

Issue 75
26 November
2018

BREXIT UPDATE

Scottish Parliament Information Centre

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Written by **Iain Thom**
SPICe Research, The Scottish Parliament



The Scottish Parliament
Pàrlamaid na h-Alba

Contents

THE WITHDRAWAL AGREEMENT AND POLITICAL DECLARATION	1
Publication of the draft documents	1
Prime Minister's statement to Parliament – 22 November	1
Prime Minister's letter	2
European Council meeting	2
Documents laid before UK Parliament	3
The next stages	4
Position of the Scottish Government	4
JOINT MINISTERIAL COMMITTEE MEETINGS	5
BRITISH-IRISH COUNCIL MEETING	5
HOLYROOD BREXIT ROUND-UP	5
Scottish Government report on science and research	5
UK Statutory Instrument notifications	6
COMMON FRAMEWORK PROGRESS	7
First report on The European Union (Withdrawal) Act and Common Frameworks	7
WESTMINSTER BREXIT ROUND-UP	7
Brexit-related legislation tracker	7
What's been happening in Westminster's Committees?	8
USEFUL LINKS	12
About this publication	12

THE WITHDRAWAL AGREEMENT AND POLITICAL DECLARATION

On 25 November 2018, EU leaders endorsed the Withdrawal Agreement and a Political Declaration negotiated between the UK and the EU. [Both documents](#) are now expected to be subject to the so-called meaningful vote in the House of Commons.

A [SPICe briefing on the Withdrawal Agreement is available](#), and a briefing on the Political Declaration will be published this week.

This *SPICe Brexit Update* provides a summary of recent negotiations and events.

Publication of the draft documents

After around 18 months of negotiations, on 14 November 2018, the European Union (EU) and the United Kingdom (UK) Government published:

- the [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#). This is a draft legal agreement setting out arrangements for the UK's departure from the EU.
- an [Outline Political Declaration](#) on the UK-EU future relationship.

Publication of these documents followed a decision by the UK Cabinet, [as reported by the Prime Minister \(PM\) in her statement of 14 November](#):

“ The choices before us were difficult, particularly in relation to the Northern Ireland backstop. But the collective decision of Cabinet was that the Government should agree the draft Withdrawal Agreement and the Outline Political Declaration – this is a decisive step which enables us to move on and finalise the deal in the days ahead.

Following further negotiations, on 22 November 2018, the UK and EU published an expanded [Draft Political Declaration](#).

Prime Minister's statement to Parliament – 22 November

On 22 November [the Prime Minister \(PM\) made a statement updating the UK Parliament on the negotiations and Political Declaration](#). The PM described, from her point of view, the important elements of the Political Declaration and what they mean for UK sovereignty, and the future relationship with the EU, should they be translated into a future relationship.

The quotes below are instances where the PM referred to devolution issues.

In relation to devolution and court jurisdiction, the PM said:

“ The draft text ends the jurisdiction of the European Court of Justice in the UK. We will make our own laws in our own Parliaments, here in Westminster and in Edinburgh, Cardiff and Belfast, and they will be adjudicated on by UK courts.

On fisheries the PM said:

- ” The deal would mean that we leave the common agricultural policy and the common fisheries policy, so let me be absolutely clear about what that would mean for fishing. We would become an independent coastal state, with control over our waters so that our fishermen get a fairer share of the fish in our waters. We have firmly rejected a link between access to our waters and access to markets. The fisheries agreement is not something that we will be trading off against any other priorities. We are clear that we will negotiate access and quotas on an annual basis, as, for example, do other independent coastal states such as Norway and Iceland.

Prime Minister's letter

On 24 November, the Prime Minister published a so-called “letter to the nation”. This is available in full on the [UK Government's website](#).

European Council meeting

On 25 November, EU27 leaders met for [a special meeting of the European Council in its Article 50 configuration to consider the draft Withdrawal Agreement and Political Declaration](#).

Leaders formally endorsed the Withdrawal Agreement and approved the Political Declaration.

[The Council's conclusions](#) stated:

- ” The European Council endorses the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. On this basis, the European Council invites the Commission, the European Parliament and the Council to take the necessary steps to ensure that the agreement can enter into force on 30 March 2019, so as to provide for an orderly withdrawal.

