

The Civil Society Brexit Project

Explainer: Brexit and What Happens Next

The UK left the EU on 31st January 2020 under the terms of the Withdrawal Agreement. According to that Agreement, the UK is now in a transition period until 31st December 2020. During the transition period, all EU laws and regulations continue to apply but the UK no longer has representatives in the EU institutions.

EU citizens' rights in the UK are protected by the Withdrawal Agreement. However, EU citizens must apply to the EU Settlement Scheme by 30th June 2021 in order to continue to be able to lawfully reside in the UK after that date. More information on the Settlement Scheme and citizens' rights can be found **here**.

The Withdrawal Agreement provided for the terms of the UK's withdrawal:

- It protects EU citizens' rights;
- it settles the financial obligations between the two sides;
- it contains a so-called backstop to ensure that there is no hard border on the island of Ireland regardless of the future relationship between the UK and the EU;
- it provides for the transition period which gives the two sides time to negotiate their future relationship.

Negotiations on the future relationship have been ongoing since March 2020. The negotiations have to determine the future rules which will apply to trade in goods and other areas including services, fishing and farming, aviation, security cooperation, data policy, education and science.

The main stumbling blocks in the negotiations so far have been fisheries (the extent to which EU fishing fleets should get access to British waters) and the so-called 'level playing field'. In relation to the latter, the UK is insisting on the right to set its own standards and regulation in areas such as environmental protection, labour standards or state aid, which could be lower or higher than those set by the EU. The EU insists that a trade deal is conditional on ensuring that the UK does not adopt lower standards in order to give its businesses a competitive advantage.

The negotiating positions can be found online:

- EU position:

<https://www.consilium.europa.eu/en/policies/eu-uk-negotiations-on-the-future-relationship/>

- UK position:

<https://commonslibrary.parliament.uk/research-briefings/cbp-8920/>

The latest round of negotiations ended in August 2020 without any progress being made.

Dates to watch:

15 October: Heads of EU Member States are meeting for the European Council meeting. Boris Johnson has set this as the latest date by which progress in the negotiations needs to have been made if it is to be in force by 1 January, otherwise both sides “should accept that and move on.”

End October: EU’s chief negotiator claims this is the date by which a trade agreement (if there is to be one) would need to 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?

At the end of transition, the UK’s relationship with the EU will be determined by the new agreements it has entered into on trade and other areas of co-operation. If no deal is reached, the UK would have to rely on previous international conventions for security co-operation and would trade with the EU on World Trade Organization terms. The exception is Northern Ireland, whose trade in goods with the EU would be covered by the provisions in the **Northern Ireland protocol**. (For further discussion on the UK Internal Markets Bill and its impact on the Northern Ireland protocol, see www.civilsocietybrexit.scot)

Even without a deal, the UK would continue to follow the EU rules transferred into UK law through the **EU Withdrawal Act 2018**. At the end of transition period, the UK would be able to diverge if it decided not to follow future changes in EU law, if UK courts decided to interpret existing EU law differently or if the government introduced changes into UK law.

Why does a no-deal cliff edge matter?

As a third country, the UK would no longer be eligible for participation in EU organisations, networks and collaborative programmes. For trade, it will fall back

on to basic World Trade Organisation terms, meaning tariffs on goods and little practical co-operation over border checks. The EU will be required to immediately apply its rules and tariffs at its borders with the UK. The outcome would effectively be the same as a no-deal Brexit.

> **Justice and Security Cooperation**

The UK and EU are aiming to negotiate new arrangements for criminal justice cooperation, although progress appears limited to date. Assuming no agreement, some instruments of cooperation, will fall back on more cumbersome pre-existing international agreements. That is the case for the European Arrest Warrant (EAW) which will be replaced by arrangements contained in a 1957 Council of Europe Convention on Extradition. This Convention does not impose time limits, and requests are made through diplomatic rather than judicial channels. There are also more grounds on which extradition can be refused than under the EAW. No longer being part of the EAW will also require amendments to UK legislation, and the UK will also need to rely upon other Member States making equivalent amendments to their law.

