

UK-EU revised agreement of 17 October 2019 on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union

6 February 2020



Background

Since the referendum, the LGA has taken a neutral position on the UK's membership of the EU. Our work has helped to ensure that the Government was addressing the risks and opportunities for councils and their communities as the UK leaves the EU. We established a seat at the negotiating table for local government through the MHCLG Delivery Board.

This briefing sets out details of the Withdrawal Agreement (WA) and the key issues known for councils so far.

As agreed at the [LGA Executive](#) on 23 January 2020, our UK/EU workstreams going forward will now consist of looking at opportunities to do things differently in local communities and ensuring that the EU trade agreement considers the needs of local communities as we prepare for the end of the transition period on 31 December 2020. We will brief councils and lobby Government on any relevant changes, opportunities or risks that have implications for council services.

For any issues regarding our future work streams and the transition period, please send details to paul.green@local.gov.uk

Introduction

On 19 October 2019 the United Kingdom and the European Union published a revised Withdrawal Agreement setting out arrangements for the UK's departure from the EU.¹ The revision focused on new customs arrangements for Northern Ireland.

The agreement was also accompanied by a revised political declaration which is non-binding.

The agreement was approved by the UK Parliament on 22 January 2020 and implemented into UK law via the EU Withdrawal Agreement Act (2020).

The agreement was also approved by the European Parliament on 29 January 2020.

This briefing sets out those elements in the agreed Withdrawal Agreement which are of most importance to local government:

- The transition period
- The key issues for councils in the Withdrawal Agreement, including:
 - Workforce
 - Procurement
 - Trade
 - Funding
 - New customs arrangements for Northern Ireland

Briefing

The Transition Period

There will be a transition period lasting until 31 December 2020 (Article 126). During this period, the UK will pay into the EU budget and continue to apply almost all EU law including new EU laws (Article 127). The UK will no longer participate in the decision-making process of the EU (Article 7.1).

During the transition period, councils will continue to follow existing and new EU laws in a wide range of fields including:

- environment e.g. waste/recycling, air quality, energy use, environmental impact assessments, biodiversity
- public procurement and franchises/concessions
- state aid: subsidies to public service providers e.g. rural bus services; aid to local projects of public interest e.g. sports, museums, arts/cultural events, voluntary sector activities etcⁱⁱ;
- citizens' rightsⁱⁱⁱ e.g. free movement, social security coordination, recognition of civil documents
- employment law e.g. health and safety, working time, TUPE, parental leave, posting of workers
- consumer protection e.g. licensing, product safety, food hygiene, animal welfare
- protection of personal data, transparency and accessibility of public data
- transport e.g. franchising, subsidies, passenger rights, disabled access

After the transition period, EU laws will be transferred into UK law. Future UK legislation may of course choose to keep, amend or delete existing legislation. A small number of EU laws are envisaged **not to apply to the UK during the transition period**, including^{iv}:

- Certain protocols on the Eurozone, the Schengen Area, and the Area of Security and Justice, which were not binding on the UK anyway (Article 127.1a)
- The ability to petition the EU or access the European Ombudsman (Article 127.1b).
- Potentially, elements of the EU's common foreign, security, and defence policy (Article 127.2).
- The ability to engage in 'enhanced cooperation': an EU procedure whereby a smaller group of EU states work together to achieve something to deepen EU integration, such as the Eurozone (Article 127.4).
- The European Treaty's provisions for all EU citizens having right to vote and stand in local elections no longer applies in the UK (Article 127.1b). However, this right is embedded in UK law and will continue unless UK law is amended. A government spokesperson has indicated that the UK will seek bilateral agreements to ensure UK citizens can vote in EU27 municipal elections and vice-versa.^v

Implementing and interpreting the Withdrawal Agreement during the transition period

- A Joint Committee, comprised of representatives of the UK and the EU, is established and will have responsibility for the implementation of the WA (Article 164). This Committee will be co-chaired by the UK and EU and will have the power to make binding decisions over both.

