

Scotland's relationship with the EU

Submission to the Holyrood inquiry by the European Movement (Scottish Council)

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The European Movement in Scotland (EMiS) is Scotland's oldest dedicated pro-European campaigning organisation. We are an independent, not-for-profit, non-governmental organization, funded exclusively by our members, not by any external bodies. We welcome members of all political parties as well as those with no affiliation.

We exist to promote closer European integration believing, that this provides incalculable benefits to our continent and, indeed, the world. As a full member of the EU for 40 years the UK has considerably advanced that objective. Brexit will curtail that.

Led by our President, Lord Campbell, EMiS campaigned for the UK to Remain. We organised ten high profile public events across Scotland, participated in others, campaigned on the streets and through a co-ordinated media and social media campaign became a recognised focus for a non-party political Scottish perspective on the EU Referendum.

We remain strongly of the view that it would be better for the UK's citizens to remain a full member of the EU and that none of the other options for the EU-UK relationship offers the full range of benefits that membership currently gives. What holds true for the UK is even more relevant for Scotland and we will continue to make the case for an outcome that seeks to retain Scotland's place in the EU, consistent with the preference expressed by 62% of Scottish voters on June 23.

Our Evidence is numbered to reflect the structure of the Call for Evidence. It includes sampled extracts of personal submissions from our members.

1. Case studies on how the prospect of a withdrawal from the EU is affecting Scotland

1.1. Case Study 1

There is a direct impact on enterprises in Scotland that rely on EU trade. An EMiS member working as a consultant to start-up enterprises has reluctantly but professionally advised a UK start-up to move its activities to France because its principal market is expected to be in the EU, a move that the company has now made.

1.2. Case Study 2

Mr and Mrs Y have been resident in the UK for two years, on the basis of an EEA Family Permit. Mr Y has German nationality and works full-time as an IT Security professional, a highly skilled job. Mr Y's employer searched for two years to recruit someone with his skills. Mrs Y is Kenyan, working part-time as a pharmacy technician and also in full-time study. Mrs Y has been entitled to EU rules for students, i.e. home fees and student loan.

Mr Y: "We would consider staying longer in Scotland, to make it our permanent home, but have no patience for future paperwork with the Home Office. I have worked in the UK in the past, and no paperwork has been required, thanks to the EU's free movement rights. I've never had any problems working in the UK since the first time I arrived in 1972.

However, the first clash we've had with the Home Office was in 2014 when the British Embassy in Nairobi refused the Family Permit for my wife, even though conditions had been met (i.e. I was required to exercise treaty rights as a EU citizen and prove that we were legally married). It was only with the help of the EU Solvit system (a mediation system, if member states do not apply EU rules correctly) that my wife got the EEA FP fairly quickly (6 weeks). I have little faith in the UK's immigration systems once it leaves the EU.

The main disturbance of the Brexit vote that we are experiencing is that we planned to have a baby next year, however with the uncertainty of our status, we are being forced to reconsider our plans to start a family here."

1.3. Case Study 3

Mr and Mrs X came to Scotland in 1994 and bought a house to restore. Now working as a consultant, he is a retired professor and former department head for postgraduate studies. They are both UK taxpayers, have invested their savings in Scotland and are committed and active citizens who give their time and money to deserving causes.

Mr X: "Mrs X and I were registered as permanent residents in Scotland in 2000 and since then have voted in European, Scottish and local government elections. We have UK health cards as we understand that we are entitled to this on the basis that part of our monthly Dutch income is deducted for healthcare and forwarded to the UK under a UK/NL bilateral agreement. We have no substantial UK income but submit annual taxation returns in both NL and the UK. We considered becoming UK citizens but hesitated due to UK ambivalence towards the EU. We are now thankful that we are still Dutch citizens, as this retains our EU citizenship, which we value above all else. Should Scotland be able to become a member of the EU, we will be at the front of the queue for Scottish citizenship.....

"We are old enough to remember World War II. As is the case throughout the UK, our families suffered in fighting for peace and freedom. To us, peace in Europe is the greatest achievement of the EU, and the freedom to travel and live throughout Europe its greatest joy. We will never agree to any dilution of this achievement or of our privilege, pride and joy, which is to be citizens of a Union that won the Nobel prize for peace."

