

Background to the announcement made by the First Minister

(1) The 2014 independence referendum:

People in Scotland were told in the independence referendum in 2014 that a No vote would mean we stay in the EU.

For example, arguing for a no vote, Ruth Davidson MSP, said: *"It's disingenuous to say No means out and Yes means in, when actually the opposite is true. No means we stay in. We are members of the European Union."* STV Referendum Debate, 2 September 2014

(2) The mandate for another independence referendum:

The SNP formed a government after being elected last May with the biggest constituency vote of any party since devolution on a clear commitment in its manifesto:

"The Scottish Parliament should have the right to hold another referendum if there is a significant and material change in the circumstances that prevailed in 2014, such as Scotland being taken out of the EU against our will."

(3) The EU referendum on June 23 2016:

People in Scotland voted by 62 pc to 38 pc (a margin of 24 points) to remain in the EU.

There was a majority for remain in every single local authority area.

(4) On June 24 the FM made it clear an independence referendum was on the table:

"Scotland faces the prospect of being taken out of the EU against our will. I regard that as democratically unacceptable."

"I want to make it absolutely clear that I intend to take all possible steps and explore all options to give effect to how people in Scotland voted - in other words, to secure our continuing place in the EU and in the single market in particular."

"If (the Scottish) parliament judges that a second referendum is the best or only way to protect our place in Europe, it must have the option to hold one within that timescale."

(5) The Scottish Parliament:

On June 28 the Scottish Parliament overwhelmingly supported – 92-0 – a motion welcoming the result in Scotland and mandating the Scottish Government to engage with the UK Government and European partners, and to explore the options to

protect Scotland's relationship with the EU, place in the single market and the social, employment and economic benefits that flow from that relationship.

On January 17 the Scottish Parliament voted by 86-36 to support continued membership of the Single Market.

On February 7 the Scottish Parliament voted by 90-34 against the passage of the Brexit Bill at Westminster to enable the triggering of Article 50.

(6) The UK Government's commitment to seek agreed outcomes and objectives for article 50 negotiations has been comprehensively broken:

- The new Prime Minister Theresa May made her first official visit to Scotland on the 15th July, in her first week in office. Speaking publicly following her meeting with the First Minister, the Prime Minister stated again in crystal clear terms: *"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."*

- The Joint Ministerial Committee:

A plenary JMC meeting on 24 October 2016, the Prime Minister and the the heads of the devolved governments agreed to establish a European Negotiations sub-committee, JMC(EN), with terms of reference to "work collaboratively" to, among other things:

- seek to agree a UK approach to, and objectives for, Article 50 negotiations; and
- provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations...

There have been four meetings of JMC(EN). In none of them has the UK Government proposed nor sought agreement to a UK approach which would ensure that the outcomes favoured by all four governments are adequately represented and pursued in the negotiations. Ministers from all three devolved administrations have expressed their unhappiness with the process.

(7) Scotland's Place in Europe – the Scottish Government's compromise proposals have clearly been rejected.

The Scottish Government published compromise proposals on December 20. Reluctantly the Scottish Government offered proposals that would mean Scotland leaving the EU. The document made the clear case for continued membership of the European Single Market, and proposed that either the UK as a whole should remain in the European Economic Area and therefore in the European Single Market, or in the alternative that Scotland should be able to take a distinct route and itself remain in the European Economic Area.

With no discussion or prior warning the Prime Minister dismissed the compromise options set out in the paper in her speech on January 17 when she announced the UK was leaving the Single Market. The views of the devolved administrations including Scotland were ignored.

At the meeting of the JMC (EN) on the 19 January – The Scottish Government presented *Scotland's Place in Europe* and it was agreed that further bilateral engagement would take place between UK and Scottish Governments to better understand those proposals.

At the JMC Plenary in Cardiff on the 30 January the First Minister made clear to the Prime Minister her mounting concern that the promise of full engagement and involvement in determining a UK-wide approach to Article 50 constituted little more than lip service.

The Prime Minister responded to that concern, echoed by the Welsh Government and Northern Ireland Executive, with a commitment that work to consider proposals of devolved administrations was ongoing, and would be intensified ahead of triggering Article 50 and continued at the same pace thereafter.

(8) “Intensification”

There has been a range of meetings between the Scottish and UK Governments to discuss Scotland's Place in Europe. At none of these meetings has there been any commitment by UK Ministers to take forward the Scottish Government's compromise proposals. The most recent Ministerial meeting on the proposals between the Secretary of State for Exiting the European Union David Davis and Scottish Government Minister Michael Russell took place on 22 February. There was no commitment at this meeting to take forward the Scottish Government's proposals.

(9) The threat to the devolved settlement

In the Supreme Court case on whether the UK Government could trigger Article 50 without Parliamentary approval, the UK Government went out of its way to argue that the Sewel Convention (which requires the consent of the Scottish Parliament to Westminster legislation about devolved issues) was merely “a self-denying ordinance” and never intended to be enforceable in the courts.

The writing of the Sewel Convention into law by the Scotland Act 2016 changed nothing and was legally worthless, as the Scottish Government and others had always warned.

The UK Government appears to be considering redrawing the boundaries of reserved powers in a way which would result in a massive centralisation of power in Whitehall. It has repeatedly refused to confirm that there is no intention of reserving currently devolved areas like agriculture, fisheries and environmental protection, nor of attempting to impose UK-wide regimes.