

SPICe Briefing

Following the EU Referendum – Frequently Asked Questions

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This paper provides answers to some of the key questions that have arisen following the outcome of the EU referendum on 23 June 2016. However, given the unique nature of a Member State leaving the EU, there remain a number of uncertainties around the process for withdrawal. The FAQs paper will be updated on an ongoing basis as things become clearer.



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INTRODUCTION

On 23 June 2016, the United Kingdom voted in a referendum on whether it should remain or leave the European Union (EU).

As shown in this [SPICe Infographic](#), Leave won with over 17.4 million votes, equating to 51.9% of the votes cast, against over 16.1 million votes for Remain, equating to 48.1% of the votes cast. Total turnout was 72.2%.

The result across the four nations of the United Kingdom varied, with majorities in England and Wales voting Leave and majorities in Scotland and Northern Ireland voting Remain. The result in each of the four nations was as follows:

- In England, on a turnout of 73.0%, 15.19 million people (53.4% of those who voted) voted Leave and 13.26 million people (46.6% of those who voted) voted Remain
- In Wales, just under 855,000 people (52.5% of those who voted) voted Leave on a turnout of 71.1%. Just over 772,000 people (47.5% of those who voted) voted Remain.
- In Scotland, 1.66 million people (62% of those who voted) voted Remain with just over 1.02 million people (38% of those who cast a vote) voting Leave, on a turnout of 67.2%.
- In Northern Ireland, on a turnout of 62.9%, 440,000 people (55.8% of those who voted) voted Remain. While just under 350,000 people voted Leave.

This Frequently Asked Questions paper provides answers to some of the questions which have arisen following the referendum.

FREQUENTLY ASKED QUESTIONS

Is the EU referendum result legally binding?

The EU referendum was advisory and not legally binding. As such, the outcome of the referendum does not in itself have any legal effect.

By what process does the United Kingdom leave the European Union?

The European Treaties, as amended by the Treaty of Lisbon, include a provision for the first time setting out how a Member State might leave the European Union should it wish to do so. Article 50 of the Treaty on European Union sets out how a Member State can withdraw from the European Union.

What is Article 50?

Article 50 of the Treaty on European Union states:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council¹ of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That

¹ The European Council is the meeting of Heads of State and Government of all 28 EU Member States

agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Use of Article 50 is the legal basis under the Treaties for withdrawal of a Member State.

Has Article 50 ever been used?

Article 50 has never been used as no Member State has ever chosen to leave the European Union. Therefore it is not yet clear how the Article 50 process will work in practice.

What is the process for triggering Article 50 of the Treaty on European Union?

Article 50 would be triggered by a letter or other form of notification from the UK Government to the European Council. While there is no timescale for submitting a notification under Article 50, the European Union institutions have said that they'd like to see the UK Government indicate its intention to leave the EU as soon as possible now that the referendum result is known. However, the Prime Minister has indicated that the UK Government will not trigger Article 50 until a new Prime Minister is in place.

Article 50 provides for up to two years to negotiate a withdrawal settlement between the leaving state and the EU. If no agreement is reached within the two years, and there is no agreement to extend the time for negotiations, the Treaties would cease to apply to the state which triggered Article 50 and that state would leave the EU.

Who will lead the negotiations for the EU?

Article 50 does not say who the EU's lead negotiator should be and reports have suggested that there is a disagreement between Member State Governments in the European Council and the European Commission about who should take the lead. An [article in Politico](#) outlines the arguments of both institutions

“The Council’s legal position, according to the Commission’s own legal service, is that the U.K. would be a member of the EU at the time of the divorce talks, not a “third state” that would usually be dealt with by the Commission, as for example in talks on joining the union. By that logic, as the Council groups together member states, the Council is the appropriate setting for these negotiations. “To the contrary,” the Commission legal service memo said, Article 50 “treats the withdrawing Member State as if it were already a third State: that State shall not participate in the Council’s discussions and decisions on the negotiations.”

