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BREXIT and the Scottish Financial Services Sector



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POLICY BRIEF

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I Introduction

This paper explores the potential impact of BREXIT on the Scottish financial services sector. For the purpose of this discussion the assumption is that Scotland remains part of the UK.

At present there is clarity neither as to what BREXIT will mean for the UK nor how this will play out for the UK financial sector. There is also a good deal of uncertainty regarding Scotland's future constitutional arrangements with regard to relationships both with the UK and with the EU. Given the extent of these uncertainties, we decided to omit reference to the possibility of a second independence referendum and what that might mean for the sector. That could be another topic for another day.

The paper is structured as follows. First we summarise the key issues related to the financial sector for the UK as a whole. Next we turn to the Scottish sector, first providing an overview of the sector and then considering the critical issues so far as each major component of the Scottish sector is concerned. Finally we summarise our conclusions. We note possible 'glimmers of hope' for the sector, related to:

1. A possible 'soft' BREXIT
2. A special deal for UK financial services on skilled non-UK labour or, failing that
3. An analogous special deal for Scotland

II The Impact on the UK Financial Services Sector

A great deal has already been written and said about the possible impact of BREXIT on the UK financial services sector, but it is clear that most of this is, inevitably, conjecture. We do not know what BREXIT will mean, nor when it will actually come to pass and whether there might be special arrangements for the financial services sector and/or an extended transition period.

At the time of writing, the UK government has not set out its priorities in full; nor have formal negotiations started. Senior figures in the industry have been meeting Ministers and representative bodies have been making proposals, but the vacuum of knowledge on which proposals can be based has led to only very generalised commentary and discussion. The implication of statements from the Prime Minister and key BREXIT Ministers is that priority will be given to limiting freedom of movement and hence immigration, rather than continuing access to the single market. Ministers would appear to be willing to sacrifice the latter for the former. How flexible this view might be will only be seen as discussions continue.

It is reasonable to characterise the mainstream view from within the UK financial industry as favouring a clear and stable relationship between the UK and EU, and one which retains as many features of the current relationship as possible, since that implies as little disruption as possible and maintains open markets within the EU as it is currently configured. In sum the sector would prefer a 'soft' BREXIT.

There are, however, supporters of a more radical break with established practices and a move towards putting the UK/EU relationship on a footing more similar to that of non-European countries. This view is justified principally on the grounds that it will free the UK financial industry from what is perceived as heavy-handed EU regulation. This minority view favours a 'hard' BREXIT. Holders of this view appear to accept that an outcome in which the UK is not

part of EU single-market frameworks, like the passporting regime discussed below, is justified as such participation would entail subjection to an unacceptable degree of EU oversight and regulation.¹ Holders of this view might also see access to passporting via EEA/EFTA membership as unacceptable; as this would not only involve being subject to that oversight/regulation (and probably some payment to the EU) but also having no say in how that regime would change over time.

What Matters Most?

The key factors for the UK financial services industry appear to be the issue of '*passporting*' and *access to non-British staff*. Passporting is the arrangement whereby British companies in the sector are permitted to trade across the whole of the single market and also foreign firms can achieve that right by establishing passporting via links with UK companies. It has been estimated² that 5,500 financial service companies' passport their services out of the UK and into the EU; while some 8,000 passport services into the UK from the EU.

Passporting is enshrined for members of the EU. It is also feasible, with some caveats, for members of the EEA and other countries making special deals with the EU. But these alternative forms of access come at a cost. First there is an actual financial cost – a payment to the EU is required. Second the 'associate' passport members have no influence whatever over the rules and regulations. Any changes have to be accepted on a 'take it or leave it' basis.

The implication of recent statements by the Prime Minister and her BREXIT Ministerial team is that they are not minded for the UK to make any payments to or trade-offs with the EU to retain access to the single market. It could be assumed that this would also apply to passporting. That could have major implications for the sector across the UK.

¹ <https://www.ft.com/content/cd29621b-b2ff-3151-9941-e7bacfa3f870#myft:list:page>
"Shore Capital hopeful of EU regulation roll back"

² Financial Times 25th September 2015.

The position on non-UK personnel is also uncertain, and becoming increasingly confused. At present there are very large numbers of highly skilled (and highly paid) foreign staff in UK financial sector companies, and in foreign companies based here. These people come from elsewhere in the EU and more widely. We do not know if those already here would all be permitted to stay, and if so on what basis. Nor do we know whether further foreign staff could be recruited post BREXIT and again what conditions might apply. Already there are some anecdotal stories of this causing problems over recruitment and retention.

