

Brexit

What could the position be following Brexit?

The UK and EU have negotiated a Brexit package consisting of a Withdrawal Agreement and a Political Declaration on the framework for the future relationship. The Withdrawal Agreement contains provisions for the UK's withdrawal from the EU and a transition period from the date of Brexit until the end of December 2020 (with the option for an extension), during which the legal framework for UK/EU trade would continue as if the UK were still a member state. The transition period would allow further time for the UK and EU to negotiate the detailed terms of their future relationship (based on the Political Declaration agreed between the EU and the UK in November 2018).

The Withdrawal Agreement also reflects the agreement reached between the UK and the EU on citizens' rights in December 2017 (see our briefing [here](#)). The agreement is reciprocal – if approved, it would apply to the rights of EU citizens living in the UK and to those of UK citizens living in the EU. The UK government has confirmed that it expects the agreement's scope also to extend to nationals of Norway, Iceland, Lichtenstein and Switzerland. The agreement would apply to all EU citizens residing in the UK before the end of the transition period and all UK citizens in an EU Member State before that date, as well as their family members. It provides also that EU citizens who arrive in the UK during the transition period will be permitted to have their family members join them in the UK after the transition period on the same basis as they are currently able to, and vice versa for family members of UK citizens living in the EU.

If the Withdrawal Agreement comes into force and no future partnership agreement is in place at the end of the transition period, the Irish 'backstop' will apply (which is designed to avoid a hard border between Ireland and Northern Ireland): UK/EU trade in goods will be covered by the rules in the Irish Protocol to the Withdrawal Agreement rather than the WTO rules, including (i) the creation of a customs union between the UK as a whole and the EU; (ii) certain level playing field measures between the UK and the EU; and (iii) certain additional EU regulatory alignment measures applicable just to Northern Ireland. In all other respects the WTO rules will apply, e.g. for trade in services.

The Withdrawal Agreement and Political Declaration will not come into force unless approved by the UK Parliament and the EU Council of Ministers with the consent of the European Parliament. In the absence of an approved agreement – the 'no deal' scenario – the UK/EU trade relationship would default to the minimal rules of the World Trade Organisation ('WTO option') upon Brexit on the expiration of the Article 50 period. On 15 January 2019, 12 March and 29 March 2019, the UK House of Commons voted not to approve this withdrawal package (despite additional reassurances around the Irish backstop ahead of the second vote). On 21 March 2019, the UK and the EU agreed an extension to the Article 50 period to: (i) 12 April if the UK does not approve the Withdrawal Agreement by 29 March (which was the case); or (ii) 22 May if the UK approves the Withdrawal Agreement by 29 March. If the Withdrawal Agreement is not approved, the UK is expected to present its suggestions for the way forward before 12 April.

What mobility arrangements might apply if the UK and the EU agree a new partnership agreement based on the political declaration agreed between the EU and the UK?

The Political Declaration contains a section on mobility, which is light on detail. It notes that free movement of people will end as the UK exits the EU and provides that the future mobility arrangements will be based on non-discrimination between the member states and full reciprocity. It also confirms that:

- Visa-free travel will be permitted for short visits to the EU or the UK.
- The parties will consider conditions for entry and stay for research, study, training and youth exchanges.
- The future mobility arrangements would be in addition to commitments on temporary entry and stay of natural persons for business purposes in defined areas.

The UK government's White Paper on Immigration was published on 19 December 2018. This contains the government's proposals for the immigration regime which will apply following the end of the transition period, ie after 31 December 2020.

Until six months after the end of the transition period, the government will implement the EU Settlement Scheme, which gives EU citizens already in the UK and those who arrive during the transition period the opportunity to secure future residence in the UK. By the date of the UK's exit from the EU, the EU Settlement Scheme will be open to all eligible EU and EFTA citizens.