In a [statement to the Irish Parliament](#) following the referendum, the Taoiseach, Enda Kenny said:

“I expect that on Wednesday morning there will be a substantial discussion among the Heads of State or Government of the 27 other member states, without the presence of the UK. I have no doubt that it will be underlined that Article 50 of the Treaty on European Union is the only legal basis for a member state to withdraw from the European Union. I also want to make clear that it is the European Council, the leaders of the different country, under the direction of President Donald Tusk, and not any other EU institution or subgroup, which will have overall political control of the process involved here.”

Following the UK decision to leave, the European Council appointed Belgian career diplomat Didier Seeuws to lead the Council’s 27 Member States (for the purposes of negotiating the UK’s departure from the EU, the UK Government is not represented in the European Council). Didier Seeuws’ job is to lead the Council’s working group over the UK’s departure from the EU.

Does the Scottish Government or the Scottish Parliament have a role in the decision to trigger Article 50?

No, neither the Scottish Government nor the Scottish Parliament have a formal role in the notification of Article 50; however, the UK Government may choose to consult with the Devolved Administrations ahead of notifying the European Council of its intention to leave the EU.

What has the new Prime Minister said about triggering Article 50?

Following her meeting with Scotland’s First Minister, the new Prime Minister, Theresa May, [said](#):

“I have already said that I won’t be triggering Article 50 until I think that we have a UK approach and objectives for negotiations - I think it is important that we establish that before we trigger Article 50.”

The Prime Minister also indicated that she, “wanted the Scottish Government to be fully engaged in our discussion” about the UK Government’s approach to negotiations with the European Union.

During her visit to Berlin for talks with German Chancellor Angela Merkel, the Prime Minister indicated that the UK Government did not intend to trigger Article 50 before the end of 2016.

What needs to be agreed under Article 50?

The negotiations between the EU and the UK Government are likely to result in a Treaty between the EU and the UK setting out the terms of the UK’s withdrawal; a Treaty between the EU and the UK setting out the UK’s future relationship with the EU and an EU Treaty to amend the EU Treaties to take account of the UK’s exit. If the Treaty setting out the future relationship also extends into areas which are within the competence of the Member States to legislate on, then such a “mixed agreement” would need the unanimous agreement of the Member States.

What is the Scottish Government’s position on the UK decision to leave the EU?

Following the referendum result, the First Minister of Scotland made a [statement](#) on Friday 24 June in which she said that she regarded it as “democratically unacceptable” that Scotland should face the prospect of being taken out of the EU against its will. The First Minister also said:

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

To that end, I have made clear to the Prime Minister this morning that the Scottish Government must be fully and directly involved in any and all decisions about the next steps that the UK government intends to take.

We will also be seeking direct discussions with the EU institutions and its member states, including the earliest possible meeting with the President of the European Commission.

I will also be communicating over this weekend with each EU member state to make clear that Scotland has voted to stay in the EU - and that I intend to discuss all options for doing so.”

Following a debate in the Scottish Parliament on 28 June in which the First Minister reiterated that her over-riding priority is to protect Scotland’s relationship with, and place in, the EU, the Parliament passed the [following motion](#) by 92 votes to 0 votes with 31 abstentions:

“That the Parliament welcomes the overwhelming vote of the people of Scotland to remain in the European Union; affirms to citizens of other EU countries living here that they remain welcome and that their contribution is valued; mandates the Scottish Government to have discussions with the UK Government, other devolved administrations, the EU institutions and member states to explore options for protecting Scotland’s relationship with the EU, Scotland’s place in the single market and the social, employment and economic benefits that come from that, and instructs the Scottish Government to report back regularly to parliamentarians, to the European and External Relations Committee and the Parliament on the progress of those discussions and to seek Parliament’s approval of the outcome of that process.”

