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Brexit FAQs

What next for the UK and the EU?

January 2020



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Counting down, stepping up

One countdown is nearly over. It is now clear that the UK will leave the EU on 31 January 2020. But another countdown starts at that moment: unless the UK government modifies its approach and agrees to an extension, the so-called transition period – during which, broadly, the regulatory status quo continues – will end on 31 December. It looks set to be an eventful 11 months.

Whatever view businesses have of ‘getting Brexit done’, they now have a new concern: stepping up to the challenges and opportunities that will come with the end of the transition period. There is currently quite some distance between the apparent negotiating stances of the UK and the EU, although neither has yet published an official negotiating position. Will that gap close in the next few months? If it doesn’t, might there nevertheless be a deal, albeit not an ‘ambitious’ one? Or will we see a December No Deal outcome, which leaves the UK trading with the EU on World Trade Organization terms?

At the moment, an important step for many businesses is likely to be assessing their exposure both to the risk of a December No Deal and to a limited agreement between the EU and the UK that materially affects the way they do business. Even if you have already audited your exposure to Brexit, it may be worth taking a fresh look at your situation. A lot of water has passed under the Brexit bridge since 2016 (even if some of it has been going round in circles).

The UK’s departure from the single market and the EU acquis looks set to have a very wide range of effects on businesses in the UK, and on many of those that do business with the UK. Until we have some more detail, we have to talk in terms of potential opportunities and risks. But it is already clear that some businesses are likely to be well placed to take advantage of the changes to come, while others will have to be more focused on dealing with, for example, additional regulation, new trade friction and costs, or obstacles to the provision of services.

This briefing answers some of the many questions that are being asked about Brexit. It can’t answer them all, nor can it go into the level of detail businesses need when formulating their responses to Brexit. CMS can help you audit and prioritise your legal risks and opportunities, as well as advising on solutions and on other aspects of Brexit, including its longer term implications. If you would like to know more, please get in touch with your usual CMS contact, or any of the members of our Brexit taskforce listed at the end of this briefing. You will also find updates and analyses on our [Brexit website](#) and, for financial services regulation, our [RegZone](#) website.



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These FAQs discuss the relationship that the United Kingdom will have with the European Union from 31 January 2020, once it is no longer an EU Member State. Many of the references in these FAQs to the EU or to EU Member States should be taken to include not only the remaining 27 EU nations but also the three other countries in the European Economic Area: Iceland, Liechtenstein and Norway. Some are also relevant to Switzerland.

Leaving at last

In one sentence, what's going to happen on 31 January 2020?

The UK will cease to be an EU Member State at 11pm UK time (which is midnight in Brussels).

The Department for Exiting the European Union (DExEU) will also cease to exist on 31 January. The UK's future negotiations with the EU will be run by a central unit called 'Taskforce Europe', which will be based in Downing Street.

Could anything stop the UK leaving?

No. In theory the UK could suddenly ask the EU for an emergency extension to the 'Article 50 period', or tell the EU that it is revoking its 'Article 50 notification' and wishes to remain in the EU – but in practice, of course, neither of these things is going to happen.

The European Union (Withdrawal Agreement) Act 2020 is now law, having moved through the Commons at unprecedented speed for legislation of this nature. The bill was amended during its passage through the Lords, but those amendments were rejected in the Commons, after which the Lords allowed the bill to pass without further delay. It received royal assent on 23 January and the Prime Minister signed the Withdrawal Agreement the following day.

In Brussels, the Withdrawal Agreement was signed on the same day by Ursula von der Leyen, the President of the European Commission, and Charles Michel, the President of the European Council. And on 29 January it was finally ratified by the European Parliament.

Why are Members of the European Parliament still unhappy?

Although the European Parliament has now ratified the Withdrawal Agreement, there is still significant disquiet among MEPs about the arrangements for EU citizens in the UK after Brexit. On 15 January the parliament adopted (by 610 votes to 29) a resolution noting that "its decision on consent to the Withdrawal Agreement will take into account experience gained and assurances given in relation to the implementation of key provisions of the Withdrawal Agreement, especially as regards the UK's EU Settlement Scheme".

In reality, it would have been difficult for MEPs not to ratify the Withdrawal Agreement. They would have risked an abrupt No Deal Brexit that would have made the position of EU citizens in the UK even more uncertain. So the consent the parliament has now given to the Withdrawal Agreement should not be taken to mean that its concerns have been wholly allayed. On the contrary,

MEPs are now likely to focus on ensuring that the forthcoming negotiations between the EU and the UK result in additional guarantees for EU citizens.

The UK has been trying to persuade MEPs that their concerns are needless. A meeting between Guy Verhofstadt, the European Parliament's Brexit Co-ordinator, and the UK's Brexit Secretary Steve Barclay was described as "constructive", with Mr Barclay apparently offering reassurances that EU citizens will not automatically be deported from the UK if they fail to apply for settled status within the period specified by the government. However, looking ahead, Mr Verhofstadt has also said that he "cannot imagine the EU will agree to any free trade deal if there are outstanding concerns about the treatment of EU citizens in the UK."

What will be different after the UK leaves?

In the short term very little. In the long term, probably a lot.

For the rest of 2020 (and possibly longer) we will be in a transition period, or 'implementation period' as the UK's Brexit legislation terms it. During this time the UK will continue to follow EU rules (including any new rules). The EU will treat the UK as a Member State in most respects, although it will not be represented in EU institutions or EU decision-making. EU law will continue to apply in the UK.

The implementation of the Withdrawal Agreement and the management of the future relationship between the UK and the EU will be managed by a new Joint Committee. According to the Political Declaration which accompanied the Withdrawal Agreement, it will "comprise the Parties' representatives at an appropriate level" and will "establish its own rules of procedures, reach decisions by mutual consent, and meet as often as required to fulfil its tasks." The Withdrawal Agreement also provides for arbitration where no mutually agreed solution to a dispute is reached within three months of a written notice being provided to the Joint Committee.

Once the transition period ends there will be many changes. We already know about some of these; others will depend on what the UK and the EU negotiate in the coming months. They are discussed in more detail below.

Another thing that will be different is that there will be no way back into the EU for the UK via the Article 50 process. Until 11pm on 31 January, the UK retains the power to revoke its A50 notification and remain part of the EU. After that point, any future government that sought to take the UK back into the EU would have to go through the same application and approval process as any other non-EU nation.



Non-EU trade

One area in which there may be some immediate change is trade between the UK and certain non-EU countries. The EU will tell such 'third countries' with which it has free trade agreements (FTAs) that they should continue to treat the UK as a Member State during the transition period. But those countries will not be bound to do so.

