

**CULTURE, TOURISM, EUROPE &
EXTERNAL RELATIONS COMMITTEE**
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BREXIT UPDATE

SPICe weekly update

**ARTICLE 50:
TRIGGERED**

**ARTICLE 50 LETTER RESOPNSES:
SCOT GOVT & EUROPEAN COUNCIL**

**WHAT DO VOTERS IN SCOTLAND
WANT FROM BREXIT?**

SPICe The Information Centre
An t-Ionad Fiosrachaidh

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The Scottish Parliament
Pàrlamaid na h-Alba

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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, the process for which has now formally begun following the Prime Minister's triggering of Article 50 on 29 March.

The weekly 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. This week's update focuses on the triggering of Article 50, the European Council response and the Great Repeal Bill White Paper.

The weekly update will take a break over Easter recess and will return on Tuesday 25/Wednesday 26 April.

Article 50 triggered

As was widely trailed beforehand, on 29 March the Prime Minister [wrote](#) to the President of the European Council, Donald Tusk to notify the European Council of the United Kingdom's intention to withdraw from the European Union.

The [six page letter](#) sets out the UK Government's likely approach to the negotiations and states the aim of the UK Government is to achieve "a deep and special partnership we hope to enjoy – as your closest friend and neighbour – with the European Union once we leave".

The letter also suggests an early aim of the negotiations should be to give:

"citizens and businesses in the United Kingdom and the European Union – and indeed from third countries around the world – as much certainty as possible, as early as possible."

In setting out the domestic arrangements for Brexit, the Prime Minister states that "we will negotiate as one United Kingdom, taking due account of the specific interests of every nation and region of the UK as we do so".

The Prime Minister makes clear that the aim of the negotiations between the UK and the EU should be to secure a deep and special partnership, but the letter is clear about the potential consequences of no deal being reached:

"If, however, we leave the European Union without an agreement the default position is that we would have to trade on World Trade Organisation terms. In security terms a failure to reach agreement would mean our cooperation in the fight against crime and terrorism would be weakened. In this kind of scenario, both the United Kingdom and the European Union would of course cope with the change, but it is not the outcome that either side should seek. We must therefore work hard to avoid that outcome."

Having set out the UK Government position, the letter then sets out seven principles that the Prime Minister believes should underpin the negotiations. These principles are:

1. We should engage with one another constructively and respectfully, in a spirit of sincere cooperation
2. We should always put our citizens first
3. We should work towards securing a comprehensive agreement
4. We should work together to minimise disruption and give as much certainty as possible
5. In particular, we must pay attention to the UK's unique relationship with the Republic of Ireland and the importance of the peace process in Northern Ireland
6. We should begin technical talks on detailed policy areas as soon as possible, but we should prioritise the biggest challenges
7. We should continue to work together to advance and protect our shared European values

At the conclusion of the letter the Prime Minister acknowledges that achieving everything – the leave agreement and a future trade agreement – within two years will be challenging but stated:

“We recognise that it will be a challenge to reach such a comprehensive agreement within the two-year period set out for withdrawal discussions in the Treaty. But we believe it is necessary to agree the terms of our future partnership alongside those of our withdrawal from the EU. We start from a unique position in these discussions – close regulatory alignment, trust in one another’s institutions, and a spirit of cooperation stretching back decades. It is for these reasons, and because the future partnership between the UK and the EU is of such importance to both sides, that I am sure it can be agreed in the time period set out by the Treaty.”

At the same time the letter was being delivered to Donald Tusk by the United Kingdom’s Permanent Representative to the EU, Sir Tim Barrow, the Prime Minister made a [statement](#) in the House of Commons. In her statement Theresa May initially set out her view that Brexit was now irreversible:

“This is an historic moment from which there can be no turning back. Britain is leaving the European Union. We are going to make our own decisions and our own laws. We are going to take control of the things that matter most to us. And we are going to take this opportunity to build a stronger, fairer Britain – a country that our children and grandchildren are proud to call home. That is our ambition and our opportunity. That is what this government is determined to do.”

On the contents of the letter, the Prime Minister said:

“I have been clear that the deep and special partnership we seek is in the best interests of the United Kingdom and of the European Union too.

I have been clear that we will work constructively – in a spirit of sincere co-operation – to bring this partnership into being. And I have been clear that we should seek to agree the terms of this future partnership alongside those of our withdrawal, within the next 2 years.”

On the future of EU citizens in the UK, the Prime Minister said:

“We seek to guarantee the rights of EU citizens who are already living in Britain, and the rights of British nationals in other member states as early as we can. That is set out very clearly in the letter as an early priority for the talks ahead.”

