

**CULTURE, TOURISM, EUROPE &
EXTERNAL RELATIONS COMMITTEE**
#SPICeBrexitWeekly

Issue 24

14 March

2017

BREXIT UPDATE

SPICe weekly update

**BREXIT:
ARTICLE 50 BILL**

**FIRST MINISTER SETS OUT PLAN FOR
A SECOND INDEPENDENCE REFERENDUM**

**HoC REPORT: ARTICLE 50 NEGOTIATIONS
AND THE IMPLICATIONS OF 'NO DEAL'**

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Written by Iain McIver, SPICe Research



The Scottish Parliament
Pàrlamaid na h-Alba

Contents

Article 50 Bill	1
First Minister sets out plan for a second independence referendum	2
Prime Minister at the European Council	5
Meeting of Commonwealth Trade Ministers	7
House of Commons Foreign Affairs Committee report	8
House of Lords European Union Select Committee inquiry into Brexit and devolution	9
The impact of Brexit on the civil service	9

About this paper

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 once the Prime Minister has triggered Article 50 which is likely to be before the end of March.

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 focuses on the completion of the Article 50 Bill's passage through the UK Parliament and the Scottish Government's call for a second independence referendum.

Article 50 Bill

The [European Union \(Notification of Withdrawal\) Bill](#) was introduced on 26 January and is being fast tracked through the UK Parliament. The Bill was passed without amendment by the House of Commons on the evening of 8 February.

As reported in last week's update, the House of Lords [considered the Bill](#) last week and agreed two amendments on guaranteeing the rights of EU and EEA citizens legally resident in the UK after Brexit and ensuring parliamentary approval is required on the outcome of the Brexit negotiations.

On 13 March, the House of Commons [debated](#) the proposed House of Lords amendments. Addressing the content of the first of the Lords' amendments on the status of EU citizens, the Secretary of State for Exiting the European Union, David Davis said:

"Lords amendment 1 seeks to require the Government to act unilaterally to bring forward plans within three months to secure the status of European Union and European economic area citizens and their family members living in the United Kingdom. On this matter, the Government have been consistently clear: we want to secure the status of EU citizens already living in Britain, and the status of British nationals living in other member states, as early as we can..."

...However, the European Union has been clear that we cannot open these discussions until the Prime Minister has given formal notification that the UK wishes to withdraw from the EU. That is why we must pass this straightforward Bill without further delay, so that the Prime Minister can get to work on the negotiations, and we can secure a quick deal that secures the status both of EU citizens in the UK and of UK nationals living in the EU, of which there are around 1 million.

We take very seriously—I take very seriously—our moral responsibility to all 4 million UK and EU citizens. The Prime Minister has been clear that this issue will be one of the top priorities for the immediate negotiations. I also welcome the encouraging words from across the channel, particularly from Poland and Sweden, which fill me with confidence that we will reach a swift agreement with our European partners. Indeed, as Beata Szydlo, the Polish Prime Minister, has said:

"Of course, these guarantees would need to be reciprocal. It's also important what guarantees the British citizens living and working in other member states of the European Union will have."

On the second amendment requiring votes in the UK Parliament to approve the final negotiated deal between the UK and the EU, the Secretary of State said:

"If I may move on, I will now address the issues created by the proposed additional second clause to the Bill. Let me be clear from the outset that this amendment does not seek to simply put what we have already promised on the face of the Bill, as was suggested by some. In fact, it seeks to go much further. But let me begin with proposed subsections (1) to (3), which do simply seek to put

our commitment to a vote on the face of the Bill. I will repeat here our commitment: the Government will bring forward a motion on the final agreement to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final issue. This commitment could not be clearer, so proposed subsections (1) to (3) are wholly unnecessary. Our clear intention—an intention stated more than once at this Dispatch Box—and by far the most likely outcome, by the way, is that we will bring a deal back to the Houses of Parliament for them to approve...

...As I said last week, because it is unnecessary. When a Minister gives an undertaking at this Dispatch Box in this House, it is binding on the Government. Understand that point?

On the more general point about votes—and I say this with some personal interest—we should not underestimate the mechanisms at Parliament’s disposal to ensure that its voice is heard. To paraphrase the wise words of Lord Howard of Lympne during the debate on the amendment in the other place, this place “will have its say” and “will have its way.” We do not need to put this into legislation, and making legislation when none is required only benefits lawyers.”

Following a [debate](#), both amendments were rejected by the House of Commons. The first on citizens’ rights was rejected by 335 votes to 287 and the second on a parliamentary vote at the end of the process was rejected by 331 votes to 286 votes.

With both amendments rejected, the Bill returned immediately to the [House of Lords](#) where the Lords agreed not to resist the view of the House of Commons. The amendment on citizen rights was effectively rejected this time by 274 votes to 135 and the amendment on a parliamentary vote was rejected by 274 votes to 118.

As a result of both amendments falling, the Bill was passed by the UK Parliament as originally introduced with no amendments. Once the Bill receives Royal Assent, the UK Government will have the necessary parliamentary approval (as required by the Supreme Court) to trigger Article 50 and start the withdrawal process from the European Union.

With the agreement of Parliament to trigger Article 50, it has been [reported](#) that the Prime Minister does not intend to trigger Article 50 until next week at the earliest. A spokesman for the Prime Minister confirmed that “We have been clear. The Prime Minister will trigger Article 50 by the end of March.”

First Minister sets out plan for a second independence referendum

On 13 March, the First Minister [announced](#) that she would seek Scottish parliamentary approval to begin discussions with the UK Government on the details of a Section 30 order to enable an independence referendum to take place.

Giving her view that a second independence referendum was necessary as a result of Brexit, the First Minister [said](#):

“Scotland stands at a hugely important crossroads. On the eve of Article 50 being triggered, not only is there no UK wide agreement on the way ahead – the UK Government has not moved even an inch in pursuit of compromise and agreement.

“All of our efforts at compromise have been met with a brick wall of intransigence.

“UK membership of the single market was ruled out with no prior consultation with the Scottish Government or with the other devolved administrations, leaving us facing not just Brexit, but a hard Brexit.

“And far from any prospect of significant new powers for the Scottish Parliament, the UK Government is becoming ever more assertive in its intention to muscle in on the powers we already have. The language of partnership has gone, completely.

“I will continue to stand up for Scotland's interests during the process of Brexit negotiations. But I will take the steps necessary now to make sure that Scotland will have a choice at the end of this process – a choice of whether to follow the UK to a hard Brexit, or to become an independent country able to secure a real partnership of equals with the rest of the UK and our own relationship with Europe.”

On the possible timing of a referendum, the First Minister said:

“The detailed arrangements for a referendum - including its timing - must be for the Scottish Parliament to decide.

However, in my view, it is important that Scotland is able to exercise the right to choose our own future at a time when the options are clearer than they are now - but before it is too late to decide on our own path.

Let me be clear what I mean by that.

The timing of the Brexit negotiations is not within the control of the Scottish Government.

However, we must plan on the basis of what we know now.

And what we know is that on the timetable set out by the Prime Minister, the shape of the Brexit deal will become clear in the autumn of next year - ahead of ratification votes by other EU countries.

That is therefore the earliest point at which a referendum would be appropriate.

However, it is just as important that we do not leave it too late to choose a different path in a timely way.

If the UK leaves the EU without Scotland indicating beforehand - or at least within a short time after it - that we want a different relationship, we could face a lengthy period outside not just the EU but also the single market. That could make the task of negotiating a different future much more difficult.

These considerations lead me to the conclusion that if Scotland is to have a real choice - when the terms of Brexit are known, but before it is too late to choose our own course - then that choice must be offered between the autumn of next year, 2018, and the spring of 2019.”

Alongside the First Minister’s speech, the Scottish Government [published some background information](#) to the decision to seek a second independence referendum.

Following the First Minister’s speech, a number of blogs have been written. Kirsty Hughes of Friends of Europe [writing](#) on the Centre on Constitutional Change blog suggested that the timing of a second independence referendum as indicated by the First Minister means it is likely that Scotland will leave the EU along with the rest of the UK and this may present challenges in the event a newly independent Scotland wants to join the EU:

“But if May triggers Article 50 this month, as planned, then the UK will leave the EU by March 2019 (given Article 50’s two year deadline). So if there is an independence referendum in autumn 2018 or spring 2019, Scotland will still be part of the UK when it leaves the EU in March 2019, even if Scotland has voted ‘yes’ to independence. There is no way out of Brexit in the short-term it seems...

...So if Scotland were to leave the EU with the rest of the UK in March 2019, is there any way to avoid this messy outcome of firstly negotiating a divorce deal with rUK outside the EU, and then negotiating a second new relationship (based on the UK’s future UK-EU27 deal) once Scotland is back inside?

This will depend on three-way talks between London, Brussels and Edinburgh. The real challenge would be not whether Scotland can get some sort of ‘special status’ keeping it within the EU but whether and how Scotland can pragmatically stay aligned with EU laws and policies, and within its regulatory programmes and networks.

If Scotland goes through a ‘normal’ EU accession process, then this challenge – of staying aligned to EU laws – will need to be met firstly while Scotland is still part of the UK and outside the EU, and secondly while it is independent and outside the EU. The latter part is relatively straightforward – the EU is very experienced in ensuring countries outside the EU align with its laws and policies before actually joining. So the real challenge will be for the period of time when Scotland is outside the EU and part of the UK.”

On a similar theme, Richard Parry, an Honorary Fellow at the University of Edinburgh [discusses](#) the timing of a second independence referendum and whether Scotland might pursue European Economic Area membership as opposed to full EU membership.

Writing on the London School of Economics Brexit blog, Jan Eichhorn from the University of Edinburgh suggested [Brexit alone will not decide a second Scottish referendum – but its perceived economic impact may](#). He suggested that the question over EU membership was not a decisive factor during the 2014 referendum and it is unlikely to be decisive if there is a second independence referendum:

“However, the idea that EU membership drove most Scots’ decision-making in 2014 – because of their love for Europe – is misguided. Yes, compared to other parts of the UK, Scotland has been and is less negative about the European Union, but it is not a fan of it either. When we take together those who say that the UK should leave the EU and those who say it should stay but that some powers should be returned to member states, the total proportion in Scotland is roughly the same as elsewhere in the UK (about two-thirds to three-quarters). So, while the majority of Scots want to remain, the number of those who like the status quo or want more European integration has not been markedly greater than elsewhere in the UK.

Taking all this together, it is not surprising to find that the question of the UK’s EU membership was not decisive in the 2014 referendum in the aggregate. Both independence supporters and opponents had roughly the same position on the EU on average. For example, about three-quarters in either group agreed that an independent Scotland should be part of the EU. The question did not divide the public as a whole with regards to independence.”

Jan Eichhorn argues that rather than Brexit being a potential factor in itself, linking Brexit to economics may have a greater impact:

“If supporters or opponents of Scottish independence want Brexit to have a high likelihood of impact in a potential second Scottish independence referendum, their best chance is to clearly establish a narrative about its link to the economic question. On its own, EU membership, while generally relevant of course, is unlikely to galvanise massive opinion shifts amongst very large groups of the Scottish public.”

Prime Minister at the European Council

On 9 March, the Prime Minister attended the latest European Council meeting. The meeting saw confirmation of Council President Donald Tusk confirmed in post for a further two and a half years until 30 November 2019. This means President Tusk will chair the European Council during the period encompassing the Brexit negotiations.

Due to the Polish Government’s refusal to endorse Tusk’s re-election there were no Council conclusions following the meeting but [conclusions by the President of the European Council](#) were published which set out views on jobs, growth and competitiveness; security and defence and migration.

Following the European Council, the Prime Minister made a [statement to the press](#). In her statement, the Prime Minister reiterated that the UK would be leaving the European Union but not be leaving Europe and suggested that both the UK and the EU were now keen to proceed with the Brexit negotiations:

“Finally turning to Brexit, our European partners have made clear to me that they want to get on with the negotiations. So do I.

It is time to get on with leaving the European Union and building the independent, self-governing, global Britain the British people have called for.

And so, as I have said, we will trigger Article 50 by the end of this month. This will be a defining moment for the UK as we begin the process of forging a new role for ourselves in the world – as a strong country with control over our borders and over our laws.

And as the Chancellor made clear yesterday, we will use this moment of change to build a stronger economy and a fairer society that works for ordinary working people by embracing genuine economic and social reform here at home.

Britain is leaving the European Union but we are not leaving Europe. A global Britain that stands tall in the world, will be a Britain that remains a good friend and ally to all our European partners.”

Following her statement, the Prime Minister took questions from the press. On question related to a comment from the Danish Prime Minister that a future UK-EU trade deal could take up to 15 years to negotiate and not 2 years as the UK Government hopes. In response the Prime Minister said:

“First of all, obviously the Treaty sets out that when a country is leaving the EU that the process which is Article 50 sets out for the withdrawal but also setting the framework for the future relationship actually should take the 2 years. And that is the timetable that we’re working to and that’s the timetable that the EU is working to. Yes, I am optimistic that we can achieve a good and comprehensive free trade deal with the EU.

Why am I optimistic about that? Because it’s not just about what’s in the UK’s interests but also what is in the interests of the EU. And I think what we see in the comments and discussions I hear that increasingly as we look – obviously we haven’t started the negotiations, we will start that when we trigger Article 50 by the end of this month – when we come to look at those negotiations what people will see is that the relationship between the UK and the EU of the future matters not just to the UK.

This isn’t just what is good for the UK, but what is good for the EU as well. And I believe that that good free trade arrangement is in the interests of both sides of that negotiation.”

Meeting of Commonwealth Trade Ministers

On 9 March, the UK Government convened the first [Commonwealth Trade Ministers' meeting](#).

[Speaking at the conference](#), the UK Government's Secretary of State for International Trade, Liam Fox referred to the importance of the Commonwealth as the United Kingdom leaves the European Union and the UK's commitment to global free trade:

"It comes at a time where we, in the UK, are at a truly historic moment. Following our referendum on EU membership, and the decision of the British people to forge a different future, our Prime Minister has set out a vision for a truly 'Global Britain'.

*This country has long been associated with both the concept and practice of free-trade. A small island perched on the edge of the European continent became a leader of world trade. For over a century the terms 'Britain' and 'free trade' were virtually synonymous. It was from here that those such as Adam Smith set out the intellectual case for free and open commerce, arguments that are just as valid today as they were in 1776 when he published *The Wealth of Nations*.*

Those of us, represented here today, have, through our shared history and experience, witnessed the transformation that trade can bring and have a duty to ensure that the benefits that we enjoy today are made available to future generations."

In relation to the UK's trading future outside the EU, Liam Fox said:

"I have long believed that free trade is one of the most powerful tools we have to help those in greatest need around the world. As we establish our own position after we leave the European Union, Britain will proudly carry the standard of free and open trade as a badge of honour. As we, one of the world's largest economies, take our independent seat at the World Trade Organisation we will seek to achieve continuity in our trade and investment relationships with developing countries.

The UK remains committed to pursuing free trade. That includes seeking to achieve continuity in our trade and investment relationships with third world countries, including those covered by EU FTAs or other EU preferential arrangements. Yet we understand that trade can never be an isolated policy objective. It is an unavoidable truth that prosperity, including an open and free trading environment, social stability, political stability and security are part of the same continuum."

House of Commons Foreign Affairs Committee report

On 12 March, the House of Commons Foreign Affairs Committee published its inquiry report into the [Article 50 negotiations and the implications of no deal](#). The Committee concluded that there was no guarantee a deal would be reached between the UK and the EU before the two year deadline passes. According to the Committee, in the event of no deal:

“The consequences of ‘no deal’ are far from being what the Brexit Secretary called “an exercise in guesswork.” On the contrary, the evidence published in today's report makes the scope of those consequences clear.

The full potential implications of 'no deal', explored in detail in the annexes to the report, include:

- Ongoing disputes over the exit 'bill'
- Uncertainty and confusion for UK citizens in the EU and EU citizens in the UK
- Trading on World Trade Organisation (WTO) terms
- A 'regulatory gap' and legal uncertainty in areas not covered by the "Great Repeal Bill"
- Uncertainty over UK participation in the EU's common foreign and security policy
- The sudden return of a customs border between Northern Ireland and the Republic of Ireland

Publishing the report, the Chairman of the Committee, [Crispin Blunt MP said](#):

"The possibility of 'no deal' is real enough to require the Government to plan how to deal with it. But there is no evidence to indicate that this is receiving the consideration it deserves or that serious contingency planning is underway.

The Government has repeatedly said that it will walk away from a 'bad' final deal. That makes preparing for 'no deal' all the more essential. Such preparation reinforces that stance.

Last year, the Committee described the Government's failure to plan for a Leave vote as an act of gross negligence. This Government must not make a comparable mistake.

The Article 50 negotiations will hopefully be successful. There is a clear shared UK and EU interest in reaching agreement. Mutually assured damage is the alternative. The responsibility on the negotiators is substantial.

But there is a real prospect that negotiations will fail. The Government should therefore require each Department to produce a 'no deal' plan identifying the likely consequences and making proposals, including guidance to individuals and businesses, to mitigate potential risks. Anything less would be a dereliction of duty."

House of Lords European Union Select Committee inquiry into Brexit and devolution

The House of Lords is continuing its [Brexit and devolution inquiry](#). On 6 March, the Committee [took evidence](#) from The Rt Hon the Lord Forsyth of Drumlean, former Secretary of State for Scottish Affairs; The Rt Hon the Lord Wallace of Tankerness QC, former Deputy First Minister of Scotland.

The impact of Brexit on the civil service

A report by the UK in a Changing Europe and the Institute for Government has examined [the civil service after Article 50](#). The paper shows Brexit will make [four demands](#) on the civil service:

- Analysis: civil servants will need to develop options for new policies, advise ministers and react to EU negotiating positions
- Co-ordination: civil servants must be able to access the expertise of a range of groups, including devolved administrations, local government, and businesses.
- Legislation: the civil service will need the skills and capacity to prepare, draft and manage the passage into law of a big body of legislation, some of which will be highly contentious and to tight timelines.
- Delivery: civil servants will then have to implement the outcome of any final deal, which includes new regulatory regimes, immigration systems, customs checks at UK borders.

Professor Anand Menon, Director of the UK in a Changing Europe, said:

“The pressure of Brexit will be felt right across government and delivering it alongside existing commitments will test capacity to the limit. The civil service has many of the core skills required to do the task but effectively managing competing priorities and limited resources will require strong leadership.”

Iain McIver
SPICe Research

SPICe The Information Centre
An t-Ionad Fiosrachaidh

Scottish Parliament Information Centre (SPICe)

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 extension 85294 or email 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.

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH 99 1SP.

www.parliament.scot

This paper was written by Iain McIver, SPICe Research.

Culture, Tourism, Europe and External Relations Committee

Keep up to date with the Committee via the following links:



www.parliament.scot/europe



europe@parliament.scot



[@SP_European](https://twitter.com/SP_European)



[YouTube](https://www.youtube.com)

#SPICeBrexitWeekly