

SCOTLAND AND EUROPE: Submission from The Royal Society of Edinburgh

Summary

- *The United Kingdom in the recent referendum on membership of the European Union voted to leave.*
- *The precise nature of the desired continuing relationship with the remaining countries of the EU has still to be defined.*
- *The Scottish Government has indicated that it wishes to contribute to the UK negotiating position and also that it wishes to see Scotland continue to have a form of relationship with the EU.*
- *The RSE believes that it is important that the Governments of the devolved administrations are integral to the UK negotiating team throughout – this also places an obligation on the devolved administrations to respect the confidentiality of the diplomatic process.*
- *The Scottish Parliament along with the Welsh and Northern Irish Assemblies must have the opportunity to scrutinise the terms of the future relationship with the EU.*
- *The Scottish Government is likely to face capacity issues both in the period of negotiations and if additional responsibilities are ultimately passed to it in areas such as agriculture & fisheries.*
- *Whether legislation following Brexit negotiations requires a Legislative Consent Motion of the Scottish Parliament is likely to be a major item of contention – legally and/or politically.*
- *Once the UK has left the EU, the Scottish Government will be faced with the issue of whether it seeks to mirror EU laws – as financial services is a reserved matter this would be dependent on decisions taken at a UK level in this field.*
- *Access to the single market is a critical issue, most notably in maintaining ‘passporting’ rights for the financial services sector and for sectors of the economy heavily reliant on exports to the EU, such as whisky.*
- *The impact of Brexit on Scottish public funding is unclear at the moment, however the long term impact on tax revenues may be an issue once the current fiscal framework agreement needs to be renegotiated.*
- *Depending on the nature of Brexit there may be opportunities to vary or devolve further areas of taxation, though these also come with risks and potential impact on public expenditure.*
- *Access to the single market is likely to depend on an agreement on the right of free movement of workers – it is likely to be problematic to negotiate agreement on free movement that satisfies both the EU and pro-Brexit campaigners.*
- *The rights of EU citizens already resident in the UK and vice-versa should be resolved at an early stage in the negotiations and communicated clearly to both groups of citizens.*
- *Pan European collaboration has contributed significantly to the success of UK science and research – continued joint working is likely to be dependent on an acceptable agreement on freedom of movement for students and researchers.*

Introduction

- 1 On the 23rd June 2016 the United Kingdom voted in the referendum on membership of the European Union to Leave, by a margin of 52% to 48%. Scotland (by 62% to 38%), along with Northern Ireland and several, mainly metropolitan, parts of England voted by a majority to Remain. The precise nature of “Brexit” has still to be articulated by the UK Government. The Scottish Government has expressed the view that it wishes to explore ways in which it can maintain a relationship with the EU post-Brexit, including a form of continuing membership and a role in formulating the UK negotiating position.

- 2 In this context The Royal Society of Edinburgh (RSE) welcomes the opportunity to contribute to work of the Scottish Affairs Committee in the House of Commons and its inquiry into Scotland's Place in Europe, as well as the work of the Scottish Parliament European and External Relations Committee on Scotland's relationship with the EU. The RSE convened a group of Fellows with relevant expertise to prepare this Advice Paper, which has been approved on behalf of the RSE Council by Professor Alan Alexander, General Secretary of the RSE.
- 3 The Advice Paper covers many aspects of the Brexit debate including: the single market; financial services; free movement of people & labour; research & Higher Education; agriculture, fisheries and the environment; and legal & process issues.

The Role of the Scottish Government

- 4 The Scottish Government and Parliament have an interest in the way devolved issues are handled in the negotiations, as well as in reserved issues such as migration and freedom of movement, and financial services. In regular EU policy-making, there is a provision for involving the devolved governments and including them in the UK delegation where devolved matters are at issue in the Council of the EU (Council of Ministers). The Joint Ministerial Committee (Europe) discusses the line to be taken and ministers from the devolved governments may, by invitation, be part of the UK delegation. It is the UK Government that has the last word. An important part of this is that civil servants from the devolved administrations may participate in preparatory meetings and contribute to the shaping of positions, although their capacity to do so is limited. There is also provision for consultation and information in advance of meetings of the European Council (of heads of state and government). The Scottish Government has taken the view that these arrangements are not adequate. The UK Government has taken the view that it cannot allow the devolved bodies a veto.
- 5 In the negotiations preceding the EU referendum, the devolved administrations were consulted but

were not part of the negotiating team and expressed dissatisfaction at their marginalization. In the negotiations about Brexit, the Prime Minister has promised a 'UK approach' but it is not clear what this means in practice. There will no doubt be consultation with the devolved administrations on devolved matters but this is not the same as inviting them to be part of the negotiating team. Devolved civil servants might be invited to sectoral working parties on specific issues but the role of devolved ministers is not clear.

