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SPICe Briefing

Pàipear-ullachaidh SPICe

# Issue 17: EU-UK future relationship negotiations

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Following the UK's departure from the EU, the negotiations to determine the future relationship began on 2 March 2020. Over the course of the negotiations, SPICe will publish briefings outlining the key events, speeches and documents published. This briefing follows the political-level efforts to make progress ahead of the European Council on 10-11 December 2020, outlines the negotiations main disagreements at this stage and the likelihood of no agreement being reached, as described by the UK Government and European Commission.



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# Executive Summary

This is the seventeenth in a series of SPICe briefings covering the negotiations on the future relationship between the EU and the UK.

This briefing:

- Describes the negotiations which took place across the latter weeks of November and into December, before a "pause" from 4 December.
- Follows the political-level efforts of the Prime Minister and the European Commission President to progress the negotiations ahead of the European Council on 10-11 December.
- Outlines the main areas of disagreement in the negotiations and the likelihood of no agreement being reached, as described by the UK Government and European Commission.
- Reports on the European Council on 10-11 December as it relates to the future relationship negotiations.

While both the UK and EU remain in active negotiations, the Prime Minister has described not reaching an agreement as a ["strong possibility"](#) and the European Commission President has reportedly told the European Council no deal is the [more likely scenario](#).

Sunday 13 December 2020 has now been set by both sides as the next point in time when a decision will be taken on whether talks continue or not. At that point, there will be 18 days before the end of the transition period.

# Negotiations

## Negotiations go into December

[Issue 16 of this briefing series](#) summarised the negotiations on the EU-UK future relationship in the period leading up to the European Council on 19 November 2020. While the negotiating teams had reportedly found common ground on 95% of the legal text which could comprise a deal, significant disagreements remained. Issue 16 provided an assessment of the state of play across the three areas of significant disagreement: level playing field issues, governance and fisheries.

The negotiations have continued and face-to-face meetings between the negotiating teams restarted on 28 November (after the Michael Barnier's team finished a period of self-isolation due to COVID-19). Ahead of these meetings, David Frost, the [UK's Chief Negotiator tweeted](#):

“ I look forward to welcoming @michelbarnier and his team to London and to resuming face-to-face talks tomorrow. We are glad all are safe and well.”

“ Some people are asking me why we are still talking. My answer is that it's my job to do my utmost to see if the conditions for a deal exist. It is late, but a deal is still possible, and I will continue to talk until it's clear that it isn't.”

“ But for a deal to be possible it must fully respect UK sovereignty. That is not just a word - it has practical consequences. That includes: controlling our borders; deciding ourselves on a robust and principled subsidy control system; and controlling our fishing waters.”

“ We look to reach an agreement on this basis, allowing the new beginning to our relationship with the EU which, for our part, we have always wanted. We will continue to work hard to get it – because an agreement on any other basis is not possible.”

Negotiations continued into December.

## No agreement as yet

On the evening of Friday 4 December, [David Frost and Michel Barnier issued a joint statement](#). This statement concluded that the "conditions for an agreement" had not been met and that talks at negotiator-level should pause:

After one week of intense negotiations in London, the two Chief negotiators agreed today that the conditions for an agreement are not met, due to significant divergences on level playing field, governance and fisheries.

On this basis, they agreed to pause the talks in order to brief our Principals on the state of play of the negotiations. President von der Leyen and Prime Minister Johnson will discuss the state of play tomorrow afternoon.

RTÉ's Europe Editor Tony Connelly provided an [analysis of the key sticking points as regards the governance of the level playing field](#):

“ What held up progress on Thursday was state aid and the level playing field, the key battlegrounds of sovereignty versus constraint.”

“ Having dropped a demand that the UK agree to dynamic alignment with EU state aid rules, Brussels is holding out for a set of principles, underpinned by rules and safeguards, and an independent UK regulator, that if an EU (or UK) business feels they are facing unfair competition due to their rivals on the other side being subsidised, or due to the UK diverging from agreed labour, environment, taxation standards, then action can be taken.”

“ Brussels also dropped a demand for an *ex ante* provision, meaning that the UK would need prior approval from its own independent authority before subsidising a company. France and others instead have pushed hard to for a "direct effect" provision, meaning that an aggrieved EU company could take action through the UK courts.”

“ At the very least, the EU wants the ability to retaliate by, for example, imposing tariffs or restrictions in its choosing, while arbitration gets under way.”