The European Council approves the Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland. The European Council restates the Union's determination to have as close as possible a partnership with the United Kingdom in the future in line with the Political Declaration. The Union's approach will continue to be defined by the overall positions and principles set out in the previously agreed European Council's guidelines. The European Council will remain permanently seized of the matter.

The European Council thanks Michel Barnier for his tireless efforts as the Union's chief negotiator and for his contribution to maintaining the unity among EU27 Member States throughout the negotiations on the withdrawal of the United Kingdom from the European Union.

The Agreement's article which provides for a possible extension of the transition period was finalised to read:

- ” ARTICLE 132 - Extension of the transition period. Notwithstanding Article 126, the Joint Committee may, before 1 July 2020, adopt a single decision extending the transition period for **up to one or two years**.

The text had previously given the end date as “20XX”.

The Council meeting minutes also [included a set of statements, some of which relate to devolved competencies](#):

- ” On the basis of its successive guidelines of 29 April 2017, 15 December 2017 and 23 March 2018, the European Council will demonstrate particular vigilance as regards safeguarding the rights and interests of citizens, the necessity to maintain ambitious level playing field conditions and to protect fishing enterprises and coastal communities.

This will apply both when assessing the implementation of the Withdrawal Agreement, if the backstop is to be operationalized, and when considering the future relationship, in particular in the field of environment regarding the alignment to European standards.

As recalled in the Withdrawal Agreement, a fisheries agreement is a matter of priority, and should build on, inter alia, existing reciprocal access and quota shares. Such an agreement should be negotiated well before the end of the transition period.

The European Council and the European Commission welcome the commitments, as reaffirmed in the Political Declaration, to international agreements to tackle climate change, including the Paris Agreement, as well as commitments covering inter alia climate change, building on the level playing field arrangements provided for in the Withdrawal Agreement. In that light, the withdrawal of the United Kingdom from the Union will not affect shared commitments under the Paris Agreement.

Where the Union position to be taken in the Joint Committee relates to the extension of the transition period and the review of the Protocol on Ireland/Northern Ireland, the Council will act in accordance with the European Council guidelines. Any decision on the extension of the transition period will take into account the fulfilment of obligations by the United Kingdom under the Agreement, including its Protocols.

Documents laid before UK Parliament

As provided for under Section 13(1)(a) of the EU (Withdrawal Act) 2018, [the UK Government have laid before the UK Parliament a ‘Statement that Political Agreement has been reached’, as well as the Withdrawal Agreement and Political Declaration](#).

The [‘Statement that Political Agreement has been reached’](#) indicated that:

- ” At this stage, the withdrawal agreement represents a version of the text which has been agreed, but has not yet been formally signed. Before this formal signature takes place, the agreement must complete the European Union’s jurist-

linguist translation process. During that time, minor technical corrections will be made to the text, though these changes will not affect the substance of the agreement. The laying of the withdrawal agreement before Parliament at this stage does not therefore trigger any procedures under the Constitutional Reform and Governance Act 2010.

The next stages

The Agreement and Declaration will be subject to the so-called meaningful vote in the House of Commons. The details of this are set out in the House of Commons Library Briefing [A User's Guide to the Meaningful Vote](#).

If the Agreement is endorsed by the House of Commons, it will then require the consent of the European Parliament and implementing legislation in the UK. The UK Government has indicated it will introduce legislation to ensure the Agreement is fully ratified.

Position of the Scottish Government

As detailed in SPICe Brexit Update #74, following the publication of the draft Withdrawal Agreement and Outline Political Declaration:

- the [First Minister expressed her concern](#) that the Agreement's provisions on access to the EU's single market for businesses in Northern Ireland puts businesses in Scotland at a "competitive disadvantage".
- the Cabinet Secretary for Government Business and Constitutional Relations [confirmed that the Scottish Government intends to bring a Scottish Parliament vote](#) on the Agreement.

