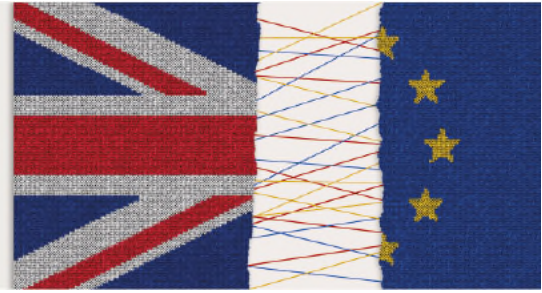


## Brexit: Overview of Withdrawal Agreement

November 2018



A **Withdrawal Agreement** setting out the **terms of the UK's withdrawal** from the EU has been agreed in principle between the EU and the UK, along with a **Political Declaration** on the framework for the future EU-UK relationship.

The Withdrawal Agreement runs across hundreds of pages and includes provisions on citizens' rights, the financial settlement, governance and separation issues, as well as Protocols on Ireland, Gibraltar and Cyprus. Crucially, it confirms a transition period lasting until 31 December 2020, with provision for a one-off temporary extension of this period.

The Withdrawal Agreement and Political Declaration on the framework for the future EU-UK relationship were endorsed by the European Council at a special summit on 25 November, following which it needs to be ratified both at the EU and UK level. See our [separate note on the approvals processes](#).

This note is a summary of some of the key elements of concern to business but the detailed, technical implications will bear further close scrutiny in light of their far-reaching impact.

### The transition period

The draft Withdrawal Agreement confirms a transition period lasting until 31 December 2020. During this time, EU law, as it evolves, would continue to apply to the UK. Although the UK will technically have left the EU on 30 March 2019, the transition period delivers a "standstill" arrangement which will ensure there is no immediate change to the regulatory environment in the EU27 or the UK. So, for example, passporting and other rights and obligations under EU law for financial services would continue as they do today until the end of 2020.

However, as the UK would no longer be a Member State of the European Union, it would not have the same participation in the governance or decision-making of the EU institutions, bodies or agencies and so will have very limited ability to influence them.

During the transition period, the UK will be bound by the EU's international agreements and the EU will notify the other parties to these agreements that during the transition period, the United Kingdom is to be treated as a Member State for the purposes of these agreements. This leaves some uncertainties, however, as to whether third countries will treat the UK as though it were still a member of the EU in the transition period.

The Agreement allows for the extension of the transition period "for up to one or two years" – i.e. to 31 December 2021 or 31 December 2022. This possibility may be used only once and must be decided before 1 July 2020 by the Joint Committee (see below) at the UK's request.

### The Irish backstop

Avoiding a hard border between Ireland and Northern Ireland has been a key aspect of the negotiations. The EU and the UK have agreed to use their best endeavours to conclude a future agreement before the end of the transition period to supersede the need for the backstop in whole or part. Should this not occur, they could jointly extend

the transition period – alternatively (subject to any extension of the transition period and to the extent not superseded by another agreement) the backstop for Ireland and Northern Ireland would apply as of January 2021, subject to a joint review mechanism.

The backstop entails the establishment of a “single customs territory” covering the EU and the UK. The single customs territory would mean that there would be no tariffs, quotas or checks on rules of origin between Great Britain and Northern Ireland (or indeed between the UK and the EU). The text provides for a series of measures to ensure a level playing field between the EU and the UK. The level playing field measures include commitments on fair taxation; non-regression on environmental, employment and social standards; state aid; and competition law.

In addition, Northern Ireland would remain subject to the Union Customs Code and to other EU regulations covering agricultural and other goods to ensure that Northern Irish goods can enter the EU Single Market without restriction. The backstop provisions also aim to preserve access for Northern Irish goods to the rest of the UK. The detailed administrative measures to make the backstop work in practice would need to be developed if it becomes apparent that it will be needed. Further explanation of these provisions is set out in the UK government's [Technical note on the Northern Ireland protocol](#).

Exit from the backstop can be requested by the UK or the EU and will be decided on by the Joint Committee, based on a good faith determination of whether the backstop is still needed.

## Other withdrawal issues

The draft Withdrawal Agreement also deals with:

**Citizens' Rights:** The draft Withdrawal Agreement sets out provisions safeguarding the rights of EU citizens residing in the UK and UK nationals residing in the EU27 Member States at the end of the transition period (including in respect of the continued recognition of any professional qualifications), as well as certain provisions protecting family members having rights under EU law.

