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BREXIT UPDATE

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An t-Ionad Fiosrachaidh

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CONTEXT

Summary of recent developments

On 25 November 2018, EU leaders endorsed the [Withdrawal Agreement \(setting out legal arrangements for the UK's departure from the EU\) and a Political Declaration \(on the UK-EU future relationship\)](#) negotiated between the UK and the EU.

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

On 15 January 2019, the House of Commons rejected a motion to approve the Withdrawal Agreement and Political Declaration by 202 votes to 432.

The European Union (Withdrawal) Act 2018 contains some [procedural requirements](#) that follow from the UK Parliament's rejection of the Withdrawal Agreement and Political Declaration on 15 January 2019. In line with these requirements, the UK Government provided time for debate on a motion "in neutral terms" in the House of Commons on 29 January 2019.

This *SPICe Brexit Update #79* discusses the outcome of votes on this motion and other developments from a Scottish devolved perspective.

SPICe resources

- SPICe briefings on the [Withdrawal Agreement](#) and [Political Declaration](#) (November 2018)
- SPICe Spotlight blog post [discussing the likelihood of various scenarios](#) following the Commons' rejection of the Withdrawal Agreement and Political Declaration on 15 January 2019.
- *NEW* SPICe Spotlight blog post on [seeking amendments to the backstop](#) following the Commons vote on 29 January and Prime Ministers intention to re-open negotiations on the Withdrawal Agreement.

VOTES ON THE “MOTION IN NEUTRAL TERMS”

The House of Commons debate and vote on the 29 January 2019 was not another attempt to seek the UK Parliament’s approval of the Withdrawal Agreement and Political Declaration. Rather, the vote fulfilled procedural requirements of the European Union (Withdrawal) Act 2018.

Procedural requirements

The UK Government motion moved for debate in the House of Commons on 29 January 2019 noted statements made by the Prime Minister. The motion read:

“ That this House, in accordance with the provisions of section 13(6)(a) and 13(11)(b)(i) and 13(13)(b) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled “Statement under Section 13(4) of the European Union (Withdrawal) Act 2018” and made on 21 January 2019, and the Written Statement titled “Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018” and made on 24 January 2019.

This motion was designed to fulfil the procedural requirements set out under the European Union (Withdrawal) Act 2018. In order to “avoid any legal uncertainty” the UK Government’s motion covered the procedural requirements for two of the scenarios envisioned by Section 13 of the Act:

1. That the House of Commons decides not to pass the resolution mentioned in subsection (1)(b) (i.e. rejects the “meaningful vote”)
2. That there is no agreement in principle in negotiations under Article 50(2) of the Treaty on European Union.

Making the statements referred to in the motion and arranging for debate on this “motion in neutral terms” fulfils the procedural requirements of the Act.

However, the more important aspect relates to the amendments tabled to the motion and voted on after debate.

Amendments, debate and voting outcomes

Fifteen amendments (and five amendments to an amendment) were [lodged on 29 January](#).

The amendments selected for debate by the Speaker, and the outcomes of the votes, are below:

Amendment (a) - Jeremy Corbyn	Defeated (Ayes: 296 Noes: 327)
Amendment (o) - Ian Blackford	Defeated (Ayes: 39 Noes: 327)
Amendment (g) - Dominic Grieve	Defeated (Ayes: 301 Noes: 321)
Amendment (b) - Yvette Cooper	Defeated (Ayes: 298 Noes: 321)

Amendment (j) - Rachel Reeves	Defeated (Ayes: 290 Noes: 322)
Amendment (i) - Caroline Spelman	Passed (Ayes: 318 Noes: 310)
Amendment (n) - Graham Brady	Passed (Ayes: 317 Noes: 301)
Motion as amended	Agreed without division.

The agreed motion as amended read:

That this House, in accordance with the provisions of section 13(6)(a) and 13(11)(b)(i) and 13(13)(b) of the European Union (Withdrawal) Act 2018, has considered the Written Statement titled “Statement under Section 13(4) of the European Union (Withdrawal) Act 2018” and made on 21 January 2019, and the Written Statement titled “Statement under Section 13(11)(a) of the European Union (Withdrawal) Act 2018” and made on 24 January 2019, **and rejects the United Kingdom leaving the European Union without a Withdrawal Agreement and a Framework for the Future Relationship, and requires the Northern Ireland backstop to be replaced with alternative arrangements to avoid a hard border; supports leaving the European Union with a deal and would therefore support the Withdrawal Agreement subject to this change.**

The text of Amendment (i) - Caroline Spelman is marked in red. The text of Amendment (n) - Graham Brady is marked in purple. The full text of all the amendments is available from the [Commons' Order Paper](#).

It is worth remembering that this motion and the amendments to it have no legal effect.

