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# BREXIT UPDATE

SPICe weekly update



**JOINT MINISTERIAL COMMITTEE  
ON EUROPEAN NEGOTIATIONS**

**HOUSE OF LORDS EU SELECT COMMITTEE  
BREXIT AND DEVOLUTION INQUIRY**

**REPATRIATING EU POWERS  
IN DEVOLVED POLICY AREAS**

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### About this paper

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union which are expected to formally begin once the Prime Minister has triggered Article 50 which is likely to be before the end of March.

Ahead of the UK Government's triggering of Article 50, the updates will provide information on the UK Government's approach to leaving the EU, along with details of the Scottish Government and the other Devolved Administrations positions. The updates will also provide information on developments within the EU with regard to the UK's departure. Finally the update 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.

As was clear during the referendum campaign and since the decision to leave the EU was taken, there is an abundance of information and analysis available, and this SPICe paper will try to cover the key issues by drawing on that information and analysis. Following a break last week due to February recess, this week's update focuses on events of the last two weeks including the continued passage of the Article 50 bill in the UK Parliament and the fourth meeting of the Joint Ministerial Committee on European Negotiations.

## Article 50 Bill

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The [European Union \(Notification of Withdrawal\) Bill](#) was introduced on 26 January and is being fast tracked through the UK Parliament.

From Monday 6 until Wednesday 8 February, a Committee of the whole House of Commons considered [potential amendments](#) to the Bill. None of the proposed amendments were passed and as a result, the Bill was passed without amendment by the House of Commons on the evening of 8 February. The [vote on whether to agree the Bill had been read the Third time was 494 in favour of the Bill and 122 against](#).

The Bill has since moved to the House of Lords for consideration. On 8 February, the first reading of the Bill took place. This is a formal process by which the title of the bill is read out in the chamber. Second reading of the Bill is scheduled to take place on 20-21 February. Second Reading will be an opportunity for members to debate the key purpose and principles of the bill.

As with its consideration in the House of Commons, a number of [proposed amendments](#) have been tabled to the Bill. As in the case of the House of Commons, consideration of amendments will be by a Committee of the whole house in the House of Lords. The Committee stage of the [Bill is scheduled](#) to begin on Monday 27 February with the second day of the Committee stage scheduled for Wednesday 1 March. Following the Committee stage, a Third Reading is scheduled for 7 March. In the event the Bill makes its way through the House of Lords without amendment it will be considered to have been passed by the UK Parliament following the Third Reading, if however amendments are made to the Bill, there will be referred back to the House of Commons for consideration.

An article by Jessica Elgot in the Guardian online on 17 February [examined](#) the role the House of Lords might play in Parliament's consideration of the Article 50 Bill. On the "ping pong" between the two Houses in the event of the Lords passing amendments to the Bill, Jessica Elgot wrote:

*"The Lords ping the bill back to the Commons, which could agree to the amendments; or, more likely, try to find a way to force peers to back down. Davis has previously said the peers must do their "patriotic duty" to pass the bill and other government sources have threatened reform of the House of Lords if it does not respect the referendum result. Peers seem relatively relaxed about this threat.*

*If the Commons wants to reject amendments, a small group called the reasons committee composes a formal rejection. They could offer other amendments, or they could just say: No thanks. Government ministers could also give verbal concessions – say, on EU citizens – in the hope of persuading some peers to back down.*

*While one House deliberates, the other waits, and whips need to make sure peers don't go home. There have been imaginative solutions to this in the past, including screenings of the James Bond film Skyfall during negotiations for the 2013 Justice and Security Bill."*

On the likelihood of amendments being passed by the House of Lords, the [BBC's Parliamentary correspondent Mark D'Arcy](#) suggests a clue will be given when the Lords debate the Bill at Second Reading:

*“So what is to be learned from the debate? Watch the crossbenchers. The crossbench or independent peers are not a party - they have no agreed policies, still less a whip, and their main rule is that their members must carry no taint of party allegiance, which means no local membership, and no financial donations.*

*It follows that there is no crossbench line on Brexit, but the crossbenchers could well provide the swing vote on the key amendments to be debated at the bill's committee stage, a week after Second Reading.*