However, until the transition period ends the UK will be bound by its obligations under those FTAs, just as if it were still a Member State. It will also be bound by any new agreements the EU makes.

Whether non-EU nations agree temporarily to treat the UK as a Member State or not, the UK will cease to have such access to EU FTAs once the transition period is over.

New trade agreements

The government has presented the UK's new ability to set its own tariffs and pursue its own free trade agreements as one of the major benefits of Brexit. The UK will be able to negotiate and ratify trade agreements with non-EU countries during the transition period, but any such agreement cannot come into force until the transition period ends, unless the EU agrees to allow it.

The 2019 Conservative Party general election manifesto said that a Conservative government would aim to have 80% of UK trade covered by free trade agreements within three years. The initial focus would be on deals with the US, Australia, New Zealand and Japan, which would be negotiated in parallel with the EU deal.

Rollover agreements

The UK has already been negotiating 'rollover' agreements with third countries from whose existing agreements with the EU the UK has benefitted as a Member State. (The UK has been a party to some 800 bilateral or multilateral agreements between the EU and third countries or organisations, a significant number of which are trade or trade-related agreements.) Its intention has been as far as possible to replicate the effects of EU FTAs in a series of bilateral agreements which will apply as soon as the UK is no longer covered by the EU FTAs.

These agreements will ensure a degree of continuity in the UK's international trade, and should be replaced by newly negotiated FTAs in due course – although in some cases, realistically, that could take many years.

At the time of writing the UK has concluded 20 rollover agreements with parties ranging from the Faroe Islands and CARIFORUM to South Korea and Switzerland. It has also signed some 'mutual recognition agreements' with nations such as the US and Australia that have trade-related agreements rather than FTAs with the EU. However, it has not yet concluded rollover deals with nations such as Canada, Turkey and Japan. If such deals are not concluded by the end of the transition period, UK businesses will find that they are trading with those countries on World Trade Organization terms.

It is important to note that rollover agreements are far from being simply 'photocopies' of the EU deals on which they are based. In many instances important details have been changed. UK importers and exporters which have previously relied on the EU agreements will need to be sure that they understand what the differences are.

What happens next?

In essence, the UK and the EU will try to negotiate an agreement on their future relationship as quickly as possible. The Political Declaration gives some indications as to how they may approach this. Unlike the Withdrawal Agreement, however, the Political Declaration is non-binding, and the consensus among trade experts is that the type of “ambitious” free trade agreement envisaged in the Political Declaration cannot be concluded by the end of 2020.

What's the likely timetable for the negotiations? One of the first things the negotiators will do is agree a schedule for the talks. But we already know some of the key points.	
February	The European Council agrees its negotiating mandate for the European Commission. This will probably happen at the Council meeting on 25 February. The Commission will not open formal negotiations with the UK before the mandate is signed off.
March	<p>Negotiations begin. Initially they will cover the operating framework for what comes next. The parties will agree in general terms what they want to negotiate, and the sequencing for it – i.e. the order in which the topics for negotiation will be tackled.</p> <p>The EU has strong views on sequencing. It believes the UK's refusal to extend the transition period (see below) means that only a very limited number of topics can be agreed before the transition period ends, and it wishes to prioritise those that are most important to it, such as fisheries. It is also likely to focus on security and the need to resolve outstanding issues that relate to the Irish border. But the UK may wish to assert different priorities.</p> <p>It will be interesting to see whether there is a repeat of the Article 50 negotiations in 2017, when the then-Brexit Secretary David Davis promised “the row of the summer” over the EU's proposals for sequencing, only to agree to them on the first day of the talks.</p>
June	<p>The Political Declaration says that the parties will “convene at a high level” in June to take stock of progress, with the aim of agreeing actions to move forward in negotiations on the future relationship. This may not be the only such summit, but it is the only one which has so far been even provisionally confirmed.</p> <p>The Political Declaration also envisages that equivalence assessments for financial services will be concluded by the end of June (see below).</p> <p>There should be an agreement on fisheries by the end of June. The Political Declaration says that the UK and the EU “will use their best endeavours to conclude and ratify their new fisheries agreement by 1 July 2020” so that it will be in place to be used for determining fishing opportunities for the first year after the transition period.</p> <p>30 June is the deadline for the agreement of any extension of the transition period. If none has been agreed by then, the transition period will end on 31 December 2020.</p>
November	The EU has indicated that, assuming there has been no extension to the transition period, any agreement must be concluded by 26 November, in order to give the European Parliament time to ratify it.
December	As well as being the anticipated end of the transition period, December is the target date in the Political Declaration for the EU's decision on its data adequacy assessment of the UK (see below).



How transparent will the negotiations be?

During the Article 50 negotiations, the EU made a virtue of openness: regularly giving updates and publishing relevant materials. It looks likely to approach the forthcoming negotiations in a similar way. Michel Barnier, the head of the European Commission's Task Force for Relations with the United Kingdom, recently said that his team "will work in an open and transparent manner [and] will continue to regularly inform and engage with Member States and the European Parliament in particular, but also in each capital, with the business community, civil society, trade unions and all key stakeholders." There is no sign yet of any equivalent stance from the UK.

When will businesses know what to expect?

Not nearly as soon as they'd like. Some businesses have said they need up to a year to prepare for a new trade regime. And it's common for the arrangements in trade deals to be phased in, sometimes over several years. However, at the moment, it seems quite possible that the details of any trade agreement that may be reached will not be finalised until November 2020, with the agreement set to "come into force by the end of 2020", as the Political Declaration puts it.

There is also a real possibility that no agreement will be reached before the transition period ends – in which case, a host of barriers to trade between the UK and the EU will automatically come into effect. This uncertainty leaves many businesses with difficult choices to make about contingency planning.

For some UK businesses, though, the biggest risk in the longer term may be the possibility – perhaps, as discussed below, even the probability – of a so-called 'bare bones' deal that eliminates some tariffs and quotas but allows onerous barriers to trade and administrative and regulatory burdens to arise, while doing little or nothing for other parts of the economy, such as the services sector.

What does the UK have to do besides negotiate a deal with the EU?

Plenty. As already mentioned, it will want to open trade negotiations with other nations. It will also need to take steps such as the following, to position the UK in a post-Brexit world.

- Develop detailed policies in a wide range of areas to reflect its new status as a non-Member State.
- Put in place arrangements to implement the new Irish protocol (see below).
- Finalise the tariff regime that it will apply to trade with nations with which it has no FTA once the transition period ends. The government led by Theresa May said it would cut most tariffs to zero. We do not yet know what the approach of Boris Johnson's government will be.
- Pass further Brexit-related legislation, such as the Trade Bill, the Environment Bill, the Agriculture Bill, the Fisheries Bill and the Immigration and Social Security Coordination (EU Withdrawal) Bill.
- Establish new public bodies, such as the Independent Monitoring Authority for citizens' rights, the Office for Environmental Protection and the Trade Remedies Authority.
- Enhance the capacity of existing public bodies which will have additional responsibilities once the UK is no longer subject to EU rules, such as the Competition and Markets Authority.

