The White Paper Project

An Independent Scotland’s Customs and Borders — Principles and Approaches

Bill Austin
Peter Henderson

COMMON WEAL POLICY
The case for Scottish independence was never and cannot ever be a tablet of stone – it must be made and re-made constantly as circumstances change.

It seems that, after Brexit, everyone is very conscious of the fact that the case for an independent Scotland is in urgent need of renewal. From Alex Salmond to Joseph Stiglitz, big players in the 2014 referendum accept that there’s aspects of the argument that need updated in light of events.

We are at a conjuncture where some assertive leadership is now needed on the big issues facing Yes supporters: Britain’s exit from the European Union has thrown the prospect of a referendum open again, but polls show Scots to still be at best jittery about the prospect. There’s a confidence deficit in Scots’ belief in independence that needs to be made up in the Yes argument. That won’t be resolved through clever politics or deft diplomacy. We can only properly go back to the people of Scotland with another Yes offer when we have well thought out answers to the questions they didn’t feel were answered adequately last time and new questions that have been raised since.

What currency do we use? How do we deal with the collapse in oil revenue? How do we ensure Scotland has a credible fiscal position? What do we do about Scotland’s border with rUK? What would the division of assets and liabilities be?

These are some of the big structural questions that Common Weal is working on answers to in what we’re calling our White Paper Project.

Our White Paper is not going to be like the Scottish Government’s in 2014, which attempted to amalgamate structural issues with specific policy offers. We won’t be looking at, for example, whether an independent Scotland would raise or lower taxes. As far as feasibly possible, we’re going to try to focus only on the systems and structures in establishing an independent Scotland, not our own policy ideas.

It will be for a future election in an independent Scotland to decide on the specific policies to be pursued. What we want to prove with the White Paper Project is that independence the country can pursue its own path in the world, that means an All of Us First society.

We are not so foolhardy to believe that a small organisation like Common Weal can come up with all the answers. In some areas, we will simply be hoping to create a methodology that can be built upon in the future. But we think we’ve already proven with our reports on Scottish Currency Options post-Brexit and Claiming Scotland’s Assets that we can look at the historical precedents and come up with answers that can be important strategically in renewing the structural case for Scottish independence.

Our plan is to publish more papers throughout the rest of the year which will be brought together in one White Paper early in 2017.

You can help us: if you have policy expertise in any of the structural areas facing an independent Scotland and would like to volunteer your thoughts or time, get in touch. If you are just very keen to see the White Paper Project be the best it can be then help us improve our limited research capacity by becoming a regular donor to Common Weal. We can’t wait on high for the case for Scottish independence to be renewed – let’s get on with it ourselves.
Authors —

BILL AUSTIN served as a Higher Executive Officer with HM Customs & Excise (HM C&E) between 1977 and 2007 in the UK (including Northern Ireland), Republic of Ireland and France. Concurrently, he also served as a Territorial Army officer from commissioning at the Royal Military Academy Sandhurst in 1985. Between 1999 and 2007 Bill served on continuous “Special Leave” for those eight years from HM C&E to the UK Regular Army, in the rank of major, serving in anti-smuggling roles on four Operational Tours; one United Nations tour in Sierra Leone, West Africa, and three NATO tours in the Balkans.

As a result of this extensive hands-on professional anti-smuggling experience Bill crystallised this work in 2010-2011 with additional full-time primary research at the Department of War Studies, University of Glasgow resulting in a “Distinction” dissertation, titled “UK military involvement in anti-smuggling 1969-2010”, gaining a Master of Letters (MLitt). He worked on Customs reform projects as an international Customs consultant in Ethiopia, Djibouti, Democratic Republic of Congo, Sierra Leone and the Balkans. Bill is also a Chartered Member of the Institute of Logistics and Transport (CMILT) and a Member of the International Network of Customs Universities (MINCU). Currently, Bill is a PhD student with the Centre for Customs & Excise Studies (CCES) at the World Customs Organisation (WCO) approved Charles Stuart University, Canberra, Australia.

PETER HENDERSON worked for over 30 years in Customs and Excise working in all disciplines i.e. Intelligence, Customs, Excise, VAT, Investigation, Audit and Revenue Cutters and RHIB (20 years’ experience) in Scotland the UK and Isle of Man.

Commencing at Junior Officer and rising through the ranks, Peter served as Director General of Customs and Revenue in the British Overseas Territories before leaving and working in many Jurisdictions worldwide in Customs, providing a unique overview of what can be achieved in an Independent Scotland.

From Fair Isle in Shetland and working and living in all areas of Scotland, Peter has been given an insight into Scotland’s diverse geography and requirements. Serving in Dover, The Isle of Man, St Helena Montserrat and other jurisdictions has supplied a diverse experience of this area of work bringing lessons from outside to assist in developing the best cost effective service.
Contents

INTRODUCTION______________________________________1
WHAT IS CUSTOMS AND WHY DOES IT MATTER?___________1
WHAT’S WRONG WITH THE UK SYSTEM?____________________1
A SCOTTISH CUSTOMS & EXCISE DIVISION_______________4
SCOTLAND’S BORDER ARRANGEMENTS WITH THE REST OF UK__9
CUSTOMS AND DEFENCE________________________________10
CONCLUSIONS ________________________________________11
BIBLIOGRAPHY_________________________________________12
Executive Summary

- Customs is a key governmental activity in protecting the revenue and security of any state. Customs work in Scotland is likely to become more important with significant year-on-year increases in travel and freight to the year 2050 predicted.

- Since the merger of HM Customs & Excise and Inland Revenue into HMRC in 2005, Customs work has been systematically degraded in the UK, as immigration has been over-prioritised.

