



The Scottish Parliament  
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SPICe Briefing

Pàipear-ullachaidh SPICe

# Issue 9: EU-UK Future Relationship Negotiations

Iain McIver, Iain Thom

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 ninth briefing covers the fourth round of negotiations and related issues.



8 June 2020  
SB 20-40

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# Executive Summary

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

This briefing covers:

- David Frost's first committee evidence sessions in his capacity as the UK's chief negotiator.
- What happened in the fourth round on negotiations, and a look-ahead to the high-level political meeting envisaged for later this month.
- The Scottish Government's position on its involvement in the negotiations.
- Evidence to the Scottish Parliament from David McAllister MEP, Chair of the UK Coordination Group in the European Parliament and Philip Rycroft, Former Permanent Secretary at the Department for Exiting the European Union.
- The Scottish Government's recent economic modelling and its case for an extension to the transition period.
- Updates to the implementation of the Withdrawal Agreement and the Scottish Government's participation in implementing the Ireland/Northern Ireland protocol.
- An update on the development of UK common frameworks.

# Chief negotiator at Commons & Lords committees

David Frost, the UK's chief negotiator and special adviser to the Prime Minister, gave evidence to a UK parliamentary committee for the first time in his current role. Frost appeared alongside the Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office, Michael Gove before the:

- [House of Commons Committee on the Future Relationship with the European Union](#) (27 May) and;
- [House of Lords European Union Committee](#) (28 May).

The evidence session with the Committee on the Future Relationship with the European Union took place following both the third round of negotiations which hadn't seen much progress made and the [exchange of letters between David Frost and Michel Barnier](#). The fact it was David Frost's first appearance in his role at the Committee was reflected in that most of the questions during the evidence session were directed at Mr Frost.

At the beginning of the evidence session, David Frost was asked to set out his role in government and in the negotiations and how it dovetails with the role of Michael Gove:

“ I am a special adviser, appointed by the Prime Minister in the same way as every other special adviser. He has additionally asked me to take on this particular role of being chief negotiator for the future relationship, and I report to him on that. As you know, CDL (Chancellor of the Duchy of Lancaster) is responsible for the other side of this sphere of activity, in terms of the withdrawal agreement and readiness at the end of the transition period. That is my responsibility. To be clear, I advise on the policy within which I work, but the policy is set by the Prime Minister and by the relevant Cabinet committee. I work within the framework that they have set for these negotiations.”

David Frost was then asked about the reasons he wrote the letter to Michel Barnier, he told the Committee that:

“ It was really to mark the moment. Obviously, the letter was coincidental with the publishing of our legal texts, which went online the same day. It had been a long time since we had set out our mandate, which we did on 27 February, and a lot of things had happened since then. There had been two or three rounds of negotiations. We thought it was the right moment to set out and restate what had happened, what we were trying to do in these negotiations and what we saw as the state of play. The point of it was to address a wider audience with the approach we were taking, where we thought the negotiations had got to and what we thought might need to happen next to move them forward...”

David Frost also set out how each negotiating round takes place:

“ We have tried in these virtual meetings to mimic the structure of a real-life round as far as we can. What normally happens is that there is an opening plenary session, where each lead negotiator, of which there are a dozen or so on each side, sets out where they think the negotiations have reached. We then spend two or three days in detailed discussions and, as you will see from the agenda we publish, there are 11 or 12 different workstreams, working roughly in parallel. That goes on for two or three days and then we have a plenary session to wrap up at the end of each round, so those are the formal mechanics.”

“ We have, as you would expect, an internal process before that to establish how we wish to take forward each workstream, what issues are going to be discussed, what ground we wish to cover and then, within the round, at the end of each day we have a reporting system, both on paper and orally, that captures what is going on. I myself do not lead any of the individual workstreams. I simply dip into those workstreams as seems best...”

“ ...During each round he (Michel Barnier) and I will talk to each other from time to time. We have small meetings to take stock and compare notes of what we see as happening. Usually, but not always, we will have a meeting before and after each round to check that we have the same understanding of where we got to. On video that is basically all you can do. It is not as good as going for a coffee with somebody, but it accomplishes the purpose for the stage of the negotiations we are in.”

On the progress in the negotiations David Frost suggested that the process was at an early stage with both sides setting out and explaining their positions. Efforts are now being made to find areas of common grounds and identify areas of divergence.

On the possibility of extending the transition period, David Frost said that was a policy decision taken by Ministers. He confirmed once again that UK government policy is not to extend the transition period adding that:

“ We have always put a lot of emphasis on economic and political freedom at the end of this year and on avoiding ongoing significant payments into the EU budget. Those things are accomplished by ending the transition period at the end of the year, so I work within that and it is my job to get an agreement in the time that is available.”

