

Brexit Update August 2020

Trade Deal

Negotiations for a trade deal, which began in March 2020, cover trade in goods and other areas including services, fishing and farming, aviation, security cooperation, data policy, education and science. At a high-level meeting between the Commission and UK Gov in June 2020 the UK Prime Minister set out three red lines:

- There would be no role for the Court of Justice of the EU in the UK;
- The UK wishes to regain the right to determine future UK laws without constraints;
- The UK is seeking an agreement on fisheries that shows a real impact post-Brexit compared to the existing situation.

Questions

- Can these demands be reconciled with the Political Declaration signed by Boris Johnson on 17 October 2019?
- Can an agreement be reached in time to put the Protocol on Ireland and Northern Ireland (part of the Withdrawal Agreement) into law by 1 January 2021?

This would mean reaching an agreement by the end of October at the latest.

The July Trade Negotiations

Round 6 of the negotiations for a new partnership between the European Union and the UK ended on 23rd July 2020.

Progress made in some areas:

- The two sides appear to be coming closer to a common position on social security and EU programmes
- There is some movement towards a comprehensive and single institutional framework with effective enforcement mechanisms (Court of Justice jurisdictional issue may be overcome).
- Michel Barnier (EU's Chief Negotiator) noted "good discussions" on police and judicial cooperation, although differences remain.

Ongoing constructive discussions on:

- Transport
- Energy

BUT the UK is still seeking the same/similar benefits as those applicable to the single market for both.

No progress on two essential areas,

- Competition rules and fisheries
- Both are covered by the Political Declaration but need to be enshrined in law.
- Lack of agreement could derail an EU/UK trade agreement.

Competition Rules

- I.e. a level playing field including on State aid and common standards for EU and UK businesses.
- Lots at stake for all 27 Member States and for UK businesses and economy.
- State aid: the wording of the Political Declaration is clear – i.e. the EU will not agree to a UK system that offers domestic subsidies to UK businesses without the same types of controls that it imposes on EU member state governments. The UK Government has yet to commit to firming this up legally.
- Common standards (e.g. climate, environment, labour and social laws). The UK Government has not ruled out lower standards and is seeking to regain its regulatory autonomy “taking back control”. This could distort competition with the EU which would derail any agreement.

Fisheries

- The UK Government is effectively seeking near total exclusion of EU fishing vessels from UK waters.
- This is unacceptable for the EU as common stocks need to be managed jointly under international law and any agreement cannot have a destructive impact on the EU fishing industry.

What happens if NO agreement is reached?

- Tariffs and quotas will be imposed on UK goods and service entering the EU in addition to new customs formalities.
- Very costly for business and consumers
- No guaranteed standards, e.g. environmental, workers’ rights, consumer rights.

Next stage?

Negotiations are set to resume mid-August.

Dates to watch:

End October: Trade agreement (if there is to be one) should be reached.

26 November: According to EU officials the agreement must be presented to the European Parliament by this week if it is to be ratified by the end of the year. MEPs will be in Strasbourg in the final week of November for their penultimate plenary session of 2020. The final one, in mid-December, would come too late to sign off on any deal with the UK.

31 December: The cliff edge. If a trade deal is not in place, the UK will fall back on to basic World Trade Organisation terms, meaning tariffs on goods and little practical co-operation over border checks. The outcome would effectively be the same as a no-deal Brexit.

Beyond transition: Future relationship talks are expected to continue after 2020. Michel Barnier has made clear that not everything can be addressed before the end of the transition and that in some areas the EU can adopt stop-gap measures. Examples include air and road transportation, where the EU can simply grant temporary permissions to Britain so that things continue as normal. The core trade deal may also be complemented by further agreements after 2020, notably in the area of services which are vital to the UK economy.

