

# Commons Library briefing summary

## **The UK's EU Withdrawal Agreement**

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This briefing looks in detail at the Withdrawal Agreement negotiated between the EU and UK and finalised on 14 November. It was endorsed by EU Member State leaders at a special European Council summit on 25 November and the UK Prime Minister has promoted it in the UK Parliament and around the country. But it will be debated at length in Parliament over the coming days before being put to the so-called 'meaningful vote' on 11 December.

### **Agreement is reached**

On 13 November 2018 the EU decided that “decisive progress” had been made in the Brexit negotiations, and on 14 November the European Commission and UK Government published a draft withdrawal agreement, together with three protocols (on the border between Ireland and Northern Ireland, the UK’s Sovereign Base Areas in Cyprus, and Gibraltar) and nine annexes. The text of the negotiated [Withdrawal Agreement](#), together with the Political Declaration on the framework for future EU-UK relations, was endorsed by EU leaders at a specially convened European Council meeting on 25 November 2018.

### **Structure of the negotiated Withdrawal Agreement**

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Part 2 Citizens’ Rights (p 16)

Part 3 Separation Provisions (p 69)

Part 4 Transition (p 196)

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Protocol on Ireland/Northern Ireland (p 302) and Annexes to Ireland/N.I. protocol (p 331)

Protocol on Sovereign Base Areas of UK in Cyprus (p 476)

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Annex VIII on Rules of Procedure of the Joint Committee and Specialised Committees (p 560)

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### **Part one: Common Provisions**

Part 1 of the Withdrawal Agreement contains so-called 'Common Provisions'. They set out its territorial scope, key definitions, and how the Withdrawal Agreement (and particularly, its EU law content) is to be given effect in the UK. An important difference from the March draft Withdrawal Agreement is that Article 4 makes clear that the entire Withdrawal Agreement (rather than just Part Two on Citizens' Rights) is intended to be directly effective in the UK where its provisions are clear, precise and unconditional.

### **Part two: Citizens' Rights**

The citizens' rights provisions were agreed by the UK and the EU in the March draft withdrawal agreement. There are no substantive changes or additions, except in provisions on the rights of nationals of Iceland, Liechtenstein, Norway and Switzerland.

Free movement will continue until the end of the transition (or implementation) period and EU and UK nationals will be able to move to the UK or Member States as is currently permitted by EU law. EU citizens living in their host state before the end of transition will have permanent residence rights under the withdrawal agreement, subject to certain requirements. The UK and the EU27 have discretion under the agreement to require EU or UK nationals to apply for a new residency status.

The UK has chosen to implement a scheme which requires EU citizens to apply for a new residency status known as settled or pre-settled status. It is still unclear whether each of the EU27 will exercise their discretion under the withdrawal agreement to require UK residents to apply for a new residency status.

The Government is expected to publish an Immigration White Paper in the coming weeks in preparation for next year's Immigration Bill. Much about the future relationship between the UK and EU in relation to immigration is yet unknown.

## **Part Three: Separation Provisions**

Part Three of the WA is intended to create an orderly exit from the EU. Ongoing processes and arrangements will be allowed to come to an end under current rules following the end of transition. It contains provisions on market access for goods, ongoing customs, VAT and excise matters, intellectual property, ongoing police and judicial cooperation in both criminal and civil/commercial matters, the protection of data obtained before the end of transition, ongoing public procurement procedures, Euratom issues, ongoing EU judicial/administrative processes, privileges and immunities, and a few provisions relating to the functioning of the EU institutions.

Some examples are summarised below.

### **Goods Placed on the Market**

The December 2017 [Joint Report](#) included high-level agreement on goods placed on the market. Most of the draft legal text was shown as agreed in the [March 2018 draft](#). The final part, on the sharing of information on tests on goods (conformity assessment), was agreed in the June 2018 [joint statement](#).

### **Ongoing Customs Procedures**

Early in 2018 the UK and EU had agreed on the broad principle here – that movements of goods which commence before the UK's withdrawal from the EU Customs Union should be allowed to complete their movement under the rules which were in place at the start of their movement (UK Government, [Technical note: other separation issues - phase 2](#), March 2018). The WA has an added requirement that the UK will reimburse the EU for the actual costs of facilitating access to the EU networks and databases.