- A £40Bn loss of potential UK tax revenue in the ‘shadow economy’ can partly be explained through the undermining of Customs work, as very few checks are carried out to ensure tax compliance on the movement of goods and inland taxes like VAT.

- In Scotland, the lack of Customs ‘Cutters’ on the coast or a significant presence of officers in port towns means major smuggling routes are often unchallenged. This has been proven to endanger society.

- A ‘smart borders’ approach prioritises borders operations at the most convenient and efficient place, rather than at the border point itself. A system of inland Customs controls based on Inland Clearance Depots, at easy access points for cargo, would be both effective and efficient. 90% of French Customs operations work in this way.

- A Scottish Customs & Excise Division should be established as part of Revenue Scotland. This should have officers strategically located across the country, with a substantial maritime presence. A draft organisation for this division suggests a fully effective team would have 800 officers – each are capable of bringing in as much as 100 times their salary in tax revenue. A Customs Division of this kind could be responsible for over half of Scottish revenue collection.

- Scotland should remain part of the UK Common Travel Area, established in 1923 and containing states and dominions which are currently inside and outside the EU (Republic of Ireland and the UK being inside; Jersey, Guernsey and Alderney being outside).

- Inside the UK Common Travel Area, there is no reason why the Scottish-English border could not have a similar relationship to the Norway-Sweden border: in that case, no hard immigration controls on the border exist as both are part of Schengen, but because Norway is outside the EU and Sweden is inside they both operate separate Customs operations which work smoothly and effectively.

- If the rest of UK decided to establish a ‘hard border’ it would be a decision without precedent and would cause major harm to their own citizenry and economy, but if they were to decide to do so it would have to be set up on the rest of UK side of the border and all costs would therefore fall on the rest of UK. This is highly unlikely however, as the attitude of the new Brexit Secretary David Davis MP towards the Republic of Ireland-Northern Ireland border indicates it is in the interests of everyone to avoid a hard border.

- Customs operations should be central to an independent Scotland’s defence strategy through the close co-ordination of Customs, Defence and policing services, especially in coastal and maritime territory where smuggling is a serious security threat for Scotland. A National Defence Academy, similar to that in Denmark, should be established as a headquarters for this co-ordination between services and to support educational development.
Introduction

This report will set out what we believe to be an approach to an independent Scotland's Customs and borders that will make a major contribution to securing Scotland's national sovereignty and protecting society. We believe this approach to be far superior to that of the UK Government currently, which over-emphasises the issue of immigration and de-emphasises the issue of Customs revenues collection. This approach only works to the advantage of those who seek to trade illegally at the disadvantage of the public purse, which loses billions each year in uncollected indirect taxes, an often under-estimated and misunderstood aspect of government revenue. We believe an independent Scotland could have a far smaller tax gap than the UK currently has through taking Customs revenues collection seriously.

Additionally, we believe that concern, usually from opponents of independence, about an independent Scotland's border with the rest of UK (rUK) in the event of Scotland being in the EU and rUK being outside the EU has been totally overblown. We will outline a 'smart borders' approach which we believe an independent Scotland should take up, and explain why it would be an internationally unprecedented and wholly self-defeating move for rUK to attempt to erect what has been dubbed a 'hard border' with Scotland.

We will outline a 'smart borders' approach which we believe an independent Scotland should take up, and why why it would be an internationally unprecedented and wholly self-defeating move for rUK to attempt to erect what has been dubbed a 'hard border' with Scotland.

Finally, Customs should be integrated into a coherent defence strategy in an independent Scotland where Customs, Immigration and Defence officials work closely together to protect society from smuggling and similar threats. We propose a National Defence Academy as a co-ordinating headquarters with educational capacity to lead these efforts.

What is Customs and why does it matter?

Customs is the arm of government that is responsible for the control of flow of goods, and for collecting tariffs on those goods. The importance of this work to the revenues of any nation-state is highly significant, as Customs relates directly to all indirect taxes – that being a tax levied on goods or services rather than income or profits. Most recent figures from the National Audit Office show 39% of all government revenue comes from indirect taxes, the most important being VAT and Excise Duty. In ensuring that movement of goods are conducted legally and are of no danger to the public, Customs officers have to deal with illegal trade such as smuggling and cyber-crime as well as issues like environmental waste from pollutants and disease control from animals.

The following is a list of assigned matters – key areas in which a Customs Officer in the UK would be legally responsible for: Immigration (including modern human slavery); Bio Security; trade in endangered species and products ('CITES'); Cash Detection; Gold and precious Metals; Blood Diamonds; Counterfeit goods; Intellectual Property; Proceeds of Crime; taking control and preventing looting or destruction of wrecks ('Receiver of Wreck'); Pollution Control; early detection of health and pollution issues affecting fish and sea life; Register of small ships; Fisheries control; Pollution Control; Diversion fraud; VAT fraud; Excise fraud; Tobacco, Alcohol and Fuel fraud.

This large and diverse range of activities clearly involves a number of different skills and is highly geographical in nature – i.e. having officers in particular parts of Scotland, especially coastal areas, is vital. It is also work that impinges on other areas of government and therefore requires good cross-intelligence relationships with e.g. intelligence services, defence, police, environment, agriculture, fisheries and trade & industry more broadly.

It should be evident that Customs failure on any of these assigned matters has serious knock on effects on society and the economy: counterfeit goods affects legitimate trade, further reducing tax returns; the cost of a fake car part causing an accident puts further stress on the health service, and so forth.

This work is likely to increase in importance over-time. The UK Government's figures indicate massive, year-on-year, increases in travel and freight to year 2050. The role of Customs officers in terms of both protecting the tax base and protecting society should therefore be obvious, but the UK Government has taken the view that this expertise is dispensable, as we will explain below.

