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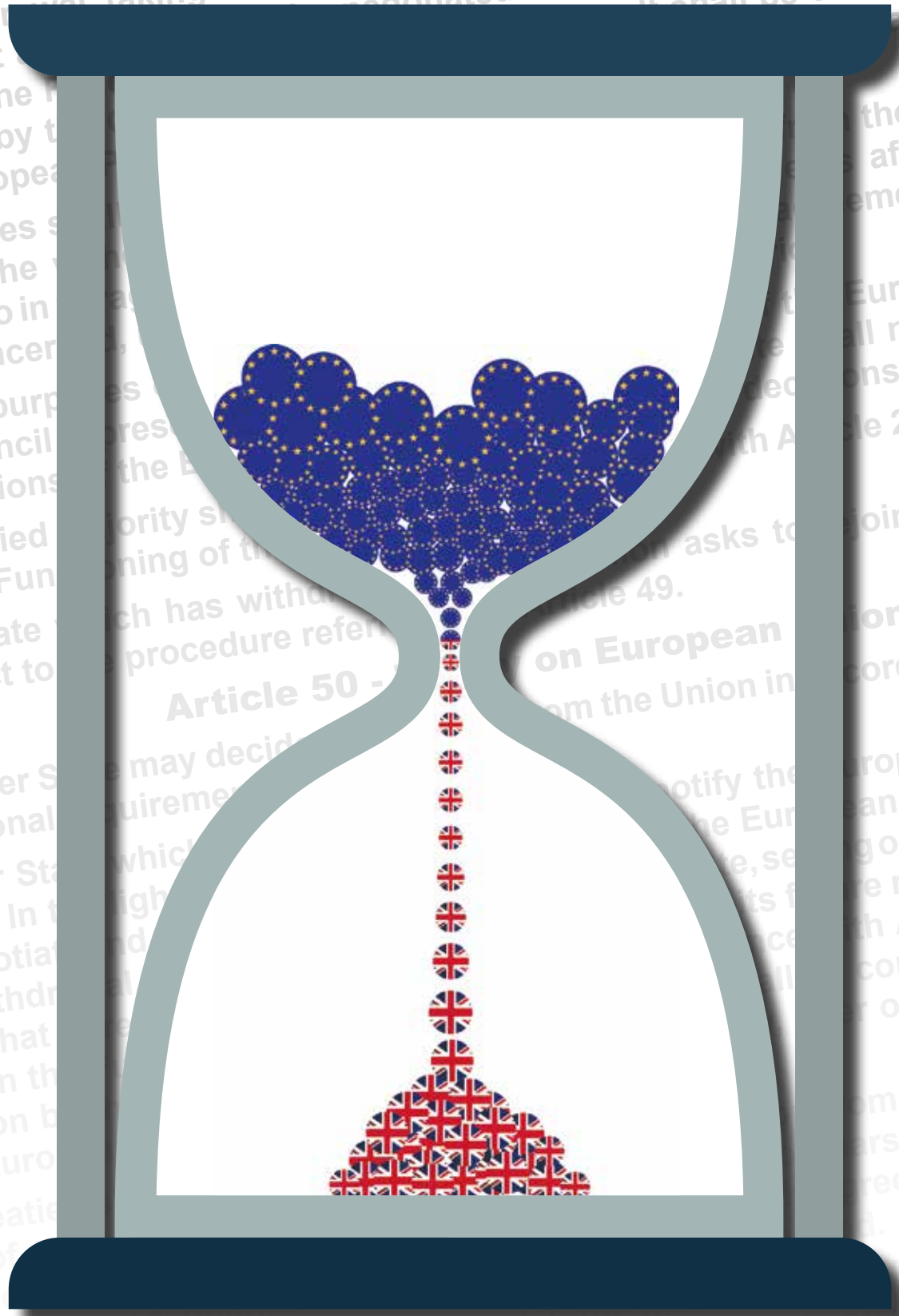
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# Article 50 one year on



The **UK** in a  
**Changing Europe**

# Foreword

Remember that photo of Tim Barrow handing the Prime Minister's letter to Donald Tusk? Can you believe that was a year ago? Personally, it feels like about a decade, but anyway.

However it might feel, Brexit continues to dominate the headlines. And so in what follows we try to explain what Brexit means. What has happened? What is still to happen? Are we any closer to knowing what Brexit will end up looking like?

This report is our attempt to answer these and other questions about this most unique of times. It brings together some of the best minds working on Brexit, to explain what their research reveals about a range of areas where Brexit is having or will have an impact. It makes a unique and original contribution to the Brexit debate.

I'm immensely grateful to all those who contributed to this undertaking. As ever, they've tolerated my questions and comments with (more or less) efficient good humour. Matt Bevington and Ben Miller produced and designed the report. Special thanks to Jonathan Portes, Simon Usherwood, John-Paul Salter, Alan Wager and Navjyot Lehl, who all proofed drafts at unreasonably short notice. I hope you find what follows useful and interesting.

***Professor Anand Menon***

*Director, The UK in a Changing Europe*

Hyperlinks to cited material can be found online at [www.ukandeu.ac.uk](http://www.ukandeu.ac.uk)



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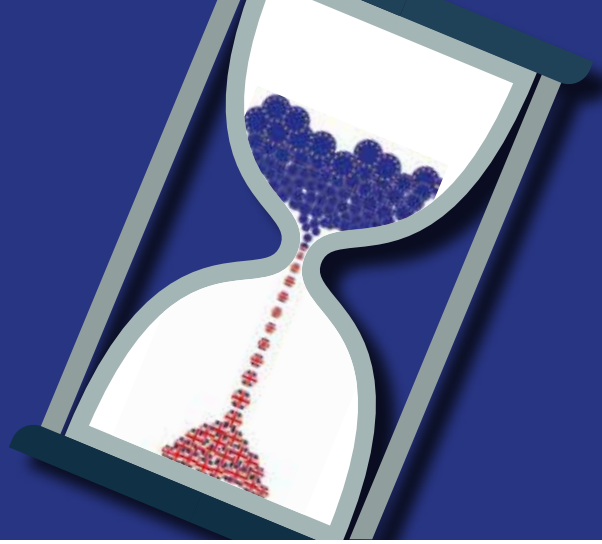
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# Introduction

By Anand Menon



One year on from the triggering of Article 50, where have we got to with Brexit, what remains to be done and what can we now say about how the process and its outcome might impact on the UK? These are the key questions that my colleagues attempt to address in the report that follows. Space constraints mean I cannot do justice to the richness of their contributions here, so I will confine myself to making a couple of points.

The short answer to these questions, reinforced in one way or another by all the various contributions, is that because so much remains to be done, we remain unsure as to how the process might unfold and what it might mean.

Uncertainty persists—and is arguably greater than it was a year ago—in the realm of politics. The snap election of June 2017 left the Conservatives without a majority in Parliament and left the Prime Minister dependent for support on the DUP, a party committed to an intransigent position on perhaps the one issue most likely to derail the Brexit negotiations—the Irish border.

And in a context in which the two largest parties are themselves divided over Brexit, it is impossible to predict how the parliamentary arithmetic will play out. In the few days since Alan Wager and I completed our chapters for this collection, the sacking of Owen Smith from the Labour front bench has raised still more questions about whether the leader of the opposition might face renewed pressure to again rethink his stance on the Brexit question.

On top of the vagaries of the parliamentary maths is the question of how the negotiations with the EU themselves will play out. Strikingly, as both Nicola Chelotti and Hussein Kassim underline, the position of the Union has remained relatively clear and consistent. Contrary to the stated expectation of many Brexit supporters, the vote of 2016 did not boost eurosceptic parties across the continent. To take the most recent example, it hardly figured in the March 2018 Italian elections. Meanwhile, in eastern Europe governments have found themselves balancing their affinities with the UK against a desire to protect their nationals when it comes to the rights of EU citizens in this country.

For all the hopes expressed that EU unity would be tested to breaking point, member states have remained staunchly united behind the European Commission's approach to the negotiations. These dynamics, of course, may change once trade talks commence. But, for the moment at least, it is hard to discern differing positions forming cracks which the UK government could attempt to turn into fissures.

So we enter the trade talks uncertain about how robust parliamentary support for the Prime Minister will prove to be, and what compromises might be reached as the negotiations kick off. And the combination of domestic instability and the unpredictability of a set of talks the like of which have

never been attempted before is beginning to exert an impact of its own.

Across the studies in this collection, we see repeated emphasis on uncertainty. Simon Usherwood points out that transition will be unstable. Jonathan Portes underlines how little we know about what post-Brexit immigration might look like. The same can be, and indeed has been, said of agriculture, fisheries, aviation, the environment, higher education, the health service and financial services.

This theme of significant uncertainty clouds the future of the very structure of the UK itself. Perhaps the other most striking theme to emerge in what follows is that of division within the UK. In her letter to Donald Tusk in March 2017, the Prime Minister insisted that the Brexit process would involve consideration of where in the UK powers repatriated from the EU should reside. She further stated that “it is the expectation of the government that the outcome of this process will be a significant increase in the decision-making power of each devolved administration”.

No longer, it would seem. Chapter after chapter stresses the implications of the fact that, as Catherine Barnard points out, the Withdrawal Bill amends the main acts of parliament on devolution. The behaviour of the Government to date has led to accusations from Cardiff and Edinburgh that London is engaged in a ‘power grab.’ As if negotiating with the EU not while managing a rebellious parliament and divided cabinet were not enough, the government is also simultaneously having to negotiate with the devolved administrations.

Certainly, there is a legitimate debate to be had about the necessity of common frameworks to preserve the UK internal market, especially in the areas of agriculture, fisheries and the environment. Yet the lack of clarity over how the twin requirements of devolution and common frameworks will be resolved is adding further uncertainty to considerations of post-Brexit public policy in many areas, ranging from immigration to agriculture, to health care and the environment.

A year ago, in her letter triggering Article 50, the Prime Minister stated her intention to provide both citizens and businesses in the UK and the EU with “as much certainty as possible, as early as possible”. Amongst the many clear findings of this report is the fact that she has not yet done so.



# British politics: the referendum and beyond

By Anand Menon and Alan Wager

Referendums perturb politics. They can reinforce existing political divisions. They can create new ones. They can also muddy the waters when it comes to responsibility for democratically legitimate decision making. The Brexit referendum seems to have achieved all three things. It gave voice to political dissatisfactions. It has also brought to the fore a new division in British politics, one based on values rather than traditional left-right ideology. Meanwhile, Parliament has struggled to deal with the aftermath of the vote.

In a recent [book](#), Geoffrey Evans and Anand Menon argued that the drivers of the referendum outcome were long term in nature. Clearly, opposition to European integration was important. And euroscepticism took on additional resonance as the European Union became associated with unprecedentedly high levels of immigration.

Less often remarked upon, however, are the political sources of the outcome. In the two decades prior to the EU referendum, Britain's major political parties coalesced around an economically centrist, socially liberal, pro-European consensus. In combination with the country's first past the post voting system, this left those with socially conservative preferences, or who opposed the prevalent economic orthodoxy, with no obvious mainstream political home.

After 2008, the combination of the MPs expenses scandal and the policies of austerity implemented in the wake of the financial crisis heightened discontent and anger at the political class. The Scottish independence referendum, which appeared to many a victory for the status quo, provided a clear warning sign of levels of distrust and discontent with Westminster. With the gift of hindsight, it should have been seen as a flashing light on the Westminster dashboard. Instead, it was interpreted as an indication of the winnability of divisive referendums.

Combined, all this created a climate for rebellion. An increasingly disenchanting electorate was confronted with a limited set of political choices. Evidence of this build-up of unreleased pressure, along with a further cause for resentment, was provided by the performance of Ukip in the 2015 general election. The party won 3.9 million votes, but only one parliamentary seat.

The impact of the Leave campaign can be gleaned from the striking levels of turnout achieved among its supporters. The 'participation gap' between the university-educated and those in manual jobs – largely Remain and Leave voters respectively – was [reduced](#) from 39% in the previous general election to 20%. There was a certain irony in Vote Leave's Chief Executive Matthew Elliott – who had run the successful campaign against changing the electoral system in 2011 – so effectively exploiting the dissatisfactions that the first past the post system had allowed to fester.

Voter discontent with politics was not sufficient to get the Leave vote over 50%. But it provided a rationale for many of those who had effectively opted out of politics to reengage. It saw a majority of those who turned out ignoring the advice of the majority of the political establishment. The

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impact of the financial crisis made many voters suspicious of claims that the status quo was worth defending. Growing detachment from politics and distrust of politicians made such a rebellion not only conceivable, but even desirable.

Moreover, the referendum did not divide people along traditional left-right party lines, but rather along a cleavage centred on values, which had been concealed by the existing party structure. This battle between social liberals and social conservatives, in which education represents a key dividing line, cut across parties. NatCen [found](#) a crystal-clear link between values and attitudes towards the EU: 66% of social traditionalists voted to leave, while only 18% of liberals did so. This appears to explain the vote much more convincingly than economics. Pensioners, for instance, were much more likely to vote to leave than those of working age, despite the latter suffering from a decade of stagnant real wages, while pensions have risen steadily.

The immediate post-referendum impact was a new Prime Minister. The vote, moreover, accelerated a shift in the substance of political debates in British politics, shattering the old consensus and ushering in a new political debate. The [Overton window](#) – or the range of ideas tolerated in public debate – became a set of French doors. The response was a dramatic shift on both sides of the political spectrum towards economic interventionism.

Theresa May combined a pledge to take the UK out of the EU and to clamp down on immigration with promises to improve the lives of those ‘just about managing’. This shift became clearer following her decision to call a snap election. The Conservative manifesto was arguably the most statist produced by a governing party in living memory. It declared, in a decisive break with post-Thatcher Conservative governments, that Conservatives ‘do not believe in untrammelled free markets. We reject the cult of selfish individualism. We abhor social division, injustice, unfairness and inequality’. In rhetoric, at the very least, this was a shift to a post-Thatcherite Conservative agenda.

On the other side of the political spectrum, Jeremy Corbyn’s election as Labour leader predated the referendum and underlined prevailing dissatisfaction with the political establishment. He injected ideology back into the Labour Party. The Labour manifesto of 2017 arguably was as sharp a break with its own recent past as its Tory equivalent, proposing a massive expansion of state control of the economy, direct and indirect, including the reversal of several of the major Thatcher-era privatisations.

The election campaign had a clear effect: Remainers drifted to Labour, and Leavers to the Conservatives. This changed their electoral coalitions of support. In the week before Theresa May called the snap election, [YouGov](#) found 58% of Leavers intending to vote Conservative, and 30% of Remain voters – a 28% gap. In their post-election poll, this had increased to 40%: 65% of Leave voters said they had voted for the party, and 25% of Remainers. The opposite dynamic can be seen in the make-up of the Labour vote. In April, 34% of Remain voters planned to vote Labour, and 12% of Leave voters – a 22% gap. By mid-June this gap had increased to 31%: [YouGov](#) calculated 55% of Remain voters, and 24% of Leavers, voted for Labour.

This can also be measured in the way the 2015 [Ukip vote crumbled](#). Of Ukip’s 2015 voters, only 16% voted Ukip again in 2017: 51% instead opted for the Conservatives, 17% for Labour. The strategic choice of the Conservative Party was clearly to regain the votes of social conservatives, and these new Tory voters were disproportionately working class: [whichever pollster measured it](#), support for the Conservatives among unskilled labourers and the unemployed went up by 12%, with a swing from Labour to the Conservatives of 3%.