A key issue for many domestic and foreign financial sector companies in the UK will be the question of access to skilled staff. These skills are utterly critical to companies in many elements of the sector, especially the high value-added elements. Their presence in the UK adds substantially and directly to GDP and exports; and is also a key basis for attracting other elements of the sector and other business and professional service organisations. The employees of these companies are very (to some incredibly) highly paid; and that means that they pay very large sums in income tax to the UK exchequer. Losing such high skill components of the sector would mean major direct and indirect impacts on the economy and also leave a large hole in the Government's finances.

For which components does BREXIT matter most?

The EU single market is, on the face of it, more important to the UK investment banking industry than to its retail and commercial counterparts³. This is not surprising, since retail banking and much of commercial banking is jurisdiction-limited, for the most part. In other words, services are not sold across EU internal borders. It is estimated, nonetheless, that between a fifth and a quarter of London's investment banking business is dependent on access to the EU market (ibid.).

³ City's special relationship with EU finance system revealed; Banks that use UK as gateway to Europe make profits of £50bn and have more than £7.5tn of assets (Financial Times, 25 September, 2016)

However, retail banking may not be immune from impact. It is reported⁴ that consumer banking, in several respects, could be detrimentally affected by BREXIT: some 70% of credit cards are provided from the UK to the EU and acceptance of UK credit cards in other EU countries, at the transaction level, could become limited. It is estimated that some £20bn of services a year are exported by UK banks to the EU and that some wealth management services will simply become un-exportable (ibid.).

For all financial services providers, the issue of 'passporting' is central and this has been the focus of most industry commentary and analysis. It affects all sectors, but particularly insurance, banking and asset management⁵. Not all companies will be affected – much depends on the nature of their particular businesses and not all businesses rely on 'passporting'. But a lot of insurance business is based in London because of the ability to passport services from there to the rest of the EU.

As discussed above, under a 'hard' BREXIT, passporting between the UK and the EU is likely to come to an end. Providers will need then to consider whether they should set up new operations in other EU countries, in order to retain passporting rights, or find some other way of maintaining their customer relationships.

Under a 'softer' version of BREXIT, passporting rights could be maintained. But, at the time of writing, this looks unlikely.

This is not a binary choice, of course, and in such a complex negotiation there may be special dispensations and exemptions. But speculating on their nature and likelihood is not possible until some principles are established and this has yet to occur. The Chancellor of the Exchequer, for example, has floated the

⁴ 'Confidential report reveals Brexit threat to retail banking', Financial Times, 26 September, 2016

⁵ 'Brexit: assessing the impact on asset managers' - Clifford Chance Briefing Note, April 2016 https://www.cliffordchance.com/briefings/2016/07/brexit_assessingtheimpactonassetmanagers.html

possibility that some people working in financial services could be given special treatment within what is expected to be a tighter immigration control policy⁶. As noted above that would be most welcome to components of the sector and might be necessary in order to retain key and high value-added and high skill/high pay sub-sectors in the UK.

The possibility that passporting rights could be maintained on the basis of 'equivalence' has been mooted, where a jurisdiction demonstrates that it operates the same standards of regulation and, on that basis, is permitted to exercise passporting rights. The drawbacks of this, which are not trivial, are that (as with EEA membership) the need to comply is not associated with any right of influence over the rules, so it is a 'take it or leave it' offer; that equivalence status can be revoked; and that it is not available for insurance⁷ and mutual funds.

It is not possible to say what BREXIT will mean for the City of London's main financial markets. Commentators have homed in on the possibility that the EU will require euro-denominated derivative transactions to be managed on exchanges based, geographically, in the EU, as that requirement has been mooted before. On the other hand, it is suggested that cash foreign exchange trading relies on liquidity, where London is dominant, and does not depend on clearance-based risk management, but is settled in the London-based CLS bank. So the precise impacts of BREXIT on these various clearing houses and exchanges are not knowable at this stage.

It is uncontentious to observe that the UK financial services industry is a big part of the UK economy and a significant asset for the EU. So there will be room for give and take in any negotiation. But the positive case for BREXIT, for financial

⁶ 'Hammond vows to protect top bankers from EU migration curbs', Financial Times, 8 September 2016

⁷ London's insurers rush to cover the Brexit bases: Industry is wary of losing 'passporting' rights but confident it will adapt, Financial Times, 29 September 2016

services, rests on the proposition that access to other markets, like India and the US, will be improved, even though such access is within the gift of the authorities in the market concerned. If that aspiration is realised, then it might generate profits for UK-domiciled companies, but it won't create significant numbers of jobs in the UK, since the actual delivery of the services will take place locally.

