

Issue 80
15 February
2019

BREXIT UPDATE

Scottish Parliament Information Centre

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Written by **Iain Thom**
SPICe Research, The Scottish Parliament



The Scottish Parliament
Parlaimint na h-Alba

CONTEXT	1
Summary of recent developments	1
SPICe resources	1
RE-NEGOTIATIONS WITH THE EU	2
PM’s meetings and speech in Northern Ireland	2
Taoiseach in Brussels	3
PM and President Juncker’s joint statement	4
HOUSE OF COMMONS AND THE RE-NEGOTIATIONS	5
Prime Minister’s update to UK Parliament	5
Commons debate – 14 February	6
Next steps?	6
Legal and procedural analysis of next steps	7
SCOTTISH GOVERNMENT	7
Ministerial Forum (EU Negotiations): 31 January	7
Joint statement from the First Ministers of Scotland and Wales	7
Joint Ministerial Committee (EU Negotiations): 7 February	8
COMMON FRAMEWORKS	8
Second report on ‘freezing’ powers	8
Academic papers on common framework issues	9

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. Ratification of the Withdrawal Agreement and Political Declaration requires:

- approval by the UK Parliament
- approval by the European Parliament
- implementing legislation in the UK

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

Following a further vote on 29 January (see *Brexit Update #79*), the Prime Minister stated her intention to re-negotiate the Northern Ireland backstop provisions in the Withdrawal Agreement.

This *SPICe Brexit Update #80* outlines events since this statement, as well as other Brexit-related 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.
- 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.

RE-NEGOTIATIONS WITH THE EU

As covered in *Brexit Update #79*, on 29 January 2019 the Prime Minister (PM) committed to re-negotiating the Northern Ireland backstop provisions with the EU. This commitment followed the UK Parliament's rejection of the Withdrawal Agreement and Political Declaration on 15 January.

Immediate reaction from the European Commission reaffirmed previous statements that the Withdrawal Agreement was "not open for re-negotiation".

PM's meetings and speech in Northern Ireland

On 5 February the PM gave a speech in Belfast followed by meetings with political leaders in Northern Ireland on 6 February.

During her speech in Belfast, the PM stated:

“ I know that many people in Northern Ireland, and indeed across this island, are worried about what Parliament's rejection of the withdrawal deal means for them. So I am here today to affirm my commitment... to the Belfast/Good Friday Agreement, to its successors the St Andrew's Agreement and the Stormont House Agreement, and to the principles they enshrine – which is absolute. And to affirm my commitment to delivering a Brexit that ensures no return to a hard border between Northern Ireland and Ireland – which is unshakable.

[...] I can only deliver on the commitments we have made if I can get a deal through the UK Parliament. And meetings with MPs across the House showed that I can only get a deal through Parliament if legal changes are made to the backstop.

[...] I know that the prospect of changing the backstop and re-opening the Withdrawal Agreement creates real anxieties here in Northern Ireland and in Ireland. Because it is here that the consequences of whatever is agreed will most be felt. I recognise, too, that the majority of voters in Northern Ireland voted to remain. And that many will feel that once again decisions taken in Westminster are having a profound – and in many cases unwanted – impact in Northern Ireland and Ireland.

So I am determined to work towards a solution that can command broader support from across the community in Northern Ireland. As we do so, there are a number of commitments that will underpin our approach and which must be part of any alternative arrangements that we seek to negotiate with the EU and pass through the UK Parliament.

The PM then outlined these commitments across the rest of her speech. The commitments are summarised below by the following quotes:

“ First, we stand by our commitment in the Joint Report that there will be no hard border, including any physical infrastructure or related checks and controls. And this means people on either side of that border will be able to live their lives as they do now.

- “ Second, neither will I compromise on my promise to protect Northern Ireland’s integral place in the UK. When the European Commission proposed a version of the backstop which involved creating a customs border in the Irish Sea, I successfully resisted it. And I have ruled out any return to such a suggestion... Furthermore, we will also ensure there will be no new regulatory barriers between Northern Ireland and the rest of the UK without Northern Ireland’s institutions having their say.
- “ Third, there will be full protection for all existing cross-border co-operation.
- “ Fourth, we will uphold the rights enshrined in the Belfast Agreement for all the people of Northern Ireland, right across the whole community. This includes upholding commitments around mutual respect, religious liberties, equality of opportunity, tolerance and rights.

Taoiseach in Brussels

On 6 February, Irish Taoiseach Leo Varadkar met with senior EU representatives in Brussels regarding the backstop provisions in the Withdrawal Agreement and contingency planning for a “no deal” Brexit.