RTÉ's Europe Editor Tony Connelly also [summarised the negotiations on fisheries](#):

“ Negotiators are currently locked in talks over the amount of access EU boats will have to UK waters after Brexit, and how much fish quota they will be able to catch.”

“ Quota is generally divided into demersal, or seabed, species such as white fish and prawn, and pelagic species like mackerel, whiting and Atlanto-scandian herring (ASH), which swim near the surface.”

“ It has emerged that the UK wants to strip the pelagic element, said to be worth some 80% of the value of fish caught by European fleets in UK waters, out of the treaty. It wants to have it dealt with through an informal fish management forum under the auspices of the North East Atlantic Fisheries Commission (NEAFC). In the meantime, demersal stocks would be handled through the bilateral EU-UK free trade agreement.”

“ EU officials have expressed alarm at the suggestion. They argue that the NEAFC forum is informal and not legally binding, and that it will lead to the overfishing of stocks such as mackerel, since its members historically breach quota limits.”

# Johnson - von der Leyen discussions

In an effort to resolve disagreements at a political level, the Prime Minister and European Commission President held phone discussions on [Saturday 5 December](#) and [Monday 7 December](#) with a further day of negotiations in between.

No political breakthrough was made and the familiar areas of divergence remained. The joint statement on 7 December concluded that:

“ the conditions for finalising an agreement are not there due to the remaining significant differences on three critical issues: level playing field, governance and fisheries.”

However, a further physical meeting between the Prime Minister and European Commission President was arranged for Wednesday 9 December:

“ We asked our Chief Negotiators and their teams to prepare an overview of the remaining differences to be discussed in a physical meeting in Brussels in the coming days.”

# Prime Minister's statements at PMQs, 9 December 2020

Ahead of the meeting between the Prime Minister and European Commission President, the Prime Minister said in response to a question at Prime Minister's Questions:

“...a good deal is still there to be done, and I look forward to discussing it with Commissioner von der Leyen tonight, but I must tell the House that our friends in the EU are currently insisting that, if they pass a new law in the future with which we in this country do not comply or do not follow suit, they should have the automatic right to punish us and to retaliate. Secondly, they are saying that the UK should be the only country in the world not to have sovereign control over its fishing waters. I do not believe that those are terms that any Prime Minister of this country should accept.”

In this statement, the Prime Minister describes a specific disagreement between the UK and EU over the level playing field. This disagreement relates to the the nature of any so-called ratchet clauses and governance of them, in particular the ability to take retaliatory action in the event of any future divergences (as described in [Issue 16 - State of Play](#)).

This statement by the Prime Minister has been interpreted as the UK Government publicly setting out the changes it wishes to agree in the final stages of the negotiations. Analysing the Prime Minister's statement, the [BBC's Economic Editor, Faisal Islam](#) writes "the PM's carefully scripted prepared words at the beginning of PMQs hint at the problem and the solution". Islam expands on this idea, writing:

“...let's return to the PM's words: "If they pass a new law in the future." That sounds rather like setting your own bar for a negotiating win. It is rather easily dealt with, by adopting the original form of the [ratchet] clause where both sides have to agree to raise the baseline in standards.”

“ So there is very legitimate debate about whether the UK would want to be constrained in this way. But to be clear, both the UK and the EU would have the sovereign right to diverge from the current baseline of standards and from mutually agreed higher standards. It's just that the divergence (and each side would have to show that the divergence distorted trade) could then see a proportionate retaliation, in terms of trade tariffs and taxes.”

“ The problem is plausible, but also a hypothetical, about which it is difficult to conjure concrete examples. It is about the risk of future retaliatory tariffs. The question for both sides is whether seeking to avoid the future possibility of such action justifies guaranteed widespread tariffs in 22 days' time.”

“ "Ratcheting" up the pressure on this could yet have created the space for a deal.”