A press release issued on 23 November highlighted the Scottish Government's view that:

“ The draft Brexit deal is a 'blind leap into the unknown' which leaves Scotland's £16 billion EU-related export sector facing trade barriers and 'years of damaging uncertainty'

A press release issued on 25 November highlighted the Scottish Government's view that:

“ Leaving the EU and ending freedom of movement could cost Scotland £2 billion in tax revenues [by 2040]

The basis for the Scottish Government's tax revenue estimation is explained in the [Technical Annex](#) of *Scotland's population needs and migration policy: discussion paper* (February 2018).

JOINT MINISTERIAL COMMITTEE MEETINGS

Two Joint Ministerial Committee (EU Negotiations) meetings were held in November to date.

- 13 November 2018 – this was the fourteenth Joint Ministerial Committee (EU Negotiations) meeting. [The communique describes the agenda](#) as including an update on negotiations, including further developments in relation to the Withdrawal Agreement and the Future Framework; an update on the EU (Withdrawal Agreement) Bill; and engagement on common frameworks and operational readiness.
- 19 November 2018 – this was the fifteenth Joint Ministerial Committee (EU Negotiations) meeting. [The communique describes the agenda](#) as including an overview of the draft Withdrawal Agreement and Outline Political Declaration that had been published since the Committee last met and discussion on the draft Withdrawal Agreement and the Outline Political Declaration.

Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP attended both meetings from the Scottish Government.

BRITISH-IRISH COUNCIL MEETING

On 9 November 2018, the British-Irish Council held its 31st Summit meeting. [On Brexit the communique said:](#)

- ☞ Ministers also updated the Council on their activity in relation to the UK's exit from the European Union (EU), particularly with reference to engagement between Member Administrations. They discussed the importance of maintaining the constitutional and formal relationships across the United Kingdom and the Crown Dependencies. The Council engaged on topics including the economy and trade, free movement of goods and people, the Common Travel Area and ongoing relations with the EU.

First Minister Nicola Sturgeon attended from the Scottish Government.

HOLYROOD BREXIT ROUND-UP

Scottish Government report on science and research

On 5 November, the Scottish Government published its sixth Brexit policy report, [Scotland's place in Europe: science and research](#). This presents the Scottish Government's analysis of the implications for Scotland's science and research if the UK exits the European Union.

A motion on the same topic was [debated in the Scottish Parliament on 7 November](#).