And on the aim of the negotiations the Prime Minister said that whilst the UK will leave the Single Market:

“We will pursue a bold and ambitious free trade agreement with the European Union that allows for the freest possible trade in goods and services between Britain and the EU’s member states; that gives British companies the maximum freedom to trade with and operate within European markets; and that lets European businesses do the same in Britain.”

The Prime Minister did acknowledge that leaving the EU would have consequences for the UK, she told the Commons:

“Mr Speaker, we understand that there will be consequences for the UK of leaving the EU. We know that we will lose influence over the rules that affect the European economy. We know that UK companies that trade with the EU will have to align with rules agreed by institutions of which we are no longer a part, just as we do in other overseas markets. We accept that.”

Following the Prime Minister’s statement she took [questions from MPs](#).

Scottish Government response to the Article 50 letter

Shortly after Article 50 was triggered, the Scottish Government issued a [news release](#) providing the First Minister’s response. According to the news release, the First Minister said:

“Today’s triggering of Article 50 represents a leap in the dark by the Prime Minister.

“Fully nine months after the EU referendum, the UK Government still cannot answer basic questions about what Brexit will mean for businesses, for the economy generally and for the type of society we live in.

“I wish the Prime Minister well in the negotiations which lie ahead, because a good Brexit deal for the UK is in Scotland’s interests.

“But the UK Government’s hard-line approach to Brexit is a reckless gamble, and it is clear, even at these very early stages, that the final deal is almost certain to be worse economically than the existing arrangements – and potentially much worse.

“Scotland voted decisively to remain part of Europe, but the UK Government only formally responded with a dismissal of our compromise proposals to keep Scotland in the Single Market at the same time as the Article 50 letter was sent.

“The next two years are hugely important and will determine the kind of country Scotland will become.

“The Prime Minister has today confirmed her aim is to reach a Brexit agreement covering a future relationship within two years.

“So the people of Scotland must have the final say on their own future once the terms of Brexit are clear.”

The European Council response to the Article 50 letter

Two days after Article 50 was triggered, the European Council provided its first response. The President of the European Council, Donald Tusk published [draft guidelines following the United Kingdom's notification under Article 50 TEU](#). The draft guidelines were drawn together by the General Secretariat of the Council and they will be discussed at the European Council meeting (of the EU27) on April 29.

The Council's guidelines which run to nine pages long focus on achieving a phased approach to the negotiations which give priority to reaching agreement on an "orderly withdrawal" before negotiations on the future trade relationship can begin.

With regards to the withdrawal agreement, the guidelines highlight a number of priorities for the EU27 including:

- Reaching agreement on reciprocal guarantees for the rights of EU citizens in the UK and UK citizens in the EU
- Ensuring that there is no legal vacuum for EU businesses operating in the UK at the date of withdrawal
- Agreeing a single financial settlement should ensure that the Union and the United Kingdom both respect the obligations undertaken before the date of withdrawal. The settlement should cover all legal and budgetary commitments as well as liabilities, including contingent liabilities.
- With regard to the island of Ireland, respect for the Good Friday Agreement and trying to find "flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order".
- Removal of EU Agencies located in the United Kingdom

Assuming agreement can be reached on the terms of an orderly withdrawal, the guidelines propose that negotiations could proceed to the second phase:

"While an agreement on a future relationship between the Union and the United Kingdom as such can only be concluded once the United Kingdom has become a third country, Article 50 TEU requires to take account of the framework for its future relationship with the Union in the arrangements for withdrawal. To this end, an overall understanding on the framework for the future relationship could be identified during a second phase of the negotiations under Article 50. The Union and its Member States stand ready to engage in preliminary and preparatory discussions to this end in the context of negotiations under Article 50 TEU, as soon as sufficient progress has been made in the first phase towards reaching a satisfactory agreement on the arrangements for an orderly withdrawal."

The guidelines are clear that the future arrangement between the EU and the UK can only be agreed once the UK has left the European Union but:

“to the extent necessary and legally possible, the negotiations may also seek to determine transitional arrangements which are in the interest of the Union and, as appropriate, to provide for bridges towards the foreseeable framework for the future relationship”.

Any transitional arrangement would require the UK to continue to be bound by the laws and procedures of the European Union.

Looking ahead to any new trading arrangement, the guidelines state:

“The British government has indicated that it will not seek to remain in the single market, but would like to pursue an ambitious free trade agreement with the European Union. Based on the Union's interests, the European Council stands ready to initiate work towards such an agreement, to be finalised and concluded once the United Kingdom is no longer a Member State.