The Prime Minister's intention to reopen negotiations

During the debate the Prime Minister accepted that the Parliament had rejected the Withdrawal Agreement and Political Declaration negotiated between the UK and EU, and urged the House of Commons to back Amendment (n) - Graham Brady indicating that this provided her with:

🗣️ “the negotiating mandate for going back to Brussels”

The Prime Minister further confirmed her intention to re-open negotiations with the EU on the Withdrawal Agreement in relation to the backstop, and in her speech she referenced three different options for changes:

- “alternative arrangements”
- time limit to the backstop
- unilateral exit clause

The Prime Minister added:

🗣️ What I am talking about is not a further exchange of letters but a significant and legally binding change to the withdrawal agreement.

The Prime Minister set a deadline of 13 February 2019 for returning to Parliament with a revised deal:

- “ First of all, as I have said, we will bring a revised deal back to this House for a second meaningful vote as soon as we possibly can. While we will want the House to support that deal, if it did not, we would—just as before—table an amendable motion for debate the next day. Furthermore, if we have not brought a revised deal back to this House by Wednesday 13 February, we will make a statement and, again, table an amendable motion for debate the next day. So the House will have a further opportunity to revisit this question of leaving without a deal. Today, we can and must instead focus all our efforts on securing a good deal with the EU that enables us to leave in a smooth and orderly way on 29 March.

All the debate referenced so far relates to the Withdrawal Agreement. However the Prime Minister also referenced the negotiations on the future relationship:

- “ First, we must be more flexible, open and inclusive in how we engage this House in our approach to negotiating our future partnership with the European Union. Secondly, we must and will embed the strongest possible protections for workers’ rights and the environment. The Government will not allow the UK leaving the EU to result in any lowering of standards in relation to employment, environmental protection or health and safety. Furthermore, we will ensure that, after exit day, the House has the opportunity to consider any measure approved by EU institutions that strengthens any of those protections. As I have set out before, we will consider legislation where necessary to ensure that those commitments are binding. To that end, in the coming days we will have further talks with the trade unions and MPs across the House to flesh out exactly how we can ensure that their concerns on those fronts are met.

What next for negotiations?

Almost immediately after the conclusion of the debate, President of the European Council, Donald Tusk issued a [statement](#) in which he said:

- “ The Withdrawal Agreement is and remains the best and only way to ensure an orderly withdrawal of the United Kingdom from the European Union. The backstop is part of the Withdrawal Agreement, and the Withdrawal Agreement is not open for re-negotiation’

However further discussions may take place between the UK and EU on the backstop.

Dr Katy Hayward (UK in a Changing Europe) [discusses the possibility of an alternative backstop](#) as proposed in the document ‘[A Better Deal](#)’. These proposals form the basis of the so-called ‘[Malthouse Compromise](#)’.

What the Commons agreed to and the prospects for renegotiation are discussed in the SPICe Spotlight blog [Brexit – Seeking amendments to the backstop](#)

Conditions for ratification

As well as the UK Parliament's approval, the other necessary conditions for ratification of the Withdrawal Agreement and Political Declaration are:

- the consent of the European Parliament
- implementing legislation in the UK

On the 24 January 2019, the European Parliament's Brexit Coordinator, Guy Verhofstadt [tweeted](#) that:

 The Withdrawal Agreement is fair & non-negotiable. The "backstop" guarantees there will be no hardening of the border on the island of Ireland. Without it, the @Europarl_EN will not give its consent to the Withdrawal Agreement.

The UK Government has [previously indicated](#) that it expects implementing legislation to place binding obligations on the whole of the UK, including devolved administrations.

NO-DEAL PREPARATIONS

The UK exiting the EU on 29 March 2019 without a deal remains the default legal position without a ratified Withdrawal Agreement and Political Declaration.

No-deal technical notices

To date, the UK Government has [published 92 technical notes](#) intended to provide guidance to citizens, businesses, public sector bodies and NGOs in the United Kingdom on how to prepare for the possibility of the UK leaving the EU next March without concluding a Withdrawal Agreement.

The 92 technical notes come under the following headings:

- Applying for EU-funded programmes (9)
- Driving and transport (4)
- Farming and fishing (6)
- Handling civil legal cases (1)
- Importing and exporting (11)
- Labelling products and making them safe (17)
- Meeting business regulations (10)
- Money and tax (2)
- Personal data and consumer rights (3)
- Protecting the environment (4)
- Regulating energy (6)

- Regulating medicines and medical equipment (6)
- Regulating veterinary medicines (3)
- Sanctions (1)
- Satellites and space (1)
- Seafaring (2)
- State aid (1)
- Studying in the UK or the EU (1)
- Travelling between the UK and the EU (3)
- Workplace rights (1)

To date, the European Commission has published 83 [preparedness notices](#) providing guidance on the implications of a no-deal Brexit. In addition, EU decentralised agencies have published information in relation to the UK's withdrawal from the EU, for example the Community Plant Variety Office and the European Chemicals Agency.