EU Preparations

The EU has made a range of preparations for the UK's withdrawal from the Single Market and the Customs Union on 1 January 2021, including:

- A [Communication](#) has been published by the Commission to help EU citizens, businesses and public administrations prepare for the end of the transition period.
- EU leaders have agreed a Brexit Adjustment Reserve (5 billion euros) to counter unforeseen/ adverse consequences in Member States and the sectors that are worst affected by Brexit.
- The publication of over 70 [sector specific notices](#) with detailed explanations of what actions must be taken in each sector to be ready for the end of the transition period.

UK Preparations

Legislation in Progress

Trade Bill 2019-2021 - 2nd reading in House of Lords 8.9.2020 (general debate).

If enacted, will:

- allow the UK to use secondary legislation to 'roll over' trade relations with countries the EU already has a trade agreement with.
- establish a UK Trade Remedies Authority in place of the EU's current functions in regulating competition – e.g. through actions against 'dumped' goods, imported at artificially low prices.
- enable HMRC to collect and share trade-related information.

Agriculture Bill 2019-2021 - HL Report stage date tba

The UK left the EU's Common Agricultural Policy (CAP) on exiting the EU on 30 January 2020. Direct payments to farmers, similar to CAP (i.e. based on the amount of land they farm), have continued in 2020.

- The Bill contains arrangements which would introduce a new approach to farm support in England from 2021 to include payment to farmers for 'public goods' such as environmental or animal welfare improvements. Agriculture is a devolved matter and Scotland can make its own 'regional adjustments' via legislation.
- Ministers would also be required to consider the need to encourage food production and ensure food security.
- Concern has been expressed that the Agriculture Bill contains no commitment that food and animal welfare standards will not be reduced in future trade deals.
- The Bill provides for compliance with the WTO Agreement on Agriculture.

Fisheries Bill 2019-2021 (started in HL) 2nd Reading in House of Commons 1.9.2020 (debate). If enacted, the Bill will make provision in relation to fisheries, fishing, aquaculture and marine conservation including the functions of the Marine Management Organisation. Although fisheries is a devolved matter, the Bill contains some provision for a 'common UK framework'.

Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21- Committee stage House of Lords 7th September 2020. If enacted, the Bill will:

- repeal the free movement rights of EU, EEA and Swiss citizens in the UK.
- protect Irish citizens' existing immigration rights.
- allow retained EU law on social security co-ordination to be modified by regulations. The Government says this will be necessary 'whether the UK has a future agreement with the EU at the end of the transition period or not.'

Environment Bill 2019-21 - Introduced in the HC on 31st January 2020

- This Bill was being considered by a Public Bill Committee whose sittings have been suspended due to Covid 19. The Committee is scheduled to report by Tuesday 29 September 2020.
- Some parts of this Bill have been certified by the Speaker as relating exclusively to England and England and Wales, so the 'English votes for English laws' procedure will apply to it in the House of Commons. Environmental policy is devolved - See Scotland section below.

Future Bills

Two further Bills are planned to enable departure from the transition period. They have not been introduced to the Westminster Parliament yet.

Financial Services (Implementation of Legislation) Bill [HL] 2017-19

Most financial services regulation is currently done at the EU level. Before the 2019 General Election, the Bill completed its stages in the Lords and had reached committee stage in the Commons. But it progressed no further. Financial services legislation was announced in the December 2019 Queen's Speech but has not yet been introduced. The aim of future legislation would be to enable the Treasury to make corresponding or similar provisions in UK law to upcoming EU financial services legislation. If the transition period ends with no deal, without this Bill, there will be no mechanism in UK law through which financial services regulation can be updated.

Animal Sentience and Brexit Bill

EU Law recognises animals as sentient beings. Before the 2019 General Election, the Animal Welfare (Sentencing) Bill 2017-19, aimed at increasing sentences for animal cruelty, did not complete its parliamentary stages. The Queen's Speech in December 2019 announced the intention to introduce these measures in animal welfare legislation.