What’s wrong with the UK system?

Entering any UK airport, you will see a sign/poster for Customs Controls. But it is highly unlikely that there will be a HM Revenue & Customs (HMRC) officer at the airport. This has been the case since 2005, when HM Customs & Excise was amalgamated with Inland Revenue. Since that time, the UK has effectively stopped doing Customs work, and the consequences of that are severe but not widely understood.

At the time of the amalgamation with HMRC, the United Kingdom Borders Agency (UKBA) were given the “borders” role in 2005 – this became largely an immigration service (with a
residual group of professional Cussie anti-smugglers who refused to transfer into the new HMRC). In 2013, Theresa May (then Home Secretary) killed UKBA off (“unfit for purpose”) to be re-born as the United Kingdom Borders Force (UKBF), which has a 90% focus on immigration. UKBA/F relegated the traditional Customs role to minor agency tasking.

A very small number of UKBF officers are now classified as anti-smugglers and, to their immense frustration, can be directed to immigration work at little notice.

The 2005 merger led many former HM Customs & Excise (HM C&E) staff to resign and become Customs consultants worldwide. Their expertise was, and continues to be, highly sought after in nascent self-governing countries, including post-conflict, as those countries seek to raise, protect and build their own revenues.

The decision to shut-down HM C&E in 2005 took place pre-financial crisis and at the apex of Labour Chancellor Gordon Brown’s ‘light-touch regulation’ mantra, supported by the Conservatives. In practise it was a cost-cutting measure.

HM C&E was fully integrated as a revenue collection and protection profession through assimilation of Customs border controls with inland Excise and VAT collection, amongst other revenue types. Those disciplines spoke to each other constantly with officers moving between them. That system has now been fragmented, one obvious example of this being UKBF have to take out Memorandums of Understanding (MoU’s) with HMRC in order to consolidate work which was previously the responsibility of one government department.

Indeed, Customs controls are carried out as an agency task, by UKBF, on behalf of HMRC. UKBF are required, in law, to name a Director of Border Revenue who is responsible for designating “customs” officials from within UKBF. However, these officers, inexplicably, do not have control of import/export VAT within their remit.

The problem of undermining Customs work can be understood numerically in terms of the tax gap – the difference between what should be collected in tax if every person and organisation paid what they owe, and what is actually collected. HMRC’s estimate of a £36bn tax gap has been heavily criticised as a gross under-estimation by the UK Government Public Accounts Committee and tax experts. An analysis by tax expert Richard Murphy for the PCS put the figure at £120bn, and has clearly worked out methodology for coming up with this total (HMRC do not publish its methodology).

Of that £120bn figure, the amount that could be derived from indirect taxes is substantial. Figure 1 (below) is a recent extract from the UK Government’s own National Audit Office (NAO) analysis:

This figure demonstrates that a minimum 39% of current indirect tax revenues were pertinent to the original HM C&E. This is almost certainly an underestimation of possible revenues. It is estimated that one in six cigarettes are smuggled or counterfeit, and one in seven for alcohol. Proceeds of Crime prosecutions are not included in these figures. Customs Duty and Import VAT (from outside the EU) are also not included – both of these will run well into the billions.

‘One example of how Customs officers could help close this gap is VAT. [Richard] Murphy has argued that “VAT is lost on about 10% of VAT chargeable sales” making it “highly likely that about 10% of all sales, or about £100bn per year in 2011-12, were unrecorded.”

One example of how Customs officers could help close this gap is VAT. Murphy has argued that “VAT is lost on about 10% of all VAT chargeable sales” making it “highly likely that about 10% of all sales, or £100bn per year in 2011--12, were unrecorded.” He added: “VAT losses of the type noted here always relate to unrecorded sales.”

Figure 1: UK tax Revenues 2011/12-2015/16

<table>
<thead>
<tr>
<th>OTHER</th>
<th>EXCISE</th>
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<tr>
<td>47.4</td>
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</tr>
<tr>
<td>116</td>
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<td>39%</td>
</tr>
<tr>
<td>112</td>
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</tr>
<tr>
<td>169.4</td>
<td>32%</td>
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<td>61%</td>
</tr>
<tr>
<td>536.8</td>
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</tr>
</tbody>
</table>

2 “Cussie” was the familiar nick-name, within HM Customs & Excise, for a professional Customs officer. Akin to cop/copper. 
5 We have consulted tax expert Richard Murphy and are confident that it would be possible for one-third of the total tax gap could be closed with the right system and sufficient resources in place to tackle tax avoidance, evasion and debt. 
This figure is about 6.6% of the UK’s total national income as of 2011–12, Murphy finds. A shadow economy, which Murphy believes to be worth a missing £40Bn in revenues, is allowed to thrive when Customs work is relegated to an add-on, rather than a fundamental part of a tax collection system.

It is only logical that such an approach would lead to a loss in revenues: if cargo is moved into the UK and there is never (or rarely ever) any checks on where the goods have come from, whether there is a tariff on those goods, and so forth, it is likely that at least some of those who make their wealth out of this trade will see an opportunity in not registering the goods. Non-compliance is actively facilitated if the possibility of enforcement is low. But who is dealing with, for example, smuggling in the current UK system? UKBF, the Home Office immigration department, where skills in revenue collection are at a premium.

This is not just a problem of catching criminals in the act. Law enforcement was only a minor part of what Customs officers would do, as was mentioned in the last section. One key element in terms of revenue collection was to ensure that all players involved in the movement of goods were aware of the law, knew their obligations and how to exercise them. Revenue collection is about relationships as much as law enforcement.

