

Brexit Briefing: December 2017

We end 2017 having completed phase one of the Brexit negotiations and passing the first big hurdle of the EU Withdrawal Bill – its House of Commons committee reading. Even though progress of talks has been glacial at times, in mid-December the UK and EU agreed that there has been “sufficient progress” to move onto the second phase of talks, while the Cabinet has reached a broad consensus to fight for a bespoke Brexit deal.

This briefing contains details of:

- [The latest Government and political developments relating to Brexit](#)
- [An overview of the Brexit negotiations](#)
- [An update on parliamentary activities relating to Brexit, including the committee stage of the EU Withdrawal Bill](#)
- [NHS Providers' work on Brexit with the Cavendish Coalition and the Brexit Health Alliance](#)

Key points

- Theresa May's Florence speech set out the Government's latest position on Brexit, whereas Labour's stance on Brexit remains fluid and the party's official position on whether there should be a 'second referendum' on any final deal is unclear.
- Agreements in principle on: protecting the rights of EU citizens in the UK and UK citizens in the EU; the framework for addressing the unique circumstances in Northern Ireland; and the broad financial settlement; meant that negotiations could move on to the second phase in mid-December.
- However discussions around the border between the Republic of Ireland and Northern Ireland nearly derailed the talks in early December.
- The [EU \(Withdrawal\) Bill](#) has now completed the committee stage in the House of Commons. The only vote lost by the Government was on Amendment 7, which requires the final Brexit deal to be approved in a new law passed by Parliament. The Bill will move to Report Stage in the new year, giving MPs an opportunity to consider any further amendments before moving on to Third Reading.
- The Government has announced its intention to enshrine in law the date the UK would leave the EU as 11pm GMT, on March 29 2019. However ministers will be able to change the date and time of exit day, meaning that negotiations could be extended beyond 29 March 2019.
- There are around 25 live Brexit-related select committee inquiries in the House of Commons, including a Health Select Committee inquiry into [Brexit – medicines, medical devices and substances of human origin](#),
- The tight timetable imposed on reaching an agreement on future relations (i.e., a trade deal) is earmarked as the most likely cause of a no deal situation.

1. Government and political developments

Government approach to Brexit

The full Cabinet met to discuss Brexit for the first time on 19 December, with reports that there was broad agreement for a bespoke Brexit which doesn't follow any of the existing EU trade models – an approach the Prime Minister hinted at in her Florence speech in September. A spokesperson for the Prime Minister played down Michel Barnier's **suggestion** that there was no possibility of a bespoke solution.

It was reported that at the Cabinet sub-committee meeting, which met the day before the full Cabinet, Boris Johnson (foreign secretary) and Michael Gove (environment secretary) led calls for Britain to seek maximum freedom to pursue economic advantages. They were supported by Liam Fox (international trade secretary) and Gavin Williamson (defence secretary), while Philip Hammond (chancellor) and Amber Rudd (home secretary) suggested that those who wanted to move away from EU rules should prove that the benefits would outweigh the costs case by case.

Theresa May's **Florence speech** is still the best indication of the Government's position on Brexit. In the speech she set out the framework for the overall relationship she would be seeking with the EU, with many of the areas she covered being secured by the end of phase one, such as the agreement on citizen's rights, and the "divorce bill". She also committed to the idea of a transition deal that would last for around two years for the first time. She is expected to deliver her third set piece Brexit speech (her first being in January 2017 at **Lancaster House**) early in 2018.

Opposition approach to Brexit

Labour's stance on Brexit remains fluid, having evolved since the summer towards a softer Brexit, the party is still keeping its options open on a number of key issues. For example, the party's official position on whether there should be a 'second referendum' on any final deal is unclear. Deputy leader Tom Watson has said that Labour would not rule out backing a second referendum on EU membership, saying "**when you're in complex negotiations on behalf of the nation you shouldn't rule anything out**", whereas shadow home secretary Diane Abbott has said the party doesn't support a second referendum.