David Frost was then asked to outline how the UK government agreed its negotiating texts and specifically whether they started with a blank piece of paper or were based on precedent:

“ No, it was not a blank piece of paper. It was based on free trade agreements that the EU has already agreed or is in the process of negotiating with other third countries, so we have drawn extensively from those. Principally, I would say our text is drawn from the Canada free trade agreement. There is language in it drawn from the Japan agreement and in other cases we have drawn on the kind of offer that the EU has made to Australia and New Zealand, so we have not drawn rigidly from any one source. The reason for that is that practice in free trade agreements has evolved quite a lot over the last 10 years. The level of ambition and the level of scope has moved on and each one has, by and large, become a bit more ambitious than its predecessor, and they are all tailored to particular circumstances. ”

“ It would not have been right to just take the Canada one, cross out the word “Canada” and write in “UK”. We have been quite a lot more sophisticated than that, but we have drawn on recognisable free trade precedents in all cases.”

On the development of the fisheries text, David Frost confirmed that quite a lot of it was drawn from the EU-Norway fisheries agreement with the exception of a couple of areas where the UK government was looking to modernise it:

“ It has been modernised in a couple of areas, for example to bring in a forum for consultation on fisheries, which was not in the Norway text. It is certainly quite an old one now, but it is very much drawn from it and recognisably the same kind of agreement.”

Whilst discussing fisheries, David Frost used those specific negotiations to outline an example of what he suggested was an inconsistency in the EU negotiating position:

“ Michel Barnier has to work within the mandate that is given to him by member states and they, in their wisdom, decided that their opening pitch for this should be that, as far as possible, the common fisheries policy should continue after we left, just as it did while we were a member. We find that a bit unusual, because in many other areas they tell us, “Nothing can be the same after you have left the EU”, rightly so. It is different, but fisheries seem to be the one exception to that...”

“ ...If I could just make one other point on that, it is worth noting that every other fisheries agreement the EU has is a free-standing agreement. It is not connected to anything else or part of anything else. Uniquely, the EU said that the fisheries agreement for us must be part of a wider agreement with all the dispute settlement and other process that goes with it. Again, that is not borne out by any of the other precedents they have.”

On the other big sticking point in the negotiations, the requirement for level playing field provisions in the agreement, David Frost said:

“ It is fair to say that we have a fundamental disagreement at the moment on most aspects of the level playing field. There are one or two areas that are slightly less controversial and problematic, but in most of the important areas there is a big gap. He (Michel Barnier) is delivering the mandate he was given. Member states regarded the level playing field as very important. ”

“ To recall, we are not saying that there can be no level playing field provisions. We are simply saying that there must be provisions that are appropriate to a free trade agreement, like those found in the Canada or Japan agreement, and that is what we have put forward, but there is a big gap between those and where the EU is. That will be one of the biggest issues we have to resolve in the next few months...”

“ ...the fundamental issue for us is about setting our own laws. Brexit was about the right of the British people to set their own laws and have those adjudicated in their own courts. That is the point of principle that we bring to this process. As I said, there are some commitments in the Canada agreement and others that we have been willing to make in return for a trade agreement, but they are a long way from where the EU wants to go, so this fundamental disagreement is a line of principle that at the moment seems quite difficult to find a way through.”

State Aid regulations form a significant part of the EU's demands on the level playing field. David Frost outlined why the EU proposal on State Aid is unacceptable to the UK. He said the EU's view is that the UK should continue to apply EU state aid rules at the point at which the UK leaves, and that if there are changes to them subsequently, the UK should apply them as well, and that, if the UK does not do so, the EU would have the right to take measures, i.e. impose tariffs on the UK. David Frost suggested the UK would like a deal on State Aids in line with that contained in the EU-Canada deal:

“ We are looking for something that is much more like the Canada agreement, which is fundamentally based on WTO rules plus a clear requirement to transparency and consultation, so to tell the other side what subsidies you are giving, to give them an opportunity to complain about it and to try to resolve issues through dialogue and discussion, rather than imposing one side's laws on the other. ”

On the question of governance and the differences between the EU wanting one deal and the UK wanting a number of deals, David Frost again suggested the EU was being inconsistent in its approach:

“ Probably what is happening is that it (the EU) is looking at the models of agreements with other countries in the continent of Europe and drawing from those. Those tend to be the countries that either want a close relationship without being members or hope one day to be members and are willing to make commitments that we are not. Its proposal for governance and dispute settlement is one single agreement with a very tough dispute settlement mechanism within it, which would require any issue of EU law to go to the European Court. Obviously, we cannot accept that, because it is not an equal process.”

“ As you know, we have proposed a suite of agreements, many of which are well precedented elsewhere, for civil nuclear, air transport and air safety. All these have their own well-understood dispute settlement mechanisms and governance in many other similar agreements around the world. We are simply drawing on those, which we know work well in other contexts. Although the EU represents its system as simpler because it is one agreement, we think ours is simpler because we are just drawing on models that already exist.”