*So any indication that they are breaking in a particular direction will be significant. One key figure may be the super-lawyer, Lord Pannick, who led the legal team which forced the Government to introduce this Bill in the first place.*

*In debates on legal issues, in particular, he has been able to persuade the Lords' legion of retired judges and senior QCs to back his initiatives, and his name appears on an amendment from Labour's shadow Brexit spokesperson, Baroness Hayter, requiring prior Parliamentary approval for agreements with the European Union, which bears a considerable resemblance to the "Meaningful Vote" proposed by Labour in the Commons.*

*The "Meaningful Vote" looks likely to provide the toughest test for the government whips, although the issue of the status of EU citizens resident in the UK will also be raised - and here the support for the amendment from the Joint Committee on Human Rights could be important.”*

## **Joint Ministerial Committee on European Negotiations**

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On 8 February, the Joint Ministerial Committee on European Negotiations met for the fourth time. No post meeting communiqué was published but the Scottish Government issued a [news release](#) following the meeting. In relation to the Scottish Government's proposals for Scotland's place in Europe, the Scottish Government Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell said:

*“Only last week the Prime Minister herself said that work to find a common UK position on triggering Article 50 needed to be intensified.*

*“However, there was no commitment today that the Scottish Government's compromise plan to keep Scotland in the Single Market will be put forward as an objective by the UK Government.*

*“And alarmingly there was no guarantee that current devolved powers, such as agriculture, will come back to the Scottish Parliament in full.*

*“I made it clear to David Davis when I wrote to him two days ago that the so-called “Article 50 letter” should remain at the top of the agenda for discussion. Also, that*

*the agenda must address the way in which that letter will make mention of the devolved administrations and their requirements including that of differentiation.*

*“A clear majority of Scotland’s elected representatives oppose EU withdrawal, and Scotland’s views must be respected.*

*“Along with ministers from across the devolved administrations, we are asking that the UK Government fully engage and involve us in the discussions around the content and timing of Article 50. This should remain at the top of the agenda.*

*“The Scottish Government’s comprehensive plan, Scotland’s Place in Europe, published in December is designed to keep Scotland in the European single market even if the rest of the UK leaves – which is absolutely essential for Scottish jobs, investment and long-term economic wellbeing.”*

## **Finance Ministers quadrilateral**

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On 14 February, Finance Ministers from the UK Government and the Devolved Administrations met in Edinburgh for their regular quadrilateral meeting. The meeting was attended by the Chief Secretary to the Treasury David Gauke, the Scottish Government’s Finance Secretary Derek Mackay the Welsh Government’s Finance Secretary Mark Drakeford and Stormont Finance Minister Máirtín Ó Muilleoir.

There was no post meeting communiqué, but the Scottish and Welsh Governments published the same news release following the quadrilateral. The [Scottish Government news release](#) stated:

*“The UK Government has failed to provide devolved administrations with necessary information or clarity on how exiting the EU will impact their economies and budgets, the finance ministers of Scotland, Wales and Northern Ireland have said.*

*Following today’s Finance Ministers Quadrilateral in Edinburgh the devolved administrations have voiced their disappointment at the UK Government’s lack of assurances that there will be meaningful engagement over the approach it proposes to take on Brexit. The Scottish, Welsh and Northern Ireland Ministers also underlined the economic and public finance challenges this lack of clarity presents.”*

The news release also quoted the three Devolved Administration Ministers:

Mr Mackay said:

*“While I am disappointed about this lack of progress with the UK Government, we will continue to work with the Welsh and Northern Ireland Governments as it is essential for the devolved administrations to be at the heart of any decision making. We need clarity from the UK Government as we have the right to have our say on how devolved budgets and our economy will be affected by a hard Brexit.*

*"I asked again today that the UK Government give serious consideration to the proposals the Scottish Government has put forward in response to the outcome of the EU Referendum and responds constructively, in the interests of the people of Scotland.*

*"We have been clear, keeping Scotland in the European single market is absolutely essential for Scottish jobs, investment and long-term economic wellbeing."*

Welsh Government Finance Secretary Mark Drakeford said:

*"Our White Paper, Securing Wales' Future, which was discussed at the recent JMC (EN) provides a comprehensive, credible plan for the negotiations as the UK prepares to exit from the EU. It focuses on Wales' priorities but in a way which would work for the whole of the UK.*

*"We have always been clear that a hard Brexit would be highly damaging to the Welsh and UK economy. That is why we have repeatedly called for full and unfettered access to the single market in our negotiations with the UK Government. Our economy is closely integrated into the single market and our success in attracting foreign investment owes much to this access.*

*"The fact of Brexit is not in doubt but we need to ensure a good outcome for Wales. We will continue our discussions with the UK Government through the JMC (EN) but we need to see these discussions intensify over the next few weeks as the triggering of Article 50 approaches. We need a clear signal from the UK Government that the views of the devolved administrations are taken into account so we secure a future post Brexit that works for Wales and works for the rest of the UK."*

Stormont Finance Minister Máirtín Ó Muilleoir said:

*"I have previously been on record saying that there is a lack of understanding of the calamitous effects that Brexit would have on our local economy and there has been no appreciation of the need for a special status for the North within the EU. Nothing I have heard today changes that."*

## **Minister for Exiting the European Union in Scotland**

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On 14 February, the UK Government Minister for Exiting the European Union, Robin Walker visited Fort William, Glasgow and Edinburgh. [According to the UK Government:](#)

*"The Minister was in Scotland to continue the Government's UK-wide engagement programme ahead of the start of EU negotiations. The Prime Minister has signalled that we will trigger Article 50 before the end of March, allowing formal negotiations to begin.*

*During the two day trip, the Minister travelled across the country listening to universities, businesses and charities about their top priorities for EU exit and views on how they can capitalise on the opportunities that our departure presents.*

*He visited both the University of Glasgow and the University of Edinburgh, the Lochaber Chambers of Commerce and Age Scotland as well as attending roundtables with key business sectors.”*

The news release included a quote from Robin Walker who said:

*“It’s vitally important that we get a deal that works for all of the UK, and Scotland’s voice will be heard loud and clear as we prepare for the upcoming negotiations.*

*Over the past two days I’ve spoken to people across Scotland, many with extensive experience in their sector, ensuring their views are heard as they are hugely important to us as we continue to form our negotiating strategy.”*

## **Repatriating EU powers in devolved policy areas**

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Professor David Bell from the University of Stirling has published a [research paper](#) examining the repatriation of EU powers in policy areas which are currently devolved. In a [summary](#) published on the Centre on Constitutional Change website, Professor Bell argues that repatriation of EU powers will affect a number of devolved areas:

*“Since the EU referendum, the post-Brexit future for agricultural, regional and rural policies in the UK have been hotly debated. Few of these debates have taken account of the role of the devolved governments in relation to these policies. Although agriculture, regional and rural policy have been heavily influenced by the EU for decades, the devolved governments have played an important role in their development and administration. Repatriating the policies to the UK will pose many political and economic challenges...”*

*... Clearly, the UK government is the prime actor in decisions over policy repatriation. It is about to embark on negotiations with the EU which will result in the withdrawal of the UK from these area-based policies - policies that are linked to specific locations within the UK, such as those dealing with agriculture, regional and rural issues. It will soon be negotiating trade deals with the EU and with other countries. It must decide how it will treat issues such as agricultural support in these negotiations. Agriculture is often a difficult issue in trade negotiations. Changes to agricultural tariffs and income support mechanisms will also affect the budgets of the devolved governments. They will wish to have a significant influence on the U.K.’s negotiating stance in relation to these policies, since the outcomes from trade negotiations may affect their competences.”*

Professor Bell argues that even if the current area based approach to agricultural policy continues:

*“Important decisions must be made about the allocation of responsibility for their design, administration and evaluation. These will involve the UK government and the devolved governments since a significant proportion of the EU funding is already administered by the devolved governments. Conflicts around these decisions have the potential to disrupt the relationship between different levels of government within the UK.”*

On the future of agriculture policy, Professor Bell concludes:

