



# The Withdrawal Agreement

AUGUST 2018

## Q&A

### 1. What is the Withdrawal Agreement?

The withdrawal agreement is the agreement being negotiated between the EU and the UK under Article 50 of the Treaty of the European Union (TEU), that is the provision dealing with the withdrawal by a Member State of the EU. The aim of the agreement is to set out the arrangements for the UK's withdrawal from the EU on 29 March 2019. The UK's future relationship with the EU is being negotiated in a separate agreement to be entered into once the UK has left the EU and becomes a third country, although it is intended that key principles for the future relationship will be settled within the negotiating timetable for the withdrawal agreement (see Q3 below).

The text of the draft withdrawal agreement (Withdrawal Agreement) is based on the conclusions of the negotiations in phase one of the Brexit timeline, which were published in the EU/UK Joint Report in December 2017. The text is still in draft, and negotiations will continue over the coming months, with a view of reaching a final draft text in October 2018 at the earliest.

In March 2018 the EU Commission published a 'colour-coded' version of the draft Withdrawal Agreement (see link [here](#)) in which the text in green is agreed at negotiators' level, the text in yellow is agreed on the policy objective level (with drafting changes or clarifications still required) and the text in white

is still to be agreed. For those areas not yet discussed or agreed, the text reflects only the EU's position. When the draft was published, around 75% of the text was agreed, but as highlighted by David Davis, the last 25% will be the hardest to agree. On 19 June 2018 a [Joint Statement](#) from the negotiators was released recording the latest progress on the withdrawal agreement negotiations.

### 2. What does the Withdrawal Agreement cover?

The draft Withdrawal Agreement covers the key withdrawal issues of citizens' rights, financial contribution and the Irish border, on which sufficient progress had to be made before the negotiations could proceed to the second phase. It also covers a range of other withdrawal issues such as issues relating to intellectual property, ongoing public procurement procedures, ongoing judicial cooperation on civil and commercial matters and ongoing judicial and administrative procedures.

The Withdrawal Agreement (Part 4) contains provisions setting out a transition period following the date of the UK's EU exit through to 31 December 2020, during which EU law will continue to apply in and to the UK (see Q6 and Q7 below).

The draft Agreement also contains institutional arrangements specific to the

Agreement, including the establishment of a Joint Committee responsible for the implementation and application of the Agreement, and provisions on disputes relating to the Agreement itself.

See Annex attached for a summary of the draft Withdrawal Agreement.

### 3. Why does the Withdrawal Agreement not incorporate details on the future UK/EU relationship?

The EU Commission took the view early on that a withdrawal agreement can only deal with separation issues and cannot include an agreement on a future relationship, because such an agreement would require a different legal basis and can only be negotiated with a country that is not a Member State. So this means it can only be negotiated once the UK has left the EU.

However, the EU has accepted that discussions on an 'overall understanding' of that future relationship can take place before the UK leaves. The terms of a withdrawal agreement are expected to be accompanied in late 2018 by a Political Declaration setting out the key objectives for the future relationship, which the UK Parliament will be asked to approve at the same time as it will be voting on a finalised withdrawal agreement (see Q11 below).

#### 4. What has to happen for the Withdrawal Agreement to come into force?

A withdrawal agreement will require a number of approvals before it can come into force, which means that the final text needs to be agreed by around the end of 2018 in order to allow time for the approval processes to be completed by 29 March 2019 when the agreement needs to take effect.

On the EU side, a withdrawal agreement requires approval of the European Parliament (by simple majority) and approval of the Council by qualified majority vote (20 of the 27 Member States representing at least 65% of their combined population). There is no requirement for a withdrawal agreement to be ratified by the 27 Member States individually. As regards the UK, the EU Withdrawal Act provides for Parliament to have a 'meaningful' vote on the draft agreement before it is considered by the European Parliament. A withdrawal agreement can only be ratified by the UK Government and enter into force once:

- the final agreement and the framework for a future relationship with the EU has been approved by the House of Commons and considered by the House of Lords
- an Act of Parliament setting out the provisions for implementation of the agreement has been passed; and
- in accordance with the Constitutional Reform and Governance Act 2010 the Withdrawal Agreement has been laid before Parliament for 21 sitting days after it is signed by the UK and the EU

Failure to obtain these EU and UK approvals would mean that there would be no withdrawal agreement and the UK would leave the EU on 29 March 2019 facing a cliff-edge, no deal Brexit.