On the customs union, it is now party policy for the UK to remain a member during the two-year transition period. Shadow Brexit secretary, Sir Keir Starmer, tabled an amendment calling for Britain to remain in the single market during a two-year transition period, as many MPs believe Britain will not have time to secure a trade deal with the EU before 2019.

Beyond that, there is again some ambiguity in Labour's official stance. Sir Kier has also talked about going further and making the arrangement permanent. In his speech at Labour Party conference he said, "**Remaining in a form of customs union with the EU is a possible end destination for Labour**". Party leader Jeremy Corbyn has suggested he was broadly in favour of staying in the single market and customs union during a meeting with chief EU negotiator Michel Barnier in October, and the committee stage of the EU Withdrawal Bill (see **section 3**).

2. Brexit negotiations

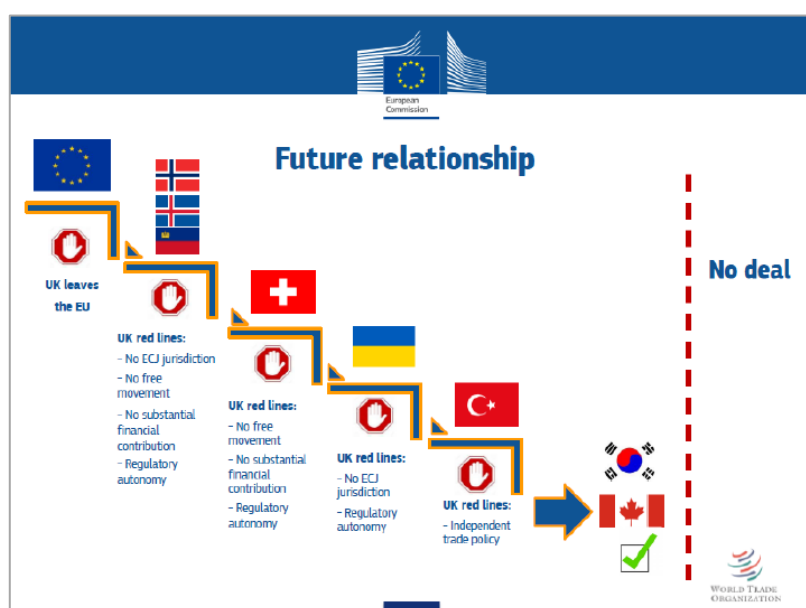
Negotiation progress

At the EU Council summit on 14 and 15 December, the 27 leaders of the remaining EU countries (the EU27) agreed that there had been “sufficient [progress] to move to the second phase related to transition and the framework for the future relationship”. However, Donald Tusk, President of the European Council, warned that “negotiations in the second phase can only progress as long as all commitments undertaken during the first phase are respected in full and translated faithfully into legal terms as quickly as possible”.

The decision to move to phase two comes after an agreement in principle was reached on: protecting the rights of EU citizens in the UK and UK citizens in the EU; the framework for addressing the unique circumstances in Northern Ireland; and the broad financial settlement (the so-called divorce bill payable in respect of commitments made by the UK while an EU member). The agreement was published in a **joint report** which sets out the progress made during phase one of negotiations, “under the caveat that nothing is agreed until everything is agreed”, meaning that it will continue to work on these issues during the second phase of talks.

However, the Sunday after the agreement was reached, David Davis appeared on the *Andrew Marr Show* describing it as a “statement of intent” and that it was not legally enforceable. This angered negotiators in Brussels and led Michel Barnier to release a statement saying “we will have a final agreement only if the political commitments taken by Theresa May on behalf of the British Government last Friday are respected... We will not accept any backtracking from the UK.”

At the December summit Michel Barnier presented this **graphic** to all 27 EU leaders setting out what the EU thinks is the consequence of each of May’s demands. Starting with full EU membership on the left, it goes through each of the non-EU countries that it thinks the UK could possibly use as a template for a future relationship and essentially rules them out due to red lines put down by the UK government.