So far, so expected. What was unexpected was that these dynamics did not translate into a thumping Conservative majority. The counter-reaction – social liberals migrating to the Labour Party – more than outweighed Conservative gains. The Labour Party’s strategic positioning on Brexit, resting on

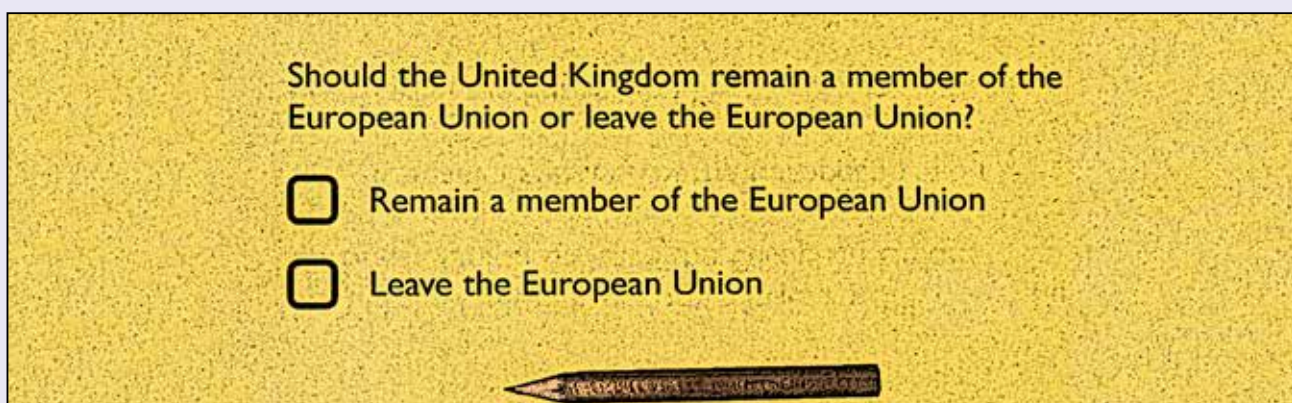
the vacuity of a ‘jobs-first Brexit’, was deliberately ambiguous. But, nevertheless, Jeremy Corbyn’s leadership acted as a lightning rod for social liberals who voted Remain in the 2016 referendum. The perception of Corbyn among Remain voters as less hardline on Brexit was enough to attract a quarter of 2015 Liberal Democrat supporters, as well as a significant proportion of Tory Remainers. Labour profited from a division over values, crystallised in the new political identities of Leave and Remain which, as Sara Hobolt, Thomas Leeper and James Tilley have [shown](#), have persisted and deepened.

The electoral coalitions of the two parties shifted socially, but also geographically. Both Labour and the Conservatives regained a foothold in Scotland. Labour gained seats across England – winning not just in Remain bastions like Canterbury and Sheffield Hallam, but also places like Peterborough, which was 61% Leave. In London, Labour overturned huge Conservative majorities in Battersea, Kensington and Enfield Southgate. The Conservative party gained just seven seats from Labour in England. Apart from Walsall North, all these constituencies were north of the River Trent and, across these seats, the vote to Leave in 2016 was an estimated average of 64%. The number of Conservative gains in England was expected to be closer to 70 than seven. The crucial story of the election was one of Labour holding on to seats (and MPs) that were expected to fall to the Conservatives.

Yet, despite this, Theresa May has clung on as Prime Minister. And while politics has shifted on its axis, the government still has Brexit to deliver. As we outline in our analysis of the parliamentary dynamics of Brexit, and [as Adam Cygan reiterates in this report](#), the government’s lack of an overall majority has hampered its ability to deal with this challenge. The Brexit negotiations have been as much a question of cabinet and party management as of the talks with the EU itself.

The divisions within both parties are stark. The European Research Group, headed by Jacob Rees-Mogg, has (with relative success) pushed the government – in rhetoric, at least – towards stating strong negotiating ‘red lines’. It shares a party with the ‘Brexit mutineers’, a group of europhile Tories fewer in number but likely to be of increasing importance given the perilous parliamentary calculations confronting Mrs May. Meanwhile, those carrying the torch for the Remain campaign reside largely in the Labour party. They sit alongside pro-Brexit colleagues who could ultimately vote for May’s deal and keep her in office. Little wonder that talk, however loose and fanciful, continues to rumble on about the prospect of a new centrist party.

Backbenchers in the House of Commons are playing an increasingly prominent role, with groupings in the Commons representing the range of views on Brexit that exist across Parliament and the country at large. These new Brexit divisions – representing the values divide exposed by Brexit – are layered on top of existing political faultlines that have in some cases been reinforced by the experience of the referendum. Interpreting these disparate signals and forming a coherent governing strategy out of them is a thankless task indeed. On reflection, perturbation is perhaps too weak a word.





# Developments in public opinion

By John Curtice

Voters have had plenty to absorb since the UK gave formal notice that it wished to leave the EU. As the negotiations have proceeded, there have been debates and arguments about, *inter alia*, the future rights of EU citizens, the role of the European Court of Justice, and the relative merits of the customs union versus a customs union versus a customs arrangement with the EU.

Not all of these issues received significant attention during the referendum campaign – and thus, perhaps, could have provided many a reason why voters might have changed their minds about the merits or otherwise of Brexit.

Indeed, since the referendum voters seem to have become a little more doubtful about the possible consequences of leaving the EU. In the period between August and October 2016 YouGov found on average that 28% thought that Britain would be better off economically as a result of leaving, while 39% reckoned it would be worse off. But in the half dozen readings the company has taken since October of last year, on average only 26% have felt that the country would be better off, while 41% stated that it would be worse off.

Similarly, whereas in [five readings taken](#) in August 2016 on average slightly more thought that Brexit would be good for the NHS (28%) than reckoned it would be bad (26%), in the five most recent readings taken by YouGov, those who think leaving the EU would be good for the health service (25%) have clearly been outnumbered by those who think it will be bad (31%).

Increased pessimism is even more in evidence when voters are asked what kind of deal they think the Brexit negotiations will eventually deliver. In February 2017, just before the UK triggered Article 50, [almost as many \(33%\) felt that the UK would get a good deal as reckoned it would end up with a bad one \(37%\)](#). But by the end of the year, no less than 52% of the respondents to NatCen's random probability panel anticipated that the UK would emerge with a bad deal, while only 19% felt it was likely to secure a good deal.

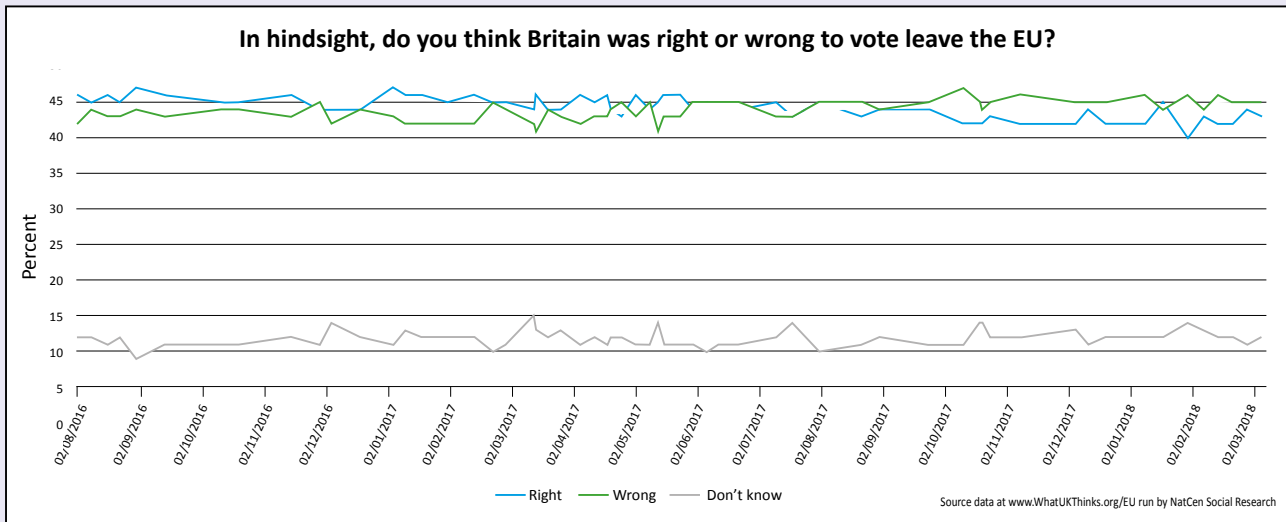
But has this apparently rather more doubtful mood served to reduce support for Brexit? There is some sign of movement, but not enough to suggest that the country is anything other than more or less evenly divided down the middle on the subject, much as it was on referendum day itself.

Since the referendum, the most frequently taken measure of people's overall judgement of the merits of Brexit has been via a question that reads, "In hindsight, do you think Britain was right or wrong to vote to leave the EU?". When YouGov first posed this question back in August 2016, on average 46% said that the decision was right, slightly outnumbering the proportion (43%) who thought it was wrong.

The position was still more or less the same in February and March last year, with 45% saying on average that the vote was right and 43% that it was wrong. But, after last year's general election the balance of opinion tilted slightly in the opposite direction. As a result, across all the readings that have so far been taken this year, only 43% have indicated they think the decision was right, while 45% have stated that it was wrong.

## What's happened?

## Developments in public opinion



Polls of how people might vote in a second referendum have been rather thinner on the ground, and not all that have addressed the issue have presented respondents with exactly the same question that appeared on the referendum ballot paper. But [amongst those that have](#), much the same slight movement is to be found.

In four such polls conducted in the second half of 2016 on average exactly half (50%) indicated they would vote Remain (after leaving aside those who said 'Don't know'), while half (50%) would vote Leave. In the four most recent, 52% said they would vote Remain and 48% Leave. A similar slight movement was also discernible during the course of last year in [those polls that in other ways asked people how they would vote](#) in a second referendum, though more recently two such polls have put Leave narrowly ahead once again.

Of course, given the narrowness of the outcome in the referendum it would only take a small movement to produce a different result second time around, and it might be thought that the polls provide sufficient evidence that this indeed is what has happened.

But all polls come with a health warning of potential error. Indeed, on average they anticipated a narrow win for Remain in their final readings taken just before the referendum. The current poll estimate that 52% might now vote for Remain is far from sufficient evidence to be sure that a second ballot would see a reversal of the original result.

This becomes even more apparent when we identify what appears to account for the slight shift registered by the polls. It is not based on any marked tendency amongst those that voted Leave to say that they would now vote Remain.

On average across [four recent polls of how people might vote in a second referendum](#), just 8% of 2016 Leave voters have said that they would now vote Remain. This group is barely any more numerous than the 7% of 2016 Remain voters who now say they would vote to Leave. The principal reason why polls now show a small lead for Remain is that, while around one in five (21%) of those who did not vote in 2016 say they would now vote Leave, around a half (51%) state that they would now vote Remain.

In short, at present at least, the outcome of any second referendum looks as though it could well depend on who did and did not turn out to vote on the day. But that, perhaps, is almost inevitable in a country that is still deeply divided about the path on which it began to embark a year ago.



# The Withdrawal Bill

By Catherine Barnard

The EU (Withdrawal) Bill is the most constitutionally significant piece of legislation adopted by the UK Parliament for decades. Originally called the Great Repeal Bill, the main purpose of the Withdrawal Bill is to repeal the European Communities Act (ECA) 1972 and so stop the flow of EU law into UK law. The ECA took the UK into the EU at the domestic level, and gave effect to the twin principles of EU law: supremacy (that EU law prevails over conflicting national law) and direct effect (that EU law can be enforced in national courts). Both principles will cease to apply in the UK with the passage of the Withdrawal Bill.

Although hailed as a great measure of repeal, ‘repeal’ was always a somewhat misleading term to apply to the bill. It is much more about ensuring the maintenance of the whole body of EU law within the UK system, albeit now as UK law or, to use the jargon, ‘retained EU law’. This is being done in the interests of legal certainty.

So, the Withdrawal Bill broadly guarantees that the same rules will apply in the UK whatever type of Brexit occurs. As a result, the core provisions of the bill – five of its 19 sections – concern retention. The bill makes clear that all EU legislation which became part of UK law under powers found in the ECA – such as the Working Time Regulations which implement the Working Time Directive – will remain on the UK statute book. All legislation which was adopted under other powers will also remain, such as the Fixed Term Work Regulations, which were adopted under provisions of the Employment Act 2002. Primary legislation giving effect to EU law, such as the Equality Act 2010, will also remain in force.

So far, so straightforward. However, not all EU laws can be retained in their current form. For example, the Transnational Information and Consultation of Employees (TICE) Regulations require a multinational company—or, using the jargon, a ‘*Community-scale undertaking*’—to set up a European Works Council or equivalent for the purposes of providing information to, and consulting with, worker representatives. However, the definition of such an undertaking in UK legislation is one with ‘at least 1,000 employees within the *member states* and at least 150 employees in each of at least two *member states*’. As the UK will no longer be a member state, this raises a problem.

So, Clause 7 of the bill gives the government the power to deal with so-called ‘deficiencies’ in existing law where the executive thinks it is ‘appropriate’ to do so. However, these so-called ‘Henry VIII’ powers are controversial because they are **exceptionally wide** and allow the government to amend both statutory instruments (SIs) – or secondary law – and Acts of Parliament (primary law), thus, according to the Lords’ Constitution Committee, giving ‘**ministers far greater latitude than is constitutionally acceptable**’. However, during the Commons debate, the government conceded that there would need to be a new parliamentary committee to sift statutory instruments introduced to amend retained EU law. The committee will decide whether these SIs should be subject to the negative or affirmative procedure (the latter requires approval by both Houses of Parliament). The House of Lords, for its part, does not consider these safeguards sufficient.

The Withdrawal Bill also addresses the question of devolution, as Nicola McEwen highlights in this report. When power is repatriated from Brussels, will it go back to Westminster or, in areas where

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powers are already devolved, to the devolved administrations? There has been considerable concern that, as [Stephen Tierney](#) puts it, the Withdrawal Bill amends the main Acts of Parliament on devolution so that the existing restriction on the devolved legislatures legislating contrary to EU law is replaced by a new restriction: generally, an Act of a devolved legislature ‘cannot modify, or confer power by subordinate legislation to modify, *retained* EU law.’ In other words, the concern is that devolved powers exercised in Brussels would now effectively be exercised in London.

Given the constitutional importance of the Withdrawal Bill, it comes as no surprise that all Parliamentarians want a say on what it should look like. The amendments to the bill in the Commons and the Lords run into the many hundreds. While the Bill did, in fact, manage to escape the Commons largely unscathed, it is unlikely to fare well in the Lords. The upper house will want to see some major concessions: certainly over devolution and the deficiencies provision in Clause 7, and possibly over the position of the EU Charter on Fundamental Rights (which currently will not become part of EU retained law, although the principles underpinning the charter will continue to be applied). They might also want further clarity over the obligations on the judiciary to take into account decisions of the Court of Justice. The Withdrawal Bill currently allows judges to take such decisions into account when they consider it ‘appropriate to do so’. This provision is hardly clear, and judges are wary of becoming the target of tabloid ire when they come to make use of it.

At the behest of the Prime Minister, the timing of ‘Exit day’ (11pm 29 Mar 2019) was incorporated into the Withdrawal Bill. This was mostly a political gimmick to play to Leave supporters. However, it has created an unnecessary straightjacket for the Brexit negotiating team, who are forced to conclude the withdrawal agreement and the transition arrangements by October 2018—or December 2018 at the latest—to give the UK parliament time to have a ‘meaningful vote’, and the European Parliament time to vote on the deal as well. The Commons did accept a certain softening of this position through regulations adopted by ministers; the Lords might ask for more.

The one defeat the government did suffer in the Commons was on Clause 9. Originally, this enabled ministers, by secondary legislation, to make appropriate provision to implement the withdrawal (i.e. Article 50) agreement. Given the major changes to UK law that would be required by the withdrawal agreement, it was surprising that this was intended to be done by secondary legislation. Dominic Grieve’s amendment made the enactment of any such regulations subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the UK from the EU. However, since then the government has recognised that it needs a new and separate bill, the Withdrawal and Implementation Bill (WAIB), to give effect to the withdrawal agreement and the arrangements for transition. It may be that Clause 9 is removed from the Withdrawal Bill.