[See WTO \(World Trade Organisation\) - if negotiations fail in the accompanying section: the New Trade Relationships](#)

#### 5. How will the Withdrawal Agreement be implemented in the UK and in the EU?

In addition to the European Union (Withdrawal) Act (Withdrawal Act) which has now been passed by both Houses of Parliament and passed into law on 26 June 2018, the UK Government will put forward another new Bill, the 'Withdrawal Agreement and Implementation Bill' (Withdrawal Agreement Bill), which will implement any withdrawal agreement into UK law.

The Withdrawal Agreement Bill will only be introduced once Parliament has approved the

final Withdrawal Agreement in accordance with the requirements set out in the Withdrawal Act (see question 4 above). In its White Paper 'Legislating for the Withdrawal Agreement' published in July 2018, the UK Government sets out its proposals for implementing those parts of the Withdrawal Agreement where the text is agreed, in particular citizens' rights, the transition period and the financial settlement. The Bill will enable EU citizens in the UK to rely directly on their rights set out in the Withdrawal Agreement, which will take precedence over any inconsistent provisions in domestic law. UK courts will be able to make references to the CJEU for a period of 8 years after the end of the transition period to address questions of interpretation. The Bill will amend the European Communities Act 1972 (ECA) is selectively saved for the duration of the transition period to ensure that EU law continues (see also question 8 below). In relation to the financial settlement the Bill will include a provision that allows the UK Government to make the payments due under the Withdrawal Agreement. It may also include a requirement on the Government to provide regular updates on payments and forecast payments.

As far as the EU is concerned, any withdrawal agreement will be adopted under Article 50 of the TEU and will form part of EU law under Article 216(2) of the Treaty on the Functioning of the EU (TFEU), in the same way as any other international agreement to which the EU is a party. To the extent that its provisions are sufficiently clear, precise and unconditional, it will have direct effect in the legal systems of the Member States.

#### 6. What happens on 29 March 2019 - will the UK be leaving the EU or does the UK remain a member state for the duration of the transition period?

The UK will leave the EU two years after it served the Article 50 notice under the TEU, that is at 11pm GMT on 29 March 2019, and will cease to be an EU Member State at that time. It will then be a third country for the purpose of the EU Treaties and EU law. The only circumstance in which this would change is if an extension were agreed of the two-year period set out in Article 50, (which requires unanimous agreement of the EU27). There has been no suggestion to date that this would be contemplated.

#### 7. What is the impact of the transition period?

If the draft Withdrawal Agreement is agreed and formally adopted, the provisions dealing with the transition period will then govern the UK's relationship with the EU until 31

December 2020. The provisions in the draft Agreement on the transition period state that the full existing body of EU law will apply in the UK during the transition period. So EU law will continue to have direct effect in the UK, and the principle of supremacy will apply, but the UK will not be a member of the EU during that period. During the transition period the UK will no longer be represented and participate in the EU institutions after 29 March 2018, but in exceptional circumstances representatives or experts from the UK may, upon invitation, attend meetings of certain committees, without having any voting rights.

The transitional provisions in the draft Withdrawal Agreement (Articles 121 onwards in the current draft) state that during the transition period from 30 March 2019 to 31 December 2020, except as expressly provided otherwise in the Agreement, EU law is to be 'applicable to and in the UK' so as to produce the same legal affect as it does prior to exit. The provisions also state that any references to Member States in EU law, including EU law as implemented by Member States, is to be understood as including the UK during the transition period.

The provisions relating to the transition period also provide that the UK will be bound by obligations resulting from international agreements concluded by the EU on behalf of the Member States. In a footnote to Article 124(1) it is agreed that "the Union will notify the other parties to these agreements that during the transition period the UK is to be treated as a Member State for the purposes of these agreements". Such a notification will not in itself create an obligation for third countries to continue to grant the UK the treatment provided for in that particular FTA. However, since third countries have an evident interest in preserving stability in commercial relations, it is expected that this will lead to a de facto continued application of EU FTAs to the UK. The continued participation of the UK in these international agreements will need to be provided for in the Withdrawal Agreement Bill.

#### 8. What is the impact of the transition period on Brexit implementation under the Withdrawal Act?

The Withdrawal Act provides for the repeal of the European Communities Act 1972 (ECA), which gives effect and priority to EU law in the UK, on exit day ie 29 March 2019. It also provides for the incorporation of all directly applicable EU law into UK law from that date.



