

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

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BREXIT UPDATE

SPICe weekly update

**ARTICLE 50:
TRIGGER DATE**

**EUROPEAN COMMITTEE
REPORTS DEBATED**

**SECRETARY OF STATE FOR EXITING THE EU
APPEARS BEFORE COMMONS COMMITTEE**

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The Information Centre
An t-Ionad Fiosrachaidh

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The Scottish Parliament
Pàrlamaid na h-Alba

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About this paper

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union which will formally begin once the Prime Minister has triggered Article 50 at 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 confirmation of the date for triggering Article 50 and the Scottish Parliamentary debate of the Culture, Tourism, Europe and External Relations Committee reports in relation to Brexit.

Royal Assent of EU (Notification of Withdrawal) Bill

Following its successful passage through the UK Parliament, the EU (Notification of Withdrawal) Bill was [given Royal Assent](#) by The Queen on 16 March. The granting of Royal Assent completed the Bill's passage to becoming an Act and clears the way for the Prime Minister to trigger Article 50.

Article 50 Trigger Date

It has been [confirmed by the UK Government](#) that the Prime Minister will trigger Article 50 on Wednesday 29 March kick-starting the two year process for negotiating the UK's withdrawal from the European Union.

According to the Department for Exiting the European Union:

"The UK's Permanent Representative to the European Union, Sir Tim Barrow, has this morning informed the office of European Council President, Donald Tusk, of the UK's intention to invoke Article 50 of the Lisbon Treaty on March 29, 2017.

This meets the UK's longstanding commitment to trigger Article 50 by the end of March 2017."

At the time Article 50 is triggered, the Prime Minister is expected to make a statement to the House of Commons.

Following the Government's announcement, Michael Russell, the Scottish Government's Minister for UK Negotiations on Scotland's Place in Europe indicated the Scottish Government had not been made aware of the date ahead of it being made public when he [tweeted](#):

"Thank you @BBCNews for letting JMC members like me know that #Article50 is to be triggered next week. @GOVUK somehow forgot to inform us."

Donald Tusk, the President of the European Council [tweeted](#) that the European Council would work quickly on shaping the response of the EU27 to the Article 50 trigger:

"Within 48 hours of the UK triggering Article 50, I will present the draft #Brexit guidelines to the EU27 Member States."

It was also [announced](#) that an EU summit would be held on 29th April to agree the guidelines for the EU's negotiating team headed by Michel Barnier. The summit will be a meeting of the EU27 with the UK not invited to attend. Announcing the summit, President Tusk said:

"As you all know, I personally wish the UK hadn't chosen to leave the EU, but the majority of British voters decided otherwise. Therefore, we must do everything we can to make the process of divorce the least painful for the EU."

The President highlighted that the main priority for the negotiations must be to create as much certainty and clarity as possible for all citizens, companies and member states that will be negatively affected by Brexit as well as for the EU's important partners and friends around the world.

European Committee Reports debated

On 15 March, the four reports produced by the Culture, Tourism, Europe and External Relations Committee following the EU referendum were debated in the Scottish Parliament. The reports are:

- [The EU referendum result and its implications for Scotland: Initial Evidence](#);
- [Brexit: What Scotland thinks: summary of evidence and emerging issues](#);
- [EU Migration and EU Citizens' Rights](#)
- [Determining Scotland's future relationship with the European Union](#)

The [debate](#) was opened by the Convener of the Committee Joan McAlpine MSP who described some of the key findings emanating from the Committee's final report "Determining Scotland's future relationship with the European Union:

"The committee's final report, which was published at the beginning of March, is entitled "Determining Scotland's future relationship with the European Union". It covers three key areas: future trading arrangements, intergovernmental relations and the impact of withdrawal on the devolution settlement.

The UK Government has chosen to withdraw not only from the European Union but from the European Economic Area. Witnesses told us that the UK will leave the most successful free trade area in the world and that it will no longer be a party to the EU's preferential trade agreements with more than 50 other countries. As we were told, never has a country decided to dismantle its existing trade agreements in such a way.

Scottish exporters have benefited from the abolition of tariffs and non-tariff barriers, and it has become the norm to send Scottish produce across the continent without any border controls. There is no need to satisfy rules of origin for goods that are manufactured in Scotland and exported to the EU. All that could go when we leave the EU. By choosing a hard Brexit, and by entering the negotiations with red lines that relate to freedom of movement, the jurisdiction of the European Court of Justice and EU legislation, the UK might find that it can achieve only a very limited trade agreement with the EU, so Scottish businesses will suffer as a result. Alternatively, as we heard being suggested at the weekend, the UK may be unable to reach a deal with the EU within two years, and we will fall back on World Trade Organization rules.

The UK will be reducing its trading opportunities by choice. We heard that, since the second world war, there has been a progressive move towards reducing tariffs and non-tariff barriers in international trade. The EU has made the greatest progress of any region in pursuing free trade, but the UK Government has decided that it wishes to give up those opportunities by leaving the EEA and starting from scratch in renegotiating its trading relationship with the world's biggest trading partner, as well as with other countries throughout the world.

The possibility of a hard Brexit on WTO terms looks increasingly likely, as UK ministers have described that scenario as "perfectly OK". In contrast, the Fraser of Allander institute submitted a report to the committee that predicts that that situation would result in a 5 per cent reduction in gross domestic product, a 7 per cent reduction in real wages and the loss of 80,000 jobs.

Our latest report also considered the intergovernmental arrangements for agreeing the UK's position on Brexit and for conducting negotiations with the EU on withdrawal, as well as on the future trade relationship, and it considered intergovernmental relations between the UK and the Scottish Governments. Those areas will be the focus of other speakers, so I will limit myself to referring to the role that other sub-states have in relation to trade. During our inquiry work, we heard about how Québec, along with the other Canadian provinces, was included in negotiations on the Comprehensive Economic and Trade Agreement, and about the influence that the Parliament of Wallonia was able to use to block the CETA agreement temporarily. Both those examples highlight the comparative limitations of the intergovernmental structures in the UK.

Finally, the report considered the impact on the devolution settlement of withdrawal from the EU. As all members will be aware, under the devolution settlement, powers that are not reserved to Westminster are powers of the Scottish Parliament and the Scottish Government. Thus, under the devolution settlement, current EU competences—including the environment, agriculture, fisheries, justice and home affairs—fall within devolved policy areas. The committee concluded:

“We believe that any power currently a competence of the EU that is to be repatriated after Brexit and which is not currently listed in schedule 5 of the Scotland Act 1998 should be fully devolved, alongside a funding mechanism, resulting in no detriment to Scotland.”

Scotland currently receives considerable funding under agricultural and structural funding programmes. There is no clarity about how funding in those areas would be calculated in the future. The committee considers that there is

“a very significant risk to EU competitive funding streams, agricultural support and structural funding in Scotland following withdrawal from the EU.”

and is particularly concerned that

“Any move towards a territorial funding framework within the UK that is based in population share rather than the allocation system currently in use would see Scotland's agricultural sector, for example, lose hundreds of millions of pounds.”

Finally, the majority of the committee concluded that a bespoke solution for Scotland that would enable it to remain in the single market should be explored as part of the negotiations ahead, and that the UK Government should provide a response to “Scotland's Place in Europe” before article 50 is triggered.

In conclusion, I say that members will see that there are significant implications for Scotland of withdrawal from the EU, which the committee's reports highlight.”

Responding for the Scottish Government, the Minister for UK Negotiations on Scotland's Place in Europe welcomed the reports and their conclusions. Michael Russell MSP told Parliament:

“The committee's reports recognise a number of key benefits of EU membership. They recognise the importance of the single market, the way in which Scotland has benefited from increasing trade opportunities during the UK's 43 years of membership and the fact that EU membership and access have been of vital

importance to Scotland's economy. They recognise that migration is key to addressing Scotland's demographic challenges and that it is necessary to guarantee the rights of EU citizens who are resident in the UK. They recognise the importance of retaining freedom of movement, and that a bespoke solution that reflects Scotland's majority vote to remain in the single market is required for Scotland. In short, the committee comes to many of the same conclusions that we came to in our paper, "Scotland's Place in Europe". I particularly welcome the committee's recognition of the importance of membership of, not merely access to, the single market, and of the fact that a differentiated approach is required for Scotland."

One of the Conservative Party members of the Committee Jackson Carlaw MSP told Parliament that the Committee had tried to reach agreement on a common view of intergovernmental arrangements for negotiating Brexit but been divided on the prospects of continued membership of the single market. He said:

"We sought agreement to the participation of Scottish Government ministers in negotiations that will follow in bilateral and quadrilateral talks with international partners on new post-withdrawal trading relationships. We talked of a joint ministerial committee on international trade. In other words, as a committee, we recommended a Scottish Government involved heart and soul and body and spirit in the multiple strands of work required to negotiate and secure Scotland's interests in the agreement reached to withdraw from the EU."

No committee member has argued or concluded that that will be easy. If anything, the extensive engagement that we have had since last June has illustrated just how difficult and fraught it will inevitably prove to be, and has identified the considerable, exceptional legislative burden for which this Parliament will have to prepare."

We were ultimately divided on the prospects of continued membership of the single market, which the SNP leader has called for. Indeed, I have yet to hear any member state diplomat argue that that is achievable, and all 27 member states would have to agree to it."

Closing the debate, the Committee's Deputy Convener Lewis Macdonald MSP summarised the areas in which the Committee had achieved a consensus view:

"Although committee members agreed about the benefits of the single market for Scotland and for the UK as a whole, we neither endorsed the Scottish Government's proposed mechanism for Scotland to remain in the single market if the rest of the UK were to leave, nor did we reject it; instead, we said:

"a bespoke solution that reflects Scotland's majority vote to remain in the single market should be explored with the EU 27 as part of the negotiations ahead, before and after the triggering of Article 50."

It is worth remembering that all committee members agreed to that wording.

At the time that we agreed the report, a majority of the committee believed that a differentiated solution could be found in the EU to accommodate Scotland in, or its connection to, the single market, but no collective view was expressed about what that differentiated solution might be. However, we were explicit in saying that a

bespoke solution for Scotland—within the UK—should continue to be explored after, as well as before, the triggering of article 50.”

The Committee’s deputy convener also referred to the Committee’s view on the repatriation of powers from Brussels after Brexit. He said:

“On the subject of powers repatriated from Brussels, as the convener said, we concluded that any such power that is not currently reserved should be devolved, alongside a funding mechanism, with no detriment to Scotland. Different parties have different views on what should happen with the repatriation of other competences, but an agreed starting point for that debate is laid out in our reports.

There are many EU funding streams, but structural funds and agricultural support cover the main ones that are delivered through a territorial funding framework. The question of whether there should be a UK-wide framework for agreeing support for disadvantaged regions or less favoured areas objectively across Scotland, England, Northern Ireland and Wales was raised. If that is to happen, the reports’ clear implication is that such a framework has to be devised by the UK Government and the devolved Administrations working together, rather than being determined by the UK Government alone.”

Finally on intergovernmental relations during the negotiation of Brexit, Lewis Macdonald MSP said:

“Whatever the timescale for article 50, the committee agreed unanimously that the respective Governments should deal with European partners on the basis of an agreed approach. Current practice in relation to the Council of Ministers is described in our reports in these terms:

“Scottish Ministers have participated in negotiations following the prior agreement of a UK negotiating line and set of priorities. This principle should apply to the withdrawal agreement and any new free trade agreements.”

We also said that, as those negotiations proceed, a means should be found to involve the Scottish Government in discussions on future trade deals, whether by creating a joint ministerial committee on international trade or in some other way. Just as importantly, we called for the written agreement between the Scottish Government and the Scottish Parliament to be augmented to ensure that committees of the Parliament are fully informed by ministers on both the EU withdrawal agreement and any future trade deals. Here again, events this week may have put some of those recommendations in a different light, but they remain the unanimous recommendations of all members of the committee.”

At the conclusion of the debate, the following motion was agreed to by Parliament:

“That the Parliament notes the conclusions and recommendations contained in the Culture, Tourism, Europe and External Relations Committee’s 1st Report, 2016 (Session 5), The EU referendum result and its implications for Scotland: Initial Evidence (SP Paper 5); 1st Report, 2017 (Session 5), Brexit: What Scotland thinks: summary of evidence and emerging issues (SP Paper 64); 3rd Report (Session 5), EU Migration and EU Citizens’ Rights (SP Paper 84) and 4th Report, 2017 (Session 5), Determining Scotland’s future relationship with the European Union (SP Paper 99).”

Secretary of State for Exiting the EU appears before Commons Committee

On 15 March, the House of Commons Exiting the European Union Committee [took evidence](#) from David Davis MP, Secretary of State for Exiting the European Union.

The evidence session covered a wide range of issues in relation to Brexit. The Secretary of State confirmed that in the event that no deal was reached between the UK Government and the EU, tariffs would be likely to be introduced on UK exports to the EU imports from the EU to the UK.

On whether the UK Government had economic assessment of the implications for the British economy and for British businesses of there being no deal, the Secretary of State said:

“It made an estimate during the leave campaign or the referendum campaign, but one of the issues that has arisen is that those forecasts do not appear to have exactly been very robust since then. If you mean under my time, the answer is no.”

On the issue of addressing possible customs checks following Brexit, David Davis told the Committee:

“To take your example on customs, one of the concerns from some companies—and it does vary—is not so much the tariff as the delays on customs going through that make the issue. You highlighted the point of the Northern Irish border, which is a special case of that.

There are various ways of dealing with that. Not all of it is about new software systems or new inspection systems. Let me give you a single example. In current arrangements with customs, there is something known colloquially as trusted traders. In Treasury speak, I think they are called authorised economic operators. An authorised economic operator has a special relationship with HMRC, whereby they have electronic notification. We are talking about a number of companies that account for either 60% of our exports and 74% of our imports or the other way round, but it is significant anyway; it is nearly two-thirds of our international trade. For those operators, the clearance of 92% of their cross-border traffic takes five seconds. The remaining 8% are things where the customs notifies them will require an inspection.

We have discussed this, or at least one of my Ministers has discussed this, with the British Chambers of Commerce. The question here is if we can extend the AEOs and the trusted trader structure to much smaller companies. Can we change the rate? Until you have an answer to that, the assessment of the economic impact of these customs is not possible to calculate. The simple truth is that you have to do this in sequence. I am forever facing questions in this process saying, “Have you done this yet?” No, we will do it when we have the information. We will do it when we have the facts. We can make the same arguments about agriculture. In those circumstances, there will be a tariff structure. It is one of the reasons we are trying to avoid it. There will also be, because it is much more of an issue, phytosanitary checks. They are there already, so it may not be a change for them, and ditto for banking and so on. All of these things are being

done piece by piece. When we have finished making the Lego blocks, we will build the house, and then we will have the forecast you are talking about.”

On the question of a transitional deal, the Secretary of state said:

“When I was here last, we talked about this at very great length and I made the point that we needed to distinguish between the range of views of what a transition arrangement means, which is why we used “implementation period” as a better phrase. The range of views, just to remind you, range from the views taken by some members of the Commission that we will do the “divorce”, the departure deal, and then after that have a transitional arrangement while we are still paying money and there is still the free movement of people. There are all of these things going on and we will do the long-term deal in slow motion. That is plainly not what we are after. That is the first thing to say.

Other people are vague about transition arrangements. I was not here for your discussions with the IoD, so I do not know precisely what they said to you, but let me give you one example of it. One example is that many banking structures and many of the financial services structures want to have time from the point at which they know what the outcome is to the point at which it takes effect, so that they can then do their planning on facts, not fears. I understand that, but we are talking about something that is a negotiation and the negotiation has not yet started. What we do have around Europe among member states is an understanding that we are going to need some time to put into effect whatever it is that we agree afterwards.

Last time, I resisted being drawn on what that—I do not like “transition arrangements”—implementation phase would be for a very simple reason. What the implementation phase needs to be is dependent on what the final outcome is—what the end structure is. If it is very similar to now, and arguably a comprehensive free trade agreement would be quite similar to the effect in terms of accessing the single market, then less transition is required. If it is a big difference, more transition is required. As I say, we have not started the negotiation. I would rather not try to initiate the negotiation through this Committee.”

The Secretary of State accepted that it was not clear at this stage whether the negotiations on the UK’s future relationship with the EU could take place alongside the divorce negotiations. He added:

“I did not write the Article 50 guidelines, but they say, in effect, that at the end of two years you are not a member of the European Union anymore, unless you negotiated something different. There is a fixed timeline on that. In the British national interest and the British Government interest, it is sensible to achieve the decisions by the end of the two-year period, from a negotiating point of view, but also from an intelligent management point of view. That is what we intend. You are right that the first formal conversation between Michel and me will almost certainly be about this subject.”

Other issues which were discussed during the evidence session included the likely costs of the divorce bill, access to funding for science, innovation and research, migration and freedom of movement and the situation in Northern Ireland with regards to Brexit.

On the issue of whether a UK wide negotiating position would be agreed before Article 50 was triggered, the Secretary of State said:

“What we said in terms of the Scottish Government was that we will do everything to ensure that the Scottish people get a good deal—not the Scottish National Party but the Scottish people get a good deal. It is the same for the Welsh people and Northern Irish people, and indeed the people of England. That is what we intend.

We have had discussions in the JMC over a variety of things with the Scottish Government representative. There have been areas of agreement. The most obvious one is issues like the protection of employment rights and areas relating to justice and home affairs. There have been areas where we understand the concerns of the Scottish Government, for example immigration matters, and I think they may well be resolvable by other mechanisms than the Scottish Government think, but we understand that. There are areas that are currently under debate, which are how we handle and the effect of devolution in the return of powers. That is due to be debated at, I think, the next JMC (EN).

There are areas that are much more difficult, such as the Scottish Government’s request to have a special arrangement for remaining inside the single market, whilst the rest of the United Kingdom is outside it. We think that is difficult. Indeed, I note that at least two of the advisers to the Scottish Government felt that was impossible as well. We have technical work under way on it, but I am not optimistic that that will come to a conclusion. In that area, as I said earlier, the intent is to try to give as good a deal in terms of access to the single market as we currently have and solve that problem there in terms of outcomes for the Scottish people, not necessarily the individual policy requests of the Scottish Government. Now, we said at the beginning that there will be no veto. We will discuss as openly and as frankly as is possible, and that is what we have done. We have not got to an identical position. We are very close on a lot of issues, but not all.”

Following up, the Secretary of State was asked whether there would be agreement within the Joint Ministerial Committee was likely to agree a UK approach and objectives for Article 50 negotiations. He replied:

“The phrase is “seek to agree”. If one side does not want to agree, which I am afraid has been the position of the Scottish Government from time to time, then there is no way that seek to agree can turn into agree. I am afraid that the stance of the Scottish Government on this has been, frankly, a very political one that is not necessarily in the interests of the people they represent.”

On the frequency of meetings of the Joint Ministerial Committee, the Secretary of State engaged in a conversation with Joanna Cherry MP which focussed on the situation in Northern Ireland being a contributing factor to the lack of JMC meetings recently:

“Joanna Cherry: Do you agree with me that, in order for the Joint Ministerial Committee to reach agreement, it needs to meet?”

Mr Davis: It has met four times, I think.

Joanna Cherry: Are you aware that it was cancelled this week without any prior consultation with any of the participants?

Mr Davis: We have a difficulty at the moment, which does not relate to Scotland. It relates to the issue of the Northern Ireland Executive. During the election period, the Northern Ireland Executive still had Ministers in place. Once it had gone, there were not Ministers in place. The only way that the JMC can meet is to meet as two-thirds, not to meet as one.

Joanna Cherry: Are you saying that the JMC cannot meet at present because there is no Northern Ireland Executive? Is that your evidence?

Mr Davis: There is a three-week timetable, Ms Cherry, for the resolution of the election. At the end of that, if we do not have a Northern Ireland Executive, we will have to make a decision on what we do. I will discuss that at that time with the Northern Ireland Office and the Secretary of State for Northern Ireland.

Joanna Cherry: I am puzzled as to your evidence. Are you saying that there will be no further meetings with the Scottish Government and the Welsh Administration until such time as a Northern Ireland Administration has been formed? Is that your evidence? I am just trying to understand you, Secretary of State.

Mr Davis: I am going to give you the answer, if you will just stop trying to put words into my mouth. I have had a meeting with Mr Mike Russell three weeks ago, since the last JMC (EN). I have had a meeting with the First Minister of Wales last week. There is discussion with them. There are also the territorial Ministers who attend and are part of that Committee, who have constant meetings too. "No" is the answer to your question.

Joanna Cherry: The Prime Minister has made it clear that she wants to trigger Article 50 before the end of the month. When will the next meeting of the Joint Ministerial Committee be held?

Mr Davis: It will be as soon as we can, once we have a resolution on Northern Ireland.

Joanna Cherry: Will one be held before the end of March?

Mr Davis: It may not be, but that does not mean that we will not have any further discussions with the relevant governments.

Joanna Cherry: There may not be any further meetings of the Joint Ministerial Committee before Article 50 is triggered. Is that the position?

Mr Davis: There may not. There may not, but I do not know at this stage.

Joanna Cherry: Will the devolved governments be given any notice of the triggering of Article 50?

Mr Davis: I think we will be having conversations with them beforehand."

On the Scottish and Welsh Government's proposals for the future relationship with the EU, the Secretary of State said the UK Government had discussed the proposals with both Governments within the JMC.

The Secretary of State will appear before the House of Lords European Union Committee on [22 March](#).

EU Citizens and Comprehensive Sickness Insurance

Whilst much of the discussion around EU citizens currently in the UK has focussed upon whether their rights will be guaranteed following the UK's departure from the EU, a related issue has revolved around the requirement that EU citizens have comprehensive sickness insurance (CSI). A [London School of Economics blog](#) written by Aleksandra Herbec a PhD candidate in the Department of Behavioural Science and Health at UCL examines the issue in more detail stating:

“In the past few days, the misleading term ‘Comprehensive Sickness Insurance’ (CSI) has suddenly become a hot topic among EU citizens in the UK. For many of them, as well as their British relatives and friends, this was the first time they have ever heard about CSI. The chilling discovery was that for many years now the CSI has been a requirement for all EU citizens studying in the UK or residing here as self-sufficient persons. Without it, they cannot exercise their treaty rights and acquire permanent residency, which would normally be automatically granted after spending a continuous period of five years in the UK. At the moment, without a valid CSI the years spent in the UK do not count towards PR. Ominously, the current rules – some of which were introduced as recently as February 2017 – seem to give the Home Office the power to deport EU nationals who are not exercising treaty rights.”

Herbec states that:

“The CSI is a concern for thousands of EU nationals who, during their period of residence in the UK that would otherwise count towards PR, were at any time either a student, or a self-sufficient person (e.g. carers, stay-at-home spouses, or part-time workers not earning enough to cross a threshold set by the government). This would include cases in which an EU national worked full-time for 4 years and then enrolled at a UK university without having a CSI, thus unwittingly interrupting the 5-year residency rule.”

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