

The draft Brexit Withdrawal Agreement of 14th November 2018

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What does this mean in practice?

A draft Brexit Withdrawal Agreement was approved by the EU member states on 25th November 2018. Many hurdles remain in the tortuous path towards the Brexit divorce, not least voting in the UK's Parliament. In the meantime, many are asking: *What does this draft agreement actually mean?*

- What will happen to your daughter who has just won a place to study at a university in the UK?
- Will you need a visa to travel to the UK?
- How will your business continue to export its products into the UK market?
- How will Financial Services companies operate in the future?
- Will my professional qualifications be recognised if I move country?

These are some of the questions we look at below.

“Brexit Day”

The United Kingdom of Great Britain and Northern Ireland automatically leaves the European Union two years after the UK Prime Minister's withdrawal notification letter under Article 50.2 of the Treaty on European Union. That date is 29th March 2019. Although there is a technical possibility under Article 50.3 of extending that two-year time period, such an extension under the Treaty would require the unanimous approval of all EU member states, which is considered to be extremely unlikely. So Brexit Day will almost certainly happen on 29th March 2019.

Implementation Period

In order to allow time for a smooth transition from one regime to another, a 21 month Implementation Period (IP) is planned to run from Brexit Day until 31st December 2020. This period is subject to a special legal framework, in general, preserving the status quo, albeit without the UK being a member of, or having a say in, any of the European Union's various institutions. Unlike the two year withdrawal notification period up to the 29th March 2019, the new draft Withdrawal Agreement provides that the 21 month Implementation Period may be extended by further agreement, but only by one or two years. Thus under the draft Withdrawal Agreement, the end of the IP could be 31st December of either 2020, 2021 or 2022 depending on the state of future negotiations.

Residence Rights

Any European citizen who takes up residence in the UK at any time *before the end of the IP* will have all the rights that they currently have to live, work and study in the UK, along with the right to apply for "permanent residency" once they have been resident for 5 years.

Professional Qualifications

EU professionals working in the UK will continue to have their EU professional qualifications recognised if they have obtained or are obtaining an official recognition before the end of the IP.

"Divorce" Bill

The subject of much political debate, a payment of approximately £39M is expected to be made from the UK to the EU in order to cover existing budgetary payment obligations that the UK has with the European Union.

Movement of Goods and People

The current draft agreement allows the present border arrangements for the free movement of goods and people to continue during the Implementation Period. What happens thereafter will be the subject of detailed negotiation after 29th March 2019 when the UK is no longer a member state of the EU. It is envisaged that an agreement to allow the smooth physical movement of goods and people between the EU and the UK will be in place by the end of the Implementation Period. If, for any reason, there is no such agreement in place, then a series of practical minimum arrangements have been pre-agreed to avoid a "hard border" appearing on the frontier between Northern Ireland and the Republic of Ireland. This is called the *Northern Ireland "Backstop"* and reflects the desire of all parties to preserve the unquestioned socio-political benefits yielded from the Northern-Ireland peace process and the Northern Ireland Good Friday Agreement of 10th April 1998. It is hoped that more agile arrangements - well beyond those already secured in the Backstop - can be agreed before the end of the IP.

Financial Services including Insurance

Likewise, current “passporting” arrangements in the Financial Services Sector, which allow UK operating licences to extend to the rest of the EU and vice versa, will continue to apply during the Implementation Period, but the UK’s involvement in the EU’s Institutions which regulate the sector will have ceased. What happens thereafter will be the subject of detailed negotiation once the UK is no longer a member state of the EU in March 2019. The draft Political Declaration of the EU and the UK made on 22nd November 2018 following the draft Withdrawal Agreement raises the possibility of “*regulatory autonomy*” and “*equivalence frameworks*” but those terms are far from defined and this Declaration is in any event not intended to constitute a binding commitment. What is certain however, is that these issues will be intensely debated and negotiated during the coming months and years.

Travel and Tourism

Under the draft Agreement the current international travel arrangements between the UK and the EU will continue to apply during the Implementation Period. Helpfully, the draft Political Declaration gives a relatively clear indication of what is anticipated thereafter. The UK and the EU are proposing to adopt reciprocal measures on migration including visa-free travel for short-term visits. Furthermore, the parties expect to be able to agree appropriate conditions to allow entry and stay for the purposes of study, research, training and participation in youth exchanges.

Conclusions

- Brexit will almost certainly go ahead, and will happen on 29th March 2019.
- If the Brexit “divorce” continues to proceed in accordance with the draft Withdrawal Agreement, and this is formalised, significant uncertainty will still apply to the above areas during the periods after the completion of the Implementation Period. These issues have not yet been negotiated or agreed, but the EU and the UK provide a non-binding statement of their current intentions in the agreed draft Political Declaration.
- If the draft Withdrawal Agreement (and the draft Political Declaration based upon it) are not formalised, and a “no-deal Brexit” scenario ensues, then *significantly greater uncertainty* will apply to these areas, in a *significantly shorter timescale*. That is to say immediately following 29th March 2019.