There is an imbalance here in terms of commitment of resources. One example is the National Crime Agency (NCA), which lists 14 “…threats the UK faces from organised crime.” Of these only three (cyber crime, fraud and organised crime groups) are revenue fraud related. But 20% of UK organised crime is revenue frauds totalling approximately £5Bn. Revenue based crimes may not make as many headlines, but there is a good justification to say that, if looked at in the round, they have one of the biggest impacts on the public good.

"There is an imbalance here in terms of commitment of resources. One example is the National Crime Agency, which lists 14 "...threats the UK faces from organised crime." Of these only three (cyber crime, fraud and organised crime groups) are revenue fraud related. But 20% of UK organised crime is revenue frauds totalling approximately £5Bn."

It is important to recognise that this is not just a problem in terms of lost revenue, but also in ensuring the protection of society. A useful way of illustrating this is to look at Scotland’s long coast-line which has historically had a number of key smuggling routes, especially between Scotland and Northern Ireland during the Troubles. Currently, there are no Customs cutters in Scottish waters nor has there been any stationed in Scotland for at least thirty years. Recent drugs and weapons finds in Scotland, and Scottish waters, confirm such ongoing threats to our community whilst providing profits for terrorists and organised crime. HMRC, UKBF and the MoD should have an integrated coastal strategy, recognising the interconnectedness of Defence, Immigration and Revenue issues, but as the points on Figure 2 show there is now very little coverage of Scotland’s ports and airports

7 http://www.nationalcrimeagency.gov.uk/crime-threats
9 http://icinspectorgovindependentgovukwp-contentuploads/2013/11/An-Inspection-of-Border-Force-Freight-OperationsFINAL-PDF.pdf  We have consulted tax expert Richard Murphy and are confident that it would be possible for one-third of the total tax

Three specific examples will suffice in order to demonstrate the risks to revenue and protection of society from this severe shortage of Customs coverage in Scotland:

**Ship/Aircraft/Container Manifests**

On arrival, from EU and non-EU, a vessel/aircraft/container must have a commercial Manifest detailing what/how much/value of their cargo regarding accuracy, valuation and quantities are being imported. Previously, a Customs officer diligently carried out these essential controls. Today, who checks that everything has been properly accounted for regarding Customs revenues at import? Theoretically, a UKBF officer does, but currently, very few checks are carried out.

John Vine, independent Chief Inspector of Borders and Immigration, in his ’An Inspection of Border Force Freight Operations March 2013 – July 2013 report’, detected a number of serious flaws in freight controls. This included “a breakdown in communication between Border Force and HMRC” and that “large seizures of cigarettes and alcohol were not being investigated”. Vine, as a former Chief Constable of Tayside, has very little HM Customs & Excise experience. Undoubtedly, an experienced Customs audit team would have identified further issues. Up until 2005, each Customs region (including Scotland) had an elite
specialist Customs Audit Team (CAT). These teams were disbanded without effective replacement.

**Excise distilleries & breweries:**

The revenues that were involved in Customs work at Excise distilleries & breweries could be measured in billions. Excise officers are no longer stationed at any of these locations. Taxation is now the responsibility of the respective traders normally by electronic means. Extremely rare Control audits are now carried out at premises. Audits are carried out on traders declared records and documentation. Self-evidently, there is serious revenue risk.

**Arms Exports**

Scotland has a substantial manufacturing economy in arms exports, accounting for 10% of UK sales and employing nearly 40,000 staff. The Defence industry is clearly important to Scotland. However, the control over authorisation, consignment examination, where arms exports go and how they are used is unclear. The dangers of any of this going wrong are self-evident. Principle control legislation is controlled by HMRC but, as we have discussed above, Customs officials do not work at airports/ports. UKBF focus on Immigration; Customs controls are “secondary.” Within those “secondary” controls priority is given to imports over exports. Export controls at ports/airports are the responsibility of UKBF. Vine’s UKBF Freight Inspection report (cited above) ignored Export Controls. The United Kingdom Strategic Export Controls Annual Report 2015 recorded only one single UK prosecution during 2015 of 14,000 licences issued. It is reasonable therefore to assume that strategic Export controls in Scotland currently are ineffective.

The overall balance of the UK Government’s approach is weighed far too heavily towards immigration. This emphasis has led to a systemic degrading of Customs work to the detriment of protecting society and raising revenues in the UK.

**A Scottish Customs & Excise Division**

An independent Scotland must look to the UK pre-2005 HM Customs & Excise as a role model. At that time the UK followed the international norm, evolved over centuries, of protecting a nations revenues, at the border and inland controls, on behalf of the Treasury – because it is logical and sound governance.

The Customs services of Denmark, Ireland, Iceland, Germany and France continue to do that work on behalf of their respective Finance ministries. The UK does not.

To get there, Scotland will need a modern, well-resourced Customs Division as part of a beefed up Revenue Scotland, premised on a simple, efficient tax code that eliminates loopholes. The UK tax code is notoriously complicated and therefore fully exploited by accountancy and law firms on behalf of tax evaders and avoiders. A written Constitution would be an excellent starting-point in ensuring this problem is not replicated.

How would the basic functions of a Scottish Customs & Excise Division operate in a modern context? Pickering and Weber (2006) explain: “Physical borders are not so much diminishing, but are changing towards ‘smart borders’, while the border function is both trans-nationalised and internally dispersed. Motomura has pointed out that the legal precedent for the idea of “functional borders” has been long established…the border [can] be conceptualised according to Motomura’s (1993:712) analysis as: “not a fixed location but rather wherever the government performs border functions”.

