

Issue 77  
16 January  
2019

# BREXIT UPDATE

Scottish Parliament Information Centre



**SPICe**

**The Information Centre**  
An t-Ionad Fiosrachaidh

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The Scottish Parliament  
Pàrlamaid na h-Alba

## Contents

<b>CONTEXT</b>	<b>1</b>
<b>A REMINDER ABOUT THE MEANINGFUL VOTE</b>	<b>1</b>
<b>DEVELOPMENTS AHEAD OF THE MEANINGFUL VOTE</b>	<b>2</b>
European Council – 13 December 2018	2
UK Government commitments to Northern Ireland	3
Exchange of letters with the Council and Commission	4
Prime Minister’s speech in Stoke-on-Trent	5
<b>OUTCOME OF THE MEANINGFUL VOTE</b>	<b>5</b>
<b>REACTION TO THE MEANINGFUL VOTE</b>	<b>6</b>
Prime Minister	6
European Commission	6
Scottish Government	7
Reaction from academic and policy commentators	7
<b>WHAT HAPPENS NOW?</b>	<b>8</b>
Can the current Withdrawal Agreement and Political Declaration be saved?	8
If not the current Withdrawal Agreement and Political Declaration, then what?	8
So, is a no-deal Brexit more likely?	9
Will the UK leave the EU on 29 March?	9
<b>NO-DEAL PREPARATIONS</b>	<b>10</b>
Scottish Government update	10
UK Finance Bill and preparations for EU exit	10
About this publication	11

## CONTEXT

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On 25 November 2018, EU leaders endorsed the Withdrawal Agreement and a Political Declaration negotiated between the UK and the EU.

- the [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#). This is a draft legal agreement setting out arrangements for the UK's departure from the EU.
- an [Outline Political Declaration](#) on the UK-EU future relationship.

SPICe briefings on the Withdrawal Agreement and Political Declaration are available at the links below:

- [An overview of the Withdrawal Agreement](#) (November 2018)
- [An overview of the Political Declaration](#) (November 2018)

Before the Withdrawal Agreement and Political Declaration can be ratified, one of the necessary conditions is approval by the UK Parliament.

## A REMINDER ABOUT THE MEANINGFUL VOTE

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The European Union (Withdrawal) Act 2018 requires parliamentary approval of the negotiated withdrawal agreement and the framework for the future relationship, before any ratification is permissible. The vote to determine this approval is known as the “meaningful vote”.

The requirement and provisions for the “meaningful vote” and the vote’s possible outcomes are established by Section 13 of the European Union (Withdrawal) Act 2018. More detail is available in the Commons’ Library paper: [A User's Guide to the Meaningful Vote](#).

Three days of debate were conducted over [4 December](#), [5 December](#), [6 December](#). However on 10 December 2018, following a statement by the Prime Minister, the vote scheduled for 11 December was [indefinitely delayed by the UK Government](#).

In order to reassure those opposed to the Ireland/Northern Ireland “backstop” provisions, the [Prime Minister indicated on 10 December that](#):

- “ in advance of the European Council I will go to see my counterparts in other member states and the leadership of the Council and the Commission. I will discuss with them the clear concerns that this House has expressed. We are also looking closely at new ways of empowering the House of Commons to ensure that any provision for a backstop has democratic legitimacy and to enable the House to place its own obligations on the Government to ensure that the backstop cannot be in place indefinitely.

## DEVELOPMENTS AHEAD OF THE MEANINGFUL VOTE

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### European Council – 13 December 2018

Three days after the delay to the “meaningful vote”, the Prime Minister sought further legal clarifications about the status of the Ireland and Northern Ireland border backstop from the European Council

On 13 December, the [conclusions from the European Council \(Art. 50\)](#) stated:

- 3. The European Council underlines that the backstop is intended as an insurance policy to prevent a hard border on the island of Ireland and ensure the integrity of the Single Market. It is the Union’s firm determination to work speedily on a subsequent agreement that establishes by 31 December 2020 alternative arrangements, so that the backstop will not need to be triggered.
- 4. The European Council also underlines that, if the backstop were nevertheless to be triggered, it would apply temporarily, unless and until it is superseded by a subsequent agreement that ensures that a hard border is avoided. In such a case, the Union would use its best endeavours to negotiate and conclude expeditiously a subsequent agreement that would replace the backstop, and would expect the same of the United Kingdom, so that the backstop would only be in place for as long as strictly necessary.

However, the conclusions also reaffirmed the Council’s position that the Withdrawal Agreement “is not open for renegotiation”.

