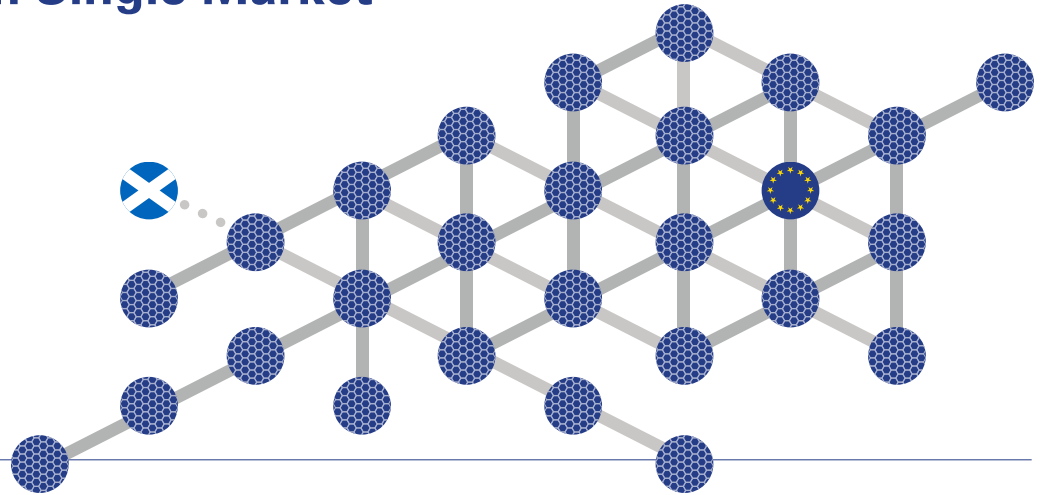




Scotland's Place in Europe

Scottish Government publishes proposals for remaining in the European Single Market



On 20 December 2016, the Scottish Government published a document containing its proposals for mitigating the impact of Brexit on Scotland. Titled *Scotland's Place in Europe*, this paper argues in favour of remaining in the European Single Market and presents how this could be implemented. These proposals will be further explored in discussions with the UK Government through the Joint Ministerial Committee structure.

The first Joint Ministerial Committee (EU Negotiations) was held on 9 November 2016, where it was agreed that the relevant UK, Scottish, Welsh and Northern Irish ministers would hold monthly meetings to share evidence and take forward joint analysis that will inform the UK's negotiating position. This document therefore provides a useful indication of how the Scottish Government will seek to influence the negotiations between the UK and the EU over the terms of Brexit.

The Scottish Government's starting point is that the UK should retain membership of the European Single Market and the EU Customs Union, something that the paper claims "is both feasible and desirable". However, in light of recent statements by the UK Government, the paper concedes that this proposal is unlikely to be accepted.

The paper therefore sets out an alternative proposal for Scotland to remain within the Single Market even if the rest of the UK chooses to leave. This would involve Scotland joining the European Free Trade Association (EFTA) and then signing up to the European Economic Area (EEA) Agreement. The paper refers to this as the 'Norway option', in particular it advocates for Scotland's

continued involvement in EU policies and programmes such as Horizon 2020 and Erasmus.

This forms the core of the 'differentiated option' that the Scottish Government is seeking – differentiated because it would require Scotland to leave the EU on terms different from the terms negotiated for the rest of the UK. Although just a starting point, the paper does mention a number of potential challenges:

- Membership of the EFTA Treaty and the EEA Agreement is only open to states. The paper mentions that the UK could 'sponsor' Scottish membership, although there is no such precedent.
- If goods and people are allowed to move freely between the EU and Scotland but not between the EU and the rest of the UK, then a number of complications are bound to arise. It is unlikely that an open border between England and Scotland could be maintained. This problem will not be unique to Scotland: the Irish border poses similar complications.
- Membership of EFTA and the EEA would require Scotland to have an array of new powers. For example,



it would need additional legislative competence to ensure the free movement of goods, services, capital and persons between Scotland and the EU.

In respect of this last point, the paper concludes with calling for “a fundamental review of the UK’s constitutional arrangements” and for more powers to be devolved to Scotland. The paper identifies three broad categories of powers that will need to be examined:

1. **EU powers affecting devolved areas:** the EU currently has the power to legislate on areas that fall within the remit of Scotland’s devolved powers, such as agriculture, health and environmental protection. The paper stresses that the EU’s powers to legislate on these areas should not revert to Westminster, unless the Scottish Parliament explicitly grants its consent.

2. **EU powers affecting areas that should be devolved:** the paper identifies certain key rights and protections that are guaranteed by EU law. To ensure that these rights are preserved in Scotland, the paper calls for additional devolved powers in areas such as employment law and consumer protection.

3. **Additional powers needed to implement ‘differentiated option’:** Scotland can only join the Single Market if it is granted further powers in order to give effect to critical areas such as ensuring the free movement of people, goods, services and capital. It would also require Scotland to have a greater international presence.

The Scottish Government’s paper can be found [here](#).

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For further information in the first instance, please contact:



Louisa Knox
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5216
M +44(0)781 800 2191
E louisa.knox@shepwedd.com



Gordon Downie
Partner & Co-Chair Of Brexit Advisers
T +44 (0)131 473 5162
M +44(0)771 863 7298
E gordon.downie@shepwedd.com



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