The other aspect of the pro-BREXIT argument is that the UK can change its regulatory framework in such a way as to make it more attractive to foreign companies than competing jurisdictions. Again, if this can be achieved, it may attract assets and transactions, but not necessarily large numbers of jobs. Further, looser regulation could imply attracting higher risk activities – and post-2008 we should be wary.

III Scotland's financial services industry – in brief

Scotland's financial services industry is one of the nation's most important business sectors, as a component of GDP, a generator of wealth, a very substantial employer and a competitive player in international markets. It is a diverse industry that includes *savings, loans, insurance, pensions, investment management, and asset servicing and professional services*.

The financial services industry in Scotland contributes around £8 billion a year to the Scottish economy and employs around 90,000 people directly and a further 90,000 indirectly. Taken as a whole, this is roughly a twelfth of the total Scottish workforce. The principal centres of employment are Edinburgh and Glasgow and there are also significant operations in Aberdeen, Dundee, Perth and Stirling.

The industry has developed over centuries and has a strong international reputation. There are risks associated with BREXIT but, historically, they are not the largest that the industry has faced. While it is not easy to see new opportunities arising from BREXIT, equally the threats are not, given the

diversity of the sector, existential. Perhaps the biggest threat is the risk it creates for the UK economy as a whole, since a thriving UK economy drives demand for UK financial services.

For the purposes of assessing the likely effects of BREXIT, there are three ways of categorising the activities and operations that make up the financial services industry in Scotland:

- *by sector*, since different kinds of financial services will be affected differently;
- *by location* and ownership, for regulatory purposes, since regulation is a central factor in company structuring and decision-making; and
- *by market*, since protecting and expanding market share is a main driver for a lot of company activity.

These three categories overlap, however. RBS, for example, is a bank with most of its customers in the UK, so it is perhaps less concerned than some others about the delivery of services directly to other parts of the EU. It is registered in Scotland for regulatory purposes, so it is regulated by the UK authorities and is perhaps less concerned about how it might be regulated in other parts of the EU than, say, a bank with subsidiaries in several other countries. And, as noted above, its principal market is the UK.

Some Scottish fund management companies, in contrast, serve clients all over the world and, in some cases their UK customer base is small or even non-existent. Because they are providing services to investors in other parts of the EU, they may be concerned about how those relationships will be affected by the UK ceasing to be part of the EU's common regulatory framework. And they may be concerned about their market share in other countries, if BREXIT changes the basis on which that market is served, either because of regulatory complications or because they are treated differently in some other way

because their home country, the UK, is no longer in the EU. The UK will become, in EU policy language, a 'third country'.

By sub sector

The *banks* operating in Scotland are predominantly domestic providers of financial services. Banking services are not, by and large, exported to the EU from Scotland. The single EU market for commercial and retail banking services is not well-developed, partly because compensation schemes are operated at member state level and it is rare for a customer, either as a business or an individual, to hold a bank account in another country. Capital markets and corporate banking are international, however, though these tend to be managed out of London.

Asset managers in Scotland provide services to clients around the world, including in the EU. The EU single market for investment vehicles, like funds and trusts, has broadened and deepened in recent years, so that an investment fund managed in Scotland can attract investors from all over the EU. Fund providers, if they set up the fund within the EU and who meet certain standards, are exempt from national regulation in individual EU countries. Their products are 'passport' into other national jurisdictions without the need for country-by-country approvals. Providers in countries outside the EU, like the UK post-BREXIT, either have to establish their funds within an EU member state, and 'passport' throughout the EU from there or market their funds from the UK under a more complex procedure.⁸ Some or all of this could become necessary, depending on the outcome of negotiations. The risks to this sub-sector are clear and of substance.⁹

⁸ "Investment Association warns about Brexit impact on UK funds", Financial Times, 29 September 2016

⁹ See 'The Impact of the UK's Exit from the EU on the UK-Based Financial Services Sector' by Oliver Wyman; 2016.

Asset servicing, which is the administration and execution of investment transactions and the protection and custody of financial assets, is dominated by large, international banks, although there are also some smaller, boutique providers, principally serving wealth managers. Several of them have operations in Scotland and the sector has grown considerably in recent years, creating sizeable numbers of high quality, internationally-focused jobs. Within the UK, Scotland is the leading centre for asset servicing. The clients of these operations are other financial institutions. They serve clients around the world and comply with regulatory requirements on behalf of those clients, wherever they are. These companies may see a disadvantage with dealing with companies in Scotland if and when the Scottish companies no longer have passporting rights. Also limited access to high skill staff could constrain both asset management and asset servicing.

