

Local Government Association (LGA)

Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union



Introduction

On Monday 19 March 2018, the United Kingdom and European Union published a draft withdrawal agreement, which sets out the arrangements for a transition period of 21 months following the UK's departure from the EU.

[The text of the draft agreement can be found online.](#) On Friday 23 March 2018 parts of this draft agreement were endorsed by the leaders of remaining EU 27.

It remains possible that the draft agreement could be amended to accommodate any final agreement reached on the future relationship between the UK and the EU: 'nothing is agreed until everything is agreed'.¹ The trade deal struck with the EU may affect the border controls necessary in Northern Ireland, for example.

This briefing sets out those issues in the draft withdrawal agreement which are of most importance to local government, covering:

- The Transition Period
- Workforce
- Procurement
- Trade
- Funding
- The European Investment Bank

The LGA has a wide-ranging programme of work on Brexit. [Details can be found online.](#)

The Transition Period

- There will be a transition period lasting until 31 December 2020 (Article 121).
- During this period, the UK will no longer participate in the decision-making process of the EU (Art.6.1), as it will no longer be a member state as of 30 March 2019 (Art.168).²
- A Joint Committee, comprised of representatives of the EU and the UK, is established and will have responsibility for the implementation of the withdrawal agreement (Art.157). This Committee will be co-chaired by the UK and EU and will have the power to make binding decisions over both (Art.159). Interpretation of the withdrawal agreement, and all EU law applicable to the UK, will remain with the Court of Justice of the European Union (Art.126).
- During transition the vast majority of existing EU laws will apply in the UK as now, including, for example: rules relating to the single market (such as

¹ European Council guidelines for Brexit negotiations, <http://www.consilium.europa.eu/en/press/press-releases/2017/04/29/euco-brexite-guidelines/>

² 11pm 29th March, UK time.

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procurement), rules relating to competition (such as state aid), the free movement of labour and the customs union (Art.122.1, Art.122.6).

- A small number of EU laws are envisaged not to apply to the UK during transition. For example:³
 - The right to vote and stand in municipal elections in an EU member state of residence on the same basis as a national from that member state (Art.122.1.b). A government spokesperson has indicated that the UK will nevertheless seek bilateral agreements with each member state to allow UK citizens to vote in their municipal elections, and to allow EU citizens to vote in UK municipal elections.⁴ The LGA will seek further detail on this.
 - The right to vote and stand in elections in the European Parliament (Art.122.1.b).
 - Certain protocols on the Eurozone, the Schengen Area, and the Area of Security and Justice, which were not binding on the UK anyway (Art.122.1.a)
 - The ability to petition the EU or access the European Ombudsman (Art.122.1.b).
 - Potentially, elements of the EU's common foreign, security, and defence policy (Art.122.2).
 - 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 (Art.122.4).
- There are also a range of complex provisions in relation to new EU measures as regards the Area of Freedom, Security and Justice; including border checks, asylum and immigration (Art.122.5). This is in part to accommodate ongoing discussions on the Northern Ireland border.
- In addition, any new EU laws coming into force during the transition period will also apply to the UK during the transition period unless they specify otherwise (Art.122.1, 122.3, 122.6). Regarding the EU's foreign policy, diplomatic and military interventions, an agreement has been reached in a spirit of 'sincere cooperation' that the UK will refrain from impeding any EU actions in international organisations, such as the United Nations (Art.124.3). In return, the UK does not have to apply an EU foreign policy decision if it sees it as against the UK's national interest (Art.124.6).
- The UK may negotiate, sign, and ratify international deals during the transition period such as trade deals or partnership agreements, providing they do not come into force during the transition period (Article 124.4).
- There is no provision within the draft withdrawal agreement to extend the transition period. (This could nevertheless be done by agreement with the UK and unanimity (EU27) in the European Council).⁵

³ See Article 122 of the draft Withdrawal Agreement for the full list.

⁴ https://elpais.com/elpais/2018/03/26/inenglish/1522053686_520168.html

⁵ Extending pre-transition negotiations beyond 30 March 2019 will continue to be governed by Article 50.3 TEU, which also requires the agreement of the UK and a unanimous decision (EU27) of the European Council.