One of the key aims of transition is to maintain the status quo, which includes the requirement that the principles of supremacy of EU law and direct effect must continue to apply in the UK legal system during this period. The UK will also be required to implement new EU law. So although the Withdrawal Bill will ‘turn off’ the European Communities Act, which introduced those principles into UK law, the WAIB will have to turn those principles back on during transition. Furthermore, on citizens’ rights (the rights of UK nationals living in an EU state and EU nationals living in the UK prior to the end of transition), the principles of supremacy and direct effect of the terms of Part Two of the withdrawal agreement will have to be respected for the lifetime of the EU citizen. This means that the WAIB will have to make provision for that too.

The Withdrawal Bill and the WAIB will make significant changes to the UK’s constitutional landscape, not just in respect of its relationship with the EU but also in respect of its relationship with the devolved administrations. As a result of the legal devices contained in Withdrawal Bill and the WAIB, EU law will continue to shape many aspects of UK residents’ daily lives. The Withdrawal Bill does, however, give the power to Parliament to change those rules if parliamentarians so choose. In this respect, some aspect of control has been taken back.



# Politics in the EU

By Nicola Chelotti

The Brexit negotiations have coincided with a period of high political uncertainty in the EU27. Across Europe, governments are being confronted with significant challenges, including controversial constitutional reforms (in Poland and Hungary), the persistence of euroscepticism and the continuing (albeit diminished for the moment at least) impact of the refugee crisis.

In the year since the triggering of Article 50, six EU countries besides the UK (Malta, France, Germany, Austria, Czech Republic and Italy) have held general elections, and several more have elected presidents. At least in the UK, some thought that the impact of Brexit might be to strengthen eurosceptic parties and even to signal the beginning of the unravelling of European integration.

However, in key EU27 states Brexit has had little effect. Since the referendum, instead of bolstering euroscepticism, Brexit has led to a toning-down in the ambitions of eurosceptic parties across Europe. It played little role in any of the European elections, with eurosceptic parties failing to use it as a frame in their electoral campaigns.

During the first year of the Brexit negotiations, Germany supported the approach that was adopted by the European Commission with conviction: the need for 'sufficient progress' on citizens' rights, the UK's financial obligations and the Irish border before talks over future trade arrangements could begin. For Germany, the main priority is the future of the EU27 and the preservation of the integrity of the single market. Despite British hopes that German industry would lobby to allow the UK preferential access to the single market post-Brexit, the German government has repeatedly rejected the possibility of the UK cherry-picking aspects of EU membership.

These positions reflected a broad consensus within the country, accepted among large portions of the electorate, the federal states, industry and most political parties (except for the eurosceptic Alternative für Deutschland). Brexit was not a major issue in the national elections in September 2017 and was rarely discussed during the campaign. The difficulties in forming a new government in Germany might have temporarily decreased its global and European clout, but they have not changed the substance of its Brexit positions. The 177-page coalition deal, signed in February 2018, which paved the way for a grand coalition government, contains only one reference to Brexit. Chancellor Merkel has recently suggested that a unique, tailor-made deal for UK is possible, but it is unlikely that this indicates a significant change of Germany's commitment to protect the integrity of the single market.

Just a few weeks after Article 50 was triggered, the French electoral season began, with two rounds each of the presidential and legislative elections. Ultimately, the presidential contest took place between a europhile liberal centrist, Emmanuel Macron, and a nationalist, eurosceptic and anti-immigration party led by Marine Le Pen. Ms Le Pen first reacted positively to Brexit, promising to take France out of the euro, before rowing back on this promise later. However, Brexit became ever less important in debates during the campaign. The victory of Mr Macron was arguably an important moment for Brexit and the future of European integration, as he supported the Commission's Brexit approach (although

## What's happened?

we cannot know what Ms Le Pen would have done), while aiming to work closely with Germany to strengthen the EU.

In southern Europe, Spain has important economic and social links with the UK. While the Spanish political system has recently become more fragmented and diversified with the emergence of several new parties, there is broad political consensus on how to approach Brexit. In the first phase of the talks, the Spanish government diligently followed the European Commission's lead. Spanish elections were held just three days after the UK's EU referendum, and all the major parties lamented Brexit. Unlike other major EU countries, there is no eurosceptic party in the Spanish Parliament. The mainstream parties even used Brexit against the new Podemos party, framing it as a populist danger to stability.

Conversely, in Italy, euroscepticism has been on the rise. Immediately after the Brexit vote, a number of right-wing parties applauded the British public's decision to leave the EU. However, anti-EU sentiment has halted since the Brexit referendum. So far, the Italian government has kept in line with the objectives and strategies of the Commission, while also advocating a constructive approach in the negotiations. A few members of the Italian government, including Prime Minister Paolo Gentiloni, have spoken in favour of a bespoke model for the future UK-EU trading relationship.

In the run-up to the March 2018 Italian elections, Brexit was hardly mentioned. While the formation of the government is still under consideration, less EU-friendly parties will likely become part of it. The party that won most votes in the recent elections, Movimento Cinque Stelle (Five Star Movement), has repeatedly called for a referendum on Italy's participation in the euro. On the whole, however, Italy has not played a major role in shaping the EU's negotiating positions, and it is unlikely this will change whichever parties are in power.

In eastern Europe, Brexit came at a time of per-sistent criticism of Brussels, especially regarding the handling of immigration from outside the EU. Nevertheless, despite Poland and Hungary being run by eurosceptic parties, even in eastern Europe Brexit has not been important to electorates. The ruling parties in Poland and Hungary have mainly used the Brexit vote to criticise the EU's attempts to interfere in the domestic politics of member states. Eastern European countries have had to balance their affinity with the UK with their concrete interests in the Brexit negotiations. They might be more favourable than others to the UK's continued access to the single market post-Brexit, but in the first phase of the talks they firmly supported the Commission in protecting EU citizens' rights in the UK and demanding an adequate financial settlement.

Finally, some of the UK's closest allies in the EU, such as Sweden and Denmark, were particularly concerned about the economic consequences of Brexit. However, the main parties of the two countries have been united in defending the integrity of the single market. In the Netherlands, despite the presence of Geert Wilders' euro-sceptic party, Brexit hardly attracted any attention in the elections of March 2017. Wilders remains committed to opposing Dutch EU membership, and yet immigration and 'Islamisation' were the main themes of his party's campaign. In terms of their negotiating positions, the Dutch – like the Nordic states – want to maintain strong economic ties with the UK while not allowing any form of cherry-picking from the single market.

In sum, Brexit appears to have had little effect on domestic politics across the continent, with the major member states remaining committed to the Commission's negotiating approach. In countries that are sympathetic to the UK's position, governments have so far prioritised the interests of their citizens and the EU budget over supporting concessions for the UK. Even the UK's closest allies have held firm to the Commission's approach to protect the integrity of the single market as a first order priority. However, differences among member states are more likely to emerge in the second phase of talks, when EU27 unity will be more seriously tested.





# Negotiating Brexit

By Steve Peers

Nearly one year on from sending the Article 50 letter, where does the process stand?

The first three months of the talks were effectively suspended while the Conservative Party called an early election in an attempt to increase its majority – a gambit which spectacularly backfired. The following six months were dominated by the issues which both sides agreed to treat as a priority – the financial settlement, the status of EU27 and UK citizens who moved before Brexit day, and the Irish border with Northern Ireland – although the UK side would rather have been discussing future trade relations in parallel.

Those priority issues were discussed alongside less high-profile talks on ‘separation issues’, such as what happens to European Arrest Warrants which are pending on Brexit day. The talks were characterised by the UK’s gradual, reluctant acceptance of the EU27 position on many points, notably the extent of financial commitments outstanding on Brexit day and the level of detail necessary to deal with citizens’ rights issues.

In the event, there was a partial, provisional and political agreement on these points in the form of a [Joint Report](#) of the parties in December 2017. This report (which I have [analysed elsewhere](#)) noted partial agreement on separation issues, extensive agreement on the financial settlement, and agreement on many main points related to citizens’ rights. However, there was a vague, formless fudge on the issue of the Northern Ireland/Republic border. But it wasn’t entirely the UK agreeing to EU27 positions—the EU27 gave way somewhat on limiting the future family reunion rights of EU27 citizens, for instance.

The agreement was enough for the EU to confirm that, in its view, ‘sufficient progress’ had been made on the first stage of the talks to move on to discuss a post-Brexit transition period, which the Prime Minister had requested in her [Florence speech](#) several months before. This soon resulted in the EU27 tabling a short legal text providing essentially that the UK would still apply EU laws until the end of 2020, including new EU laws, but with no representation in the EU institutions after Brexit day. Despite this unsatisfactory position, the UK was willing to agree to this in principle for economic reasons, although it continues to [argue over the details](#).

By the end of February 2018, the EU27 tried to move things on by tabling a lengthy draft text of the entire [withdrawal agreement](#) (an [amended version](#) has since been tabled, on 15 March). The main shock for the UK was the inclusion of a protocol on the Northern Ireland/Republic border which set out in detail the EU27’s interpretation of the agreed option of Northern Ireland remaining fully aligned with relevant EU law, without elaborating upon or giving precedence to the other agreed options to avoid a hard border that the UK prefers. This seems set to be the issue that raises the biggest risk of torpedoing the talks altogether. (For more detailed analysis, see my annotations of the [border protocol](#), [the citizens’ rights clauses](#), and [dispute settlement issues](#)).

Shortly afterwards, another [amended draft](#) was tabled, on 19 March, this time indicating that the EU and UK had agreed on most issues (the main exceptions being the Irish border issues and future dispute settlement). As a result of this partial agreement, the EU side agreed on 23 March that this progress is sufficient to start talks on the future UK-EU relationship, particularly on trade but also on other issues like security (which I have discussed [elsewhere](#))—fully a year after the Article 50 letter was sent. Any agreement on the future relationship will likely take the form of a declaration linked to the withdrawal agreement, although it remains to be seen how detailed it will be and what exactly it will say. Formal negotiations on the actual treaties giving effect to this future relationship will then start after Brexit day and likely continue for some time after that. Those who are bored with Brexit already are set for an extended taste of what it feels like to be a football widow.

Overall, the negotiations have been a far cry from what some Brexiters predicted: that they would be wrapped up in a few hours or days in the form of a short, simple text. The fact that the UK has agreed to pay tens of billions of pounds also demonstrates the balance of power in the negotiations, which is firmly in favour of the EU.

But the talks haven't been as one-sided as most Remainers suggested they would either. For instance, the UK has recently secured important concessions to protect its fisheries, and to abstain from EU foreign policy decisions it fundamentally objects to during the transition period. Despite the public confusion or ignorance on Brexit issues, often displayed by senior ministers – and to some extent the official opposition as well – the UK's negotiators are quietly getting on with the job as best they can.

Time will tell whether the Brexit talks are ultimately doomed to failure due to the Ireland/Northern Ireland border and/or other issues. But the story to date has been one of slow but steady progress.





# Transition

By Simon Usherwood

Transition has not been one of the flashpoints in the Article 50 negotiations to date. Both the EU and the UK have treated it largely as a technical exercise intended to carry arrangements over from the end of the UK's membership in March 2019 to the start of the new relationship.

However, while the broad outlines of what transition will look like have been agreed, there remain several points of contention, to which must be added a bigger set of questions about democratic legitimacy.

From the Article 50 notification, the EU was clear that it would only discuss the winding up of British membership of the Union, rather than simultaneously negotiating the new relationship. This implied that, in addition to the phase one issues, the only other points on the agenda would be the agreement of a framework for those new relationship talks, and arrangements for the interim period.

Transition will be defined by two fundamental dimensions: what form it might take and how long it lasts.

On substance, both sides in the negotiations appear to have settled for a model that keeps as much of the current, pre-withdrawal situation in place as possible, while still allowing the UK to formally leave the EU. The Prime Minister's original proposal, made in her [Lancaster House speech](#), for a "phased implementation" period was therefore clearly misleading. As the new relationship will not be negotiated by the time transition begins, there will be nothing to implement. It would be more accurate to describe it as a 'standstill period'.

According to the current draft of the withdrawal agreement, under transition there will be no British representation in the institutions or decision-making – bar its presence (still with no vote) in decisions of particular relevance, such as fishing quotas. At the same time, the UK will continue to pay into the EU budget, follow all rules and regulations, continue to implement EU policies (including freedom of movement) while remaining under the authority of the Court of Justice of the EU. The UK has even conceded, reluctantly, that EU nationals who move to the UK during the transition period will be able to remain after it ends and, eventually, acquire the right to permanent residence.

The logic of this 'full monty' model is three-fold. Firstly, it provides a high level of certainty for economic operators and citizens, who do not have to make immediate changes come 29 March 2019. Secondly, it has made drafting the text relatively simple: any alternative, with special provisions on specific areas of activity risked becoming another complex item for resolution by October. Finally, in the continuing absence of agreement on a new relationship, a standstill looks prudent, if only to avoid having to undo decisions taken now at a later date.

The EU has accepted a number of relatively minor modifications to the agreement to recognise UK concerns; it has agreed to the creation of a Joint Committee to manage transition and consider the options for handling disputes. While giving the UK a more formal standing within the transition

framework, questions have been raised about whether such a committee would be needed for what is intended to be a relatively brief period of time: most rules that might be agreed in that period have already begun their long journey through the EU's decision-making process.

This is the flip-side of keeping the UK on a full roster of obligations and commitments: transition is foreseen to last for less than two years.

Both sides have also accepted the December 2018 statement by the European Council that transition should conclude at the end of 2020, roughly 19 months after the UK leaves. This fits into the EU's multiannual financial planning framework and removes the need to engage in politically difficult renegotiations of the 2019 and 2020 annual budgets. It also aligns with the underlying desire of the EU27 to get Brexit off their agendas as quickly as possible, to allow them to focus more fully on the other challenges confronting them.

For the UK's part, London's original suggestion that an end date be left unspecified was driven partly by the fact that the government's own modelling suggests that a minimum two years will be needed to get a new relationship in place, and partly by concerns that domestic preparations for exit [will take longer than the time being offered](#).

So the intention is that transition should be deep but short. Unfortunately, a number of substantive issues remain unresolved.

At the legal level, while rolling over the UK's involvement post-membership might be the simplest option, it does create other, external problems. Third countries with agreements with the EU will have to be asked to allow the UK to remain within these after March 2019. While many have recognised that the situation is a very particular one, this has not stopped some – such as South Korea and Chile – suggesting that some terms of trade will have to be reviewed and, possibly, renegotiated. Even if this happens only exceptionally, ensuring these arrangements are rolled over will be a complex and time-consuming undertaking, [as Lorand Bartels and Samuel Coldicutt set out in this report](#).

More substantially, the proposed model of transition creates issues with the World Trade Organisation (WTO). The WTO does allow for provisional agreements on preferential trade, but these have always been preludes to the completion of full legal instruments, the contents of which are known at the point that the WTO is informed about the provisional agreement. Here, that content is likely not to be known, given that neither party in the Article 50 process has a settled view of what is to be concluded. Consequently, a challenge by a party to the WTO is a distinct possibility, especially if the need arises to extend the transition period.

Which brings us to timing. During the 19-month transition, it is intended that the EU and the UK negotiate and ratify an extensive package on their new relationship: “the broadest and deepest possible partnership”, in Theresa May's words at Mansion House. However, many elements of this package have not been attempted before, so negotiators will have to work from scratch in drafting the text.

Moreover, experience of other extensive free-trade deals – such as the one the EU has signed with Canada – is that the EU will need roughly a year to complete the ratification process alone, which will involve every member state (along with several sub-national assemblies). That leaves just seven months to pull together an innovative text, the broad outlines of which do not exist in London, Brussels or any other European capital. Meanwhile, there will be the huge bureaucratic and administrative task, for the UK in particular (albeit not exclusively), of creating new customs systems, regulatory frameworks, and so on.