Further to this, Michel Barnier has ruled out a special deal for London's financial services, saying that "there is no place [for financial services]. There is not a single trade agreement that is open to financial services. It doesn't exist." This will come as a blow to the Government which has publically stated it wants a unique trade deal that would include financial services. The Brexit secretary had previously called for a "Canada plus plus plus" deal with the EU, which would include "Canada plus the best of Japan, the best of South Korea and that bit that is missing, which is the services".

Transition deal

Michel Barnier has given further clarity around a possible transition, confirming that in that period the UK would have to apply all EU laws, including any new ones agreed after 2019, and be subject to the enforcement powers of the European Commission, EU agencies and the European Court of Justice (although the UK would not get a say on any decisions). He also confirmed that Gibraltar will not automatically be part of the transition; a separate bilateral agreement will have to be reached between the UK and Spain.

He also said that the transition should end by 31 December 2020. Theresa May had originally suggested the transition would last up to two years.

Citizens' rights

Part of the agreement covered the rights of EU citizens living in the UK after withdrawal from the EU. The deal means that:

- People who, by 29 March 2019, have been living in the UK for five years will be able to apply to stay indefinitely by obtaining 'settled status' (which would replace any permanent residence status).
- People who arrive in the UK by 29 March 2019, but won't have been living here lawfully for five years when the UK leaves the EU, will be able to apply to stay until they have reached the five-year threshold. They can then also apply for settled status.
- Family members who are living with, or join, EU citizens in the UK by 29 March 2019 will also be able to apply for settled status, usually after five years in the UK.
- Close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join EU citizens in the UK after exit, where the relationship existed on or before 29 March 2019.

Financial settlement

A deal has been reached over the so called 'Brexit bill' or 'divorce bill', wherein the UK honours its share of the obligations undertaken while a member of the EU and the specific costs associated with withdrawal from the EU. No calculation of the total has been announced yet, but it is estimated to be around £35-£39 billion. The agreement sets out that the "UK will contribute to, and participate in, the implementation of the Union's annual budgets for the years 2019 and 2020 as if it had remained in the Union". These will be

paid when the obligations “fall due” rather than in one lump sum. In addition, the UK will be able to benefit from programmes that started in this financing period.

Irish border

The Prime Minister reiterated her commitment that there will be no hard border between the Republic of Ireland and Northern Ireland. She first made this commitment during her Florence speech and this is the issue that nearly derailed the talks in early December, following an intervention from the DUP which said it could not support the planned commitment to keep Northern Ireland aligned with EU laws (and so be treated differently from the rest of the UK). The UK has guaranteed that it will maintain “full alignment” with the EU’s single market and customs rules that govern cross-border trade. It is not yet clear how full alignment could be maintained without Northern Ireland staying in the single market and the customs union, especially as there is no option of partial membership. It is another sign that the competing demands that have been discussed in the lead up to the agreement have been sidestepped rather than fully resolved.

Phase two negotiating guidelines

The Council has published its negotiating guidelines for phase two of the Brexit talks and agreed “to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies”. The key points of the guidelines are:

- The UK will need to continue to comply with EU trade policy during the transition
- All EU law will apply until end of transition, assumed to be 2021, and the UK will have to abide with all four freedoms, which means EU immigration carries on as is for five years after the referendum
- European Court of Justice rulings will be enforced in the UK during the transition

Phase two will not include the detail of future trade relations. The joint report calls for “an agreement as early as possible in 2018 on transitional arrangements”. There will be another separate mandate for negotiations on a future trade framework in late March 2018.

3. Parliament

European Union (Withdrawal) Bill

The EU (Withdrawal) Bill has completed committee stage in the House of Commons. At the start of the process, 378 amendments and 75 new clauses had been proposed – on that basis alone, it is remarkable that only one vote was been lost by the Government. MPs from across the House have co-ordinated on amendments, ranging from attempts to offer Parliament a vote on the final deal to the role of the European Court of Justice after Brexit.