"Inland Clearance Depots are an effective method of facilitating international cargo trade. Inland - not at the border. Customs controls can be located at road system, airport and rail hubs as part of a co-ordinated modern inter-model transport system."

An arbitrary line on a map is not the principal, smart place to carry out border controls. Uncollected revenues, contraband (e.g. tobacco, spirits, weapons and drugs) and those which are deemed “illegal” should be assessed and relevant legal enforcement action taken wherever they are identified within our community in conjunction with our Statute of Limitation. France collects 90% of its Customs/taxation through post-clearance Inland controls. It’s modern, efficient and the way ahead.

To facilitate this, an independent Scotland could re-establish the former HM C&E “Large Trader Control Units” (LTCUs) where professional expertise could focus and prioritise resources to maximise tax yield. LTCUs are an excellent example of “post-clearance” controls i.e. Customs controls carried out inland.

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10 Scottish Development International website: www.sdi.co.uk accessed on 2 August 2013.
12 HM Customs & Excise Management Act, 1979.
13 “Frontline operations at the border are the responsibility of Border Force.” http://icinspector.independent.gov.uk/wp content/uploads/2013/11/An-Inspection-of-Border-Force-Freight-Operations-FINAL-PDF.pdf#Section 4.1
15 Ibid Section 4 & 5.
16 https://www.theguardian.com/commentisfree/2015/feb/13/britain-tax-code-17000-pages-long-dog-whistle-very-rich
17 https://law.ucla.edu/faculty/faculty-profiles/hiroshi-motomura/ Professor of Law, UCLA.
Similarly, Inland Clearance Depots (ICDs) are an effective method of facilitating international cargo trade. Inland – not at the border. Customs controls can be co-located at road system, airport and rail hubs as part of a co-ordinated modern inter-modal transport system. Trade is facilitated by reducing/eliminating border checks by allowing cargo traffic to move quickly (and so at reduced cost) to ICDs near to their operations. It is vital to remember that since the closure of Customs offices around Scotland coupled with the closure of Coastguard stations, Fishery protection officers, local tax offices, local police stations and military cutbacks etc., the network of trained officers in the field and the lack of local contacts in the community has been broken. The regular contacts in especially remote areas is vital for Scotland’s intelligence needs, local trends, smuggled items and general awareness of potential terrorist and criminal exploitation. The necessity of communication and building of trust and networks must be established in order to protect the revenue, the country and the public.

"Smuggling has not stopped and has a long history - the big change in recent years is what is being smuggled. Traditional proven methods are still deployed but are upgraded and adapted. New methods are developed and used. Organised criminal activity is adept and quick to change and adapt to utilising modern technology we must keep up with."

Cybercrime is expanding. For example, dealing in Carbon Credits is a virtual activity; the creation of false companies and false invoices for money laundering is a growing trend. Responding to this depends on adapting and utilising all methods to clean up the profits. Trained staff are essential - no computer has been developed to replace instinct, human frailty (splashing cash with no visible or legitimate means of obtaining etc.), lifestyle, jealousy, or simple observation. Technology assists greatly but, in securing revenue and protecting society, humans still have a vital role.

To this end, and given the areas marked out above that the Customs Division should have control over, Table 1 on the next page is a projection for a full Customs Division of Revenue Scotland, based on the authors many years of experience in Scottish Customs work. The areas currently covered by Revenue Scotland, Land and Buildings Transaction Tax and Landfill Tax, will remain with its existing unit.

The ability of officers on the ground to deter, discourage and prevent evasion of controls as well as informing and educating the public and trade on risks, dangers, undermining of trade, security and the effects of revenue and security loss are all of vital importance. The fact that drugs, arms, people and other prohibited goods have and are being smuggled into and out of the country by utilising the vast coastline and islands is evidenced by past seizure and detections by HM C&E.

Smuggling has not stopped and has a long history – the big change in recent years is what is being smuggled. Traditional proven methods are still deployed but are upgraded and adapted. New methods are developed and used. Organised criminal activity is adept and quick to change and adapt to utilising modern technology we must keep up with.
### Table 1 Scottish Customs & Excise Division - Draft Organisation

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<th>Customs Station</th>
<th>Primary Function</th>
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<td>EXCISE &amp; VAT</td>
<td>1. WHISKY&lt;br&gt;2. LVO</td>
<td>EAST</td>
<td>1. 10 2. 10/20</td>
</tr>
</tbody>
</table>