While the UK/EU negotiations will inevitably attract a lot of attention, it is clear that there will be many changes at a domestic level which will also have a significant effect on business in the UK, from both primary and secondary legislation.

Why are there separate deadlines for fisheries, financial services and data?

What's happening with financial services?

Once the transition period ends, the UK's financial services sector will lose the 'passport' which enables it to trade freely across the EU on the basis of home state authorisation.

The Political Declaration notes that "close and structured cooperation on regulatory and supervisory matters" is in the mutual interest of the UK and the EU. However, the envisaged regime for financial services is one of 'equivalence' – i.e. the recognition by one jurisdiction of the regulatory standards of another jurisdiction.

Both sides will begin their equivalence assessments as soon as possible after the UK leaves the EU, with the aim of concluding them before the end of June 2020. However, not all EU financial legislation adopts the principle of equivalence – for example, there is no equivalence provision for commercial banking or primary insurance. Furthermore, equivalence assessment is inherently a piecemeal process: the EU currently makes decisions on about 40 areas of equivalence, and has yet to deem any jurisdiction to be equivalent in all of them.

There are other problems with the equivalence regime. The benefits for UK firms are extremely limited. As the EU has emphasised, the granting of equivalence is unilateral and discretionary. There are frequent complaints that equivalence assessments can be withdrawn with very little notice, and also have the potential to become politicised.

However, if the UK and the EU really can complete their assessments by mid-2020, it will provide a limited degree of relative certainty for financial services that will be welcome, and which will offer more short term clarity than that available to most other sectors.

What has been agreed about data?

According to the Political Declaration, the European Commission will use the existing EU data adequacy framework to assess the UK as soon as possible after it leaves the EU, "endeavouring to adopt decisions by the end of 2020, if the applicable conditions are met." At the same time the UK will "take steps to ensure the comparable facilitation of transfers of personal data to the Union, if the applicable conditions are met."

This aspirational deadline has been carried over unchanged from the original Political Declaration negotiated by Mrs May, which would have allowed 21 months for the adequacy assessments and decisions, rather than the 11 available now.

Concerns have been expressed in some quarters that the shorter timetable may prove to be a problem. Previous EU data adequacy decisions have taken much longer than this: of the 13 so far concluded, the Argentinian, which lasted 18 months, appears to have been the fastest. Furthermore, the EU is already engaged in multiple adequacy assessments involving other countries, so there may be some (possibly tactical) resistance to allowing the UK to 'jump the queue'.

Won't there be negotiations on financial services?

Any FTA which the EU and UK negotiate is likely to include a chapter on financial services. But FTAs typically lack deep engagement with financial services, and it is improbable that the EU and the UK could reach a comprehensive agreement on financial services that suited them both.

The EU is hugely unlikely to accept the sort of mutual recognition agreement that would effectively be a continuation of passporting, while the UK is equally

unlikely to accept a regulatory regime for its financial services industry over which it has no control.

We might expect an FTA to cover, for example, interaction between UK and EU regulators – the Political Declaration talks about "close and structured cooperation on regulatory and supervisory matters" – but not, to any material extent, the ability of UK financial services providers to trade in the EU.



If the EU's adequacy decision is not concluded before the end of the transition period there will be a significant amount of disruption. The UK has previously indicated that it would temporarily allow data flows to the EU in the absence of a deal, but the EU has given no similar reassurance, and is unlikely to do so. Businesses which do not have workarounds such as appropriate contractual clauses in place could face serious problems.

It is also possible that the EU will not agree on adequacy without changes to the UK's data regime. It has previously, for example, expressed concerns about the UK's bulk data collection laws. Such obstacles may reduce the chance of a positive decision by the end of 2020.

Why are politicians so interested in fish?

A fisheries agreement with the UK is a concern for only about eight EU Member States. But in most of those states, as in the UK, fisheries have a symbolic and political significance that is far greater than their economic value. (In 2018, for example, UK vessels landed catches worth a total of £989m, with the entire industry accounting for less than 0.15% of UK GDP.)

This means that fisheries issues could have a somewhat disproportionate effect on the overall course of the UK/EU negotiations. The EU's initial negotiating position appears to be that no trade deal of any sort will happen unless EU fishing fleets have access to UK waters. It has said that negotiations on fisheries will take place within the context of the overall economic partnership and will be directly linked with negotiations on trade in goods. Furthermore, it wants to keep its existing quotas:

indeed, the Withdrawal Agreement specifies that "a fisheries agreement is a matter of priority, and should build on, inter alia, existing reciprocal access and quota shares."

However, Mr Johnson and his fellow Brexiteers have repeatedly promised that the UK will 'take back control' of its waters. Indeed, in his very first appearance in the Commons as Prime Minister, Mr Johnson pledged that "we will take back our fisheries and we will boost that extraordinary industry."

There will be a lot of pressure on the government quickly to agree to something that resembles the status quo – not least, perhaps, from other UK industries, which will be watching with alarm if the clock ticks on towards 31 December while the talks are held up by fisheries. However, it is not clear that the government would be prepared to take the political hit this might entail (even though, ironically, the UK fishing industry would be badly hit if there were no deal on tariffs, as much of its output is exported to the EU).

The transition period

Does the transition period give the parties long enough to do a deal?

The UK government has repeatedly said that the transition period must end on 31 December 2020. It was also stated clearly in the Conservative Party manifesto in last year's general election. The government has even added a provision to its Brexit legislation that prohibits ministers from agreeing an extension (although in practice it could fairly easily find ways around this provision if it subsequently wished to do so).

Despite this very public insistence from the UK on a 31 December end to the transition period, assorted EU players have made clear their view that it leaves far too little time for negotiation and that the UK should accept the idea of an extension. In the words of Ursula von der Leyen, they believe it is "basically impossible" to negotiate a comprehensive deal by the end of 2020.

The EU's existing trade agreements have all taken much longer than ten months to negotiate: the EU/Canada agreement, for example, which the government often refers to as a partial template for its own preferred deal, took five years.

Some commentators have suggested that, because the UK and EU observe the same regime at the moment, negotiations could move with unusual rapidity. But others think this could only be true if the UK agreed to be bound by many aspects of the EU regime in future, which the UK government is adamant it will not do. Otherwise, they say, the existing alignment will actually make the talks more difficult, as divergence is harder to negotiate than convergence. In the words of Sir Ivan Rogers, formerly the Permanent Representative of the UK to the EU, "the further 'out' of the European Union we choose to go, and therefore the further we want to go, the longer it will take to negotiate the necessary agreements."

