

Draft Brexit agreement and outline future relationship

Last night, the Cabinet agreed to support a draft Brexit withdrawal agreement, with an EU summit subsequently set to take place on 25 November. However, despite the apparent collective agreement last night, today there have been a series of ministerial resignations.

As developments are likely to continue over the weekend, with the full framework for the future relationship due to be published next Tuesday, NHS Providers will send out a further briefing early next week as necessary. In the meantime, this briefing provides a summary of the draft agreement, an overview of today's political developments, the expected next steps, and initial considerations for trusts.

Summary and implications of the draft agreement and outline future relationship

Draft withdrawal agreement

Common provisions

These ensure that the provisions of the Withdrawal Agreement have the same legal effects in the UK as in the EU and its Member States, including for example, interpretation until the end of the transition period of the provisions in a manner consistent with the Charter of Fundamental Rights and Court of Justice of the European Union (CJEU) case law. At the end of the transition period, the UK will be disconnected from all EU databases and networks, unless otherwise agreed.

Transition period

The EU will treat the UK as if it were a Member State during the transition period, with the exception of participation in the EU institutions and governance structures. The UK will continue to participate in the EU Customs Union and the Single Market. Britain can ask to extend the transition period beyond its cut-off date of 31 December 2020, but the agreement does not define until when. If an extension is needed, the UK will no longer participate in the common agricultural policy, as it would with the existing transition period.

Citizens' rights

Broadly, EU citizens residing in the UK, and UK citizens residing in the EU, up until the end of the transition period can continue to exercise their rights derived from EU law in each others territories for the rest of their lives. EU free movement law will continue to apply until the end of the transition period. Afterwards, if someone is residing in the UK at the end the transition period, they will be able to stay in the UK under

essentially the same substantive conditions required by EU free movement law: continuing to have residence rights if they continue to work, become self-employed, or become self-sufficient. However, an application for settled status will need to be made, available after five years of legal residence in the UK.

The question of onward movement – where a UK citizen may move between EU countries – has not been resolved. Rights to healthcare, pensions and other social security benefits will continue. It may be possible to continue receiving cash benefits.

When a person covered by the Withdrawal Agreement who had professional qualifications recognised in the country (an EU Member State or the UK) where he or she currently resides or, for frontier workers, where he or she works, will be able to continue to rely on the recognition decision there for the purpose of carrying out the professional activities linked to the use of those professional qualifications. If he or she has already applied for the recognition of his or her professional qualifications before the end of the transition period, his or her application will be processed domestically in accordance with the EU rules applicable when the application was made.

Separation issues

Provisions are made for an orderly withdrawal (for example, to allow for goods placed on the market before the end of the transition to continue to their destination, for the protection of existing intellectual property rights including geographical indications, the winding down of ongoing police and judicial cooperation in criminal matters and other administrative and judicial procedures, the use of data and information exchanged before the end of the transition period, issues related to Euratom, the EU Framework Programme for Research and Innovation and other matters).

Financial settlement

The UK and the EU will honour all financial obligations undertaken while the UK was a member of the Union.

Dispute resolution

In the event of a dispute on the interpretation of the Withdrawal Agreement, an initial political consultation would take place in a Joint Committee. If the Joint Committee cannot reach an agreement on a dispute it will be referred to an independent arbitration panel. But when the dispute involves a matter of interpretation of European law, the panel will refer it to European Court of Justice. The final decision on the dispute will rest with the panel and not the court. Up to four years after the end of the transition, the Joint Committee will be able to amend the withdrawal agreement “to address situations unforeseen when it was signed”.

Ireland and Northern Ireland

If an agreement on the future EU-UK relationship is not applicable by 31 December 2020, the EU and the UK have agreed that a backstop solution will apply until such a time as a subsequent agreement is in place. Alternatively, the UK may, before 1 July 2020, request an extension of the transition period. Such a

request must be agreed by the Joint Committee. In the scenario where the "backstop solution" would apply, this would mean there will be a single EU-UK customs territory and Northern Irish businesses would not face restrictions when placing products on the EU's Single Market. Northern Ireland would remain aligned to a limited set of rules that are related to the EU's Single Market in order to avoid a hard border.

Further issues include:

- Fishing – the EU wants continued access to British territorial waters, while the 13 Scottish Conservative MPs made clear they would vote against the deal if automatic fishing rights were granted. The document appears to have delayed a decision here.
- Cyprus – a protocol on the Sovereign Base Areas (SBA) in Cyprus, protecting the interests of Cypriots who live and work in the Sovereign Base Areas following the UK's withdrawal from the Union.
- Gibraltar – a protocol on Gibraltar, which provides for close cooperation between Spain and the UK in respect of Gibraltar on the implementation of citizens' rights provisions of the Withdrawal Agreement, and concerns administrative cooperation between competent authorities in a number of policy areas.

The draft agreement is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf

Outline of the future relationship

The "political declaration setting out the framework for the future relationship" is non-binding, and outlines the two sides' ambitions for their desired future trading relationship, on which negotiations have yet formally to start.

Issues covered include:

- Goods – the creation of a free trade area combining deep regulatory and customs cooperation, and replacing the backstop solution on Northern Ireland
- Services – appropriate arrangements on professional qualifications will be made
- Mobility – visa free travel to EU states and vice versa for short term visits
- Public procurement – broadly, mutual opportunities will exist
- Transport – provisions made covering market access and investment, aviation safety and security, air traffic management and provisions to ensure open and fair competition

The outline does not cover health, care, public health or research, and security co-operation is not finalised.