The following day Michael Gove and David Frost appeared before the House of Lords European Union Committee. David Frost was asked about the timeline of the fourth round of negotiations leading in to the High Level summit later in June and then into negotiations over the summer:

“ We have not yet fixed the high-level meeting. We are talking to the Commission about that. It is still very likely to be in June; I would guess in the last week of June. In an ideal world, you would have a negotiating round next week, have some stocktake at the European Council and then jump off with new impetus from the high-level meeting after that. ”

“ We will have to see whether that is where the EU is. It has a lot on its plate with other negotiations and other issues, and it is not yet clear that it has the focus on this negotiation that will enable us to get to that point...”

“...We are all working on the assumption that there will be further rounds after the European Council and the high-level meeting. I expect there to be one towards the end of June. I am sure there will be at least one more round in July, so negotiations will continue. As the UK, we have to balance two things: our need, on the one hand, to keep talking as long as there is a constructive process happening, which at the moment there is; and our need, at some point, to provide maximum certainty to businesses and economic operators about what will happen at the end of the year.”

David Frost indicated that despite not publishing a negotiating text, the UK government was discussing participation in Horizon 2020 and "three or four other programmes that we are interested in participating in" with the EU. He explained that because these are EU programmes, it made sense to negotiate from the EU's texts. However, David Frost suggested there were some potential difficulties in the negotiation:

“A number of areas remain to be clarified. In particular, the Commission has proposed a mechanism that would mean that in no circumstances could the UK be a net recipient from any of these programmes; it could only be a net contributor. Some provisions about the terms of access, the GDP key and the terms on which either side could exit the programme need to be sorted out. If we can sort these out, we are very much open to participation. The negotiation is pretty constructive, but we are still some way from agreement on it.”

David Frost also told the committee that the UK government was not seeking an agreement which included mutual recognition of standards but rather an agreement which meant "each side's agencies can recognise goods against different standards. A UK agency could say that a good met UK standards and EU standards, so the same good did not have to be policed in different places". He confirmed that at present this arrangement was not on offer from the EU.

David Frost was also asked about the UK government's apparent shift in its negotiating position which means it would consider a trade agreement which would include some tariffs if the EU's level playing field required are relaxed. In response to a question from Lord Kerr of Kinlochard about which areas tariffs might be introduced, David Frost said:

“We have brought this into the discussion, although we prefer the outcome of zero tariffs and quotas. We have committed to that in the political declaration. That is what we are working for. We are trying to find a way through the level playing field problem. At the moment we have a binary choice in these negotiations: zero tariffs with lots of level playing field, or no agreement. It seems that there is a way in the middle of this, with the level playing field characteristic of a free trade agreement and free trade agreement-like levels of access, so 98% or 99% tariff-free, but a small amount.”

David Frost also pointed out that there are precedents in this area which mostly focus on tariffs on agricultural products but he said that would be a policy decision for the UK government.

Given the UK may now consider a trade agreement which includes some tariffs, David Frost was asked whether there are precedents for the timescales to negotiate such a deal. He suggested there is no such precedent given the EU-UK deal is about constructing trade barriers whereas in contrast most trade deals seek to reduce barriers to trade.

David Frost also highlighted what he saw as a potential opportunity at the end of the year irrespective of whether the UK can finalise a trade agreement with the EU. He cited the:

“ ability to control your own trade, to do free trade agreements with other countries more broadly, to lead the WTO in the trade world more generally, and to have regulatory control over your own rules in a way that makes us nimbler and more capable of responding, for example, to technological developments and the EU.”

David Frost also confirmed the reason that public procurement did not form part of the UK's negotiating texts was because "there is the WTO government procurement agreement, which we will be party to and seems to do everything we need it to".

David Frost was asked about the UK government's approach in using the precedents set out in the EU's other trade agreements in its negotiating texts. He suggested that trade agreements have evolved over time and that as a result, it is impossible to directly compare the EU's trade agreements negotiated in the past compared to the agreement the UK is seeking to negotiate.

Finally David Frost said he was confident the EU negotiations wouldn't create a conflict with other trade agreements the UK government are pursuing, such as with Japan, the United States. He suggested that if the UK had been seeking a high level of regulatory alignment with the EU this may have caused issues:

“ If we had been trying to negotiate a high-alignment arrangement with the EU in which we accepted large parts of EU regulation, product regulation and similar, we would have had a problem because we would not have had total discretion to waive or change our regulatory rules in the context of other trade agreements. Since we are not doing that, it is not a problem. We have discretion over our own laws and our own regulations, and we can tailor them as we see fit in any free trade agreement we conduct. There is always a precondition and a presumption that we are a high-standards country, and we take that forward into those negotiations. ”

# Negotiations

## Going into Round 4

The fourth round of EU-UK negotiations on the future relationship took place from 2-5 June 2020 by video conference. The agenda was [published in advance](#) with negotiations on fishing scheduled to receive the largest amount of time.

