

# FINANCIAL MARKETS LAW COMMITTEE

## BREXIT—ADVISORY GROUP

### Minutes

**Meeting Date:** Friday 24 May 2019

**Tea and coffee:** 9.30am

**Meeting Time:** 10.00am

**Venue:** Bank of England, Threadneedle Street, London, EC2R 8AH



### Attendees:

Joanna Perkins (Chair)	FMLC
Gregg Beechey	Fried, Frank, Harris, Shriver & Jacobson (London) LLP
Paul Double	City of London Corporation
Kate Gibbons	Clifford Chance LLP
Jonathan Gilmour	Travers Smith LLP
Saima Hanif	3 Verulam Buildings
Trevor Hartley	London School of Economics and Political Science
Jim Ho	Cleary Gottlieb Steen & Hamilton LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Rashpal Kaul	Rabobank
Dorothy Livingston	Herbert Smith Freehills LLP
Michelle Moran	K & L Gates LLP
Jan Putnis	Slaughter and May
Marke Raines	Raines & Co
Arad Reisberg	Brunel Law School
Kate Sumpter	Allen & Overy LLP
Peter Werner	International Swaps & Derivatives Association
Stuart Willey	White & Case LLP
Venessa Parekh	FMLC Secretariat

### Guest speaker:

Hamish Patrick	Shepherd and Wedderburn LLP
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## Minutes:

### 1. Introduction

- 1.1. Dr Perkins opened the meeting. She recounted the developments in the Brexit process since the last meeting—including the six-month extension to the Article 50 notice period granted by the E.U. to the U.K. She noted that U.K. Prime Minister Theresa May was expected to make a speech that morning regarding her tenure as Prime Minister.

### 2. A Second Scottish Independence Referendum? (Hamish Patrick)<sup>1</sup>

- 2.1. Dr Patrick began his presentation by reminding attendees about the results of the 2014 Independence referendum (the “**2014 referendum**”) in Scotland: 45% of voters were in favour of Scottish independence and 55% were against it. The Independence campaign had, however, continued, even as much of the country had also shifted its sights to the Brexit referendum in 2016 (the “**2016 referendum**”). 60% of Scottish voters had voted to remain in the E.U. The difference between the Scottish vote and the U.K. as a whole, which by a small majority had voted to leave the E.U., had reenergised the campaign for a second Scottish independence referendum. In April 2019, the Scottish National Party (“**SNP**”) had pledged to hold a second Scottish independence referendum within two years.
- 2.2. Dr Patrick noted that the narrative that those who had voted to remain in the E.U. in the 2016 referendum would vote for Scottish independence as a means of keeping Scotland in the E.U. was over-simplified. A section of voters who wished the U.K. to withdraw from the E.U. also wanted Scotland to be an entirely self-governing nation and would vote for independence and a section of the E.U. remain vote favoured the U.K. union.
- 2.3. Dr Patrick recounted some of the issues which had occupied voters’ minds during the 2014 referendum. Much attention was given to the ability of the Scottish economy to succeed following its separation from the rest of the U.K. After the 2016 referendum, when interest in another independence referendum resurfaced more seriously, the Sustainable Growth Commission was appointed. It published a report in May 2018.<sup>2</sup> The Report attempted to chart the trajectory of the Scottish economy over a longer term. It considered issues such as the establishment of a new central bank and new regulators, the gradual transition to a new currency and, with Brexit in the background, explored the possibility of Scotland rejoining the E.U. Although the Report had a mixed reception, the SNP adopted it at its 2019 Spring party

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<sup>1</sup> Please see slides in Appendix I.

<sup>2</sup> Sustainable Growth Commission, *Scotland – the new case for optimism: A strategy for inter-generational economic renaissance* (May 2018), available at: <https://www.sustainablegrowthcommission.scot/report>.

conference. Dr Patrick then turned to the question of a new currency. The Report had proposed six tests in any consideration of a new currency, including fiscal sustainability, sufficient forex reserves and the requirements of the economy. These too had been approved by the SNP Spring conference, which had, however, expressed support for moving to a new currency within the period of a single parliament and therefore potentially more quickly than suggested in the Report.