### **Ongoing VAT and Excise Duty Matters**

The current EU VAT arrangements will apply to goods dispatched or transported from the UK to an EU Member State, or vice versa, where the dispatch or transport started before the end of the transition period and ended afterwards. Unless the future relations agreement provides otherwise, goods exported from the UK to the EU and vice versa after the end of the transition will attract VAT and customs formalities. There is equivalent provision for EU excise arrangements for fuel, alcohol and tobacco products. After transition, exports of excisable products from the UK to the EU will be subject to customs formalities before they can be moved within the EU. To meet these requirements, the UK may have access to relevant network and information systems and databases.

### **Intellectual Property**

Intellectual property (IP) laws are harmonised to a large extent across Europe, and much of the UK legislative framework in this area is currently composed of directly effective EU Regulations and transposed EU Directives. Under the EU Withdrawal Act the existing body of directly applicable EU law will be converted into domestic law. However, because the UK

would no longer be a Member State, this would affect the unitary character of EU IP rights, meaning that they would not be protected in UK law.

### **Ongoing Police and Judicial Cooperation in Criminal Matters**

The UK currently participates in approximately 40 EU measures that aim to support and enhance internal security and policing and judicial cooperation in criminal matters. Measures identified as being of particular significance include the European Arrest Warrant (EAW); access to databases, including the Second Generation Schengen Information System (SIS II), European Criminal Records Information Exchange System (ECRIS) and Passenger Name Records (PNR); and participation in agencies, in particular Europol and Eurojust.

### **Ongoing Judicial Cooperation in Civil and Commercial Matters**

The UK currently participates in certain measures designed to facilitate judicial cooperation in civil, family and commercial matters. These concern the choice of court to be used to determine disputes, the applicable law, and the automatic recognition and enforcement of legal decisions in different Member States.

### **Agriculture**

The Government's Agriculture Bill will take forward measures for new UK agricultural support schemes. The WA disapplies EU state aid rules that continue to apply to the UK more generally to enable the UK to operate agricultural support schemes during transition/extended transition periods. However, although CAP rules will not apply directly, the UK's 2020 scheme must be equivalent to the EU CAP and expenditure on UK schemes during the transition period are limited to CAP spend levels. The Ireland/NI Protocol includes similar measures which come into effect when the WA does.

Certain EU regulations on food and agriculture continue to apply to NI during the 'backstop' period (see below). Existing checks on animals and animal products moving from GB into NI will need to be scaled up. The Political Declaration states that provisions should be put in place to tackle sanitary and phytosanitary (animal and plant health) barriers to trade, that "build on and go beyond" WTO agreements.

### **Data Protection**

Under the EU's data protection framework, personal data can only be transferred to third countries (such as the UK when it leaves the EU) when an "adequate" level of protection is guaranteed. One option is for the European Commission to make an [adequacy decision](#). The WA covers data processed or obtained before the end of the transition period or on the basis of the Agreement. EU data protection law would apply in the UK in respect of the processing of personal data of subjects outside the UK where the data was processed under EU law before the end of transition period or the data was processed after the end of the transition period. These rules would not apply if the processing was covered by an adequacy decision. If an adequacy decision ceased to apply, the UK would have to ensure its data processing was "essentially equivalent" to EU law.

## **Immunities and privileges**

The WA generally provides for a continuation of existing privileges and immunities for activities that took place before the end of the transition period.

## **Euratom**

The UK will be responsible for nuclear safeguards and there are provisions on ownership of materials and equipment in relation to third countries and Euratom Member States. The UK will keep assets in the UK but would purchase from Euratom any equipment and other property related to the provision of safeguards in the UK as it implements its own safeguards regime. The UK will continue to fulfil obligations with third countries and will continue to be responsible for its nuclear waste, even if it is on another Member State's territory.

## **Part Four: Transition**

The transition period, also described as the 'implementation period' is meant to bridge the period between the date of the UK's exit from the EU and the entry into force of the new, yet to be negotiated, UK-EU partnership arrangements. The transition will run until the end of December 2020, with the possibility of extension for up to two years. A decision on extension must be taken by 1 July 2020. The UK will continue to apply EU law during the transition period, with a few exceptions, as if it were a Member State. But the UK will have no institutional representation and no role in decision-making. The EU institutions and other bodies, offices and agencies will continue to exercise their powers under EU law in relation to the UK. The CJEU will have jurisdiction in relation to the UK and to the interpretation and application of the Withdrawal Agreement.