2. Scotland's future relationship with the EU

The benefits to Scotland are not just about money. Membership of the EU has encouraged Scotland to be outward looking and confident and to take pride in itself as a European country with a very long history. EU membership has encouraged Scotland to develop expertise and leadership, recognised by our European partners, with whom we work closely within an EU framework. The most recent example is the newly announced Ocean Power Innovation Network, involving Scotland, Ireland and N. Ireland.

Options for our future relationship with the EU depend on what is legally possible and politically feasible. Legal debate e.g. as to whether Article 50 can be revoked once invoked will ultimately be resolved by political discussion at the highest EU instance. This means that few matters of importance are likely to be settled unilaterally but all should be possible with the agreement of the European Council and of the European Parliament.

3. Alternatives to EU membership

3.1. The alternatives to EU membership

So long as Scotland stays part of the UK, its options depend both on what can be negotiated as part of any external settlement and on any further domestic constitutional change. Outcomes in these two dimensions may well be interconnected.

Regarding the UK's external settlement with the EU there would seem to be four broad ways in which things might develop:

3.1.1. "Brexit Pure" (aka WTO Rules)

This is the preferred approach of hardline "Brexiters". It entails complete withdrawal from all existing commitments at European level accompanied by steps to forge new trading relationships with Commonwealth countries, US, China, Japan etc. But it requires joining the WTO first and that will require unanimous agreement from all existing members incl EU.

3.1.2. Membership of the EEA

Membership of the EEA, along with Norway, Iceland and Liechtenstein, lies at the opposite end of the spectrum. It would mean a return of agriculture and fisheries to domestic jurisdiction and possibly a little (but only a little) more flexibility over state aid. In addition, the UK would be able to negotiate its own trade treaties with countries outside the EEA.

But the UK would still have to make a financial contribution to the EU budget and abide by the rules of the single market – with no say in these rules – and including free movement of persons. The only change would be that free movement could be restricted on the very limited grounds of “public policy, public security or public health”.

Difficulties with this approach include whether the limited control on immigration would be enough to satisfy those who voted Leave and legal uncertainty about automatic EEA membership. The UK signed the Treaty in 1994 whilst part of the EC/EU but in its own right so the question arises as to whether leaving the EU automatically means leaving the EEA. If it does not, it may be necessary to give 12 months notice of withdrawal from the EEA too, depending on the obligations that would continue. The content of these obligations also needs to be assessed. If full UK membership of the EEA proves to be the preferred outcome the legal implications will also need to be assessed.

3.1.3. New Trading Agreements

The last option is that of re-joining the European Free Trade Area (EFTA, consisting of Norway, Iceland, Liechtenstein and Switzerland) or negotiating some kind of generalised association agreement with the EU, concentrating on tariff free trade. Both, however, would still mean having to conform to a large number of EU rules, those on product safety being a prime example. Again the UK would have little say on their content. Also, unless any agreement included the free movement of services, there could be problems for that sector, especially for financial institutions in London and Edinburgh.

Another possibility is a number of specific association agreements, allowing the UK to salvage certain aspects of EU membership, such as continuing the Erasmus programme for students, joint research projects and so on. It is unclear how favourably this kind of approach would be regarded by the EU-27.

3.1.4. EU reconfiguration

The EU has never stood still but has always adapted to reflect the challenges and opportunities of the time. Brexit is prompting a renewed examination of the very means by which countries can participate in the EU. That may offer possibilities for the UK and Scotland to reengage (though it may also may it more difficult).

3.2. The implications of these alternatives for Scotland

As part of the UK, Scotland's options are both internal and external and vary with the 3 broad scenarios outlined above. However, it should be clearly understood that technical participation in a programme by “buying in” is very far from being viewed as a full-blooded partner in a longer term relationship. None of these options will be as satisfactory as direct participation through EU membership.

3.2.1. Brexit pure

On paper, this returns legal control to Scotland over all currently devolved areas, including farming, fishing and state aid. It is unclear whether Westminster would, in practice, intervene and that might be a point for internal negotiation. Either way, there would still be a need to conform to WTO rules and other international treaties. For example, freedom on fisheries would not be as extensive as some might expect because, even though there would effectively be sole use of the exclusive economic zone, rights to fish in e.g. Norwegian

waters, would require to be renegotiated with inevitable quid pro quo; and the outtake of shared fish stocks (eg N Sea Haddock) would still need to be agreed with the EU.

What might be achievable politically, in return for Scotland agreeing not to raise difficulties about the nature of any Article 50 agreement, is a further increase in devolved powers. Examples could be over employment law, welfare and immigration.