On 19 December 2018, the European Commission [announced](#) it had started implementing its no deal Contingency Action Plan, stating:

“ Today's package includes 14 measures in a limited number of areas where a "no-deal" scenario would create major disruption for citizens and businesses in the EU27. These areas include financial services, air transport, customs, and climate policy, amongst others.

A European Commission [memo with questions and answers](#) on these no deal measures was also published.

Slides from various Council Working Party (Article 50) preparedness seminars are also available. These include presentations on devolved policy areas such as [police and judicial cooperation in criminal matters](#) (December 2018) and [climate change \(including the EU ETS\), environment and fisheries](#) (January 2019).

Citizen rights

The implications for citizen rights is discussed in SPICe Spotlight blog post [What would happen to citizens' rights in a no deal Brexit?](#) (24 January 2019).

On 28 January, the UK Government issued a [press release](#) with the following summary of no-deal arrangements for EU citizens:

“ In the event of no deal, EU citizens will be able to enter the UK to visit, work or study after 29 March 2019. For stays longer than 3 months, European Temporary Leave to Remain will be required.

EU citizens in the UK in a 'no-deal' Brexit is [further discussed by the Commons Library](#). SPICe briefing [Immigration policy – the countdown to Brexit](#) (January 2019) analyses the UK Government's proposals for a post-Brexit immigration policy and their

implications for Scotland. The briefing also discusses the [implications of a no-deal scenario for immigration policy](#).

Scottish Government preparations

In answer to oral question S5O-02824 (Andy Wightman): *To ask the Scottish Government whether it will provide an update on the preparations being made by it and its agencies for a potential no deal Brexit*, the Minister for Parliamentary Business and Veterans, Graeme Dey [responded](#):

The Scottish Government remains committed to keeping Parliament informed of our contingency planning for the prospect of exiting the European Union without an agreement. We have repeatedly made it clear that the United Kingdom Government can, and should, take immediate steps to exclude the possibility of a no-deal outcome. Until that happens, as a responsible Government, we will continue to intensify our preparations, which includes work at directorate level on identifying risks and potential impacts, as well as mitigating actions, across a wide range of issues. The Scottish Government resilience committee leads on our preparations for a no-deal Brexit. Officials, key agency leads, ministers and a representative from the Convention of Scottish Local Authorities meet each week to assess progress.

Scottish legislative changes required under a no-deal scenario

UK Statutory Instrument notifications: To date, 70 notifications from the Scottish Government that they intend to ask the UK Government to make changes (required as a result of Brexit) to the law in devolved areas through UK SIs, have been received. Scottish parliamentary committees have approved all notifications they have considered so far. A full list of UK SI notifications laid is available on the [Delegated Powers and Law Reform Committee webpages](#). The SI notification approval process is set out in a [protocol](#) designed to aid parliamentary scrutiny.

Scottish Statutory Instruments: Six Brexit-related SSI's have been laid. A full list is available through the [Scottish Statutory Instrument Tracker](#). A protocol between the Scottish Parliament and Scottish Government [has been agreed](#) to aid parliamentary scrutiny.

Further significant changes to domestic law are expected to be required before 29 March 2019, but comprehensive information on this is not available.

Scottish agriculture post-Brexit

Under any Brexit scenario the UK has to leave the EU's Common Agricultural Policy (CAP) and its system of farm support payments, rural development programmes and market measures, although broadly, the arrangements will remain in place until transitional policies are in place.

The **UK Government's Agriculture Bill** is designed to provide the legal framework required to transition out of the EU, replace the Common Agricultural Policy (CAP) and deliver a range of reforms. The Bill completed its Committee stage in the House of Commons on 20 November 2018. The Bill contains a schedule for Wales and Northern Ireland, but not for Scotland. There continues to be disagreement between the Scottish

and UK Governments over competence. The Scottish Government has proposed a number of [amendments to the Bill](#) to address their concerns. The UK Bill is discussed in the [SPICe Briefing on the UK Agriculture Bill](#).

The UK Government has initiated an [independent review -The Bew Review](#) - into the factors that should be considered to make sure that funding for domestic farm support is fairly allocated to the administrations of England, Scotland, Wales and Northern Ireland. Defra states that “Funding allocations have already been made up to 2020, so the review will make recommendations from 2020 to the end of this Parliament.”

The Scottish Government states that there continues to be a [sound legal basis](#) for making CAP payments after Brexit. However, Fergus Ewing, Cabinet Secretary for Rural Economy, [announced on 10 January 2019](#), that there will be a **Scottish Agriculture Bill**. No date was given for introduction, but Mr Ewing stated “The purpose of the bill is primarily to provide the fundamental framework for the continuance of payments being made as well as to allow changes in future policy post-Brexit, should that occur.”

As part of its inquiry into the future of Scottish agriculture post-Brexit, the **Scottish Affairs Committee** took [evidence from stakeholders and academics](#) on 28 January 2018 at the SRUC’s Oatridge Campus in West Lothian.

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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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