## **Part Five: Financial Settlement**

After the first round of withdrawal negotiations, the UK and EU set out an agreed approach to the financial settlement in the December 2017 [Joint Report](#). The settlement sets out the financial commitments that will be covered, the methodology for calculating the UK's share and the payment schedule. The withdrawal agreement turns the approach set out in this Report into legal text and provides for further negotiations on UK contributions to the EU budget if there is an extension of the transition period. Any extension would not impact on the financial settlement, which would continue as agreed.

## **Part six: Institutional and Final provisions**

Part six sets out the institutional arrangements underpinning the Agreement, and how disputes about the WA are to be resolved. The key changes to Part Six of the March draft relate to disputes regarding the agreement itself, which the Commission had originally proposed should be resolved by the CJEU if it could not be resolved in the Joint Committee. The November draft instead proposes in Article 170 that any disputes not resolved in the Joint Committee are taken to an independent arbitral tribunal, which will issue a binding decision regarding the dispute. However, where the dispute requires the interpretation of concepts or provisions of EU law, under Article 174 the tribunal is obliged to refer those to

the CJEU for a binding interpretation of those concepts or provisions which the tribunal must then apply.

## **Protocols**

### **The Protocol on Ireland/Northern Ireland**

The NI Protocol, including the 'backstop', is intended to be temporary and applies unless and until it is superseded by a future relations agreement, which the parties will try to achieve by 31 December 2020. The Protocol refers to equality rights, the Common Travel Area and North-South cooperation. Under the 'backstop' the UK will form a customs union with the EU (except for trade in fisheries and aquaculture products, which should be the subject of a further agreement on fishing opportunities by 1 July 2020).

The UK will conform to specific EU legislation on customs, including with respect to third countries, and some harmonisation of law will continue on taxation, the environment, labour law, state aid, competition and public companies/monopolies, but with no obligation to keep up with new EU legislation and CJEU case law. To provide a 'level playing field' the UK commits to non-regression on EU environmental protection, labour and social standards, state aid and competition, and state-owned undertakings in respect of administration of tax. The UK will be able to conclude trade agreements with third countries, however, the 'customs union' would substantially limit the UK's ability to have significantly different trade relationships with them, particularly in relation to goods. There would be greater scope for the UK to offer different terms on trade in services and areas such as procurement.

In the UK in respect of NI, specific additional EU legislation applies on customs, certain VAT and excise provisions, and certain technical standards relating to goods. EU law on free movement of persons, services and capital, and contributions to the EU budget, will not apply. But there will be free movement for goods moving from NI to the rest of the UK and the EU. The EU and the UK will seek to facilitate trade between Britain and NI with a view to avoiding controls at NI ports and airports.

UK authorities are responsible for implementing and applying EU law applicable under the Protocol but also, where EU law continues to apply to the UK in respect of NI, the EU institutions and bodies will have the same powers as they have under the EU Treaties. EU bodies including the CJEU can apply and interpret Protocol provisions specific to Northern Ireland. EU law applicable to the UK in respect of NI can be amended or replaced. But new EU legislation not listed in the Protocol but in its scope would need to be adopted by the Joint Committee – failing which the EU can take appropriate remedial measures. The Protocol is subject to review and may be ended in whole or part by decision of the Joint Committee.

### **Protocols on Sovereign Base Areas in Cyprus and Gibraltar**

Gibraltar, other UK Overseas Territories and Crown Dependencies are covered by the territorial scope of the Withdrawal Agreement, including part four on the transition period.

The extent of application to each of these territories reflects its relationship with the EU before Brexit.

The **Protocol on the Sovereign Base Areas in Cyprus** aims to protect the interests of Cypriots who live and work in the Sovereign Base Areas after Brexit and to ensure that EU law, in the areas stipulated in Protocol 3 to the Cyprus Act of Accession, continues to apply in the SBAs, with no loss of rights, especially for Cypriot civilians living and working in the SBA areas. This applies to policy areas such as taxation, goods, agriculture, fisheries and veterinary and phytosanitary rules. The arrangements aim to ensure that the laws applicable to Cypriots in the SBAs are the same as the laws of the Republic of Cyprus. The Protocol confers responsibility on Cyprus for the implementation and enforcement of EU law in relation to most of the areas covered, except for security and military affairs.

