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THE UK’S DEPARTURE FROM THE EU

The UK will leave the European Union on Friday 31 January 2020 and will then enter into a transition period until 31 December 2020. As a result, this will be the last Brexit Update to be published by SPICe.

During the transition period, the EU and the UK will undertake negotiations on their future relationship. SPICe will continue to monitor the negotiations and their implications for Scotland.

SPICe has produced a number of resources providing information on the UK’s departure from the EU and the next phase.

SPICe briefing

SPICe has published a briefing answering a number of Frequently Asked Questions about the UK’s departure from the EU. The briefing explains what is meant by common terminology associated with Brexit including:

- the transition period
- the Withdrawal Agreement
- the political declaration
- the future relationship.

The briefing also explains how Brexit may affect people living in Scotland in areas including citizens’ rights, travel and health.

Post-Brexit hub

You may wish to visit SPICe’s post-Brexit hub which was launched on 20 January 2020.

The hub is a one stop shop for information on arrangements in the UK post-Brexit and brings together information about:

- common frameworks;
- intergovernmental relations and
- key Brexit related legislation affecting Scotland.

The hub explains each of these topics and how they may affect Scotland. The hub will be updated as common frameworks in particular develop.

A useful SPICe blog explaining the hub’s purpose and content in more detail was published on 20 January 2020.
EUROPEAN UNION (WITHDRAWAL AGREEMENT) BILL

Having passed its third reading in the House of Commons on 9 January 2020, the European Union (Withdrawal Agreement) Bill then moved to the House of Lords for debate.

The second reading of the bill in the House of Lords took place on 13 January 2020.

This was followed by three days of debate at committee stage which took place on 14, 15 and 16 January 2020. No amendments were put to a vote during the committee stage.

The Lords considered the bill at report stage on 20 and 21 January. Five amendments were made to the bill during this stage. The amendments sought to:

- ensure the continued rights of unaccompanied child refugees to be reunited with their relatives in the UK;
- provide EU nationals with a physical document as proof of their citizenship and
- ensure the bill respects the Sewel convention – an agreement that the UK Parliament will not normally legislate in an area of devolved responsibility without first obtaining the consent of the devolved legislatures.

There were also amendments on the interpretation of retained EU law which sought to:

- prevent lower courts from diverging from Court of Justice of the European Union caselaw, and
- require lower courts to refer to the UK Supreme Court before breaking with EU convention.

All amendments were defeated in the House of Commons on 22 January 2020 and the bill completed its passage through Parliament.

Royal Assent

The European Union (Withdrawal Agreement) Bill received Royal Assent on 23 January 2020 to become the European Union (Withdrawal Agreement) Act 2020. The passing of the Bill ensured the UK successfully ratified the Withdrawal Agreement allowing the UK to leave the EU in an orderly way.
DEVOLVED ADMINISTRATIONS WITHHOLD CONSENT

On 20 January 2020, the Northern Ireland Assembly passed a motion withholding consent on the European Union (Withdrawal Agreement) Bill.

The Welsh Assembly voted to withhold consent on the bill on 21 January 2020.

The Scottish Parliament had voted to withhold consent on the bill on 8 January 2020.

The votes represent the first time the legislatures in Scotland, Northern Ireland and Wales had all voted to withhold consent on UK government legislation that affects devolved matters.

Correspondence from the Secretary of State for Exiting the European Union

On 17 January 2020, the Secretary of State for Exiting the European Union, Steve Barclay, wrote to the Cabinet Secretary for Government Business and Constitutional Relations at the Scottish Government and the Counsel General and Brexit Minister at the Welsh Government.

The letters set out the UK Government’s position on their consideration of the Withdrawal Agreement Bill.

The UK Government indicated that it would proceed with the bill, writing:

The UK Government has requested consent for parts of the Withdrawal Agreement Bill. It has not requested consent for the Withdrawal Agreement, which is a reserved matter for the UK Government and Parliament. The Scottish and Welsh Governments have said they are unable to support the Bill because of their opposition to the Withdrawal Agreement. They have also sought changes to the Bill in reserved areas.

These letters set out the UK Government’s view that the devolution settlements did not intend for the Devolved Administrations to be able to frustrate the UK Government’s exercise of reserved powers. The UK Government had hoped that the Scottish and Welsh Governments would consider the Bill on the basis on the provisions for which we sought consent, including the important powers granted to them to protect citizens’ rights.