*“Decisions about the future of these policies will partly be dependent on future UK trade negotiations. Agriculture is particularly exposed to such effects. Currently, UK agriculture is highly dependent on subsidy from the CAP. It will only remain competitive with the EU, its main trading partner, if it retains a similar level of subsidy to the CAP and has tariff free access to European markets. However, comprehensive trade negotiations with other countries will inevitably consider tariffs and subsidies relating to agricultural products. Objections will almost certainly be raised to the retention of CAP-like subsidies and the UK negotiators must consider whether to sacrifice these to gain concessions for other, more important, industries. Trade negotiations inevitably involve give and-take: it is unrealistic to assume that the UK will get everything it wants. And agriculture is in a particularly exposed position in that it is currently protected by sizeable tariffs and an extensive subsidy regime. Reduction in barriers to agricultural imports will likely benefit UK consumers through lower food prices, but it is difficult to see how UK agricultural producers can remain competitive both with the EU and other countries without significant restructuring. This is likely to be strongly opposed both by the powerful agriculture industry lobby groups and by the devolved governments, which are more dependent on the existing system of agricultural subsidies than is the case in England.”*

Reference to Professor Bell’s paper was included in the [Scotsman](#) on 17 February. The article states:

*“Professor Bell’s concern assumes funding will continue, but raises the question of who would be responsible for area-based policies. Would devolved governments be given that responsibility, or would Westminster retain control? If it is to be the latter, then trouble is likely to be brewing, causing further friction in relationships between the different levels of government.*

*Ultimately, the biggest victims of a power struggle may not be politicians, but those whose interests are directly affected by the agricultural, regional and rural policies which are in doubt.*

*But the issue also highlights a problem for Theresa May’s government as she negotiates a Brexit settlement for all of the UK. The devolved governments have a clear interest in the continuation and allocation of whatever is to replace EU funding, and yet these administrations remain on the outside looking in, being told that there are no special arrangements available for parts of the UK.*

*The argument that the Westminster government should be allowed to negotiate a nationwide exit settlement is reasonable, but it is no less reasonable to believe that the Scottish Government should have direct input into the fate of EU funds currently allocated north of the border. It should be possible to achieve this level of involvement without compromising the overall negotiating position.”*

## House of Lords EU Select Committee Brexit and devolution inquiry

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As part of its [inquiry into the impact of Brexit on devolution](#) in the UK, the House of Lords EU Select Committee will this week take evidence from academics. On 21 February, the Committee will [hear from](#) Professor Sionaidh Douglas-Scott, co-director at the Centre for law and society in a global context, Queen Mary University of London; Professor Roger Scully, Professor of Political Science, Cardiff University and Professor Jonathan Tonge, Professor of Politics, Liverpool University.

The four overarching questions the Committee will look to explore are:

- What are the political, economic and legal implications for the devolved nations of the Brexit model the UK Government is pursuing?
- Is it possible for the nations and regions of the UK to have differentiated terms of exit from the EU, or is a consistent approach across the UK the only viable solution?
- Which EU competences should be transferred to the devolved governments after Brexit?
- Are existing mechanisms for interparliamentary dialogue between Westminster and the devolved legislatures sufficient to deal with the challenge of Brexit?

Coverage of the evidence session will be available on [Parliament TV](#).

## House of Lords report on Brexit: environment and climate change

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On 14 February the House of Lords EU Energy and Environment Sub-Committee published its inquiry report on [Brexit: environment and climate change](#).

The Committee [concluded](#):

*“that one of the key challenges in this area will be that of effectively maintaining environmental protection through the Great Repeal Bill, given the complex and extensive nature of environmental legislation. They also identified a risk of a vacuum once the European Commission and Court of Justice of the European Union no longer have a role in the oversight and enforcement of environment legislation, given the significant impact those institutions have had on the UK’s compliance in the past. The Committee noted that the UK may wish to coordinate environmental standards with the EU in the future, to both enable trade and ensure the effective protection of the natural environment. The Committee also concluded that the UK should explore diplomatic avenues to maintain its influence in climate negotiations post-Brexit.”*

## House of Commons Exiting the EU Committee evidence on Scottish Government's role in Brexit negotiations

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On 8 February the House of Commons Exiting the European Union Committee [took evidence](#) on the role of the Scottish Government as part of the negotiations for exiting the EU.