The **Protocol on Gibraltar** will apply to the end of the transition period, except for provisions on citizens' rights, which will continue beyond. The Protocol covers preparation for the application of the Citizens' Rights part of the WA, allows EU law to be applied to Gibraltar Airport if the UK and Spain reach agreement on it; establishes cooperation between Spain and the UK on fiscal matters, environmental protection and fishing, and police and customs matters. Memoranda of Understanding between the UK and Spain facilitate working-level collaboration between competent authorities in Gibraltar and Spain, including through the use of joint committees, on citizens' rights, the environment, police and customs and tobacco.

## **Ratification of the texts in the EU and UK**

### **Parliamentary approval in the UK**

The UK Parliament will need to undertake two approval processes before the UK can ratify the withdrawal agreement. Both the *EU (Withdrawal) Act 2018* and the *Constitutional Reform and Governance Act 2010 (CRAG)* impose procedural hurdles on the capacity of the UK to ratify what has been negotiated. The *Withdrawal Act* also provides for a Parliamentary process in the event that a deal is rejected by the Commons, or if no negotiated agreement is ever put to it. The Government has [committed](#) to holding a vote on a resolution in both Houses of Parliament before the EP holds its vote, where each House will be asked to approve the withdrawal agreement. If approved, an EU (Withdrawal Agreement) Bill will be introduced to implement the withdrawal agreement in UK law. Further to the Library's paper, [The User's Guide to the Meaningful Vote](#), this paper provides an updated account of the domestic constitutional requirements for ratifying the withdrawal agreement. This includes a summary of the Procedure Committee's recommendations for how the 'Meaningful Vote' should be conducted in the Commons.

### **Second Referendum?**

The possibility of a second referendum on the question of EU membership has been raised both within and outwith Parliament. The paper provides an overview of the practical steps that would need to be considered for any such referendum to take place, should Parliament decide that such a referendum ought to take place. Issues of importance, beyond the merits

or otherwise of holding such a poll concern, among other things the timing of the referendum, the question or questions on the ballot paper, the legislation required to underpin the poll and arrangements for the regulation of the campaign, its participants, donations and expenditure.

## **EU approval**

If the EP approves the agreement by a simple majority, for it be 'concluded' (ratified) by the EU it must be passed by a super qualified majority of the European Council of the remaining 27 Member States (20 of the other EU27 representing 65% of the EU27 population).

## **Constitutional implications in the UK**

Both the draft Withdrawal Agreement and the Political Declaration have potentially significant implications for the UK constitution. Some constitutional issues that are likely to arise in any bill to implement the withdrawal agreement include:

- the status of the European Convention on Human Rights in any future relationship;
- the role of Parliament in any decision to extend the transition period;
- the role of Parliament in the conversion of the Political Declaration into a treaty on the future relationship;
- the constitutional status of the Withdrawal Agreement;
- the domestic legislation required to give effect to EU law during transition; and
- the role of the CJEU and domestic courts in interpreting and applying the Withdrawal Agreement during and beyond transition.

## **Terminology**

In this paper the negotiated [Withdrawal Agreement](#) endorsed by EU leaders on 25 November is abbreviated to **WA**, and the [Political Declaration](#) setting out the framework for the future relationship between the EU and the UK is abbreviated to **PD**. Earlier drafts of these documents are referenced as such (e.g. the March draft).

The Government published the following texts on the **Gov.uk website**:

- [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 14 November 2018 (this includes Protocols on Ireland / Northern Ireland, the Sovereign Base Areas in Cyprus and Gibraltar)
- [Withdrawal Agreement explainer and Technical Explanatory note on Articles 6-8 on the Northern Ireland Protocol](#)
- [Explanatory slides](#) for the Withdrawal Agreement and Political Declaration on our future relationship with the EU
- [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018

- [Explainer for the Political Declaration setting out the framework for the future relationship between the United Kingdom and the European Union](#), 25 November 2018
- [Four Memorandums of Understanding and a Concordat](#) between the UK and Spain on matters concerning Gibraltar [Draft withdrawal agreement](#), 14 November 2018

All Brexit-related briefing papers are available on the Parliamentary website at [Brexit: research and analysis](#).

Other Library papers on the Withdrawal Agreement and Political Declaration are:

- Commons Briefing Paper 8454, [The Political Declaration on the Framework for Future EU-UK Relations](#), 30 November 2018
- Commons Briefing Paper 8451, Brexit deal: Economic analyses, forthcoming.

Commons Briefing papers CBP-8453

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