3.2.2. Membership of the EEA & New Trading Agreements

With UK membership of the EEA much the same would apply, except that EEA rules would stay in place. For trading relations, Scotland would remain tied into UK arrangements at a European level. But it might achieve some that are tailor made. Scotch whisky is an obvious but far from unique potential area. As there are currently no external tariffs on imports of whisky to the EU, no immediate problem is posed for exports there – but some safeguards might be sought. A guarantee of some input into the decision-making process would be especially helpful for newer industries e.g. Scotland's burgeoning digital games sector.

It is possible, too, that Scotland might be able to pursue some other types of association agreement. Normally these are made by the EU with non-member states but there are some exceptions. For example, the Faroe Islands are part of Horizon 2020. Admittedly Denmark, as part of the EU, administers their foreign relations, but they do set a form of precedent. The Erasmus programme and scientific research projects are obvious examples, over and above what might be included in any agreement at UK level.

3.2.3. EU Reconfiguration

The only implication is to monitor and engage with discussion as much as possible.

4. The withdrawal process

While Westminster appears to be in a state of flux, corporate board rooms are already working on contingency plans. The City of London is mobilising its considerable influence (not least as a substantial donor to the Conservative party) and other sectors will be seeking to follow that model. That applies both in the UK and, importantly, in continental EU. The risk is that this will result in a dialogue which focuses on financial/trading aspects at the cost of neglecting social and environmental provisions. Scottish lobbying will need to jostle for attention with such groups.

4.1. How the withdrawal process might be managed at the EU and UK level

There is no precedent as the Art 50 process has never been used but based on knowledge of how the EU operates, we would expect the EU Council (of 27) to mandate the European Commission to draw up a list of matters that need to be considered and negotiated. Whitehall and UKRep Brussels officials will probably undertake a similar exercise from the UK perspective. The UK and Commission will want to agree the list and then start settling the matters therein. We expect oversight by the Council of 27 will be unusually evident.

It increasingly appears that the PM will trigger Art 50 without seeking approval of the UK Parliament. EMIS considers this to be a problematic use of the prerogative of the Executive, given that the Referendum was merely advisory and the outcome was only narrowly for Leave. It is an ill advised approach in a parliamentary democracy to sideline representative MPs. The Committee may wish to take evidence on the implications of this for Scotland.

4.2. What steps would be involved and how individual policy fields might be dealt with

For the UK, the first and most important item of business will be to decide what "Brexit" should ideally amount to. Without that, negotiators will have no clear objectives. The hardliners' solution of "getting on with it" obdurately surrenders negotiating power to our ex-partners and is likely to produce a poorer and potentially isolationist outcome for the UK.

A more considered approach, offering substantial advantages, will require time for that consideration. We note that the PM immediately ruled out triggering Art 50 in 2016 but has since set no latest time limit. We welcome this window for reflection.

4.3. The amount of time that might be required to deal with the negotiations

It is poorly appreciated that the now famous two year Article 50 period primarily covers limited questions of how to treat the status quo on matters such as pension payments for EU-assigned civil servants and the rights of existing UK migrants in other EU countries to arrive at an agreed exit treaty. Future UK-EU trading arrangements can only be settled once that base has been determined and while preparatory work will necessarily start earlier, serious discussions can only be expected to begin after the baseline is set i.e. 2 years hence. Trade deals with the wider world will, in turn, depend on what has been agreed with the EU.

All of this follows only after due consideration of what the UK's negotiating objectives are. That prerequisite alone currently looks like taking 12 months. Estimates of 10 years for the entire package to replace the work of 40 years seem plausible or even ambitious.

4.4. How the interests of Scotland and the other constituent parts of the United Kingdom can be represented in those negotiations and what role the Scottish Government should have in those negotiations

The vote was advisory. It was supported by a small majority across the UK but in the devolved administrations of Scotland and N Ireland, a large majority voted to remain. We consider that the strength of this popular vote places an obligation on the Scottish Parliament to actively advocate retention of the present European Citizenship status of the people of Scotland.

When the Prime Minister met the First Minister in July, Mrs May promised, "... I won't be triggering article 50 until I think that we have a UK approach and objectives for negotiations – I think it is important that we establish that before we trigger article 50."