All of which suggests that a debate may need to be had on extending transition. Recall that the key purpose of a transition period is to avoid having a cliff-edge in March 2019: does it make sense to simply shift this to December 2020? Interestingly, the EU has rowed back from its position in December, when it stated that the period should be fixed and non-extendable. Whatever the eventual text actually says, the possibility of extension is likely to remain a live one throughout the period.


Indeed, it might appear to serve everyone's interests to let transition run on. For the EU, having the UK continue to be a functional part of its policy area – and a net budgetary contributor – while not having a vote, looks like an ideal arrangement. For the current British government, removing the time pressure they face within Article 50 might allow for the natural emergence of a new consensus on how to proceed.

However, transitions are unstable by their very nature. The pressure to find a more durable resolution will grow over time, as the compromises and costs become clearer to all. Politically, the impression that Britain has become a 'vassal state' – to use Jacob Rees Mogg's words – will grow, as the costs of not having a vote in EU rules that still apply to the UK become more evident. More broadly, the notion of being subject to a system in which one has no representation is highly problematic for democratic legitimacy and accountability, whatever one's views. The particular form of transition might solve some practical problems but does nothing to answer the critique that democracy is an afterthought in the corridors of power.

That said, the EU itself may find that the effective abrogation of power by the European Council to manage and extend transitional arrangements becomes the subject of legal challenges to the European Court of Justice. While this might address the balance of power within the European institutions, it does not necessarily change arrangements for the UK and its representation in what might be longer-than-hoped-for period.

While the time pressure of Article 50 will no longer apply, this will not mean that there are no perils involved. Most of the legal and organisational elements might stand still in the proposed model, but the politics will continue to move, in ways that risk throwing up ever more uncertainties.





# The Trade Bill and rolled over agreements

By Lorand Bartels and Samuel Coldicutt

One of the main purposes of the Trade Bill is to give the government the tools it needs to maintain the UK's trading relationships with third countries, such as South Korea, with which the EU currently has trade agreements. The question is whether the UK will be able to 'roll over' these agreements and, if so, how?

The government originally intended to do this by renegotiating largely the same agreements by March 2019. It has now abandoned this as unrealistic; in the first instance, the plan is that the EU will simply ask third countries to treat the UK as if it were a member state during the transition period – even though it will no longer be one. It is unclear how the third countries will react. But even if this strategy is successful, such agreements will need to be renegotiated by the end of the transition period, at which point it seems inevitable that the UK would drop out of the existing agreements.

Constitutionally, the government is able to sign and ratify international agreements with minimal reference to Parliament. Normally, however, legislation would be required to implement those treaties. The Trade Bill is designed to shortcut this process and authorise the government to implement the new agreements directly by executive act.

It sounds uncontroversial. The devil, however, is in the detail.

## **What current agreements will be rolled over under the Trade Bill?**

For a start, it is surprisingly difficult to know exactly what the Trade Bill covers. Clause 2, entitled 'implementation of international trade agreements', seems straightforward enough. However, an 'international trade agreement' not only includes a 'free trade agreement' (which is defined to include customs unions and free trade agreements for services) but also 'an international agreement that relates mainly to trade other than a free trade agreement'.

It is unclear how far this definition extends. There are many agreements that relate to trade. For example, some environmental agreements have trade aspects; the Montreal Protocol and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), for example, are about banning trade in ozone-depleting substances and endangered species respectively.

It could be that what is meant are agreements focused on reducing obvious barriers to trade. But modern free trade agreements are about much more than duties and quotas. As economies have become more interconnected over the decades, countries have taken a greater interest in each other's domestic regulation, such as food and product safety. Where one country has high domestic standards, its negotiating partner might see these as unnecessary trade barriers. The subject of the Trade Bill is therefore both much wider than most people appreciate and much less clear.

One quirk of the way the Bill is drafted is that the government would be able to implement replacement international trade agreements in the UK even if they never become legally binding on the UK or the other party. This is because the Bill allows the government to implement international trade agreements that the UK has signed but which are not yet in force. This would cover agreements like the EU-Canada Comprehensive Economic and Trade Agreement (CETA)—which is being provisionally applied but is technically not yet in force.

### **What will rolled over agreements contain?**

You could be forgiven for thinking that a rolled over agreement would be a simple ‘copy-and-paste’ of the current agreements, with minor technical changes. In many cases, this would work. However, not all aspects of the EU’s agreements will be appropriate for the UK once it has left the EU.

One important example concerns what are called ‘rules of origin’. These state that a certain percentage of a product being exported must come directly from a partner country to benefit from lower duties. The UK may lose many of its benefits in this area if it simply copies the rules of origin in the EU’s agreements.

This could happen in two ways. Take a hypothetical car assembled in the UK, with 50% of its value coming from UK production and another 50% from other EU sources. At the moment, an existing EU free trade agreement that gives preferential benefits to cars with at least 60% of their value from the EU would cover such vehicles. However, a UK agreement with the same 60% threshold would not help a car made in the UK in future.

Most likely, in this example, the UK will want to renegotiate the rules of origin to reduce it to 50%, so it can continue to benefit from lower duties.

Second, the UK could also lose out indirectly. This is because an EU-assembled car with 50% UK content would no longer be able to be exported under the EU trade agreement. That would give EU producers an incentive to switch from UK parts and technology to EU (or third country) ones.

Another problem is that the other party may not be happy rolling over an agreement without some changes. This is particularly the case for those countries whose investors have traditionally used the UK as a hub for their EU operations and who have therefore relied on UK participation in the customs union and the single market.

There is always a risk that a party seeking changes in one part of an agreement will lead to demands for trade-offs from the other party, perhaps even resulting in the entire structure being unpicked. In addition, for issues such as rules of origin, a satisfactory solution may depend on the willingness of the EU to get involved in the negotiations (which does not so far seem to be the case). There is therefore a complex mix of political and technical issues to deal with, and there is no guarantee that both – or all three – sides will come to an arrangement.

### **How will Parliament be involved in the process?**

Finally, it is unclear how the Trade Bill fits into the overarching narrative of ‘taking back control’. It hands the government powers to implement the rolled over agreements in domestic law through regulations, powers that include the ability to change some laws passed by Parliament. Agreements may change in important respects, possibly placing new international obligations on the UK.

Given these extensive powers, one would expect an important scrutiny role for Parliament. Currently,

this is not the case. Parliamentary involvement would be limited to the so-called ‘negative resolution procedure’. This means that each of the Houses of Parliament could cancel regulations implementing the rolled over agreements within 40 days of the government bringing them before Parliament. However, the House of Commons will not hold a vote unless the government grants time for a debate. In the 2016-17 parliamentary session, for example, less than 1% of these regulations were debated. Meanwhile, the House of Lords faces political constraints in opposing the government with its limited democratic mandate. Neither House can seek amendments.

The role for Parliament in ratifying the rolled-over agreements themselves, making them binding on the UK as a matter of international law, is similarly limited. The Constitutional Reform and Governance Act 2010 theoretically allows the House of Commons to delay ratification indefinitely – but this depends on the government making time available for votes against ratification.

There are good arguments in favour of secrecy in some aspects of trade negotiations. The issues that come up in such negotiations lie somewhere on a spectrum between market access issues and regulatory issues. When negotiations concern market access – where barriers to trade are being reduced, meaning some sectors of the economy will lose out because of greater foreign competition – confidentiality can be important for getting the deal done. It gives negotiators greater flexibility to make trade-offs between sectors.

However, negotiations may also concern purely regulatory issues, such as food safety standards, which would normally be dealt with through the democratic process, and confidentiality for this type of negotiation is harder to justify. Market access and regulatory issues overlap, and it is hard to know where to draw the line, but there is certainly greater scope for parliamentary involvement in rolling over agreements than presently envisaged by the Trade Bill.

Many other countries have systems where parliamentarians have some rights to see what is being negotiated and to be kept up to speed on negotiations as they progress. The EU, for instance, is extremely advanced in this respect; there are strict limitations on parliamentarians taking notes of secret documents, no phones are allowed, and so on. The US Congress has similar arrangements. There are a number of options to enable parliamentary involvement, even within the framework of confidentiality.

### **How does all of this link in with the EU?**

As noted, the EU would need to agree with the UK and the relevant third countries for all sides to maintain certain benefits from current agreements.

Until recently, it looked as though the UK faced a much bigger problem with the EU’s position on two issues. The first is what rights the UK would have under the current agreements during the transition period. The second is whether the UK could negotiate replacements during the transition period. Under the draft withdrawal agreement, however, the EU and the UK have dealt with both concerns. The EU would request that partner countries treat the UK as though it were still in the EU during the transition period and the UK would have the right to negotiate replacement agreements. It is not clear how third countries will respond. They could, for instance, ignore the EU request in order to gain leverage in negotiations with the UK. At the very least, however, the draft withdrawal agreement gives the government something less to worry about as it seeks continuity in trading with the rest of the world.



# Parliament

By Adam Cygan



In its judgment on the Gina Miller court case, the Supreme Court held that to trigger Article 50 and commence the two-year process of exiting the EU, there must first be a formal vote by parliament. The Court confirmed that, given the constitutional consequences of leaving the EU, particularly the repeal of the European Communities Act (ECA) 1972—which will bring to an end the rights contained within the EU Treaties—parliamentary consent was required.

This judgment placed constraints on the ability of the government to act without reference to parliament, and since triggering Article 50 Parliament has sought to assert its constitutional rights throughout the passage of the EU Withdrawal Bill. First and foremost, Parliament has exercised its right to hold the government to account.

Since triggering Article 50, the relationship between Parliament and the government has been further complicated by the inconclusive general election result. In June 2017, the Conservative government lost its parliamentary majority, making the process of delivering Brexit even more challenging.

One consequence of the hung Parliament that resulted from the election has been to embolden MPs, who proposed nearly 500 amendments to the EU Withdrawal Bill. Though only defeated once – on the amendment for a ‘meaningful vote’ for Parliament on the final Brexit deal – the government was mindful of the impact of losing key votes which would create an impression of a government losing control of the Brexit process.

Thus, it accepted a number of amendments to the Bill, including one which proposed that the date of withdrawal could be changed if necessary. Overall, the number of amendments proposed illustrates that MPs believe they have a real chance to influence the Brexit process, and the acceptance of amendments by the government, without a vote, is recognition that the government is not in complete control of the parliamentary process. In the coming year, leading up to Brexit on 29 March 2019, Parliament and the government will continue to compete to assert their authority.

## **The first 12 months: the EU Withdrawal Bill**

Through the EU Withdrawal Bill, the government sought parliamentary consent to deliver three key Brexit objectives. First, the repeal of the European Communities Act, which will bring to an end the supremacy of EU law in the UK and enable Parliament to pass legislation that may diverge from EU law. Second, the Bill will convert the body of EU law into UK law on Brexit day and create a new type of UK legislation called ‘retained EU law’. The purpose of this is to provide legal certainty and continuity immediately after Brexit. Third, the Bill enables ministers to—where necessary—correct UK law to deliver a functioning legal system in those circumstances where the EU Withdrawal Bill cannot provide legislative certainty. This includes where existing EU legislation imposes specific functions on the EU institutions. The final objective also requires Parliament to approve the use of so-called ‘Henry VIII powers’ by ministers to make ‘corrections’ without the need for parliamentary approval.

The government has faced intense pressure from all sides of the Commons to guarantee a ‘meaningful vote’ for Parliament on the terms of the final Brexit withdrawal agreement the UK concludes with the EU. It was on this issue and on the question of the use of Henry VIII powers to implement the final withdrawal agreement that the government suffered its only defeat. Constitutionally, this amendment to the Bill is significant. Not only does it provide for a formal vote by Parliament on the withdrawal agreement, but it also enshrines in law a parliamentary right of democratic oversight over the Brexit withdrawal agreement. To this extent, Parliament can be said to have ‘taken back control’. In the British system of parliamentary democracy, where the government is expected to command a majority in the House of Commons, such a defeat is significant.

Through this legal requirement for a vote to approve the final deal, Parliament has laid down clear boundaries. The final deal will be one which is agreed and agreeable to both the EU27 and the UK, and which has been endorsed by both the European and UK parliaments. This defeat is also significant in terms of the future relationship between Parliament and the government, both during the Brexit process and more generally.

At the very least, for the remainder of this parliamentary term, the government cannot assume that it has a command of parliament, notwithstanding the agreement with the DUP covering Brexit issues. This will be significant when the government brings before Parliament further Brexit legislation such as the EU Withdrawal Agreement and Implementation Bill – which will legislate for the withdrawal agreement between the UK and EU to become part of UK law – and the Trade and Customs Bill.

While governments do not like parliamentary defeats, this one could be considered an opportunity to strengthen and ‘democratise’ the Brexit process. It is fair to say that the process so far has proved challenging for the government, both in terms of the negotiations with the EU and during the parliamentary process. By asserting its supremacy and taking back control, Parliament has made clear that it has an independent voice on Brexit to which the government would be well advised to listen to avoid further defeats. Moreover, the defeat on a ‘meaningful vote’ demonstrates that Parliament cannot be taken for granted, something which will be tested again when the EU Withdrawal Bill returns to the Commons from the House of Lords, where it is likely to have been amended.

### **Parliamentary challenges for the second year of the Article 50 process**

In addition to Phase Two of the negotiations, in which the UK will commence the difficult and lengthy process of trying to secure a new trading relationship with the EU, the parliamentary process of delivering Brexit will continue, potentially right up to the date of withdrawal. The House of Lords will finish debating the EU Withdrawal Bill, and the House of Commons will need to consider those amendments approved by the Lords. This raises the prospect of re-opening controversial issues that the Commons had previously settled such as, for example, the future application of the EU Charter of Fundamental Rights.

Amendments passed by the Lords could act as lightning rods for rebels, old and new, on all sides of the Commons who could use them as a springboard to overturn previous votes. Equally challenging for the government will be the passage of the Trade and Customs Bill, with cross-party amendments proposing to keep the UK within some form of customs union with the EU. The voting intentions of Conservative MPs who oppose a ‘hard Brexit’ could prove particularly significant, since they could once again deprive the government of a majority.

The introduction of the EU Withdrawal Agreement and Implementation Bill in the Commons is likely to provide further opportunities for MPs to challenge the government’s Brexit strategy, more specifically on the implementation of the withdrawal agreement and the transition period. A key battleground

here is likely to be the extent to which the UK should remain aligned with EU law during transition and the UK's continued compliance with judgments of the Court of Justice of the European Union.

Across the whole parliamentary spectrum of MPs there is a genuine disagreement on this question; however, the government is mindful that the Implementation Bill must comply with the spirit, as well as the legal requirements, of the withdrawal agreement signed with the EU. The government, without a parliamentary majority, will need to find a 'middle ground' that satisfies MPs on all sides of the Brexit debate, but in seeking a compromise the government runs the risk of alienating those MPs, mainly within the Conservative Party, who may consider the proposed compromise as unacceptable. The possibility of further government defeats in parliament, during the coming year, should not be discounted.

The political circumstances surrounding the Brexit process, be they the inconclusive general election result or cabinet disagreement over the direction of the negotiations, have given Parliament an opportunity to shape the Brexit process to an extent which could not have been anticipated at the time the Prime Minister laid out her Brexit priorities during the Lancaster House speech in January 2017. This must be considered a positive development for parliamentary democracy.

Yet Parliament must also be strategic in its scrutiny of the Brexit process given that only 12 months remain before the Article 50 period expires. In holding the government to account, Parliament must also recognise the dangers that the UK faces. In particular, a failure to agree a formal deal with the EU is likely to have political and economic consequences. Parliament would want to avoid taking the blame for this type of 'no deal' scenario.

So far, Parliament has demonstrated that it is sovereign, and if it is to exercise powers repatriated from Brussels it intends to do so in a manner that it considers represents the best interests of the UK. However, perhaps the biggest risk for Parliament in the coming year is that in delivering Brexit it will stand accused at the end of the Article 50 period of not giving effect to the will of the British people as expressed in the 2016 referendum and in particular the expectation that leaving the EU means 'taking back control'. If this were to be the case, such an outcome may prove bad for parliamentary democracy and for parliament's reputation.