In letters to the Devolved Administrations on the EU (Withdrawal Agreement) Bill, the UK Government set out that it recognised the important role played by the legislative consent process and that the UK Government is committed to the principle of legislative consent. The letter from Steve Barclay, Secretary of State for Exiting the EU added that:

The Sewel Convention holds that the UK Government should not normally press ahead with legislation without legislative consent motions from the devolved administrations but the circumstances of our departure from the European Union
are specific, singular and exceptional. That does not, however mean the UK Government will not continue to work to address your concerns.

SIGNING THE WITHDRAWAL AGREEMENT

The European Union (Withdrawal Agreement) Act implements the text of the Withdrawal Agreement. With Royal Assent granted, the UK Prime Minister and the Presidents of the European Council and Commission completed the next stage of the Brexit process - signing the Withdrawal Agreement.

Speaking on 24 January 2020 the Prime Minister said:

- The signing of the Withdrawal Agreement is a fantastic moment, which finally delivers the result of the 2016 referendum and brings to an end far too many years of argument and division.

  We can now move forward as one country – with a Government focused upon delivering better public services, greater opportunity and unleashing the potential of every corner of our brilliant United Kingdom, while building a strong new relationship with the EU as friends and sovereign equals.

The President of the European Council, Charles Michel tweeted:

Charles Michel
@eucopresident

Today I signed the UK Withdrawal Agreement for the EU together with @vonderleyen

Things will inevitably change but our friendship will remain. We start a new chapter as partners and allies.
While the President of the European Commission, Ursula von der Leyen tweeted:

Ursula von der Leyen @vonderleyen · 24 Jan
. @eucopresident Charles Michel and I have just signed the Agreement on the Withdrawal of the UK from the EU, opening the way for its ratification by the European Parliament.

EUROPEAN PARLIAMENT ACTION

The European Parliament held a debate on ‘Implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement’ on 14 January 2020. Speaking in the debate, President of the European Commission, Ursula von der Leyen said:

… We are ready to help European Union citizens living in the United Kingdom to ensure they are properly informed and supported. And of course we will do the same when it comes to British citizens living in the European Union.

All these questions I have been speaking about I raised with Prime Minister Johnson last week when I visited London. We will closely cooperate with the United Kingdom to make sure that we can get this right and that we can solve any problems as swiftly as possible.

Finally, the good news is that there will be continuity for the European Union citizens living in the United Kingdom and vice versa for the British citizens living in the European Union at the end of the transition period. But, after the end of the transition period, the United Kingdom will be a third country. And Brexit will mean changes to those who will want to make their future life on either side of the Channel.

We will have to negotiate a new way forward, and we are getting ready to formulate the mandate for those negotiations ahead of 1 February. We have, as we have done in the past, also made in these negotiations citizens’ rights our main priority. And we will always negotiate in good faith to build a new comprehensive partnership with our British friends. As I said to those students in London, it is the good old story about old friends and new beginnings.

The European Parliament adopted a resolution on implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement.

The resolution called on the UK and the EU to:

增加努力提高公民对英国脱欧对欧盟和英国人双方有影响的意识，并发起或加强针对所有受《退出协议》保护的公民权利及其可能变化的针对性信息宣传活动。
It also urged that:

future free movement rights across the whole EU for UK citizens covered by the Withdrawal Agreement be guaranteed, as well as a lifelong right for citizens covered by the Withdrawal Agreement to return to the UK or the EU.

The resolution was adopted with 610 votes in favour, 29 against and 68 abstentions.

Constitutional Affairs Committee

The Constitutional Affairs Committee at the European Parliament voted on 23 January 2020 to recommend that the European Parliament plenary approve the terms of the UK withdrawal from the EU.

Parliamentary approval

On 29 January 2020, the Withdrawal Agreement was approved by the European Parliament with 621 votes in favour, 49 against and 13 abstentions.

The vote confirmed that the terms of the UK’s departure from the European Union on Friday 31 January 2020 would be governed by the Withdrawal Agreement.

JOINT MINISTERIAL COMMITTEE (EU NEGOTIATIONS)

The Joint Ministerial Committee (EU Negotiations) met on 28 January 2020. The Committee discussed the UK’s exit from the EU, including the role of the devolved administrations in EU exit negotiations and the strategic choices relating to leaving the European Union.

The Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP represented the Scottish Government.

FUTURE NEGOTIATIONS

Once the UK has left the EU on 31 January 2020, attention will turn to the next phase of negotiations – to secure agreement on the future relationship between the EU and the UK. It has been reported that negotiations will begin on 3 March 2020.

Some key issues likely to be considered during the negotiations are outlined below:

Trade offs

On 13 January 2020, the EU Trade Commissioner Phil Hogan suggested there could be last minute trade-offs as negotiations between the EU and the UK near their conclusion, stating:

There certainly will be trade-offs, particularly at the end of the negotiations. The EU will be seeking concessions on fishery access and the UK will very probably be seeking concessions on financial services.
Level playing field

On 13 January 2020 during a visit to Luxembourg, Ursula von der Leyen, President of the European Commission reiterated the message she had given in a speech in London earlier in the month, in which she said the UK could not expect access to the single market without agreeing to level playing field commitments on environment, labour, taxation and state aid. Speaking in Luxembourg she said:

Great Britain is our friend, the Brits are our friends, it is a friendship that has been growing for a long time but we have to break new ground with each other, and here it applies as well: it is the decision of Great Britain how close or distant of the biggest single market in the world they want to be.

The closer they are, meaning a level playing field, the more they are ready to respect the European rules, the easier accession to the European single market will be. The further away, the less there is of a level playing field, the more difficult their access to the European single market will be. It is a decision Great Britain has to make and in the negotiations we will have to sound out the scope that we want to use to then determine the negotiations accordingly.

Alignment with EU regulations

The UK Chancellor, Sajid Javid, indicated in January 2020 that the UK may move away from EU regulations once it has left the EU. He was reported as saying:

There will not be alignment, we will not be a rule taker, we will not be in the single market and we will not be in the customs union – and we will do this by the end of the year.

Days later, the Chancellor followed up on these comments saying:

We will be a sovereign and independent country, not a rule-taker.

But we’ll always protect the interests of British businesses throughout this process. And we’ll maintain high standards – not because we are told to; but because we want to. It’s what the British people want

That doesn’t mean we will diverge for the sake of it.

Length of negotiation period

In December 2019, the President of the European Commission, Ursula von der Leyen expressed concerns on the length of the transition period and the prospect of a deal being agreed before the transition period is due to end at the end of December 2020.

This view was echoed in January 2020 by the EU Trade Commissioner Phil Hogan who said that securing a full trade deal by the end of 2020 was “just not possible.” He continued:
Certainly by the end of the year we are not going to get everything that’s in the 36-page document on the future relationship agreed because Prime Minister Johnson decided we are going to have everything concluded by the end of the year.

Checks on goods

During an oral question in the House of Commons on 22 January 2020, the Prime Minister was asked whether trading between Great Britain and Northern Ireland would remain “unfettered” after Brexit. He responded that it “emphatically” would. This re-affirms a statement the Prime Minister made in November 2019 when he stated that “there will not be checks on goods going from Northern Ireland to Great Britain.”

The EU advise however that, under the terms of the deal agreed by the UK and the EU, checks will be required on goods travelling between Great Britain and Northern Ireland. On 21 January 2020, the European Commission published a series of slides explaining the revised EU-UK Withdrawal Agreement. The slides included a map illustrating how checks would be carried out on goods moving between Great Britain and Northern Ireland.

Welsh Government publishes priorities for forthcoming EU negotiations

Ahead of the negotiations on the future UK/EU relationship, the Welsh Government published the negotiating priorities for Wales on 20 January 2020.

Counsel General and Brexit Minister Jeremy Miles said the Welsh Government would:

- continue to challenge an approach to the negotiations which prioritises the ‘freedom’ of the UK to diverge from EU regulatory standards above the well-being of the people of Wales. Such an approach would be deeply flawed and could result in lost jobs and lost investment in Wales. We need an agreement with the EU which reflects the interests of Wales and the United Kingdom.

- The UK government claims it wants to maintain high standards and we will hold them to their word. We will therefore oppose any agenda of deregulation, which will damage consumers’ interests in the long run.