It is essential that the Westminster Government is held to this in practice and therefore that the Scottish Government is fully involved in the deliberations which lead to any triggering of Art. 50. It is also important that it is clear and agreed what is meant by "a UK approach and objectives for negotiations."

The UK and the devolved administrations seek to manage issues of common concern under a Memorandum of Understanding that sets out matters such as representation in EU meetings and how an agreed UK policy position on EU issues will be achieved.

The MOU does not confine itself to devolved matters, narrowly interpreted. It states that "the UK Government wishes to involve the Scottish Ministers as directly and fully as possible in decision making on EU matters which touch on devolved areas (including non-devolved matters which impact on devolved areas and non-devolved matters which will have a distinctive impact of importance in Scotland)". This clearly covers present circumstances.

Ministers from the Westminster and devolved governments meet together three or four times a year in the Joint Ministerial Committee to coordinate the UK position on high profile EU issues and overall strategy to ensure that the differing needs of all parts of the U.K are clearly understood in the Foreign Office and No. 10.

It may well be this machinery which will be used to meet the PM's promise to the FM. We question whether that is sufficient. The Scottish Government will certainly need to guard against it being more than a token exercise. Precedent suggests that Whitehall is willing and able to exclude devolved representation where it decides that it is politically expedient.

The Committee may wish to invite evidence from the Scottish Government and from relevant UK Government Ministers and officials on how it can be ensured that the PM's promise and the

fact that 62% of Scottish voters want to Remain will be respected in the deliberations on the redefined UK relations with the EU.

Engagement via the EU institutions and other member states is the other important pillar which should be reinforced. A guiding principle for Scottish Government should be to positively engage with those as much as possible. Moreover, while Article 50 effectively prohibits intergovernmental discussion on withdrawal until it has been triggered, it says nothing about sub-national discussions. Scotland need not, therefore, wait silently until the larger timetable starts running. Rather, it should use the window to establish as strong a position as possible in advance of the main UK-EU discussions taking place. That is unlikely to be effort wasted – irrespective of the eventual outcome.

4.5. The positions likely to be taken by other Member States in the negotiations

Overall, and precisely because of the very sovereignty enjoyed by the member states, the process to obtain agreement from all 27 countries on the terms of the UK's departure will involve extended discussion within the EU (let alone with the UK). National domestic agendas, sharpened by upcoming elections, will mean that compromises will be reached involving trade-offs in seemingly unrelated areas and the positions taken by individual countries will adapt as negotiations progress. That also applies for countries outside the EU e.g. Japan's and the US' recent statements. It is therefore crucial to see engagement as an ongoing, evolving and dynamic process.

5. The domestic process for dealing with a withdrawal from the EU

5.1. The implications for the devolution settlement of withdrawal from the EU

It is clear that the devolved nations of the UK will be disproportionately affected by withdrawal. Not only do EU payments favour those parts more than they do England but the core argument used by Leave to win the Referendum, namely migration control is, in a Scottish context with its history of outward migration and depopulation, a negative benefit.

Guarantees given to protect payments by the EU e.g. CAP, "until 2020" beg the question of what will happen after that. Historical precedent is not encouraging.

A combination of disbenefits to Scotland and a rejection of the votes of a substantial majority north of the border in favour of a small majority south of the border can only lead to further strains within the Union.

5.2. The implications for UK and Scots law of a withdrawal from the EU, particularly the need to repeal legislation and prepare new legislation to fill the gaps left by EU legislation

One possibility is for Scotland to "keep" existing EU law in devolved areas insofar as it has already been incorporated into Scots law and to mirror it in future legislation. Although the majority of legal opinion seems to be that Scotland cannot do anything legally to prevent Brexit as such, it could be that the refusal of legislative consent to the unpicking of EU law in devolved areas would preserve some of the status quo. Even if not, there is no obvious legal barrier to just re-enacting it. Certainly this would put Scotland in a good position for independent EU membership at some later date.

5.3. Scale of the task and implications for the Scottish Government and Parliament

Partly because the EU has been dealt with primarily through the Foreign Office, it is not widely appreciated just how deeply engaged Scotland already is with the EU. The Scottish Government and Parliament have significant EU obligations. They implement EU legislation in respect of all

devolved matters and are required to operate in accordance with EU law in every respect. The Scottish Government engages closely with the EU Institutions directly in Brussels; it works with the six Scottish MEPs, as well as members of the Economic and Social Committee and the Committee of the Regions. The Scottish Government has civil servants posted in Scotland House in Brussels and Scottish Ministers and officials participate in Council meetings on the full range of devolved issues.

