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BREXIT UPDATE

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An t-Ionad Fiosrachaidh

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The Scottish Parliament
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INTRODUCTION

This SPICe Brexit Update #85 focusses on the lead up to, and the outcome of the special European Council meeting held on 10 April at which the EU agreed to extend the Article 50 process to the end of October this year.

PRIME MINISTER'S OFFER TO WORK WITH THE OPPOSITION

After the Withdrawal Agreement was rejected by the House of Commons for a third time on 29 March, and no motion having gained a majority in the first or second rounds of indicative votes, the UK Government held a long cabinet meeting, on 2 April.

Following this meeting, the Prime Minister [announced she would seek to work with the Leader of the Opposition](#) to find a solution to allow the UK to leave the European Union in an orderly way:

” ...Despite the best efforts of MPs, the process that the House of Commons has tried to lead has not come up with an answer.

So today I am taking action to break the logjam: I am offering to sit down with the Leader of the Opposition and to try to agree a plan - that we would both stick to - to ensure that we leave the European Union and that we do so with a deal.

Any plan would have to agree the current Withdrawal Agreement – it has already been negotiated with the 27 other members, and the EU has repeatedly said that it cannot and will not be reopened.

What we need to focus on is our Future Relationship with the EU.

The PM then indicated that her “ideal outcome” of this process would be to agree an approach on a Future Relationship with the Leader of the Opposition that the House of Commons could then endorse ahead of the European Council meeting on 10 April. Alternatively, the PM suggested a number of options for the Future Relationship could be defined and then voted on in the House of Commons.

The PM indicated that the the Government would “abide by the decision of the House” and aim to pass a Withdrawal Agreement Bill:

” before 22nd May so that the United Kingdom need not take part in European Parliamentary Elections.

Following this, talks were held between Labour and the UK Government. However, nothing formal was agreed ahead of the European Council meeting on 10 April.

The SPICe Spotlight blog, [Brexit – Focus on the future relationship](#), discusses the status of the Political Declaration describing the basis for a future relationship and whether it is possible to ensure binding changes.

PM’s REQUEST TO FURTHER EXTEND ARTICLE 50

On 21 March, the European Council agreed to a short extension of Article 50. Because the House of Commons had not approved the Withdrawal Agreement by the 29 March, this short extension was to 12 April.

On 3 April, following the PM’s announcement that she would seek to work with the Leader of the Opposition, the President of the European Commission, Jean Claude-Juncker [said in the European Parliament](#):

” In light of Prime Minister May's statement last night, I believe we now have a few more days. If the United Kingdom is in a position to approve the Withdrawal Agreement with a sustainable majority by 12 April, the European Union should be prepared to accept a delay until 22 May.

But 12 April is the ultimate deadline for the approval of the Withdrawal Agreement by the House of Commons. If it has not done so by then, no further short extension will be possible. After 12 April, we risk jeopardising the European Parliament elections, and so threaten the functioning of the European Union.

On 5 April, the PM [wrote to European Council President Donald Tusk to request a further extension to Article 50](#).

The letter outlined the PM’s offer of cross-party talks to

1. agree a single approach to the future relationship that could be voted on in the House of Commons, or
2. “establish a consensus on a small number of clear options” that could be voted on House of Commons.

In her letter, the PM requests an extension to 30 June 2019 with an option for early termination:

I am writing therefore to inform the European Council that the United Kingdom is seeking a further extension to the period provided under Article 50(3) of the Treaty on European Union, including as applied by Article 106a of the Euratom Treaty. The United Kingdom proposes that this period should end on 30 June 2019. If the parties are able to ratify before this date, the Government proposes that the period should be terminated early. The Government will want to agree a timetable for ratification that allows the United Kingdom to withdraw from the European Union before 23 May 2019 and therefore cancel the European Parliament elections, but will continue to make responsible preparations to hold the elections should this not prove possible.

On 6 April, the PM gave a [further statement](#) on the Brexit process:

” Because Parliament has made clear it will stop the UK leaving without a deal, we now have a stark choice: leave the European Union with a deal or do not leave at all.

My answer to that is clear: we must deliver Brexit and to do so we must agree a deal. If we cannot secure a majority among Conservative and DUP MPs we have no choice but to reach out across the House of Commons.

The referendum was not fought along party lines and people I speak to on the doorstep tell me they expect their politicians to work together when the national interest demands it. The fact is that on Brexit there are areas where the two main parties agree: we both want to end free movement, we both want to leave with a good deal, and we both want to protect jobs.

That is the basis for a compromise that can win a majority in Parliament and winning that majority is the only way to deliver Brexit.

The longer this takes, the greater the risk of the UK never leaving at all. It would mean letting the Brexit the British people voted for slip through our fingers. I will not stand for that. It is essential we deliver what people voted for and to do that we need to get a deal over the line.

To achieve this I will go to Brussels this week to seek a short extension to Article 50. My intention is to reach an agreement with my fellow EU leaders that will mean if we can agree a deal here at home we can leave the EU in just six weeks.

EUROPEAN UNION (WITHDRAWAL) (No. 5) BILL

Running parallel with the UK Government's request to extend Article 50, the House of Commons agreed the European Union (Withdrawal) (No. 5) Bill, now Act.