For other EU instruments, such as the Directive on European Protection Orders, there is no fall-back international instrument, meaning that, in the event of no deal, the protections afforded will fall away completely. The Directive means that crime victims who are granted protection from their aggressors in one EU Member State (through eg restraining and stalking orders) can get similar protection if they move to another.

In the absence of an agreement before the end of December 2020, law enforcement agencies will find it harder to get crucial information for investigations, as UK authorities will lose access to huge EU-wide databases. These include the second-generation Schengen Information System (SIS II), which stores information on missing and wanted individuals and objects.

> **Food and medicines**

Almost 30% of the UK's food is imported from the EU. This food will be subject to higher tariffs and checks at the border. It is therefore likely that food will become more expensive and, in the short-term, additional controls could cause significant delays, making certain foods more difficult to source. This has particular impacts on those with specialist diets and already experiencing food insecurity and poverty.

The same concern applies to medicines and medical equipment, 75% of which comes from the EU. In the short term, there could be delays in importing medicines due to new border arrangements which mean that goods will take longer to enter the country as they will be subject to extra checks and there may be limits on the number of lorries/amount of goods coming into the UK on a daily basis. This may require stockpiling and good supply chain management to ensure there will be no shortages.

> No more EU grants and programmes unless negotiated

UK organisations will no longer be able to get EU grants or bid for EU contracts. It is not clear what will happen with the UK's participation in Erasmus + - the UK could continue to participate as a non-EU Member State but this still needs to be negotiated. The UK Government has said that it will cover EU project funding that is already committed to e.g. for 3rd sector organisations.

> Immigration

Free movement for EU citizens will come to an end on 31st December 2020. EU citizens in the UK before 31st December 2020 can continue to live and work in the UK but they must apply to the EU Settlement Scheme by 30 June 2021.

An Immigration Bill is currently working its way through the Westminster Parliament. If passed, then the new immigration rules will make it more difficult to recruit workers from outside the UK. Two sectors where this will be particularly noticeable are social care and agriculture where EU citizens make up a sizeable proportion of the workforce. This could lead to potential knock-on effects for patient care if there is a shortage of carers, and food supply chains if farmers cannot recruit sufficient numbers of workers to harvest produce.

Can Scotland do anything differently?

The Scottish Government's ability to pursue a different future relationship with the EU, and to avoid a cliff edge, is constrained by the devolution settlement. Trade, external relations and immigration are reserved to the UK Government. The Scottish Government can try to mitigate the impact of a cliff edge on Scottish society and industry (as it has set out to do in its **'no deal' preparations**) but it cannot avoid the cliff edge, even in devolved areas such as health, agriculture or fisheries. This means, for example, that Scotland could not participate in EU funding streams if the UK Government decides otherwise; Scotland also does not have the power to set its own immigration rules and

cannot apply different tariffs than those set by the UK Government to goods coming into the country.

What should organisations do?

- Be aware that EU citizens in the UK by end of December 2020 must apply for settled status by **30 June 2021** to be able to stay in the UK. If you have EU citizens amongst your staff, volunteers, members or service users, are there ways in which you can support them to apply on time? You can get more information and advice about **settled status here**.
- Be aware that recruiting staff from the EU will be subject to different rules. This affects all sectors including the charities and civil society organisations. Check out NCVO's **Key Points to Consider** for charities; **SCVO's Planning for Brexit** page.
- Understand and prepare for how transfer of data to and from the EU will be affected. Read more from the ICO **here**.
- Get involved in raising your concerns. Join the **Brexit Civil Society Alliance**, or add your voice to the **Trade Justice Movement**. Get in touch with us at civilsocietybrexitscot@gmail.com to find out about working with other organisations in Scotland to raise these issues.

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