### Round 4: agenda

AGENDA  
EU - UK Future Relationship Negotiations: 02 - 05 June 2020

Tuesday, 2 June	Wednesday, 3 June		Thursday, 4 June		Friday, 5 June
14:30 - 17:00 (*)	10:30 - 13:00	14:30 - 17:00	10:30 - 13:00	14:30 - 17:00	10:30 - 12:30
					CLOSING PLENARY SESSION
		TRADE IN GOODS	TRADE IN GOODS		
		TRADE IN SERVICES and INVESTMENT and OTHER ISSUES	TRADE IN SERVICES and INVESTMENT and OTHER ISSUES	TRADE IN SERVICES and INVESTMENT and OTHER ISSUES	
FISHERIES	FISHERIES	FISHERIES	FISHERIES		
		LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION	LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION		
	LAW ENFORCEMENT COOPERATION	LAW ENFORCEMENT COOPERATION			
		ENERGY (CIVIL NUCLEAR COOPERATION)	ENERGY (OTHER)		
THEMATIC COOPERATION					
				SOCIAL SECURITY	
		PARTICIPATION IN UNION PROGRAMMES	PARTICIPATION IN UNION PROGRAMMES		
	HORIZONTAL ARRANGEMENTS + GOVERNANCE				
GOVERNANCE FOR LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION			GOVERNANCE FOR AVIATION	LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION + ENERGY	

<https://www.gov.uk/government/publications/fourth-round-uk-eu-future-relationship-negotiations-2-5-june-2020>

Ahead of this round, the negotiations had been characterised by little progress and incompatible red lines for both sides. In particular, disagreements focussed on governance, level playing field commitments and fisheries.

Commenting on the progress of the negotiations ahead of Round 4, the UK's chief negotiator David Frost said:

“ We are still at a relatively early stage of the negotiation. It is extremely accelerated compared to a normal one, but we are still nevertheless at the stage of setting out positions, explaining each other’s positions and identifying areas of convergence and divergence... I would like soon to be in discussions where we are genuinely seeing if we can move forward.”

## What happened in Round 4?

Both sides agreed the fourth round of negotiations should concentrate on the four areas which have proved stumbling blocks so far, namely:

- fisheries
- level playing field
- fundamental rights and freedoms needed to underpin close police and judicial cooperation in criminal matters;
- governance of the future relationship

The fourth round of negotiations once again saw little progress. Following the conclusion of the negotiating round, both Michel Barnier and David Frost issued statements outlining the negotiating challenges faced by both sides.

In a [written statement](#), David Frost said:

“ We have just completed our fourth full negotiating round with the EU, again by video conference. It was a little shorter than usual and more restricted in scope. We continue to discuss the full range of issues, including the most difficult ones. ”

“ Progress remains limited but our talks have been positive in tone. Negotiations will continue and we remain committed to a successful outcome. ”

“ We are now at an important moment for these talks. We are close to reaching the limits of what we can achieve through the format of remote formal Rounds. If we are to make progress, it is clear that we must intensify and accelerate our work. We are discussing with the Commission how this can best be done.”

“ We need to conclude this negotiation in good time to enable people and businesses to have certainty about the trading terms that will follow the end of the transition period at the end of this year, and, if necessary, to allow ratification of any agreements reached. ”

“ For our part we are willing to work hard to see whether at least the outline of a balanced agreement, covering all issues, can be reached soon. Any such deal must of course accommodate the reality of the UK’s well-established position on the so-called “level playing field”, on fisheries, and the other difficult issues.”

Michel Barnier [told a media conference](#) that once again the talks had not been productive. On the four priority areas for negotiation, Michel Barnier provided the following summary:

“

- On fisheries, the United Kingdom did not show any real willingness to explore other approaches than zonal attachment on quota sharing. It also continues to condition access to its waters to an annual negotiation – which is technically impossible for us. Whereas the EU wants to build a more stable economic partnership.”
- On the *level playing field*, we didn't make any progress on these rules of economic and commercial fair play, despite choosing to focus this week on issues that should have been more consensual, such as non-regression mechanisms on social and environmental standards, climate change, taxation or sustainable development.”
- On the governance of our future relationship, we were unable to make progress on the issue of the single governance framework establishing legal linkages between our different areas of cooperation.”
- Finally, on police and judicial cooperation in criminal matters, we had a slightly more constructive discussion on the question of commitment to the European Convention on Human Rights, although important questions remain as to how to reflect this commitment in our agreement.”

Michel Barnier also questioned why the UK government was not honouring the commitments it made in the Political Declaration agreed alongside the Withdrawal Agreement last October. He suggested progress in the four priority areas has stalled because the UK government position is now different compared to what it agreed in the Political Declaration. He told the press conference:

“ To be clear: Our lack of progress in this negotiation is not due to our method, but to the substance. We must stick to our commitments if we want to move forward! We engaged in this negotiation on the basis of a joint Political Declaration that clearly sets out the terms of our future partnership.

- This document is available in all languages, including English. It is a good read, if I may say so.”
- This declaration was negotiated with and approved by Prime Minister Johnson.”
- It was approved by the leaders of the 27 Member States at the European Council in October 2019. It has the backing of the European Parliament.”
- It is – and it will remain for us – the only valid reference, the only relevant precedent in this negotiation, as it was agreed by both sides.”