This legislation requires the UK Government to lodge a motion on the day that the Bill receives Royal Assent that reads:

"That this House agrees for the purposes of section 1 of the European Union (Withdrawal) Act 2019 to the Prime Minister seeking an extension of the period specified in Article 50(3) of the Treaty on European Union to a period ending on [...]"

The square brackets must be substituted by a specific date. If the House of Commons approves a motion for the Prime Minister seeking an extension, she would then be under a legal obligation to ask the European Council for that extension.

This Private Member's Bill in the name of Yvette Cooper had its [first reading on 2 April](#), progressed through the House of Commons on [3 April](#) before coming back from the Lords and being [approved and gaining Royal Assent on 8 April](#).

By the time of Royal Assent, the PM had already requested an extension to Article 50 (to 30 June 2019). However, in line with the requirements of the legislation, on 9 April the UK Government moved a motion that sought approval from the House of Commons for such an extension. The Solicitor General [opened the debate](#).

The motion was [supported](#) (Ayes:420 Noes:110).

While it is unlikely to be relevant, the European Union (Withdrawal) (No. 5) Act also creates restrictions on the UK Government's ability to accept an extension from the European Council shorter than 22 May 2019. This is described in the Commons Library blog: [The Cooper Act and Article 50 – a new role for Parliament?](#)

SPECIAL EUROPEAN COUNCIL MEETING

Ahead of the special European Council meeting, on 9 April, the Prime Minister visited Berlin and Paris for discussions with [Chancellor Merkel](#) and [President Macron](#).

In the lead up to the summit, European Council President, Donald Tusk [wrote to EU27 heads of state and government](#) suggesting a delay of up to one year with the opportunity for the UK to leave the EU at the point at which the Withdrawal Agreement was ratified would be a good outcome.

Discussions between the EU27 led to the offer of an extension to the Article 50 period to the end of October this year. The [Council Conclusions](#) outline the agreement reached between the EU27 and the UK Government. The terms of the [further extension](#) are as follows:

- The UK will not now leave the European Union on 12 April. Instead a flexible extension has been granted to 31 October. If the Withdrawal Agreement is ratified before then, the UK will leave the EU at the end of the month in which the Agreement is ratified.

- The UK must participate in the European Parliament elections to be held on 23 May if it is still an EU member and has not ratified the Withdrawal Agreement by 22 May. Failure to participate would mean the UK would leave the EU on 1 June.
- The Withdrawal Agreement will not be reopened. However, changes could be made to the Political Declaration on the Future Relationship. But concrete negotiations on the future relationship cannot take place whilst the UK remains a member.
- The UK remains a member of EU with full rights and obligations until it leaves, and whilst a member is still free to revoke Article 50 if it wishes.
- The UK should behave in a constructive and responsible manner throughout the extension in accordance with the duty of sincere cooperation.
- The EU member state governments will continue to meet in its EU27 format to discuss Brexit throughout the further extension. A review of the situation will be undertaken in June.

Crucially, last night's decision does nothing to move the Brexit process forward, instead it delays exit for a further six months. Movement will require the UK Government to find an approach which commands a majority in the House of Commons.

Following the European Council, [Donald Tusk said](#):

” Tonight the European Council decided to grant the United Kingdom a flexible extension of the Article 50 period until the 31st of October. This means an additional 6 months for the UK. During this time, the course of action will be entirely in the UK's hands. It can still ratify the Withdrawal Agreement, in which case the extension will be terminated. It can also reconsider the whole Brexit strategy. That might lead to changes in the Political Declaration, but not in the Withdrawal Agreement. Until the end of this period, the UK will also have the possibility to revoke Article 50 and cancel Brexit altogether.

The UK will continue its sincere cooperation as a full member state with all its rights, and as a close friend and trusted ally in the future.

Let me finish with a message to our British friends: this extension is as flexible as I expected, and a little bit shorter than I expected, but it's still enough to find the best possible solution. Please do not waste this time.

The [Prime Minister said](#):

” I have just met with Donald Tusk, the President of the European Council, where I agreed an extension to the Brexit process to the end of October at the latest.

I continue to believe we need to leave the EU, with a deal, as soon as possible.

And vitally, the EU have agreed that the extension can be terminated when the Withdrawal Agreement has been ratified — which was my key request of my fellow leaders.

For example, this means that, if we are able to pass a deal in the first three weeks of May, we will not have to take part in European Elections and will officially leave the EU on Saturday, 1st June.

During the course of the extension, the European Council is clear that the UK will continue to hold full membership rights, as well as its obligations.

As I said in the room tonight, there is only a single tier of EU membership, with no conditionality attached beyond existing treaty obligations.

On 11 April, the First Minister, Nicola Sturgeon wrote to the Prime Minister to set out the Scottish Government's view that the extension to the Article 50 period should provide an opportunity for talks over EU exit to include the devolved administrations, and for any deal agreed by the UK Parliament to be put to a second referendum. The [First Minister wrote](#):

Dear Theresa

I am writing to you today following the agreement reached at the European Council last night to extend the Article 50 period to the end of October 2019, with a review in June.