LGA view:

We have called for clarity and certainty about citizens' rights, the applicability of EU law, and rules relating to the operation of the single market. The decision to agree a transition period ensures that there will be no cliff edge next year and gives reassurances to both businesses and citizens that nothing will change in the short to medium term. However, significant work will need to continue during the transition period to ensure certainty once this period ends on 31st December 2020.

We have called for in-depth UK reviews of EU laws that apply to local government, such as those relating to procurement, food safety and state aid. We have argued that local government should have a role in deciding which of these to amend and which to keep. These reviews can only take place from 2021. We have also called for a role for councils in the more imminent technical changes that government ministers will make when converting EU law into UK law on the date of exit,⁶ potentially necessitating the creation of new UK bodies.

We have put in place and are considering further ways in which councils can continue to influence current and future EU legislative proposals that impact on councils and their finances throughout the period of transition.

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 (Art.9).
- Residency during the transition period counts towards the five years needed for permanent residence (Art.14). However, there is scope to make future rights to reside conditional on registration under a national scheme (Art.17).
- Workers will continue to enjoy existing rights including: non-discrimination on the grounds of nationality, rights to benefits and housing (Art.22).

LGA view:

We have provided evidence to the Government through the Migration Advisory Committee on the high number of non-UK EU nationals who work in key services such as social care, construction and local industries such as tourism.⁷

We have highlighted the urgent need for business continuity across local places, both in terms of our ability to plan for the sustainability of essential public services and for local private and public sector employers to have the steady supply of the skills they need to thrive and grow. The withdrawal agreement gives much needed certainty on this issue, at least over the short term.

The UK already faces a range of skills challenges as a symptom of a centrally controlled skills system, which does not account for differing local skills gaps and business needs. By 2024, we will have four million too few high-skilled workers and eight million too many intermediate- and low-skilled workers to fill the jobs the national economy will generate. Failure to address this puts at risk up to 4 per cent of future economic growth, equivalent to a loss of £90 billion economic

⁶ Likely overseen by a UK Parliamentary 'sifting committee'.

⁷ LGA response to the Migration Advisory Committee, <https://www.local.gov.uk/parliament/briefings-and-responses/response-migration-advisory-committee-call-evidence-contribution>

output, which would make the average worker £1,000 a year worse off.⁸

Our skills crisis has been exacerbated by a succession of top-down Whitehall initiatives which, while well-meaning, have simply not worked. This has created a confusing patchwork of £10.5 billion skills and employment funding scattered across 20 different national schemes.⁹ We urge the Government to work with councils so that the whole skills system can be made coherent for local people and effective for local businesses. Only then will we be able to make the most of valuable public resources and produce the current and future workforce we need.

Procurement

- 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 procurement law (Art.72).

LGA view:

Councils currently have to follow EU-wide advertising and award procedures when they buy goods, works and services. The process sometimes sits uneasily with supporting the local economy. The EU process can take between three and 18 months,¹⁰ much longer than a typical private sector procurement.

Almost no public contracts end up being awarded to companies in other EU member states. Only 20 per cent of English councils receive expressions of interest from companies based in other EU countries. Across Europe, only 1.6 per cent of public contracts are awarded to companies in other member states.¹¹

We have called for a review of procurement law. In line with the other reviews of UK laws that apply EU rules to councils, this will take place from 2021. This creates the opportunity to develop a lighter-touch system which simplifies the process, and provides more flexibilities to promote local growth. This is vital so that councils can procure to shorter timescales and lower high administration costs for businesses, especially small and medium-sized enterprises.

Trade

- The UK is able to negotiate and ratify new trade agreements during the transition period, but these cannot be implemented until 2021 (Art.124.4).

LGA view:

Councils across the country have well-established trade links with cities across the globe, helping to drive exports and bringing in much-needed investment. Their expertise needs to be used as we renew our trading relationship with rest of world. It is now urgent that the Department for International Trade works with us to strike the best deals possible.

New trading deals will impact on places differently, but our own research in this area suggests that existing sub-national trade and investment policy is fragmented, underfunded and often poorly integrated with wider growth

⁸ Work Local – Our vision for employment and skills, <https://www.local.gov.uk/work-local-our-vision-employment-and-skills>

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¹⁰ <https://www.local.gov.uk/about/news/lga-simplify-eu-rules-over-how-councils-buy-goods-and-services-after-brexit>

¹¹ <https://www.local.gov.uk/about/news/lga-simplify-eu-rules-over-how-councils-buy-goods-and-services-after-brexit>

programmes. If local businesses and communities are to see the full benefits of our new global trading ambitions, it is vital that these arrangements are made fit for purpose as matter of urgency.

Funding

- Confirmation that UK will participate in the current EU funding programmes until the end of 2020 (Art.130).
- EU payments and audits to continue after transition period until closure of 2014-20 programmes in 2023 (Art.131).

LGA view:

This agreement means that local communities will continue to benefit from EU funds until the end of the current programmes in 2020, allowing programme delivery to run until the foreseen closure in 2023. This is welcome as a short-term solution. We continue to work with the Government through the national ESIF Growth Programme Board to ensure remaining funds are spent quickly and are driven by local priorities.

It is now essential that this EU funding to local areas is fully replaced by 2021 at the very latest as part of a locally-led successor scheme. This is to ensure that local areas have sufficient time to plan activity. Otherwise a £8.4 billion UK-wide funding gap for local communities would immediately open up from 2021.¹² The Government has announced a new UK Shared Prosperity Fund (UKSPF), and promised a consultation by the end of 2018.

In July 2017, the LGA published proactive proposals on behalf of councils to outline the principles which should underpin successor arrangements to EU funds.¹³ These include:

- The UKSPF should at the very least, match the quantum of its predecessor EU funding for the 2014-2020 period.
- It should provide an opportunity for different and better arrangements that are more flexible and responsive to local needs in all types of areas.
- It should maximise integration with other funding streams for local growth.
- The funding should be distributed over a stable period.
- The funding should be easier to access and manage, with a simplified and more proportionate approach to financial management.

The LGA will work with the sector, stakeholders and the Government to influence the shape of UKSPF.

European Investment Bank (EIB)

- From the beginning of the transition period the UK will not be eligible for EIB services reserved for EU members, but will be treated as being outside the EU (Art.144).

LGA View:

Many local areas have benefited from the financial provisions of the EIB. Loans,

¹² Beyond Brexit: Future of funding currently sourced from the EU, LGA
https://www.local.gov.uk/sites/default/files/documents/2017-07_Beyond%20Brexit%20-%20LGA%20Discussion%20%28FINAL%29_0.pdf

¹³ Beyond Brexit: Future of funding currently sourced from the EU, LGA
https://www.local.gov.uk/sites/default/files/documents/2017-07_Beyond%20Brexit%20-%20LGA%20Discussion%20%28FINAL%29_0.pdf

guarantees, and equity issued to UK projects are of similar financial amounts to those received in grant funding from the EU Structural Funds. We will be investigating the local impact and what successor arrangements are needed for local places.

Conclusions

The draft withdrawal agreement signals a milestone in the Brexit journey. A transition period has been agreed and greater certainty is now available, but it is still dependent on a final deal, most likely at the European Council Summit in October 2018.

A 'no deal' outcome cannot be excluded and would have a major impact on councils, their communities and local economies.

Over the next few months there are three priorities for the LGA:

- Fully understand the impact of the transition arrangements, drawing on greater intelligence from councils on the risks and opportunities for their local areas. We will raise this in our regular work with Government.
- Monitor the remaining elements of the withdrawal agreement, including negotiations relating to our trading arrangements with the EU and the rest of the world and the agreement of proposals for Northern Ireland.
- Start the debate on what the UK should look like after 2020. Our call for devolution beyond Westminster becomes more important than ever as EU powers return to the UK. As the detail of withdrawal starts to be understood, devolves power beyond Whitehall, Stormont, Holyrood and Cardiff Bay.