This pen picture of asset servicing might imply that these operations are all the same but there are several varieties. Some serve UK customers, in the main, but most have clients in many countries. Some are providing services that are not dependent on regulatory jurisdiction and could, in a sense, be located anywhere. Others operate to a large degree under the EU's regulatory framework for investments, outlined above, and if the UK withdraws from that, questions may arise in a small number of cases about whether work carried out in Scotland will have to move to an EU location. For the most part, these operations are highly mobile and, indeed, dispersion of risk is a key factor in most location decisions. Other key factors are cost and availability of talent. If the UK does make it much more difficult to bring in skilled people from other countries, it will undermine one of the UK and Scotland's main attractions for internationally mobile businesses and activities.

The *insurance sector* can be divided into life insurance, which is closely linked to pensions; and general insurance, which is the provision of the risk-management services that underpin almost all economic activity, from building bridges to driving a car. As with banking, there is an international market for

insurance, and it is based in London. So the extent of activities in Scotland focused on international insurance, or providing insurance services to the rest of the EU, is limited.

Pension providers (linked to life insurance, in many cases) are large companies, since liabilities are very long-term and scale is necessary. There is not much of a single EU market in pensions, as a pension depends for its structure on the tax framework within which it sits, and taxation is largely a member state responsibility, so it is difficult to sell the same pension in more than one place. The pensions industry in Scotland is generally serving the UK market.

Wealth management, as a sector, overlaps to some degree with asset management. But there is a thriving and growing sector in Scotland that provides advice and investment services to private clients. Some are parts of larger financial services companies that provide services in other EU countries but the services are regulated at member state level so direct provision across borders is unusual.

Providers of *professional services* in Scotland, principally accountants, lawyers and actuaries, serve clients in many jurisdictions. In general, the single EU market for business services is not well developed, so provision across borders is not always easy. The big professional services companies have a network of offices to facilitate operations that comply with local legal and regulatory requirements. The size of the sector in Scotland depends, however, on the scale and success of the financial services industry as a whole, since it provides the local client base and an ecosystem of skills and professional bodies.

By location and ownership

There are various ownership and governance models operating in Scotland's financial services industry. To summarise for the larger operations, and eschewing an exhaustive taxonomy:

- Some public companies (that is, listed on the stock market) are headquartered in Scotland, are not part of some larger entity, and have Scotland as their place of registration for regulatory purposes. The list of such companies is not long and it includes Standard Life, RBS, Aberdeen Asset Management and Alliance Trust.
- Lloyds Banking Group's registered office is in Edinburgh but the headquarters is in London. Baillie Gifford, unusually but not uniquely, is a partnership, registered and headquartered in Scotland.
- Most other operations in Scotland are part of larger corporate entities, either UK-based, like Aviva, Royal London and Sainsbury's Bank; or foreign, like Citi, J P Morgan and Santander.

By market

Nearly every provider of financial services in Scotland, to a greater or lesser extent, serves the UK market. A company with most of its customers in the UK will not be insulated from BREXIT but the questions that arise for, say, some fund managers, around direct access to an EU-wide customer base, will not arise. Of course some of the customers elsewhere in the UK may face adverse impacts as a result of BREXIT and this could lead to indirect adverse effects on the Scottish companies related to UK exit from the EU.

For any given company, a combination of the following factors will need to be considered in assessing the implications of BREXIT:

- The nature of the business and how its conduct, financial management and marketing will be affected by changes to legal and regulatory frameworks, including trade agreements.
- The ownership and regulatory standing of the business – is it regulated in more than one jurisdiction and how will the relationships between different parts of the business be affected?

- The markets and customers either served currently or in which growth or new business is being sought.

All financial institutions in Scotland depend, however, on London's markets and market infrastructure to support their activities, whether that is raising money on the capital markets, participating in Lloyds insurance market or the buying and selling of bonds. If some of that business moves away from the UK, as some predict, then the cost and complexity for all UK companies could rise. If, on the other hand, these markets remain stable, it may only be the period of uncertainty (in which we sit at the time of writing) that causes major concern. Much depends on whether the UK pursues a 'hard' BREXIT or a 'soft' one.

IV In conclusion

The available evidence suggests that those elements of the financial sector most affected by a hard BREXIT will be those to whom passporting rights and access to high skill non-UK personnel matters most. That in turn means those who either work directly to sell into EU markets or who relate to other organisations which sell into those markets. Such organisations could be UK based, say in the City of London, or foreign companies working to sell into the EU via the UK.