# Brexit and Ireland/ Northern Ireland

By Colin Harvey

## Triggering constitutional instability

A year on from the triggering of Article 50, many of the complex questions facing the island of Ireland remain unanswered and contested. The failure of the UK government to provide credible and practical solutions regarding the status of Northern Ireland, and particularly of the Irish border, has resulted in growing alarm in Ireland. There is a fear that the problems facing the island are either misunderstood in London or being wilfully ignored.

Brexit continues to generate an exhaustive level of analysis on the potential impact for the island. The result of the referendum was plainly a shock to many in Ireland and Northern Ireland, not least as a majority of people in Northern Ireland voted Remain.

The argument to ‘move on’ does not resonate in a region where there is considerable anxiety about what lies ahead. The concern about a lack of consent has persisted, precisely because the term has such a contested history: the constitutional status of the region rests only on ongoing democratic consent. If that position were to change, then Northern Ireland has a recognised right to leave the UK. One consequence of Brexit has been the increasing discussion of Irish unity.

The border on the island is both a fact and an ongoing fault line within the constitutional politics of these islands. Its existence is a result of wider British-Irish conflicts, and Northern Ireland is still a society radically divided over matters of ethno-national identity. Politics and public life are dominated by the continuing divisions between British unionists and loyalists and Irish nationalists and republicans. Recent elections in Northern Ireland largely confirmed this picture.

The main political parties on opposite sides of this divide (the Democratic Unionist Party and Sinn Féin respectively) also took different positions on Brexit: the DUP opted for Leave and Sinn Féin argued for Remain. Before the collapse of the Northern Ireland political institutions in January 2017, the then First and deputy First Ministers [agreed a joint letter](#), in which they set out matters that were of ‘particular significance’ for Northern Ireland.

Given the political context, this letter has taken on added importance as a relatively isolated indicator of possible shared concerns. It makes clear that “the region is unique”, “the border should not become an impediment to the movement of people, goods and services” and that Brexit should not “create an incentive for those who wish to undermine the peace process and/or the political settlement”.

For the more optimistically minded, the letter does hint that some common ground might be carved out if the political institutions were once again operational. There is further limited evidence along these lines in the [documents that were leaked](#) from recent negotiated attempts to restore the political institutions. A disputed ‘draft agreement’ text contained reference to Brexit as a priority issue and possible structures for handling it.

However, these negotiations collapsed, and at the time of writing it looks unlikely that Northern Ireland will have a government in 2018. It remains an open question whether the major parties in Northern Ireland would ever have forged a common position given their very different starting points. Agreeing that there are 'special circumstances' to be taken into account is relatively meaningless when the debate has advanced to a much greater level of specificity, and when the DUP and Sinn Féin remain so fundamentally divided on the subject.

At the UK level, the government's 'confidence and supply agreement' with the DUP following the general election of June 2017 has given the party an influential role in the negotiations. It should be noted, though, that the party does not speak for the whole of Northern Ireland on Brexit or any other matter.

The UK's current constitutional instability and political context, as well as the fact that there is no operational Northern Ireland Executive and Assembly, must therefore be factored into any assessment of what is both possible and desirable.

### **Agreement in the abstract?**

Both the UK and Irish governments have indicated their desire to see the unique circumstances of Northern Ireland and the island of Ireland respected. The UK's position has been to reiterate its commitment to the Common Travel Area (CTA), the Belfast/Good Friday Agreement, and the need to avoid a hard border, as well as the continuing role of north-south and east-west cooperation.

The problem remains that the UK has not been forthcoming with the required level of detail, particularly when it comes to reconciling the need to avoid a hard border and the government's commitment to leaving the single market and customs union. The Prime Minister's speech of 2 March 2018 provided little in the way of clarity on this score. There are clearly tactical issues in play here for both the UK and the EU.

The Irish government has also outlined its approach to the Brexit negotiations, and stressed the troubling potential impact on Ireland. It has been proactive, both before and after the vote, and has consistently insisted that it is fully aligned with the other 26 EU member states. But at the same time as both governments have found themselves on opposite sides in the Brexit negotiations, they have also had to find ways to work together over the restoration of the political institutions in Northern Ireland.

### **Negotiating a way forward?**

There is little doubt about the centrality of the Ireland/Northern Ireland issues for these EU-UK negotiations. It is welcome that the Belfast/Good Friday Agreement is at the heart of negotiations, both in terms of protecting it and applying it in practice.

When considering ways forward, there are three things to focus on. First, there is a common desire to avoid a hard border on the island of Ireland. Although everyone seems to agree with this as a principle, it is proving more difficult to find practical solutions.

In the Joint Report from December, a number of options were outlined: Option A is to achieve this through the overall UK-EU relationship; Option B is for the UK to suggest specific solutions that address these unique challenges; and Option C is to undertake (in the absence of an agreed outcome for the UK) to retain 'full alignment' with the rules of the EU's internal market and customs union that are supportive of north-south cooperation, the island economy and the protection of the Belfast/Good Friday Agreement. The UK has also noted that it will avoid any new regulatory barriers within the UK, unless there is devolved agreement to do otherwise.

Despite some of the reactions in the UK, the Protocol produced by the European Commission in

February 2018 did little more than formalise the prior agreements. Widely reported arguments based on the constitutional integrity of the UK appeared to neglect both the particular circumstances of Northern Ireland and the increasingly pluralist nature of existing governance arrangements.

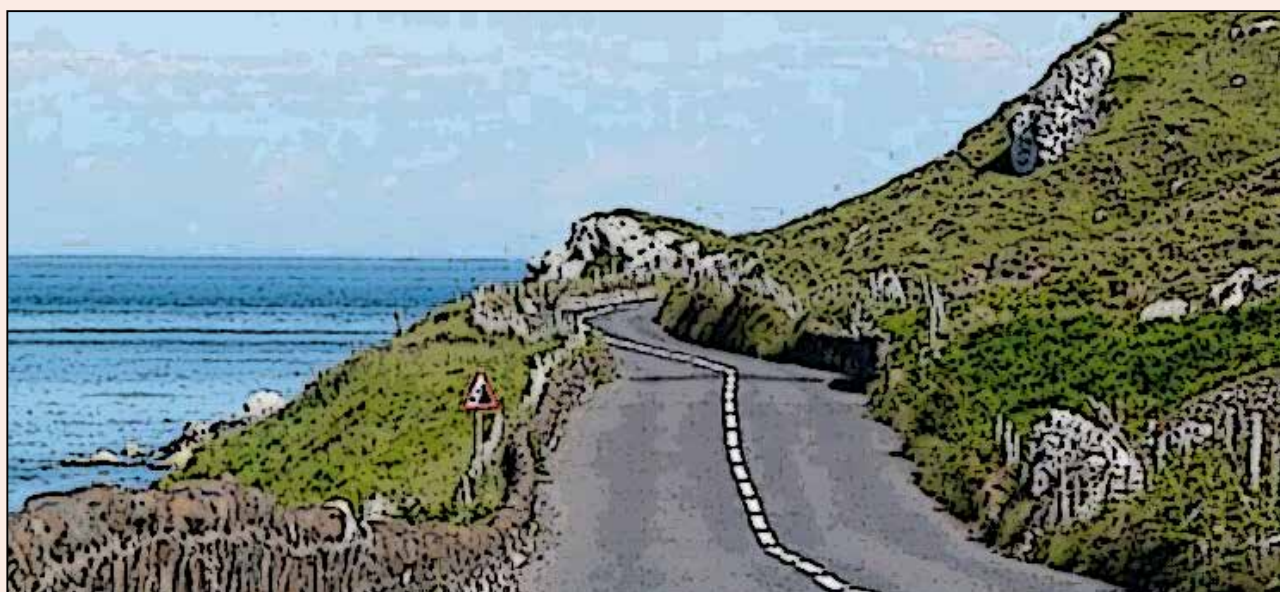
Second, it is worth noting that human rights and equality are central to the Belfast/Good Friday Agreement and have featured prominently in the discussions on Brexit. There are several strands to this. The rights of Irish citizens in Northern Ireland, as both EU citizens and as persons who benefit from existing special arrangements in the UK, have been noted. Respecting agreements reached thus far around this will raise complex questions and may prove divisive if the issue is not addressed comprehensively and appropriately.

Brexit has upset ongoing attempts to promote equal citizenship in Northern Ireland by opening a clear divide between British and Irish citizens, and by potentially undermining human rights and equality guarantees. The supporting role of the EU has also been acknowledged, and the agreement to ensure 'no diminution' in the areas of rights and equality is significant. Again, however, this will raise immediate questions for the UK, including around the retention of the EU Charter of Fundamental Rights and other EU law derived rights in Northern Ireland. It may well be time to renew the conversation in Northern Ireland about a Bill of Rights.

Third, all sides are keen to provide reassurance around the CTA, with the EU accepting that the UK and Ireland can continue with this arrangement (within prescribed boundaries). The nature of the reciprocal bilateral special relationship between the UK and Ireland is in need of much further attention, and there is a strong case for enhanced codification to ensure that, for example, the rights of Irish citizens in the UK are protected over the long term and that the principles of human rights and equality are more securely grounded within the CTA.

### **Time to return to the constitutional fundamentals of the peace process?**

Many predicted that Brexit would have a disastrous impact on relationships across these islands. The destabilising consequences may take a generation to mend, and the consequences for Ireland/Northern Ireland remain worrying. In the negotiations still to come, both sides will need to find the constitutional imagination to deliver credible solutions. Current suggestions from the UK government have notably failed to offer the sorts of specific proposals that are required, and once again Northern Ireland looks tragically like collateral damage, with long-term implications that are hard to predict.





# The EU institutions

By Hussein Kassim

The negotiations over phase one of Brexit have seen the EU member states maintain a unity that has surprised many in the UK. Despite early hopes in London that differing interests in different national capitals could be exploited, this has not, as yet, proven to be the case. The EU has also successfully imposed a structure and timetable on the negotiations that have suited its purposes.

## Clarity and continuity

Since at least early 2016, the EU institutions have considered it imperative to agree and communicate a clear position on the Brexit question.

EU leaders stressed that, although they hoped the UK would be a close partner in the future, it would be the UK government's responsibility to come forward with proposals about the relationship, as it had been the UK that had voted to leave. They emphasised, moreover, that any agreement would have to reflect the status of the UK as a third country, and balance rights with obligations. The process of the UK's departure should, they said, be 'swift' and 'orderly', and a withdrawal agreement separate from a future trade agreement.

The same message was repeated by an informal European Council of the 27 member states on 29 June 2016—the first opportunity the member states had had to meet since the vote. This elaborated principles that have informed the subsequent process:

- negotiations would proceed only once the UK had formally notified the EU of its decision to leave by triggering Article 50;
- any agreement between the EU and the UK must be based on a balance of rights and obligations;
- access to the single market must involve recognition of all four freedoms; and
- the EU27 would remain united.

The European Council, the European Commission and the Council of the European Union began their preparations from the moment the referendum result was known. They worked closely together, as well as with the European Parliament, while waiting for notification from London. The Treaty gives all four institutions a formal role in the process. At the conclusion of the negotiations and on the basis of a proposal from the negotiator, the Council signs and adopts the agreement, which is then passed for decision to the European Council (qualified majority) and the European Parliament (simple majority). The European Council and the Commission pledged to keep the European Parliament informed about the progress of negotiations. In a departure from normal practice in trade negotiations, the institutions agreed that representatives from the EU27 should be part of a committee that monitors the negotiations and keeps in close touch with the EU negotiator.

Work began in the Council Secretariat in July 2016 to review the legal issues. In the same month, Commission President Juncker proposed Michel Barnier, former Commissioner and former French foreign minister, as the EU negotiator. By September 2016, the Article 50 Task Force had been formed with Barnier at its head. The European Parliament, meanwhile, appointed Guy Verhofstadt as its representative and Brexit coordinator. In December 2016 – more than three months before the UK formally notified the EU of its decision to leave – the EU institutions agreed their negotiating position. The European Council of 27 member states announced the principles (essentially, the same as those declared on 29 June) that would guide its approach, as well as how the Article 50 negotiations would proceed.

The EU institutions repeated these principles in public and in meetings with the UK government. In a major speech in Brussels, Donald Tusk underlined that the UK's choice was between 'no Brexit' and 'hard Brexit'. The EU institutions began a parallel discussion about the future direction of the Union. The informal European Council in Bratislava was a first step in a dialogue between the leaders of the EU27 that was taken into successive summit meetings and supported by Commission President Juncker in his white paper on the future of the EU and associated initiatives.

The Article 50 Task Force took the view that transparency was essential and began at an early stage in the negotiations to publish its position papers. The information campaign continued in early 2018, when the Task Force began a series of seminars with EU27 officials that detailed how, across a range of areas and sectors, the UK's status would change once it had left the EU. It has also issued a series of notices, alerting business to the changes that will ensue when the UK leaves and informing them about how they will need to adapt.

When formal notification from London reached Brussels on 29 March 2017, the European Council reacted quickly. In draft guidelines adopted two days later, it emphasized that the EU's overall objective in the negotiations would be to preserve its interests. It reaffirmed the 29 June principles, and stated that the negotiations would be conducted as a single package: nothing would be agreed until everything was agreed. The final version of the guidelines, adopted on 29 April, set out two phases for the negotiations:

- the first, to provide clarity and legal certainty to citizens, businesses, stakeholders and non-EU member states on the effects of the UK's departure from the EU, and to settle the UK's disentanglement from the rights and obligations from commitments undertaken as member state, which would come to cover the UK's financial settlement, the rights of EU citizens living in the UK, and the border between Northern Ireland the Republic of Ireland; and
- the second, to reach an overall understanding on the framework for the future relationship.

Only after the successful conclusion of these phases under Article 50 would it be possible to proceed to a negotiation of a trade deal between the UK and the EU.

The Council adopted the negotiating directives that would guide the Article 50 Task Force the following month.

Over the course of the first phase negotiations, the UK was forced to accept the structure imposed by the EU. The European Council agreed on 14-15 December 2017 that 'sufficient progress' had been made during Phase One for talks to continue to the second phase – though with a fudge on the critical question of the border between Northern Ireland and the Republic of Ireland – and a commitment that the UK would turn the terms of the Joint Report agreed by the two sides the preceding week into a treaty agreement. In practice, the failure of the UK side to engage has meant that in practice the Commission has spent the three months between the December agreement and the 23 March European Council on drafting the withdrawal agreement; discussions on the future relationship have yet to begin.

Tusk and Juncker have continued to remind the UK that there can be no bespoke agreement and that, as the departing state, it is responsible for proposing solutions. When the UK reacted negatively to the draft withdrawal agreement issued on 28 February 2018, the EU institutions reiterated that the UK had to come up with proposed solutions to the border issue. The UK has now accepted the Commission draft as a basis for discussion, while still maintaining that some elements are unacceptable.

### **Conclusion**

As the Brexit negotiations have proceeded, both the member states and the four EU institutions have remained remarkably united in their approach. Reiterating the four principles of 29 June 2016, and reminding London that Michel Barnier is the EU negotiator, not an agent of the Commission, the EU institutions favour a choice between existing models and have firmly resisted any attempt by the UK to negotiate a bespoke agreement that would create a new category of third country relationship different either from EEA membership or signatory to a free trade agreement.

Throughout the process, considerable effort has been expended, particularly by Tusk, in ensuring that all national capitals are on board. The organisational structures put in place for the negotiations also serve this purpose. Although the tone and sympathy of member states towards London varies among the EU27, no government has disrupted the common purpose. It remains to be seen whether this situation will endure once trade talks commence.