Lost vote

The only vote lost by the Government was on Amendment 7, which requires the final Brexit deal to be approved in a new law passed by Parliament. The Government had made concessions to avoid a vote on this amendment, announcing on 13 November that it would enshrine the withdrawal agreement through a separate [Withdrawal Agreement and Implementation Bill](#), and in a letter to the House of Commons on the day of the vote, Brexit secretary David Davis promised “[a resolution in both Houses of Parliament \[which\] will cover both the withdrawal agreement and the terms for our future relationship](#)”.

Nevertheless, 11 Conservative MPs went against the party whip and voted in support of the amendment tabled by Conservative former attorney general Dominic Grieve.¹ This led to attacks in the press and on social media, and from other MPs, that the Conservatives who voted against Amendment 7 were “self-consumed malcontents”. However others have come out in support of these MPs saying that they “[are speaking for parliamentary democracy and for the importance of holding power to account](#)”. John Bercow, Speaker of the House of Commons defended the right of MPs to vote in line with their principles, saying they are “[dedicated public servants](#)” and “[never mutineers, traitors, malcontents nor enemies of the people](#)”.

Accepted amendments

One of the main concerns highlighted was over attempts to use so-called Henry VIII powers, which allow the Government to pass, repeal or amend legislation without scrutiny. The Government insisted that it would only use these powers because of limited parliamentary time to get through the substantial number of EU regulations that need to be incorporated into UK law, but Labour warned that the “[bill rides roughshod over the rights of the public and Parliament to scrutinise the Government’s trade policy after we leave the EU](#)”.

The Government latterly accepted amendments tabled by Charles Walker, chair of the procedure committee (Amendments 392-398) on Henry VIII powers. These would establish a new ‘sifting committee’ of the House of Commons, which will work through each piece of delegated legislation and recommend which ones require debate and a vote in the House before they become law. The committee would have ten sitting days to make this recommendation.

The Government announced its intention to amend the Bill to enshrine in law the date the UK would leave the EU as 11pm GMT, midnight in Brussels, on March 29 2019. This led to Conservative MPs threatening to vote against the amendment, alongside Opposition MPs. Four Conservative MPs then tabled a new amendment which would allow ministers to use delegated powers to change the date and time of exit day if the UK leaves the EU on a different date from the one specified. This would mean negotiations could be extended beyond 29 March 2019, which the EU have said they would be willing to do, and avoid a cliff

¹ The original clause read: “A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purposes of implementing the withdrawal agreement if the Minister considers that such provision should be in force on or before exit day.” The amendment added the clause that it should be “subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the European Union.”

edge resulting in no deal. The tabling of this amendment encouraged potential rebels to vote with the Government.

Concessions

The Government has made a number of concessions to avoid defeat on various amendments to the Bill:

- On the potential implications to equality law, justice minister Dominic Raab announced that the Government was working on an amendment which would require ministers to “**make a statement before the House in the presentation of any Brexit-related primary or secondary legislation on whether and how it is consistent with the Equality Act 2010**”.
- Labour MP Chris Leslie withdrew New Clause 20 which would have required the Government to provide an assessment of the Bill’s implications on international treaties in response to **assurances from Brexit minister Robin Walker** that more information from the Government would be forthcoming.
- The secretary of state for Scotland **stated** that the bill would be amended in response to concerns raised by the Scottish Conservatives, about clause 11 which states the devolved legislatures will not be able to legislate contrary to retained EU law. The Government rejected an amendment tabled by the Scottish and Welsh Government which would remove the restriction and committed to amending this at report stage instead.
- The solicitor general Robert Buckland **committed** the Government to bringing forward its own amendments to clarify when it would be possible to challenge the validity of EU retained law. This followed concerns raised by Dominic Grieve during the debate on clause 5, which provides exception to the general rule that in the event of a conflict between a retained EU law and domestic law, the latter must give way to the former.

Next steps

The Bill will move to Report Stage in the new year, giving MPs an opportunity to consider any further amendments before moving on to Third Reading. The Bill will then begin its passage through the Lords. Vince Cable, leader of the Liberal Democrats recently said that he was working with peers from across the House of Lords to defeat the Government “**on amendments of substance, particularly where this involves the rights of Parliament, the ‘Henry VIII powers’**”.