As described above, the draft Withdrawal Agreement sets out a transition period during which the status quo in relation to the application of EU law will be maintained until the end of December 2020. If the draft Agreement, which contains the provisions relating to this transition period, is agreed and adopted, it will be necessary for the UK to ensure that EU law continues to be applicable in the UK during the transition period.

In its July 2018 White Paper 'Legislating for the Withdrawal Agreement' the UK Government indicates this will be achieved by way of a transitional provision, under which the Withdrawal Agreement Bill will amend the Withdrawal Act so that the effect of the ECA is saved for the duration of the transition period. The Bill will also modify the parts of the ECA whose effect is saved to reflect the fact that the UK has left the EU and that the UK's relationship with EU law during the transition period is based on the UK's commitments under the Withdrawal Agreement, rather than as a Member State.

### 9. Will the UK still benefit from a transition period if a Withdrawal Agreement is not adopted?

No. Although the transition period was agreed by the EU Council in March, the provisions setting out a transition period until the end of December 2020 are part of the draft Withdrawal Agreement and can only take effect if the draft Agreement is formally adopted following the required approval processes (see Q4).

### 10. How do Northern Ireland border issues fit into the negotiations?

The draft Protocol on Ireland/Northern Ireland in the draft Withdrawal Agreement will translate into legal text the 'backstop' position for Northern Ireland, which is the third of the three options for Northern Ireland set out in the December 2017 EU/UK Joint Report. Option one, which is the UK's preferred option, is to settle the issue as part of the overall future relationship and under option two the UK proposes specific solutions to address the unique circumstances of the island of Ireland. As the first two options can only be put in place in the context of the future relationship, the Protocol being negotiated as part of the draft Agreement focuses on the backstop option, which proposes the maintenance of Northern Ireland in the Customs Union and the creation of a 'common regulatory area' covering a series of sectors. The Prime Minister has made it clear that this approach is unacceptable to the UK, as it would undermine the UK common market and the constitutional integrity of the

UK. It remains a priority for the UK to resolve the issue of the Irish border as part of the negotiations on the overall relationship between the UK and the EU. Nevertheless, in June 2018 the Government published its own proposal for a backstop position aimed at avoiding a hard border between Northern Ireland and Ireland. The UK proposes a temporary customs arrangement between the UK and the EU, which would apply in the 'specific and narrow circumstances' of a final customs arrangement not being in place by the end of the transition period. The UK expects the overall future relationship agreement to be in place by the end of December 2021 at the latest, but the UK's backstop proposal for Northern Ireland does not include a specific end date. In order to finalise the Protocol, and so the Withdrawal Agreement, the EU and the UK need to agree the detail of the backstop position, even if the future relationship position for Northern Ireland is not agreed.

### 11. What stage have the negotiations for the future relationship reached?

Discussions between the UK and the EU on 'an overall understanding' of the future relationship have started but any new relationship will only be finalised once the UK has left the EU. The finalised Withdrawal Agreement is expected to be accompanied by a Political Declaration in late 2018 setting out the overall understanding of the framework for the future relationship. The UK Government has made it clear that Parliament will be asked to approve this political declaration at the same time as any finalised Withdrawal Agreement.

**UK approach:** The Prime Minister's Mansion House speech of 2 March 2018 sets out her vision for the future economic partnership she hopes to agree with the EU. She confirmed that the UK will be leaving the single market and the customs union and is looking for a deep and comprehensive partnership with the EU, covering more sectors and co-operating more fully than any FTA anywhere in the world today. On 12 July 2018 the UK Government published its White Paper on the future relationship between the United Kingdom and the European Union including a proposal for the establishment of an economic partnership between the UK and the EU. At the core of this proposal is the establishment of a free trade area for goods which is intended to avoid friction at the border, preserve economic prosperity and allow commitments with respect to the border between Northern Ireland and the rest of the island of Ireland to be respected. It is accompanied by proposals for far-reaching cooperation in numerous areas (many of which will facilitate trade in services) and a new institutional framework. See accompanying section: [The UK White Paper](#)

[2018: Business perspectives](#) for a more detailed briefing on the UK's proposals.

