

Written evidence submitted by Dr Kirsty Hughes (FRE0025)

State of EU-UK Negotiations

1. The negotiations between the EU and UK over their future relationship are not, as of the end of May 2020, progressing well. There are particularly difficult challenges over the questions of: overall governance of the future relationship, level-playing field conditions, participation in EU security databases and processes, and the question of fisheries. These difficulties are exacerbated by the fact that the UK government is not basing its stance on these issues on the jointly agreed EU-UK Political Declaration last autumn.

Extending Transition

2. In the face of the Covid-19 crisis, there has inevitably been less political and technical attention and resources available for the negotiations. Given the future public health, economic, political and social impacts of the Covid-19 crisis, and the state of the EU-UK negotiations, it is self-evident that extending the transition period for two years would provide more time for all those organisations and individuals affected by the future EU-UK relationship to prepare, and for more constructive EU-UK negotiations to take place.

3. The UK government currently states it will not extend the transition. If it sticks to this position then the combined damage of the Covid-19 downturn and the economic damage of increasing barriers to trade and all the other aspects of weakening the EU-UK relationship will be considerable. As well as the substantive aspects of both challenges, there is considerable uncertainty around both, adding to the difficulties, if not the impossibility, for governments and organisations to prepare adequately in advance.

Centralised Decision-Making on Strategy, Lack of JMC (EN) Consultation

4. The overall strategic approach to the negotiations from the UK side is centralised in Number Ten. There has been minimal to no chance for the Scottish government to input into that strategy. There has been just one meeting of the JMC (EN) since the UK left the EU on 31st January. That was on the 21st May – and the meeting before that was on 28th January. These simple facts illustrate plainly that the JMC (EN) is not being used as a serious forum by the UK government and that the devolved administrations have had no genuine opportunity to input to the overall strategy of the talks.

5. When the JMC (EN) was established in 2016, its terms of reference were set as follows:

“Through the JMC(EN) the governments will work collaboratively to:

- *discuss each government’s requirements of the future relationship with the EU;*
- *seek to agree a UK approach to, and objectives for, Article 50*

negotiations; and

- *provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations; and,*
- *discuss issues stemming from the negotiation process which may impact upon or have consequences for the UK Government, the Scottish Government, the Welsh Government or the Northern Ireland Executive.”*

Continuity of Disregard

6. It is fair to say that these aims have not been met by the current or previous UK administration. There has been a continuity of disregard across the last almost four years from the government led by Theresa May to that led by Boris Johnson towards the devolved administrations.

7. There is no agreed UK approach to the negotiations nor has there been any serious effort to create one. There are not even any serious or adequate information flows, discussion and feedback loops between the four governments.

Collaboration at Technical Level

8. There has, however, been some collaboration at technical level between officials in the UK government and in the Scottish government. It appears that much of this collaboration is highly compartmentalised for the Scottish government officials. So while they may contribute expertise at a detailed and granular level, for instance on fisheries, on implications of different customs procedures, on priority sectors, neither officials nor ministers get to contribute to the choice of approach and choices between options that determine the more comprehensive framework within which such interactions are taking place. In earlier years of EU fisheries quota negotiations, at least one Scottish fisheries expert was included in the talks. However, no such inclusion of one or more Scottish officials with expertise appears to have taken place so far in the UK negotiating teams and rounds up to the end of May 2020.

Inadequate Information Flows and Feedback Loops

9. There appear to be highly inadequate flows of information from the UK government to the Scottish government. It seems that the UK's full negotiating set of legal texts was shared with the Scottish government less than 24 hours before it was published. For the more detailed, technical and granular discussions, there is a lack of feedback so officials do not know how their contributions have been received or used. It does appear that some limited, specific parts of some drafts of legal texts may have been shared between officials for very focused consultation but nothing of the range or level that should have happened or that would come anywhere near meeting the JMC (EN) terms of reference. There is some information provided after negotiating rounds but a lack of serious let alone comprehensive consultation ahead of each round.

10. On more highly political texts, including the recent difficult exchange of letters between the UK and EU's chief negotiators, it appears the Scottish government was entirely unsighted on these.

Lack of Efforts to Form Consensus Across the UK

11. It has been clear since the Brexit vote in 2016, when Scotland and Northern Ireland voted remain, that there have been major differences between the UK's four nations. However, there has been little or no effort from the UK government to build some form of consensus or compromise over the last four years. The Scottish government has made several proposals since 2016 including for: a soft Brexit of the UK staying in the EU's single market and customs union; a differentiated solution of Scotland staying in the EU's single market; some devolution of migration powers to Scotland; and a range of other proposals in particular policy areas. There has been no serious engagement on these proposals by the UK government, simply rejection.

