

## **THE UNITED KINGDOM'S DEPARTURE FROM THE EU: THE LATEST DEVELOPMENTS**

**10 OCTOBER 2016**

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union which are expected to formally begin early in 2017.

Ahead of the UK Government's triggering of Article 50, the 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 focusses on the UK Government's provision of guarantees on future EU funding, the legal challenge on the triggering of Article 50 and developing debates about the UK's future relationship with the EU following Brexit.

### **UK Government provides further guarantees for future EU funding (through to 2020)**

Following the previous [limited assurances](#) about EU funding provided by the Chief Secretary to the Treasury David Gauke MP, on 12 August 2016, the UK Government has now provided an updated guarantee.

On 4 October 2016, the UK Government provided "[further certainty](#)" for EU funded projects. The Chancellor of the Exchequer, Phillip Hammond announced that the government will guarantee EU funding for structural and investment fund projects, including agri-environment schemes, signed by the point at which the UK departs the EU and which continue after we have left the EU. The UK Government's announcement also provided certainty for EU funding managed by the Devolved Administrations:

"Where the devolved administrations sign up to structural and investment fund projects under their current EU budget allocation prior to Brexit, the government will ensure they are funded to meet these commitments."

The Chancellor's guarantee means that spend for all pre-allocated EU funds is guaranteed if committed before the UK leaves the EU. The funds covered are:

- European Agricultural Fund for Rural Development – CAP Pillar 2 (in Scotland, the Scottish Rural Development Programme)

- European Social Fund
- European Maritime and Fisheries Fund
- European Regional Development Fund - including European Territorial Cooperation.

The UK Government had already guaranteed all CAP Pillar One payments through to 2020 “as part of the transition to new domestic arrangements”.

The updated guarantee removes the requirement for managing authorities such as the Scottish Government to commit as much funding as possible ahead of the autumn statement which had previously been the cut-off point for the funding guarantee.

### **Ministerial Statement on exiting the EU**

On 10 October, the Secretary of State for Exiting the EU David Davis, made a [statement to the House of Commons](#) outlining the next steps in leaving the EU. The Secretary of State reaffirmed the Government’s commitment to leaving the EU and said it was incumbent on the Government to “deliver an exit in the most orderly and smooth way possible, delivering maximum certainty for businesses and workers”.

David Davis also reaffirmed the Government’s view that Parliament should not have a role in the decision to trigger Article 50 but stressed Parliament’s role in the passing of the Great Repeal Bill. The Secretary of State also said that legislation resulting from the UK’s exit must work for the whole of the United Kingdom. He told the Commons:

“To that end, while no one part of the United Kingdom can have a veto over our exit, the Government will consult with the devolved administrations.

I have already held initial conversations with the leaders of the devolved governments about our plans. And I will make sure that the devolved administrations have every opportunity to work closely with us.”

Following his statement, the Secretary of State took questions. Both the statement and the questions can be viewed on [parliamentlive.tv](#).

The Daily Telegraph produced an [article](#) summarising the proceedings in the Commons.

### **Article 50 legal challenge**

As reported in last week’s [update](#), a preliminary ruling in the legal challenge to the UK Government aimed at forcing a parliamentary vote on the decision to trigger Article 50 to begin the process for leaving the EU was delivered on 26 September. The ruling by Mr Justice Cranston removed restrictions on publishing official documents before the hearing on 13 October.

As a result, on 6 October, the UK Government published the [skeleton argument of the Secretary of State for Exiting the European Union](#). According to the summary of the UK Government’s argument, the Secretary of State for Exiting the European Union’s case will focus on 4 arguments. The first of these revolves around the constitutionality of the referendum:

“In the circumstances of the present case, it would be constitutionally proper and lawful to begin to give effect to the referendum result by the use of prerogative

powers. The basis on which the referendum was undertaken was that the Government would give effect to the result of the referendum. That was the basis on which the people voted. The 2015 Act neither expressly nor implicitly required that further Parliamentary authority would be required before an Article 50(2) notification could be given to commence the process of giving effect to the outcome of the referendum.”

The Government’s argument also states that triggering Article 50 is not inconsistent with the European Communities Act 1972. The legal challenge has claimed that triggering Article 50 using the Royal Prerogative would be illegal “because the act of giving notification “would frustrate or substantially undermine rights and duties established by Acts of Parliament” namely the European Communities Act 1972 (“ECA”) and other Acts which assume the UK’s membership of the EU”.

Linked to this the Government’s view is that “the decision that the UK should withdraw from the EU is not justiciable in the Courts”.