Yet, round after round, our British counterparts seek to distance themselves from this common basis.”

One example provided by Michel Barnier referred to commitments on the level playing field in the Political Declaration citing paragraph 77 which stated that "given our geographic proximity and economic interdependence, our future agreement must encompass robust commitments to prevent distortions of trade and unfair competitive advantages". However, as discussed in the recent [SPICe blog examining the third round of negotiations](#), the commitment on level playing field in the Political Declaration also stated that:

"The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties."

The UK government has argued that given it is seeking a similar deal to that enjoyed by Canada, stringent level playing field measures are unnecessary and it is still complying with the terms of the Political Declaration.

It is also important to remember the Political Declaration is non-binding from a legal perspective.

Looking ahead, the EU's Chief Negotiator said:

" The month of June will also see the second meeting of the Joint Committee – on 12 June – and the High Level Meeting that we agreed to in the Political Declaration to take stock of these negotiations."

" We still need to decide on the date and the modalities of this meeting. This is also the case for the next rounds – the first of which would probably take place towards the end of June or early July."

" But it is clear that we are approaching a moment of truth: We expect the United Kingdom to respect its engagements – both when it comes to our, already ratified, Withdrawal Agreement, and to the precise content of the Political Declaration, which remains and will remain the basis and the framework for our negotiation."

Attention now turns to the scheduled High-level conference due to take place later in June.

## High-level conference

A date for the High-level conference towards the end of June is still to be agreed.

The conference envisaged since the start of the negotiations for June 2020 is anticipated to be a political-level meeting (e.g. involving the UK Prime Minister and the President of the European Commission). The negotiating rounds which have taken place so far have been led by officials, albeit officials who themselves sit at high levels in the UK Government or European Commission.

## Scottish Government participation

The Scottish Government has consistently expressed its view that there has been a lack of meaningful participation for it in the UK-EU future relationship negotiations. For example, the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell [responded to the publication of the UK's legal texts](#) on 19 May stating:

" Despite making many requests to see these texts, the Scottish Government only received these legal texts a few hours before publication... Yet again the UK Government has chosen to treat Scotland's interests and views with contempt and they have failed to involve any of the devolved governments in any meaningful way."

On the other hand, the UK Government has repeatedly stated it sees the involvement of the devolved administrations as important.

During his appearance at the Committee on the Future Relationship with the European Union on 27 April, Michael Gove was asked why the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) "has not met for three months?". Michael Gove responded:

“ My colleague, the Paymaster General, Penny Mordaunt, is in touch this week with representatives from the Scottish, Welsh and Northern Ireland Governments in order to discuss our approach towards negotiations. It is one of her responsibilities to update each of the devolved Administrations, and I hope to have a JMC(EN) very shortly, in the next week or two, in order to make sure that the collaboration and cooperation, which has been such a feature of the cross-United Kingdom response to [the COVID-19] crisis, is maintained for our negotiations.”

The JMC(EN) subsequently met on 21 May. This was chaired by Michael Gove and attended for the Scottish Government by Michael Russell MSP and Minister for Europe and International Development, Jenny Gilruth MSP. The short [communiqué](#) read:

The Committee discussed ongoing negotiations relating to the future UK-EU free trade agreement and wider relationship, preparedness for the end of the transition period and an update on the Intergovernmental Relations Review.

On 26 May, Michael Russell [wrote in a letter to the CTEEA Committee](#) in which he set out the Scottish Government's involvement in the development of the UK's negotiating position for the future relationship negotiations:

### **Scottish Government involvement in shaping the UKG negotiating position**

The Scottish Government continues to seek meaningful engagement with the UK Government to develop a UK negotiating position that reflects the needs and interests of Scotland. We have focused effort in areas of devolved competence, where there is a specific Scottish interest, and/or where implementation of an agreement will be delivered by the Scottish Government.

It is to my deep regret, despite innumerable contacts at official level and significant ministerial pressure from all the devolved governments, that we have fallen significantly short of what we think necessary. Whilst engagement at official level continues – punctuated with ministerial engagement by telephone and occasionally around the Joint Ministerial Committee (European Negotiations) – we remain very much in the dark as to the UK Government's negotiating position and how it intends to make strategic choices in the final stages of negotiations. To illustrate the point, we were sent UK Government legal texts for the negotiations on 18 May, only hours before they were made public, and those texts were decided upon by UK ministers alone.

A meeting of the Joint Ministerial Council (European Negotiations) was held on 21 May, the first time since January this year. Despite the understandable impact of Covid-19 on ministerial availability, we have made clear to the UK Government during this hiatus that whilst negotiations were continuing the JMC(EN) should continue to meet, albeit virtually. As is customary, I shall write to the Committee separately regarding this meeting.