Germany holds the [Council of the EU's rotating presidency](#) until the end of the year. Addressing the Bundestag on 9 December ahead of the European Council meeting on 10-11 December, the Chancellor of Germany, Angela Merkel is [reported to have also pointed to the ratchet clauses as the blue difficult issue](#):

“ We currently more or less have the same legal system, a harmonised legal system, but over the years the legal systems will diverge regarding environment law, labour law, health legislation, everywhere. And how will the respective other side react to this, when the legal situation either in the European Union or in Great Britain will change? And we can't just say we won't talk about this, but we not only need a level playing field for today but also for days to come. For this we need to find agreements about how each side can react when the other changes their legal situation. Otherwise there will be unfair competition conditions, which we can't do to our companies. This is the big, difficult issue which is still on the table, next to questions about fishing quotas and similar things. But this issue of fair competition between two diverging legal systems – this is the actual big issue for which we need satisfying solutions.”

# Johnson - von der Leyen meeting, 9 December

Following his [statements in the House of Commons on Wednesday 9 December](#), the Prime Minister flew to Brussels for the meeting with the European Commission President that was agreed the previous weekend.

No breakthrough was made.

In a [media interview following the meeting](#), the Prime Minister said:

“ There’s now the strong possibility we will have a solution that’s much more like an Australian relationship with the EU than a Canadian relationship with the EU. That doesn’t mean it’s a bad thing. There are plenty of ways that we can turn that to the advantage of both sides in the conversation. There are plenty of opportunities for the UK.”

“ But yes, now it the time for the public and businesses to get ready for January 1st. Because believe me there will be changes either way... we certainly now need to make proper preparations for that Australian solution... I have to tell you in all candour, the treaty is not there yet. And that was the strong view of our Cabinet as well.”

The Prime Minister's reference to "an Australian relationship with the EU" means essentially trading on World Trade Organisation (WTO) terms. An Australia deal is discussed in more detail in this [UK in a Changing Europe explainer](#).

The Prime Minister went on to cite the "most important" block to a deal as "equivalence between the UK and the EU", explaining:

“ Which basically means that whatever new laws [the EU] brought in, we would have to follow. Or else face punishments, sanctions, tariffs.... Clearly that is not a sensible way to proceed. It is unlike any other free trade deal. Its a way of keeping the UK locking in the EU's regulatory orbit.”

This is the same issue as [cited by the Prime Minister at PMQs the previous day](#).

Despite the failure to make any progress, the meeting between the Prime Minister and European Commission President did lead to agreement to continue negotiations.

Sunday 13 December 2020 was set as the latest deadline for a "firm decision... about the future of the talks". This deadline is not set in law.

The [UK Government's readout](#) said:

The Prime Minister and President von der Leyen met for dinner in Brussels this evening.

The leaders had a frank discussion about the state of play in the negotiations. They acknowledged that the situation remained very difficult and there were still major differences between the two sides.

They agreed that Chief Negotiators would continue talks over the next few days and that a firm decision should be taken about the future of the talks by Sunday.

The Prime Minister is determined not to leave any route to a fair deal untested, but any agreement must respect the independence and sovereignty of the UK.

The [European Commission's readout](#) said:

We had a lively and interesting discussion on the state of play across the list of outstanding issues.

We gained a clear understanding of each other's positions. They remain far apart.

We agreed that the teams should immediately reconvene to try to resolve these essential issues.

We will come to a decision by the end of the weekend.

# European Council, 10-11 December 2020

Without a draft EU-UK future relationship treaty, the European Council on 10-11 December 2020, did not formally discuss the issue and no reference was made to the issue in the [meeting's conclusions](#). The meeting's ["invitation letter" which describes the agenda](#) said:

“ When it comes to relations with the UK, negotiations are on-going based on our common mandate. It is not the intention to plan a discussion on the matter. The President of the Commission will debrief us on the state of play.”

The meeting continued throughout the night on 10 December focussed on other issues. Media reports suggest that the EU-UK negotiations were covered only briefly, with the European Commission President stating that no deal was the more likely option. [Bloomberg reported on 11 December](#):

“ The meeting of the EU’s 27 government chiefs in Brussels went through the night as they tussled over tough new climate targets. Leaders, including those crucial to the U.K. talks, like German Chancellor Angela Merkel and French President Emmanuel Macron, were scheduled to be briefed on the EU’s future relationship with the U.K. over dinner but it ended up only happening for less that 10 minutes at 8:30 a.m., after a gruelling night.”

“ European Commission President Ursula von der Leyen, who met Johnson on Wednesday, told the summit that no deal was now the more likely option, according to two European officials. She told them that the main obstacles remain.”

The European Commission President also provided a statement on the EU-UK negotiations at the post-summit press conference:

“ I briefed the leaders on the negotiations with the UK. Positions remain apart on fundamental issues.”