Mr Barnier is adamant that any deal concluded by the end of November 2020 cannot address all the topics that have to be dealt with. He recently suggested three priorities for the negotiations: "a new capacity that enables us to work together", a "very close" security relationship, and "an economic partnership based on a level playing field."

Mr Barnier also told MEPs that "if there is no extension, we will still have a few months to achieve what I would describe as the minimum necessary for the economy and security or to prepare for a cliff-edge." He has suggested that those preparations may include discretionary granting by the EU of temporary

permissions to the UK to ensure, for example, that air and road transport are not massively disrupted by the 'cliff-edge'. The vital areas where such fallbacks are not possible would be the priorities for negotiation.

In recent weeks, representatives of both sides have been telling journalists that the short timetable will force the other side to make significant concessions in order to get the deal it needs. We will soon find out whether either of them is right.

If it's not long enough for the negotiations, why does the transition period end in December?

The December 2020 date was originally part of the Withdrawal Agreement negotiated by Mrs May's government, which was intended to apply from the end of March 2019. This would have provided 21 months for negotiation and preparation, with the possibility of an extension. Furthermore, the UK-wide 'backstop' that formed part of that agreement would have softened the impact of any failure to negotiate an FTA in the time available.

When Mr Johnson's government agreed its revised version of Mrs May's deal, the December 2020 deadline was left unchanged, even though this meant that the time set aside for the negotiations (taking account of the requirements for scoping, ratification etc) was more than halved.

Will the transition period be extended?

The Withdrawal Agreement permits a one-off extension of the transition period, for up to one or two years, provided the EU and the UK agree to it before 1 July 2020.

As noted above, the EU thinks an extension is necessary, but Mr Johnson and his ministers currently refuse to contemplate one.

It is not impossible that the EU and the UK could find another way of effectively extending the transition period, although the Withdrawal Agreement does not provide for this. The prevailing view at the moment is that if the transition period has not been extended by 1 July it will not be extended at all. But it would not be a total surprise if something like a 'phased implementation period for the FTA' ended up being tacked on to the end of the transition period. This would allow the UK government to observe its pledge not to extend the transition, while creating some extra time for supplementary negotiations and for businesses to adjust to the FTA. However, some of the benefits enjoyed by the UK in the original transition period would probably fall away.

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What happens at the end of the transition period?

That mostly depends on whether the UK and the EU negotiate a deal and – if they do – on what it says. Additionally, however, the Withdrawal Agreement puts in place some ‘separation provisions’ to support an orderly end to the transition period, such as the following measures which do not depend on any future deal.

Goods (other than animals and animal or germinal products) that are lawfully placed on the market before the end of the transition period can continue to circulate freely between the UK and the EU until they reach the end user.

Any **movement of goods** between the EU and the UK that starts before the end of the transition period but ends after it will be treated as an intra-EU movement in terms of import and export rules (and EU VAT rules).

The **EU VAT Directive** will apply to transactions between the UK and the EU during the transition period for five years after the transition period ends. Businesses incurring VAT in a Member State where they are not established or VAT registered will be able to claim refunds until 31 March 2021.

Mergers with a UK dimension that have been notified to the EU Commission but not cleared by the end of the transition period will be determined by the EU until their conclusion, as will competition proceedings initiated by the EU but not concluded before the transition period is over.

The **European Court of Justice** will continue to have jurisdiction for all proceedings commenced before the transition period ends (whether involving the UK or as a reference from a UK court or tribunal). UK lawyers can continue to act in such cases.

EU citizens and their families who are living in the UK when the transition period ends, and **UK citizens** and their families who are living in an EU Member State when the transition period ends, will basically have the right to go on living there indefinitely, although some other rights they may have had before will not necessarily continue. Once they have lived there for five years they will be entitled to a permanent right of residence. The ECJ will have some jurisdiction here: for eight years after the transition period ends, UK courts may refer questions about the interpretation of citizens’ rights in the Withdrawal Agreement to the ECJ for a preliminary ruling.

EU professionals who live or work in the UK, and **UK professionals** who live or work in the EU, will continue to have their professional qualifications recognised, provided a recognition decision is obtained before the end of the transitional period.

EU **data protection** law will continue to apply in the UK to any personal data of non-UK individuals that was processed in the UK under EU law before the end of the transition period, or that is subsequently processed in the UK on the basis of the Withdrawal Agreement.

Several provisions in the Withdrawal Agreement protect **intellectual property rights**.

- EU trade marks, Community designs and Community plant variety rights that are in place before the end of the transition period will automatically be replicated into UK law.
- The holders of any unregistered Community design rights or database rights that have arisen before the end of the transition period will have similar protection in the UK.
- Where an EU trade mark or Community design has been applied for but has not been registered when the transition period ends, the applicant will have nine months in which to file an application in the UK and maintain their priority. (There is a similar right of priority for Community plant variety rights, with a six-month grace period.)
- Geographical indications or designations of origin that are protected in the EU when the transition period ends will continue to enjoy protection in the UK.
- The EU regime for supplementary protection certificates for plant protection products and medicinal products will continue to apply to any applications filed in the UK before the end of the transition period if the administrative procedure is ongoing when the transition period ends.



Any **public procurement** processes that are ongoing at the end of the transition period will continue on the same basis of non-discrimination.

The European Commission can challenge UK **state aid** granted before the end of the transition period for four years after the end of the transition period. The European Commission reportedly also believes that, in the absence of any FTA, the Irish protocol will ensure that large UK companies with a significant presence in Northern Ireland remain subject to EU state aid rules, even if they are not headquartered in Northern Ireland. The UK may dispute this interpretation of the protocol if it ever becomes an issue.

The **EU Insolvency Regulation** will continue to apply to proceedings involving the UK that are opened before the end of the transition period.

Some EU regulations on **conflicts of laws, jurisdiction and the enforcement of judgments** will continue to apply.

- Rome I will be applied by UK courts to contracts concluded before the end of the transition period.
- UK courts will apply Rome II to proceedings initiated before the transition period ends, in respect of choice of law and enforcement of judgements.
- Brussels I will be applicable to proceedings instituted before the end of the transition period, and to the recognition and enforcement of judgments given in proceedings instituted before the end of the transition period.
- Other provisions of the Withdrawal Agreement cover e.g. European payment orders, small claims procedures, and the application of the Service Regulation and the Taking of Evidence Regulation.