Any free trade agreement should be balanced, ambitious and wide-ranging. It cannot, however, amount to participation in the Single Market or parts thereof, as this would undermine its integrity and proper functioning. It must ensure a level playing field in terms of competition and state aid, and must encompass safeguards against unfair competitive advantages through, inter alia, fiscal, social and environmental dumping.

Beyond trade, the EU stands ready to consider establishing a partnership in other areas, in particular the fight against terrorism and international crime as well as security and defence.”

Finally, the guidelines state that any future trade agreement between the UK and the EU may only apply to Gibraltar with the agreement of the UK and Spain.

Guide to the Negotiations

Last week's update provided details of the content of the negotiations as seen through a timeline produced by Dr Simon Usherwood from the University of Surrey. The [timeline for the Article 50 negotiations](#) along with a [blog](#) detail what to look out for during the negotiations which whilst scheduled to last for two years are likely to need to take much less time due to “faffing at the start and the ratifications at the end”.

Writing for EU Law Analysis, Professor Steve Peers from the University of Essex has written a blog on the [EU negotiations](#). The blog includes a comparison of the EU draft guidelines with the UK position which was set out by the Prime Minister in her [Lancaster House speech](#) on 17 January. Professor Peers suggests that the two positions actually have much in common:

“While the initial attention in the UK has focussed on a misunderstanding of what the draft EU guidelines say about Gibraltar, the most significant issue is actually that the EU and UK in principle have many negotiating objectives in common. Most notably, the EU has accepted the UK's objective of aiming towards a

comprehensive EU/UK free trade agreement (FTA) without provisions on the free movement of persons or contributions to the EU budget.

The devil will therefore be in the considerable details. For example, the EU and UK still disagree on the timing of Brexit talks, (possibly) the role of the ECJ, financial issues (the ‘divorce bill’), the Gibraltar issue (although this will be an issue for bilateral talks with Spain), whether the UK should comply with environmental and other standards as part of a deal, and whether ‘sectoral’ deals are possible. Further points of detailed disagreement will surely emerge as the talks get underway.”

The Great Repeal Bill White Paper

The day after Article 50 was formally triggered, the UK Government published [Legislating for the United Kingdom’s withdrawal from the European Union](#). The White Paper set out the UK Government’s proposals for ensuring a functioning statute book once the UK has left the EU.

The White Paper addresses three issues:

- the repeal of the European Communities Act 1972
- how EU law will be converted into UK law
- how corrections will be made to the statute book, to ensure the law continues to function once we have left the EU

The White Paper includes proposals to copy over all EU-derived law into UK law to coincide with the UK’s departure from the EU. The White Paper also suggests removing reference to EU law and EU institutions in UK legislation. To allow these changes to UK legislation to happen, the UK Government has proposed including in the Great Repeal Bill delegated powers to UK Government and Devolved Administration Ministers to amend legislation using secondary legislation. These powers are known as Henry VIII powers. The House of Commons Library [describes Henry VIII](#) powers as:

“The Government sometimes adds this provision to a Bill to enable the Government to repeal or amend it after it has become an Act of Parliament. The provision enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny.

Such provisions are known as Henry VIII clauses, so named from the Statute of Proclamations 1539 which gave King Henry VIII power to legislate by proclamation.”

In the White Paper, the UK Government has provided a number of reasons for using secondary legislation arising from powers proposed in the Great Repeal Bill:

- a. Matters which cannot be known or may be liable to change at the point when the primary legislation is being passed because the Government needs to allow for progress of negotiations;

- b. Adjustments to policy that are directly consequential on our exiting the EU; and
- c. To provide a level of detail not thought appropriate for primary legislation.

Section 4 of the White Paper addresses interaction with the devolution settlements. Alongside proposing similar delegated powers for Devolved Administration Ministers to amend EU-derived legislation in devolved areas, the White Paper addresses the issue of repatriated competences when the UK leaves the EU. The UK Government states that the current devolution settlements were agreed when the UK was a member of the EU and therefore were premised on EU membership:

“In areas where the devolved administrations and legislatures have competence, such as agriculture, environment and some transport issues, the devolved administrations and legislatures are responsible for implementing the common policy frameworks set by the EU. At EU level, the UK Government represents the whole of the UK’s interests in the process for setting those common frameworks and these also then provide common UK frameworks, including safeguarding the harmonious functioning of the UK’s own single market.”

The White Paper suggests that a key consideration in the repatriation of powers following Brexit will be to ensure that common UK frameworks and the UK single market are unaffected:

“Examples of where common UK frameworks may be required include where they are necessary to protect the freedom of businesses to operate across the UK single market and to enable the UK to strike free trade deals with third countries.”