- 6 It is important that Scotland and the other devolved administrations be involved in the discussions at all stages. There is, however, a dilemma. If the devolved administrations are part of the negotiating team, they will be bound by confidentiality and may be unable to make their concerns public. They may also have to commit to making Brexit work, which poses particular problems in Scotland, where there was a clear majority for Remain.
- 7 It is also important that the Scottish Parliament, along with the Welsh and Northern Ireland assemblies, be able to scrutinize the process. This may pose difficulties given the confidential nature of diplomacy and the fact that EU membership is a reserved matter.

Capacity of the Scottish Government

- 8 Establishing new frameworks for all of the areas currently covered by EU legislation is a major task, particularly as the timing of the transition from the EU frameworks to new Scottish ones will need to be simultaneous across a range of different policy areas. It is a task which is not intrinsically different in nature between the UK Government's responsibilities in relation to England and the Scottish Government's responsibilities in relation to Scotland but the civil service resources available to the Scottish Government are much more limited. The total number of staff employed in the core Directorates of the Scottish Government has remained broadly constant at between 5000 and 5500 for a number of years, despite substantial increases in the responsibilities of the Scottish Government.

- 9 The work involved in preparing proposals for new frameworks to replace EU frameworks, consulting and legislating on them, and establishing any necessary implementation arrangements would be very substantial at any time; but the period between now and the likely expiry of the EU frameworks is also one during which the Scottish Government will be absorbing the major tasks associated with increased fiscal and welfare powers. There must be a substantial risk that the capacity of the relatively small numbers of senior staff who will be responsible for leading the work involved will be strained to the point that the quality and sustainability of new frameworks to replace EU frameworks is compromised. The effect of that in relation, for example, to the environment or to the agriculture and fishing sectors of the economy could be a matter of concern.

Legal aspects of Brexit

- 10 Section 2 of the Scotland Act 2016 has enshrined the main part of the Sewel convention in statute by adding the following proviso at the end of section 28 of the Scotland Act 1998 on the powers of the UK Parliament to legislate on matters that fall within the competence of the Scottish Parliament because they are not reserved to the UK Parliament: “[8]But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”
- 11 The Brexit process will require the UK Parliament to repeal the UK legislation that gives direct effect and primacy to European Union law in the UK. As this is a reserved matter under Schedule 5 to the Scotland Act 1998, then, subject to the proviso below, it should not need the consent of the Scottish Parliament to do so. If the UK Parliament Brexit legislation seeks to go further and to disapply, amend or replace for the UK any of the EU legislation that affects matters that are not reserved to the UK Parliament (eg on fisheries in the Scottish zone, agriculture, the environment, private international law, higher education) then section 28(8) of the Scotland Act 1998 provides that this should not “normally” happen without the consent of the Scottish Parliament.
- 12 It would seem therefore that, if the Sewel convention as now enacted into the Scotland Act is to be fully respected, then the Scottish Parliament would have to consent to any changes in the contents of the EU laws that were operative in Scotland prior to the date of Brexit on any matter that is not reserved to the UK Parliament. However, full respect of the convention is not guaranteed by law as the legal requirement is tempered by the word “normally”. Therefore the UK Parliament merely has to assert that its failure to obtain the consent of the Scottish Parliament to change the content of EU laws on non-reserved subject matters as they apply in Scotland post-Brexit was abnormal. Such abnormality may be legally justified on many grounds as it is hard to see any court in Scotland or the UK Supreme Court requiring a reason for the abnormality.
- 13 It can be argued that the Brexit legislation to be passed by Westminster would require a Legislative Consent Motion of the Scottish Parliament. The Scotland Act, as amended by the Act of 2016, provides that “the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”. It was accepted that the 2016 Act itself required an LCM because it altered the competences of the Scottish Parliament and Government, as any Brexit legislation would almost inevitably do. Nevertheless, Westminster could legislate without such an LCM on the ground that the circumstances are not ‘normal’. It is not clear whether or how that could be tested as a matter of law.

