



IMPLEMENTING BREXIT IN THE UK: THE EU (WITHDRAWAL AGREEMENT) BILL

The UK Government has published a [White Paper](#) on its proposals for a European Union (Withdrawal Agreement) Bill to implement the UK's Withdrawal Agreement with the EU into UK domestic law. The White Paper details how the UK will implement the planned transition period, as well as the UK Government's proposals for dealing with the protections for citizens' rights after Brexit and the administration of the UK's proposed financial settlement with the EU.

NOTIFICATION, AGREEMENT, WITHDRAWAL

The White Paper, *Legislating for the Withdrawal Agreement between the United Kingdom and the European Union* sets out the UK Government's proposals for a European Union (Withdrawal Agreement) Bill, previously referred to as the 'Withdrawal Agreement and Implementation Bill'. The proposed Bill will be the latest piece of UK domestic legislation dealing with the legal mechanics of Brexit.

The European Union (Notification of Withdrawal) Act 2017 allowed the UK Government to trigger Article 50 of the Treaty on European Union and start the formal process of withdrawal from the EU. The European Union (Withdrawal) Act 2018 prepares the UK's statute book for Brexit by incorporating the *acquis* of EU law into domestic law. Parliament has passed legislation on sanctions and anti-money laundering, nuclear safeguards and road haulage permits and is currently considering the Trade Bill and the Taxation (Cross-border Trade) Bill.

The EU and the UK hope to reach an agreement in the autumn under Article 50 on the terms of the UK's withdrawal from the EU. The Withdrawal Agreement will provide protections for the rights of EU citizens currently resident in the UK, and vice versa, detail the UK's financial settlement with the EU, and will set out a backstop mechanism to prevent a hard border between the Republic of Ireland and Northern Ireland. It will also provide for a transition (or implementation) period lasting until the end of 2020, during which, for most purposes, EU law will continue to apply in the UK and in the EU as if the UK were still a member state.

The White Paper envisages that the first step towards implementing the Withdrawal Agreement in the UK will be Parliament's 'meaningful vote' on the final deal with the EU, as required by the EU (Withdrawal) Act. After that, the Government will introduce the Withdrawal Agreement Bill into Parliament.

Key issues

- The UK and EU are negotiating a Withdrawal Agreement governing the UK's exit from the EU
- The EU (Withdrawal Agreement) Bill will implement the Withdrawal Agreement in UK domestic law
- The Government will propose the Bill after the UK Parliament has voted on the UK's deal with the EU
- The Bill must be enacted before UK ratification of the Withdrawal Agreement
- The Bill will give domestic legal effect to the transition period by preserving the European Communities Act 1972
- It will also defer the effective date of the onshoring of EU law under the EU (Withdrawal) Act to the end of the transition period
- The Bill will deal with citizens' rights and the UK financial settlement with the EU
- The UK Government will continue to plan for a 'no deal' scenario
- It will continue to adopt statutory instruments to prepare UK law for Brexit without a transition period

Before UK ratification of the Withdrawal Agreement, there will also be a scrutiny process under the Constitutional Reform and Governance Act 2010. The Government will lay the agreement before both Houses of Parliament for a period of 21 sitting days and may only proceed to ratification if neither House has resolved that the agreement should not be ratified (though the Commons can override the Lords). After the Withdrawal Agreement Bill has been enacted and the process under the 2010 Act is completed, the Government can ratify the Withdrawal Agreement, bringing into force the transition period.

ENACTING TRANSITION

The European Union (Withdrawal) Act 2018, enacted after considerable parliamentary gymnastics in June this year, repeals the European Communities Act 1972 (ECA) as of 29 March 2019, when under Article 50, the EU treaties will cease to apply to the UK.

Here lies the problem: section 2 of the ECA provides the principal legal mechanism by which EU law is given effect in the UK. However, under the proposals for the transition period beginning on 29 March 2019, the UK will undertake to apply EU law, including new EU legislation, and to recognise the jurisdiction of the Court of Justice of the EU, as if the UK were still a member of the bloc.

The White Paper therefore states that the Withdrawal Agreement Bill "will amend the EU (Withdrawal) Act 2018 so that the effect of the ECA is saved for the time-limited implementation period. Exit day, as defined in the EU (Withdrawal) Act 2018, will remain 29 March 2019". This may be politically controversial in the UK, given the symbolic status of the ECA. However, the Bill will modify the saved provisions of the ECA, so that the UK's obligations to apply EU law are determined by the Withdrawal Agreement, rather than as a Member State. It will also allow for changes to UK laws during the transition period to reflect the fact that the UK is no longer a Member State (e.g. to read references to Member States as references to Member States and the UK).

CHANGES TO THE 'ONSHORING' PROCESS

The message from the UK Government is that nothing will change during the transition period. Individuals and businesses will continue to be able to rely on EU law as they did when the UK was a member of the EU.