The White Paper states that the UK Government intends to replicate the current frameworks provided by EU rules through UK legislation and then consider where common frameworks need to be retained in the future. This seems to suggest, that at least initially powers over framework policies such as in agriculture and environmental standards will be help by the UK Parliament despite relating to devolved competences.

The White Paper does however state that following the discussion about where powers best sit, “it is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration”.

Publishing the White Paper, the Secretary of State for Exiting the European Union David Davis gave a [statement](#) in Parliament. On the conversion of EU law to UK law, the Secretary of State told Parliament:

“A simple repeal of the ECA would leave holes in our statute book. The EU Regulations that apply directly in the UK would no longer have any effect. And many of the domestic regulations we have made to implement our EU obligations would fall away.

Therefore, to provide the maximum possible legal certainty, the Great Repeal Bill will convert EU law into domestic law on the day we leave the European Union. This means, for example, that the workers’ rights, environmental protection and consumer rights that are enjoyed under EU law in the UK will continue to be available in UK law after we have left the European Union.

Once EU law has been converted into domestic law, Parliament will be able to pass legislation to amend, repeal or improve any piece of European Union law it chooses – as will the devolved legislatures, where they have power to do so.”

On the use of Delegated Powers (Henry VIII clauses), the Secretary of State said:

“However, further steps will be needed to provide a smooth and orderly exit. This is because a large number of laws – both existing domestic laws and those we convert into UK law – will not work properly if we leave the EU without taking further action. Some laws, for example, grant functions to an EU institution with which the UK will no longer have a relationship.

To overcome this, the Great Repeal Bill will provide a power to correct the statute book where necessary to resolve the problems which will occur as a consequence of leaving the European Union.

This will be done using secondary legislation, the flexibility of which will make sure we have put in place the necessary corrections before the day we leave the EU.”

David Davis also spoke about Brexit and devolution. He told the Commons:

“In areas where the devolved administrations and legislatures have competence, such as agriculture, the environment and some areas of transport, this competence is exercised within the constraints set by European Union law.

The existence of common EU frameworks has had the effect of providing a common UK framework in many areas, safeguarding the functioning of the UK internal market.

As powers return from the EU, we have an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the United Kingdom than ever before.”

The Secretary of State confirmed that in some areas common UK frameworks would be necessary and said the UK Government will work closely with the devolved administrations in this area.

Following his statement, the Secretary of State [took questions](#) from Members of Parliament. Joanna Cherry MP asked the Secretary of State about the need for Legislative Consent Motions. The Secretary of State said:

“At this stage we do not know, because we do not know the final format of the Bill. That is the simple truth.”

Following up on the Legislative Consent Question, Patrick Grady MP asked the Secretary of State:

“Given that statutory instruments are not currently subject to legislative consent from the devolved Assemblies, can the Secretary of State assure us that no statutory instruments will be used to legislate on devolved matters?”

The Secretary of State replied:

“We shall be talking to the devolved Administrations about the extent to which this will have an impact, and ensuring that there are increases—not decreases—in the powers available to them.”

The Scottish Government response to the White Paper

Following publication of the Great Repeal Bill White Paper, the Scottish Government issued a [news release](#) providing its reaction. In the news release the Scottish Government focussed on the repatriation of powers from the European Union particularly in devolved areas. The news release provided a quote from the Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell who said:

“It remains deeply disappointing that the UK Government is ploughing ahead with leaving the European Union and ending our 40 year relationship with our nearest neighbours and the world’s largest market.

“This white paper for this Brexit bill leaves many important questions unanswered, such as the nature of the powers for the Scottish Parliament, and the need for the consent of the Scottish Parliament under the Sewel Convention. The UK Government now needs work closely with the Scottish Government on the detail of the bill as it develops.

“There are no new powers proposed for the parliament beyond those required to fix the mess that will be caused by Brexit, exposing what have so far been empty promises from the UK Government.

“In all other areas where powers already belong to the Scottish Parliament the white paper continues to threaten that in areas such as agriculture, fisheries and the environment, powers will be taken by the UK Government after Brexit.

“For the UK government to seek to impose legislative frameworks on these areas would be to take the unprecedented step of extending its powers over Scotland and must not take place. The Scottish Parliament’s competences must not be diminished as a result of Brexit.

“The UK Government continues to assert that the UK is a partnership of four nations. It needs to now prove that it truly believes this by entering into meaningful discussions as the process of withdrawing from the EU gets underway.

“Overall, it appears that the UK Government is set to be consumed by legislating for Brexit at the expense of all other priorities for years to come.”