# The Brexit endgame

By Anand Menon and Alan Wager



The impact of Brexit on our politics will reverberate long beyond 11pm on 29 March 2019, when the UK is scheduled to leave the European Union. The referendum changed what, and who, the political parties stand for. Both main parties in Westminster, like the rest of us, are still grappling with the dynamics of the last election. And this structural shift, and how MPs respond to it, will shape the crucial choices Parliament makes over the next 12 months.

As our analysis of the politics of Brexit in this report illustrates, the 2017 general election crystallised a growing electoral cleavage, driven by Brexit but based on underlying values. The Conservative Party fought the campaign on the basis they were the only party that could deliver the form of Brexit they claimed the referendum had endorsed. In contrast, the Labour Party's strategic positioning on Brexit was deliberately ambiguous. It was designed to appeal to Remain voters, while at the same time retaining the minority of Labour supporters who had voted Leave. As the British Election Study [put it](#), for voters 'the Tories were the party of hard Brexit whilst Labour was the party of soft Brexit'.

But, as the politics of Brexit plays out on the floor of the House of Commons, both parties face a basic dilemma: whether to embrace the logic of their new electoral coalitions, or address areas where they have lost support since the referendum. For the Conservatives this means deciding whether to try to regain support among those who are economically but also socially liberal (and who probably voted Remain), not to mention reinforcing fraying support in the business community. The alternative is to re-assure those seeking protection from the harsh winds of global economic competition. Labour, on the other hand, must decide whether it is the party of the liberal metropolitan voters who flocked to it in 2017. Instead, they may prioritise regaining seats in the North of England. Is their key goal keeping Kensington, or recapturing Mansfield?

Each side also faces its own specific problems in parliament. The Conservative side is characterised by a curious mixture of continuity and instability. Theresa May's stated ambition of leaving both the single market and the customs union has survived this most turbulent of political years. And counterintuitively, given the electoral setback this approach delivered, her parliamentary party appears to have fallen into line. In [December 2016](#), 44% of Conservative MPs felt the referendum result prohibited remaining in the single market. A year later, in [December 2017](#), this was 76%. This is helped by the fact Theresa May's Brexit policy approximately represents an increasingly eurosceptic centre of gravity within the Conservative parliamentary party.

However, May's leadership has been severely weakened. Her parliamentary majority, and with it the political capital that comes with being an electoral asset, disappeared following the general election. Her ability to stay in power rests on managing the dynamics in cabinet, and the split in her parliamentary party between the two sides of the Brexit divide. May is led by her party, rather than leading it. What is questionable is the long-term sustainability of this arrangement, particularly as grand objectives translate to policy outcomes.

On the Labour side, Jeremy Corbyn must reconcile the ambiguity that served him so well in the election campaign with the need to effectively oppose the Government. The Labour front bench moved with excruciating care towards the acceptance of some kind of 'customs arrangement' with the EU. The alacrity with which Corbyn followed that statement with a speech railing against cheap labour undercutting British workers testifies to the complex triangulation being undertaken. Simply put, he is attempting to reassure Remainers he is opposing the May version of Brexit whilst convincing Brexiters he is on their side. This balancing act is made more difficult by a hardening majority among Labour MPs and members in favour of a very soft Brexit, or no Brexit at all. Corbyn, in contrast to May, was strengthened by the election, but is currently at odds with the majority of his parliamentary party on Brexit.

What all this translates into is tremendous uncertainty over what Parliament will do, as the steady stream of Brexit legislation – on trade, customs, agriculture and the like – appears before it. We have already seen at first hand the potential problems the government faces. In December, only 11 Conservative MPs were required to inflict the government's first, and thus far only, Brexit defeat. Headed by the former Attorney General Dominic Grieve, these MPs voted to guarantee that Parliament would have a final vote on the withdrawal agreement prior to the scheduled exit day. It was a striking reassertion of legislative power. It also provided evidence that the government's numbers in Parliament could fall short if a deal cannot satisfy Conservative MPs concerned about Brexit's potential impact.

The next test was due to be new Clause 5 to the Trade Bill, which would bind the government to a customs union with the EU. The same 11 MPs that voted for the Grieve Amendment have signed new Clause 5. However, key members of this group – for example the senior backbench MP Sarah Wollaston – backed off somewhat following the Prime Minister's somewhat conciliatory tone in her Mansion House speech. The last time there was a temporary truce between May and this group of Brexit rebels was over Christmas, following the Joint Report that signalled progress on the Northern Ireland border. It didn't last long.

Defeat for the government, which remains possible, would fundamentally restructure the Brexit negotiations with some time to spare. The Grieve amendment was a question of process, while forcing a customs union would push the substantive position of the government much closer to that of the Labour party. It would mean the Prime Minister would no longer have free reign over negotiations. The fact that the vote has been delayed by the whips – originally due in March, now unlikely before the local elections at the end of May – speaks to the paralysis caused by the tight arithmetic in the House of Commons.


Fear of rebellion means it may be in the interest of the government to delay the eventual vote on a final deal as well. There is an increasing feeling that a deal will not be signed until January 2019. Whilst the 'meaningful vote' will encompass both withdrawal and transition agreements, there is little chance that much of substance on trade can be thrashed out with the EU by then. So the key question of British politics in the next 12 months is whether europhile Conservative MPs feel they have the ability to oppose what will be, at best, a rather vague statement of future ambitions. Their calculations are complicated by the nature of the Labour leadership. There is a real fear of opening the gates of 10 Downing Street to Jeremy Corbyn.

It is far from clear what a defeat on the government's Brexit policy in Parliament would mean for the government. The Fixed Term Parliament Act, introduced by the coalition in 2011, means that a defeat cannot automatically precipitate a general election. It would, however, almost certainly bring down the government. A super-majority of two-thirds is required to force a general election in these

circumstances. Instead, these rules give two weeks for a new government to form and command the confidence of the House of Commons before a general election is triggered. This could mean the immediate result would be a period of intense parliamentary haggling, both within the Conservative Party and, perhaps, across parties; and a new Brexit policy. The outcome – from paralysis leading to the UK crashing out without a deal, through to a new cross-party alliance forming to seek a much softer Brexit or even to reverse it, to a general election – would be almost impossible to predict.

These high stakes parliamentary manoeuvres will be played out, constantly, with one eye on the next election. Politics is moving fast, and no two elections are fought under the same circumstances. Labour's Brexit positioning was electorally propitious in June 2017 but a tactical masterstroke – accidental or otherwise – can quickly become moribund. The Conservative strategy of doubling down on Brexit will intensify opposition among those who see Brexit as both a cause and a symptom of political change they do not like. All we know for sure is this is the Brexit Parliament and, sooner or later, we are likely to have another election defined by Brexit too.





# Demographic change and public opinion

By Rob Ford and Maria Sobolewska

On 28 February 2018, former Prime Minister Sir John Major caused a stir by declaring that: “By 2021 [...] the electorate will have changed. Some voters will have left us. Many new voters will be enfranchised. [...] No one can truly know what ‘the will of the people’ may then be.”

While no one can predict for certain how the electorate will look in coming years, there are some robust and well established demographic trends that will influence opinion in future: rising education levels, rising ethnic diversity and generational change. Projecting these trends, we can offer an estimate of how the political climate may change over the Brexit transition and beyond.

All else being equal, these changes will tend to pull opinion in a pro-European direction. We estimate they would be sufficient to produce a majority of 52%-48% for Remain in 2021, and 54%-46% by 2026. However, in 2016 many Remain voters also wanted a reduction of EU powers, so the demographic trend is not necessarily one in favour of reversing Brexit, but it does suggest public pressure for close association with the EU will rise over time.

As Sir John Curtice highlights in this report, one year on from the invocation of Article 50, and nearly two years after the vote to leave the European Union, [there is little evidence of a major shift in public opinion on Brexit](#).

One major reason for this stability is that public views [reflect deep rooted divides in voters’ values and worldviews](#). But the distribution of these values and outlooks in the electorate is not static. It is closely related to demographic background and social change, and so responds to long-running demographic trends. This change, while largely unobserved in day-to-day politics, continues and will affect attitudes towards Brexit.

In fact, relative to 2016, the three processes of demographic change we examine would be enough to reduce support for Brexit across the electorate by over two percentage points in 2019, over four percentage points in 2021 and over seven percentage points in 2026. While these are projections based on current trends, and make the unrealistic assumption that nothing else will change, they do highlight that the Brexit majority is fragile and on the wrong side of powerful demographic pressures, with eurosceptic social groups shrinking over time while more europhile groups expand.

Core values and outlooks do not change quickly, if at all, but they are associated with key demographic factors such as education level, ethnic identity and formative experience. Three overlapping processes of long-run demographic change—university expansion, rising diversity and generational replacement—are all increasing the share of the electorate who hold the socially liberal and cosmopolitan values associated with EU support. These processes of political climate change are slow, but relentless. They could exert a growing influence on views of long-run relations with the EU as we move on from the breakneck schedule set by Article 50 to the slower processes of transition and renegotiation.

[Education, ethnicity, migrant status and generation were all strong predictors of vote choice in the](#)

EU referendum. All the Leave-leaning groups, such as school-leavers, white and British-born voters, and those who grew up before Britain joined the EU, are shrinking over time. Simultaneously, all the Remain-leaning groups – graduates, ethnic minorities and migrants, and the younger cohorts who came of age after the Maastricht agreement – are growing.

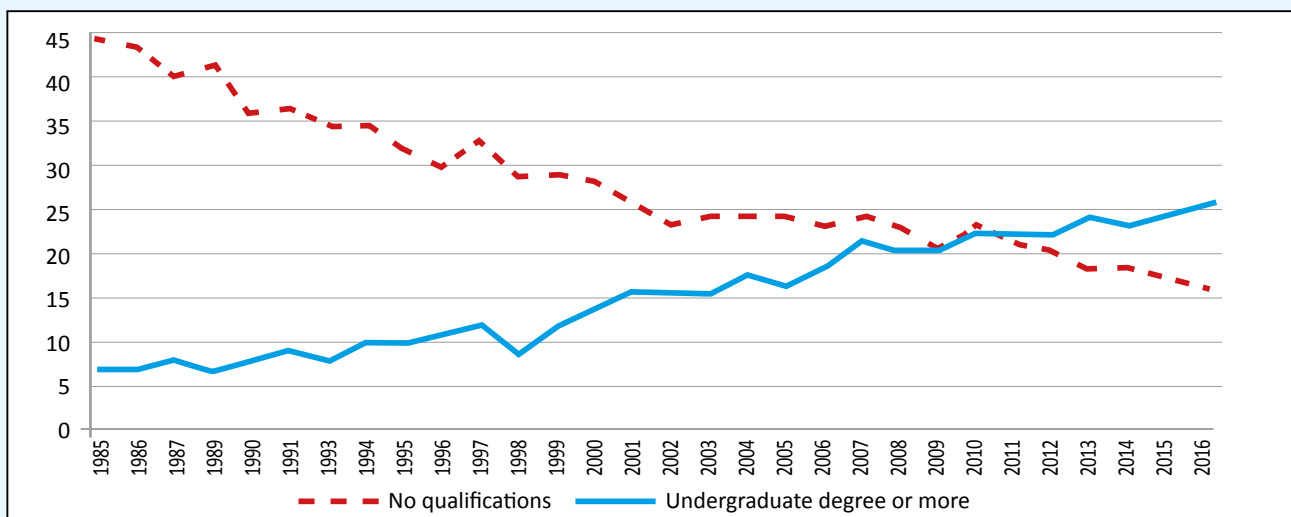
The first of these shifts is educational expansion. Figure 1 charts the share of respondents in the British Social Attitudes survey who report having a university degree, and the share who report leaving school with no qualifications at all. Every year over the past three decades or so, the share of the electorate with no formal qualifications has fallen by around one percentage point, and the share with a university degree has risen by around 0.7 points. These are not big changes, but they quickly add up. If these trends continue – and they are likely to – then by 2021, when the transition period is due to end, graduates could outnumber school leavers three to one.

Diversity is also rising slowly but steadily. The share of respondents from an ethnic minority group has risen from around 2-3% in the early 1980s to 11-13% now – a rise of around three points per decade. The censuses taken every ten years also show that the share with an ethnic minority background doubled from 7% to 14% between 1991 and 2011. And this is not including the migrant-origin population, which has grown at a similarly rapid pace – Office for National Statistics data suggests the share of British residents who were born in another country increased from 9% in 2004 to 14% in 2016 – or their children. Recent growth has been particularly fast among EU-origin migrants.

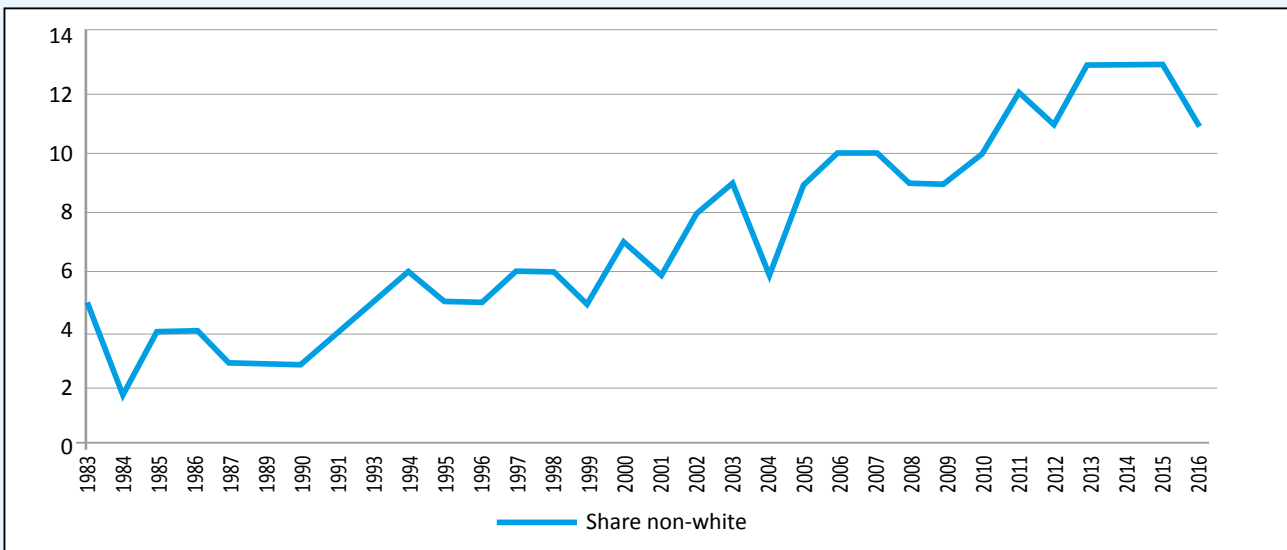
There are good reasons to expect the trend of rising diversity to continue. The ethnic minority population is younger on average than the white population and growing faster, and, despite a recent fall in arrivals from the EU, immigration levels remain very high, with hundreds of thousands of migrants settling in the UK each year. If the trends seen over the past two decades continue, the electorate will have substantially larger shares of migrant and ethnic minority voters in coming years than it did in 2016. Indeed, Brexit might, paradoxically, accelerate this shift as EU citizens resident in the UK acquire UK citizenship (something relatively few saw as necessary before Brexit).

