

The November Draft Withdrawal Agreement ^[1]



The Government has published a draft ^[2] agreement on the withdrawal of the UK from the EU. The table below focuses mainly on what had not already been agreed in March, including the method for implementation, institutional provisions, transition and geographical indications.

The agreement also contains an extensive protocol on Northern Ireland ^[3], which we explain separately.

Area

Implementation of the Withdrawal Agreement

Article 4 says that both the agreement and any EU law applying to the UK under the agreement should have the same effect as it has in EU member states.

What the agreement says

This includes “direct effect”, which allows private parties to invoke their rights under the withdrawal agreement before both UK courts, as well as EU member states.

It also gives EU law supremacy over domestic law – the courts could disapply any domestic legislation which is incompatible with EU law.

In the March draft, this only applied to citizens’ rights. It would now apply to the entire agreement.

What it means

This will be challenging both politically and legally to implement, principally down to the role of parliamentary sovereignty in the UK.

The Government of the time managed to give supremacy to EU law under the European Communities Act 1972 ^[4], but this will be a challenge for the current Government when they bring forward the EU Withdrawal Agreement Bill needed to implement the agreement in domestic law.

Transition

The UK will continue to apply the entire body of EU law during the transition, but it will be outside of the EU’s political institutions.

The UK will continue to apply EU trade policy and any trade agreements signed by the UK will not be able to enter into force until the transition ends. The EU will write to third countries with which it has agreements to request the UK continues to benefit from these during the period.

What the agreement says

In addition to the continuation of the UK’s economic relationship with the EU, all elements of justice, home affairs, foreign and defence policies will continue. If agreement is reached on the future relationship in foreign, defence and security policy, this can come into effect before the end of the transition period and EU law will no longer apply in this area in the UK.

The transition will end on 31 December 2020. But the two sides may extend the transition, as a one-off for an as yet undefined time. To trigger this extension, the two sides must agree to do so by 1 July 2020.

An extension of the transition would require the two sides to agree a new financial settlement. An additional provision specifies that in case the transition is extended, the UK will still be required to make a financial contribution, but it will be treated as a third country rather than a member state for the purposes of the EU budget. Its share will be decided by the Joint Committee ^[5] rather than through the usual Multiannual Funding Framework mechanism.

The transition remains as negotiated in March this year; however, it now includes the provision for the

UK to request a one-off extension.

What it means

Extension would allow the UK to avoid activating the Irish protocol in January 2021.

During transition, the UK would continue to be subject to all EU rules but also enjoy all rights except involvement in EU institutions.

This gives the UK a say in calculating its financial contribution for the extension, despite no longer having the right to participate in EU institutions.

Institutional provisions

What the agreement says

As in the March draft but with an addition which allows the Joint Committee to adopt certain decisions relating to the Withdrawal Agreement.

What it means

Dispute settlement

What the agreement says

The UK and EU will first try to resolve disputes via the Joint Committee where they will try to agree a solution.

If the committee cannot agree, then either the EU or the UK can request an arbitration panel. The EU and the UK will each nominate two members to the panel and agree a chair. If a party does not comply with a ruling, then it can impose a financial penalty. Moreover, parts of the agreement could also be suspended (except the part relating to citizens' rights), although this should be temporary.

If a dispute relates to the interpretation of EU law, or whether the UK has complied with European Court of Justice (ECJ) judgements made before the end of transition, then the ECJ will have jurisdiction. This ruling will be binding on the arbitration panel.

What it means

The agreement has settled on a political resolution, then arbitration process rather than the establishment of a court (and this will form the basis of the dispute resolution process for the future framework).

The proposed role for the European Court of Justice (ECJ) in the withdrawal agreement reflects the ECJ's position ^[5] that only the ECJ can bind certain interpretations of EU law and concepts.

Geographical indications

What the agreement says

More than 3,000 geographical indications, such as Parma ham, Champagne and Welsh lamb, are currently protected under EU law.

The agreement guarantees that they will continue to be protected, with the UK agreeing to apply the same level of protection through its domestic law as the EU provides now.