It might appear at first glance that Scottish fund managers and asset managers may face the most significant impact due to loss of passporting rights. However, many of them already have the legal entities – 'management companies' – in place in other locations (typically, but not exclusively, in Luxembourg or Dublin) that determine the domicile of an investment vehicle for regulatory purposes. In practice then, even with the 'hardest' of BREXITs, they could operate in a broadly similar manner to other non-EU fund providers, relying on the international norms that allow the management of investment portfolios to be delegated to non-EU countries. They will, at least, have options, depending on their product range and target markets. This will apply especially if they are

offering products that had initially been created within the EU framework for such products.

Areas such as retail banking, insurance (as represented in Scotland) and pensions appear to be less at risk. Investment banking is very limited in Scotland, although Scottish companies will sell into London-based investment banking organisations. Any impact for them will be indirect not direct.

However, elements of even these sectors least at risk from the loss of passporting may yet suffer as a result of any constraint on retaining or recruiting high skilled staff from EU or elsewhere. The top quality, highest value-added, components of the financial sector are the ones that bring most added value to Scotland. They are also the ones most at risk from any immigration constraint.

Many parts of the Scottish financial services sector may be dependent upon the liquidity provided via London's financial markets, with their clearing houses and exchanges. Any risk to these could flow through to Scottish-based activities.

It should further be noted that, following the impending round of fiscal devolution to the Scottish Parliament, slower growth in Scotland due to problems in this sector or elsewhere will have a direct effect on the share of UK income tax revenue allocated to Scotland.

We have not attempted to quantify these effects; that would be a very substantial task. However, given the size of the sector and its relatively high contribution to incomes and GDP, the loss would be material.

The clear implication is that it would be in Scotland's interests to continue to press the case for the UK Government to negotiate a continuation of passporting rights; and further to press for agreement to take a less than rigid line so far as retention and recruitment of high skilled staff from overseas is concerned. To do otherwise would appear unduly masochistic.

This line of argument does not take us to a case for Scottish independence in the EU. The risks to relationships for the financial sector with counterparts and customers of one type or another in the rest of the UK would intuitively appear at least as great as the risks from a hard BREXIT while remaining within the UK. The uncertainties for the sector following independence look even greater than those following a sharp BREXIT.

However, we do return, in closing, to the final possible mitigations mentioned on page one. Is there some means to achieve the least bad of both worlds? Could the Scottish financial sector (along perhaps with some other sectors) be granted sufficient 'independence' – including some flexibility within the UK regulatory system – to allowed it to continue using passporting rights in some areas, or some other differential treatment to facilitate access to EU markets, even while the rest of the UK chooses to act otherwise?

This would require the strong support of the UK Government, including devolving further powers to Scotland and allowing Scotland to negotiate the EU aspects of their exercise directly with Brussels and being willing to implement changes at the UK level that might undermine the integrity of the existing single market for all financial services. It would also require acceptance by the Scottish Parliament of some of the liabilities attached to the business of regulating financial services, perhaps around compensation schemes and legal risks. The apportionment of such risks within a UK regulatory framework is likely to be difficult. In addition, it would require brave moves by the EU to venture into a new type of arrangement with one part of a European country and to accept a fragmented model of regulation not seen elsewhere within the EU or envisaged in the EU regulatory frameworks.

Further, if this possibility were to make any sense, it would require all concerned – in the EU, UK and Scotland – to treat this as a long term solution. That might prove a particularly difficult line for the SNP administration. We are not aware

of such a variegated approach to financial regulation anywhere else – if this is a pig that might fly, it is not a version that is currently airborne!

Another area in which Scotland within a post-BREXIT UK could seek some special relationship with the EU is in relation to the movement of people. As noted above, one of the UK and Scotland's main attractions for international companies who need to move people around is its openness. Recent changes to immigration rules introduced by the Cameron government have already raised questions about increasing paperwork and restrictions on visas. More recent statements by the new May government have only increased these concerns.

A different policy for Scotland may not be wholly implausible – indeed this prospect was raised some years ago by Professor Robert Wright of Strathclyde University in a seminar and paper for the David Hume Institute. It was also touched upon in the final report of the Smith Commission. Where circumstances and attitudes between the UK and Scottish Parliaments on the movement of people differ so widely, then why not create different policies between the two? If Scotland were to seek, as a policy goal, continued success for its financial services industry, then some differentiated approach – vis-à-vis the UK - to the movement of people in and out of Scotland would be a good (if difficult) place to start.

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