- The Committee heard from two panels:
- Michael Clancy, Director Law Reform, Law Society of Scotland
- Professor Nicola McEwen, Professor of Politics, University of Edinburgh
- Professor Alan Page, Professor of Public Law, University of Dundee

And then from:

- Michael Russell MSP, Minister for UK Negotiations on Scotland's Place in Europe, Scottish Government
- Ian Mitchell, Deputy Director External Affairs, Scottish Government
- George Burgess, Deputy Director for EU and International Trade and Investment Policy, Scottish Government

A [full transcript](#) from both panels has been produced.

## The Brexit Negotiations

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With the Article 50 bill making its way through the UK Parliament, attention is turning to the Brexit negotiations which will kick off once Article 50 has been triggered. An article on the front page of the Financial Times (FT) on 20 February suggested the EU's Brexit negotiators want to sort out the UK's outstanding financial contribution to the EU along with the future of EU citizens before discussions on the future trade relationship can begin. [According to the FT](#) (paywall) the European Commission's Chief negotiator Michel Barnier has set out his strategy to the 27 Member State governments:

*"In recent weeks Mr Barnier has outlined to the EU's remaining 27 members his views on the timing and order of talks, which move from basic terms for the disentanglement to trade relations and finally preparations for a transition.*

*"He thinks we will be discussing money and acquired rights (of expatriate citizens) until December," said one senior Eurozone official in contact with Mr Barnier...*

*...Five other national diplomats involved in the Brexit talks confirmed Mr Barneir's rough year-end timetable. Many noted that Theresa May, Britain's prime minister, had avoided acknowledging the break-up challenges and outstanding budget liabilities."*

The FT article goes on to suggest that despite Michel Barnier's plan, the Member State Governments are split on how the Brexit negotiations will be staged with the French suggesting the first step should involve the British Government honouring its EU

financial commitments whilst the Spanish Government have suggested early discussions about the nature of the future UK-EU relationship.

Writing for the Centre for European Reform blog on 20 February, Charles Grant suggests any deal on Brexit will be "[not just hard but also difficult](#)". On the possibilities for a deal he wrote:

*"EU officials are pessimistic because they observe the pressure May is under from hard-liners to take a very tough approach to the negotiations. They see limited pressure on her for a softer Brexit. But several factors could favour a less-than-very-hard Brexit: a majority of MPs wants to retain close ties with the EU, as do business lobbies; and an economic downturn (if it happens) could steer public opinion away from supporting a clean break."*

Charles Grant surmises that a key factor in the success of the negotiations will be the attitude of the EU27, most of who think it is important to see the UK get a tough deal to ensure continued EU unity:

*"The outcome of the Brexit talks will be shaped to a large degree by the EU governments. They are mostly united in taking a hard line. Worried about the cohesion and unity of the EU, they do not want populist leaders to be able to point to the British and say, "They are doing fine outside the EU, let us go and join them." Exiting must be seen to carry a price."*

Despite the proposals set out in the UK Government's White Paper, Charles Grant says that the UK Government has still to decide what it wants to achieve from the negotiations on issues such as immigration controls, whether to seek a special deal for the City of London and what future Customs arrangements it will seek.

On the UK's negotiating assets, Charles Grant presents a mixed picture, he suggests that Britain's contribution to European security is a strength – unless the UK allies itself too closely to President Trump; in other areas he suggests the UK Government's hand is weaker:

*"It regards the City of London as a European asset that should be cherished by all – but that is not how most of the 27 see it. Nor should the UK try to claim that since the 27 have a trade surplus with it, they need a good trade deal more than it does; the reality is that Britain depends more on EU markets than vice versa. Finally, May's threat to respond to a bad deal by transforming Britain into a low-tax, ultra-liberal economy lacks credibility."*

On the negotiations and the likely outcome, Charles Grant concluded:

*"There are only three possible outcomes of the Brexit talks: a separation agreement plus an accord on future relations including an FTA; a separation agreement but no deal on future relations, so that Britain has to rely on WTO rules; and neither a separation agreement nor a deal on future relations, so that Britain faces legal chaos and has to rely on WTO rules."*