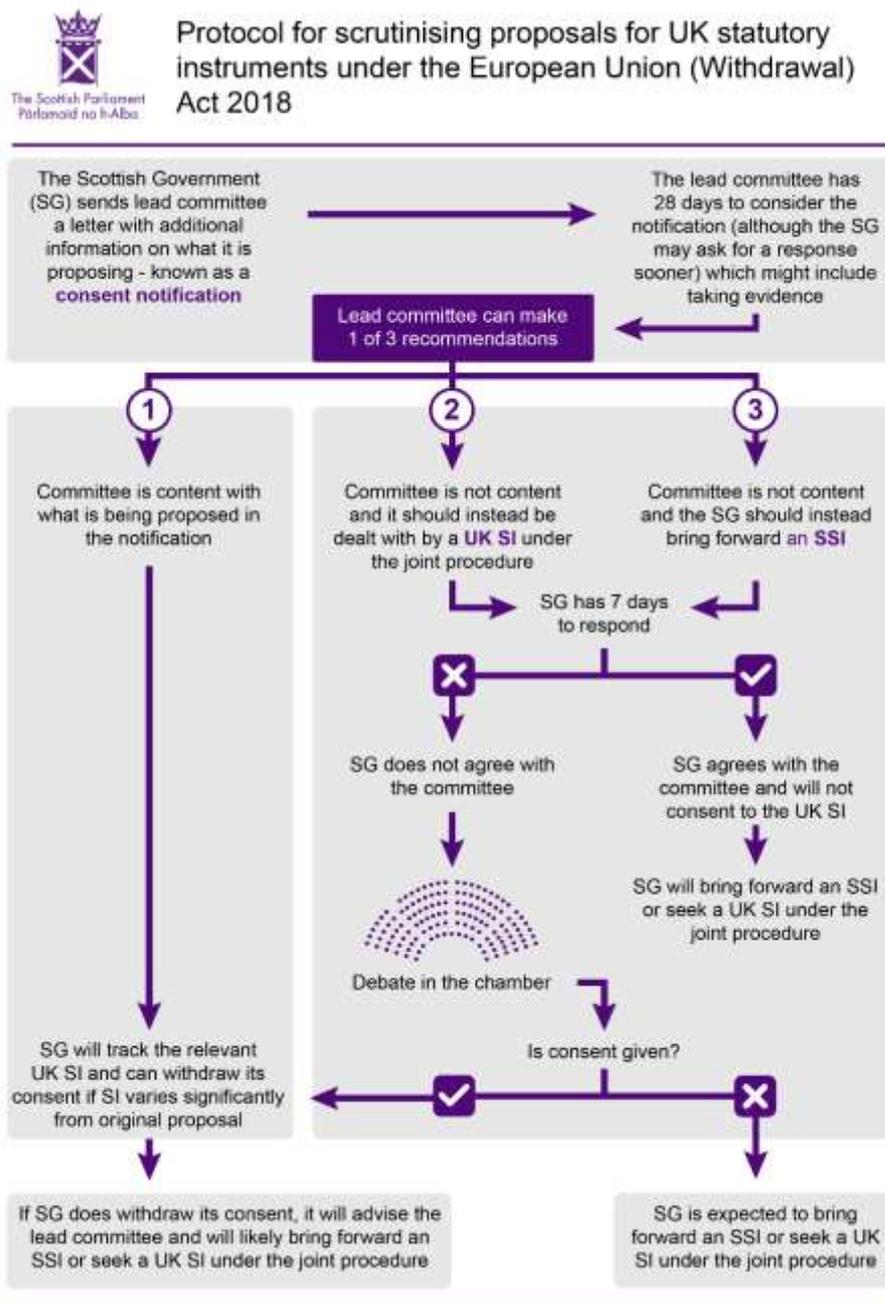
UK Statutory Instrument notifications

The Scottish Parliament has now received forty ‘consent notifications’ from the Scottish Government.

These notifications inform the Scottish Parliament when the Scottish Government intends to consent to the UK Government laying statutory instruments (required as a result of Brexit) that include proposals relating to devolved competencies.

The ‘consent notification’ scrutiny process is described by the infographic below.

A **full list of SI notifications** received to date, and the Committee’s response, is available from the [DPLR Committee webpages](#).



COMMON FRAMEWORK PROGRESS

First report on The European Union (Withdrawal) Act and Common Frameworks

The European Union (Withdrawal) Act requires a report to be laid every three months on the operation on:

- Implementation of future common frameworks.
- Legislation relating to retained EU law restrictions.

The [first report was published on 13 November 2018](#). The foreword says:

“ This report details the progress made in the first reporting period covered under the legislation. These discussions have been collaborative and constructive enabling us to define jointly the potential scope and shape of future common frameworks in the highest priority areas, where it makes sense to continue with common approaches after we leave the EU.

On the basis of the significant joint progress on future frameworks, and the continued collaboration to ensure the statute book is ready for exit day, the UK Government has concluded that it does not need to bring forward any section 12 regulations at this juncture. On this basis, the Scottish and Welsh Governments continue to commit to not diverging in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussions continue.

In response, [the Scottish Government called for section 12 of the European Union \(Withdrawal\) Act to be “immediately repealed”](#).

The Scottish Government press release also detail the areas where progress has been made on common frameworks:

“ Areas where progress has been made in discussions include: Food and Feed Hygiene & Safety Law; Animal Health and Welfare; Fisheries Management and Support; Nutrition Health Claims, Compensation & Labelling; Hazardous Substances Planning and Public Sector Procurement.

WESTMINSTER BREXIT ROUND-UP

Brexit-related legislation tracker

The following Bills are in progress:

1. [Healthcare \(International Arrangements\) Bill](#), introduced 26 October 2018 (to enable the UK Government to make and fund reciprocal healthcare agreements with other countries in the event of “no deal”). The Committee stage is scheduled for 27 November.