What it means

Geographical indications are names used to define both the origin and the quality, characteristics or reputation of products. It often applies to food and drink.

The UK will have to set up its own list of geographical indications in domestic legislation that will recognise the EU's.

This applies "unless and until" superceded by the long-term trading relationship – recognising geographical indications are usually a key demand of the EU in trade agreements.

Gibraltar

What the agreement says

Spain and the UK have agreed a bilateral protocol on citizens' rights, particularly frontier workers; air transport; fiscal and financial matters; environment protection and fishing; and police and customs co-ordination.

Spain and the UK will co-ordinate bilaterally, while the EU Commission will be invited to participate

says in police and customs matters. EU air transport law will be updated during the transition period if both Spain and the UK agree.

These provisions, except those on citizens' rights, cease to apply by the end of the transition period.

What it means The UK and Spain are both responsible for ensuring that citizens' rights established by the Withdrawal Agreement are protected.

EU aviation law, which doesn't apply now to Gibraltar International Airport, can only be applied during the transition if both the UK and Spain agree.

Cyprus

What the agreement says

The Protocol on the Sovereign Base Areas in Cyprus aims to preserve the current, unique situation. The Sovereign Base Areas will remain part of the Union's custom territory and be bound by EU law with respect to indirect taxation, regulation of agriculture, goods and data. The UK will continue to pass domestic legislation but will entrust responsibility to the Republic of Cyprus for implementation and enforcement, responsible to the EU.

A specialised committee will facilitate the Protocol's implementation, and the Joint Committee will amend references to EU law upon its recommendation. The ECJ will supervise and have jurisdiction.

What it means

The Sovereign Base Areas will be considered part of the EU's customs territory, align with agricultural standards and the Republic of Cyprus' VAT and excise regime after the transition period.

The Republic of Cyprus will have responsibility for implementation and enforcement in most areas covered, those most important to the EU, but not security and defence.

Citizens' rights

What the agreement says

No change from March draft.

What it means

Financial settlement

What the agreement says

No change from March draft.

What it means

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Implementation of the Withdrawal Agreement	<p>Article 4 says that both the agreement and any EU law applying to the UK under the agreement should have the same effect as it has in EU member states.</p> <p>This includes "direct effect", which allows private parties to invoke their rights under the withdrawal agreement before both UK courts, as well as EU member states.</p>	<p>This will be challenging both politically and legally to implement, principally down to the role of parliamentary sovereignty in the UK.</p> <p>The Government of the time managed to give supremacy to EU law under the European Communities Act 1972 ^[4], but</p>