EU laws post-Brexit

- 14 Under the terms of the present devolution settlement Scotland will have the opportunity after Brexit to decide how much EU law it wants to keep in place for Scotland in non-reserved matters such as the environment, fisheries, agriculture and private international law. Of course some of these laws operate on a reciprocal basis and, relocated outside of the EU, Scotland would lose the reciprocal benefits. So Scotland could choose to continue to align its rules on jurisdiction in civil and commercial matters with the Brussels I Regulation and continue to offer fast track recognition and enforcement of judgments to other EU Member States using the same rules of jurisdiction, but the other EU Member States would not be obliged to recognise and enforce Scottish judgments. In order to secure ongoing reciprocity with other EU Member States the Brexit deal and/or subsequent international negotiations by the UK would have to negotiate a special arrangement for the whole of the UK and the EU, or perhaps just for Scotland and the EU.

- 15** If Scotland continues to mirror EU laws post-Brexit it would make it easier for Scottish firms to continue to offer their services in the rest of the EU. One problem may be that financial services – a key element of the Scottish economy – is a reserved matter and, therefore, the UK Parliament may choose to regulate financial services in a way that does not conform with EU law (if the UK is not a full participant in the single market after Brexit), so making it harder for Scottish financial services to do business in the EU. The prospect of UK law deviating from EU law in this area creates a difficult dilemma for Scotland. Devolution of financial services and business associations to the Scottish Parliament may enable Scottish businesses to sell their services more effectively in the EU but it might make it harder to sell those services in the rest of the UK (at the moment a larger market for Scottish financial services than the rest of the EU).
- 16** Another issue for Scotland is that there are international obligations that affect certain areas that were previously within EU competence but are not reserved matters (or not wholly reserved matters) within the UK. One example is fishing. It is only fishing in the Scottish zone that is devolved to Scotland by the Scotland Act and therefore the UK Government still has competence to negotiate on fishing internationally for the UK as whole, including Scotland, and the UK Parliament has the competence to legislate for fishing matters not in the Scottish zone. Thus post-Brexit the international negotiations with Iceland, Norway and the EU (and no doubt other partners as well) will be very important to determine limits on fishing in order to conserve fish stocks which move around the North Sea and Atlantic Ocean.
- 17** The circumstances surrounding Brexit will have an impact on Scottish public funding in a number of ways, most conveniently distinguished as indirect and direct.
- 18** The indirect route works through the effects on the Scottish economy and the resulting tax productivity of devolved taxes (e.g. income tax) and assigned taxes (share of VAT). Under the 2016 fiscal framework, revenue performance relative to the UK per capita average will determine the extent to which such tax revenue compensates for the indexed deductions from the Barnett-controlled block grant. The fiscal framework provides Scotland with protection until 2022/23 against the tax effects of UK population increasing faster than Scottish population. Even before the Brexit referendum there were concerns about how the decline of the oil sector would affect income tax revenues, given the proportion of Scottish income tax that comes from the top of the income distribution. To this is now added the possible effects of Brexit on the Scottish financial sector, especially via the passporting of financial services, which enables UK based financial sector companies to trade in specified services throughout the EEA¹.
- 19** The Scottish Parliament is now vulnerable to fiscal risks that did not exist from 1999 to the present; an early sign is the delay in publishing the 2017-18 Draft Budget. Although difficult to quantify, deterioration in relative economic performance would put further pressure on public services.
- 20** Perhaps the greatest uncertainty relates to what effect Brexit will have upon UK economic policy. Since 2010 there has been ambiguity about the extent to which austerity has been a way of correcting a chronic budgetary position and the extent to which it was designed to achieve a smaller state. Policy could now go in either of two directions. Some prominent Brexiteers envisage a more free-market economy outside the EU, to be achieved through deregulation and lower taxation. However, the limits of monetary policy are being reached and expansionary fiscal policy may be used, outside the constraints of the EU Stability and Growth Pact. It is therefore unclear whether the near future will be marked by additions or reductions to the Scottish block via Barnett consequentials. In the background is the question of whether the Barnett formula will come under greater pressure from the UK Government and Westminster Parliament. This key element of the funding system remains non-statutory, its operation lacks transparency, and its legitimacy is regularly questioned. The 2016 fiscal framework, negotiated on the eve of the Brexit referendum, is only an agreement between two governments and could be revisited.