UK Government Policy

Immigration

New UK policy from 2021 for EU/EEA/Swiss nationals. A 'points-based system' which takes different factors like skills and language into account when awarding visas which would allow people to work in the UK. To get a visa, applicants from anywhere in the world must:

- Have a job offer from an 'approved employer' at an 'appropriate skill level'
- Speak English.

That will get an applicant to 50 points. But they must have 70 points to be eligible for a visa. The most straightforward route to the final 20 points is to:

- Earn at least £25,600 (reduced from the £30,000 which currently applies to non-EU applicants)
- Have certain qualifications (10 points for a relevant PhD; or 20 points for a PhD in science, technology, engineering or maths)
- Have an offer of a job in which the UK has a shortage (20 points). The UK Government has now announced that those coming to do certain jobs in health or education can still get 20 points if their salary is less than £25,600 - so long as they are paid a minimum of £20,480 and in line with national pay scales.

Health and care visa: The Home Office has given details of a fast-track entry system for doctors, nurses and other healthcare professionals. Most care workers will not be covered by the scheme.

- Those eligible for this visa will pay reduced fees and will be supported through the application process, with decisions expected to be given within 3 weeks.
- Successful applicants will be exempt from the immigration health surcharge. The charge (which currently only applies to non-EU workers) is £400 per person per year and is due to rise to £624 in October.
- Applicants via this route will still have to meet the relevant skill level and salary thresholds.

Students: There will be no limit on the number of international students who can come to the UK to study. A new graduate visa will be launched in summer 2021 and will allow students who have completed a degree to stay in the UK for 2 years, rising to 3 for those who have done a PhD.

Trade Talks with Third Countries

- US – potential obstacles relate to food and animal welfare standards;
- China – BUT the role of Huawei in UK communications networks and the UK government's offer of UK citizenship for 3.5 million Hong Kong residents;
- Japan – better terms sought for British cheese producers.

The UK Government has issued [guidance on importing and exporting](#) for businesses after the transition period ends.

Scotland - The UK Withdrawal from the European Union (Continuity) (Scotland) Bill

The Scottish Government introduced this Bill to the Scottish Parliament on 18 June 2020. It is intended to try and keep Scots law aligned with EU law after the end of the transition period.

The Bill aims to:

- enable Scots law to 'keep pace' with EU law in devolved areas, where appropriate (Part 1 and part 3)
- ensure that there continue to be guiding principles on the environment in Scotland, and to establish an environmental governance body, Environmental Standards Scotland (Part 2)
- continue the role and functions of the European institutions in ensuring the complete and effective implementation of environmental law (Part 2).

This is different from the previous 'Continuity Bill' that was ultimately found by the UK Supreme Court to be beyond the Parliament's powers under the Scotland Act, largely due to amending legislation passed at Westminster while the bill was in progress.

If enacted, this legislation will fulfil its aims in the following ways:

Part 1 provides for a discretionary power which will enable Scottish ministers to align devolved Scots law with EU legislation following the end of the transition period, by making regulations corresponding to EU regulations or decisions. The power would last for a 10-year period after the bill comes into force; with some exceptions requiring the affirmative procedure in the Scottish Parliament, regulations will be subject only to the negative procedure. Ministers must report annually to the Parliament on how their powers have been used.

Part 2 makes replacement arrangements for EU environmental principles and governance, to ensure that there continue to be guiding principles on the environment in Scotland which ministers must follow, after the end of the transition period. It sets out principles deriving from EU law, which can be amended by regulations subject to the affirmative procedure in the Parliament. This part of the bill is not time limited.

To further this, a new governance body, Environmental Standards Scotland, will be established to replace the system of environmental governance provided by the EU institutions which will be lost at the end of the transition period. Its powers will include the ability to investigate the effectiveness and delivery of environmental law by public authorities and whether authorities are failing to comply with environmental law, and to take enforcement measures including through improvement reports and plans, and compliance notices.