In recent weeks, as rounds of negotiation have taken place, the UK government has made arrangements for devolved administrations to receive summarised readout of the talks after the event. There has been no attempt in advance of each round to agree, or even discuss, the positions the UK intends to take with ministers from devolved administrations, all of whom have called for this. In summary, despite the obvious legitimate Scottish interests in the negotiations and the fact that many aspects of them will fall to the Scottish Government to be implemented, UK ministers continue to make all decisions on the UK's position unilaterally.

# CTEEA Committee inquiry

The [Culture, Tourism, Europe and External Affairs Committee's inquiry](#) scrutinising the future relationship negotiations and their implications for Scotland has changed its format in response to the COVID-19 pandemic to include a greater focus on written contributions alongside virtual evidence sessions with a reduced number of experts.

Recent evidence received:

- Nine written submissions from academics and stakeholders who were invited to give evidence.
- 26 May - oral evidence from David McAllister MEP, UK Coordination Group in the European Parliament.
- 26 May - [letter from Cabinet Secretary for Constitution, Europe and External Affairs Michael Russell MSP covering the negotiations, no-deal contingency planning and the Ireland/Northern Ireland protocol](#).
- 4 June - oral evidence from Philip Rycroft, Former Permanent Secretary, Department for Exiting the European Union.

## Evidence from David McAllister MEP

David McAllister MEP, Chair of the [UK Coordination Group in the European Parliament](#) gave [evidence to the Committee on 26 May 2020](#). The UK Coordination Group (UKCG) is the key group within the European Parliament tracking the future relationship negotiations. The UKCG's role for the future relationship negotiations in the European Parliament is similar to the Brexit Steering Group's role in relation to the Withdrawal Agreement negotiations.

In his opening statement, David McAllister set out his view on progress in the negotiations suggesting that after three rounds, "no real progress has been achieved, with the exception of limited openings on an equally limited number of areas". In terms of what needs to be done by 31 December 2020, McAllister outlined three things:

- Need to implement the Withdrawal Agreement.
- Need to prepare businesses and citizens on both sides for the changes that will take place on 1 January 2021 whether or not we have an agreement.
- We have to negotiate the future agreement.

In terms of reaching a future relationship agreement, McAllister suggested the mood in Brussels was pessimistic and that feeling was shared by the European Commission, Member States and the European Parliament.

David McAllister discussed the lack of progress in the negotiations and cited COVID-19 and the need to conduct the talks by video conference as being particular problems:

“ It is very unfortunate that the negotiations cannot take place in person. As we have all experienced in the past few weeks, videoconferencing is the second-best option. At the moment, on what are very politically sensitive issues, the chief negotiators are unable to talk to each other confidentially behind closed doors, as they might normally do for six, eight or even 12 hours. That option is not possible at the moment, and that is an additional difficulty. ”

“ We are way behind on the talks—and the timeframe was already ambitious. At this point, we should have been preparing for the fifth round of talks, but instead we are on the third round.”

David McAllister also discussed the geographic proximity of the UK and the EU and how that affected the deal the EU was prepared to offer the UK, particular around the level playing field commitments the EU wished to include in the deal:

“ We cannot compare the UK with Canada or South Korea. There is a big difference, because the UK is in our immediate neighbourhood and the world’s largest single market is the most important trading partner for the UK. Our objective is to ensure open and fair competition to benefit businesses and companies on both sides. We are offering the UK something that is unprecedented for a third country that is not a member of the single market—access, no quotas and no tariffs. That, of course, comes at a price, which is that we do not start a race to the bottom when it comes to standards on the environment, consumer protection, state subsidies and other matters.”

David McAllister also cited the importance of the Political Declaration (something Michel Barnier subsequently did after the fourth round of negotiations) in the efforts to secure an agreement. He told the Committee:

“ Our efforts and engagement to negotiate an agreement have always been based on the political declaration that was signed by both sides in October. It is not an EU invention; it has the signature of the UK Prime Minister. ”

“ In the old Roman days, we would say, “Pacta sunt servanda”—what has been agreed needs to be implemented. We consider the political declaration to be an important document. Important issues that are being discussed at the moment were outlined in the political declaration, which was signed by both sides; in international politics and international law, a change of Government does not change such texts. Even though the political declaration might not be legally binding, it played a crucial role with regard to the withdrawal agreement. ”

“ Just a few months ago, both sides agreed on important aspects, and the European Council, the European Parliament and, in the end, the European Commission worked on a mandate for the negotiations on the basis of the political declaration. What we find difficult is that we now have a piecemeal approach in London, whereby the UK Government picks certain bits and pieces of the political declaration that are in the British interests but leaves others by saying, “That’s not so relevant. We’ve had elections and there’s a new majority in the House of Commons.” Once again, that is cherry picking, which is extremely unpopular in Brussels, because we have gone through that process for so many decades. ”

In essence, David McAllister presented a fairly bleak picture of the negotiations.