On 17 December, the Prime Minister made a statement to Parliament which [emphasised the December Council’s assurances and highlighted certain mechanisms](#) in the Withdrawal Agreement:

- As formal conclusions from a European Council, these commitments have legal status and should be welcomed. They go further than the EU has ever done previously in trying to address the concerns of this House. And of course they sit on top of the commitments that we have already negotiated in relation to the backstop, including ensuring that the customs element is UK-wide; that both sides are legally committed to using best endeavours to have our new relationship in place before the end of the implementation period; that if the new relationship is not ready, we can choose to extend the implementation period instead of the backstop coming into force; that if the backstop does come in, we can use alternative arrangements, not just the future relationship, to get out of it; that the treaty is clear the backstop can only ever be temporary; and that there is an explicit termination clause.

The Prime Minister also indicated discussions with the EU were continuing and she restated the possibility of new powers for the House of Commons in relation to the backstop:

- discussions [with the EU] are continuing to explore further political and legal assurances. We are also looking... at new ways of empowering the House of

Commons to ensure that any provision for a backstop has democratic legitimacy and enabling the House to place its own obligations on the Government to ensure that the backstop cannot be in place indefinitely.

## UK Government commitments to Northern Ireland

On 9 January, the UK Government published [UK Government commitments to Northern Ireland and its integral place in the United Kingdom](#) which according to the UK Government outlined a package of measures to give Northern Ireland a strong voice and role in the backstop process. This includes a new Stormont lock to give Northern Ireland the power to reject new EU laws and regulation in the backstop.

The UK Government [describe their commitments](#) in this paper as:

- Setting out that no new areas of EU law would be applied in a backstop scenario without seeking the agreement of the Northern Ireland Assembly;
- Ensuring unfettered access for Northern Ireland businesses to the Great Britain economy;
- Providing a strong role for Stormont before the backstop could be triggered;
- Giving the Northern Ireland Executive a role in Northern Ireland-specific discussions between the UK and EU under the structures established in the withdrawal agreement;
- Outlining that there would be no regulatory divergence between GB and Northern Ireland in areas covered by the backstop in any scenario in which it applied;
- A guarantee that there would be no change to north-south co-operation through the protocol, preserving the arrangements under strand II of the Belfast (“Good Friday”) agreement;
- A powerful voice for Northern Ireland in future relationship negotiations—putting the voice of the Northern Ireland Executive, along with the other devolved Administrations, at the heart of that work.

The document refers occasionally to the role of all devolved administrations, including in Scotland.

On new powers for devolved administrations, the document repeats the established UK Government policy position:

“...in leaving the EU, there is an opportunity, to which this Government is committed, to significantly increasing the decision making powers of the Devolved Administrations in Scotland, Wales and Northern Ireland, as decisions previously taken in Brussels, that are otherwise within areas of devolved competence, return to the UK. Alongside that, in some areas vital to the operation of the UK’s internal market and to the protection of common resources, we should continue to take common UK approaches.

On the devolved administrations' role in negotiations, the document states:

“ It will therefore ultimately be in the development of our future relationship with the EU where it is most essential to establish the means for Belfast, Cardiff, Edinburgh and Westminster to come together to deliver growth and prosperity right across the UK. And we will ensure those interests are properly represented and reflected as we negotiate that future partnership with the EU. This will be alongside our existing commitment to ensure that all devolved institutions and interests are properly represented as we take forward our independent trade policy.

In their post on the LSE Brexit blog, [Katy Hayward and David Phinnemore discuss](#) the arguments made against the Withdrawal Agreement and the UK Government's proposals in relation to the “principle of consent”.

### Exchange of letters with the Council and Commission

One day before the “meaningful vote” the [UK Government and European Commission exchanged letters](#). These letters were designed to set out clarifications with regard to the “backstop” and assurances that future negotiations replace the “backstop” before it is required to be used.

The European Commission's letter emphasised the European Council's conclusions of 13 December 2018 which were themselves designed to provide assurances on the “backstop”, and stated the extent of the conclusions' legal authority.

On the negotiating timetable, the letter emphasised the Commission's willingness to start negotiations on the future relationship immediately after signature. The letter also stated for the first time that, should full agreement on the future relationship not be ready at the end of the transition period, the Commission is:

“ready to propose provisional application of relevant parts of the future relationship, in line with the legal frameworks that apply and existing practice.”

On the “backstop”, the letter emphasised that the Commission's view that it does not wish to see the backstop enter into force, and that the “backstop” would be a temporary solution in the event it was needed. The letter stated that in negotiating the future relationship, an agreement to replace the Ireland/Northern Ireland Protocol would be a priority, that “facilitative arrangements and technologies will be considered”, and stated that:

“arrangements which supersede the Protocol are not required to replicate its provisions in any respect, provided that the underlying objectives continue to be met.