The White Paper states that there will be a year of extensive engagement on the proposals after which the government will publish the Immigration Rules setting out the detail of the future regime. On worker access to the UK, the key points are as follows:

- There will be no priority given to EU nationals. Access will be given to highly skilled and skilled workers from all countries, EU and non-EU.
- The skilled worker route will require employer sponsorship but there will no longer be a requirement on employers of skilled migrants to carry out a resident labour market test as a condition of sponsoring a worker.
- There will be no cap on skilled workers. It is proposed that individuals entering the UK under this route could bring dependants, extend their stay and switch to other routes and potentially settle permanently.
- The new skilled worker route will include both workers with intermediate level skills at A level or equivalent (intermediate skilled workers) and skilled workers in occupations at RQF6 and above (essentially graduate level). There will be a minimum salary threshold for access which will be set following engagement with businesses and employers. A minimum salary threshold of £30,000 had been mooted but this was not ultimately included in the White Paper.
- There is no route specifically for low skilled workers, subject to the following:
 - As a transitional measure there will be a time limited route for temporary short-term workers. This would allow individuals to come to the UK from specified countries for a maximum of 12 months with a cooling off period of a further 12 months (during which they will not be allowed to re-enter the UK on a temporary work visa) to prevent low skilled workers coming to work in the UK permanently. Workers coming to the UK through this route would have no entitlement to access public funds and no right to extend their stay, to switch to other routes or to bring dependants.
 - The White Paper states that this transitional measure will be kept under review and that by 2025 the government will have considered whether there should be a continuing facility for temporary workers to come to the UK.
 - While there is no proposal to open any sectoral labour schemes, it is possible that such a scheme will be put in place for seasonal agricultural workers: a small scale pilot scheme for agricultural workers will be run in 2019 to test feasibility.
- The UK is willing to expand on a reciprocal basis its current range of GATS Mode 4 commitments in relation to skilled workers in occupations at RQF6 and above. These commitments currently permit 'intra-corporate transfers' that allow UK and non-EU companies to train staff, to move them between offices and plants and to deploy expertise where needed.

What if the UK leaves the EU without any form of FTA at the end of (i) the Article 50 period on 12 April 2019 (the WTO option); or (ii) the transition period (the WTO + backstop option)?

(i) WTO option

If the UK were to exit under the WTO option, the principle of freedom of movement of persons would cease to apply on 12 April 2019 and the current immigration rules which apply to individuals from non-EU countries would apply equally to EU nationals who are not currently living in the UK but who wish to work in the UK following 12 April 2019.

There would be no transition period and therefore the provisions of the Withdrawal Agreement which relate to the rights of citizens to come to the UK during the transition period would not be relevant. In its 'no-deal' Contingency Action Plan communication on 19 December 2018, the European Commission invited member states to take a generous approach to the rights of UK citizens in the EU provided this approach is reciprocated by the UK. In particular, the Commission stated that member

states should take measures to ensure that UK citizens legally residing in the EU on the date of exit will continue to be considered legal residents. The UK government has confirmed that, in the event of a no-deal exit, (i) EU nationals and their family members living in the UK by 12 April 2019 will be able to apply, through the EU Settlement Scheme, for 'settled status' to secure their future residence in the UK once they have lived in the UK continuously for five years and (ii) the UK government would adopt an approach to the rights of these citizens based on the relevant provisions of the Withdrawal Agreement. The EU Settlement Scheme is now open to all eligible EU, EFTA and Swiss citizens. In the event of a no-deal exit, the deadline for applying will be 31 December 2020.

The proposals in the government's White Paper about the shape of the UK's future immigration regime are as relevant to the WTO option as they are to a negotiated departure. Please see above for a summary of the key proposals in the White Paper relating to worker access to the UK under the proposed new regime. The new Immigration Rules, which will contain the full detail of the new regime, will be published after extensive consultation on the White Paper proposals. This consultation is expected to last for one year.

(ii) WTO + backstop option

With effect from the end of the transition period, it is proposed that the new UK immigration regime would be in place, whether or not there is a negotiated FTA. Please see above for a summary of the key proposals in the White Paper relating to worker access to the UK under the proposed new regime. The new Immigration Rules, which will contain the full detail of the new regime, will be published after extensive consultation on the White Paper proposals. This consultation is expected to last for one year.

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