Brexit impact assessments

There has been a long standing row over whether adequate preparations for Brexit have been carried out, which culminated in a threat of finding Brexit secretary David Davis in contempt of Parliament.²

² Contempt is a parliamentary term covering action that involves defying the will of the Commons. MPs can pass motions criticising people for contempt, and impose a punishment on members who transgress, such as suspension.

In December 2016, David Davis told the exiting the EU select committee that the Government was “carrying out 57 sets of analyses, each of which has implications for individual parts of 85 percent of the economy” of the impact of Brexit.

In November 2017, the Labour Party held a debate which called for the publication of these assessments and a vote took place which required the impact assessments to be published. In response, David Davis made a written statement to the House of Commons which noted that “it is not the case that 58 sectoral impact assessments exist”. He explained that there is a “wide mix of qualitative and quantitative analysis contained in a range of documents developed at different times since the referendum” so would take time to collate the information. He also stated that there might be confidential and commercially sensitive information in the analysis and that advice to ministers must remain private, so it was agreed that the information would be provided to the exiting the EU committee.

Information was given to the House of Commons exiting the EU committee and the House of Lords European Union committee on 27 November. However, information that was considered to be commercially or market sensitive, or potentially damaging to negotiations, was not included. This caused the committee chair, Labour’s Hilary Benn, to suggest that David Davis was in contempt of Parliament, for not having fulfilled the motion. Mr Davis was summoned to the exiting the EU committee, where he admitted that the assessments did not exist. The committee voted on whether he was in contempt of Parliament, and by 11 votes to eight ruled that he is not.

On 14 December 2017, the Speaker – John Bercow – further found that David Davis was not in contempt of Parliament, but took the opportunity to publically admonish Mr Davis saying it was “most regrettable that the Secretary of State ... unilaterally excised some material from the papers he provided, and that it took so long to provide the papers”.

On 21 December the Committee on Exiting the European Union published the sector reports. There are two reports which cover the health sector;

- **Medical Services and Social Care Sector Report**, which includes a description of the sector, the current EU regulatory regime, existing frameworks for how trade is facilitated between countries in this sector. It does not cover the NHS.
- **Life Sciences Sector Report** which includes a description of the sector, the current EU regulatory regime, existing frameworks for how trade is facilitated between countries in this sector.

There is little detail in either report on preferences for the future or on what the impact may be on the sector. The sections on stakeholder engagement and view from the sector have been redacted in the report.

Select committee update

Since the general election, a number of select committees have launched a range of inquiries looking at aspects of Brexit, from the negotiations to the legislation to its potential impact. There are around 25 live

Brexit-related select committee inquiries in the House of Commons, being conducted by 18 committees, and around 15 inquiries taking place in Lords select committees.

European Union committee

The House of Lords EU select committee published a report, '[Brexit: deal or no deal](#)', which assessed the potential impact on the UK of leaving the EU without a deal, and examined the feasibility of a transition period immediately post-Brexit. The report found that, "['no deal' would not only be economically damaging, but would bring an abrupt end to cooperation between the UK and EU on issues such as counter terrorism, police and security and nuclear safeguards. It would also necessitate the imposition of controls at the Irish land border](#)". It also highlights the loss of 75,000 jobs and £8bn-£10bn in tax revenues in financial services, food prices rising by 20 per cent, and UK ports being "overwhelmed" by the demands for customs checks.

The committee looked at eight key sectors (not including health), examining the impact of a no deal on each, and concluded that "it is difficult to envisage a worse outcome for the United Kingdom than 'no deal'". Acknowledging that such a scenario would also be damaging to the EU in terms of loss of police and security cooperation, scientific and research collaboration, and of access to the City of London and capital markets, the report makes clear that the effects would be felt much more keenly by the UK.

The tight timetable imposed on reaching an agreement on future relations (i.e., a trade deal) is earmarked as the most likely cause of a no deal situation, with the committee urging both the UK and EU to be flexible on this, recommending that the UK abandon its policy of "nothing is agreed until everything is agreed" and consider a "standstill transition period". The committee's view is that this would be carried out either to extend UK membership of the EU for a time limited period, or to set a date later than March 2019 for withdrawal to take effect.