“ On the level playing field, we have repeatedly made clear to our UK partners that the principle of fair competition is a precondition to privileged access to the EU market. It is the largest Single Market in the world. And it is only fair that competitors to our own enterprises face the same conditions on our own market. But this is not to say that we would require the UK to follow us every time we decide to raise our level of ambition, for example in the environmental field. They would remain free - sovereign if you wish - to decide what they want to do. We would simply adapt the conditions for access to our market accordingly to the decision of the UK, and this would apply *vice versa*.”

“ On fisheries, here also we continue to have a gap. We have not yet found the solutions to bridge our differences. We understand that the UK aspires to control its waters. The UK must, on the other hand, understand the legitimate expectations of EU fishing fleets built on decades and sometime centuries of access.”

“ On these and other points our negotiators are working. We will decide on Sunday whether we have the conditions for an agreement or not.”

“ In the meantime the Commission has proposed four targeted contingency measures today. They provide a short term fix to provide basic connectivity in air and road transport for 6 months. And we are also proposing to the UK, to ensure reciprocal access to each other's waters for next year.”

“ One way or the other in less than three weeks, it will be new beginnings for old friends.”

The European Council on 10-11 December 2020 was the last scheduled meeting before the end of the transition period. The Negotiators had previously looked to this meeting as the last chance for Member States to sign up to a future relationship agreement. This did not happen, however the deadline has never been set in either EU or UK law. Further European Council meetings can theoretically be arranged ahead of 31 December 2020 should a draft agreement be reached, but time is extremely tight. Any agreement would also require ratification once signed off by the European Council and the UK Government - see [Issue 16 for further details](#).

# Agreement on the Ireland/Northern Ireland Protocol

## Political agreement on implementation

Disagreement between the EU and UK on how to implement the Protocol on Ireland/Northern Ireland has been a potential stumbling block for any future relationship deal. The EU has stated throughout the EU-UK negotiations that it considers the full implementation of the Withdrawal Agreement, and in particular the Protocol on Ireland/Northern Ireland, as critical and linked to any agreement on the EU-UK future relationship.

On 7 December, the co-chairs of the EU-UK Joint Committee held a "political meeting" aimed at finding solutions to the outstanding implementation issues in relation to the Protocol on Ireland/Northern Ireland. This meeting appears to have been successful. The [joint statement issued on 8 December](#) announced "agreement in principle on all issues" and that the UK Government would withdraw controversial clauses from the UK Internal Market Bill.

Describing the areas of agreement, the joint statement said:

“ Following intensive and constructive work over the past weeks by the EU and the UK, the two co-chairs can now announce their agreement in principle on all issues, in particular with regard to the Protocol on Ireland and Northern Ireland.”

“ An agreement in principle has been found in the following areas, amongst others: Border Control Posts/Entry Points specifically for checks on animals, plants and derived products, export declarations, the supply of medicines, the supply of chilled meats, and other food products to supermarkets, and a clarification on the application of State aid under the terms of the Protocol.”

“ The parties have also reached an agreement in principle with respect to the decisions the Joint Committee has to take before 1 January 2021. In particular, this concerns the practical arrangements regarding the EU’s presence in Northern Ireland when UK authorities implement checks and controls under the Protocol, determining criteria for goods to be considered “not at risk” of entering the EU when moving from Great Britain to Northern Ireland, the exemption of agricultural and fish subsidies from State aid rules, the finalisation of the list of chairpersons of the arbitration panel for the dispute settlement mechanism so that the arbitration panel can start operating as of next year, as well as the correction of errors and omissions in Annex 2 of the Protocol.”

Technical work is necessary to implement the political "agreement in principle". A formal meeting of the EU-UK Joint Committee is to be convened before the end of the year to adopt formal texts on these matters. The Chancellor of the Duchy of Lancaster, Michael Gove, described the agreement from the UK Government's perspective in a [statement to the House of Commons on 9 December 2020](#). And on 10 December, the UK Government published further details in a [Command Paper, four draft Decisions for the Joint Council and five draft unilateral declarations](#).

# Clauses to be removed from the UK Internal Market Bill

Following "[agreement in principle on all issues](#)" outstanding on the implementation of the Protocol on Ireland and Northern Ireland, the EU-UK [joint statement issued on 8 December](#) said:

“ In view of these mutually agreed solutions, the UK will withdraw clauses 44, 45 and 47 of the UK Internal Market Bill, and not introduce any similar provisions in the Taxation Bill.”