**EU approach:** The EU negotiating guidelines on the post-Brexit trade relationship with the UK which were published in March 2018 provide for a free trade agreement to be agreed with the UK which would address: trade in goods covering all sectors (which should be subject to zero tariffs and no quantitative restrictions), appropriate customs cooperation, disciplines on technical barriers to trade, trade in services (allowing market access to provide services under host state rules), provisions on movement of natural persons as well as a framework for the recognition of professional qualifications, access to public procurement markets, investments and protection of intellectual property rights.

### 12. Would a failure to adopt any Withdrawal Agreement mean that a future relationship agreement can also not be agreed?

Failure to adopt any withdrawal agreement does not mean that there can be no agreement on a trade relationship in future, but negotiations on a trade deal are likely to be even more challenging in that case and would be expected to take a longer time. The CETA Agreement between the EU and Canada took seven years to negotiate and a further year before provisional application.

### 13. What happens if a future relationship agreement is not in place by the end of the transition period in December 2020?

It is possible that a future relationship agreement between the UK and the EU will not be agreed and adopted by the end of 2020, when the transition period under the draft Withdrawal Agreement is set to end. Both sides will need to reach agreement on a number of difficult issues, and in addition it is likely that the future relationship agreement will have to be ratified by the 27 Member States individually, a process that itself can take years.

Unless the transition period is extended, or other contingency measures are put in place, there would be a 'cliff-edge' Brexit at the end of December 2020 if the future relationship agreement is not approved by then. Extending the transition period has not been discussed, and is not provided for in the draft Agreement. Unless the draft Agreement is amended to provide a mechanism for such an extension, a separate agreement between the EU and UK on any extension period would be necessary, which would need to go through new approval processes in the same way as the original finalised Withdrawal Agreement.

# Annex

## Summary of the Withdrawal Agreement

The current version of the draft Agreement consists of six parts and two protocols:

**Part One – Common provisions:** this section sets out relevant definitions and territorial scope of the Agreement. Article 4 requires the UK to put in place domestic primary legislation in order to allow EU and UK citizens to rely directly on the provisions in Part two dealing with citizens' rights and to ensure that any provisions that are inconsistent with these rights are disapplied.

**Part Two – Citizens' rights:** this section deals with the rights of EU citizens in the UK and UK citizens in the EU who are exercising their free movement rights before the end of the transition period ('the specified date').

Qualifying EU citizens will be able to continue to exercise their right of free movement under EU law and live, work and study in the UK as they are currently able to do. UK citizens exercising their rights in the EU will be able to continue to do this in their host state but not elsewhere in the EU. The same rights will apply to their family members who are legally resident in the host State before the end of the specified date. Spouses, registered partners, dependent parents and children related to the EU/UK right holder who are not residing in the host Member State on the specified date will keep their entitlement to join an EU/UK family member at a later date, for the lifetime of the EU/UK national right holder, irrespective of their nationality.

The UK and the EU27 are entitled to require citizens concerned to apply to obtain a status which gives them the necessary rights of residence, but such administrative procedures must be transparent, smooth and streamlined.

Although this is the area where most progress has been made (the whole text of part two is in green) there remain a number of unresolved issues such as the family reunion rights of future partners or spouses and the right of UK nationals living in the EU27 to live and work in a different Member State after Brexit.

**Part Three – Separation provisions:** this covers a range of events in a variety of areas that may be ongoing by the end of the transition period and sets out how these will be resolved. It deals with the following:

- Goods placed on the market before the end of the transition
- Ongoing customs procedures, ongoing value added tax and excise duty matters
- Continued protection in the UK of intellectual property rights
- Ongoing police and judicial cooperation in criminal matters
- Ongoing judicial cooperation in civil and commercial matters
- Data and information processed or obtained before the end of the transition period or on the basis of the Withdrawal Agreement
- Ongoing public procurement and similar procedures
- Euratom related issues
- EU judicial and administrative procedures
- Privileges and immunities – status of UK nationals working in EU institution and EU staff working in EU bodies in the UK
- Other issues relating to the functioning of the institutions, bodies, offices and agencies of the EU

**Part Four – Transition period:** a transition or implementation period, starting on the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020 has been agreed. During this transition period the UK will no longer be an EU Member State, as it will have left the EU on 29 March 2019, but, unless otherwise provided in the Withdrawal Agreement, EU law will be applicable to and in the UK, so as to produce the same legal effect as it does prior to exit. The provisions also state that any references to Member States in EU law, including EU law as implemented by Member States, is to be understood as including the UK during the transition period.