¹ [p://www.bankofengland.co.uk/pru/Pages/authorisations/passporting/default.aspx](http://www.bankofengland.co.uk/pru/Pages/authorisations/passporting/default.aspx)

- 21** The direct consequences of Brexit relate to both taxation and public expenditure. Since the 1970s discussions on UK devolved taxes have been constrained by EU law and regulations in relation to tax harmonisation and state aids. The main examples are Corporation Tax and VAT not varying within a Member State, even though they can – within prescribed limits – vary between Member States. These rules led to the prolonged controversy about Corporation Tax flexibility in Northern Ireland, with off-setting reductions in its Barnett-controlled block accepted by the European Commission as satisfying the state-aids constraint.
- 22** Brexit abolishes these constraints. However, a predictable development will be the UK Government reducing Corporation Tax, thereby limiting the benefit a devolved government might gain from lower rates. Regarding VAT, the removal of EU constraints will lead to intensified lobbying to further narrow the UK VAT base. Although EU restrictions were used as arguments to prevent devolution of VAT, there are powerful administrative and compliance reasons not to differentiate VAT within the UK.
- 23** On the expenditure side, the direct effects relate to spending hitherto financed by the EU, responsibility for which will be repatriated from the date when Brexit occurs. The most important items relate to agriculture, cohesion policy (regional and social funds)² and research. A prior issue will be whether these functions revert to UK government or to the devolved administrations. There is a distinction between spending which mainly depends on the characteristics of the area receiving the funding (as for agriculture) and that which depends on the performance of recipient institutions (as for university research). Scottish spending is significantly higher than the UK average in these areas, though the published data do not show the proportion that is EU-funded. However, it is known that Scottish farm incomes depend more heavily on subsidy than those in England, and that Scotland performs well in EU research funding.
- 24** Once EU funding ceases, the main options will be: (a) do not replace funding; (b) fund these activities directly from the UK Treasury; (c) fund these activities from the UK Treasury via earmarked allocations (Annually Managed Expenditure) outside the block; or (d) transfer all or a proportion of base-year spending into the Barnett-controlled block. Options (b) and (c) imply

policy control by the UK Government. Options (a) and (d) imply a degree of policy control by the Scottish Government, while creating competition for resources between these additional functions and existing block functions such as education and health. This would run against the logic of the distinction between Departmental Expenditure Limits and Annually Managed Expenditure which puts more volatile items into AME so as not to disrupt the multi-year planning of DEL.

- 25** The 2014–15 per capita index of ‘Total expenditure on services’ in Scotland was 116 (UK = 100), with higher numbers for the sub-functions of ‘Enterprise and economic development’ (261), ‘Science and technology’ (118) and ‘Agriculture, fisheries and forestry’ (212) (PESA 2016). Further disaggregation is required to establish the extent of EU funding behind these numbers.

Single Market Goods & Financial Services

- 26** Access to the Single Market will be one of the most significant issues in discussions between the UK and the EU. In 2015 trade with the EU represented 44.6% of UK exports and 53.2% of UK imports, as reported by the Office for National Statistics (ONS). Overall the UK had a trade deficit of goods of £77.0 billion in 2014 and a trade surplus of £15.4 billion in services³. The ONS also recorded that the UK had a net trade surplus of £27.8 billion with non-EU countries in 2015. The net trade deficit with EU countries led to some on the Leave side of the Referendum debate to suggest that the EU would be likely to seek to reach a deal with the UK on access to the single market to protect their domestic producers.
- 27** Failure to reach an agreement on access to the Single Market, however, could leave key areas of the Scottish economy under pressure. For example 40% of Scotch whisky exports by volume are to EU countries. If tariffs were introduced on alcohol exports this could impact significantly on exports in this field. Overall it is also estimated that Scotland operates an overall trade surplus with the EU, although it is difficult to reach a precise figure on this as UK based companies are not required to break down their export figures based on which plant within the UK has produced the goods concerned. The Scottish Government reported that exports from Scotland to the EU totalled £11.6 billion in 2014, around 46% of international exports. If the rest of the UK were regarded as an export market then £48.5 billion was exported to England, Wales and Northern Ireland⁴.