Other areas with similar continuity provisions include police and judicial cooperation, Euratom related issues, and various administrative procedures and functions.

What might a deal look like?

Will there be one deal, or many?

The UK is unlikely to end up in the position of Switzerland, whose economic relations with the EU are governed by well over 100 bilateral agreements. Nevertheless, the UK and the EU might negotiate a portfolio of agreements rather than a single FTA, giving priority to a basic deal and delaying more difficult negotiations until the transition period is over.

The EU would probably prefer a single agreement, not least because it wishes to ensure that different aspects of the negotiations remain linked, and wants to avoid what it sees as cherry-picking on the part of the UK. Such a deal might take the form of an 'association agreement', resembling the one agreed by the EU and Ukraine. However, believing that such a comprehensive deal cannot be concluded by the end of 2020, it may instead accept the piecemeal approach as a viable alternative, particularly if a single governing framework can also be agreed. (The Political Declaration envisages an overarching institutional framework, but also admits the idea that some UK/EU agreements could sit outside it, with their own governance arrangements.) As noted above, the EU would be prepared – as would the UK – to put in place time-limited unilateral measures in certain other areas, to provide stopgaps until agreements on those areas were reached.

For the purposes of these FAQs, however, we will continue to refer to 'a' deal or 'the' deal.

What sort of deal will the UK aim to negotiate?

Mr Johnson has told the EU that he wants "a broad free-trade agreement covering goods and services and co-operation in other areas". However, he also amended the section of Mrs May's Political Declaration that envisaged the UK and the EU "having a trading relationship on goods that is as close as possible" to remove the words "as close as possible".

This has encouraged the belief that any FTA agreed by the Johnson government will leave the UK in a more distant relationship with the EU than the May government had planned. So has the fact that the Johnson Political Declaration envisages a partnership between the UK and the EU "with a comprehensive and balanced Free Trade Agreement at its core", where the May version foresaw a "free trade area". This implied membership of a customs union, but the 2019 Conservative Party election manifesto specifically rejected the idea of any customs union or single market involvement for the UK.

What does the EU want?

The EU has some different priorities, notably the protection of its single market. A key section of the Political Declaration says "the future relationship must ensure open and fair competition, encompassing robust commitments to ensure a level playing field. The precise nature of commitments should be commensurate with the scope and depth of the future relationship and the economic connectedness of the Parties." Or as Ursula von der Leyen said in a recent speech in London: "Without a level playing field on environment, labour, taxation and state aid, you cannot have the highest quality access to the world's largest single market." She also reiterated that the EU will not accept the free movement of capital, goods and services if there is no free movement of people.

The EU is willing to negotiate a "zero tariff, zero quota" deal, as Mr Johnson terms it, but the EU's version of that mantra also includes "zero dumping". Dumping is EU terminology for gaining a competitive advantage by, for example, cutting environmental standards below the other party's.

When Mrs May negotiated her withdrawal agreement with the EU, its backstop element included non-regression clauses on tax, labour and social standards, and environmental protection, meaning that the UK undertook not to lower the standards it currently maintains in these areas. For state aid, the UK accepted dynamic alignment – in other words, it agreed that its state aid regime would change in tandem with any changes in the EU regime. The EU is likely to want a set of commitments that is at least as strong as this before it contemplates agreeing the sort of zero tariff, zero quota deal to which Mr Johnson aspires.

There are rumours that some Member States wish to go significantly further: e.g. to insist on the dynamic alignment of environmental regimes, in order to ensure that the UK cannot undercut the EU as the latter moves towards achieving its 2050 carbon targets. As the UK is currently not prepared to contemplate the dynamic alignment of anything at all, and appears only willing to accept non-regression agreements in areas of its own choosing – which the EU sees as unacceptable cherry-picking – the stage is set for some hard negotiations.



Individual EU Member States will also have their own priorities, some of which may come to be significant factors in the negotiations as a whole. The most high-profile example from the talks to date has been the question of Gibraltar (which is the subject of a protocol in the Withdrawal Agreement, establishing committees to deal with a variety of specific issues). Some commentators expect Spain to take the opportunity of the forthcoming time-limited negotiations to press for additional concessions on Gibraltar from the UK.

What have the EU and the UK said the negotiations should cover?

The principal guide to this is the Political Declaration. As noted already, this is a non-binding document. Some commentators view it as little more than a wish list. But even if it is a wish list, at least it offers an indication of what the UK and the EU are wishing for. The following topics are among those covered.

Cooperation

The Political Declaration holds out the prospect of UK and EU cooperation in areas ranging from the promotion of “effective global practices on cyber security” to, simply, “space”.

It also says that the talks will explore the possibility of cooperation between UK authorities and EU agencies such as the European Medicines Agency, the European Chemicals Agency and the European Aviation Safety Agency.

Customs arrangements

The Political Declaration emphasises a wish for the parties to use measures such as technology, trusted trader programmes and administrative cooperation in their new customs arrangements.

Digital

Some facilitation of e-commerce is envisaged, as is equal access to telecoms networks, services and suppliers.



Energy

The Political Declaration says that the EU and the UK “should cooperate to support the delivery of cost efficient, clean and secure supplies of electricity and gas, based on competitive markets and non-discriminatory access to networks.” There will be a framework for technical cooperation, and possibly cooperation on carbon pricing.

The European Investment Bank

The declaration notes that the UK wants a future relationship with the EIB. However, there is no commitment for the parties to negotiate one.

Intellectual property

The agreement foreseen by the Political Declaration would provide for IP rights that preserve current high levels of protection, while allowing the parties freedom to establish their own regimes for the exhaustion of IP rights. It would include a mechanism for cooperation and exchange of information on IP issues of mutual interest.

Movement of persons

The Political Declaration notes that the UK has decided that the principle of free movement of persons between the EU and the UK will no longer apply. In the light of that, it suggests that they will try to negotiate non-discriminatory and reciprocal arrangements covering, for example, visa-free travel for short-term visits; temporary entry and stays for business purposes; and entry and stays for purposes such as research, study, training and youth exchanges. At least some of these – such as visa-free short stays – should be fairly easy to negotiate.

Professional qualifications

The recognition of most non-EU professional qualifications is handled by individual Member States. In some previous FTAs the EU has undertaken to facilitate discussions between the certification bodies in Member States and their equivalents in the negotiating state. But the EU cannot simply offer recognition to the UK, which may therefore find itself negotiating with dozens of regulators across the EU. The Political Declaration merely says the parties should “develop appropriate arrangements on those professional qualifications which are necessary to the pursuit of regulated professions” where it is in their mutual interest to do so.