- 2.4. Finally, Dr Patrick laid out the expectations of a new financial regulator. He stated that equivalence determinations from the E.U. (and equivalence with the rest of the U.K.) would likely be a priority. Some amount of bank regulatory migration was predicted but he noted the likely existence of ring-fenced Scottish banks. There was an expectation that the Scottish funds market would grow and that an independent Scotland would agree a cooperation agreement with the rest of the U.K. in regards to pensions at least. Dr Patrick concluded by stating that although there was political impetus, a great deal of scrutiny is still required.
- 2.5. An attendee asked what the process would be for Scotland to become an E.U. Member State. Dr Patrick said that, in 2014, the “successor state” argument had been put forward. Since the U.K. might not be a Member State when a second Scottish independence referendum is held, it was difficult to predict the process. Other discussions were held on the expected provisions for the freedom of movement and the sharing of security and intelligence data between Scotland and the rest of the U.K.

### 3. **Update on Brexit developments in London (Paul Double)**

- 3.1. Dr Perkins told attendees that Mrs May had announced her resignation from the office of Prime Minister.
- 3.2. Mr Double turned to the Withdrawal Agreement Bill—which would incorporate the Withdrawal agreement between the U.K. and E.U. into U.K. law. The Bill had been scheduled to be discussed in the House of Commons in early June but a leadership contest was likely. The path which would be taken by an incoming administration and, hence the future of any Bill dealing with an agreement, was unknown.
- 3.3. Mr Double reminded attendees that the European Union (Withdrawal)(No 2) Act 2019—the “**Yvette Cooper Act**”—had the effect of altering the procedure for obtaining Parliamentary approval by Statutory Instrument for any future proposed change in the E.U. exit date from an ‘affirmative’ to a ‘negative’ resolution confirmatory mechanism. The practical consequence was that a future change would not require a specific resolution of either House, but rather would come into effect *proforma* in the absence of a resolution of either House to the contrary.

**4. Plenary discussion on FMLC’s work on Brexit (Joanna Perkins)**

4.1. Dr Perkins turned to the FMLC’s work on Brexit which had been focused until April on legal uncertainties arising in a possible “no deal” context. Upon securing the second extension, HM Government announced that it would stand down those civil servants working on preparations for a “no deal” Brexit. The Secretariat had, therefore, de-prioritised this aspect of its work. It had, however, asked HM Treasury whether they would like the FMLC to continue to send feedback on “no deal” legislation.

**5. Any other business<sup>3</sup>**

5.1. No other business was raised.

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<sup>3</sup> The next meeting is scheduled for Thursday 5 September.

# Brexit Advisory Group

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# A Second Scottish Independence Referendum

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- **Dr Hamish Patrick, Shepherd & Wedderburn**



SHEPHERD+ WEDDERBURN

# A Second Scottish Independence Referendum?

Hamish Patrick

May 2019

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# Overview

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- 2014 Independence: yes 45% - no 55%
- Continuing independence campaign
- 2016 Brexit Scotland: leave 40% - remain 60%
- SNP April 2019 - Indyref2 within 2 years?



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## Brexit/independence matrix

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No/Remain	No/Leave
Yes/Remain	Yes/Leave

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# Polls & politics

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- Post Brexit ref Indy polling
- Scottish elections May 2021
- Westminster elections May 2022?
- Political dynamics

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# Economics & currency

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- 2014 Indyref debates
- Sustainable Growth Commission appointed September 2016
- Mixed reception to May 2018 report  
<https://www.sustainablegrowthcommission.scot/>

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# Sustainable Growth Commission

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- longer game economically
- new central bank/regulators
- sterling retention then new currency
- upbeat on wholesale/retail rates/terms
- EU & euro?

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## 2019 Spring SNP conference

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- approves Growth Commission report
- new currency timetable accelerated (10-5 years)?
- new currency "6 tests" retained?

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## 6 tests for new currency

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- fiscal sustainability
- central bank credibility/stability of debt issuance
- forex/reserves sufficiency
- economic/trade cycle correlation
- trade/investment pattern fit
- residents/businesses requirements

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## New currency

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- like Ireland was, not sterlingzone
- no redenomination
- no exchange/capital controls
- short/medium term sterling pegging?

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# Financial regulator

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- flip over UK/EU
- lots of equivalence
- bank regulatory migration expected
- but some Scottish ring-fenced banks?
- grow Scottish funds, with extra co-operation?
- joint with r-UK for pensions?





SHEPHERD+ WEDDERBURN

Questions?

# Update on Brexit Preparations and Negotiations

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- **Paul Double**, City of London Corporation

# Plenary Discussion on FMLC's work on Brexit

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- Joanna Perkins, FMLC