But this is contingent on the UK and the EU concluding the Withdrawal Agreement. Until the Withdrawal Agreement is in place, the Government will continue to plan for a 'no deal' scenario by using the powers under the EU (Withdrawal) Act to prepare the UK's statute book for the UK's exit from the EU on 29 March 2019.

That Act gives the Government wide-ranging powers to remedy deficiencies in UK law arising from the UK's withdrawal from the EU, where provisions are no longer workable given the UK's new status outside the EU. The Government has already begun the process of publishing statutory instruments amending the UK statute book and conferring powers on UK regulators to amend their own rulebooks as necessary. These are drafted on the assumption that there is no transition period and the resulting changes to UK law largely take effect on 'exit day', i.e. 29 March 2019.

The Withdrawal Agreement Bill will therefore amend the EU (Withdrawal) Act so that the 'onshoring' of EU law into UK domestic law takes place at the end of the transition period (instead of 'exit day'). It will also allow the Government

HOW WILL TRANSITION WORK?

In March 2018, the EU and UK agreed on [text](#) to be included in the Withdrawal Agreement governing the transition (or implementation) period from the UK's withdrawal to the end of 2020. This aims to ensure that individuals and businesses can continue to rely on single market rules and other EU law during this period in much the same way as today.

Under this text, during the transition period EU law "shall be applicable to and in the United Kingdom" and "shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the [EU]". Any reference to Member States in EU law "including as implemented and applied by Member States, shall be understood as including the United Kingdom".

For these purposes, references to EU law include the EU treaties and all EU legislation, including legislation adopted and coming into effect during the transition period, with only limited exceptions. The UK will cease to have institutional or voting rights in the EU during the transition period.

Applicable EU law will be interpreted and applied in the same way as within the EU and the Court of Justice will have jurisdiction as it does today.

The UK will continue to be bound by the EU's obligations under its international agreements during the transition. The EU will notify other parties that the UK is to be treated as a member state during the period. The UK may negotiate its own trade agreements during the transition period but they cannot take effect until the end of the period without EU approval.

to correct deficiencies in UK law arising from the transition period coming to an end as well as those arising from withdrawal itself.

The EU (Withdrawal) Act includes a sunset clause so that the Government's powers to amend the UK statute book expire on 29 March 2021. This would only give three months to correct deficiencies that become apparent after the end of the transition period, and the Withdrawal Agreement Bill will therefore extend these powers until the end of 2022. This may be controversial, given Parliament's reluctance to agree these wide-ranging powers in the first place, and Parliament may seek further oversight or control of these measures.

CITIZENS' RIGHTS AND THE FINANCIAL SETTLEMENT

The White Paper also gives further detail on how the UK will legislate for other components of the Withdrawal Agreement.

On citizens' rights, the proposed Bill will give legal effect to the rights conferred by the Withdrawal Agreement and will establish a new independent body to oversee the Government's adherence to its commitments to afford "settled status" to EU citizens resident in the UK who meet the criteria agreed in the Withdrawal Agreement. This broadly entails granting settled status to those who have been resident in the UK for five years or more. However, the Government will use rules under the Immigration Act 1971 to deliver the EU scheme so that work can start before the Bill is enacted. The proposed Bill will also provide that any future repeal of the UK legislation implementing those rights will be subject to an "additional procedural step" in Parliament, presumably to make any such repeal or divergence from commitments more difficult, and politically unpalatable.

The UK has committed to make payments to the EU to address the EU's funding obligations that arose during the UK's participation in the EU budget and related to its broader membership of the EU. These commitments will be set out in the Withdrawal Agreement and the proposed Bill will put the payment mechanism on a statutory footing as well as creating a mechanism for Parliamentary scrutiny of payments.

POLITICAL HURDLES

The proposals for a Withdrawal Agreement Bill assume that there will be a Withdrawal Agreement in place before 29 March 2019. However, there remains a real risk that this will not be agreed in the time available. Article 50 states that the Withdrawal Agreement should take "account of the framework for the future [the UK's] relationship with the [EU]", but EU negotiators view the UK's proposals for the future relationship as unrealistic and unworkable.

The outstanding issue of the Northern Ireland border remains unresolved, and there is pessimism within the European Commission that a solution which is both politically feasible and legally possible can be found. This issue has the potential to undermine efforts to finalise a Withdrawal Agreement, without which the legislation proposed by the latest White Paper would be redundant.

Certain measures within the proposed Bill are also likely to be politically contentious within the Government and in Parliament. Extending ministerial powers to amend the statute book and retaining the ECA after the UK has left the EU could give rise to further Parliamentary debate and possible delays to the passage of the Bill. In the UK, 'no deal' contingency planning by the Government continues apace.

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