A [joint statement](#) was issued by European Commission President Jean-Claude Juncker and the Taoiseach:

- “ As we have said on many occasions, the Withdrawal Agreement is the best and only deal possible. It is not open for renegotiation.

The backstop is an integral part of the Withdrawal Agreement. While we hope the backstop will not need to be used, it is a necessary legal guarantee to protect peace and to ensure there will be no return to a hard border on the island of Ireland, while protecting the integrity of our Single Market and the Customs Union.

[...] The backstop is not a bilateral issue, but a European one. Ireland’s border is also the border of the European Union and its market is part of the Single Market. We will stay united on this matter.

We will continue to seek agreement on the orderly withdrawal of the United Kingdom but we will also step up our preparation for a no-deal scenario. In this context, programmes that provide support for cross-border peace and reconciliation in the border counties of Ireland and Northern Ireland will be continued and strengthened...

Following his meeting with with Taoiseach, President of the European Council Donald Tusk made the following [statement](#):

- “ Today our most important task is to prevent a no deal scenario. I would, once again, like to stress that the position of the EU27 is clear, as expressed in the documents agreed with the UK government – that is the Withdrawal Agreement and the Political Declaration – and the EU27 is not making any new offer. Let me recall that the December European Council decided that the Withdrawal Agreement is not open for re-negotiation. I hope that tomorrow we will hear from

Prime Minister May a realistic suggestion on how to end the impasse, in which the process of the orderly withdrawal of the UK from the EU has found itself, following the latest votes in the House of Commons.

The top priority for us, remains the issue of the border on the island of Ireland, and the guarantee to maintain the peace process in accordance with the Good Friday Agreement. There is no room for speculation here. The EU itself is first and foremost a peace project. We will not gamble with peace; or put a sell-by date on reconciliation. And this is why we insist on the backstop. Give us a believable guarantee for peace in Northern Ireland, and the UK will leave the EU as a trusted friend. I hope that the UK government will present ideas that will both respect this point of view and, at the same time, command a stable and clear majority in the House of Commons. I strongly believe that a common solution is possible, and I will do everything in my power to find it.

A sense of responsibility also tells us to prepare for a possible fiasco. The Taoiseach and I have spoken about the necessary actions in case of no deal; I know that you will also be discussing this shortly with the European Commission.

PM and President Juncker's joint statement

On 7 February the Prime Minister met with President Juncker as part of the UK Government's effort to re-negotiate the Northern Ireland backstop provisions.

Following the meeting a joint statement was issued:

“ The Prime Minister described the context in the UK Parliament, and the motivation behind last week's vote in the House of Commons seeking a legally binding change to the terms of the backstop. She raised various options for dealing with these concerns in the context of the Withdrawal Agreement in line with her commitments to the Parliament.

President Juncker underlined that the EU27 will not reopen the Withdrawal Agreement, which represents a carefully balanced compromise between the European Union and the UK, in which both sides have made significant concessions to arrive at a deal. President Juncker however expressed his openness to add wording to the Political Declaration agreed by the EU27 and the UK in order to be more ambitious in terms of content and speed when it comes to the future relationship between the European Union and the UK. President Juncker drew attention to the fact that any solution would have to be agreed by the European Parliament and the EU27.

The discussion was robust but constructive. Despite the challenges, the two leaders agreed that their teams should hold talks as to whether a way through can be found that would gain the broadest possible support in the UK Parliament and respect the guidelines agreed by the European Council. The Prime Minister and the President will meet again before the end of February to take stock of these discussions.

This statement highlights the current difference between the UK Government and European Commission positions in relation to re-negotiation: the UK seeks legally-

binding changes to the backstop provisions in the Withdrawal Agreement; the EU are open to changes to the Political Declaration, but are not willing to re-open the Withdrawal Agreement.

HOUSE OF COMMONS AND THE RE-NEGOTIATIONS

Prime Minister's update to UK Parliament

On 12 February, the PM made a [statement](#) to the House of Commons on the re-negotiations which again highlighted the different positions of the UK and EU:

“ First, the backstop could be replaced with alternative arrangements to avoid a hard border between Northern Ireland and Ireland... Second, there could be a legally-binding time limit to the existing backstop. Or third, there could be a legally-binding unilateral exit clause to that backstop.

Given both sides agree we do not ever want to use the backstop, and that if we did it would be temporary, we believe it is reasonable to ask for legally binding changes to this effect.

Mr Speaker, as expected, President Juncker maintained the EU's position that they will not reopen the Withdrawal Agreement.