Exiting the EU committee

The House of Commons Exiting the EU committee is currently holding two inquiries. The first is related to the sectoral analyses of the Department for Exiting the European Union (DExEU), and followed an [Opposition Day debate on 1 November](#) calling on the Government to provide the committee with impact assessments arising from its 58 sectoral analyses. The outcome of this inquiry is outlined earlier in the briefing.

The committee is also looking at the [progress of the UK's negotiations on EU withdrawal](#). This inquiry will continue alongside the negotiations.

Health Committee

The Health Committee has not restarted its Brexit and health and social care inquiry which was closed due to the general election. However, it recently launched an inquiry into [Brexit – medicines, medical devices and substances of human origin](#), which looks at the new regulatory arrangements that must be

put in place from 29 March 2019 to guarantee the safe and effective supply of medicines, medical devices, medical products and substances of human origin in the UK.

It also has recently concluded an inquiry into the **nursing workforce**, looking at the impact Brexit has had on the workforce as part of it. The committee will be publishing their findings in the new year.

Liaison Committee

The Prime Minister appeared in front of the Liaison Committee on 20 December, where she was questioned on Brexit and health and social care. She was pressed to confirm that MPs would get a vote on the EU withdrawal agreement and implementation bill before being ratified.

4. NHS Providers' work on Brexit

The Cavendish Coalition

The Coalition brings together a group over 35 health and social care organisations and focuses on addressing the potential impacts of Brexit on the health and care workforce.

Several members of the Cavendish Coalition, including NHS Providers, took part in a December roundtable with immigration minister Rt Hon Brandon Lewis MP. The purpose of the meeting was for the Government to understand in more detail the immigration issues facing the health and social care sectors as the UK prepares to leave the EU. Following this, the Home Office has shared its latest guide for EU citizens living in the UK: <https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know>. This also allows any individual to register to receive updates from the Home Office as soon as they are issued, to ensure they are kept informed in a timely and direct way with information they need to secure permanent residence.

In October, the Cavendish Coalition held a parliamentary reception and presented the interim findings of the research commissioned by the group to provide insight and suggest potential policy options to ensure the health and care sector has the workforce it needs for the future. That research, being undertaken by the National Institute of Economic and Social Research (NIESR), underpinned the Coalition's response to the migration advisory committee (the MAC) call for evidence on the economic and social impacts of Brexit. NIESR will produce its final report next year, contributing to the ongoing work of the MAC.

Over the autumn, the Coalition has also briefed MPs on a number of parliamentary debates, including the Home Affairs immigration inquiry, an SNP opposition day debate on the rights of EU nationals and the health select committee as part of its inquiry into the impact of Brexit on medicines, medical devices and substances of human origin.

Brexit Health Alliance

Bringing together the NHS, medical research, industry, patients and public health organisations, the Brexit Health Alliance aims to safeguard the interests of patients and the healthcare and research they rely on during the Brexit negotiations.

The Alliance is seeking to:

- **Support maximum levels of research and innovation collaboration**, ensuring that patients are able to benefit from international research collaborations post-Brexit
- **Ensure regulatory alignment for the benefit of patients and the public's health**, so that UK patients continue to benefit from early access to the wide range of innovative health technologies available
- **Preserve reciprocal healthcare arrangements**
- **Ensure robust coordination mechanisms on public health and wellbeing**
- **Secure a strong funding commitment to the health sector and the public's health**, promoting solutions to minimise any potential additional pressures which may result from Brexit, as well as advocating for any loss of EU funds for the sector to be offset by alternative funding.

It will run campaigns in each of these areas, with the first one focused on preserving reciprocal healthcare arrangements. Work around this included contributing oral and written evidence to the House of Lords EU Committee (Home Affairs sub-committee) inquiry into Brexit and reciprocal healthcare. The Alliance also developed briefing papers, blogs and a podcast to illustrate the importance of maintaining EU-UK reciprocal healthcare arrangements post-Brexit.