Opposing Goals for the Future EU-UK Relationship

12. This runs through to the current talks. The UK government is looking for either a rather hard Brexit in the form of a free trade agreement (albeit looking for more integration in some areas such as services and access to security databases as pointed out by the EU's chief negotiator Michel Barnier) or for a 'no deal' Brexit. Either of these outcomes are expected to be seriously damaging in economic and trade terms (as many economic studies have shown including ones by the UK and by the Scottish government). The Scottish government would still prefer a soft Brexit or at least some differentiation for Scotland. So the preferred negotiating goals are opposites.

Combining Covid-19 and Brexit Uncertainties as a Deliberate Choice

13. It is obvious that the level of uncertainty created by a probable exit from the transition period at the end of December 2020, together with the multiple changes and barriers any type of free trade deal will impose compared to the UK's current position, creates a perfect storm for all those individuals and organisations having relationships directly or indirectly with others in the EU. This was the case even before the Covid-19 crisis and is many more times so now.

14. The Scottish government had put considerable effort in 2019 into preparing both for a 'no deal' outcome and for a basic free trade deal outcome. Inevitably, some of those staff resources focused on that work have been redeployed to the Covid-19 crisis but given the state of the UK-EU talks, there is now a need to put more resources back onto the future EU-UK relationship challenge.

15. Any shifting of resources away from a Covid-19 focus at the present time is surely undesirable; if the transition period was extended it would not be necessary. The UK government is currently deliberately choosing to combine the two uncertainties of Covid-19 and Brexit – even when each, in their different ways, is severely damaging. It is not a constructive choice. The Scottish government has made clear its preference for a two year extension but there does not appear to have been any serious engagement with this request from the UK government side.

Constitutional Impact

16. Given the differences of view on Brexit and on the future EU-UK relationship across the UK's four nations, it is inevitable that there are constitutional implications of the way the negotiations are being handled. The constitutional question in Scotland of whether to seek independence in the EU is a debate and political dividing line that has not gone away. The combined effects of the UK government's weak handling of the Covid-19 crisis and its poor handling of relations with the devolved administrations during the almost four years since the Brexit vote means that debate over the option of independence is impacted by these UK government strategies and tactics. How that will unfold in the coming months and years is an open but core question.

17. There are also major constitutional questions around the ad hoc and inadequate nature of consultation and dialogue across the four nations. The failure to respect the terms of reference of the JMC (EN) is one substantial indicator of that. The UK's current constitutional arrangements are clearly deeply inadequate.

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Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

14 May 2020

Dr. Kirsty Hughes
Director
Scottish Centre on European Relations

Dear Dr. Hughes,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

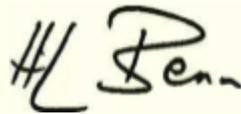
The Committee wishes to gather as much evidence as possible to inform its deliberations and I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- What are the Devolved Administrations' priorities for the future relationship negotiations? What would be the possible consequences of a deal which does not meet these priorities?
- What might be the economic and social consequences for the devolved nations if no future relationship with the EU is agreed before the end of the Transition Period? Would such an exit also have constitutional implications? What are the Devolved Administrations doing to prepare for this eventuality?
- To what extent do the Devolved Administrations' priorities align with the negotiating aims set out by the UK Government? What are the areas of greatest disagreement?
- To what extent do the Devolved Administrations' priorities for the future relationship align with those set out in the EU's negotiating mandate? What are the areas of greatest disagreement?
- To what extent did the UK Government consult the Devolved Administrations before publishing its negotiating mandate? Were any amendments made as a result? Have they contributed to, or had the opportunity to comment on, any UK draft legal texts?
- To what extent has the UK Government kept the Devolved Administrations informed of developments in the future relationship negotiations? Have they found this satisfactory? If not, what improved means would you propose?
- How would you assess the effectiveness of the Joint Ministerial Committee since the UK left the EU? Is there scope for improvement? If so, how?
- What guidance has UK Government given the Devolved Administrations as to the steps that will need to be taken to prepare for the end of the Transition Period, for example: additional infrastructure or staff? What areas remain unclear?
- What effect has the COVID-19 pandemic had on the Devolved Administrations' preparations for the end of the Transition Period? What has been done and what still needs doing? What is a reasonable timetable for these steps to be taken?

- What steps have the Devolved Administrations taken to prepare businesses, local Government and civil society for the end of the Transition Period? Has there been any coordination with the UK Government about what practical changes businesses will need to make?
- Do you expect common frameworks will be ready by the end of the year? If not, what conversations have the Devolved Administrations had with UK Government about interim arrangements? What happens if some nations have come to agreement with the UK Government, but others haven't? If common frameworks are not agreed, what do you anticipate the implications will be for areas that fall within the Devolved Administrations' legislative competence?
- How do you expect legislative and non-legislative frameworks will be scrutinised? Are there still areas where competence is disputed? What has changed since the NI Executive has been re-established and NI is no longer represented by civil servants?
- How do you expect the trade provisions of the Northern Ireland protocol to operate? What checks will be needed on goods moving from GB to NI to identify those at risk of entering the European Union? What will be the implication of such checks for the operation of ports and airports?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

Hilary Benn
Chair of the Committee