In terms of the European Parliament's priorities for the negotiations (the EP will have to give its consent to the final agreement), David McAllister listed the following issues:

- citizens' rights in the Withdrawal Agreement.
- environmental protection.
- consumer protection and other standards.
- and the Ireland/Northern Ireland protocol as set out in the Withdrawal Agreement.

He also warned that he expected the European Parliament would want to exert its authority over the future relationship negotiations:

“ I have the impression that this newly elected European Parliament will want to show and flex some muscles here and there. I am saying that as a representative of the European People's Party. If you look at the debates in other political groups, such as the socialist group, the liberal group and the green group—or in the socialist communist gauche unitaire européenne group—you can imagine that issues of the level playing field play an even more important role than perhaps in my political family. We have to be very clear that the standards that we have now—standards that the UK has accepted and implemented—are key for any further co-operation with the single market. ”

## Evidence from Philip Rycroft

Philip Rycroft, former Permanent Secretary at the Department for Exiting the European Union gave [evidence to the Committee on 4 June 2020](#).

On the timeline and likelihood of concluding a deal in the future relationship negotiations, Philip Rycroft believed a deal was possible:

“ ...if the political will exists, there is time to get the problems sorted out. ”

“ The really important time in the negotiations will be September and October: do not forget that the negotiations need to be put to bed by about the end of October in order to allow time for ratification by the UK and the EU before the end of the year. Time pressure can help to get folk over the line, but the key will be willingness on both sides to compromise on their original positions in order to allow a deal to emerge.”

However, he was also of the view that negotiations on other aspects of the EU-UK relationship would continue into next year:

“ Finally, it is worth emphasising that we are talking mainly about sorting out a trade agreement by the end of the year. The UK's relationship with the EU is very complex, with its having been a member for several decades, so a number of domains will need to be sorted out in order that the UK can have an ordered and structured relationship with the EU in the future. I see very little possibility that it will all be sorted out by the end of the year.”

“ We might get a free-trade agreement, but there are plenty of other domains—I have mentioned security; other examples are transport, energy and UK engagement in EU programmes—which might not be sorted out within that timescale. I suspect that even if we get a deal, we will still see negotiations continuing into next year on various aspects of our future relationship.”

Philip Rycroft also set out where he saw scope for compromise.

On compromise in relation to fisheries he said:

“ Clearly, we can see a compromise in which the UK accepts that EU boats need some certainty year on year about what fishing opportunities there will be in our waters but, by the same token, we would expect that to reduce as a proportion of the catch over time. It would be a long transition, in order not to disadvantage EU fishermen too much as we go through the process. That would be a classic sort of compromise; we can see the possibilities in that.”

On compromise in relation to the level playing field, he said:

“ It seems to me that the shape of that deal is pretty self-evident. If the UK is saying that it will sign up to binding so-called non-regression clauses, that it will not let standards slip, and will not change its rules on state aid to weaken them, the EU could say that that is fine and accept it. It could drop its demand for dynamic alignment [of State Aid] and accept that the UK does not have to follow future changes in EU laws.”

On co-operation in criminal matters, he said:

“ We may not be able to sort everything out this year. The issue may require continued negotiation into next year. The EU may not be so concerned about the European Court of Justice, but it will look for assurance that the UK will remain committed to the rights enshrined in the European convention on human rights. It needs to give its citizens that assurance if they are sharing their data with what will have become a third country. There must be confidence that that data will be respected.”

Addressing the impact of COVID-19 on the negotiations, Rycroft indicated more concern that COVID-19 has slowed preparations for the end of the transition period, compared with any impact it has had on the negotiations themselves:

“ My worry about capacity is not so much about the negotiations—they are always handled by a relatively small team in Whitehall, and likewise in the European Commission—but about the wider effort to support businesses to get ready and ensure that the UK Government systems for running the new border and all the processes associated with that are fit for purpose and ready to be up and running.”

# Scottish Government case for extending the transition period

On 3 June 2020, the Scottish government published [Coronavirus \(COVID-19\): the case for extending the Brexit transition period](#). This document argues that an extension to the Brexit transition period is vital to economic recovery after COVID-19. On the same day, the Cabinet Secretary for the Constitution, Europe and External Affairs, Michael Russell gave a [statement to the Scottish Parliament](#).

The paper includes economic modelling of four possible Brexit outcomes overlaid on top of the two COVID-19 scenarios. The Brexit outcomes modelled are: ending the transition period either at the end of 2020 or at the end of 2022, and moving thereafter into either a basic Free Trade Agreement or trading on WTO terms. The COVID-19 scenarios are illustrative.

The paper states:

“ The modelling indicates that simply extending the transition period for two years would leave Scottish GDP between £1.1 billion and £1.8 billion higher by the end of 2022 (between 0.7 and 1.1 percent of GDP). This would constitute vital support to the Scottish economy, and public finances, as Scotland recovers from the COVID-19 shock, and would be equivalent to avoiding a cumulative loss of economic activity of up to £3 billion over those two years.”

