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BREXIT UPDATE

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INTRODUCTION

This SPICe Brexit Update #86 revisits the current status of the Article 50 process and provides information on the progress of Brexit-related legislation.

ARTICLE 50: CURRENT STATUS

On 11 April, the European Council (in its EU27 format) agreed to a further extension of the Article 50 process. As summarised in Brexit Update #85, the [Council Conclusions](#) mean that:

- A flexible extension has been granted to 31 October. If the Withdrawal Agreement is ratified before then, the UK will leave the EU at the end of the month in which the Agreement is ratified.
- The UK must participate in the European Parliament elections to be held on 23 May if it is still an EU member and has not ratified the Withdrawal Agreement by 22 May. Failure to participate would mean the UK would leave the EU on 1 June.

- The Withdrawal Agreement will not be reopened. However, changes could be made to the Political Declaration on the Future Relationship. But concrete negotiations on the future relationship cannot take place whilst the UK remains a member.
- The UK remains a member of EU with full rights and obligations until it leaves, and whilst a member is still free to revoke Article 50 if it wishes.
- The UK should behave in a constructive and responsible manner throughout the extension in accordance with the duty of sincere cooperation.
- The EU member state governments will continue to meet in its EU27 format to discuss Brexit throughout the further extension. A review of the situation will be undertaken in June.

Crucially, this decision does nothing to move the Brexit process forward, instead it delays exit for a further six months. Movement will require the UK Government to find an approach which commands a majority in the House of Commons.

Why was end-October chosen as the new exit date?

Writing for the Institute for Government, [Georgina Wright suggests](#) that the October date was chosen by the EU leaders to remove the “risk of UK interference in key EU debates”:

- ” Although the European Parliament elections take place in May, the new EU Commissioners will only take up their role later in the Autumn. By selecting 31 October as the deadline, the EU27 allow the current UK Commissioner – Sir Julian King – to continue to serve as British Commissioner. This avoids the need to appoint another Brit in the next EU Commission, while also leaving the ongoing discussion in the EU about whether to reduce the number of EU Commissioners to another day. The October deadline also makes sure that the UK will not be an EU member when the EU budget for the next seven years is voted on and adopted.

UK’S PARTICIPATION IN THE EUROPEAN ELECTIONS

The European Council conclusions require the UK to participate in the European elections on 23 May if it has not ratified the Withdrawal Agreement by 22 May. Failure to participate would mean the UK would leave the EU on 1 June.

To allow for the necessary preparations, the practical cut-off date for participation in the elections is ahead of 22 May.

On 7 May, Minister for the Cabinet Office, David Lidington said in an [interview with the BBC](#) that the European election will go ahead:

- ” We very much hoped that we would be able to get our exit sorted... so that those [European] elections did not have to take place, but legally they do have to take place unless our withdrawal has been given legal effect. So those will now go ahead, but we will be redoubling our efforts and talks with MPs of all parties to

try to make sure that the delay after that is as short as possible. Ideally, we'd like to be in a situation where those MEPs from the UK never actually have to take their seats at the European Parliament and certainly to get this done and dusted by the Summer recess.

On the same day, the academic think tank The UK in a Changing Europe published a [report analysing the potential impact of the European Parliament elections](#) for both the UK and the rest of the EU.

BREXIT-RELATED LEGISLATION

This section provides information on the progress of Brexit-related legislation in the UK Parliament and Scottish Parliament.

Primary legislation in UK Parliament

Brexit-related Bills passed:

1. European Union (Withdrawal) Act 2018
2. Haulage Permits and Trailer Registration Act 2018
3. Healthcare (European Economic Area and Switzerland Arrangements) Act 2019
4. Nuclear Safeguards Act 2018
5. Sanctions and Anti-Money Laundering Act 2018
6. Taxation (Cross-border Trade) Act 2018

Brexit-related Bills under consideration:

1. Agriculture Bill
2. Fisheries Bill
3. Immigration and Social Security Co-ordination (EU Withdrawal) Bill
4. Trade Bill
5. Financial Services (Implementation of Legislation) Bill [HL]

If the House of Commons approves the Withdrawal Agreement, the UK Government is expected to shortly lodge a Bill to implement the agreement. This legislation to implement the Withdrawal Agreement is a pre-requisite to full ratification of the Withdrawal Agreement.