During the debate, the First Minister announced the formation by the Scottish Government of a Standing Council on Europe to advise on legal, financial and diplomatic issues.

On 29 June the First Minister visited Brussels and met with the President of the European Commission, Jean-Claude Juncker, as well as the President of the European Parliament, Martin Schulz, and the leaders of a number of the political groups in the European Parliament. According to the Scottish Government, the First Minister “stressed that Scotland chose to remain part of the European Union, and her determination to ensure all options are considered to enable Scotland to remain in the EU”. Following the First Minister’s meetings she held a [press conference](#) at which she said:

“In my discussions during the day, I’ve heard, as you would expect, deep concern about the impact of the referendum not just on Scotland, the UK and the European institutions, but on people in all our countries and on the EU itself.

“For my part, I’ve emphasised that Scotland voted to remain part of the EU.

“If there is a way for Scotland to stay, I am determined to find it.

“We are in uncharted territory, and none of this is easy. My task is to bring principles, purpose and clarity to the situation, and to speak for all of Scotland.

“We are early in this process. The referendum is not yet a week behind us - a long week for all of us.

“My concern at this stage is to ensure that once the UK negotiation with the EU starts, all the options are on the table. I don’t underestimate the challenges but I am heartened by the discussions. Here, I’ve found a willingness to listen: open doors, open ears and open minds.”

Who sits on the Scottish Government’s Standing Council on Europe?

Membership of the Council is as follows:

Chair: Professor Anton Muscatelli, Principal and Vice Chancellor, University of Glasgow

Vasco Cal, former economic adviser at the European Commission

Sir David Edward, European Court Judge

David Frost, whisky trade expert, former diplomat

Dame Anne Glover, former chief scientific adviser to President Barosso

Charles Grant, Centre for European Reform, London

John Kay, financial markets

Lord Kerr, diplomat, deputy chair ScottishPower, Carnegie Trust

Dame Mariot Leslie, diplomat

David Martin, MEP

Amanda McMillan, CEO Glasgow Airport

Professor Alan Miller, former chair of the Scottish Human Rights Commission

Anne Richards, M&G Investments & Edinburgh University Court

Frances P. Ruane, Irish academic economist & former director of ESRI

Alyn Smith, MEP

Grahame Smith, STUC, Scotland Europa

Professor Andrew Scott, University of Edinburgh

Fabian Zuleeg, European Policy Centre, Brussels

What powers does the Scottish Government have under the Scotland Act in relation to the European Union?

As the United Kingdom is the Member State, the United Kingdom Government represents Scotland in the European Council and in the Council of Ministers. In addition, contact with the European Commission is primarily made through the Member State Government.

This situation is reflected in the Scotland Act 1998, which states that relations with the European Union are the responsibility of the Parliament and Government of the United Kingdom. This means that the United Kingdom Government is responsible for managing relations with the European Union, including leading on all policy and legislative negotiations.

However, the Scotland Act 1998 does give the Scottish Government and Scottish Parliament responsibility for implementing European obligations where they relate to devolved matters, for example in the area of environmental policy.

The Scottish Government is also responsible for administering the spending of European funds including structural funds and the Common Agricultural Policy in Scotland.

What powers does the Scottish Parliament have under the Scotland Act 1998 in relation to the European Union?

The powers set out in the Scotland Act 1998 mean, as with the other devolved legislatures, the Scottish Parliament is responsible for implementing and transposing into domestic law a wide spectrum of EU legislation including in areas such as agriculture, fisheries and the environment.

Does Scottish Parliament legislation currently have to comply with European Union law?

Yes. Section 29(2)(d) of the Scotland Act 1998 requires that all legislation of the Scottish Parliament is compatible with EU law.

Will a UK Parliament decision to leave the European Union require the consent of the Scottish Parliament?