... We both agreed that our teams should hold further talks to find a way forward, and he and I will meet again before the end of February to take stock of those discussions.

The PM then highlighted areas of change where she believes “the whole House should be able to come together”:

“ In particular, I believe we have a shared determination across this House not to allow the UK leaving the EU to mean any lowering of standards in relation to workers' rights, environmental protections or health and safety.

The PM also expressed previous commitments to giving the UK Parliament a “stronger and clearer role in the next phase of the negotiations” – i.e. the negotiations on a future relationship based on the Political Declaration.

Responding to the [UK Labour Party's proposals](#) made on 6 February for changes to the Political Declaration, the PM said:

“ one area where the Rt Hon Gentleman the Leader of the Opposition and I do not agree is on his suggestion that the UK should remain a member of the EU Customs Union.

Finally, on the future parliamentary process, the PM confirmed the UK Government would:

- bring an amendable motion to the House of Commons on 14 February which recognises that negotiations are ongoing and need more time.

- bring another meaningful vote on the Withdrawal Agreement and a Political Declaration “when we achieve the progress we need”.
- if the UK Parliament has not agreed to the Withdrawal Agreement and a Political Declaration by 26 February, make a statement on that date and move another amendable motion on 27 February.

Commons debate – 14 February

The UK Government’s motion moved for debate on 14 February [read](#):

☞ That this House welcomes the Prime Minister’s statement of 12 February 2019; reiterates its support for the approach to leaving the EU expressed by this House on 29 January 2019 and notes that discussions between the UK and the EU on the Northern Ireland backstop are ongoing.

Ten amendments (and one amendment to an amendment) [were lodged](#). The Secretary of State for Exiting the European Union, Stephen Barclay opened [the debate](#).

The amendments selected by the Speaker, and the outcome of the votes are below:

Amendment (a) Jeremy Corbyn	Defeated (Ayes: 306 Noes: 322)
Amendment (i) Ian Blackford	Defeated (Ayes: 93 Noes: 315)
Amendment (e) Anna Soubry	Not moved.
Original motion	Defeated (Ayes: 258 Noes: 303)

This vote is non-binding on the UK Government.

Next steps?

As outlined above, the PM has said that the UK Government will bring a second “meaningful vote” to the UK Parliament when progress in the re-negotiations has been achieved. The PM also set the 27 February as the next time when the Commons will vote on an amendable motion on Brexit.

Further efforts by the UK and EU to find mutually acceptable changes are expected, but given the clear differences in positions between the parties it is not clear what progress will be made.

The default legal position remains that the UK will exit the EU on 29 March 2019 whether there is a ratified Withdrawal Agreement and Political Declaration or not.

If the re-negotiation does result in any mutually acceptable changes or clarifications, these may require European Council decisions. The next European Council is scheduled for 21-22 March – one week before exit day.

Legal and procedural analysis of next steps

Jack Simson Caird, Alan Wager and Matthew Bevington (Bingham Centre, UK in a Changing Europe) update their scenario analysis in [Resolving the Brexit impasse](#). They write:

- “ Before exit day on 29 March 2019 the House of Commons will play a major role in determining how the Brexit Endgame plays out. At this stage, there are three principal ways the Commons could shape the Brexit process:
 - Approve or reject the Brexit deal when the second ‘meaningful vote’ under the terms of section 13 of the EU (Withdrawal) Act takes place;
 - Decide on a number of options for the future relationship through ‘indicative votes’; and
 - Request an extension to Article 50.

The House of Commons Library briefing [Extending Article 50: could Brexit be delayed?](#) discusses under what scenarios could an Article 50 extension be agreed with the EU.

SCOTTISH GOVERNMENT

Ministerial Forum (EU Negotiations): 31 January

On 31 January, the seventh meeting of the Ministerial Forum (EU Negotiations) was held in Edinburgh. The Minister for Parliamentary Business and Veterans, Graeme Dey and the Minister for Community Safety, Ash Denham attended on behalf of the Scottish Government.

The brief [communiqué](#) states:

- “ The principal agenda items at the meeting were an update and discussion on the UK’s exit from the EU; a discussion on the Future Security Partnership including internal security covering law enforcement and criminal justice; and civil judicial cooperation in the context of our future relationship with the EU. Ministers also noted ongoing work to review the Ministerial Forum.

