

BREXIT DELIVERED: THE EUROPEAN UNION (WITHDRAWAL AGREEMENT) ACT 2020

Following the victory of the Conservative Party at the recent UK general election, Prime Minister Boris Johnson has used his large 80 seat majority to push the European Union (Withdrawal Agreement) Act 2020 through the new Parliament.

The Act contains significant changes from the Bill that was introduced in the last Parliament where the Government had no majority, including changes reducing Parliament's ability to scrutinise the Brexit process.

This briefing looks at the changes to the Act and their potential impact on the course of Brexit.

BACKGROUND TO THE ACT

Key changes between the Bill as introduced in the last Parliament and the Act passed by the new Parliament include:

- the removal of provisions requiring Parliament to approve the Government's statement of its objectives for the future relationship between the UK and the EU;
- the removal of provisions requiring the Government to report back to Parliament on the negotiations with the EU on the future relationship;
- the removal of provisions requiring Parliamentary approval to extend the transition period and their replacement by a prohibition on UK ministers agreeing to extend that period;
- the removal of the provisions dealing with the protection of workers rights - the UK Government has said that these will be addressed in separate legislation; and
- amendments to the European Union (Withdrawal) Act 2018 allowing lower UK courts to depart from CJEU case law – a power previously only exercisable by the UK Supreme Court and the Scottish High Court of Judiciary.

The passage of the Act through Parliament was fairly straightforward thanks to the large Conservative Party majority in the House of Commons. The House of Lords voted in favour of five amendments to the Bill, including the so-called and much-reported Dubs' amendment which would have required the UK to seek to negotiate an agreement with the EU regarding the family reunion of asylum-seeking children (as the UK was required to do under section 17 of the 2018

Key points

- The UK Government has passed the Act which gives effect to the Withdrawal Agreement.
- The Act provides for the transition which runs to the end of 2020.
- The Act gives Government ministers much greater discretion than the previous 2019 Bill.
- Lower UK courts will be able to depart from EU law if the Government so decides, not just the UK's highest courts.

Withdrawal Act). The House of Commons rejected all five of the Lords' amendments, and the Lords duly accepted the Bill. Royal Assent was granted on 23 January 2020.

The Act completes the UK's internal procedures for ratifying the Withdrawal Agreement, which has now been signed by both the UK and the EU. On the EU side, the European Parliament voted on 29 January 2020 to give its consent to the Withdrawal Agreement and to the Council of the EU to adopt a decision on the conclusion of the Withdrawal Agreement.

PURPOSE OF THE ACT

The passing of the Act paves the way for the Withdrawal Agreement to enter into force – crucially providing a transition period until 31 December 2020 during which EU law will continue to have effect in the UK and the EU as if the UK were still a Member State. The 2018 Withdrawal Act still repeals the European Communities Act 1972 on exit day, but its effect is saved during the transition period so that existing and new EU laws have effect in the UK during the transition period in much the same way as before exit day.

The new Act also amends the 2018 Withdrawal Act so that the conversion of EU law into UK domestic law now takes place at the end of the transition period ("IP completion day") instead of the day ("exit day", 31 January 2020) when the UK actually leaves the EU. The new Act also gives the Government additional powers to remedy any deficiencies in UK law resulting from the ending of the transition period and amends all existing no-deal statutory instruments (SIs) made under the 2018 Withdrawal Act so that their effective date becomes IP completion day instead of exit day (although the Government may need to make additional changes to existing SIs to adjust other dates linked to exit day).

EFFECTS OF THE ACT

Parliament's passing of the Act creates both certainty and uncertainty. It marks a shift in the Parliamentary Brexit dynamic. The Conservative Party's large majority in the House of Commons made it inevitable that the Act would be passed in whatever form the Government wanted, and extinguished any talk of a further article 50 extension or a second referendum. The UK's departure from the EU at 11pm UK time on 31 January 2020 is now all but inevitable, although there is some limited comfort for the concerned in the form of the eleven-month transition period under the Withdrawal Agreement during which little will in practice change (although the UK will no longer participate in the EU institutions). The Withdrawal Agreement postpones any "hard" departure until the end of the transition period, during which the EU and the UK have the opportunity to negotiate and agree a UK-EU Free Trade Agreement to govern the terms of their future trading relationship. For more information on the UK-EU future relationship, read our briefing [here](#).

The lack of Parliamentary scrutiny that the Act affords the Government in the Brexit process is also significant. Parliament will no longer be given the vote on whether to approve the statement of objectives on the future UK-EU relationship, though in practice this would have made little difference given the Prime Minister's majority in the Commons. Nevertheless, the removal of the requirement on the Government to report back to Parliament on the negotiations could leave Parliament in the dark on how the future relationship is shaping up, and will undoubtedly embolden the Government to pursue its plans. However, the Government will need to lay any future treaty before Parliament for a possible vote before ratification under the Constitutional Reform and

Governance Act and will need to secure the passage of an Act of Parliament to allow it to implement the provisions of any treaty into domestic law.

And finally, section 26 of the Act amends the 2018 Withdrawal Act to allow, if the government so decides, all UK courts to depart from EU case law, a power previously reserved to the UK Supreme Court and the Scottish High Court of Justiciary. This may reduce the legal continuity which the 2018 Act sought to provide, though in practice it may be that the courts will show considerable hesitation before declining to follow existing CJEU case law.

CONTACTS

Phillip Souta
Head of UK Public
Policy, London
T +44 20 7006 1097
E phillip.souta
@cliffordchance.com

Christopher Bates
Partner, London
T +44 20 7006 1041
E chris.bates
@cliffordchance.com

Simon James
Partner, London
T +44 20 7006 8405
E simon.james
@cliffordchance.com

Kate Gibbons
Partner, London
T +44 20 7006 2544
E kate.gibbons
@cliffordchance.com

Gail Orton
Head of EU Public
Policy, Paris / Brussels
T +33 1 4405 2429
E gail.orton
@cliffordchance.com

Dan Neidle
Partner, London
T +44 20 7006 8811
E dan.neidle
@cliffordchance.com

Simon Gleeson
Partner, London
T +44 20 7006 4979
E simon.gleeson
@cliffordchance.com

George Bumpus
Trainee Solicitor
T +44 20 7006 1271
E george.bumpus
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.