On the same day, the [Prime Minister made a statement to the UK Parliament](#). She summarised the content of the letters as she saw it and stated her view that the backstop mechanism would be part of any Withdrawal Agreement negotiated with the European Union:

- ” The simple truth is that the EU was not prepared to agree to [a unilateral exit mechanism from the backstop, an end date or rejecting the backstop altogether] and rejecting the backstop altogether means no deal. Whatever version of the future relationship Members might want to see—from Norway to Canada, to any number of variations—all require a withdrawal agreement, and any withdrawal agreement would contain the backstop. That will not change however the House votes tomorrow. To those who think that we should reject this deal in favour of no deal because we cannot get every assurance we want, I ask what a no-deal Brexit would do to strengthen the hand of those campaigning for Scottish independence or, indeed, of those demanding a border poll in Northern Ireland. Surely that is the real threat to our Union.

### Prime Minister's speech in Stoke-on-Trent

On 14 January the Prime Minister gave a [speech on Brexit in Stoke-on-Trent](#). She referred repeatedly to her intention to implement the result of the referendum and provided the following analysis on possible scenarios:

- ” You can take no deal off the table by voting for [the Withdrawal Agreement]. And if no deal is a bad as you believe it is, it would be the height of recklessness to do anything else. But while no deal remains a serious risk, having observed events at Westminster over the last seven days, it is now my judgment that the more likely outcome is a paralysis in Parliament that risks there being no Brexit.

## OUTCOME OF THE MEANINGFUL VOTE

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Following the indefinite delay to the “meaningful vote” on 10 December, the vote was rescheduled for 15 January 2019. Five further days of debate were had on [9 January](#), [10 January](#), [11 January](#), [14 January](#) and [15 January](#).

On 9 January, the business motion to allow for the debates was [passed with an amendment from Dominic Grieve MP](#) which read:

“7. In the event of the motion under Section 13(1)(b) being negatived or amended so as to be negatived, a Minister of the Crown shall table within three sitting days a motion under Section 13, considering the process of exiting the European Union under Article 50.”

Four amendments were selected for debate by the Speaker.

- Labour [amendment (a)]
- SNP [amendment (k)]
- Edward Leigh [amendment (b)]
- John Barron [amendment (f)]

The text of the motion and all amendments is available in the [15 January Order Paper](#).

Following debate Labour, SNP and Edward Leigh did not move their amendments.

The amendment in the name of John Barron which would have approved the Withdrawal Agreement “subject to changes being made... so that the UK has the right

to terminate the [backstop] without having to secure the agreement of the EU” was voted down 600 to 24.

The original motion from the UK Government was then voted on unamended. The result of the vote was 202 ayes and 432 noes. This means that the UK parliament did not give its approval to the Withdrawal Agreement and Political Declaration necessary for the Withdrawal Agreement’s ratification.

## REACTION TO THE MEANINGFUL VOTE

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### Prime Minister

Immediately following the result of the meaningful vote, the Prime Minister said

“ ...with your permission, Mr Speaker, I would like to set out briefly how the Government intend to proceed. First, we need to confirm whether the Government still enjoy the confidence of the House... Secondly, if the House confirms its confidence in this Government, I will then hold meetings with my colleagues, our confidence and supply partner the Democratic Unionist party, and senior parliamentarians from across the House to identify what would be required to secure the backing of the House. The Government will approach those meetings in a constructive spirit, but given the urgent need to make progress we must focus on ideas that are genuinely negotiable and have sufficient support in this House. Thirdly, if those meetings yield such ideas the Government will then explore them with the European Union.

The Prime Minister then confirmed that it would comply with the spirit of the business motion amendment from Dominic Grieve MP:

“ We will therefore make a statement about the way forward and table an amendable motion by Monday.

### European Commission

European Commission President, [Jean-Claude Juncker made the following statement](#) on 15 January following the result of the vote:

“ I take note with regret of the outcome of the vote in the House of Commons this evening.

On the EU side, the process of ratification of the Withdrawal Agreement continues. The Withdrawal Agreement is a fair compromise and the best possible deal. It reduces the damage caused by Brexit for citizens and businesses across Europe. It is the only way to ensure an orderly withdrawal of the United Kingdom from the European Union.

The European Commission, and notably our Chief Negotiator Michel Barnier, has invested enormous time and effort to negotiate the Withdrawal Agreement. We have shown creativity and flexibility throughout. I, together with President Tusk, have demonstrated goodwill again by offering additional clarifications and reassurances in an exchange of letters with Prime Minister May earlier this week.

