

SPECIAL
REPORT

Beyond Brexit: Navigating a new beginning



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The United Kingdom (UK) started 2021 outside the European Union's (EU) orbit, ending half a century of membership of the European project. Uncertainty as to the shape of an agreement on the future UK-EU relationship reigned for many months prior to the end of the transition period, with many concerned about the potential impact of a no-deal exit.

With just days to go before the **transition period** came to an end, the UK and the EU reached a deal on the **future relationship agreements**, which consist of three separate agreements:

- UK-EU trade and co-operation agreement. This is the main agreement, covering trade, economic and security co-operation. It has a single overarching governance framework.
- UK-EU security of information agreement, which supplements the main agreement. It addresses security procedures for exchanging and protecting classified information.
- UK-Euratom nuclear co-operation, which provides a framework for co-operation between Euratom and the UK in the peaceful uses of nuclear energy.

It is important to see the agreements, and the UK-EU trade and co-operation agreement (TCA) in particular, as a framework, with scope for future negotiation. In one key area, the TCA provides certainty and in fact goes further than other comparable EU free trade agreements by prohibiting customs duties and quotas on the other party's goods, It also sets out detailed rules of origin that must be satisfied in order to qualify for preferential tariff treatment. However, there are more limited commitments in relation to services and investment, which are subject to very broad exceptions and conditions. For example, there is a mechanism, but no obligation, for the parties to agree on the mutual recognition of professional qualifications in the future.

The general provisions include a requirement for supplementing agreements (unless they provide otherwise) to form an integral part of the overall relationship governed by the trade and co-operation agreement, and part of the overall

framework. It is hoped that there will be such agreements in areas such as financial services and data transfers in the short term.

In addition to the future relationship agreements beginning to apply on a provisional basis, as of 31 December 2020, **retained EU law** was created under the **European Union (Withdrawal) Act 2018** (EUWA), and many of the amendments to retained EU law immediately came into effect. In addition, the remaining withdrawal agreement provisions came into operation, and the legal changes associated with the UK's withdrawal from the EU and the European Atomic Energy Community (Euratom), and from the EU's international agreements took full effect.

As a result, law firms and corporate legal departments have a big task ahead of them post-transition. They must stay abreast of changes to retained EU law, the post-transition legal and regulatory landscape, the ways in which UK and EU laws diverge, and how courts interpret these changes.

To do this, lawyers need a source of in-depth information that is reliable, authoritative, comprehensive, and timely in order to provide sound legal guidance that enables their clients and organisations to anticipate and prepare for opportunities and challenges ahead.

Staying Abreast of Legal Changes

Lawyers assessing the potential extent of legal change in an affected area should consider the following:

- **Withdrawal Agreement and Implementation:** Does the UK-EU withdrawal agreement contain relevant provisions? For example, the separation provisions in Part Three of the agreement could enable short-term continuity for some ongoing matters that straddle the end of the transition period. However, there will not necessarily be further UK implementing legislation to flag how withdrawal agreement provisions will operate in UK law, as many withdrawal agreement requirements have been implemented automatically via Section 7A of the EUWA.
- **Retained EU Law and Amendment by UK Legislation:** Has the underlying UK or EU law become part of retained EU law at the end of the transition period and, if so, what are the legal implications of any amendments? Some amending legislation may require further modification, depending on the nature of the UK's international agreements with the EU and with other countries.
- **UK Policy Change After the Transition Period:** Are there plans to change UK policies in areas where policy was previously set at EU level? For example, has UK primary or secondary legislation been passed to implement policy change, and what are the main constraints on the UK's ability to make substantive legal changes? From the end



of the transition period, the retained EU law versions of EU policies now apply (with basic amendments to work in a UK legal context) until replaced by substantively new UK policies.

- **UK-EU Future Relationship Agreements and Implementation:** Is the area addressed by the future relationship agreements or by unilateral measures taken independently by the UK or the EU? The agreements have been implemented into UK law by the European Union (Future Relationship) Act 2020 (FRA). Section 29(1) of the FRA provides for the general implementation, via a glossing mechanism, of provisions of the trade and co-operation agreement and the security of classified information agreement which are not implemented by any other mechanism.
- **Other International Agreements:** Could the UK's international agreements with non-EU countries provide continuity, or introduce change? Some existing international agreements are unaffected by the UK's withdrawal from the EU, while some require amendment. Others will no longer apply to the UK, and the extent of change will depend on whether the government has arranged for the UK to accede to the original agreement or conclude a new agreement, or whether the UK will apply the previous rules on a unilateral basis to the extent possible.

- **EU Readiness Notices:** Has the EU published a readiness notice (also described as a notice to stakeholders, or a stakeholder preparedness notice) on how the EU rules in a particular area apply to the UK at the end of the transition period? Readiness notices summarise the legal situation from the EU perspective and include useful examples of how relevant withdrawal agreement provisions will work in practice.

Complexity and Change

Previously, news coverage of Brexit and the end of the transition period had tended to focus on the UK-EU negotiations and trade in goods, but the legal implications are far more extensive. EU law had become integral to many areas of UK law during the past few decades. The international effect of withdrawal has rippled far beyond the UK's legal relationship with the EU; it has also changed the UK's relationships with many other international organisations and other countries. All of this is now subject to further change.