These clauses have been controversial since the UK Internal Market Bill was published on 9 September 2020 and subject to a formal infringement process by the European Commission (see [Issue 16 for further information](#)). While Part 5 of the Bill - which contained clauses 44 and 45 -was removed by the Lords, this Part was [reinserted by the Commons on 7 December](#).

Writing for UK in a Changing Europe, Colin Murray, Reader in Public Law, Newcastle Law School, discusses [what impact agreement in the Joint Council could have on the future relationship negotiations](#):

“ Does this breakthrough, moreover, make an overall deal more likely? The Internal Market Bill strategy also came with considerable costs in terms of trust in the UK’s commitments.”

“ It remains to be seen if the European Commission will pursue its action over breach of the UK’s good-faith obligations under the Withdrawal Agreement. The removal of this threat at this juncture nonetheless provides for a timely olive branch in the separate negotiations on the UK-EU future relationship.”

“ Even if this was an entirely manufactured crisis, it allows the UK Government to present itself as having made an important concession and Boris Johnson will look to translate this into tangible wins in the ongoing negotiations or the moral high ground of having tried everything if no deal is possible.”

However the [BBC's Laura Kuenssberg](#) also points out that:

“ Here, the government's actions on the Northern Ireland protocol on Tuesday are a hint that they just might be willing to bend a little further.”

“ Equally however, settling the joint protocol makes it easier for the government to minimise disruption if it walks away. So beware wise sages claiming it's definitive proof either way!”

# No deal contingency planning

## Scottish Government statement, 8 December

On 8 December 2020, the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell gave a [statement to the Scottish Parliament on Brexit readiness](#).

The Cabinet Secretary said:

“ The concurrent challenges of dealing with the end of transition, the impacts of Covid-19 and our normal winter pressures mean that our public services, businesses and communities will be stretched in a way that has never been experienced before.”

“ That is now simply a fact, and it is why the Scottish Government is putting in place a comprehensive set of arrangements based on our existing and well-established resilience processes. We will use those arrangements to oversee and manage—as best we can—our response to the concurrent challenges, together with a wide range of partners. Yesterday, the Scottish Government resilience room for those concurrent risks was activated on a seven-day-a-week basis, and the phased stand-up of the national co-ordination centre and a single Scotland-wide multi-agency co-ordination centre was commenced. The MACC is led by Police Scotland as part of the national co-ordination structure and works with national and local partners such as the Scottish Fire and Rescue Service, the Scottish Ambulance Service, the Scottish Environment Protection Agency, the Maritime and Coastguard Agency, local authorities and health boards, as well as through the local resilience partnerships.”

“ All those arrangements will build over the next four weeks and will include ministerial oversight through a winter preparedness group, convened by the Deputy First Minister, which has been meeting for some time. Meetings of a smaller ministerial group will start shortly and will become daily after Christmas. Those arrangements will become a 24-hours-a-day operation in the last week of the month and will remain at that level for as long as required.”

“ The Scottish Government has of course been working with the UK Government to scope and exercise the arrangements and scenarios that exist. Attendance by devolved Administrations at meetings of the UK Government EU exit operations committee is by invitation only, but that occurred three times last week. After a long period in which there was limited sharing of the information needed for us to liaise effectively and to ensure that all our plans were complementary to those of the other Administrations, I am glad to say that that problem appears to have eased. Last week, we secured access to the daily dashboard, and we will be feeding into it.”

“ We should be mindful of the fact that all those in the front line of our public services have been working at full tilt or beyond since the start of the pandemic. What is happening now will put a further strain upon them, which was another good reason for the UK to have accepted the extension of transition that was on offer this summer. I express my concern for all those staff, which I have raised at UK level.”

The Cabinet Secretary then went on to detail areas of activity stating that:

“...the Scottish Government has intensified preparations across the board. We are prioritising substantial work around the key themes of protecting people, protecting imports and exports of essential goods, minimising economic impact and ensuring necessary legislative changes.”