2. The [Fisheries Bill](#), introduced 25 October. The Committee stage is not yet scheduled.
3. The [Agriculture Bill](#), introduced 12 September. The Committee stage debate took place on 20 November.
4. The [Trade Bill](#) has completed its passage through the Commons. The House of Lords Committee stage is not yet scheduled.

The following primary legislation has received Royal Assent:

1. The [Taxation \(Cross-border Trade\) Act](#) received Royal Assent on 13 September.
2. The [Haulage Permits and Trailer Registration Act](#) received Royal Assent on 19 July.
3. The [European Union \(Withdrawal\) Act](#) received Royal Assent on 26 June.
4. The [Nuclear Safeguards Act](#) received Royal Assent on 26 June.
5. The [Sanctions and Anti-Money Laundering Act](#) received Royal Assent on 23 May.

What's been happening in Westminster's Committees?

The table below summarises the main Brexit-related work of Westminster's committee's since the end of October.

Commons Select Committees	
Exiting the European Union	<p>Inquiry: The progress of the UK's negotiations on EU withdrawal</p> <ul style="list-style-type: none"> • Oct 31 – evidence session on the parliamentary procedure for voting on any Withdrawal Agreement and Political Declaration with the Clerk of the House of Commons and a academic panel. (link) • Nov 13 – evidence session on security cooperation with European Council on Foreign Relations, Chatham House, Centre for European Reform and Europol. (link) • Nov 21 – initial examination of the draft Withdrawal Agreement and outline Political Declaration with Professor Franklin Dehousse, University of Liege and former Judge at the CJEU General Court, Agata Gostynska-Jakubowska, Centre for European Reform and Dr Holger Hestermeyer, King's College London. (link)

<p>Scottish Affairs</p>	<p>Open inquiry: The relationship between the UK and Scottish Governments inquiry – submission deadline 23 November 2018.</p> <ul style="list-style-type: none"> Nov 16 - evidence session focusing on mechanisms for managing intergovernmental relations and the impact of Brexit with a expert panel. (link) <p>Open inquiry: The future of Scottish agriculture post-Brexit – submission deadline 11 January 2019.</p> <ul style="list-style-type: none"> Oct 30 – evidence session with stakeholders and Fergus Ewing MSP, Cabinet Secretary for Rural Economy. (link) <p>Inquiry: Scotland and Brexit: Trade and Foreign Investment</p> <ul style="list-style-type: none"> Nov 14 – evidence session with Scottish and UK Government Ministers about the future of UK trade and its implications for Scotland. (link)
<p>European Scrutiny</p>	<p>Inquiry: EU Withdrawal</p> <ul style="list-style-type: none"> Oct 26 – Committee letter to highlighting that any extension to the post-Brexit transition period will leave the UK liable to "substantial subsidies" to the EU budget above and beyond the existing £39 billion Brexit bill. (link) 16 Nov – joint meeting examining the UK's future engagement with the European Defence Industrial Development Programme, the European Defence Fund European Defence Fund, Permanent Structured Cooperation (PESCO) and the Galileo programme. (link)
<p>Home Affairs</p>	<ul style="list-style-type: none"> Nov 14 – scrutiny session on policing and security capabilities in the event of a no deal scenario, with Minister of State for Policing and Fire Service and senior Home Office officials. (link) <p>Inquiry: Post-Brexit migration</p> <ul style="list-style-type: none"> Oct 30 – scrutiny session on the Home Office preparations on border and security preparations for Brexit with Caroline Nokes MP, Minister of State for Immigration, the National Crime Agency, and the Metropolitan Police Service. (link)
<p>Environment, Food and Rural Affairs</p>	<p>Agriculture Bill scrutiny</p> <ul style="list-style-type: none"> Oct 31 – evidence session on the Agriculture Bill with Michael Gove, Secretary of State for Environment, Food