The UK's new relationship with the EU coincides with other global issues that point to a significantly changing regulatory and legislative landscape. The economic damage caused by COVID-19 has been immense and recovery is likely to be drawn out, difficult and have significant policy implications. Economic recovery may present countries with an opportunity to put sustainability near the top of their agenda as they aim to achieve carbon reduction targets. More specifically in the UK, many government and opposition lawmakers have spoken about the need to rebalance the economy in order to address regional inequalities. Further change, complexity and uncertainty is on the horizon, all of which points to risks to be mitigated and opportunities to grasp.

It is, perhaps, more important than ever that UK organisations with a footprint in the EU and beyond stay abreast of the legal developments as they unfold. While the vast majority of rules by which businesses operate are currently aligned with EU rules, these are subject to change. Indeed, many of the regulators who set and adjudicate these rules are also subject to change. This of course means that understanding what rules apply will become a major issue for organisations and their employees who move between borders. Ensuring you know what the law is, how it's changing and what it means for you is more important than ever. Such knowledge and insight will be invaluable as your organisation seeks to help shape the changing rules through lobbying efforts at home and abroad.

As a result, lawyers specialising in a wide range of practice areas need a reliable source of information to navigate the complexity and change spurred by Brexit and other global events. Such information will enable lawyers to provide their clients and organisations with proactive, expert advice that informs strategic decisions and helps achieve objectives. It's essential to the lawyer's mission.

Brexit timeline

7 December 2016

House of Commons votes to trigger Article 50

UK House of Commons votes in favour of government triggering Article 50 by 31 March 2017.

29 March 2017

UK government gives Article 50 notice

UK government gives the Article 50 notice, starting the two-year period for exit negotiations.

26 June 2018

European Union (Withdrawal) Bill 2017-19 receives Royal Assent

The European Union (Withdrawal) Bill 2017-19 receives Royal Assent.

12 April 2019

End of first Article 50 period

Following the agreement between the UK and EU on 22 March 2019 to extend the Article 50 period for the first time, the Article 50 period was due to end on 12 April 2019. Following agreement between the UK government and the European Council on 11 April 2019, the Article 50 period was extended a second time to 31 October 2019.

24 September 2019

UK Supreme Court rules that Parliament was not prorogued

The UK Supreme Court rules that Parliament was not prorogued at the end of the sitting of 9 September 2019, as the Prime Minister's advice to the Queen to prorogue Parliament was unlawful, void, and of no effect.

23 June 2016

UK referendum on EU membership

UK referendum: majority of votes are to leave the EU.

24 January 2017

UK Supreme Court rules that Act of Parliament needed to trigger Article 50

UK Supreme Court confirms that an Act of Parliament is needed to authorise the government to give the Article 50 notice.

19 March 2018

UK and EU negotiators agree legal text for transition period

UK and EU agree legal text for transition period.

29 March 2019

End of two-year Article 50 period before any extension

The UK originally intended to leave the EU under Article 50 at 11.00 pm (UK time) on 29 March 2019 (two years after the UK's Article 50 notice). Following the agreement reached between the UK and EU on 22 March 2019, the Article 50 period was extended to 12 April 2019.

7 June 2019

Theresa May resigns as Prime Minister

Theresa May announced on 24 May 2019 that she would resign on 7 June 2019. Boris Johnson became Prime Minister after being declared the winner of the Conservative Party leadership election on 23 July 2019.

29 October 2019

European Council and UK reach legal agreement on third extension to Article 50 period

The European Council adopted a Decision of 29 October 2019 taken in agreement with the UK, which extends the Article 50 period until 11.00 pm (UK time) on 31 January 2020.

31 January 2020

End of third Article 50 extension

The UK left the EU at 11.00 pm (UK time) on 31 January 2020 under the terms of the third extension to the Article 50 period.

1 January 2021

Provisional application of future relationship agreements

Provisional application of the UK-EU trade and co-operation agreement, UK-EU security of classified information agreement, and UK-Euratom nuclear co-operation agreement takes effect from the end of the transition period.

17 October 2019

Brexit negotiators agree revised withdrawal agreement and political declaration

The UK government and the European Commission reach agreement at negotiators' level on a revised Protocol on Ireland/Northern Ireland to the withdrawal agreement, and a revised political declaration on the framework for the future relationship.

24 January 2020

Withdrawal agreement signed on behalf of UK, EU and Euratom

The UK Prime Minister signs the withdrawal agreement on behalf of the UK, and the President of the European Council and the President of the European Commission sign the withdrawal agreement on behalf of the EU and Euratom.

30 December 2020

Future relationship agreements signed

The UK-EU trade and co-operation agreement, UK-EU security of classified information agreement, and UK-Euratom nuclear co-operation agreement are signed on behalf of the parties.



Key Practical Law Brexit resources

(licence required):

Brexit essentials: Q&As on agreements, timeframes and no deal

This note gives short answers to common questions about Brexit withdrawal matters, the operation of UK law during and after transition, and the future UK-EU relationship.

Guide to assessing legal change after end of post-Brexit transition period

This covers general issues relevant to a range of UK legal practice areas and sectors. It lays the groundwork common to many Brexit-related queries, includes worked examples and frequently asked questions, and explains how to locate and identify relevant information.

Future UK-EU relationship agreements

This provides an overview of the UK-EU trade and co-operation agreement, UK-EU security of classified information agreement, and UK-Euratom nuclear co-operation agreement. These future relationship agreements have applied provisionally since the end of the transition period at 11.00 pm (UK time) on 31 December 2020.

Brexit and UK lawyers' rights

This note examines the implications of Brexit on rights for UK lawyers to provide cross-border legal services in the EU.

These and other resources (licence required) can be viewed from Practical Law's [Brexit page](#).

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