- Legal interpretation of the WA, and associated EU law applicable to the UK, will remain with the Court of Justice of the European Union during the transition period (Article 131).^{vi}
- In the EU/UK Withdrawal Treaty, the transition period can be extended by a further 1 or 2 years (Article 132). However, the Government amended UK legislation, making it illegal for a Minister of the Crown to agree to an extension^{vii}.

Key issues for Councils in the Withdrawal Agreement

Workforce

- The right of residency for EU nationals in the UK and UK citizens in individual EU nations (and their family members) remains available throughout the transition period (Article 13). After the transition period, a new UK immigration policy is likely to be established.
- Residency of EU citizens during the transition period counts towards the five years needed for permanent residence (Article 15). However, there is scope to make future rights to reside conditional on registration under a national scheme (Article 18), such as the UK's 'settled status' scheme.
- EU workers will continue to enjoy existing rights including: non-discrimination on the grounds of nationality, rights to benefits and housing (Article 24).

Procurement

- Under the agreement, the procurement rules will remain unchanged during the transition period. Public procurement procedures which are started before the end of the transition period and not yet finalised on the last day of it will continue to be carried out under EU rules (Articles 75, 76).
- The EU rules allowing failed bidders to challenge the award of a public contract ('remedies') will also remain during the transition period (Article 77).

Trade

- The UK may negotiate, sign, and ratify international deals during the transition period such as free trade agreements (FTAs) or deeper economic partnership/cooperation agreements, providing they do not come into force until after the end of the transition period (Article 129.4).^{viii}
- Following evidence from the LGA, the Common's International Trade Committee recommended that local government should have a voice throughout the trade policy process, and the government should set out how it plans to facilitate this. It also recommended that the government should consider whether it would be appropriate to include local government representation on the Strategic Trade Advisory Group.^{ix}
- The LGA will monitor progress of any international trade deals and the implications there may be for public procurement and council services,

Funding

- The agreement provides for the UK to continue to participate in EU funding programmes as normal until the end of 2020 (Article 137).
- EU payments and audits will continue after the transition period until the closure of the 2014-20 programmes in 2023 (Article 138).

- Government has committed to replace the seven year ESIF programme with a UK Shared Prosperity Fund (UKSPF). The fund includes a commitment for £500 million to be invested in skills for disadvantaged communities. There has still been no detail on the design or delivery of UKSPF, despite the promise of a consultation for over 18 months. The LGA has called for this fund to be a localised, place-based fund that is driven by locally determined outcomes and is at least equal in quantum to the funds it is replacing.
- From the *beginning* of the transition period the UK will not be eligible for European Investment Bank (EIB) services such as loans, guarantees, and equity, but will be treated as being outside the EU (Article 151). The UK's capital in the bank will be paid back over time.
- EIB support granted to projects before entry into force of the agreement will continue as planned (Article 151).

New customs arrangements for Northern Ireland

- The revised withdrawal agreement includes an important new protocol governing the customs relationship between Northern Ireland and the UK, and Northern Ireland and the EU.
- The LGA is exploring what this means for local authority regulatory services activities conducted at English ports.

ⁱ <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

ⁱⁱ Agricultural support to farmers/rural areas will also continue albeit on a different basis (Article 137): <https://www.farminglife.com/farming-news/legislation-to-continue-farming-subsidies-after-brexit-clears-commons-1-9216676>

ⁱⁱⁱ Under the agreement (Part Two) many citizens' rights will continue to be protected even beyond the transition period.

^{iv} See Article 127 of the Withdrawal Agreement for the full list.

^v https://elpais.com/elpais/2018/03/26/inenglish/1522053686_520168.html%20 (27.3.2018).

^{vi} After the transition period, UK courts must pay 'due regard' to EU law but can disapply CJEU case law retained in UK law in some circumstances: see UK Withdrawal Agreement Act (2020).

^{vii} <https://www.legislation.gov.uk/ukpga/2020/1/enacted/data.xht>

^{viii} Trade deals already completed by the UK (6.1.20): <https://www.bbc.co.uk/news/uk-47213842>

^{ix} UK trade policy transparency and scrutiny - <https://publications.parliament.uk/pa/cm201719/cmselect/cmtrade/1043/1043.pdf>