The risk of a disorderly withdrawal of the United Kingdom has increased with this evening's vote. While we do not want this to happen, the European Commission will continue its contingency work to help ensure the EU is fully prepared.

I urge the United Kingdom to clarify its intentions as soon as possible. Time is almost up.

## Scottish Government

On 16 January, the [First Minister wrote to the Prime Minister](#). The letter urged “urgent engagement” with the devolved administrations:

“ As a first step I am writing to call for a meeting of the Joint Ministerial Committee (Plenary). I understand the First Minister of Wales is making a similar call. It is important, contrary to our experience of the past two and a half years, that such a meeting must be more than window dressing. Urgent and meaningful discussions are needed in the next days to agree a way forward which can command a majority in the House of Commons, and which has the confidence and support of the devolved administrations.

On next steps, the First Minister stated:

“ The Scottish Government believes that the best way of resolving the current impasse is to negotiate an extension to the Article 50 period and hold a second EU referendum. Given the rejection of your deal we will now be intensifying work towards the achievement of that aim.

On Twitter, the First Minister [commented](#):

“ if none of PM's red lines change, what progress can she possibly make?

Also on 16 January, the Cabinet Secretary for Government Business and Constitutional Relations made a statement to the Scottish Parliament. This included the steps the Scottish Government believe must now be taken:

“ The first part of the plan must be to rule out No Deal.

... Secondly, the Prime Minister must write to the EU immediately, requesting an extension to the Article 50 process.

...the third key step [if the motion of no confidence fails] is for the UK Government, or a Parliament now controlled by its members, to bring forward a proposal to legislate for a second EU Referendum.

The statement also updated the Scottish Parliament on the Scottish Government's no-deal preparations - see the No-Deal Preparations section below.

## Reaction from academic and policy commentators

A selection of blogs from policy and academic commentators is available below:

- Jill Rutter (Institute for Government): [After the meaningful vote, what next for Brexit?](#)
- Bronwen Maddox (Institute for Government): [The historic significance of Theresa May's defeat](#)
- Dr Simon Usherwood (UK in a Changing Europe): [Theresa May Brexit deal hammered in parliament, but be wary of prospects of a new 'consensus' approach](#)
- Professor David Howarth (UK in a Changing Europe): [Seizing control of Brexit](#)

## WHAT HAPPENS NOW?

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What follows is extracted from a [SPICe Spotlight blog](#) published on 15 January.

### Can the current Withdrawal Agreement and Political Declaration be saved?

The scale of the defeat in the House of Commons makes it unlikely that the Withdrawal Agreement and Political Declaration can be salvaged in its current form. Conservative MPs in particular objected to there being no mechanism to allow the UK to unilaterally withdraw from the Northern Irish backstop.

Other MPs objected to the lack of clarity about the future relationship between the EU and the UK. The Labour Party suggested that the lack of a permanent Customs Union with the EU meant they couldn't support the Withdrawal Agreement.

The reservations of MPs about the UK's future relationship with the EU could be addressed in the Political Declaration, and it is possible the EU might be willing to include a more detailed indication of the future relationship. However, even with a more detailed Political Declaration, the Withdrawal Agreement would still need to be agreed and it seems unlikely that the EU will agree to reopen negotiations on this. In addition, even if the Withdrawal Agreement was to be reopened, it's difficult to see how the Northern Irish backstop could either be removed or amended to allow one side to withdraw from it unilaterally.

### If not the current Withdrawal Agreement and Political Declaration, then what?

In the aftermath of the House of Commons vote, it was clear that Members of Parliament are still not agreed about the kind of Brexit the House of Commons wants. This has two effects:

First, the UK's internal conversations often appear to some extent ignore that the Brexit negotiations are two sided. The EU27 has adopted a position on Brexit which has remained constant throughout the negotiations. Key elements of this position are:

- that a Withdrawal Agreement must address the three key issues of citizens' rights, the financial settlement and the Northern Ireland and Ireland border
- that in negotiating the future relationship, the EU's four freedoms (goods, services, capital and labour) are indivisible.

Second, the UK's internal conversations have yet to conclude with a clear picture of what the UK wants from the future relationship. This has been a [common complaint](#) from the EU27 over recent months.

Therefore, if the UK Government or Parliament wishes to re-negotiate the Withdrawal Agreement and/or the Political Declaration, it will need to ensure it has a clear position on what it wants from the negotiations (particularly in terms of the future relationship). In framing its negotiating position it will also need to be aware of the EU's red lines. Any new UK position will also need to be able to gain the support of a majority in the House of Commons if a new Withdrawal Agreement and Political Declaration is brought forward.