On financial support, the Cabinet Secretary said:

“As ever, it will be those who can afford it least who will be hit hardest. We know that there is a risk that households who are already struggling financially will find life even harder after EU exit, with increasing inequalities and a greater demand on local government and the third sector. That is why the First Minister announced at the end of November a £100 million package of measures to support vulnerable people, communities and the third sector, in order to help those on low incomes, children and people at risk of homelessness or social isolation cope with the economic impacts of Brexit, coronavirus and the winter weather. Work is under way, led by my colleague the Cabinet Secretary for Communities and Local Government, to ensure that the money goes to where it is needed.”

On food supply chains, the Cabinet Secretary said:

“We are aware that the security of international supply chains has never been so important, so we have launched a new £5 million fund to help Scottish wholesale food and drink businesses, many of which have been affected by Covid-19, in order to support food supplies across the country, especially into our hospitals, care homes, schools and prisons. The Cabinet Secretary for the Rural Economy and Tourism is maintaining the effective liaison with the retail sector that he undertook at the start of the first lockdown and had put in place for earlier no-deal preparations. We are particularly sensitive to issues arising at the end of food chains, many of which terminate in rural Scotland, even though they start at the short straits. Food Standards Scotland is a key partner in that activity.”

On medicine supply, the Cabinet Secretary said:

“Working with the other Administrations, we are doing all that we can to make sure that patients get the medicines and other medical supplies that are needed, and to ensure the continuity of those supplies. Additional freight capacity has been contracted in order to ensure that the most critical goods can reach the UK mainland without interruption.”

“Pharmaceutical companies have been building up stocks of medicines to mitigate potential disruption at ports. In addition to those arrangements, and in response to lessons learnt from the first wave of Covid-19, we are building a stockpile of around 60 medicines for critical care in intensive care units and supportive care at end of life, as well as supplies of Covid-19 treatments. We have in place arrangements for managing potential shortages, including the Scottish medicines shortages response group, which is clinically led. We will also be making use of new information technology reporting tools to gather real-time data on medicines stockholding and stock usage in hospitals.”

“ Supply issues in Scotland for medical devices and clinical consumables are being managed by NHS National Services Scotland’s national procurement arm, which is building up stocks of main items at the national distribution centre. Eighty-eight per cent of products are already at the target of six weeks or above, and the remaining items are expected by mid-December.”

“ The Cabinet Secretary for Health and Sport is fully engaged in ensuring that those actions are taking place, even though she is also fully engaged in the response to the pandemic. I pay tribute to her extraordinary commitment and resilience, given the demands on her.”

On EU citizens in Scotland, the Cabinet Secretary said:

“ Scotland benefits enormously from the contributions of EU citizens who work in the health and social care sectors, as well as in other sectors, and to lose them would be disastrous for all of us. EU citizens who are currently resident and working in Scotland have the right to remain, under the withdrawal agreement. We encourage all such EU citizens to apply to the Home Office’s settled status scheme in order to exercise that right.”

On business readiness, the Cabinet Secretary said:

“ We understand that businesses across Scotland have been put under immense strain over the past year, and that many are struggling with the prospect of dealing with the great complexities that EU exit will bring. The Cabinet Secretary for Economy, Fair Work and Culture is therefore implementing a wide range of measures to support businesses across all sectors of the Scottish economy. The building resilience steering group provides strategic leadership and co-ordination across our enterprise agencies to ensure effective delivery of the joint EU exit and Covid-19 response for Scottish businesses.”

“ Our enterprise agencies have developed mechanisms to identify companies that we anticipate will encounter operational and financial challenges as a result of both EU exit and Covid-19, and are proactively contacting 500 such companies to provide targeted advice and guidance. In addition, our multi-agency Prepare for Brexit website, which is hosted by Scottish Enterprise, provides advice, sources of financial support and online self-assessment toolkits. Enterprise agencies are also working jointly with the UK Government on its field force programme, to provide advice to business.”

“ We are working with seafood exporters, Scottish local authorities and logistics companies to provide an export health certificate signing service at a number of existing logistics hubs in central Scotland. In addition to relieving some of the growing Brexit and Covid burden on local authority environmental health departments, that approach, which relies on a risk-based approach to certification, will provide improved access to those certificates for our exporters.”

“ We will continue all that work throughout the end process of the transition period and beyond, but the stark truth is that we simply cannot avert every negative outcome. All sectors of society must now do what they can to prepare, by using the resources and support that we have put in place.”