- We reject a vision of Britain where the economy is based on a low-wage, low job security, low regulation model, which would lead to growing inequality. We need a strong, innovative outward-looking UK economy underpinned by mutual respect for the responsibilities of all governments of the Union

In terms of the role of the Welsh Government in negotiations, the document noted:

- It is essential that the Welsh Government, and the other devolved governments, are part of the negotiations to shape a future that works for all parts of the UK. The devolved governments to date have been treated as a consultee in the process of setting a UK position. Information sharing and consultation with the devolved governments falls a long way short of the arrangements necessary to ensure UK positions truly reflect the positions of all parts of the Union
And in terms of the timescale for negotiating a future relationship with the EU, the Counsel General said:

We will continue to argue that the UK government should not close the door on an extension beyond the arbitrary deadline of December 2020. The priority must be achieving the best deal, not the quickest one.

**SPICe briefing on negotiating the future UK and EU relationship**

SPICe has published a briefing on negotiating the future UK and EU relationship. The briefing sets out the process for negotiating the new economic and security relationship between the UK and the EU after Brexit. It also provides analysis of the key areas of negotiation from a Scottish perspective.

**EU PREPARATORY DISCUSSIONS ON THE FUTURE RELATIONSHIP**

In January 2020, the EU began a number of preparatory discussions on the future relationship between the EU and the UK, taking into account the views of Member States.

Following each meeting, a set of slides outlining the main points of the preparatory discussions were published. These are set out below.

- 10 January 2020 [Personal data protection (adequacy decisions); Cooperation and equivalence in financial services](#)
- 13 January 2020 [Free trade agreement](#)
- 14 January 2020 [Level playing field and sustainability](#)
- 14 January 2020 [Fisheries](#)
- 15 January 2020 [Transport](#)
- 15 January 2020 [Energy](#)
- 16 January 2020 [Law enforcement and judicial cooperation in criminal matters](#)
- 17 January 2020 [Foreign policy, security and defence](#)
- 20 January 2020 [UK participation in Union programmes](#)
- 20 January 2020 [Mobility of persons](#)
- 20 January 2020 [Governance](#)
- 21 January 2020 [Architecture and legal nature of the partnership](#)
SCOTTISH PARLIAMENT EVIDENCE SESSIONS

As part of its Article 50 Inquiry, the Scottish Parliament’s Culture, Tourism, Europe and External Affairs Committee held two evidence sessions in January 2020.

On 16 January, the Committee heard from witnesses on the Ireland and Northern Ireland Protocol.

On 23 January, the Committee heard from witnesses on the Withdrawal Agreement and Negotiation of the Future Relationship with the EU.

VISIT BY MICHEL BARNIER

Ahead of the negotiations on the future EU-UK relationship, the EU chief negotiator Michel Barnier visited Dublin to meet with the Taoiseach Leo Varadkar. Michel Barnier also visited Belfast to meet with Michelle O’Neill, deputy First Minister and Diane Dodds, Minister for the Economy.

Barnier also gave a speech at Queen’s University Belfast. Looking beyond the UK’s exit from the Union, he reflected:

"Whatever agreement we reach on our future relationship, Brexit will always be a matter of damage limitation. Not one single person – from the UK or elsewhere – has ever convinced me of the added value of Brexit.

At least, with the Withdrawal Agreement, which has now been ratified by the UK, we have managed to secure an orderly Brexit – for now. One that limits the destruction of value for our citizens and businesses. This is also our objective going forward.

In terms of the Protocol on Ireland and Northern Ireland, Barnier reinforced the need for checks on goods travelling between Northern Ireland and Great Britain. He said:

In agreeing to the Protocol, the UK has agreed to a system of reinforced checks and controls for goods entering Northern Ireland from Great Britain. I understand the fears of negative economic fallout expressed by some about these checks. But Brexit unfortunately has consequences that we must manage. The UK has chosen to become a third country; to leave the Single Market and the Customs Union; to leave behind the EU’s framework of common rules, common supervision and common Court of Justice.

It has chosen to create two regulatory spaces. This makes frictionless trade impossible. It makes checks indispensable. We will need sanitary and phyto-sanitary checks on food products and live animals. The EU must be able to assess risks on any product coming into its market and, if necessary, activate physical controls."
These checks must take place somewhere. And as the whole point of the Protocol is to avoid a hard border and protect the all-island economy, it was clear that they could not take place at the land border between Ireland and Northern Ireland. The only real option was to use Northern Ireland’s other entry points. This is also where such checks are the easiest to implement. And controls will also take place in Dublin and other EU entry points.

Rebecca Bartlett
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.

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