperation on control and compliance.**

In every scenario for our future, Scotland will be a responsible global citizen, operating and our domestic fisheries management arrangements will be delivered in line with certain principles. Amongst these principles are sustainable fisheries based on maximum sustainable yields, science-based quota setting.

Regardless of the outcome of the Brexit negotiations, the rationale for the efficient and effective sharing data with neighbouring countries to ensure the effective management of straddling stocks will remain.

It is in both the UK and the EU's interest, as well as non-EU countries such as Norway, to ensure continued sharing of data and no ‘switching off’ of monitoring systems. Expert level agreement and co-operation should, therefore continue.

## **PART IV – BASIS FOR CO-OPERATION**

### **18. Governance**

**The Scottish Government considers that it is essential that an institutional framework is agreed which is commensurate with and supports our continued participation in the European Single Market, Customs Union and wider cooperation. In step with which, rigid decisions on the nature of that framework should not be the reason for preventing agreement on a deep and broad partnership.**

It is the case in most other trade agreements that each party undertakes their own supervision and enforcement. In the case of the European Economic Area the EFTA states have a separate Surveillance Authority and Court, separate and distinct from the EU states.

However, in the case of the EEA that separate nature is modified by the fact it is itself a multi-lateral body. To achieve a similar level of participation in the European Single Market – if not membership of the EEA itself – it is probable that the only acceptable version of an institutional structure to the EU would be a minimum of a fully independent (from government) UK surveillance authority.

Any such independent UK authority should be for the whole of the UK, any appointments and loaning of staff should be drawn from all administrations, and reporting should be to Ministers of all four administrations.

We acknowledge that the EU will not wish to see an institutional architecture that essentially creates a bilateral version of the EU. However, without that depth and breadth of engagement it is challenging to see how a deep, broad and special partnership could be created and maintained.

There is therefore significant merit in considering, as the Scottish Government has maintained, the benefits of retaining membership of the EEA using the EFTA institutional architecture.

The Scottish Government would expect to play a role as part of the UK delegation, as UK technical experts, and on our own account, in all aspects of this structure. This would be at a minimum consistent with the current level of involvement of devolved administrations in current EU business.

### **19. Interpretation and Application**

**If the only obstacle to ensuring the full breadth of access to cooperation arrangements is willingness to accept the jurisdiction of the Court of Justice of the EU (CJEU), or interpretation of the CJEU of principles of EU law, then the Scottish Government would urge the UK Government to seek appropriate arrangements for the UK's continued participation in the court.**

There must be an independent, certain, mechanism to determine the law that is to be applied – which will interpret the agreement and render that interpretation binding on all parties.

The Court of Justice of the EU currently provides the judicial safeguards necessary to ensure that the law is observed in the interpretation and application of the Treaties and all of the activities of the Union.

Without that single point of reference multiple interpretations of the same provisions across the different jurisdictions covered will arise. A clear, accessible and swift mechanism is needed to provide that single binding interpretation – one which is at least as fast and cost-effective as the CJEU is at present.

For all parties to have faith in the mechanism, it must be independent and objective. Individuals and businesses must have certainty that obligations in agreements will be enforced, that divergence can be avoided where necessary and that disputes can be resolved.

#### *Equivalence of EU Standards and Regulations*

**The Scottish Government's objective is to facilitate continued participation in the European Single Market, and therefore to maintain and protect equivalence (or greater) in EU standards and regulations.**

**The protection and maintenance of regulatory equivalence within the UK is crucial to avoid Scotland being placed at a competitive disadvantage.**

Europe-wide regulation protects consumers, businesses, communities and the environment. A large proportion of the regulation which impacts on Scottish consumers, businesses, communities and the environment comes from the EU.

The Scottish Government's key priority is to maintain as closely as possible (or enhance) EU equivalent standards and regulations in order to prevent regulatory divergence which could: lower economic, social and environmental standards; reduce protections; and, create additional barriers to trade which will restrict business growth and have a knock on effect into other areas of life.

**Continued access to monitoring and information sharing systems is essential to ensure the continued protection of people, businesses and the environment.**

Market surveillance and enforcement authorities need to have access to information about unsafe products, such as medicines and food, and mechanisms to take action with respect to non-compliant goods.

Lack of access would introduce vulnerability in supply chain i.e. increased risk of food fraud and unsafe food. For fisheries, data sharing prevents illegal, unregulated and unreported fishing.

## 20. Dispute Settlement

**The Scottish Government has an overall interest in a strong future partnership, the terms of which are robust and reliable.**

The Scottish Government does not take a fixed position regarding an ongoing role for the Court of Justice of the EU (CJEU) in dispute resolution as the judicial and enforcement backstop in relation to both the Withdrawal Agreement and future partnership between the EU and the UK.

We would be comfortable with such an ongoing role but are not dogmatic. Whatever mechanism is agreed between the UK and the EU, it is critical to ensure that:

- **there is a legal and objective mechanism both parties can trust in to resolve any dispute arising, at least as efficiently as the CJEU;**
- **natural and legal persons can rely upon the provisions of the agreement where that is intended to be the case;**
- **it is open to the Scottish Government, Welsh Government and Northern Ireland Executive to lodge a complaint as part of the dispute resolution mechanism.**

Whilst we do not adopt a dogmatic position with regard to an ongoing role for the CJEU, it is important to highlight that acceptance of the jurisdiction of the Court is a precondition for access to many of the current instruments of EU and UK judicial and security co-operation, as well as data sharing agreements.

The potential for parties to seek redress through the courts is also a strong behavioural driver across the public and private sectors.

Existing domestic mechanisms will not resolve inter-state disputes. Existing legal mechanisms in the UK and in the EU will provide for some recourse in the case of natural or legal persons seeking to challenge acts of other natural or legal persons within a jurisdiction.

In the case of continuing EU Member States they may also have a course of action with regards to actions or failures by the EU institutions through the CJEU, a route which is not open to non-Member States. Existing mechanisms would not offer a process to resolve EU to UK state level disputes over interpretation or implementation of the provisions.

The benefit of the CJEU has been that all Member States are represented by senior legal professionals, trusted within their respective jurisdictions. A similarly authoritative, independent mechanism is required – this will more than likely therefore involve senior judges from each party, and be supported by an institutional professional infrastructure.

Creating such an infrastructure from a blank sheet of paper would not be cost-efficient. We will essentially create a new UK-EU Court of Justice, at additional expense. It would be more efficient to build from the existing infrastructure.

If the Court of Justice of the European Union is ultimately the agreed judicial and enforcement mechanism to agreed dispute resolution mechanisms then representation should continue and rights to appear be extended to include the UK as a non-Member State in relevant cases.

A protocol to the treaty may be required to reflect this new, distinct role for the CJEU – and the rights of representation for legal professionals from the UK as a non-Member State. One option may be to create a special chamber of the Court.