EU law will therefore continue to have direct effect in the UK and the principle of supremacy of EU law will apply during the transition period. The UK will no longer be represented and participate in the EU institutions, thereby losing its right to influence and vote on new legislation. In exceptional circumstances representatives or experts from the UK may, upon invitation, attend meetings of certain committees but without having any voting rights.

During the transition period the UK will be free to negotiate, sign and ratify international agreements entered into in its own capacity, provided these agreements do not come into force or apply until after the transition period.

The transition provisions do not provide a mechanism for extending this period after 31 December 2020, and unless other contingency measures are put in place, there will be a 'cliff-edge' Brexit at the end of the transition period if a separate agreement on the future relationship between the UK and the EU is not in place by then.

**Part Five – Financial provisions:** both sides have agreed a methodology for calculating the financial settlement without agreeing a specific amount. The UK Government estimates that the costs for the UK will be around £35 - £39 billion, but it is not possible at this stage to reach a definitive figure. The UK agrees to contribute and participate in the EU budget until the end of the current budget cycle (2020) as if it had remained in the EU. The UK will also contribute its share of the financing of the budgetary commitments entered into before the end of the current budget cycle but not yet disbursed at the end of 2020 (the so called 'reste à liquider').

Payments arising from the financial settlement will become due as if the UK had remained a Member State, so the UK will not be required to make payments earlier than would be the case had it remained in the EU. The UK will continue to benefit from EU spending under programmes financed by the current budget until their closure. UK beneficiaries will be required to respect all relevant EU provisions governing these programmes, including co-financing.

Any participation of the UK in EU programmes after Brexit, as a non-Member State, will have to be discussed and agreed as part of the UK's future relationship with the EU.

**Part Six - Institutions and dispute settlement:**

a Joint Committee consisting of representatives of the EU and the UK will be responsible for the implementation and application of the Withdrawal Agreement. Disputes arising under the Withdrawal Agreement can be referred to the Joint Committee which will settle the dispute through a recommendation. The Joint Committee may, at any point, decide to refer a dispute to the CJEU for a binding ruling. If a dispute has not been settled within three months, both the EU and the UK also have the right to submit the dispute before the CJEU for a binding ruling. The role of the CJEU in dispute settlement under the Withdrawal Agreement has not yet been agreed between the parties and currently remains a red line for the UK.

**Protocol on Ireland/Northern Ireland:**

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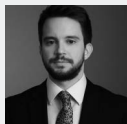
undermine the UK common market and the constitutional integrity of the UK. It remains a priority for the UK to resolve the issue of the Irish border as part of the negotiations on the overall relationship between the UK and the EU. Nevertheless, in June 2018 the Government published its own proposal for a backstop position aimed at avoiding a hard border between Northern Ireland and Ireland. The UK proposes a temporary customs arrangement between the UK and the EU, which would apply in the 'specific and narrow circumstances' of a final customs arrangement not being in place by the end of the transition period. The UK expects the overall future relationship agreement to be in place by the end of December 2021 at the latest, but the UK's backstop proposal for Northern Ireland does not include a specific end date. In order to finalise the Protocol, and so the draft Withdrawal Agreement, the EU and the UK need to agree the detail of the backstop position, even if the future relationship position for Northern Ireland is not agreed.

**Protocol relating to the Sovereign Base Areas**

**in Cyprus:** the text of the draft Withdrawal Agreement contains a 'placeholder' for a mechanism that will ensure the proper implementation of the applicable EU law in relation the Sovereign Base Areas in Cyprus following withdrawal of the UK from the EU.

**Key contacts****Gavin Williams**

Partner  
T +44 20 7466 2153  
[gavin.williams@hsf.com](mailto:gavin.williams@hsf.com)

**Tom Henderson**

Senior Associate  
T +44 20 7466 2898  
[tom.henderson@hsf.com](mailto:tom.henderson@hsf.com)

**Dorothy Livingston**

Consultant  
T +44 20 7466 2061  
[dorothy.livingston@hsf.com](mailto:dorothy.livingston@hsf.com)

**Kristien Geurickx**

Professional Support Lawyer  
T +44 20 7466 2544  
[kristien.geurickx@hsf.com](mailto:kristien.geurickx@hsf.com)

**Paul Butcher**

Brexit Director  
T +44 20 7466 2844  
[paul.butcher@hsf.com](mailto:paul.butcher@hsf.com)