Public procurement

The Political Declaration includes a rather vague aspiration for the provision of mutual opportunities beyond those available under the WTO Government Procurement Agreement, to which the UK intends to accede.

Services

The Political Declaration envisages “ambitious, comprehensive and balanced arrangements on trade in services and investment in services and non-services sectors” that build on the provisions in recent EU FTAs while respecting each party’s right to regulate.

To judge by its approach to previous deals, the EU will be quite prepared to negotiate an agreement that allows UK service providers easily to set up EU subsidiaries, but more cautious about providing for the direct export of services from the UK into the EU (which in some cases might also be complicated by, for example, provisions on free movement and the recognition of professional qualifications).

As already noted, there will be specific provisions for financial services, as well as sector-specific provisions in areas such as telecoms.

Transport

The Political Declaration says the UK and EU should ensure passenger and cargo air connectivity through a Comprehensive Air Transport Agreement (as well as cooperation on aviation safety and security), and should ensure comparable market access for freight and passenger road transport operators, alongside complementary arrangements to address travel by private motorists.

It also envisages a range of possible cooperation on maritime safety and security, as well as market access for international maritime transport services and bilateral arrangements for cross-border rail services.

UK participation in EU programmes

The Political Declaration says the UK and EU “will establish general principles, terms and conditions for the United Kingdom’s participation in Union programmes, subject to the conditions set out in the corresponding Union instruments, in areas such as science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space.” The conditions will certainly include financial contributions from the UK.

The negotiations will also explore the possibility of UK participation in the European Research Infrastructure Consortia (ERICs).

Other agreements

The Political Declaration also envisages some additional agreements, such as a wide-ranging Nuclear Cooperation Agreement between the European Atomic Energy Community (Euratom) and the UK, enabling cooperation between Euratom and the UK and its national authorities, and a Framework Participation Agreement allowing the UK to participate on a case-by-case basis in EU security and defence operations.



What about rules of origin?

Mrs May's Political Declaration aimed to obviate all need for checks on rules of origin by building on the provision in her Withdrawal Agreement for a single customs territory. The Johnson declaration envisages "appropriate and modern" rules of origin, which are likely to constitute a barrier to trade for UK businesses that export to the EU. Paperwork (or electronic filings) of some sort will probably be required to show that exported goods genuinely originate in the UK. In some cases this may be onerous. Some businesses may even opt to incur low tariffs rather than taking on the administrative burden of avoiding them.

Importantly for some supply chains, once the UK is outside the EU, components originating in the UK will no longer count as EU content. Many EU exporters only benefit from the trade deals the EU has with third countries provided a certain percentage of the value of their products originates in the EU. If they can no longer include elements from the UK in that percentage, they are likely to readjust their supply chains accordingly. We have already seen some UK companies lose business because of this, with contracts going to EU-based rivals instead.

How flexible will the EU be about animal and plant products?

The EU's sanitary and phytosanitary regime is notoriously stringent. This means that, for example, the negotiations are unlikely to lead to any exemption for the UK from the rules that ensure animals and animal products undergo the administrative and veterinary checks required by EU legislation before they enter the

EU's customs territory. Some previous EU trade agreements have reduced the levels of physical inspections required, and some reduction may be possible for the UK, but unless the UK is prepared completely to integrate itself with the EU's sanitary and phytosanitary regime (which it has said it will not do) this is an area in which significant barriers to trade will remain.

What's the likely overall outcome of the negotiations?

Opinion is divided on this. The EU's view is that if the transition period were extended, it might be possible to arrive at a deal that began to resemble the one outlined in the Political Declaration. But if Mr Johnson really does reject any attempt to extend the transition period, then at the end of 2020 there seems most likely to be either a bare bones deal that covers tariffs, quotas and dumping – plus agreements on fisheries and possibly one or two other issues such as security – or no deal at all.

While a bare bones FTA could see trade free of tariffs and quotas, it would fall well short of eliminating friction from UK/EU trade. There would be barriers to trade that do not exist at the moment, with the attendant costs and delays for businesses. Many businesses would also incur significant costs in transitioning from the present arrangements to the new regime.

A bare bones deal would not necessarily even result in the absence of all tariffs and quotas. If the UK will not agree to EU level playing field demands, the EU may insist on tariffs, and possibly quotas, in many sectors.



A bare bones deal would probably not be the long-term extent of the UK's agreements with the EU. Even if the Johnson government were to stop there (which most commentators assume it would not), a future government would almost certainly open negotiations to extend the scope of the deal.

What happens once the UK and the European Commission agree a deal?

Quite a lot – mostly within the EU. The UK government has removed from its withdrawal legislation a previous commitment to let the Commons vote on the deal, although MPs may still have the opportunity to vote on any enabling legislation related to the deal.

Once the European Commission has completed its negotiations with the UK, the Member States (through the European Council) and the European Parliament will need to ratify the deal.

If the deal turns out to be as ambitious as the UK and the EU hope, this process may be significantly more complex. If an FTA is a 'mixed agreement' – i.e. one that covers any of the competences of Member States, rather than just those (such as customs) which are in the domain of the Commission – it must additionally be ratified by the national parliaments of Member States, and even in some cases regional parliaments.

Any of these bodies can potentially derail the ratification process if they object to aspects of the deal, just as the parliament of Wallonia in Belgium famously threatened to block the EU's Comprehensive Economic and Trade Agreement with Canada in 2016 because of concerns

over its provisions on labour, environmental and consumer standards.

The Political Declaration confirms that the European Commission is ready to propose applying "relevant aspects of the future relationship" on a provisional basis if necessary. So if ratification is incomplete when the transition period ends, some of the agreement's provisions might still come into effect.

However, there would always be the danger that the deal could subsequently be blocked by a parliament somewhere in the EU.

The risks attached to any attempt to agree and ratify a mixed agreement in the limited time available have led some commentators to believe that the UK and the EU will in fact try to avoid it. On this analysis they would opt for a deal restricted to the core elements of their relationship that could, on the EU side, be approved by the Council and the European Parliament alone. A supplementary mixed agreement would follow some time in the next few years.



What if there's no deal?

What happens if the UK and the EU don't manage to negotiate a deal before the transition period ends?

In essence, we would experience a delayed No Deal Brexit. Instead of happening when the UK left the EU, many of the problems that businesses had previously expected to encounter in a No Deal scenario would kick in on 1 January 2021 (or, conceivably, at the end of an extended transition period, if there were an extension but still no agreement at the end of it).

However, a December 2020 No Deal would not be quite the same as the No Deals which have previously been threatened. The principal difference would be that the Withdrawal Agreement would be in effect, so – for example – provisions on citizens' rights would apply, as would the provisions on Northern Ireland and the UK's financial settlement with the EU. So would the separation provisions mentioned above.