Finally, in relation to the interests of the Devolved Administrations, the UK Government’s legal argument states:

“The lawfulness of the use of the prerogative is not impacted by the devolution legislation. The conduct of foreign affairs is a reserved matter such that the devolved legislatures do not have competence over it. Whilst there are provisions in the devolution legislation which envisage the application of EU law, they add nothing to the Lead Claimant’s case.”

### **Cross-party support for staying in the Single Market**

Reports in a number of national newspapers over the weekend suggest there is growing support amongst MPs for a vote on any decision to leave or limit UK involvement in the European single market. According to the [Observer](#):

“Tory MPs joined forces with former leaders of Labour and the Liberal Democrats, the SNP and Greens to insist that parliament have a say and a vote, pointing out that, while the British people had backed leaving the EU, they had not chosen to leave the biggest trading market in the western world.”

The [Independent reported](#) on the Observer story and quoted the Labour Party’s spokesman on the Brexit negotiations Keir Starmer who suggested the “opening terms” of negotiations should be put to the Commons and voted on and that Parliament should have a role in scrutinising Brexit. The Independent also states “there is thought to be a Commons majority in favour of staying in the single market and MPs who were against hard Brexit would likely use the opportunity to vote against any approach that could see Britain leave it”.

### **UK Business letter to the UK Government warning against hard Brexit**

UK Business leaders have written to the UK Government urging it to avoid a hard Brexit. The letter was signed by Carolyn Fairbairn, the head of the Confederation of British Industry (CBI), Chris Southworth of the International Chambers of Commerce (ICC), Terry Scuoler, the boss of the Engineering Employers’ Federation (EEF) – which represents manufacturing firms – and Julian David of techUK, which speaks for the technology industry.

The [letter](#) is reproduced below:

“Dear Sir,

The way in which we leave the EU and on what terms is of critical importance to jobs and investment in the UK. We respect the result of the referendum, but the Government must make sure that the terms of the deal to leave ensure stability, prosperity and improved living standards.

As business leaders we are clear what our priorities are in the upcoming negotiations.

First, the Government has committed to a bespoke arrangement. We believe this must deliver barrier free access to the EU's Single Market, which is vital to the health of the UK economy, especially to our manufacturing and service sectors. Uninterrupted access for our financial services sector is also a major priority. The sector employs thousands of people up and down the country and is critical to growth and job creation among small, medium and large British, and international businesses.

Second, leaving the EU without any preferential trade arrangement and defaulting to trading by standard World Trade Organisation rules would have significant costs for British exporters and importers, as well as those in their supply chains. 90% of UK goods trade with the EU would be subject to new tariffs. That would mean 20% in extra costs for our food and drink industry and 10% for our car producers. Every credible study that has been conducted has shown that this WTO option would do serious and lasting damage to the UK economy and those of our trading partners. The Government should give certainty to business by immediately ruling this option out under any circumstances.

Third, there is a wealth of evidence to suggest EU negotiations will not be completed within the Article 50 two-year timeframe. Many areas of regulation now up for discussion are highly complicated; whether in financial services, data protection regimes or the interconnection of energy supplies. The Government should therefore secure agreement of a transitional period, to ensure that businesses can continue to operate with no 'cliff edge' change to current circumstances until regulatory and legal changes can be implemented.

It's vital that the on-the-ground expertise of British and international business is used to help get the best deal for the UK. The Government must set out a clear roadmap for consulting with firms of all sectors and sizes to increase confidence that these complex decisions are taken on the basis of fact and a genuine understanding of the economic implications.

The UK voted to leave the EU but not, as the Chancellor said, to cause living standards to decline. We want a Brexit that safeguards future prosperity for everyone across the UK.

Yours sincerely”

### **UK Government use of international academics**

On Friday 7 October the [Guardian reported](#) that leading “foreign academics from the London School of Economics acting as expert advisers to the UK government were told

they would not be asked to contribute to government work and analysis on Brexit because they are not British nationals". According to the Guardian article:

"It is understood up to nine LSE academics specialising in EU affairs have been briefing the Foreign Office on Brexit issues, but the school was informed by a senior FCO official that submissions from non-UK citizens would no longer be accepted.

The staff concerned were then made aware of the instruction in an email from the head of the LSE's European Institute, Kevin Featherstone, which said the Foreign Office planned to approach academics to contract staff for a Brexit advisory panel – but that those to be contracted "must be UK passport-holders...

...The Foreign Office was said to be concerned about the risk of sensitive material being exposed as article 50 negotiations over Britain's exit from the EU – and subsequent talks on its future trade and other relations with the bloc – start to get under way."