Generational change is the final process reshaping the electorate. While voters’ attitudes can change as they age, there is a lot of evidence that the different conditions prevalent when generations come of age have a lasting impact on their values, and that younger cohorts generally have more socially liberal and cosmopolitan outlooks. Generational replacement is therefore likely to slowly pull attitudes in a more liberal direction, with older, more socially conservative cohorts who came of age before

**Figure 1: Share of respondents with a degree and those with no qualifications in the British Social Attitudes surveys, 1983–2016**



**Figure 2: Share of ethnic minority respondents in the British Social Attitudes surveys, 1983–2016**

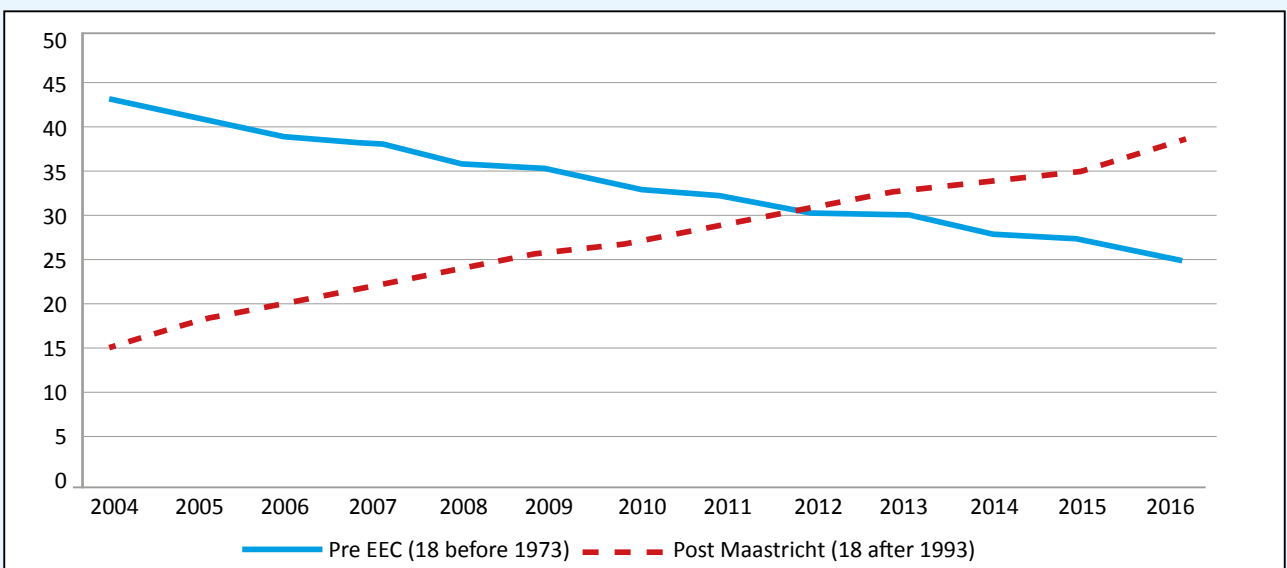


Britain joined the EU slowly fading away, while new socially liberal and cosmopolitan young voters, who have no memory of a Britain outside of the EU, join the electorate. In 2004, nearly half of the electorate had turned 18 before 1973, growing up in a Britain before it joined the precursor to the EU, while just one in six had turned 18 after 1993, coming of age in a more diverse Britain participating in a more integrated European Union.

By the time of the 2016 EU referendum, the pre-European Economic Community (EEC) cohort had shrunk to just over one in four of the British population, while the post-Maastricht cohort had risen to nearly 40%. The eurosceptic views of older cohorts were more strongly represented in the 2016 referendum, as turnout was much higher amongst the old than the young. But differential turnout cannot hold back the tide of generational change indefinitely, and mortality and cohort replacement will pull the balance of opinion towards the more pro-EU views of younger generations in years to come.

For simplicity and illustrative purposes, we have defined two very broad cohorts of older and younger

**Figure 3: Share of British Social Attitudes respondents who turned 18 before Britain joined the EEC and share who turned 18 after the Maastricht Treaty**



voters, but this may in fact understate the coming pro-European shift produced by generational replacement, as the very oldest cohorts in Britain are the most eurosceptic while the very youngest are the most pro-European.

We can use a two-step process to make a rough estimate of the potential impact of these demographic trends at three future points: the end of the Article 50 negotiation period in 2019, the anticipated end of the transition period in 2021, and 2026, a decade on from the EU vote.

First, we simply project forward the demographic trends found in the British Social Attitudes data to provide estimates of the population composition at these three points. Secondly, we use a statistical model of how these demographic factors predicted Brexit vote choice to estimate how the projected demographic change affects overall support for Brexit in the electorate. The table below offers a summary of how the population will change on these three characteristics, and then how support for Brexit might change accordingly.

While the long-term trend is clearly towards a less eurosceptic political climate, we should not make the mistake of assuming this means a European spring is just around the corner in Britain. Many of those who voted Remain in 2016 were not enthusiasts. To give one example, 60% of Remain voters in the 2016 British Social Attitudes survey also wanted to see the EU’s powers reduced.

Brexit has also changed views about the status quo – many of those who backed Remain believe the result of the referendum should be respected and would not support a complete reversal of the Brexit process. Many in the rising europhile demographic groups would instead prefer to see Britain outside the EU but closely aligned to it. While ‘hard’ Brexiteers look to be on the wrong side of demographic trends, a softer form of Brexit could – all else being equal – enjoy broader and more sustainable support in the long run.

**Table 1: Projected change in demographic composition of the electorate 2016–2026**

|   | Share 2016 | Projected share 2019 | Projected share 2021 | Projected share 2026 |
|---|------------|----------------------|----------------------|----------------------|
| <b>Education</b>  |            |                      |                      |                      |
| Degree  | 26         | 28                   | 30                   | 33                   |
| No qualifications   | 17         | 14                   | 12                   | 7                    |
| Projected change in support for Brexit                              |            | -1%                  | -2%                  | -4%                  |
| <b>Ethnicity</b>  |            |                      |                      |                      |
| White   | 87         | 86                   | 85                   | 83                   |
| Ethnic minority   | 13         | 14                   | 15                   | 17                   |
| Projected change in support for Brexit                              |            | -0.1%                | -0.2%                | -0.4%                |
| <b>Cohort</b>   |            |                      |                      |                      |
| Pre-EEC (18 before 1973)  | 26         | 22                   | 19                   | 12                   |
| Post-Maastricht (18 after 1993)                                     | 39         | 44                   | 48                   | 57                   |
| Projected change in support for Brexit                              |            | -1%                  | -2%                  | -3%                  |
| <b>Combined effects of demographic change on support for Brexit</b> |            | <b>-2.1%</b>         | <b>-4.2%</b>         | <b>-7.4%</b>         |

# Devolution



By Nicola McEwen

The devolved governments have been largely excluded from the process of defining the UK's approach to Brexit and its negotiations with the EU, despite early promises by Westminster to the contrary. Instead, the devolution dimension has been dominated by the broader domestic implications of exiting the EU, with a particular focus on the EU (Withdrawal) Bill.

As well as repealing the Act that took the UK into the EU, the bill is designed to avoid a 'cliff-edge' exit by converting existing EU law into domestic law—to be known as 'retained EU law'. The manner in which the bill deals with repatriated powers in devolved areas has led to a fierce battle between the UK government on the one hand, and the Scottish and Welsh governments on the other, with backing from cross-party committees within the Scottish Parliament and the National Assembly for Wales.

The Acts that created the devolved institutions required devolved laws to be compatible with EU law – a requirement that will lapse once the UK leaves the EU. The now infamous [Clause 11 of the withdrawal bill](#) includes a new constraint. This effectively requires devolved law to be compatible with 'retained EU law' after Brexit and prohibits the devolved legislatures from passing laws to modify retained EU law, even when these are in areas of devolved competence.

The bill provides a procedure for loosening this constraint where it was agreed that a common policy approach across the UK is unnecessary. In the face of considerable and widespread opposition to this clause, the UK government has now introduced an [amendment](#) in the House of Lords requiring a minister to introduce regulations specifying the areas where this constraint on devolved powers would be applied. [Analysis](#) published recently by the UK government suggests that restrictions would be mainly in the areas of agriculture, fisheries and the environment.

However, this amendment has been rejected by the Scottish and Welsh governments. Fearing a 'power grab' which would undermine their devolution settlements, they have passed 'continuity' legislation to prepare their own statute books for Brexit while protecting devolved powers. There is some doubt (including from the Presiding Officer of the Scottish Parliament) about whether these bills fall within the legislative competence of the devolved institutions, and the Supreme Court may be asked for its ruling.

That stage may not be reached though; both the Scottish and Welsh governments insist their first preference is to agree with Westminster an amendment to the withdrawal bill that could facilitate common UK frameworks without undermining devolution. This is a fast-moving situation with an uncertain outcome, but the ongoing discussions and debates provide insight into the challenges and opportunities which are likely to continue to shape intergovernmental relationships in the months and years to come. The current political furore over fisheries policy during the transition period and beyond illustrates the complex political dynamics at work.



First, the current impasse in part reflects the absence of shared understanding of the extent and limits of devolution. From the UK government's perspective, the fact that devolved law has had to be compatible with EU law means that areas in which the EU has enjoyed legislative competence have never been devolved. Thus, repatriated powers that are passed on to devolved institutions will represent a considerable increase in devolved powers.

Viewed from Scotland and Wales, by contrast, all policy fields that are identified as falling within the competence of the devolved legislatures, according to their founding legislation, are already devolved, irrespective of whether they have been the subject of EU law. In October, the three governments included a commitment to 'respect the devolution settlements' among the principles that would underpin new common UK frameworks to replace EU frameworks. But they hold different views of what that means.

Second, much of the ongoing dispute is about process rather than outcome. All governments are agreed that there will be some areas where it makes sense to operate on a uniform basis across the UK (or Great Britain, where separate arrangements make sense for Northern Ireland). For the UK government, common frameworks are necessary to preserve the UK's internal market. While some cross-border frameworks may be secured through less formal arrangements, such as intergovernmental Memorandums of Understanding, some may require UK legislation so that the same rules and standards apply in the same way across all four nations. This, according to [David Lidington](#), the cabinet office minister overseeing these negotiations, would ensure free movement of goods and services within the UK "without any extra red tape or expense".

For their part, the devolved governments have recognised the need for some UK common frameworks and are as keen as the UK government to avoid new internal barriers to trade and mobility. Even in the context of Scottish independence, the SNP stressed the desirability of maintaining some common regulatory frameworks with the UK government. The issue is about who gets to decide.

The common position of the Scottish and Welsh governments was succinctly expressed recently by [Mark Drakeford](#), the cabinet Secretary for Finance and lead minister in the Welsh government in the Brexit negotiations: "The things that are to be retained at the UK level should be things that are agreed... what we're looking for is agreement... the principle of agreement, rather than the principle of imposition, is fundamental to us." Of course, these issues of process are not unrelated to concerns about outcomes. Although all governments share the desire to avoid barriers to trade, they may have divergent views on how this would best be achieved.

The Brexit negotiations have also revealed both the opportunities and the limitations afforded by the UK's territorial constitution. The withdrawal bill is Westminster legislation, and it is for the Westminster Parliament to determine its final content and scope. But early in the process, the UK government conceded that those clauses of the bill that most directly affect devolved competence would be subject to the Sewel convention, which commits it to seeking the consent of the devolved legislatures before the bill becomes law.

This does not amount to a devolution veto. As the Supreme Court confirmed in its [judgment in the Miller case](#), the Sewel convention is a matter of politics, not a matter of law. But by acknowledging the applicability of the Sewel convention, Westminster gave the devolved governments an opportunity for influence in intergovernmental negotiations beyond their constitutional authority. Those negotiations have shifted significantly the UK government's position, as evident in its amendment to Clause 11, even if not yet to the point where the devolved governments are willing to recommend consent for the bill.

If consent is withheld, the normal procedure, according to the convention, would be for the offending clauses of the UK bill to be removed, freeing up space for devolved legislation. However, given the importance that the current UK government attaches to retaining authority over the UK internal market, it seems unlikely that it would acquiesce on this occasion. On the other hand, there is discomfort in the UK Parliament, especially in the House of Lords, at the prospect of passing the withdrawal bill without the consent of the devolved legislatures. The Scottish and Welsh continuity bills are an alternative to consent for the UK bill and add yet more constitutional complexity to the domestic Brexit process. Clearly, their introduction is also intended to increase pressure on the UK government towards further concessions in its own legislation to a point that would render devolved continuity legislation unnecessary.

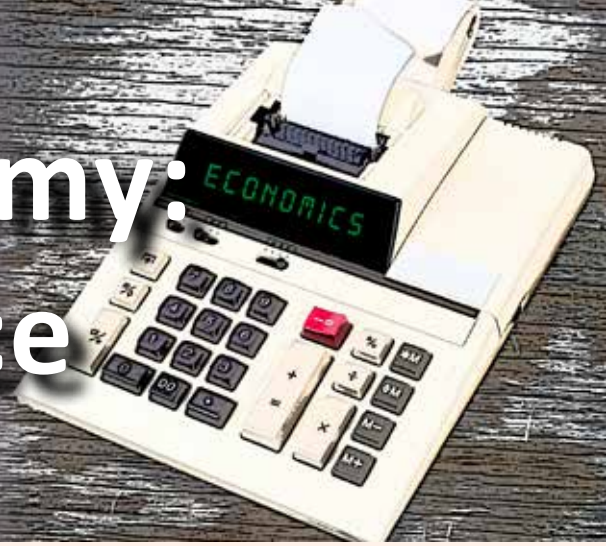
Dealing with the devolution effects of Brexit has also revealed both strengths and weaknesses in the UK's intergovernmental relations. Informally, the extent of collaboration between the Scottish (SNP) and Welsh (Labour) governments has been unprecedented and key to their capacity to exert influence over the UK government. Officials across the UK have been engaged in intensive collaborative work to explore where and how EU competences intersect with devolved competences, and where common frameworks may or may not be necessary. These positive experiences of informal cooperation are set against the weaknesses of formal intergovernmental machinery, both with respect to its ad hoc nature and the hierarchical role that the UK government continues to enjoy. This presents challenges in the context of Brexit, where the overlaps between devolved and reserved matters are set to become more acute, increasing the likelihood of policy overspill and disputes between the UK's governments.

The Welsh government has been at the forefront of demands for, and thinking on, stronger and more equal intergovernmental forums and procedures which could foster more formal cooperative working. This is perhaps because the Welsh government, as the least powerful of the devolved administrations, has most to gain from formalising shared governance, and most to lose from the alternatives. More effective intergovernmental working which gave the devolved governments a stake in UK matters may be key to securing the stability of the UK's territorial constitution. Yet, there is little evidence of enthusiasm among UK ministers for such reforms, especially if they would impose constraints upon parliamentary sovereignty and on their ability to take back control.



# The UK economy: initial evidence

By Thomas Sampson



The full economic impacts of Brexit will not materialise for many years. But 21 months after the UK voted to leave the EU, we can assess how the Brexit vote has begun to affect the British economy.

Even though the UK remains in the EU, the vote has already had economic impacts. Economic behaviour depends not only on what is happening now, but what people and businesses expect to happen in the future. The referendum changed expectations about the future of the UK's economic relations with the EU and the rest of the world.

There are two parts to this. First, uncertainty has increased. Even now, it remains unclear what exactly the UK's relationship with the EU will look like after Brexit and how policymaking in the UK will change. This uncertainty makes businesses less willing to invest in risky new projects leading to lower output growth.

Second, Brexit is likely to make the UK less open to trade, investment and immigration with the EU. Even before Brexit happens, this could make the UK a less attractive destination for foreign investment and reduce the incentive for businesses to invest in expanding UK-EU trade.

The most immediate impact of the Brexit vote was on financial markets. The day after the referendum, the FTSE 100 stock index fell by 3.8% and the value of the pound fell sharply. Researchers at University College Dublin have studied stock price movements in the days following the referendum and found that companies with greater exposure to the UK and EU markets suffered larger share price falls than businesses with a more global focus. This finding suggests investors expected the consequences of the Leave vote to be particularly severe for firms whose operations straddled the UK-EU border.

But the stock market downturn was short-lived. The Bank of England responded to the vote in August 2016 by cutting interest rates by one-quarter of a percentage point and increasing the money supply through quantitative easing. However, the fall in the value of sterling was persistent. Between 23 and 27 June 2016, sterling declined by 11% against the US dollar and 8% against the euro, and it has remained around 10% below its pre-referendum value ever since. This suggests that financial markets have lowered their expectations for future UK economic performance.