*Once Britain triggers Article 50, it is in a weak position: it must leave in two years, and if it has not signed a separation agreement before doing so, it risks economic chaos. So if Britain wants a half-decent deal, it needs the goodwill of its partners."*

*That means ministers should be polite, sober and courteous. Grandstanding and smugness will erode goodwill towards the UK. As for the substance of the negotiations, the more that Britain seeks to retain economic and other ties, the more likely are the 27 to offer a favourable deal.”*

Finally in relation to the upcoming negotiations, the [Guardian has published an article](#) analysing the likely red lines and negotiating priorities of each of the 27 EU member states that the UK will need to reach agreement with both to achieve a deal on the terms of exit and on the future relationship between the UK and the EU.

The Guardian article is one of a series it is publishing this week on Brexit. On 21 February it published an [article](#) which is said showed that if the UK leaves the EU without a trade deal in place leaving the UK to fall back on World Trade Organisation rules it would mean paying customs duties of \$7.6bn just in annual tariff costs on British exports to the EU.

## **Tony Blair’s Brexit intervention**

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On 17 February, the former Prime Minister Tony Blair delivered a [speech for Open Britain](#) in which he called for those who supported Remain in the referendum to build support to ensure the UK avoids “Brexit at any cost”.

Tony Blair said that the British people voted to leave Europe and the will of the people should prevail, but that as the Brexit terms become clear, it is the right of the people to change their mind:

*“I want to be explicit. Yes, the British people voted to leave Europe. And I agree the will of the people should prevail. I accept right now there is no widespread appetite to re-think. But the people voted without knowledge of the terms of Brexit. As these terms become clear, it is their right to change their mind. Our mission is to persuade them to do so.”*

The full text of the speech has been published on [The Spectator website](#).

## **Brexit and Scottish Independence**

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As the UK Government prepares to trigger Article 50 signalling the start of the negotiations to leave the European Union, speculation about Scotland’s future relationship with the EU has increased.

In an [article](#) for the University of Edinburgh’s European Futures website, Dr Tobias Lock, a Senior Lecturer in European Union Law and Co-Director of the Edinburgh Europa Institute at the University of Edinburgh and Dr Kirsty Hughes, a Senior Fellow at Friends of Europe argue that following the UK’s departure from the EU, if Scotland voted for independence, the accession process to join the EU might be quick (possibly by 2023 or 2024) as a result of Scotland largely complying with EU rules:

*“Talks would probably be swift. When the three then-EFTA countries, Austria, Sweden and Finland, joined the EU, their accession talks took 13 months (to complete ‘politically’), and 17 months in total (from February 1993 to June 1994) to*

*negotiate and sign the accession treaties. There was then a further six months for ratification – so they joined in January 1995.*

*Scotland already meets almost all of the EU's acquis – from the Single Market and the Common Agricultural Policy, to the Common Foreign and Security Policy and the Customs Union. So it would already meet most of the EU's current 35 chapters that have to be negotiated for the accession process.*

*Key issues to negotiate would include Scotland's budget contribution, Schengen, justice and home affairs, and the euro. It is unlikely that Scotland would be able to keep the UK's budget rebate but, given its receipts from EU structural and agricultural funds, it would probably face being a very small net contributor to the EU's budget."*

The paper also looked at whether Scotland could gain some sort of special status to remain within the EU when the UK leaves but concluded this was unlikely as even if there was political will to achieve this, it would be an unprecedented set of circumstances:

*"Since Scotland is currently part of the EU, is there any way it could get a 'special status' and somehow stay in the EU when the UK leaves in March 2019?"*

*This looks unlikely in a formal sense. The EU has a long track-record of different types of flexibility (the East German example being almost a mirror image of what Scotland would face – with German reunification in 1990, the former East Germany became a part of an EU Member State without meeting EU laws and rules for some time). But legally, Scotland would be part of the EU inside the UK, then part of the UK outside the EU, and then independent outside the EU. This is unprecedented."*

**Iain McIver**  
**SPICe Research**

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