According to the [BBC](#), following the breaking of the news, the London School of Economics released a statement which said:

"We believe our academics, including non-UK nationals, have hugely valuable expertise, which will be vital in this time of uncertainty around the UK's relationship with Europe and the rest of the world.

"Any changes to security measures are a matter for the UK government."

In response to the story, the [Foreign Office said](#) the story stemmed from a misunderstanding:

"This story stems from a misunderstanding. To be absolutely clear on the facts – it is categorically wrong to suggest that we would not welcome the work of non-British nationals, including EU nationals. We did so before the referendum and we will continue to do so in the future – benefiting from advice from the best and brightest minds, regardless of nationality."

### **Scottish Parliament debate on Higher Education and Further Education (European Union Referendum)**

On 4 October, the Scottish Parliament debated [Higher Education and Further Education \(European Union Referendum\)](#). Following the debate, the Parliament passed the following motion by 93 votes to 30:

"That the Parliament recognises the benefits of EU membership to Scotland and that Scotland's interests are best served by protecting Scotland's existing relationship in Europe, maintaining membership of the single market and access to the free movement of labour; welcomes the Scottish Government's reassurance on the tuition fee status of continuing EU students and those beginning an undergraduate course in 2016; acknowledges Scotland's success to date in securing EU funding and recognises the benefits that this brings to Scottish universities and colleges; notes that the outcome of the EU referendum potentially makes it harder to attract EU students to study in Scotland, to maintain opportunities for Scottish students and academics in Europe and to collaborate across Europe; resolves to promote Scotland's willingness to continue to collaborate with European partners and to attract the best international talent to maintain the world-class reputation of Scottish

universities and colleges, and calls on the UK Government to ensure that Scotland has a role in decision-making, as well as full involvement in all negotiations between the UK Government and the EU, to protect the interests of staff and students in Scotland's universities and colleges."

Ahead of the debate, Universities Scotland published a short briefing outlining the organisation's view on the [key challenges](#) for the sector caused by Brexit.

### **Scottish Parliament Culture, Tourism, Europe and External Relations Committee**

During the last week, the Scottish Parliament's Culture, Tourism, Europe and External Relations Committee published two pieces of research commissioned to support its work on the EU referendum and its implications for Scotland.

On 4 October, research undertaken by Professor Alan Page from the University of Dundee was published examining [the implications of EU withdrawal for the devolution settlement](#). The research concluded that whilst most existing EU competencies are reserved to the UK Parliament, the policy responsibilities that would fall to the Scottish Parliament are principally justice and home affairs, agriculture, fisheries and the environment. News of the publication on the research was covered in the [Herald](#), and the [Guardian](#).

On Thursday 6 October the Committee published research by the Fraser of Allander Institute on the [Long-term economic implications of Brexit](#). The research predicted "[a swathe of negative impacts on the Scottish economy in the years following the UK's withdrawal from the European Union](#)". Key findings of the report include:

- Under all modelled scenarios, Brexit is predicted to have a negative impact on Scotland's economy.
- After 10 years, Scottish GDP is expected to be 2-3% lower than would otherwise be the case in the most optimistic 'Norwegian scenario' and 5% lower in the 'WTO scenario'.
- Impacts on the rUK economy are more severe than those on Scotland, reflecting rUK's greater dependence on exports to the EU.
- It could be argued that Brexit may make Scotland and rUK less attractive locations to live and work relative to the rest of the world.

News of the publication on the research was covered on the [BBC website](#) and in the [Guardian](#) and [Scotsman](#).

The Scottish Parliament Information Centre (SPICe) has also [published a briefing](#) summarising the results of the Fraser of Allander's economic modelling.

### **The UK Parliament's response to the decision to leave the European Union**

The UK Parliament has indicated it is ready to establish scrutiny committees to examine the work of the Department for Exiting the EU led by David Davis and the Department for International Trade led by Liam Fox. These Committees are expected to be established this week once the House of Commons resumes after party conference season.

The Institute for Government has published two blogs by Hannah White examining [Parliament's role in the Brexit negotiations](#) and why [A 'supersize committee' could hamper Parliament's scrutiny of Brexit](#).

A number of Committees in both the House of Commons and House of Lords have established inquiries linked to the UK's decision to leave the European Union.