	<p>and Rural Affairs, and George Eustice, Minister for Agriculture, Fisheries and Food. (link)</p> <p>Fisheries Bill inquiry</p> <ul style="list-style-type: none"> Oct 31 – following the publication of the Fisheries Bill the Committee have opened an inquiry – deadline for submissions 26 November 2018. (link)
<p>International Trade</p>	<p>Inquiry: The impact of UK- EU arrangements on wider UK trade policy</p> <p>The committee held four evidence sessions examining how different stakeholders groups should be involved in the development and scrutiny of trade policy and new trade agreements</p> <ul style="list-style-type: none"> Oct 31 – evidence session with businesses and civil society stakeholders. (link) Nov 13 - evidence session with the UK’s Ambassador to the World Trade Organization and a panel of representatives from the private sector, the Office for National Statistics, and the Northern Ireland Executive. (link) Nov 14 – evidence session with devolved administrations and local government representatives, including Ivan McKee, Minister for Trade, Innovation & Investment, Scottish Government and others. (link) Nov 21 – evidence session with thinktanks on the role that Parliament should play. (link) <p>*New* inquiry: UK trade in services</p> <ul style="list-style-type: none"> Nov 23 - inquiry launched on the barriers faced by UK services exporters, how the UK should seek to liberalise international trade in services, including negotiating international agreements, and potential domestic policy implications. Deadline for submissions 21 January 2019. (link)
<p>Procedure</p>	<p>Inquiry: Motions under section 13(1) of the European Union (Withdrawal) Act 2018 (i.e. the status of and procedure for the “meaningful vote” on the outcome of the Brexit negotiations)</p> <ul style="list-style-type: none"> Nov 16 – *new report* setting out three potential options for the process for the House of Commons to approve any negotiated withdrawal agreement between the UK and the EU. (link)

Public Accounts	<ul style="list-style-type: none"> Nov 14 - *new report* on Defra’s Brexit preparedness warning that “the Department is too complacent about potential disruption or interruption to trade; fundamental issues for food, chemical and animal importers and exporters remain; [and] inadequate engagement with businesses means SMEs in particular are ill-prepared”. (link) Nov 2 – report on HMRC’s performance including conclusion that “serious concerns remain over risks to customs and borders after Brexit, especially if there is no deal”. (link)
House of Lords	
EU Select	<p>*New reports*</p> <ul style="list-style-type: none"> Nov 7 - Brexit: chemical regulation <p>Financial Affairs Sub-Committee</p> <ul style="list-style-type: none"> Evidence sessions as part of the committee’s European Investment Bank (EIB) inquiry on innovative companies (Oct 31); British Business Bank and KfW (Nov 14); and Exchequer Secretary to the Treasury, Robert Jenrick MP (Nov 21). <p>Internal Market Sub-Committee</p> <ul style="list-style-type: none"> Nov 1- Evidence session on Brexit and road transport, with road hauliers and manufacturers as well as bus and coach operators. (link) Nov 12 - evidence session with the Secretary of State for Transport to discuss future UK-EU arrangements on road, rail and maritime transport and contingency planning for the sector in the event of no deal. (link) <p>Energy and Environment Sub-Committee</p> <ul style="list-style-type: none"> Nov 15 – *new inquiry* launched into the implementation of the EU fisheries landing obligation. Deadline for submissions 13 December 2018. (link) <p>Home Affairs Sub-Committee</p>

	<ul style="list-style-type: none"> • Oct 31 – evidence session on no-deal planning with pharmaceutical industry on access to medicines and how companies should prepare. (link) The Committee later issued a letter to the UK Government. • 6 Nov - inquiry launched on Erasmus and Horizon funding after Brexit: Brexit: EU student exchanges and funding for university research. Deadline for submissions closed on 21 November.
--	---

USEFUL LINKS

Agreement texts and explanatory notes:

- The Withdrawal Agreement, Political Declaration and UK Government ‘explainers’ are all available on the [UK Government’s website](#).
- ‘Explainers’ from the European Commission are available at the following links: [What is in the Withdrawal Agreement](#) and [Protocol on Ireland and Northern Ireland](#)

Iain Thom
SPICe Research

About this publication

This regular paper produced by SPICe sets out developments in the UK’s negotiations to leave the European Union, the process for which formally begun following the Prime Minister’s triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government’s approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK’s departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK’s future relationship with the European Union.

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on telephone number 85294 or Iain.McIver@parliament.scot. Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament’s Public Information Service at sp.info@parliament.scot.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.