It is welcome that the European Union has acted in this way to give the UK more time. However, it is essential now that this time is used constructively and not wasted.

People in Scotland voted overwhelmingly to remain in the EU but have been ignored by the UK Government throughout the Brexit process. That must now change.

Notwithstanding the clear remain result in Scotland, the Scottish Government has sought to engage meaningfully on the terms of the UK's departure from the EU and has called consistently for genuine efforts to reach consensus across party lines and with the devolved administrations. However, it is still not clear that even at this late stage and following the repeated defeat of your proposals that you are willing to drop your red lines which have restricted what can be achieved in the future relationship.

We now have the gift of more time from the EU, and that must be used constructively to re-set the UK Government approach. Your ongoing talks with the Leader of the Opposition should now broaden to include other parties, the devolved administrations, business and civic society, and open up the range of options on the table in an effort to reach a genuine consensus. If such talks are to stand any chance of success you must be prepared to recognise in particular that it is essential for Scotland, at the very least, to stay inside the Single Market and continue to benefit from freedom of movement.

Further, and more fundamentally, the Scottish Government considers that any deal agreed by the UK Parliament should be put to another referendum, with the alternative proposition on the ballot paper being to remain in the EU. The extension to 31 October provides enough time to do this, and it is essential that no time is lost in making the necessary preparations.

I urge you to convene an urgent cross-party and cross-administration discussion to agree how to use the time we have been given.

I am copying this letter to the First Minister of Wales, Mark Drakeford.

HOLYROOD ROUND-UP

Culture, Tourism, Europe and External Affairs Committee

Information on recent CTEEA Committee meetings relevant to Brexit is provided in the table below. Official reports [are available](#).

Meeting date	Topic	Evidence from
7 March 2019	Article 50 - The Economic Implications for Scotland of a No Deal Brexit	Dr Gary Gillespie, Chief Economic Adviser, and Simon Fuller, Deputy Director, Economic Analysis, Scottish Government.
14 March 2019	UK-EU Inter-institutional relations post-Brexit	Professor Michael Keating, Director, Centre for Constitutional Change; Professor Paul Cairney, Professor of Politics and Public Policy, University of Stirling.
21 March 2019	Article 50—International Agreements	Dr Lorand Bartels, Reader in International Law, University of Cambridge; Dr Holger Hestermeyer, Reader in International Dispute Resolution, King's College London; Allie Rennison, Head of EU and Trade Policy, Institute of Directors.
28 March 2019	Article 50—International Agreements	Dmitry Grozoubinski, Founder, explaintrade.com; David Henig, Director of the UK Trade Policy Project, European Centre for International Political Economy; and Professor Alan Winters, Director, UK Trade Policy Observatory, University of Sussex.
4 April 2019	Immigration Inquiry	Professor Christina Boswell, Chair, Professor David Bell, Member, and Professor Rebecca Kay, Member, Expert Advisory Group on Migration and Population.

Finance and Constitution Committee

On 3 April 2019, Finance and Constitution Committee [took evidence](#) from:

- Michael Russell, Cabinet Secretary for Government Business and Constitutional Relations,
- Jenny Brough, EU Exit Readiness Team Leader, and
- Ellen Leaver, Head of Negotiation Strategy, Scottish Government.

SCOTTISH PARLIAMENT DEBATE ON REVOKING ARTICLE 50

On 27 March, the Scottish Parliament [debated a Green Party motion that Article 50 should be revoked](#).

Following the debate, Parliament voted for the following amended motion by 89 votes to 28 votes with one abstention.

- ” That the Parliament commends the more than five million signatories to the UK Parliament petition to revoke Article 50; believes that, unless the UK secures a sufficient extension to the Brexit process to organise and conduct a public vote with an option to remain in the EU, and the UK be faced with a choice of no deal or revoke, then, the UK’s notification under Article 50 of the Treaty on European Union should be revoked immediately, and calls on the UK Government to stop ignoring the views of this Parliament and the overwhelming majority of people in Scotland who wish to remain in the EU.

SCOTTISH GOVERNMENT CONTINUITY BILL UPDATE

On 5 April, the Scottish Government confirmed that following cross-party discussions about the implications of last year’s Supreme Court judgment, it has ‘reluctantly’ decided not to move for reconsideration of the Continuity Bill. Further information on the Supreme Court judgement is provided in SPICe Briefing [UK Supreme Court ruling on the UK Withdrawal from the European Union \(Legal Continuity\) \(Scotland\) Bill](#).

Instead, the Constitutional Relations Secretary Michael Russell [said](#) that the Scottish Government will ensure the choices made by the Scottish Parliament are respected by:

- bringing forward new legislation to ensure Scots law continues to align with EU law
- strengthening environmental protection, including seeking opportunities to legislate
- looking at how best to safeguard important EU human rights values
- agreeing new protocols with the Scottish Parliament, which are now in place, to give MSPs more scrutiny over Brexit legislation

The full text of the letter to the Scottish Parliament's Presiding Officer outlining the Scottish Government's position is available at <https://www.gov.scot/news/continuity-bill-update/>

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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.

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