19. LARGE TRADER CONTROL UNIT (LTCU) focusing on companies which yield strategic amounts of revenue (potentially VAT, Excise, Customs etc).
20. https://law.ucla.edu/faculty/faculty-profiles/hiroshi-motomura/ Professor of Law, UCLA.
22. EXCISE, Hydrocarbon Oils or whisky tax principally
<p>| | | | | | |</p>
<table>
<thead>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>AYR</td>
<td>VAT</td>
<td>LVO</td>
<td>WEST</td>
<td>10</td>
</tr>
<tr>
<td>9</td>
<td>DUMFRIES</td>
<td>VAT</td>
<td>VSO (AYR LVO)</td>
<td>WEST</td>
<td>10</td>
</tr>
<tr>
<td>10</td>
<td>DUNDEE</td>
<td>VAT</td>
<td>LVO</td>
<td>EAST</td>
<td>10</td>
</tr>
<tr>
<td>11</td>
<td>PERTH</td>
<td>VAT</td>
<td>VSO (DUNDEE LVO)</td>
<td>EAST</td>
<td>10</td>
</tr>
<tr>
<td>12</td>
<td>STORNOWAY</td>
<td>CUSTOMS &amp; VAT</td>
<td>VSO (ELGIN LVO)</td>
<td>WEST</td>
<td>20</td>
</tr>
<tr>
<td>13</td>
<td>STRANRAER</td>
<td>CUSTOMS</td>
<td>PORT</td>
<td>WEST</td>
<td>10</td>
</tr>
<tr>
<td>14</td>
<td>TBC</td>
<td>AIR PASSENGER TAX</td>
<td>TBC</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>MARITIME BRANCH</td>
<td>CUSTOMS</td>
<td>WEST COAST STATION: Faslane, EAST COAST STATION: Rosyth, 4 large cutters to operate West, North and East with one in reserve, Two smaller inshore vessels to cover islands</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>INTELLIGENCE BRANCH</td>
<td>NATIONWIDE</td>
<td>Co-location with Scottish Military to ensure Intel sharing</td>
<td>20 (Designated Int Offrs each locn)</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>INVESTIGATION BRANCH</td>
<td>NATIONWIDE</td>
<td>GARTCOSH</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>DOG BRANCH</td>
<td>NATIONWIDE</td>
<td>GLASGOW (utilised by MTF; Ports and smaller stations)</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>RFTU</td>
<td>NATIONWIDE</td>
<td>EDINBURGH CROWN OFFICE PROCURATOR FISCAL SERVICE (CUSTOMS &amp; EXCISE BRANCH): BETTING &amp; GAMING P/FISCAL REGION NORTH – ABERDEEN P/FISCAL REGION WEST – GLASGOW P/FISCAL REGION EAST – EDINBURGH</td>
<td>70</td>
<td></td>
</tr>
</tbody>
</table>

Clearly, this is a major expansion of Customs & Excise in Scotland to 820 highly-qualified staff, being a major quality, professional jobs boost throughout Scotland. All the evidence suggests that the return per officer will mean the taxpayer gets bang for their buck. In 2015/16 £167.06 was raised per £1 spent on a revenue officer.\(^\text{23}\) Anecdotally, a VAT/Excise control officer is expected to recover £250,000 undeclared revenue per annum with a senior officer to identify £500,000 on average. A skilled, effective LTCU team will recover revenues measured in 10's of millions.

We would propose the cost of new equipment and vessels to come from Proceeds of Crime. A system of 50% of proceeds going to Customs and 50% going to general Treasury revenues reduces government costs, incentivizes officers and punishes the criminal.

As table 2 below shows, a Customs Division on this basis would play a central role in securing tax revenues in Scotland. If the following tax areas were assigned as proposed below, over half of Scottish tax revenues could be collected by this division.

### Table 2: An independent Scotland’s projected onshore revenues

<table>
<thead>
<tr>
<th>Serial</th>
<th>TAX</th>
<th>Annual Revenue Estimate (£bn)</th>
<th>Tax Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Customs (non-EU Imports)²⁴</td>
<td>INDIRECT</td>
<td>4.2²⁶</td>
</tr>
<tr>
<td>2</td>
<td>Excise</td>
<td>INDIRECT</td>
<td>5.2²⁶,²⁷</td>
</tr>
<tr>
<td>3</td>
<td>VAT</td>
<td>INDIRECT</td>
<td>9.9²⁸</td>
</tr>
<tr>
<td>4</td>
<td>OTHER²⁹</td>
<td>INDIRECT</td>
<td>10³⁰</td>
</tr>
<tr>
<td>5</td>
<td>Uncollected Tax ‘GAP’</td>
<td>INDIRECT</td>
<td>3.5³¹</td>
</tr>
<tr>
<td>6</td>
<td>Land &amp; Property Tax²², ³³</td>
<td>INDIRECT</td>
<td>0.7</td>
</tr>
<tr>
<td>7</td>
<td>Corporation Tax</td>
<td>DIRECT</td>
<td>3.1³⁴</td>
</tr>
<tr>
<td>8</td>
<td>National Insurance</td>
<td>DIRECT</td>
<td>8.7³⁶</td>
</tr>
<tr>
<td>9</td>
<td>Income Tax</td>
<td>DIRECT</td>
<td>11.2³⁸</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td>56.5</td>
</tr>
</tbody>
</table>

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²⁴ Customs Import Duties Risk Assessment on £13.1 Bn 2015 non-EU Imports.
²⁷ IFS bn 141, p8 Table 1. Scottish and UK onshore revenues by source, 2011–12 (in 2013–14 prices)
²⁸ Ibid.
³⁰ IFS bn 141, p8 Table 1.
³¹ We have consulted tax expert Richard Murphy who suggested that closing the tax gap by one-third is achievable with a fully effective and well funded tax collection agency.
³² IFS bn 141 p4 “Property taxation is ripe for reform and is an area where Scotland will have almost complete policy autonomy even without independence”
³³ IFS bn 141 p23 “Taxation of land and property is inefficient and inequitable. There is a tax on business property – a produced input – but not on land, the supply of which is fixed and therefore cannot be discouraged. Taxation of housing involves both a transactions tax and a tax based on 20-year old valuations.”
³⁴ IFS bn 141 Table 1.
³⁵ Ibid.
³⁶ Ibid.
Scotland’s border arrangements with the Rest of UK

So far we have outlined the approach Scotland should take to Customs operating with ‘smart borders’ that allow for smooth transit of goods while being fully operational in ensuring the legal and safe processing of said goods. However, there remains a part of Scotland’s borders arrangements that it is not possible to give an entirely definitive answer to in a paper such as this because it is subject to negotiation. That is, Scotland’s border arrangement with the rest of UK.