What would happen to UK/EU trade?

Trade between the UK and the EU would be conducted on basic World Trade Organization terms. There would be tariffs on a wide range of goods exported from the UK to the EU, and probably extensive border checks, as well as many other non-tariff barriers to trade. Supply chains involving the EU would be disrupted, and substantial delays at ports and other transport hubs would be likely.

What are the other potential impacts?

A lot would depend on exactly what unilateral stopgap measures the UK and the EU introduced to reduce disruption (see above). It seems likely that some of these would, for example, enable transport between the UK and the EU to continue, although they would not reproduce every aspect of the regime that currently exists.

Other areas in which businesses might experience No Deal disruption include the following.

- **Approvals** – many approvals, certifications, licences and registrations issued by UK regulators would no longer be recognised in the EU.
- **Products** – some businesses might have to make changes in order lawfully to place goods on the EU or UK market.
- **Qualifications** – some UK workers might find that their professional qualifications are not recognised in the EU. EU citizens relying on UK qualifications but working in other countries might also experience problems, as might EU citizens in the UK, who would be governed by UK rules on third country qualifications, which vary from sector to sector.
- **Services** – the impact of No Deal on UK businesses providing services in the EU would depend heavily on the sector involved, and potentially on the regulatory regime in the EU Member State where they were seeking to work.



It should be noted that, if the EU's views on timing are correct, some of these potential problems are unlikely to be fully addressed by any deal capable of being concluded and ratified during an unextended transition period, meaning that businesses may encounter them even if there is a deal by the end of 2020.

Would the UK and the EU continue negotiating?

The fact that no agreement had been reached would not preclude the UK and the EU continuing their attempts to reach one. It might even stimulate those attempts – it is not hard to imagine, for example, that the appearance of lengthy and potentially angry queues at customs points might encourage one or both of the parties to modify their stance. So we might see a 'temporary No Deal situation' followed by a quick, if basic, deal.

Will the UK government be preparing for the possibility of a December No Deal?

We don't know. Nor do we know whether – or when – it might start to advise businesses to prepare for the absence of a deal at the end of the transition period. The government's official line has long been that there will definitely be a deal: Mr Johnson insisted during the general election campaign that there was "absolutely zero" chance of No Deal. Realistically, however, the government cannot guarantee this, unless it decides simply to accept every demand the EU makes. Nor can it yet guarantee what a deal would cover.

As past experience has shown, No Deal preparations would have to begin some months before the potential point of No Deal if they were to be effective. The government would have to trigger them while its negotiations with the EU still had quite some time to run – which would amount to an admission that the negotiations might fail after all.

Should businesses prepare for No Deal?

That will depend very much on the circumstances of an individual business. Some will already have done substantially all the preparation they are capable of doing, such as services businesses that restructured their operations in the run-up to 31 March 2019 or 31 October 2019. But, for example, a manufacturer which stockpiled components at that time, or a retailer which took on extra warehouse space, will need to decide whether to repeat that process during 2020.

All businesses should however consider auditing their existing No Deal preparations, to ensure that they reflect current commercial risks and realities.

What's happening to Northern Ireland?

What's been agreed so far?

The Withdrawal Agreement includes a lengthy protocol on Ireland and Northern Ireland, designed to avoid the introduction of a hard border on the island of Ireland and to safeguard the Good Friday Agreement. While many details – including some very important ones – are still to be determined, the protocol means that the parties' key commitments to Ireland and Northern Ireland will be observed even if the transition period ends without any further agreement.

How will Northern Ireland be different from the rest of the UK?

Northern Ireland will still be part of the UK's customs territory. But it will apply EU customs rules (including tariffs and quotas) and some single market rules.

This means that there will effectively be a customs and regulatory border between Great Britain (i.e. England, Scotland and Wales) and Northern Ireland.

Will there be customs checks on goods going between Great Britain and Northern Ireland?

The UK and the EU have not yet decided exactly how to implement their agreement that Northern Ireland will continue to observe EU regulations on goods, and thus EU customs rules. However, the majority view is that there will inevitably be customs checks on the so-called 'border in the Irish Sea' – although Mr Johnson continues to insist that there will be no checks on goods going from Northern Ireland to Great Britain, and that there will only be a need for checks on goods going from Great Britain to Northern Ireland if the UK and the EU do not agree a zero tariff, zero quota FTA.

Mr Barnier, for example, recently told MEPs that "the implementation of this [deal] foresees checks and controls entering the island of Ireland". Earlier materials from the European Commission also indicate a requirement for "EU import formalities" and checks. Business groups in Northern Ireland certainly anticipate checks, and according to Simon Coveney, Ireland's Tánaiste, it was "clear" that there would be checks, "to ensure that the EU knows what is potentially coming into their market through Northern Ireland."

During the general election campaign, the Labour Party drew attention to a leaked Treasury document that anticipated customs declarations and security checks between Northern Ireland and Great Britain, and customs declarations, checks and "potentially damaging tariffs" for goods travelling from Great Britain to Northern Ireland.

The key difficulty for those seeking to avoid the introduction of customs checks is how to ensure that something shipped from Great Britain to Northern Ireland is subject to EU rules if it is "at risk" of being subsequently moved into the EU (whether "by itself or forming part of another good following processing"), but not subject to those rules if Northern Ireland is its final destination.

It is also certainly the case that even if there is a zero tariff, zero quota deal, there will have to be a regime that includes checks on animals and animal-derived products moving from Great Britain to Northern Ireland. Such products will have to pass through border inspection posts and be subject to document checks, with some also subject to physical checks. Some such checks are already in place under the existing EU sanitary and phytosanitary regime, so this may not represent a radical change to current practice, although the number of checks may increase.

What about goods imported into Northern Ireland from elsewhere?

Goods that are imported into Northern Ireland from other countries outside the EU will be subject to the UK's customs regime – again unless a good is "at risk" of moving into the EU, in which case it will be subject to EU rules.

And what about goods going from Northern Ireland to Great Britain?

As part of the deal to restore devolved government to Stormont, the UK government has promised it will "legislate to guarantee unfettered access for Northern Ireland's businesses to the whole of the UK internal market, and ensure that this legislation is in force for 1 January 2021." But Irish businesses are still afraid that there may be exit declarations and related costs for goods going moving from Northern Ireland to Britain.



What else does the protocol deal with?

A wide variety of issues, including the following.