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	<p>It also gives EU law supremacy over domestic law – which is incompatible with domestic legislation which is incompatible with EU law.</p> <p>In the March draft, this only applied to citizens' rights. It would now apply to the entire agreement.</p> <p>The UK will continue to apply the entire body of EU law during the transition, but it will be outside of the EU's political institutions.</p> <p>The UK will continue to apply EU trade policy and any trade agreements signed by the UK will not be able to enter into force until the transition ends. The EU will write to third countries with which it has agreements to request the UK continues to benefit from these during the period.</p> <p>In addition to the continuation of the UK's economic relationship with the EU, all elements of justice, home affairs, foreign and defence policies will continue. If agreement is reached on the future relationship in foreign, defence and security policy, this can come into effect before the end of the transition period and EU law will no longer apply in this area in the UK.</p> <p>The transition will end on 31 December 2020. But the two sides may extend the transition, as a one-off for an as yet undefined time. To trigger this extension, the two sides must agree to do so by 1 July 2020.</p> <p>An extension of the transition would require the two sides to agree a new financial settlement. An additional provision specifies that in case the transition is extended, the UK will still be required to make a financial contribution, but it will be treated as a third country rather than a member state for the purposes of the EU budget. Its share will be decided by the Joint Committee ^[5] rather than through the usual Multiannual Funding Framework mechanism.</p>	<p>this will be a challenge for the government when they bring forward the EU Withdrawal Agreement Bill needed to implement the agreement in domestic law.</p> <p>The transition remains as negotiated in March this year; however, it now includes the provision for the UK to request a one-off extension.</p> <p>Extension would allow the UK to avoid activating the Irish protocol in January 2021.</p> <p>During transition, the UK would continue to be subject to all EU rules but also enjoy all rights except involvement in EU institutions.</p> <p>This gives the UK a say in calculating its financial contribution for the extension, despite no longer having the right to participate in EU institutions.</p>
Transition		
Institutional provisions	<p>As in the March draft but with an addition which allows the Joint Committee to adopt certain decisions relating to the Withdrawal Agreement.</p>	
Dispute settlement	<p>The UK and EU will first try to resolve disputes via the Joint Committee where they will try to agree a solution.</p> <p>If the committee cannot agree, then either the EU or the UK can request an arbitration panel. The EU and the UK will each nominate two members to the panel and agree a chair. If a party does not comply with a ruling, then it can impose a financial penalty. Moreover, parts of the agreement could also be suspended (except the part relating to citizens' rights), although this should be temporary.</p> <p>If a dispute relates to the interpretation of EU law, or whether the UK has complied with European Court of Justice (ECJ) judgements made before the end of transition, then the ECJ will have jurisdiction. This ruling will be binding on the arbitration panel.</p>	<p>The agreement has settled on a political resolution, then arbitration process rather than the establishment of a court (and this will form the basis of the dispute resolution process for the future framework).</p> <p>The proposed role for the European Court of Justice (ECJ) in the withdrawal agreement reflects the ECJ's position ^[5] that only the ECJ can bind certain interpretations of EU law and concepts.</p>

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Geographical indications	<p>More than 3,000 geographical indications, such as Parma ham, Champagne and Welsh lamb, are currently protected under EU law.</p> <p>The agreement guarantees that they will continue to be protected, with the UK agreeing to apply the same level of protection through its domestic law as the EU provides now.</p>	<p>names used to define both the quality, characteristics or reputation of products. It often applies to food and drink.</p> <p>The UK will have to set up its own list of geographical indications in domestic legislation that will recognise the EU's.</p> <p>This applies "unless and until" superceded by the long-term trading relationship – recognising geographical indications are usually a key demand of the EU in trade agreements.</p>
Gibraltar	<p>Spain and the UK have agreed a bilateral protocol on citizens' rights, particularly frontier workers; air transport; fiscal and financial matters; environment protection and fishing; and police and customs co-ordination.</p> <p>Spain and the UK will co-ordinate bilaterally, while the EU Commission will be invited to participate in police and customs matters. EU air transport law will be updated during the transition period if both Spain and the UK agree.</p> <p>These provisions, except those on citizens' rights, cease to apply by the end of the transition period.</p>	<p>The UK and Spain are both responsible for ensuring that citizens' rights established by the Withdrawal Agreement are protected.</p> <p>EU aviation law, which doesn't apply now to Gibraltar International Airport, can only be applied during the transition if both the UK and Spain agree.</p>
Cyprus	<p>The Protocol on the Sovereign Base Areas in Cyprus aims to preserve the current, unique situation. The Sovereign Base Areas will remain part of the Union's custom territory and be bound by EU law with respect to indirect taxation, regulation of agriculture, goods and data. The UK will continue to pass domestic legislation but will entrust responsibility to the Republic of Cyprus for implementation and enforcement, responsible to the EU.</p> <p>A specialised committee will facilitate the Protocol's implementation, and the Joint Committee will amend references to EU law upon its recommendation. The ECJ will supervise and have jurisdiction.</p>	<p>The Sovereign Base Areas will be considered part of the EU's customs territory, align with agricultural standards and the Republic of Cyprus' VAT and excise regime after the transition period.</p> <p>The Republic of Cyprus will have responsibility for implementation and enforcement in most areas covered, those most important to the EU, but not security and defence.</p>
Citizens' rights	No change from March draft.	
Financial settlement	No change from March draft.	

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