There are so many known unknowns in that situation primarily because we don’t know the nature of the UK’s exit from the EU. What’s the UK’s relationship going to be with the EU single market? The Northern Ireland Land border? The Common Travel Area? Participation in EFTA or the EEA? Participation in the Customs Union? Participation in Customs and Policing services like OLAF/FRONTEX and Europol? Maintenance of Customs to Customs information exchange (Naples 2)? Current EU “Smart Borders” initiative? All of this will shape the border relations of an independent Scotland, which we take as the starting point that it would have a view to taking up full membership of the EU.

Precedent and politics is likely to shape the contours of this issue. As Gordon Guthrie has pointed out in a new book on the case for independence after Brexit40 “we need to be honest with ourselves: the Scottish-English border will be determined by the discussions on Armagh/Monaghan border”.41

UK Brexit Secretary David Davis has been very clear with respect to the Northern Ireland land border that there would be no “hard” border. He stated: “We are clear we do not want a hard border – no return to the past – and no unnecessary barriers to trade. What we will do is deliver a practical solution that will work in everyone’s interests…”

While this is a statement of principle rather than policy, there is no logical or rational reason why this position would not also apply in the case of an Independent Scotland’s border with the rest of UK. The modern world requires inter cooperation for trade, prevention of Terrorism, Security, Organised Crime, and so on. This is established and accepted reality between the EU and all of its neighbouring countries.

Of course, if rUK is outside of the EU and an independent Scotland is inside the EU then an established border becomes fact, but it would be a remarkable and unprecedented display of economic and security self-harm for rUK to impose a Hungarian style razor wire border. Even in the Hungarian case, they still operate Inland Clearance for trade, are still part of the Customs Union which includes Turkey, and are still part of Schengen for EU nationals. The razor-wire border was a specific response to the refugee crisis; it would be unheard of for it to be used between two stable Northern European countries, and the economic damage would quickly lead to a backlash from people and businesses. In short it is a shrill and nonsensical idea that a hard border of this kind would be imposed, but if rUK were ever to propose such a thing they would have to set it up on their side of the border and all of the cost for establishing it would fall on them.

A more realistic comparison is Norway, non-EU but in the European Economic Area, which has a 1,010-mile border with EU member Sweden and a 457-mile border with EU member Finland, as well as a 122-mile land border with Russia. The border consists of Posts erected by each country along the line of the Border (simply to ensure that a visible sign is in place for want of doubt in criminal or illegal cases). Russia was similar but this year a fence is being erected due to illegal immigrants using this route from Syria and Afghanistan as other routes have been closed off into Europe.

"Norway and Sweden are both part of the Schengen area and as such there are no Immigration controls. However, only Sweden is in the EU so there are Customs checks.”

Norway and Sweden are both part of the Schengen area and as such there are no Immigration controls. However, only Sweden is in the EU so there are Customs checks. These checks are sporadic along the border, cars are usually not forced to stop (unless intelligence led), there is increased video surveillance, and Automatic Number Plate recognition has been introduced which has increased the capture of smugglers.

Between Norway and Sweden, flights and ferries have no formal passport checks at airport and ferry ports but identity cards are needed to board. Before 2001 the countries were not part of Schengen, but even then there was no passport check, there were more road customs stations but these have since been closed. For most border crossings, there is one Customs station on one side of the border, but on some both sides. A treaty allows the Customs officers authority to carry out clearance and checks for both countries. Roads without stations are not allowed to be used by heavy trucks or goods needing declaration. They are surveyed by video and subject to temporary and random checks. Railway crossings for freight and passengers have Customs Stations (in Sweden) but again no passport controls only random or intelligence led Customs. Freight and trade are cleared inland to facilitate trade.

The Finland-Norway Border is open as both are part of the Schengen area. It is legal to cross the border anywhere if no Customs declaration or passport check is needed. There is an 8-meter-wide clear cut zone along the land border almost half of the border is made up of rivers. All road crossings have customs

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37 http://ec.europa.eu/anti-fraud//home_en
38 http://frontex.europa.eu/
41 To that end, this paper has co-ordinated with a Queens University, Belfast x-border research team. Currently, they have an application to ESRC in Jan 17 on managing mobility across borders post-Brexit and includes customs and Scotland scenarios. This papers authors will synchronise with the project.
The Russia-Norway Border during the Cold War was patrolled by Soviet troops and Norwegian troops as it was the NATO border. All border matters were relevant to NATO and a very different scenario existed. Following the collapse of the Soviet Union, a far more liberal border policy ensued with a Custom protocol agreed with Russia. There are Customs offices on both sides at agreed crossings. However, the border was still a series of posts until the refugee crisis, with a fence now being built. As with Sweden and Finland, trade is facilitated and minimum checks in place.

As this analysis illuminates, Norway and Sweden is the key example here: they both have a similar Common Travel Area both committed to protecting each other's borders and trade. There is no clear reason, and no one has yet to offer one, as to why this cannot work for Scotland and rUK.

"The UK Common Travel Area currently consists of Ireland (EU), Northern Ireland, Scotland, England and Wales (EU), Isle of Man (not EU but special deal under Article 4), Jersey, Guernsey, Alderney (non EU). As such the question of EU membership is already covered in dealing with non-EU states."

The UK Common Travel Area currently consists of Ireland (EU), Northern Ireland, Scotland, England and Wales (EU), Isle of Man (not EU but special deal under Article 4), Jersey, Guernsey, Alderney (non EU). As such the question of EU membership is already covered in dealing with non-EU states.

The Common Travel area allows goods, services and people free movement within the British Isles and has done since 1923, long before the EU came into existence. Each member is committed to integrated systems of control and intelligence.