The most recent inquiry to be launched is a joint inquiry by the House of Lords EU External Affairs and EU Internal Market Sub-Committees on [Brexit: future trade between the UK and EU in services](#). The inquiry will commence after the joint Committee's work on future trade between the UK and the EU which is due to conclude on 13 October. The inquiry into services links will begin with a public meeting on Thursday, 20 October, at which experts will give evidence on how services are traded between the UK and the EU at the moment. Subsequent evidence sessions will focus on the following key sectors:

- Digital and Telecommunications
- Professional Business Services
- Aviation; and
- Creative and broadcasting

Other on-going Brexit related work in the UK Parliament includes:

[House of Commons European Scrutiny Committee Post Referendum Consultation](#)

[House of Commons Scotland Affairs Committee Scotland's Place in Europe](#)

[House of Commons Welsh Affairs Committee Implications for Wales of the EU Referendum Result](#)

[House of Commons Public Administration and Constitutional Affairs Committee Lessons Learned from the EU Referendum](#)

[House of Commons Environmental Audit Committee The Future of the Natural Environment after the EU Referendum](#)

[House of Commons Energy and Climate Change Committee Leaving the EU: Implications for UK Energy Policy](#)

[House of Commons Brexit and health and social care inquiry](#)

[House of Lords European Union Committee Brexit: UK-Irish Relations](#)

[House of Lords European Union Committee Brexit: Parliamentary Scrutiny Inquiry](#)

[House of Lords EU External Affairs and EU Internal Market Sub-Committees Brexit: future trade between the UK and the EU inquiry](#)

The [sub-committees](#) of the House of Lords European Union Committee are also conducting a number of evidence sessions following the UK's decision to leave the EU including:

[Fisheries Policy after Brexit](#)

[Brexit implications for environment policy examined by committee](#)

## [Brexit implications for energy and climate change policy](#)

### [Brexit and Financial Services](#)

The [schedule of meetings](#) for the House of Lords European Union Committee and its sub-committees from 10-21 October includes seven meetings where evidence will be taken contributing to the Committees Brexit work.

### **Why Europe wants a hard Brexit to hurt**

Following his article about [why the 27 are taking a hard line on Brexit](#) (as featured in last week's update), Charles Grant from the Centre for European Reform has written about [why Europe wants a hard Brexit to hurt](#). The opinion piece links the hard line on the negotiations with a need to protect the EU's four freedoms:

“On recent visits to Berlin, Paris and Brussels, I was struck by the uncompromising line on the “indivisibility” of the four freedoms – of labour, capital, goods and services. Key policy-makers say the UK cannot be allowed the benefits of membership, such as participation in the single market, without accepting the responsibilities, such as budget payments and free movement (Switzerland and Norway accept both).

British negotiators need to understand why the 27 are so obdurate on this point. The Germans and others worry that if the British win a special status, other countries – inside or outside the EU – would ask for equivalent deals. And that would potentially destabilise the union.

But the biggest driver of the tough line on the four freedoms is fear of populism. In Paris, mainstream politicians do not want Marine Le Pen to be able to say: “Look at the Brits, they are doing fine outside the EU, let's follow them there.” Similar views colour thinking in The Hague, Rome and other capitals: the British must be seen to pay a price for leaving.”

### **Brexit negotiations will be tough Britain does not hold all the best cards**

On the issue of the negotiations, Professor Iain Begg, a senior fellow of The UK in a Changing Europe and a Professorial Research Fellow at the European Institute, London School of Economics [writing for the UK in a Changing Europe blog](#) discusses the challenges facing the UK Government in developing its position on Brexit primarily focussing on the fact that Britain cannot just dictate the terms upon which it wishes to leave the EU:

“In the emerging, if rather unhelpful, lexicon of Brexit, full access to the single market is deemed to be ‘soft’, while the WTO outcome is considered ‘hard’. It has also been framed as, essentially, a British choice, with protagonists arguing about whether the benefits of their favoured option outweigh the costs. It has become a curious sort of phoney war in which the crucial question of what is likely to be acceptable to the rest of the EU has been too readily neglected. Will ‘they’, in other words, be receptive to what the UK, when it finally makes up its mind, wants from the negotiations? Are there issues other than those already prominently on the table, such as the rights of people from other EU countries to continue to live and work in the UK, likely to be potential deal-breakers?

In several policy areas, it will unavoidably be messy. For example, the other side to the endlessly repeated (if cynically mendacious) claim during the referendum

campaign that leaving the EU would release £350 million per week to spend on the NHS is that the EU will lose these funds. The UK's gross contribution to the EU (after deducting the famous rebate) is almost exactly the same as the aggregate of the gross contributions of all twelve countries which joined the EU in 2004 and 2007. Plainly, they will not be asked to double their contributions if the UK stops paying, but they will find other net contributors, such as the Germans and the Dutch, reluctant to make up the difference. The resulting acrimonious disputes will be blamed on the Brits."