- The UK must ensure that Good Friday Agreement rights are not reduced.
- The UK must ensure that the Common Travel Area, which has long allowed the movement of people between Ireland and Northern Ireland, continues to function. One effect of this is that the UK will have to allow EU citizens (and their family members) free movement into Northern Ireland from Ireland, which raises the question of whether the UK will seek to introduce any immigration controls between Northern Ireland and Great Britain – a move which would be highly controversial.
- The UK can include Northern Ireland in any free trade agreements it negotiates with other countries, as long as they don't prejudice the application of the protocol.
- EU law covering VAT on goods will continue to apply in Northern Ireland, although the UK will collect and retain the VAT revenue. It is possible that in time Northern Ireland and Great Britain could have different VAT rates.
- EU state aid rules will apply to measures affecting trade between Northern Ireland and the EU, including the operation of the island's Single Electricity Market, although there is a partial exemption for UK support to Northern Ireland's agricultural sector. (As mentioned above, the European Commission apparently believes that in certain cases state aid rules might also cover companies based elsewhere in the UK that have significant operations in Northern Ireland.)
- The European Court of Justice will have jurisdiction over disputes under the protocol.

What still needs to be determined?

The most important question, as already mentioned, is exactly how the border arrangements will work. This will be high on the agenda of the Joint Committee, which is charged with resolving such outstanding points.

Other issues will include, for example, determining which fisheries and aquaculture products from Northern Irish ports will be exempt from duties, and agreeing how much the UK is allowed to subsidise farmers in Northern Ireland.

How long will the protocol apply?

The Northern Ireland Assembly will be able to vote on whether to consent to the continuation of the trading arrangements established by the protocol.

The first vote will come four years after the end of the transition period. If a simple majority consents to continuation, another vote will be held after another four years. But if the majority shows 'cross-community support' (i.e. specific levels of support from both unionists and nationalists in the assembly), the next vote will not be held for eight years. Subsequent votes will be held at four-year or eight-year intervals, as appropriate.

Should the Assembly ever vote against the arrangements they will be terminated after two years. The Joint Committee would then be responsible for recommending what action to take going forward.

This system has been set out in a unilateral declaration by the UK government. The Withdrawal Agreement merely says the UK must provide the opportunity for democratic consent in a manner consistent with the Good Friday Agreement.

What happens if the UK doesn't implement new customs arrangements in time?

Considerable work will be needed to prepare for the new customs regime in Northern Ireland, whatever its details turn out to be. There is a significant risk that the UK may not have the necessary customs arrangements in place by the end of the transition period, especially if that is indeed on 31 December 2020. What would happen then is unclear. It is certainly possible that the EU could launch infringement proceedings, although it is hard to know what sort of interim regime might be created or what remedies, reliefs or sanctions might be considered appropriate.



What about Scotland and Wales?

Are there any special measures for Scotland or Wales

There are none in the Withdrawal Agreement or the Political Declaration, and none are likely to come out of the negotiations between the UK and the EU.

How are the Scottish and Welsh governments responding to Brexit?

Significant tensions have developed between Westminster and all the devolved administrations over the course of the Brexit negotiations. The protocol on Northern Ireland, for example, was agreed despite overwhelming opposition from the political parties in Northern Ireland, and one of the first acts of the newly restored Northern Ireland Assembly was to pass a motion withholding its consent for the UK's withdrawal from the EU.

The Scottish government, as well as the Scottish Parliament and some Scottish trade bodies, have complained of what they perceive as a lack of engagement by the UK government with Scottish ministers, officials and bodies on issues important to the Scottish economy, such as migration.

Like the Northern Ireland Assembly, MSPs at Holyrood rejected the UK's Brexit legislation, by 92 votes to 29. The Welsh Assembly also voted against it, by 35 votes to 15. Although these motions had no effect on the legislation, taken together they demonstrate the tensions Brexit has created between different parts of the UK.

Such tensions have created a difficult atmosphere for the discussions on a range of Brexit-related topics – such as regional funding and devolved powers – that will have to take place in the coming months.

Are Scotland and Wales involved in trade negotiations?

The First Ministers of Scotland and Wales wrote jointly to Mr Johnson in July 2019, requesting among other things a commitment to full involvement of the devolved administrations in international negotiations which impact on devolved competence. They didn't get it. However, the devolved administrations will probably still be responsible for implementing parts of any FTA.

Why are there arguments about 'Sewel'?

Under the Sewel Convention, the Westminster government does not normally legislate in areas of competency that have been devolved without the consent of the relevant legislature. But Westminster chose to go ahead with the European Union (Withdrawal) Act 2018, even though legislative consent from Holyrood and the other devolved legislatures in Cardiff and Belfast was not given. It now looks set to press on with other Brexit-related legislation that ignores Sewel, to the anger of the devolved administrations, and will create tensions if there is a difference in approach between Westminster and the devolved legislatures in respect of future alignment with EU standards.

In real terms there is little that the devolved administrations can do about this, although they may seek to reassert their rights under the convention by, for example, trying to block future legislation.



How are UK overseas territories and crown dependencies affected?

Which overseas territories and crown dependencies are covered by the Withdrawal Agreement?

The Withdrawal Agreement covers not only the UK but also, to the extent that EU law applied before the Agreement, Gibraltar and the crown dependencies (i.e. the Channel Islands and the Isle of Man).

A protocol in the Withdrawal Agreement specifically covers Gibraltar, mostly dealing with how the UK, Spain and the Government of Gibraltar aim to cooperate going forward.

The Withdrawal Agreement also applies to the UK's other overseas territories where it relates to "special arrangements" for their association with the EU.

What are the UK's other overseas territories?

As well as Gibraltar, they comprise: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn Islands; Saint Helena, Ascension and Tristan da Cunha; South Georgia and the South Sandwich Islands; and Turks and Caicos Islands.

Gibraltar is the only overseas territory which is also part of the EU (having joined the EEC with the UK in 1973).

How will any new FTAs affect crown dependencies and overseas territories?

The UK will have to consider the trade needs of crown dependencies and overseas territories when negotiating FTAs. This may in some cases be problematic, as their economic priorities may not be in line with the UK's.

The Falkland Islands, for example, derives over 70% of its GDP from its exports to the EU, which are primarily fish and animal products. A UK/EU FTA which left that trade subject to tariffs would have a considerable impact on the islands, as would any No Deal end to the transition period.

Gibraltar's Chief Minister has speculated about the potential advantages for Gibraltar of, for example, becoming part of the EU's Schengen zone. But the UK government says Gibraltar cannot independently negotiate such a deal.

Are any other UK territories affected?

Another protocol in the Withdrawal Agreement covers the UK's Sovereign Bases on Cyprus. It primarily protects the interests of Cypriots living and working in the UK's military bases on the island, while ensuring that the military functions of the bases can be fulfilled effectively. Among other provisions, the bases will remain part of the EU's customs territory and will be covered by EU law in most respects.

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