² http://ec.europa.eu/regional_policy/sources/docgener/informat/basic/basic_2014_en.pdf

³ Office for National Statistics:

<http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/re/i/international-transactions/outward-foreign-affiliates-statistics/how-important-is-the-european-union-to-uk-trade-and-investment/-sty-eu.html>

⁴ The Scottish Government: <http://www.gov.scot/Topics/Statistics/Browse/Economy/Exports/ESSPublication>

- 28** More than half of the world’s largest financial firms have their headquarters in the UK. Scotland hosts a number of internationally important financial institutions including RBS, Aberdeen Asset Management and Standard Life as well as the headquarters of Tesco and Sainsbury’s Banks. The financial services sector contributes more than 7% of the UK’s and Scotland’s GDP and employs around 85,000 people directly in Scotland (and a further 70,000 are reported to be employed in Scotland in associated professional services)⁵.
- 29** The EU has established a single market in financial services which rests upon the idea of passporting rights. Financial market regulation is based on the principle of home state control. It is principally the home state in which a financial institution is authorised that is responsible for supervising this institution’s compliance with the EU’s compendious financial services ‘single rulebook’. Financial institutions that have a ‘home’ in an EU Member State are able to provide services within other Member States and also to set up branches there. If these passporting rights were lost, this would create an incentive for financial institutions that rely heavily upon their passports to consider changing their home from the UK to a different EU Member State.
- 30** Some EU financial services legislation contains ‘third country’ provisions that may confer passporting rights on third country firms. For example, from the start of 2018, passporting rights may be conferred upon non-EU banks which are registered in a jurisdiction that has been deemed by the European Commission to have an equivalent legal and supervisory system in place. The third country passporting provisions within the EU Directive on Alternative Investment Fund Managers are yet to be activated and there are no similar provisions within the EU’s UCITS Directive (Undertakings for Collective Investment in Transferable Securities). Also, we know from experience that the process of recognising third country regimes as equivalent to that of the EU is complex and frequently slow. There is also potential for such determinations to be politicized⁶. Resulting delays and uncertainty may consequently deter firms from relying upon third country passporting rights.
- 31** If the UK were to become a member of the European Economic Area (EEA)⁷, UK-headquartered financial institutions would continue to enjoy access to the European single market (however, the UK would lose its seat on the European Banking Authority). The UK, as the home state, would be obliged to continue to supervise compliance with the EU’s single rulebook. The EEA is a dynamic legal order that incorporates new EU legislation that is EEA-relevant within the annexes and protocols to the EEA Agreement. Annex IX of the EEA Agreement lists legislation in the area of financial services that is considered to be EEA relevant. It also contains any adaptations to this legislation that is to apply in relation to one or more EEA states. There are few adaptations and those that do exist are of extremely limited significance. The process of incorporating EU financial services measures into the EEA and negotiating adaptations to them can be slow, as recent experience with the EU’s new financial supervisory framework shows⁸. This has led some on the Remain side to speculate that financial services markets within the EEA could fracture over time, thereby creating the danger that “UK financial services (could become)... increasingly isolated” even within the EEA.⁹
- 32** Finally, the EU plays a key role in convincing non-EU countries to recognise that EU law provides an equivalent or comparable level of protection to their own (known as ‘substituted compliance’ in the United States). Third country equivalence determinations make it easier for EU providers of financial services to sell their products outside of the EU. If the UK were to withdraw from the EU and does not join the EEA, it would bear the burden of entering into protracted and complex bilateral equivalence discussions with many third countries. Ongoing negotiations within the framework of the Transatlantic Trade and Investment Partnership (TTIP) illustrate how fraught discussions about market access and regulatory cooperation in financial services still are¹⁰.

⁵ HM Government:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517415/treasury_analysis_economic_impact_of_eu_membership_web.pdf

⁶ The European Commission will act by way of the so-called ‘Examination Procedure’ laid down in article 5 of Reg. 182/2001 which allows Member State representatives to block a Commission proposal by a qualified majority of votes.