### **UK restrictions on the free movement of labour whilst retaining Single Market access should be acceptable to the EU**

In contrast to the views expressed above by Charles Grant and Professor Iain Begg, Professor Stefan Kooths, Head of the Forecasting Centre of the Kiel Institute for the World Economy argues in a [blog for the London School of Economics](#) that if the EU27 seeks to punish the UK during the exit negotiations they will harm themselves (and the EU as a whole) as much as the UK. Professor Kooths argues that by allowing the UK to restrict free movement of labour whilst retaining freedom of goods, services and capital it might actually allow the UK to re-join the EU at some point in the future. In addition, he suggests the benefit of membership with regards to market access should be about being able to help set the rules of the market rather than simply being able to access it:

"Viewing free market access as a privilege in order to use it as a knockout bargaining chip would represent crude big-power policies and harm everyone. Free access to the single market for goods, services and capital does, of course, require acceptance of the rules of non-discrimination. These rules apply to all players regardless of their nationality. Having a say on these rules is a genuine club benefit of EU membership. For that reason alone, the UK is already accepting a high price for exiting, as will become apparent over time. Any appearance of imposing additional penalties would belittle the EU by unnecessarily ignoring the true value of its club assets."

### **The Prime Minister's visit to Copenhagen and Amsterdam**

Ahead of the Prime Minister's [visits to Copenhagen and Amsterdam](#) this week where she is expected to lobby for support from the Danish and Netherlands Governments ahead of the formal start of Brexit negotiations, Ylva Elvis Nilsson, a political journalist based in Stockholm wrote an [article in the Observer](#) about the reception Theresa May was likely to get. Ylva Elvis Nilsson suggested that the Prime Minister would hear about the EU27's desire to protect the Single Market including the four freedoms:

"And yet, in her talks with the Danish Prime Minister, Lars Løkke Rasmussen, May will receive an unequivocal "no" to her pleas for an EU deal without free movement of people...

... the other EU countries believe it is in their national interest to safeguard the single market. Why? Because of jobs. Millions of jobs have been created because European companies have been able to buy and sell freely to the richest consumers in the world, in the largest market in the world.

Creating the single market was a painful process. Getting 28 countries to agree on everything from safety standards of hairdryers to banks' capital levels was tough. A lot of politicians had to return home to their voters and admit that things would have to change.

Allowing one country today to dictate its own conditions while being part of this market would probably lead to the unravelling of the whole package of hard-won compromises. And that is not going to happen.”

## **The WTO challenge**

Rather than negotiating the UK’s future relationship with the EU, [Politico argues](#) that the real challenge for the UK Government will be negotiating its World Trade Organisation (WTO) membership terms. According to Politico:

“Britain is a member of the WTO under the auspices of the EU, the world’s largest trade bloc. Once the U.K. leaves, it has claimed that it will finally be free to decide for itself the tariffs it slaps on imported steel and lamb, and the levels of subsidies paid to its farmers.

But Britain’s freedom to set trade policy — and the EU’s response to that new regime — also will have to conform to the dizzyingly complex architecture of the WTO. Brexit has now become “first and foremost a WTO matter,” said Daniel Guéguen, head of strategy and lobbying at Pact European Affairs.

And overall, Britain’s trade terms depend on so many factors outside London’s control that they are impossible to steer from Westminster.”

The article quotes Maika Oshikawa, the WTO’s head of accession negotiations who says that whilst the UK will not have to reapply for WTO membership (it is already a member in its own right) but it will have to renegotiate its schedule — the tariffs and subsidies that farmers, manufacturers and service companies would commit to after Brexit. At present the UK shares the EU schedule, once the UK leaves the EU it will require its own schedule and this will need to be agreed by all 163 WTO members.

## **The future of EU citizens in the UK**

Whilst the UK Government has thus far refused to guarantee that EU citizens currently in the UK will be able to stay post Brexit, an article in the Daily Telegraph published on 7 October suggested that all 3.6 million non-UK EU citizens currently in the UK would be able to stay following Brexit. According to the [article](#):

“All EU nationals currently living in Britain will be allowed to stay following Brexit, after the Home Office discovered that five in six could not legally be deported.

There are around 3.6 million EU citizens living in the UK, more than 80 per cent of whom will have permanent residency rights by the time Britain leaves the union in early 2019, official research has concluded.

The remainder – more than 600,000 people – will be offered an amnesty, with several Cabinet ministers telling The Telegraph that those citizens will be offered the right to stay permanently, in a policy that may prove controversial.”

By way of background, once an EU national has been legally resident in the UK for five years they are likely to have a [permanent right to reside](#) and stay in the UK.

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