Why would Scotland be treated differently if it became independent? Even if the UK cuts off all links to the EU there is no reason why a Norway Sweden model would not work. Each country has different rates of duty on spirits, for example, hence no reason why a Norway Sweden model would not work. Each independent? Even if the UK cuts off all links to the EU there is no clear reason, and no one has yet to offer one, as to why this cannot work for Scotland and rUK.

Importantly, while the situation in the UK vis-à-vis border is unprecedented, complex border issues are hardly unprecedented for the EU as a whole. The Aims and Tasks of Association of European Border Regions (AEBR) website reveals well tried and established forums, intra-EU and external countries, to satisfy the most pedantic of “What If?” questions on border matters. It might be thought of as a menu to be cherry-picked from.

In line with its statutes, the AEBR works on behalf of the European border and cross-border regions with the aim to:

- “highlight their special problems, opportunities, responsibilities and activities represent their common interests vis-à-vis national and international parliaments, bodies, authorities and institutions;
- initiate, support and coordinate cooperation between the regions throughout Europe;
- promote exchanges of experience and information with a view to identifying and coordinating common interests among the diverse range of cross-border problems and opportunities, and to propose possible solutions.”

It should be noted that EU Council and Commission has to ratify movement of people/trade with non-EU 3rd Countries.

**Customs and Defence**

A paper by Scottish Defence expert Dr John MacDonald titled “The Defence and Foreign Policy of an Independent Scotland” gives a flavour of where Customs should fit in:

“Scotland’s close proximity to continental Europe and Ireland facilitates a range of smuggling activities around and through Scotland. These have included the transportation of – amongst other things – contraband cigarettes and alcohol, people trafficked for labour and the sex industry, and weapons arriving in or passing through Scotland. These activities do considerable damage to government revenues; they also greatly undermine human security;”

The smuggling of contraband tobacco provides an instructive example of why a Scottish defence model should include an effective customs enforcement and border control capability. With both countries levying the highest levels of excise duty on tobacco in the EU, the UK and Ireland are inundated with smuggled tobacco products. HM Revenue and Customs estimate that in 2012-2013, 16% of cigarette and 48% of hand-rolling tobacco in the UK was illicit (non-duty paid), at a cost to the UK economy of between £2 and £3 billion.

The significance of this issue extends well beyond the huge economic loss to the taxpayer. Smuggling is also known to be intimately linked to a variety of other criminal endeavours. In the UK, tobacco smuggling is closely associated with organized criminal gangs and their various activities in fields such as drug trafficking, human trafficking and weapons procurement. Human trafficking to the UK rose by one-quarter across the 2012-2013 period; sex trafficking in the UK (of adults and children) is also on the rise.

The UK government has acknowledged that it is struggling to address smuggling and the various collateral criminal activities it sustains. An independent Scotland should seek to address

43 The Defence and Foreign Policy of an Independent Scotland, Dr John McDonald & Dr Norrie McQueen, Commonweal, Aug 2014.
44 Illicit trade in Tobacco. ASH, April 2015.
45 https://www.theguardian.com/law/2016/jul/10/modern-slavery-on-rise-in-uk
46 https://www.gov.uk/report-smuggling
identifiable deficiencies. A properly provisioned Scottish Customs & Excise Division could make great strides towards securing the integrity of Scotland's borders by detecting and deterring the unlawful movement of goods and people into and around the country. This agency would work closely with other bodies, in particular the national police service, the Scottish coastguard service and the Scottish air force. It would also liaise closely with partner agencies in the UK and Ireland, as well as in continental Europe.

“Front Line Duty” provides more detail suggesting where an independent Scotland must fully integrate Customs into defence Strategy, Operations & Tactics. A National Defence Academy (NDA) could be a key component of this.

What would it be for? The Scottish Government would utilise the residential NDA as its collective defence brain, including Customs. This would be co-ordinated with the World Customs Organisation (WCO) Partnerships in Customs Academic Research and Development (PICARD) project. NDA should also facilitate post-graduate research in Defence matters. Middle and senior ranking service officers, Police, Customs etc should all be required to read from the same hymn sheet when it comes to a common Defence policy. Denmark has a similar system.

A mission statement of the NDA might be: "To provide Scotland with the best, most up-to-date Defence processes and procedures in order to further collectively develop successful, credible, effective, flexible defence measures to protect Scotland's national borders and sovereignty."

The Governor of the NDA would likely to be a Defence Cabinet Under-Secretary.

The NDA should be a powerful coordinating 'headquarters' to bring coherence to Defence issues, developing plans to defeat risks and threats, harnessing and informing other work at the strategic level within the European Common Security & Defence Policy (EU CSDP).

Conclusion

An independent Scotland must aspire to build a state-of-the-art Customs Division if it is serious about raising tax revenue and closing the tax gap. Customs primary task is to increase the tax yield through direct facilitation of increasing the tax base. Customs should also be central to protecting society, playing a key part in an independent Scotland's Defence strategy, especially in terms of securing the integrity of Scotland's coastal borders. In this paper we have explained in detail how this can be done.

This paper has demonstrated a 'smart borders' approach, emphasising Customs Inland post-clearance controls. This is modern, smart and effective. Logically, an independent Scotland has no need for a hard-border with a non-EU England. For England to raise a razor wire hard-border is counter intuitive to facilitation of smooth passage of trade and people to and from Scotland, plus allied with their stated policy of not doing so.

"An independent Scotland must aspire to build a state of the art Customs Division if it is serious about raising tax revenue and closing the tax gap. Customs primary task is to increase the tax yield through direct facilitation of increasing the tax base."

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The White Paper Project 12 Customs and Borders

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COMMON WEAL POLICY

www.allofusfirst.org
whitepaper@common.scot

3rd Floor, 111 Union St,
Glasgow, G1 3TA