⁷ This also requires membership of the European Free Trade Area (EFTA).

⁸ EFTA at: <http://www.efta.int/EEA/news/EEA-adaptations-EU-financial-supervisory-system-128596>

⁹ Souta (British Influence) at: http://www.britishtinfluence.org/what_could_brexit_mean_for_the_financial_services_sector

¹⁰ See L. Quaglia, ‘The “Tug War” About the Inclusion of Financial Services in TTIP’ (FEBS Policy Brief, 2016) at: <http://www.policy-network.net/uploads/media/154/9342.pdf>.

Free Movement

- 33** EU membership guarantees the right to free movement of workers for EU (and EEA) countries; as well a range of rights for EU nationals resident in other member states. Brexit would affect these two sets of rights in significant ways. However, the type and extent of these effects will depend on what sort of deal is negotiated, and in particular whether the UK remains within the Single Market.
- 34** *Free movement rights:* EU and EEA nationals have the right to move to another member state for the purpose of work. It is estimated that net migration to Scotland from EU countries totaled around 86,000 between 2004-2014, constituting around half of net migration from overseas (International Passenger Survey). Most EU nationals work in Hospitality and Catering; Administration, Business and Management; Agriculture; and Food, Fish and Meat Processing (International Labour Force Survey).
- 35** If the UK negotiates a settlement that involves leaving the Single Market, then a (future) UK government would be free to impose limits on EU/EEA immigration. This might imply (a) treating EU nationals as equivalent to non-EU nationals, who currently enter via the 5-Tier system (Highly Skilled, Skilled with Job Offer, Students, Temporary Workers, and Family-Related); or (b) adopting a less onerous/restrictive scheme for admitting EU nationals meeting specific requirements, (such as a job offer, or linked to qualifications, skills, or salary. Option (b) would be beneficial to Scotland, especially if it builds in some autonomy in, for example, defining occupational shortages, or determining the criteria for admission based on a separate points-based system (as indeed was proposed by Michael Gove during the referendum campaign). It may be better to match EU nationals to vacancies and address occupational and skills gaps. However, it would imply more onerous administrative arrangements and less flexibility for EU nationals, and would be likely to lead to an overall reduction in the attractiveness of Scotland as a destination for EU migrants. Under a points or skills based immigration system careful consideration would also need to be given to the rights of other members of the household such as partners or dependent children to have right of access to the UK.
- 36** The second possible scenario is that the UK remains in the Single Market but negotiates some sort of cap or temporary stop to EU immigration. The most likely model for such an agreement would be either (a) an annual cap, such as the one currently being discussed between the EU and Switzerland, which might involve imposing limitations on the employment of EU nationals in specific sectors or regions; or (b) an emergency stop, building on provisions already existing in the EEA agreement, involving a stop or cap of up to 7 years justified by ‘serious economic, societal or environmental difficulties’ (EEA agreement), or ‘serious disturbances on the labour market’ (as specified in the February 2016 European Council declaration). Such a stop would be likely to be combined with provisions to admit EU nationals with skills or in occupations in which the UK faces shortages. Both options would be complex to administer, especially given the current lack of registration system for EU nationals living and working in the UK. Such a stop may act as a deterrent to potential EU immigrants, even including those who were not subject to the provisions. However, the advantage of this arrangement would be that it would be of limited duration, implying that after 7 years (or whatever the length of the stop) Scotland could once again benefit from free movement of immigrants.
- 37** In all scenarios involving limiting EU mobility, it is likely that provision would be made to continue to recruit EU migrants to meet serious skill/occupational shortages. However, the extent of such flexibility may be contingent on the political context: if the net migration target and the focus on aggregate flows are retained, the UK government may be reluctant to grant multiple exemptions to any restriction of EU immigration.
- 38** *Residence rights:* the 2004 EU Citizens Directive grants a right of permanent residence for all EU citizens and their family members who have resided in the host Member State for a continuous period of five years. This right should not be subject to any conditions. This implies at the very minimum that those who have been continuously resident in the UK for 5 years prior to the date of the UK’s exit of the EU would qualify for permanent residence. The 2011 Scotland Census suggested there were around 135,000 EU nationals resident in Scotland at that time, including 76,700 from the A-8 countries that joined in 2004, of which the greatest number (55,000) were Polish nationals, followed by Irish and German.