House of Commons Exiting the EU Committee Report

On 4 April, the House of Commons Exiting the European Union Committee published its report into [The Government’s negotiating objectives: the White Paper](#). The Committee’s headline conclusion was that the Government’s assertion that “no deal is

better than a bad deal" is unsubstantiated without an economic assessment of "no deal" having been done and without evidence that steps are being taken to mitigate what would be the damaging effect of such an outcome.

The Committee's news release quotes Committee Chair Hilary Benn MP:

"The report we are publishing today is a detailed assessment of the Government's stated negotiating objectives as set out in its EU White Paper.

The UK is about to enter into enormously important and complex negotiations covering trade, customs rules, access to the single market, security and foreign policy co-operation and the rights of UK and EU citizens at home and abroad. We all want the best possible deal for the UK but what we are able to secure will ultimately depend on what the 27 Member States are prepared to agree to.

The Government is right to try and negotiate both the divorce settlement and a new trading relationship in tandem, but it should also be prepared for the worst case – i.e. that a new trade agreement is not reached or ratified by the day we leave – because the timescale allowed by Article 50 is particularly tight.

The Government should conduct a thorough assessment of the economic, legal and other implications of leaving the EU without a deal in place. The public and Parliament have a right to the maximum possible information about the impact of the different future trading options being considered. Without an economic impact assessment of 'no deal' and without evidence that steps are being taken to mitigate the damaging effect of such an outcome, the Government's assertion that 'no deal is better than a bad deal' is unsubstantiated. Parliament must be in an informed position to decide whether a proposed deal is, in fact, better or worse than no deal.

Leaving the EU without a future trade deal and in doing so defaulting to World Trade Organisation (WTO) rules is no less an important decision for the UK's economic future than the terms of any future Free Trade Agreement between the UK and the EU. It is therefore essential that such a step is not taken without Parliament having a vote on the matter."

On the issue of relations between the UK Government and the Devolved Governments, the Committee concluded that:

"The Government must establish a more effective process for engaging the devolved administrations in developing the UK's negotiating position through the Joint Ministerial Committee for EU Negotiations (JMC (EN)). And the Committee recommends that the UK Government respond formally to the Welsh, Scottish and Northern Ireland legislatures regarding each of their options papers as a matter of urgency.

Hilary Benn MP said:

"There are significant differences in the negotiating priorities of the different parts of the UK. If the future deal is to be acceptable to the whole of the UK, then these differences will need to be discussed, negotiated and common ground agreed

upon. Ministers must share more information with the devolved administrations and discuss options before decisions are reached."

The [formal minutes](#) included in the Committee's report show that there were a number of votes on specific conclusions and it was [reported](#) that a minority of the Committee refused to participate in agreeing the final report.

What do voters in Scotland want from Brexit?

[Survey work by NatCen/ScotCen Social Research](#) into Scottish voters' attitudes to Brexit has provided a clearer picture of what Scots want from the Brexit negotiations. Writing about the results on the [UK in a Changing Europe blog](#), Professor John Curtice wrote:

"The results will doubtless come as a surprise to many. For it seems that despite the way Scotland voted in the EU referendum, attitudes north of the border towards the shape of Brexit are not so different after all. In particular, rather than endorsing freedom of movement, it seems that most voters in Scotland, just like their counterparts elsewhere, would like to maintain free trade but abandon freedom of movement. As a result, it seems that their position is much closer to that of the UK government than that of the Scottish Government.

On the one hand, support for free trade appears to be near universal. As many as 93% of people in Scotland think that EU companies should be able to trade freely in Britain while British companies should be able to do the same within the EU. The figure is simply just a little higher than the 88% who take that view across Britain as a whole.

But, at the same time, there is widespread support for curbing freedom of movement. Nearly two-thirds of Scots (64%) think that people who wish to move to Britain from the EU should have to apply to do so in the same way that non-EU migrants should have to do. Only 22% are opposed. That means opinion is no more than a tad more liberal than it is across Britain as a whole, where 68% are in favour."

Professor Curtice adds that although Scottish views on immigration are similar to views across Britain, there is a difference in prioritising immigration with 61% of Scots thinking that Britain should either 'definitely' or 'probably' allow freedom of movement in return for allowing British firms to trade freely in the EU compared to 54% across Britain.

On accepting Brexit, the survey showed:

"As many as 47% think that 'Scotland is an integral part of the UK and so should accept the UK-wide vote to leave the EU', while just slightly more, 51%, believe that 'Scotland is a nation and so should not have to leave the EU when a majority of Scots voted to stay'."

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