On legislation, the Cabinet Secretary said:

“ Finally, there will be an increased legislative burden as a result of the current situation. This Parliament will have to be ready to meet that challenge, first in looking at requests for legislative consent motions for any bills that the UK Government finds it necessary to introduce in the coming days. That issue is being considered by the Minister for Parliamentary Business and Veterans, who will consult the Parliamentary Bureau.”

## Contingency measures published by European Commission

On 10 December 2020, the European Commission published details of its contingency measures aimed at continuing transport connectivity and access to fisheries. All proposals are on a reciprocal basis - i.e. on condition that the UK grants similar measures to the EU. The proposals are [summarised by the European Commission](#) below:

The Commission has consistently called on all stakeholders in all sectors to prepare for all possible scenarios on 1 January 2021. While a “no-deal” scenario will cause disruptions in many areas, some sectors would be disproportionately affected due to a lack of appropriate fall-back solutions and because in some sectors, stakeholders cannot themselves take mitigating measures. The Commission is therefore putting forward today four contingency measures to mitigate some of the significant disruptions that will occur on 1 January in case a deal with the UK is not yet in place:

- *Basic air connectivity*: A proposal for a Regulation to ensure the provision of certain air services between the UK and the EU for 6 months, provided the UK ensures the same.
- *Aviation safety*: A proposal for a Regulation ensuring that various safety certificates for products can continue to be used in EU aircraft without disruption, thereby avoiding the grounding of EU aircraft.
- *Basic road connectivity*: A proposal for a Regulation covering basic connectivity with regard to both road freight, and road passenger transport for 6 months, provided the UK assures the same to EU hauliers.
- *Fisheries*: A proposal for a Regulation to create the appropriate legal framework until 31 December 2021, or until a fisheries agreement with the UK has been concluded – whichever date is earlier – for continued reciprocal access by EU and UK vessels to each other's waters after 31 December 2020. In order to guarantee the sustainability of fisheries and in light of the importance of fisheries for the economic livelihood of many communities, it is necessary to facilitate the procedures of authorisation of fishing vessels.

The European Commission, while recognising that national-level contingency measures may be put in place, [states that](#) it:

“ sees no need for any other Union-wide, legislative contingency measures than those proposed today.”

On budget contingencies, the European Commission [states that](#) "Union funding for the 2021-2027 period should clearly take into account the impact of the end of the transition" and that:

“ The Commission will present shortly a proposal for the Brexit Adjustment Reserve (BAR) of 5 billion EUR, in line with the European Council conclusions. The BAR conditions for funding will accommodate both a deal and a no-deal situation. In terms of the regions and sectors most affected, it is already clear that a no-deal scenario poses specific risks to the EU fishing industry. The proposal will reflect this reality.”

# CTEEA Committee report: The Impact of the End of the Transition Period

On 11 December, the Culture, Tourism, Europe and External Affairs Committee published a [report following its scrutiny of the EU-UK future relationship negotiations](#).<sup>i</sup>

The conclusion of the report reads:

The report has focused on the key issues which will impact on key sectors of the Scottish economy in a couple of weeks' time when the UK leaves the regulatory framework of the EU Single Market and Customs Union. The issues highlighted in this report of access to EU markets, the implementation of the Protocol on Ireland / Northern Ireland, the end of freedom of movement and access to EU programmes will have a profound impact on Scottish business in 2021 and beyond.

However, these issues are not new. Indeed, they have been the subject of considerable scrutiny by this Committee over the course of this parliamentary session. The fact that the relationship between the EU and UK, which will take effect in a couple of weeks' time, remains unknown is of serious concern. As a consequence, businesses have no adequate basis on which to plan and prepare for an outcome that remains largely unknown.

The Committee welcomes that measures are being put in place to seek to mitigate any negative consequences that will follow from the end of the transition period. However, at best, these can only ameliorate and not remove the negative economic impacts of Brexit. The Committee strongly supports the demands from across the business community that additional time be built into any agreed outcome to allow for time for businesses to adjust to the post-transition EU-UK trading relationship.

The Committee concludes that there is little prospect of any positive outcomes for the Scottish economy from a no deal Brexit or a hard Brexit with a trade agreement albeit a no deal Brexit is the least desirable outcome. The Committee considers that for the outcome of the negotiations to remain unknown in December 2020 will result in serious disruption to the Scottish and UK economies in the new year.

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<sup>i</sup> Scottish Conservative Members of the Committee dissented from this report.

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