**Separation issues:** the Withdrawal Agreement contains provision for a wide range of separation issues, catering for processes and procedures which may be ongoing at the end of the transition period (for example, in relation to goods placed on the market before the end of the transition; ongoing administrative and judicial procedures, ongoing public procurement; ongoing judicial cooperation in civil and commercial matters; the protection of existing intellectual property rights; and Euratom related matters).

## Joint Committee

A Joint Committee is established under the Withdrawal Agreement and will be co-chaired by high level representatives from the UK and the EU, meeting alternately in London and Brussels. It is tasked with making decisions on matters such as the extension of the transition period and the ending of the backstop.

In addition, the Joint Committee is the first point of call for the resolution of disputes under the Withdrawal Agreement. Failing resolution by the Joint Committee, disputes can be referred to binding arbitration under procedures set out in the Agreement, with any questions on the interpretation of EU law being referred to the CJEU.

## Political Declaration on the future relationship

Alongside the Withdrawal Agreement, the EU and UK have agreed the Political Declaration on the framework for their future relationship. The Political Declaration sets out high level principles for a future agreement to be negotiated during the transition period.

The Political Declaration outlines the objectives of cooperation between the parties

based on shared democratic values and respect for human rights and data protection. It outlines the proposed economic partnership covering services and investment, including on financial services; intellectual property and public procurement; mobility; sectoral cooperation, such as on transport and energy; fishing opportunities; global cooperation including on climate change; trade protectionism; and financial stability; and provisions for open and fair competition (i.e. level playing field provisions). It also covers the proposed security partnership, covering judicial cooperation in criminal matters, foreign policy, security and defence.

The declaration envisages that negotiations on the detailed future relationship agreement would begin once the UK has formally left the EU. The EU and UK would use best endeavours to ensure the necessary steps are taken so that the future relationship can take effect by the end of 2020.

See further our [separate note on the Political Declaration](#).

## Next steps

The Withdrawal Agreement and Political Declaration on the framework of the future relationship need to be ratified at the EU and UK level. Whether the UK will win the necessary support in Parliament for them is currently unclear. See further our [separate note on the approvals processes](#).

## Implications

Even if the Withdrawal Agreement is successfully concluded, businesses will still need to prepare for changes at the end of the transition period. The Political Declaration shows a potential direction of travel for the future relationship, but it is uncertain whether negotiations and implementation of a new free trade arrangement can be completed within the transition period even if it is extended. This means that the Irish backstop may be invoked.

Although the transition period will provide regulatory continuity at least until the end of 2020, the UK will technically be outside the EU from 30 March 2019. This may affect business' commercial contracts or other dealings outside the scope of direct EU or UK law. For example, contractual references to the "EU" will need to be considered in context, to see whether they should be construed as still including the UK.

Similarly, there remain question marks over how the transition period will be treated by third countries. The EU has a variety of free trade and economic partnership agreements and bilateral agreements on specific sectoral issues, covering around 100 countries in all. In many cases, the UK participates solely through its membership of the EU. Depending on the specific terms, third countries might argue that the deemed treatment of the UK as a member state should not apply to certain agreements. This could mean that the UK would be bound by EU law to comply with the terms of those agreements but would not necessarily get the benefit of them.

The biggest uncertainty remains the political situation in the UK. We will have to watch and wait over the coming weeks to see if the Government can carry out its plan to have the Withdrawal Agreement approved by the UK House of Commons before Christmas and to pass the necessary implementing legislation in the new year.

## Further resources

- > [Withdrawal Agreement](#)
- > [Political Declaration setting out the framework for the future relationship](#)
- > [UK Government](#)
  - > [Guide to the Withdrawal Agreement and Guide to the Political Declaration](#)
  - > [Technical note on the Northern Ireland Protocol](#)

Further information, including the following, can be found on our [Brexit Knowledge Portal](#) and [Linklaters Brexit homepage](#):

- > [Impact of Withdrawal Agreement on financial services](#)
- > [Approving the Withdrawal Agreement](#)
- > [Overview of Political Declaration on the Framework for the Future Relationship](#)

## Key contacts

For assistance or to discuss any Brexit-related issues you may have, please get in touch with your usual Linklaters contact, or a member of our [global Brexit team](#).

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