The Cabinet Secretary emphasised that:

“ in addition to the economic impacts that the modelling identified, exiting the current transition period before Scotland had emerged from the Covid-19 crisis would increase the costs of Brexit to the Scottish economy in comparison with those after a two-year extension.”

A sectorial analysis of COVID-19 and Brexit concludes "manufacturing, agriculture and fishing to be particularly exposed to the combined impact of *COVID-19* and Brexit". The paper also covers other related issues such as the long-term effects, the impact on equalities groups, and practical challenges such as the impact on government readiness, business readiness and legislative scrutiny.

# Implementing the Withdrawal Agreement

The EU views successful implementation of the Withdrawal Agreement as a precondition to an ambitious deal on the future UK-EU relationship.

A joint UK-EU committee is responsible for the implementation and application of the Agreement. This Joint Committee is co-chaired by Michael Gove (for the UK) and Maroš Šefčovič (for the EU). It's [first meeting took place on 30 March](#) and the next is scheduled for 12 June.

The Joint Committee is supported by six specialised committees covering different parts of the Withdrawal Agreement. In general terms, specialised committees are to be co-chaired by officials and will consider detailed matters and make recommendations to the Joint Committee. Information on the meetings of the specialised committees is [available from the European Commission](#).

The specialised committees on Citizens' Rights, Ireland/Northern Ireland, Financial Provisions and Gibraltar have all met for the first time and issued brief readouts.

A [letter from Maroš Šefčovič to Michael Gove](#) also summarises the EU27 Member States' initiatives to protect the rights of UK citizens living within their borders:

Fourteen Member States have chosen a declaratory system the does not require the United Kingdom nationals to apply for a new residence status as a condition for legal residence... For these Member States, the Commission will ensure that the residence document foreseen in Article 18(4) of the Withdrawal Agreement is available as soon as possible to United Kingdom citizens that request it.

[...]

As is the case of the United Kingdom, thirteen Member States have chosen a constitutive system, which requires United Kingdom nationals to apply for a new residence status before the deadline established in the Withdrawal Agreement (not less than 6 months after the end of the transition period).

## Scottish Government participation

The Scottish Government provided an update on its position on implementing the Ireland/Northern Ireland protocol in a [letter to the CTEEA Committee on 26 May](#):

## **Impacts of the Northern Ireland Protocol on Scotland**

During the most recent JMC (EN), I took the opportunity to discuss the progress of ongoing negotiations and domestic readiness, including the implementation of the Northern Ireland Protocol. I also strongly raised concern regarding the UK Government planning to publish implementation plans without sufficient Devolved Government involvement. I should make clear that the Scottish Government had no involvement in the drafting of the UK Government's Command Paper on the Protocol published on 20 May.

I, as well as my officials, continue to press UK Government for proper involvement in the discussions around how the Northern Ireland Protocol will be implemented, in order to understand Scottish interests and, in devolved areas, plan for implementation. At the January JMC (EN) meeting, there was agreement that a distinct workstream on the Protocol would be established, comprising all the Devolved Governments. However, this has not yet materialised.

The implementation of the Northern Ireland Protocol may result in additional costs for both government and industry, for instance any infrastructure or compliance requirements for additional checks at Scottish ports of entry. The increased burden of tariffs and non-tariff barriers, such as catch certificates and export health certificates for products moving from Scotland to Northern Ireland which are at risk of entering the EU, is expected to increase industry costs. It is unclear at this point in time what the additional burden will be of these resources, as this is in part, dependant on the conditions of an EU trade deal.

In conclusion, there is no reason why the Brexit process has to be conducted in this way. Other joint programmes of work, such as that on post-exit UK frameworks, have shown that substantive progress can be made where the four governments come together as equals, and proceed on the basis of agreement, not imposition.

However, the impact of Covid-19 means that we must refocus available resources on what can reasonably be delivered by the end of year, recognising that the only responsible course of action is to extend the transition period.

# Seventh common frameworks report

The UK Government's [seventh common frameworks report](#), published on 20 May, confirms that no regulations have been made under the EU (Withdrawal) Act's powers to 'freeze' devolved competence in specified areas.

The report provides an overview of work to develop common frameworks and an update on the progress of frameworks in certain areas such as hazardous substances, emissions trading and multiple frameworks in the area of food, health, rural affairs and environment. A third iteration of the Revised Frameworks Analysis is expected to be published "in due course".

On interactions with the future relationship negotiations, the UK Government states that:

“ Work is also underway to establish how frameworks will interact with the negotiation of Free Trade Agreements. Discussions have taken place between the UK Government and the devolved administrations and we continue to develop this. ”

The Scottish Government appear to not be participating in work to explore formal internal market structures:

“ Alongside individual framework areas, the Welsh Government, the Northern Ireland Civil Service and the UK Government have been working together to explore a range of evidence and ideas, including reflecting on the experience of other countries that have formal structures to manage their internal market.”

Further background on common frameworks can be found on the [SPICe post-Brexit Hub](#).

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