

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

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BREXIT UPDATE

SPICe weekly update



**ARTICLE 50 BILL:
EU NOTIFICATION OF WITHDRAWAL**

**JOINT MINISTERIAL COMMITTEE
MEETING IN CARDIFF**

**CABINET SECRETARY AT
THE EUROPEAN PARLIAMENT**

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An t-Ionad Fiosrachaidh

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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 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 provides information on

Article 50 Bill

Following the Supreme Court judgement that Parliamentary consent (in the form of an Act of Parliament) was required ahead of the triggering of Article 50, on 26 January, the UK Government published the [European Union \(Notification of Withdrawal\) Bill](#). The Bill (as introduced) has just one operative clause which is reproduced below:

1 Power to notify withdrawal from the EU

(1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

(2) This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment.

The Bill will be debated in the House of Commons from 31 January to 8 February. Details of the stages of the passage of the Bill through the House of Commons are available on the [UK Parliament website](#).

The House of Commons Library has [produced a briefing](#) on the Bill.

Following publication of the Bill, a number of [proposed amendments](#) have been tabled. These include:

- Amendments to the effect that parliamentary oversight of the Article 50 negotiations is outlined in the Bill and to ensure that any future treaties made with the European Union must be ratified with the express approval of Parliament.
- A further proposed amendment seeks to ensure a White Paper is produced ahead of Article 50 being triggered. The amendment stipulates that the European Union (Notification of Withdrawal) Act can only come into force after each House of Parliament has approved by resolution the White Paper on withdrawal from the EU.

The amendment stipulates the White Paper must include the following:

(a) the nature and extent of any tariffs that will or may be imposed on goods and services from the UK entering the EU and goods and services from the EU entering the UK;

(b) the terms of proposed trade agreements with the EU or EU Member States, and the expected timeframe for the negotiation and ratification of said trade agreements;

(c) the proposed status of rights guaranteed by the law of the European Union, including—

- (i) labour rights,
- (ii) health and safety at work,

- (iii) the Working Time Directive,
- (iv) consumer rights, and
- (v) environmental standards;
- (d) the proposed status of—
 - (i) EU citizens living in the UK and,
 - (ii) UK citizens living in the EU, after the UK has exited the EU;
- (e) estimates as to the impact of the UK leaving the EU on—
 - (i) the balance of trade,
 - (ii) GDP, and
 - (iii) unemployment.”
- An amendment to ensure further Parliamentary approval is needed for the UK to withdraw from the European Economic Area Agreement. According to the Explanatory Note, this amendment would “allow for proper parliamentary debate and scrutiny of the United Kingdom’s membership of the Single Market and whether the UK should remain as a member of the European Economic Area prior to the Prime Minister triggering Article 50”.
- An amendment to put the role of the Joint Ministerial Committee during the Article 50 negotiations on a statutory footing. Specifically the amendment states that the Secretary of State must seek to reach consensus with the devolved administrations on the terms of withdrawal from the European Union and the framework for the United Kingdom’s future relationship with the European Union.
- An amendment to require the UK Government to consult the Scottish Government on Article 50 negotiations applying to Scotland. The amendment states:
 - (1) In negotiating an agreement in accordance with Article 50(2) of the Treaty on European Union, a Minister of the Crown must consult Scottish Government Ministers before beginning negotiations in any area that would make provisions applying to Scotland.
 - (2) A provision applies to Scotland if it—
 - (a) modifies the legislative competence of the Scottish Parliament;
 - (b) modifies the functions of any member of the Scottish Government;
 - (c) modifies the legal status of EU nationals resident in Scotland, and Scottish nationals resident elsewhere in the EU;
 - (d) would have the effect of removing the UK from the EU single market.

(3) Where a Minister of the Crown consults Scottish Government Ministers on any of the provisions listed under subsection (2), or on any other matter relating to Article 50 negotiations, the discussions should be collaborative and discuss each government's requirements of the future relationship with the EU.

(4) Where a Minister of the Crown has consulted Scottish Government Ministers on any of the provisions listed under subsection (2), the Minister of the Crown must lay a full report setting out the details of those consultations before both Houses of Parliament, and must provide a copy to the Presiding Officer of the Scottish Parliament.”

- An amendment proposing that Article 50 may not be triggered until “all members of the Joint Ministerial Committee on European Negotiation have agreed a UK wide approach to, and objectives for, the UK’s negotiations for withdrawal from the EU.
- An amendment proposing that a referendum should be held on whether the United Kingdom should approve “the United Kingdom and Gibraltar exit package proposed by HM Government at conclusion of the negotiations triggered by Article 50(2) for withdrawal from the European Union or remain a member of the European Union”.
- A number of amendments proposing impact assessments be carried out across a number of policy areas including equalities, customs union, supply chains environmental protection, climate change and research and development collaboration.
- An amendment proposing the UK Government must “resolve to guarantee the rights of residence of anyone who is lawfully resident in the United Kingdom on the day on which section 1 comes into force in accordance with or as consequence of any provision of a Treaty to which section 1 relates, and United Kingdom nationals living in the parts of the European Union that are not the United Kingdom before the European Council finalises their initial negotiating guidelines and directives.”
- An amendment requiring the UK Government to seek a transitional agreement as part of the United Kingdom’s negotiations with the EU.
- Amendments to ensure EU rules connected with environmental standards, employment and workers’ rights are maintained following Brexit.
- An amendment preventing the triggering of Article 50 until “at least one month after the Prime Minister has obtained agreement from the European Council that failure to approve the terms of exit for the UK will result in the maintenance of UK membership on existing terms”.

Details of further amendments tabled will be made available on the European Union (Notification of Withdrawal) [Bill documents page](#) on the UK Parliament website.

On 30 January, the [Guardian reported](#) that the Article 50 Bill was likely to pass without major amendment as a result of Conservative MPs being content with the Prime Minister's promise of a White Paper on Brexit.

Subsequently, The [Times newspaper reported](#) (paywall) that the Prime Minister plans to trigger Article 50 on 9 March. This would follow parliamentary approval of the Article 50 bill being concluded on 7 March.

With the parliamentary process for the Bill set to start on 31 January, the UK in a Changing Europe team published a blog with details of [what to expect](#). According to the UK in a Changing Europe team:

“Government generally has the upper hand in parliament when it comes to legislation. But it has found itself somewhat exposed with this bill, due to conflicting priorities.

On the one hand, May and her ministers have consistently taken the line that parliament should play only a minimal role in the Article 50 process: even the recent concession of a parliamentary vote on the final deal was less than it seemed, given that it will be a choice between a deal that parliament didn't like and no deal at all.

On the other, May has also staked a good deal of her credibility on triggering Article 50 by the end of March. Her firmness on this is shaped strongly by the degree to which her party is willing to give her some room for manoeuvre in organising Brexit, without letting the schedule slip any further. These conflicting priorities mean that the government will have to tread a very fine line.”

On the issue of amendments which will be considered by the House of Commons, the blog states:

“MPs will then have three days to try to amend the bill during its committee stage. Given the importance of this issue, it will take place on the floor of the house. As such, a large number of amendments are undoubtedly on the way – from Labour, the SNP, the Liberal Democrats and maybe even Tory rebels. The SNP has already said it has 50 amendments “ready to go”. These committee stages are usually hectic, with very large groups of amendments being debated at the same time.

The Commons may well give the government a tough time here. It could try to force either changes to the bill or concessions for the negotiation to come. It might, for example, demand that parliament should be both briefed and involved in the Article 50 process post-notification. But that all depends on whether or not MPs can carefully weave this into their amendments to the bill so that they are selected for debate.”

Once the Bill has cleared the House of Commons, it then goes to the House of Lords for further consideration. According to the UK in a Changing Europe team, this is where the Bill could face real challenges:

“The more daunting challenge is the House of Lords. The government can dominate the House of Commons but it doesn't have a majority in the upper

house. That means it has no control over the timetable for the consideration of the bill, so peers could make the debate last much longer than the government would like, potentially going well beyond the March deadline. It is here more than ever that the government may have to make a judgement on avoiding getting bogged down in debate versus making concessions to MPs or peers that might come back to haunt ministers further in the process of negotiation.”

Finally, the blog suggests that the real challenge for the Government might be in the scrutiny of the process of negotiation following the triggering of Article 50. As a result:

“the tight wording of the Article 50 bill is intended to stymie any efforts to add in amendments to the effect that parliament should have a full and continuing role in Brexit negotiations.”

Joint Ministerial Committee meeting in Cardiff

On 30 January, the Prime Minister convened her second meeting of the Joint Ministerial Committee (JMC) in Cardiff. The JMC, chaired by the Prime Minister, brings together the leaders of the devolved administrations of Scotland, Wales and Northern Ireland.

The meeting was attended by the Prime Minister, together with the Secretary of State for Exiting the EU, the Secretary of State for International Trade, the Secretaries of State for Scotland, Wales and Northern Ireland and the Minister for the Cabinet Office. The devolved administrations were represented by the First Ministers of Scotland, Wales and Northern Ireland along with the Scottish Government’s Minister for UK Negotiations on Scotland’s Place in Europe, Mike Russell; the Welsh Government’s Cabinet Secretary for Finance and Local Government, Mark Drakeford and the Northern Ireland Executive’s Minister for Health Michelle O’Neill.

Discussions centred on the UK’s departure from the EU along with trade and investment opportunities for business and relations between the four administrations.

Following the meeting, a [communiqué](#) was issued providing details on the content of the meeting. In relation to the UK’s departure from the EU, the communiqué stated:

“The Prime Minister provided an update on the objectives for the UK’s exit from the EU. The Secretary of State for Exiting the EU provided a progress update and overview of discussions to the Plenary, on the work of the Joint Ministerial Committee EU Negotiations (JMC(EN)).

Consideration of the proposals of the devolved administrations is an ongoing process. Work will need to be intensified ahead of triggering Article 50 and continued at the same pace thereafter.”

Following the JMC meeting, a bilateral meeting was held between the Prime Minister and the Scottish First Minister Nicola Sturgeon. Subsequently, the Scottish Government issued a [press release](#) in which the First Minister stated:

“I came here today prepared to go the extra mile and try to square the circle between the votes of people in Scotland to remain in the EU and the decision of the rest of the UK to leave.

“It is clear to me that all governments need to identify common ground, however it is also clear that so far it is only the Scottish Government – not the UK Government – that has made any effort at a compromise or to secure an agreement.

“I welcome the Prime Minister’s commitment today to intensify joint work on the Scottish Government’s proposals to protect our place in Europe. However time is running out for the UK Government to step up if she is to be true to her word and we are to have any prospect of reaching the UK-wide agreement the Prime Minister committed to in July.

“It is also increasingly clear that Brexit must result in a fundamental reconsideration of where power lies in the UK. It will not be sufficient to simply give back to Scotland the powers that are already ours, we must see a clear indication from the UK Government that there will be a major transfer of powers to the Scottish Parliament once the UK leaves the EU.

“The UK Government must now show they are prepared to do more than just listen to the devolved governments and demonstrate how they will incorporate our positions – and represent our interests – in their plan to reach a UK-wide agreement.

“Time is now fast running out for the UK Government to show how it intends to respect Scotland’s interests. But if it becomes clear that we are headed off the cliff edge of a hard Brexit, and without the ability to avert that economically disastrous outcome, then the Prime Minister should be in no doubt that we intend to give the people of Scotland a choice over their future and on what kind of country we want to be.”

Scottish Government Ministers meet with Secretary of State for Scotland

On 26 January, the Scottish Government’s Finance Secretary Derek Mackay and Minister for UK Negotiations on Scotland’s Place in Europe, Michael Russell met with the Secretary of State for Scotland David Mundell to discuss the Scottish Government’s proposals for Scotland’s place in Europe. According to the Scottish Government [press release](#) issued after the meeting, Michael Russell was quoted as saying:

“This meeting was at the request of the UK Government.

“The Scottish Government, in its detailed, compromise proposals, has set out clearly how Scotland can stay in the European single market and which powers should come to Holyrood if the UK leaves the EU.

“Given this meeting was requested by the Scotland Office I was disappointed that they appear to have given no thought to these proposals, and made no offer on powers: despite asking for the meeting to discuss that very subject.

“There was no offer, no guarantee even that current devolved powers, presently exercised through EU membership, will be coming back to Scotland. There should be no UK Government power grab.

“Time is running out for the UK Government to show it is serious about engaging with the Scottish Government’s compromise proposals to protect Scotland from the disaster of a hard Brexit.”

Cabinet Secretary at the European Parliament

On 30 January, the Scottish Government’s Cabinet Secretary for External Affairs gave evidence to the European Parliament’s Constitutional Affairs Committee about the Scottish Government’s proposals contained in Scotland’s place in Europe. The Cabinet Secretary appeared alongside the Chief Minister of Gibraltar Fabian Picardo and the session concentrated on the legal challenges stemming from Brexit for the UK devolved territories and overseas territories.

Following the Cabinet Secretary’s appearance, the Scottish Government published a [press release](#) in which it said Fiona Hyslop had “urged the European Parliament to stand up for its citizens and challenge whether Brexit negotiations respect the rights of citizens in all parts of the UK”. According to the press release, Fiona Hyslop told the Committee:

“While the UK as a whole voted to leave the European Union, the people of Scotland voted categorically to remain within it.

“We believe that finding a way to continue Scotland’s membership of the European single market, including the four freedoms, is central to the health of our economy and our prosperity as a nation.

“I accept that Article 50 negotiations will be between the UK and the EU and that’s why we are committed to working positively and creatively with the UK Government.

“We know the UK Government will need to be flexible when dealing with the border and free movement issues posed by Northern Ireland, and it looks like it will seek a differentiated approach for particular sectors. So I see no good reason why flexibility shouldn’t also apply to Scotland when there is a very clear democratic mandate to protect the interests of the people of Scotland within the EU, and within the UK.

“And we also believe that the European Parliament - which represents the voice of EU citizens - has the right to challenge whether the Article 50 negotiations respect the rights of citizens in all parts of the UK.

“It is therefore essential that differentiation is a key part of the Article 50 process – at the outset, during the negotiations and as the future relationship with the EU develops.

“The bonds of friendship between Scotland and other countries in Europe are as deep, strong and mutually beneficial today as at any time in our shared history.

“As a nation which voted overwhelmingly to remain within the European Union we seek your solidarity and support.”

House of Lords European Union Committee in Edinburgh

On 1 February, the House of Lords European Union Committee will hold a meeting in Edinburgh to [take evidence](#) for its newly announced [Brexit devolution inquiry](#). The Committee will hear evidence from:

8.15am

Professor Adam Tomkins MSP, Scottish Conservative and Unionist Party

9.30am

Professor Christina Boswell, University of Edinburgh, Professor Graeme Roy, University of Strathclyde, Dr Tobias Lock, University of Edinburgh

11.00am

Professor Nicola McEwan, University of Edinburgh, Professor Jim Gallagher, University of Glasgow and Nuffield College Oxford and Professor Alan Page, University of Dundee

1.15pm

Michael Russell MSP, Minister for UK negotiations on Scotland's place in Europe, Scottish Government

3.30pm

Scott Walker, CEO, NFU Scotland, Councillor David O'Neill, President, Convention of Scottish Local Authorities, Josh Hardie, Deputy Director-General for policy and campaigns, CBI and Professor Anton Muscatelli, Principal, University of Glasgow.

The Committee will publish transcripts from the meeting at there will be no webcast available.

UK and EU Report: Four Economic Tests for Brexit

On 30 January, the UK in a Changing Europe published a report outlining four economic tests for Brexit. [A successful Brexit: Four economic tests](#) outlines a framework for judging whether Brexit has been successful.

According to the [announcement](#) of the report's publication, it involves looking beyond the process by which Brexit will be achieved to instead look at the effect of Brexit. As a result, academics at the UK in a Changing Europe have devised a set of four tests to evaluate the impact of Brexit.

The starting point for the paper is that both Leave and Remain camps agreed on three common issues:

- Britain should remain an open, outward-looking country
- Both economic growth and social cohesion are important
- Britain should preserve – or reassert – control over its economic destiny.

As a result the academics propose four tests to judge Brexit. These are:

- The economy and public finances: A successful Brexit will make the country more prosperous overall and will improve our ability to finance our public services
- Fairness: A successful Brexit will be one that helps those who have done worst and promotes opportunity and social mobility for all across the UK, but particularly for the most disadvantaged
- Will Brexit preserve and extend the UK's openness as an economy?: A successful Brexit will be one that maintains and enhances the UK's position as an open economy and society.
- Will Brexit enhance democratic control?: A successful Brexit will be one that genuinely increases citizens' control over their own lives.

The UK's future trade policy

The London School of Economics has published a number of blogs over the last week examining the UK's future trade policy options.

Dr Matthew L. Bishop an Associate Fellow at Sheffield Political Economy Research Institute & Senior Lecturer in International Politics, University of Sheffield [examines](#) the changing face of modern trade with a greater focus on the removal of non-tariff barriers rather than tariffs themselves.

Ruth Lea CBE, an Economic Adviser at the Arbuthnot Banking Group argues that post-[Brexit Britain can thrive under WTO rules](#) in the event a free trade agreement with the EU cannot be reached.

Dr Gordon Bannerman asks whether [Liam Fox's 'free-trading nation' of the past a model for post-Brexit Britain?](#) Dr Bannerman suggests that Britain wasn't as pro-free trade in the past as has been suggested and argues that changing events such as the election of Donald Trump present new challenges to the post-Brexit trade landscape.

The Prime Minister's negotiation position

Writing for the Centre for European Reform, Charles Grant its director outlines the [negotiating challenge](#) facing the Prime Minister when it comes to agreeing a post Brexit deal with the EU's 27 member states.

Charles Grant suggests that the Prime Minister:

“wants a hard Brexit: freed of the EU's rules on free movement and the jurisdiction of its Court of Justice, Britain will leave the single market. And it will pull out of the essentials of the customs union, which means the return of customs posts to the EU-UK border (including the border between Northern Ireland and the Republic), to check for things like rules of origin. She wants "a bold and ambitious free trade agreement" (FTA) to govern the future economic relationship.

The prime minister doesn't want the very hard Brexit favoured by some eurosceptics, according to which the UK would leave the EU and simply rely on World Trade Organisation (WTO) rules. Nevertheless some key officials in Brussels and other capitals fear that Britain may face a much harder Brexit than the version she sketched out: either exiting to WTO rules, or perhaps even falling out of the EU without any Article 50 agreement, leading to legal chaos for companies and individuals.”

Grant suggests that the Prime Minister may be pushed into a harder Brexit than she would like for domestic political reasons, though he argues this needn't be the case, whilst, the UK's current European partners believe the UK Government thinks it has a stronger negotiating hand than is actually the case.

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