As reported in [Brexit Update #85](#), the Scottish Government confirmed that following cross-party discussions about the implications of last year's Supreme Court judgment, it has 'reluctantly' decided not to move for reconsideration of the European Union (Legal Continuity) (Scotland) Bill.

UK statutory instruments (SIs) with devolved aspects

Under the European Union (Withdrawal) Act 2018 both UK and Scottish Government Ministers have powers to make regulations to correct deficiencies in converted EU law to ensure the statute book is ready for Brexit. [A SPICe blog on this topic](#) is available.

In some cases where the UK Government and the Scottish Government wish to pursue the same policy objective, the Scottish Government can ask the UK Government to lay statutory instruments that include proposals relating to devolved areas of responsibility.

The Scottish Government made a commitment to the Scottish Parliament that it would have a scrutiny role in saying whether Scottish Ministers should ask the UK Government to make secondary legislation which relates to devolved areas. The Scottish Government and the Scottish Parliament worked together to develop [a protocol for scrutinising proposals for EU statutory instruments under the European \(Withdrawal\) Act 2018](#). The protocol means that the Scottish Parliament is informed of any proposals which may result in UK statutory instruments on devolved policy areas and is asked to approve the Scottish Ministers' proposal to consent to the statutory instrument.

At 8 May 2019, the Scottish Government has asked the Scottish Parliament to approve its proposed consent to 138 statutory instruments relating to devolved areas of policy being made by the UK Government (one of which is now not required). These "consent notifications" have fallen to the following committees to consider:

- Rural Economy and Connectivity (54)
- Environment, Climate Change and Land Reform (28)
- Health and Sport (25)
- Justice (12)
- Economy, Energy and Fair Work (11)
- Social Security (4)
- Culture, Tourism, Europe and External Affairs (1)
- Education and Skills (1)
- Equalities and Human Rights (1)
- Finance and Constitution (1)

So far, regulations corresponding to 127 of the consent notifications have been made at the UK Parliament. A [full breakdown of the statutory instruments proposed and their status is available](#). It is important to note that the numbers provide a snapshot in time and will change as more SIs complete their parliamentary stages or are made.

Scottish statutory instruments (SSIs)

While a significant number of regulations to prepare the devolved statute book for Brexit are being made by statutory instruments at a UK level (see above), some are also being made solely in Scotland.

A second [protocol](#) governs parliamentary scrutiny procedures for Brexit-related SSIs.

At 8 May 2019, the Scottish Government has laid 34 SSIs under the "correcting" powers of the European Union (Withdrawal) Act 2018. The largest number of these SSIs have been considered by Rural Economy and Connectivity (15). The other SSIs have been shared out between six different committees:

- Rural Economy and Connectivity (15)
- Health and Sport (6)
- Economy, Energy and Fair Work (4)
- Justice (4)
- Environment, Climate Change and Land Reform (3)
- Education and Skills (1)

- Local Government and Communities (1)

Details of all SSIs laid in the last 40 days and currently under consideration are available from Delegated Powers and Law Reform Committee's [Scottish Statutory Instrument Tracker](#). A table of all SSIs made under the European Union (Withdrawal) Act 2018 is reproduced below:

SSI title	Date laid	Lead Committee	Procedure
The International Joint Investigation Teams (International Agreements) (EU Exit) (Scotland) Order 2019	26/04/2019	Justice	Negative
Public Health and Tobacco (EU Exit) (Scotland) Regulations 2019	23/04/2019	Health and Sport	Negative
Disabled Persons (Badges for Motor Vehicles) (EU Exit) (Scotland) (Amendment) Regulations 2019	01/04/2019	Rural Economy and Connectivity	Negative
Agricultural Market Measures (EU Exit) (Scotland) (Amendment) Regulations 2019	13/03/2019	Rural Economy and Connectivity	Negative
Cross-border Health Care (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	12/03/2019	Health and Sport	Draft Affirmative
Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019	08/03/2019	Environment, Climate Change and Land Reform	Negative
Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019	07/03/2019	Local Government and Communities	Negative
Agricultural Market Measures (EU Exit) (Scotland) (Amendment) Regulations 2019	27/02/2019	Rural Economy and Connectivity	Negative
Education (Fees and Student Support) (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019	25/02/2019	Education and Skills	Negative
Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019	25/02/2019	Rural Economy and Connectivity	Negative

Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019	25/02/2019	Rural Economy and Connectivity	Negative
Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019	21/02/2019	Rural Economy and Connectivity	Negative
Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019	21/02/2019	Rural Economy and Connectivity	Negative
Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019	20/02/2019	Environment, Climate Change and Land Reform	Negative
Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	20/02/2019	Justice	Draft Affirmative
Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019	20/02/2019	Rural Economy and Connectivity	Negative
Forestry (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	20/02/2019	Rural Economy and Connectivity	Draft Affirmative
Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	20/02/2019	Rural Economy and Connectivity	Draft Affirmative
Food and Feed Safety and Hygiene (EU Exit) (Scotland) (Amendment) Regulations 2019	19/02/2019	Health and Sport	Negative
Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019	19/02/2019	Health and Sport	Negative
Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019	19/02/2019	Health and Sport	Negative
Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019	18/02/2019	Rural Economy and Connectivity	Negative
Animal Welfare (EU Exit) (Scotland) (Amendment) Regulations 2019	08/02/2019	Rural Economy and Connectivity	Negative
Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019	07/02/2019	Economy, Energy and Fair Work	Draft Affirmative

Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019	07/02/2019	Health and Sport	Draft Affirmative
Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019	04/02/2019	Rural Economy and Connectivity	Negative
Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019	04/02/2019	Rural Economy and Connectivity	Negative
Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	01/02/2019	Environment, Climate Change and Land Reform	Negative
Jurisdiction and Judgements (Family, Civil Partnership and Marriage) (Same Sex Couples) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019	25/01/2019	Justice	Draft Affirmative
INSPIRE (EU Exit) (Scotland) (Amendment) Regulations 2019	22/01/2019	Economy, Energy and Fair Work	Draft Affirmative
Aquatic Animal health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019	21/01/2019	Rural Economy and Connectivity	Negative
Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019	21/01/2019	Economy, Energy and Fair Work	Draft Affirmative
Licensing (EU Exit) (Scotland) (Amendment) Regulations 2019	17/01/2019	Justice	Negative
Insolvency (EU Exit) (Scotland) (Amendment) Regulations 2019	11/01/2019	Economy, Energy and Fair Work	Draft Affirmative

FURTHER READING

A list of recently published reports from academic think tanks is provided below.

[Devolution at 20](#)

The Institute for Government's [Devolution at 20](#) report analyses of how devolution has worked in the UK, judges its success and identifies big challenges for the future.

[The Future of Europe](#)

Scottish Centre on European Relations' report [The Future of Europe: Disruption, Continuity and Change](#) consists of contributions from numerous authors. It identifies future challenges for the EU and makes recommendations for the EU and Scotland.

Article 50 two years on

Academic think tank The UK in a Changing Europe's report [Article 50 two years on](#) summarises what has happened in the Article 50 process, the current situation, and what might happen in the future.

Negotiating Brexit

The Institute for Government's report [Negotiating Brexit: Preparing for talks on the UK's future relationship with the EU](#) analyses the first phase of EU negotiations and makes a series of recommendations about the approach to negotiations on the UK's long-term future relationship with the EU. The report addresses the issue of the role of devolved governments.

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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 began 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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