The full version is expected to be published on Tuesday. The outline is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756378/14_November_Outline_Political_Declaration_on_the_Future_Relationship.pdf

Political overview

Just after 7pm on Wednesday, following a five hour Cabinet meeting to discuss the agreement, Prime Minister Theresa May made a statement to the press stating that, “This deal – which delivers on the vote of the referendum, which brings us back control of our money, laws and borders, ends free movement, protects jobs, security and our union – or leave with no deal, or no Brexit at all”.

On Thursday morning, Mrs May made a statement to Parliament focused on the terms and concessions the EU had made. These include dropping plans for a Northern Ireland-only backstop, the option to extend the transition as an alternative to the backstop, the backstop being temporary and Northern Ireland businesses having full access to the single market. She said that neither side were “entirely happy with everything included”, and emphasised that free movement would end with the UK having its own skills-based immigration system. Mrs May confirmed that the final deal would be put before Parliament, but warned against voting the deal down as that would take the UK back to square one, and called on MPs to bring the country back together.

Leader of the Opposition Jeremy Corbyn responded that the deal did not meet Labour’s six tests¹ and the party would vote against it. The DUP, on whose support the government relies for its working majority, have expressed considerable unease. In the backstop, the agreement contains the potential for Northern Ireland to be treated differently from the rest of the UK, so crossing a red line for the DUP and making it more likely that they will oppose the deal.

The Conservative party is deeply split, with neither its front or backbenches united. While on Wednesday night there appeared to be collective Cabinet agreement, from early on Thursday morning, a series of government ministers and advisors resigned, including:

- Brexit secretary Dominic Raab
- Downing Street director of legislative affairs Nikki Da Costa
- Northern Ireland minister Shailesh Vara
- Work and pensions secretary Esther McVey
- Brexit minister Suella Braverman
- PPS to the education ministers Anne Marie Trevelyan
- PPS to justice ministry Ranil Jayawardena
- Vice chairman of the Conservative Party and the Prime Minister’s trade envoy to Pakistan, Rehman Chishti

¹ Labour’s six tests are: (1) Does it ensure a strong and collaborative future relationship with the EU? (2) Does it deliver the “exact same benefits” as we currently have as members of the Single Market and Customs Union? (3) Does it ensure the fair management of migration in the interests of the economy and communities? (4) Does it defend rights and protections and prevent a race to the bottom? (5) Does it protect national security and our capacity to tackle cross-border crime? (6) Does it deliver for all regions and nations of the UK?

The reasons given for resignations – which have come from both Leave and Remain supporters – include:

- the potentially indefinite nature of the Northern Ireland backstop
- objection to the close alignment of the UK with EU rules and therefore the degree of control the EU would have over the UK, with the agreement therefore said to fail in fulfilling the referendum result
- the different treatment of Northern Ireland from the rest of the UK and the need for EU agreement to ending the backstop
- the continuation of a single customs territory tying the UK's hands in international trade agreements.

On the backbenches, the leader of the pro-Brexit European Reform Group (counting around 80 members), Jacob Rees Mogg, came out against the deal and urged colleagues to follow suit. Remain-supporting MP Sarah Wollaston (chair of the health and social care committee and the liaison committee) criticised the deal as “Taking us out of the EU but on a road to nowhere” and not covering health, care, public health or research despite these being areas which “profoundly touches the lives of every citizen in the UK and across our partner EU nations”. There is also significant continuing speculation as to whether 1922 Committee chairman, Graham Brady, has the required 48 letters from Conservative MPs in order to trigger a leadership contest.

Those supporting the deal include Matt Hancock, health and social care secretary, it seems on the basis of the negative impact a disorderly no deal exit would have on the NHS and its patients. Alistair Burt, a former health minister, has said “The deal is getting support away from Westminster and they should stick to it”. Rory Stewart, minister for justice is also supporting.

View from the EU

The agreement has been met with positivity in Brussels, leading to some commentators on the UK side to suggest it is the UK who has been forced to make more substantive concessions. Guy Verhofstadt, the European Parliament's Brexit Coordinator welcomed the “positive progress made in the negotiations” and calling the deal a “milestone towards a credible and sustainable future relationship between the EU and UK”. Michel Barnier, the EU's chief negotiator, said he considers “that we have achieved decisive progress in the Brexit negotiations. UK will remain our friend, our ally and our partner”. Leo Varadkar, the Irish Prime Minister, has been positive about the agreement, saying that the draft Withdrawal agreement includes “important assurances re the Good Friday Agreement and the need for continued close relations among all parts of these islands”.

Next steps in the process

The EU27 European affairs ministers will meet on Monday 19 November to discuss the agreement, with summit of EU leaders set to take place on 25 November to finalise and formalise the agreement.

A parliamentary vote on the deal is due in December where, to pass, the Government will need to secure the support of 320 MPs. Analysis by [the Times](#) estimated that at present there were around 200 votes in favour of the deal (including moderate Conservatives and some Labour MPs), 300 against (including Conservative Leavers, much of Labour and the other opposition parties and the DUP), and around 140 swing votes.

In January, the Withdrawal and Implementation Bill – which puts the agreement into UK law – is due to start going through Parliament. However, both Leave and Remain MPs may seek to amend it to push for their versions of Brexit. This could force negotiations with the EU to resume as the Bill would have diverged from the deal struck and that being ratified by the European Parliament.

Potential implications for trusts

While a draft deal has been agreed between the UK and EU, and that agreement has been nominally accepted by the Cabinet, it still needs to be agreed and ratified by the UK and EU Parliaments. There remains too the potential for further changes to government policy and the government itself. Therefore, trusts may wish to consider continuing their preparations for the full range of Brexit scenarios, including that of no deal.

As necessary, NHS Providers will provide a further briefing early next week to update on developments. We continue to encourage the Department of Health and Social Care (DHSC) to improve its communications around planning for all scenarios with the trust sector specifically.