Particularly since devolution Scotland has built influence and expertise in EU deliberations across areas as diverse as renewable energy to fisheries management, from efficient regional funding to equalities practice, from climate change mitigation to how to improve parliamentary engagement. Scotland works closely with many of its EU neighbours in collaborative projects, funded and facilitated because of our EU membership. There is no guarantee that these networks and productive engagements can be maintained if the UK withdraws. Rather the opposite. Far from being a side issue to devolved responsibilities, the EU is central to how Scotland goes about much of its business.

5.4. Impact on Scotland's economy of termination of ESIF support and access to Horizon 2020 programme

We understand that the loss of payments from ESF and ERDF will be of the order of £1bn over the next 6 years. We would not dispute the Scottish Government's recent estimate of up to £11bn depending on the eventual relationship struck with the EU.

5.5. The implications for Scotland's funding settlement of withdrawal from the EU

Commitments have been given that EU funding will be made up from UK Treasury resources. However, pressure to restore the public finances, while temporarily abated, has not disappeared so such guarantees appear vulnerable. Of particular concern is farming where it seems unlikely that the UK Government will mirror the Single Farm Payment.

6. The position of EU citizens in Scotland

We would observe firstly that most people living in Scotland are currently EU citizens. The bulk of legal opinion seems to be that Brexit, in whatever form, causes that citizenship to be lost. If it is not retained, UK nationals revert to being British "subjects" and cease to be citizens at all. There is a European Convention on Nationality that deals with involuntary loss of nationality but the Brexit situation does not seem to be one of the permitted grounds and the UK is not even a signatory to the Convention. Nonetheless negotiating continuing citizenship status might be an option – though more feasibly for everyone in the UK than for Scots alone. Certainly this would benefit "expats". It would, also, almost certainly entail free movement and so protect the rights in the UK of other EU citizens.

6.1. The position of EU citizens in Scotland in the event of withdrawal from the EU

There is a great deal of uncertainty surrounding the position of EU citizens in the event of withdrawal from the EU. EU and EEA citizens risk losing the right to live here unless they have been in residence for more than five years and, possibly, even then – subject to negotiation – unless they have also applied for and been granted permanent residency.

The case studies in section 1 illustrate the deep disappointment of those who made their home in Scotland (whether on a permanent or temporary basis) in the belief that with the UK as EU member their position in Scotland was safeguarded. They describe the disruption created by the Brexit vote and the uncertainty created for career and family plans.

6.2. *The extent to which EU citizens in Scotland have acquired rights*

Those of our members who, as EU citizens, have acquired permanent residency status in Scotland describe their rights to vote in European, Scottish and local elections. They are also entitled to UK health cards on the basis that part of their regular income earned in their EU country is deducted for healthcare and forwarded to the UK under a bilateral agreement (e.g. with the Dutch Government).

However, those of our members who have been in Scotland for shorter periods (i.e. since 2014) have recounted how they have no acquired rights.

6.3. *The contribution that EU citizens make to Scotland's economy and society*

The contribution that EU citizens make to Scotland's economy and society is significant. Our members describe the numerous financial and social contributions they make as EU citizens, which include contributing their global income and participating in community life.

Our fellow EU citizens contribute a range of skills that benefit the Scottish workforce and withdrawal from the EU means Scotland risks losing a relatively young and skilled workforce. All society will be affected but some sectors e.g. health and hospitality, will feel the brunt.

There is also need to recognise historical associations. For example, Britain entered the Second World War because Hitler invaded Poland. The Poles fought alongside us during the War and there are thousands of Poles living in Scotland today who make a significant contribution to the Scottish economy. There is a real risk that certain elements of our society may start branding Poles along with other EU nationalities as unwelcome. Any such trend must be responded to quickly and firmly. We cannot be complacent that recent incidents south of the border will not be imitated in Scotland.

More generally Scotland has over the centuries been a country that is tolerant and welcoming of continental Europeans as well as one which has a long history of significantly contributing to Europe's development). The goodwill which Scotland enjoys around the world is a substantial asset but cannot be taken for granted. We need to nourish and capitalise on our longstanding mutually beneficial relationships with other European nations. A skilled media campaign based around the theme that Scotland is proud to be a European multi-cultural multi-ethnic society could help address negative attitudes towards EU citizens in Scotland.