To achieve a different deal, either the EU or the UK Government will need to modify its red lines. The UK Government's red lines have focussed on ending freedom of movement and the jurisdiction of the Court of Justice of the European Union in the UK. Without movement from either side, it is difficult to see how a different deal is possible which would be acceptable to the House of Commons.

### So, is a no-deal Brexit more likely?

With only 72 days until the UK is due to leave the European Union (on 29 March 2019), last night's decision in the House of Commons appears to make a no-deal Brexit, where the UK leaves the EU without concluding a Withdrawal Agreement, more likely.

Despite this, MPs have consistently indicated that they believe there is a majority in the House of Commons opposed to a no-deal Brexit. However, it is also important to remember that if nothing changes, the UK will leave the EU on the 29 March – it is the default position.

To avoid that scenario, either a Withdrawal Agreement and Political Declaration would need to be agreed and ratified, the Article 50 period would need to be extended, or Article 50 would need to be unilaterally revoked.

Extending Article 50 would require a request from the UK Government and the unanimous agreement of the EU27. Whilst there have been suggestions that that the EU would be willing to extend the Article 50 period, the upcoming European Parliament elections present some obstacles. In addition, the EU27 may only be in favour of an extension if it is likely to allow for a suitable solution to be reached such as either a Withdrawal Agreement being finalised or the UK choosing to hold a second referendum.

An extension to the Article 50 process would also require a change to "exit day" in the European Union (Withdrawal) Act.

### Will the UK leave the EU on 29 March?

If the UK is to leave the EU with a concluded Withdrawal Agreement it now appears unlikely this could be achieved by 29 March. This is because any changes to the Withdrawal Agreement and Political Declaration will need to be agreed with the EU27 and then consented to by the House of Commons. The Withdrawal Agreement will also require implementing legislation in the form of an Act of the UK Parliament which might also require the legislative consent of the devolved legislatures.

Therefore, unless the UK leaves the EU in a no-deal scenario, it is beginning to look like Brexit day may need to be delayed.

## NO-DEAL PREPARATIONS

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### Scottish Government update

In his statement on 16 January, the Cabinet Secretary for Government Business and Constitutional Relations provided an update to the Scottish Parliament on the Scottish Government's preparations for a no deal Brexit:

“ But until [no deal is ruled out] it will be necessary, if regrettable, for the Scottish Government to go on with, and indeed intensify, our work to prepare as best we can for that eventuality. To that end we are continuing to engage with the UK Government on our planning and preparations for a potential no deal outcome.

We are making every effort to ensure that the vital importance of getting the information we need . The Scottish Government Resilience Committee is now meeting weekly to manage and escalate matters as needed, supported by a “rapid response” group of officials which will grow as need requires.

We have a public information campaign in the final stages of development and we are making initial decisions on issues such as medicine, medical devices and clinical consumables stockpiling, emergency transportation, support for supply chains, diversion of local produce and a host of other issues.

All of this activity has become a significant focus of our resources and efforts, as it has to be for a responsible government. However, it remains something the UK Government could – and should - choose to remove as a risk and a cost today.

### UK Finance Bill and preparations for EU exit

The [Finance \(No. 3\) Bill](#) is designed to put the UK Government's Budget into law.

According to a [written statement issued on 18 December 2019](#), the UK Government has allocated almost £2 billion to UK Government department to prepare for EU-exit. This allocation has generated Barnett consequential work £55 million for the Scottish Government.

At its third reading in the House of Commons an amendment in the name of Yvette Cooper MP was agreed to the Finance (No. 3) Bill. Yvette Cooper describes the effect of this amendment as follows:

“ This amendment would prevent the Government implementing the “no deal” provisions of Clause 89 without the explicit consent of Parliament for such an outcome. It would provide three options for the provisions of Clause 89 to come into force: if the House of Commons has approved a negotiated withdrawal agreement and a framework for the future relationship; if the Government has sought an extension of the Article 50 period; or the House of Commons has approved leaving the European Union without a withdrawal agreement and framework for the future relationship.

Clause 89 is described by the UK Government as making minor and technical changes only. During the debate the Exchequer Secretary to the Treasury, Robert Jenrick MP said:

- “ The point I have just made is that the law of the land is that the UK will leave the European Union on 29 March, and nothing contained in amendment 7 will change that. As I will come on to say, the only difference that the amendment will implement is to make the UK somewhat less prepared for that eventuality.

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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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