Joint statement from the First Ministers of Scotland and Wales

Ahead of the Joint Ministerial Committee (EU Negotiations) on 7 February the First Ministers of Scotland and Wales issued a [joint statement](#). This states the two governments are of the:

- “ firm view is that [a no deal] outcome to the Brexit negotiations would be a catastrophe which would cause significant short-term disruption to the lives of ordinary citizens as well as to businesses and long-term harm to our economy.

The statement makes three calls on the Prime Minister:

- “ The point has been reached where there is now no time to waste. We therefore **renew our call for the Prime Minister to make clear that she and her**

Government will ensure ‘no deal’ is taken off the table. This should include putting forward secondary legislation now to remove 29 March 2019 as Exit Day from the EU (Withdrawal) Act.

The Prime Minister must also request an extension from the EU of the Article 50 deadline. **We call on the Prime Minister to request such an extension immediately** to put an end to the threat of the UK crashing out of the EU without a deal in only eight weeks’ time.

The EU has made it clear that in terms of negotiations on the future relationship, it would respond favourably if the Prime Minister was to drop her “red lines”. We therefore further call on the UK Government to abandon those red lines, which the EU has repeatedly said, severely restrict the possible outcomes of Brexit.

Joint Ministerial Committee (EU Negotiations): 7 February

On 7 February, the sixteenth Joint Ministerial Committee (EU Negotiations) met in London. The Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell attended on behalf of the Scottish Government.

The brief [communiqué](#) states:

” The Chair opened the meeting by providing an update on the UK’s exit from the EU. The Committee discussed recent developments.

The Committee also discussed domestic issues, including updates on operational readiness, the EU (Withdrawal Agreement) Bill and common frameworks. They also noted the publication of the second EU Withdrawal Act and Common Frameworks report.

COMMON FRAMEWORKS

Second report on ‘freezing’ powers

When the UK leaves the EU, common rules and legislative frameworks covering a large number of policy areas will fall away, including in areas of devolved competence. The European Union (Withdrawal) Act 2018 contains powers for the UK Government to apply, by regulations, a temporary ‘freeze’ on devolved competence in specified areas, subject to the approval of the UK Parliament.

A quarterly report on the use of these powers is required under the Act. The [second of these reports was published](#) by the UK Government on 7 February. The report confirms that the powers have not yet been used:

” The UK Government has not yet sought to make use of the powers to apply retained EU law restrictions. As outlined earlier in this report, significant progress is being made across the policy areas where it is envisaged that legislative frameworks will be needed, and where there is outstanding disagreement on the boundaries of devolved competence. Our priority is to continue working with the devolved administrations to establish a shared understanding of where common

approaches will need to be given effect through shared legislation, so that we can jointly design and implement those approaches.

On progress towards establishing future frameworks, the report states:

- “ Common frameworks continue to be developed through constructive discussions between the UK Government and devolved administrations. During this reporting period, detailed multilateral engagement has continued to take place at official level, in relation to the 24 priority areas, including standalone sessions on:
- Animal Health and Welfare (26 September 2018)
 - Chemicals and Pesticides (2 October & 21 November 2018)
 - Plant Health, Seeds and Propagating Material (4 October 2018)
 - Food and Feed Hygiene and Safety Law (9 October 2018)
 - Nutrition Health Claims, Composition and Labelling (21 November 2018)
 - Public Procurement (23 November 2018)
 - Fertiliser Regulations (23 November 2018)

Discussions have also continued on cross-cutting issues that are captured in the common frameworks principles, such as the functioning of the UK internal market.

The report also indicates that a new analysis of the areas that will and will not need continued common rules or ways of working will be published by the end of March 2019.

- “ The provisional analysis published in March 2018 continues to inform framework developments. The UK Government identified 153 areas of EU law that intersect with devolved competence; 150 of these policy areas intersect with competence in Northern Ireland, 107 in Scotland and 64 in Wales.

[...] UK Government officials are working with devolved administration officials to revise this analysis and take into account progress on framework areas since March 2018. We anticipate publishing a further iteration of this analysis within the next reporting period, which will form the basis of our next phase of policy development and wider engagement.

Academic papers on common framework issues

The following two papers discuss common frameworks in two policy areas relevant to devolved competencies:

- Nicola McEwen and Alexandra Remond (Centre on Constitutional Change) - [The Repatriation of Competences in Climate and Energy Policy after Brexit](#) (January 2019)
- Michael Keating (University of Aberdeen) - [The Repatriation of Competences in Agriculture after Brexit](#) (February 2019)

Iain Thom SPICe Research

About this publication

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which formally begun following the Prime Minister's triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government's approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK's departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on telephone number 85294 or Iain.McIver@parliament.scot. Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes