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# BREXIT UPDATE

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**SPICe**

**The Information Centre**  
An t-Ionad Fiosrachaidh

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## CONTEXT

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This SPICe Brexit Update covers the period:

- from 17 October 2019 when a revised Withdrawal Agreement was agreed by the UK and EU negotiators;
- to 28 October 2019 when the European Council agreed to an extension of the Article 50 withdrawal process to 31 January 2020.

SPICe Briefing [SB 19-64 The European Union \(Withdrawal Agreement\) Bill - Implications for Scotland](#) and [SB 19-65 Brexit events timeline: Scottish Parliament engagement and scrutiny](#) was also published today.

## DEAL AGREED AT NEGOTIATORS-LEVEL

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In scheduled tweets on the morning of 17 October 2019, the Prime Minister and European Commission President announced that the UK and EU had reached agreement on a revised Withdrawal Agreement and Political Declaration.

### What has changed in the Withdrawal Agreement?

Much of the [Withdrawal Agreement](#) remains exactly as before. The provisions on safeguarding EU citizen's rights in the UK; financial settlement; transition period; judicial and police cooperation and governance arrangements all remain unchanged.

All revisions (apart from two minor technical amendments) are confined to the Protocol on Ireland/Northern Ireland.

- The previous Protocol allowed for the future relationship between Northern Ireland and the EU to be negotiated during the implementation period, while including a “backstop” such that, if future arrangements were not in place by the end of the implementation period, then a set of pre-agreed provisions would be enacted. These provisions included the creation of a single EU-UK customs territory and level playing field commitments designed to ensure that the regulatory environments in the UK and EU custom territories are similar.
- The revised Withdrawal Agreement “removes the backstop” in the sense that it creates substantive arrangements (to come into force at the end of the implementation period) for trade in goods between Northern Ireland and the EU which will be in place provided consent is given by the Northern Ireland Assembly. Under these revised arrangements, Northern Ireland is legally part of the UK's customs territory but, in order to facilitate an open border on the island of Ireland, there will be customs and regulatory checks on goods crossing the Irish Sea (from Great Britain to Northern Ireland) and EU customs duties will apply to goods entering Northern Ireland from Great Britain or from outside the EU where there is a risk those goods may subsequently enter the Single Market. The level playing field commitments as they applied to the whole of the UK have been removed and are now referenced in the Political Declaration.

A SPICe blog on [The revised deal on the UK's withdrawal from the EU](#) is available.

## What has changed in the Political Declaration?

The new [Political Declaration](#) envisages a “looser” economic relationship. The Political Declaration (PD) is not legally binding. However, it is intended to provide a framework for UK-EU negotiations on a future relationship.

The aim of creating a free trade area has been replaced with the ambition of creating a Free Trade Agreement.

- References to close UK alignment with EU rules and to a trading relationship that is “as close as possible” are removed.
- References to building on a UK-EU single customs territory have been removed (reflecting the changes to the Withdrawal Agreement).
- The section on level playing field has been amended to reflect the fact that there are no longer level playing field provisions within the Withdrawal Agreement.
- The Security Partnership section has been amended to remove reference to the role of the Court of Justice of the European Union (CJEU) in the interpretation of Union law.
- The institutional arrangements section has been amended to remove reference to the dispute resolution mechanism based on that agreed in the previous Withdrawal Agreement.

Formal negotiations are intended to start after the UK leaves the EU and the UK Government’s policy is to conclude a Free Trade Agreement with the EU before the end of 2020.

SPICe Briefing [SB 19-64 The European Union \(Withdrawal Agreement\) Bill - Implications for Scotland](#) has:

- further information on [what has changed in the Political Declaration](#); and
- a discussion on [what an FTA means for trade in goods and services](#).

## EUROPEAN COUNCIL ENDORSES THE DEAL

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On 17 October 2019, the European Council met in EU27 format (i.e. without the UK) and agreed to support both the Withdrawal Agreement and Political Declaration. The [formal conclusions](#) stated that the European Council:

- **endorsed** the revised Withdrawal Agreement, and invited the other institutions in the EU with a role in the ratification process to “take the necessary steps to ensure that the agreement can enter into force on 1st November 2019, so as to provide for an orderly withdrawal”.
- **approved** the revised Political Declaration, and restated the EU's “determination to have as close as possible a partnership with the United Kingdom in the future in line with the Political Declaration”.

## COMMONS SITTING OF SATURDAY 19 OCTOBER

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On Saturday 19 October, at a special sitting of the UK Parliament the Prime Minister gave a [statement and answered questions](#) on the Withdrawal Agreement and Political Declaration.

A UK Government motion to approve the Withdrawal Agreement, Political Declaration and Unilateral Declaration on Consent was then [debated](#).

The vote on this motion was intended by the UK Government to fulfil the “meaningful vote” requirements created by the European Union (Withdrawal) Act 2018 and required before ratification of the Withdrawal Agreement.

The House of Commons however [supported an amendment to the motion](#) in the name of Oliver Letwin MP stating that “*this House... withholds approval unless and until implementing legislation is passed*”.

## EXTENSION REQUEST LETTERS SENT

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In order to comply with the terms of the European Union (Withdrawal) (No.2) Act 2019 (known as the “Benn Act”), on the evening of 19 October the UK Government sent the Council of the European Union a [letter requesting an extension](#) to the Article 50 process to 31 January 2020.

At the same time, the Prime Minister also [wrote](#) to President of the European Council, Donald Tusk stating:

“While it is open to the European Council to accede to the request mandated by Parliament or to offer an alternative extension period...my view, and the Government’s position, [is] that a further extension would damage the interests of the UK and our EU partners, and the relationship between us. We must bring this process to a conclusion...”

Tusk acknowledged receipt of the UK’s “extension request”:



Donald Tusk   
@eucopresident



The extension request has just arrived. I will now start consulting EU leaders on how to react. [#Brexit](#)

10:00 PM · Oct 19, 2019 · [Twitter for iPhone](#)

## LEGISLATION TO IMPLEMENT THE DEAL

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### Implementing legislation published

In the evening of 21 October, the UK Government published the [European Union \(Withdrawal Agreement\) Bill 2019-20](#). The Bill is designed to give the Withdrawal Agreement domestic legal effect in the UK. It does this by:

- allowing for EU law to apply during an implementation period [Part 1].
- giving the Withdrawal Agreement (other than the implementation period provisions) direct effect and supremacy in UK law [Part 2].

Much of the rest of the Bill proposes how the directly-applicable provisions of the Withdrawal Agreement (and EEA EFTA and UK-Swiss Citizen's Rights agreements) are implemented. Finally, the Bill proposes changes to the ratification process, parliamentary oversight of the future relationship negotiations and arrangements on workers rights.

A full SPICe Briefing is available on [The European Union \(Withdrawal Agreement\) Bill - Implications for Scotland](#).

### Progress of legislation

The UK Government initially proposed to complete the Commons stages of the Bill in three days – 22-24 October.

On 22 October, the House of Commons [supported the Bill at Second Reading](#) (Ayes:329 Noes:299) but voted to [reject the UK Government's proposed timetable](#) for the passage of the Bill (Ayes:308 Noes:322).

As a result, at the time of writing the Bill is paused.

### Devolved Administrations' request for further time

The Scottish and Welsh First Ministers wrote a joint letter to the Prime Minister to demand more time to scrutinise the Bill. The [joint letter stated](#):

*As you are no doubt aware, the United Kingdom government is required to seek legislative consent from both of our legislatures for the Withdrawal Agreement Bill.*

*This Bill will be among the most important piece of legislation ever considered by the UK Parliament, the Scottish Parliament and National Assembly for Wales with far-reaching implications for the whole of the United Kingdom and our future well-being.*

*Both our governments believe the deal you have negotiated with the EU will be even more damaging to Wales, Scotland and the United Kingdom than the previous unacceptable agreement made by your predecessor.*

*We therefore wish to state in the clearest possible terms that we and our legislatures need time to analyse and consider the draft Bill. We share the view which lay behind the amendment passed by a clear majority of the House of Commons that the time between now and 31 October provides insufficient opportunity to undertake this essential scrutiny.*

*It is essential that your government respects devolution, the legislative consent process and any decisions on consent that the Scottish Parliament and National Assembly may reach. In this context, we note that you have now sought an extension of the Article 50 period, in line with the requirements of the EU (Withdrawal) (No. 2) Act 2019 (the “Benn Act”). We now urge you to comply fully and in good faith with that Act and secure such an extension from the EU to enable all three legislatures to carry out their proper constitutional and democratic functions.*

The First Ministers [also wrote to the President of the European Council](#) informing him of the requirement on the UK Government to secure the consent of the Scottish and Welsh legislatures. The First Ministers also expressed their support for an extension long enough to enable a referendum to be held - with the option of remaining in the European Union on the ballot paper.

### Scottish Government's Legislative Consent Memorandum

On 22 October the Scottish Government responded to the publication of the European Union (Withdrawal Agreement) Bill 2019-20 with a [Legislative Consent Memorandum](#) stating that:

- “ The Scottish Government recommends that the Scottish Parliament should not consent to any part of the Bill, and should indicate its opposition to the UK's withdrawal from the EU and to the Withdrawal Agreement. The Scottish Government does not therefore intend to lodge a legislative consent motion in relation to the Bill.

Setting out its reasons for refusing consent, the Scottish Government highlighted that it continues to believe that remaining in the EU would be best for Scotland and the UK as a whole and that:

- “ The changes to the revised Withdrawal Agreement and Political Declaration are, in the Scottish Government's view, even more detrimental to Scotland's future than the previously negotiated withdrawal agreement. The arrangements made in the Withdrawal Agreement place Scotland at a competitive disadvantage, and result in Scotland alone not having its democratic views respected and honoured.

The Scottish Government reiterated its view that, in light of the UK Government's decision to legislate in the European Union (Withdrawal) Act for matters within or affecting the responsibilities of the Scottish Parliament despite consent being refused, the Scottish Government should not seek consent of the Scottish Parliament:

” to UK legislation related to withdrawal from the EU, except in exceptional circumstances unless the UK Government has indicated it will respect the views of the Scottish Parliament.

The Scottish Government notes that it has not received such an assurance in relation to this Bill.

The Explanatory Notes for the Withdrawal Agreement Bill include an assessment by the UK Government of the requirement for legislative consent from the devolved legislatures. In its Legislative Consent Memorandum, the Scottish Government set out that it agrees legislative consent is required in the areas identified by the UK Government, but also added a number of other clauses which it believes require legislative consent. Full details of these are available in SPICe Briefing [SB 19-64 The European Union \(Withdrawal Agreement\) Bill - Implications for Scotland](#).

## EXTENSION REQUEST AGREED

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On 28 October 2019, the European Council agreed to a further extension of the Article 50 process to 31 January 2020.

European Council President, Donal Tusk [tweeted](#):



Donald Tusk   
@eucopresident

The EU27 has agreed that it will accept the UK's request for a #Brexit flexextension until 31 January 2020. The decision is expected to be formalised through a written procedure.

9:23 AM · Oct 28, 2019 · [Twitter for iPad](#)

## NO-DEAL PREPARATIONS

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UK Government update – 21 October

On 21 October, the Chancellor of the Duchy of Lancaster, Michael Gove MP [provided an update](#) to the House of Commons on the UK Government's no deal preparations.

” We will now accelerate our efforts to help businesses and individuals mitigate any dislocation and disruption that may ensue. From today, the XO Committee will meet seven days a week to provide strong ministerial focus across the Government. Hundreds of public servants across the UK will have to be redeployed. They will transfer to work in operations centres, ready to identify challenges, work together to resolve problems swiftly and implement contingency plans as required. Government, local resilience bodies and operational partners will be working together, ready to respond 24 hours a day according to need. We are also finalising the latest update of our reasonable worst-case planning assumptions and will share them with the House shortly.



Of course, we must maintain our public information campaign, which, from tomorrow, will reflect the renewed urgency of preparation. The advice will help businesses and individuals appreciate what they must do to prepare given the uncertainty that still unfortunately prevails. I again urge everyone to check the information relevant to their situation on gov.uk and also the comprehensive summary of actions to take contained in the Government's "No-Deal Readiness Report" published on 8 October.

As part of the UK's no-deal plans, on 28 October the "Operation Brock" contraflow on the M20 in Kent [was activated](#).

### Scottish Government letters to businesses and EU citizens

On 25 October, the Scottish Government [published a "open letter"](#) from the First Minister to EU citizens living in Scotland. This letter encourages EU citizens to stay in Scotland.

On 28 October, the Scottish Government [published a letter](#) from the Cabinet Secretary for Finance, Economy and Fair Work, Derek Mackay MSP to Scottish businesses. This letter outlines sources of support available from the Scottish Government.

## COMMON FRAMEWORKS

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On 24 October, the UK Government published the [fifth report](#) on the use of the powers in section 12 of, and Schedule 3 to, the European Union (Withdrawal) Act 2018 to temporarily maintain the existing EU law limits on devolved competence.

The report includes:

- reference to the [Common Frameworks Update](#) published on 3 July 2019.
- confirmation that no "freezing" regulations have been brought forward under section 12 of the European Union (Withdrawal) Act.
- reference to revised delivery timelines for the development and implementation of frameworks, agreed by JMC(EN) on 28 June 2019, enabling "all frameworks to be agreed and the majority implemented by the end of 2020".

The report also details progress on the development of common frameworks including "two joint UK Government/devolved administration Project Board meetings, and standalone sessions on:

- Waste (17 July 2019) - The discussion centred on the frameworks interaction with international obligations and trade.
- Nutrition health claims, composition and labelling (30 July 2019) - Officials made final preparations on stakeholder engagement, finalising processes and next steps towards final sign-off.
- Implementation of EU Emissions Trading System (ETS) (14 August 2019 and 3-4 September 2019) - Workshops with officials from the UK Government and devolved administrations to develop the policy, operational structure and governance of the ETS framework.
- Food and Feed Safety and Hygiene (29 August 2019) - Officials continued detailed discussions on the framework.

- Nutrition health claims, composition and labelling (5 September 2019) - The UK Government and devolved administrations conducted an informal stakeholder engagement session to test provisional conclusions made within the frameworks outline.
- Procurement (9 September 2019) - Continued detailed discussions on the draft concordat, with a focus on the interaction with international obligations.
- Internal market (10 September 2019) - The UK government and devolved administrations held a workshop to discuss revised guidance on the internal market.
- Nutrition health claims, composition and labelling (10 September 2019) - The UK Government and devolved administrations conducted a follow up to the informal stakeholder engagement session.”

## FUTURE RELATIONSHIP

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### New European Commission task force appointed

Formal negotiations on the future UK-EU relationship will begin after the UK's exit from the EU.

On 22 October, the European Commission [announced](#) its decision to set up a “Task Force for Relations with the United Kingdom” (UKTF) encompassing the current Article 50 Task Force and the Secretariat-General's ‘Brexit Preparedness’ unit.

Michel Barnier has been appointed as Head of the UKTF.

The European Commission [states](#):

- 🗨️ The Task Force, just like TF50, will coordinate all the Commission's work on all strategic, operational, legal and financial issues related to Brexit. It will be in charge of the finalisation of the Article 50 negotiations, as well as the Commission's ‘no-deal’ preparedness work and the future relationship negotiations with the UK.

...Today's decision takes effect on 16 November 2019 – regardless of developments in the UK – and has been agreed in close coordination between President Juncker and President-elect Ursula von der Leyen.

Iain Thom  
SPICe Research

## About this publication

This regular paper produced by SPICe sets out developments in the UK's negotiations to leave the European Union, the process for which formally begun following the Prime Minister's triggering of Article 50 on 29 March 2017.

The updates provide information on the UK Government's approach to leaving the EU including the domestic legislation necessary to ensure a smooth transition in terms of the UK statute book, along with details of the positions of the Scottish Government and the other Devolved Administrations. The updates also provide information on developments within the EU with regard to the UK's departure. Finally, the updates will provide information on the key issues likely to be at play during the negotiations and in developing the UK's future relationship with the European Union.

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