- 39** The UK Government has been reticent about making a clear commitment regarding the rights of EU nationals resident in the UK. This may in part reflect concerns about setting a ‘cut-off’ point for when an EU national would need to have entered the UK in order to enjoy this right. Given that Brexit negotiations may last 5 years or more, this would imply that all EU nationals currently resident in Scotland (and who continue to stay) would qualify for permanent residence. EU nationals entering between now and, say, 2017 or 2018 might still qualify for such a status. If negotiations, however, were to be triggered in January 2017 and last just 2 years, then it is possible that only those resident since January 2012 would qualify.
- 40** The current lack of clarity regarding the rights of EU nationals resident in the UK has created uncertainty amongst EU nationals in Scotland, as well as their places of work and local communities. While residency rights are not a devolved competence, the rights of EU nationals while the UK remains in the EU are clearly set in the 2004 Directive, and these provisions could be clearly communicated to EU residents.

Research & Higher Education

- 41** The RSE recently produced an Advice Paper that considered the implications for science and research of leaving the European Union¹¹. This paper recognised that collaboration across the EU member states, allied with the free movement of people, had contributed significantly to the success of UK science and research in recent years. Putting mechanisms in place to ensure that the collaborative nature of science and research across Europe is maintained was strongly recommended.
- 42** It was noted that current UK immigration rules are seen to act as a barrier to the recruitment of international students and researchers from outwith the EU. If similar measures were to be put in place with regard to current EU students and researchers this has the potential to impact negatively on UK research and the ability to translate such research for the benefit of the economy.
- 43** Limiting the rights of EU students and researchers freely to move to the UK to study and to work is also likely to have a negative impact on the ability of the UK to negotiate continued partnership in EU wide research programmes such as Horizon 2020 (H2020) – the recent experience of Switzerland is a case in point. Following a referendum to place restrictions on freedom of movement Switzerland was suspended from full association with H2020. Switzerland has now been given till 2017 to accept free movement of EU citizens or it will no longer be fully associated with H2020 and thus not be entitled to any EU funding for any collaborative projects that it becomes involved in.

Opportunities from Brexit

- 44** While there are many challenges and uncertainties about the future relationship between the UK and the EU, leaving potentially opens up more flexibility for the UK in certain areas which could be seen as presenting opportunities.
- 45** In the field of taxation there would be greater flexibility in the ability to vary taxes. For example a far wider range of options would be available to set the rates of VAT for particular classes of goods and services, including more ability to set particular goods at zero rate. It would also be open to the UK to explore and introduce other forms of transaction tax other than VAT. Any move towards narrowing the base of taxation raised by VAT would have to be balanced with alternative taxation measures. In the absence of such alternative taxes there would be further pressure on the resourcing of public services.
- 46** Corporation Tax could be more easily devolved to the nations and regions of the UK, should the UK Government wish to do so. While recent agreement was reached with regard to Northern Ireland on Corporation Tax, the UK Government had to satisfy the Commission that the transfer of powers did not amount to state aid. Devolving Corporation Tax to the nations and regions of the UK would result in added complexity to the taxation system and could lead to a race to the bottom in Corporation Tax levels. It could also lead to further pressure on the maintenance of the sharing of UK revenues through the Barnett formula and other balancing mechanisms.
- 47** Advocates of Brexit promoted the case that the UK could act more nimbly in negotiating trade agreements with countries internationally on a bilateral basis than the EU has been able to do as a trading bloc. They also point to the balance of payments which show that the UK runs at a deficit with the other 27 countries of the EU, but at a small surplus with the rest of the world.
- 48** Some also point to the bureaucratic nature of some EU regulations as holding development back. An example of this could be the regulations that apply to the approval of GM crops for cultivation in the EU. The process is lengthy and costly and to date only two crops have been approved for cultivation. This potentially puts European researchers and bio-technology companies at a competitive disadvantage compared to international companies in this field.

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¹¹ RSE, July 2016: https://www.royalsoced.org.uk/cms/files/advice-papers/2016/AP16_16.pdf