The UK's membership of the EU is a reserved matter. The UK's withdrawal from the EU will require an international agreement or will result from the operation of the EU Treaty. International agreements are not subject to the Legislative Consent Memorandum (LCM)² process, nor are mechanisms under the EU Treaty. In that context, the Scottish Parliament would not have a block or veto.

However, once international level agreement has been reached, effect would need to be given to that agreement in UK law. It is not yet clear what form that would take but it could engage the requirement for the LCM process.

Will the Scotland Act need to be amended when the United Kingdom leaves the European Union?

A decision by the United Kingdom to leave the European Union may require amendments of the Scotland Act 1998, to remove various references to the EU or EU law. Further, a repeal of the European Communities Act 1972 would not, of itself, end the domestic incorporation of EU law in the devolved nations, given that EU law is implemented in Scotland within very many pieces of primary and secondary legislation, and not all legislation implementing EU law relies on the 1972 Act.

This would be no simple matter. Although the UK Parliament may amend legislation which relates to devolved matters, by constitutional convention the UK Parliament will not normally legislate on a devolved matter without the consent of the devolved legislature. This requires a Legislative Consent Motion under the "Sewel Convention".

The need for an LCM (or LCMs) could therefore be engaged under the current rules to implement changes to domestic law arising from the UK's withdrawal from the EU.

² Legislative Consent Memorandums are usually lodged in the Scottish Parliament by the Scottish Government. They relate to Bills under consideration in the United Kingdom Parliament which contains what are known as "relevant provisions". These provisions include altering the 'legislative competence' of the Scottish Parliament (its powers to make laws) or the 'executive competence' of Scottish Ministers (their powers to govern).

When the UK leaves the EU, would it result in more powers coming to the Scottish Parliament?

Under the current devolution settlement, when the UK leaves the EU, the competences exercised by the EU would be repatriated to the UK. Where those competences relate to devolved matters, an effect of withdrawal of the UK from the EU will be that the Scottish Parliament will obtain a competence to legislate on those matters, which it did not have before the withdrawal takes effect.

What will happen to EU legislation in Scotland?

This depends on how the UK Government chooses to deal with the European Communities Act 1972 and also what form of settlement the UK agrees with the EU in terms of a future relationship. As such it is too early to say what will happen to EU legislation currently implemented in Scotland.

When will the United Kingdom leave the European Union?

The United Kingdom will leave the European Union once an agreement is reached with the other EU Member States or at the expiry of the two year period following the triggering of Article 50, unless that period is extended by unanimous agreement of the Member States.

Until then, the UK continues to be a member of the EU with all the the benefits, responsibilities and obligations of membership. This includes continuing to observe and implement EU law.

What will happen to the future of EU funding in Scotland (i.e. CAP, structural funds, Horizon 2020 etc.)?

At this stage the UK continues to be a member of the European Union and, as a result, will continue to participate in European funding programmes. This will continue to be the case at least until the UK leaves the European Union. Following the UK's departure from the EU, the position is less clear. Continued access to some aspects of EU funding will depend on the terms of the UK's new relationship with the European Union (for instance EFTA EEA members participate in some EU funding programmes such as Horizon 2020).

Decisions on replacing EU funding, such as the Common Agricultural Policy and structural funds once the UK has left the EU, will be policy decisions for the UK and Scottish Governments.

What will happen to EU citizens in the UK following the UK decision to leave the EU?

The status of EU citizens in the United Kingdom is likely to be addressed during the negotiations of the UK's exit from the EU and negotiation of a new settlement between the EU and the UK.

The UK Government published a [statement](#) on the status of EU nationals in the UK on 11 July 2016. The statement said:

“There has been no change to the rights and status of EU nationals in the UK, and UK nationals in the EU, as a result of the referendum.

(...) When we do leave the EU, we fully expect that the legal status of EU nationals living in the UK, and that of UK nationals in EU member states, will be properly protected.

The government recognises and values the important contribution made by EU and other non-UK citizens who work, study and live in the UK.”

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