A fall in the pound increases the cost of imports into the UK but also makes UK exports to other countries cheaper. More expensive imports drive up the cost of living. Indeed, Consumer Price Index (CPI) inflation has risen dramatically since the referendum: from 0.4% in June 2016 to 3% in January 2018.

It would be a mistake to attribute this entire increase to Brexit though. Inflation has also increased in the US and the euro area over the same period, so we need to distinguish the impact of the Brexit vote from other factors that affect inflation, such as oil price movements and cost increases resulting from faster growth in the global economy.

Our team at the Centre for Economic Performance has studied how price increases since the referendum differ between products depending on how much of what we buy is imported. For tradeable goods, such as fruit, wine and clothing, we import much of what we consume, but that is much less the case for services like restaurants and hotels. So if the Brexit-induced fall in the pound is responsible for higher inflation, we would expect products where imports are more important to experience bigger price rises.

And this is exactly what the data show. [Figure 1](#) shows inflation before and after the referendum for two groups of products: the top half of products and the bottom half in terms of imports. Following the referendum there was a rapid increase in inflation for the high import group, while the rise in inflation was much slower for the low import group. This demonstrates that the depreciation of sterling did indeed lead to higher inflation.

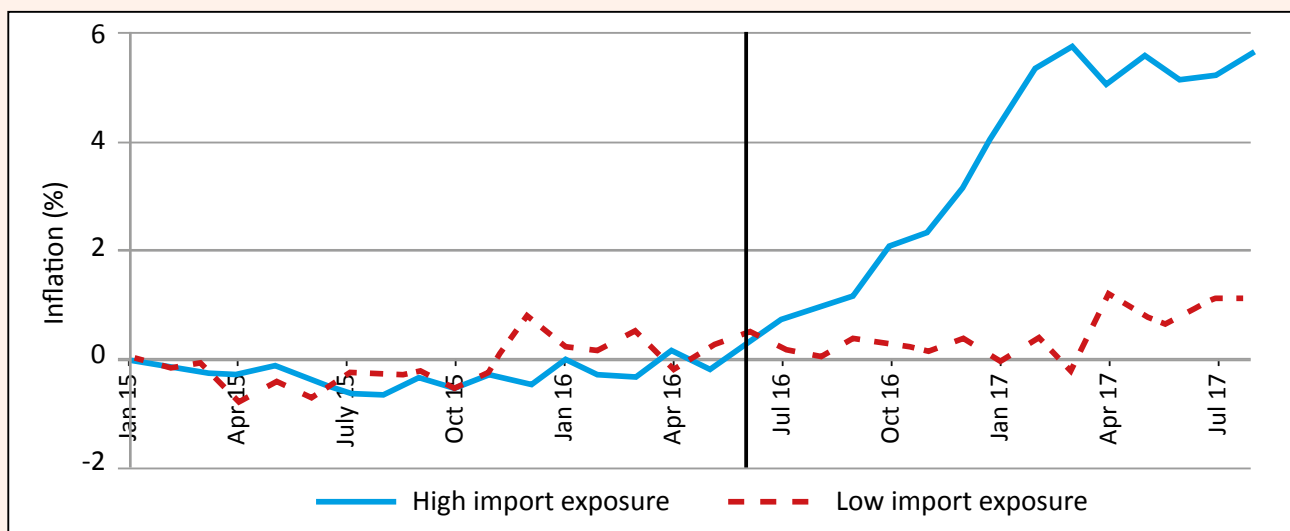
After disentangling the effect of higher import costs from other factors that affect prices, we estimate the Brexit vote increased inflation by 1.7 percentage points in the year following the referendum. It would be wise to view the precise size of this effect with some caution, but the increase is undoubtedly substantial.

A rise in inflation does not necessarily make consumers worse off if it is accompanied by higher incomes. But, as shown in [Figure 2](#), nominal wage growth has not risen since the referendum. Consequently, higher inflation has led to a decline in the real value of wages and a fall in living standards. Our estimates imply that, by June 2017, the vote to leave the EU was costing the average UK household £404 per year.

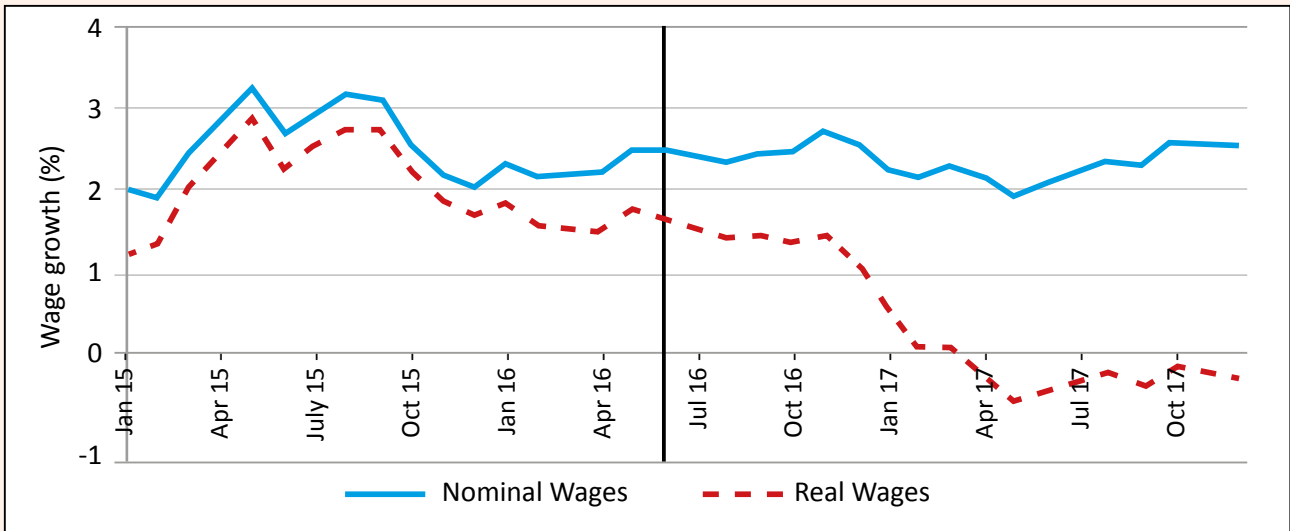
But has the depreciation of sterling had any positive economic effects? By making UK exports cheaper, the fall in the pound gives British firms a competitive advantage in foreign markets, which could, in theory, lead to higher exports. However, at the same time, the likelihood of future increases in trade barriers between the UK and the EU may make firms reluctant to invest in increasing their export capacity. And for firms with global supply chains the fall in sterling also raises import costs, mitigating the competitive advantage of the depreciation.

When sterling declines, the value of Britain’s imports and exports measured in pounds automatically rises. But this does not mean the volume of trade has increased, and, so far, there is no evidence that it has. However, trade flows are usually slow to adjust to exchange-rate movements, so it will probably be another year or two before we know whether the fall in sterling has boosted exports.

**Figure 1: Import shares and inflation, 2015–17**



**Figure 2: Nominal and real wage growth, 2015–17**

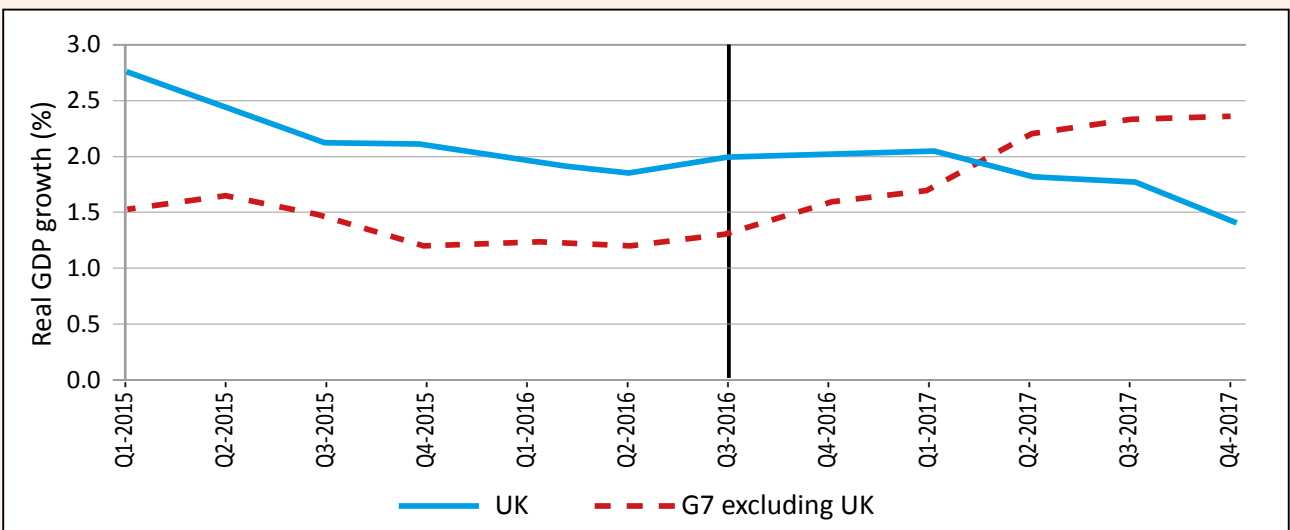


We can also look at the overall impact of the referendum on economic growth. Figure 3 shows GDP growth in the UK compared to the six other members of the G7 group of advanced economies. In the year prior to the vote, UK growth was 0.6 percentage points higher than the average for other G7 members, while in 2017 it was 0.9 percentage points lower. This is a crude comparison but does suggest that the referendum result reduced UK growth.

A more sophisticated version of this same approach has been conducted by academics from the universities of Bonn, Oxford and Tübingen. They construct a control group of countries whose average growth exactly matches UK growth prior to the Brexit vote and then compare GDP growth in the UK and the control group following the referendum. They conclude that by the third quarter of 2017 UK GDP was approximately 1.3 percentage points lower than it would have been if the UK had not voted for Brexit. This implies a decrease in output of approximately £500 million per week during the quarter.

Prior to the referendum, there was a broad consensus among economists that leaving the EU would, in the long run, reduce UK living standards. It is too soon to evaluate the accuracy of these forecasts and as time passes we will learn much more about how the Brexit vote has affected the UK economy. But even before Brexit occurs, the evidence on inflation, wages and output already shows that Britain is paying an economic price for voting to leave the EU.

**Figure 3: Real GDP growth, 2015–17**





# The public finances

By Peter Levell and Thomas Pope

Many of the current debates and uncertainties around the UK's post-Brexit status are the same as they were last March. We are not much closer to knowing what the UK's post-Brexit arrangements with the EU will look like, or what trade deals the UK will be able to strike with the rest of the world. As in the referendum campaign, a key debate has been over the impact of Brexit on the public finances – talk of 'Brexit dividends' and 'divorce bills' has filled many column inches.

Understanding the likely public finance impacts of Brexit is important, especially with a government committed to eliminating the deficit by the mid-2020s and national debt at its highest share of GDP since the late 1960s. However, this debate often happens in isolation, ignoring the large uncertainties around the UK's post-Brexit relationship with the EU and the rest of the world. In practice they are inextricably linked.

## **Financial flows between the UK and EU**

As one of the EU's richer members, the UK is a net contributor to the EU budget – meaning that it currently pays more into the EU budget than the EU spends in the UK. In 2016/17 the UK made a gross contribution to the EU budget worth around **£12 billion** (£230 million per week), and a net contribution (after taking into account EU spending in the UK) of around £7 billion (£140 million per week). The supposed 'Brexit dividend' of £350 million per week referred to in the referendum campaign was based on the UK's gross contribution of £17 billion in 2016/17, including the UK's rebate. But the rebate has already been spent by the UK government on its own domestic priorities, and, by definition, cannot be spent twice. In no sense can it contribute to any 'Brexit dividend'.

If the UK were to cease making any contributions to the EU budget, the government could in principle redirect £12 billion to new uses. However, this would involve redirecting funds from the projects currently financed by the EU, and so would require large cuts in agriculture, regional assistance and research funding relative to the status quo. The government has promised to make up lost EU spending in some of these areas for some years. If it were to replace all EU funding in the UK, it could spend the £7 billion net contribution to finance higher public spending, fund tax cuts or reduce the deficit. While this is some way from £350 million per week, it is still a substantial sum. It is the equivalent of 6.5% of the NHS budget, or it could finance a cut in the basic rate of income tax of almost two percentage points. However, depending on the nature of the future relationship with the EU, the UK may continue to make some contributions to the financing of the EU budget, as Norway currently does.

The second type of financial flow that is often discussed is the so-called 'divorce bill' – future payments that reflect the UK's share of joint EU future liabilities. It has also been suggested that the UK might not pay such a bill in a 'no deal' scenario, meaning that this element may be contingent on the type of arrangement the UK reaches with the EU. The numbers proposed here are often large. The Office for Budget Responsibility (OBR, the government's independent and official forecaster) currently

estimates a bill of around **£37 billion** (including continuing payments during the transition period). However, the magnitude of these payments will decrease over time, particularly after the end of the transition period, and will become an increasingly insignificant sum over the longer term.

### Effects on the economy

The main reason the public finance impact hinges on the post-Brexit deal is through effects on the economy. Brexit is far more than simply a change to the pattern of payments into – and out of – the EU budget. It represents a fundamental shake-up of the UK's relationship with our largest trade partner – a change that will not occur without many knock-on economic impacts, as [Thomas Sampson highlights in this report](#).

If, as most economists expect, this means economic growth being lower than it would otherwise would have been, then this would quickly wipe out any financial gain from EU budget payments, and a 'divorce bill' would quickly pay for itself if the deal it enabled had only a modest positive effect on the size of the economy. Tax revenues – and therefore the public finances as a whole – are highly sensitive to economic performance. Lower economic growth means less growth in wages, consumer spending and profits, leading to tax receipts being lower than they would otherwise have been.

In the Autumn Statement following the referendum, the OBR directly attributed a portion of its worsening economic forecast to [Brexit](#). While growth since this forecast was made has been slightly stronger than expected, if anything the medium-term outlook is now gloomier than in November 2016, so this assessment of the effects of Brexit is consistent with the latest forecasts.

The OBR ascribed to Brexit the following: a downgrade to forecast investment growth and therefore future productivity growth; lower future net immigration than would otherwise have been the case; and greater inflation as a result of the depreciation of sterling that occurred after the referendum. This initial assessment implied that the economic effects of Brexit weakened the public finances by **£15 billion per year** by the early 2020s, more than outweighing the UK's **£7 billion** net contribution.

Even given the size of the OBR's assumed economic shock, the effect on the public finances is relatively modest. This is because it is forecast to be disproportionately driven by lower investment – a tax favoured activity (in the near term lower investment boosts corporation tax revenues) – rather than consumption. Lower investment now will eventually feed into lower firm profits in future. Previous calculations by researchers at the Institute for Fiscal Studies suggest that the long-run increase in the deficit may be around **£3.5 billion larger**. In general, the economy would need to be just 0.8% smaller than it would otherwise have been for the 'Brexit dividend' to be wiped out by weaker tax receipts; almost all credible independent estimates suggest the impact will be significantly larger than this, so the overall impact on the public finances is likely to be negative.

Of course, the economic impact of Brexit is uncertain. However, the OBR forecast assumes a relatively smooth transition and is mostly concerned with the short-term effects of the Brexit vote on the economy. The magnitude of the long-term effect on the economy, and therefore the public finances, depends critically on the post-Brexit relationship between the UK and the EU.

While precise estimates differ, economic models generally show a smaller economic impact from Brexit if the UK and EU have a trading relationship closer to the current arrangement (for example, remaining a member of the EEA), whereas economic impacts would be potentially very large if the UK began to trade on WTO rules (a 'no deal' scenario). This finding was confirmed in the government's own, recently published, analysis. This concluded that Brexit would increase borrowing by between **£20 and £80 billion** annually by 2033-34.

So the impact of Brexit on the public finances is highly uncertain, and depends critically on the trading relationship between the UK and EU. However, both the government's own analysis and that of independent economists suggest that, overall, it is likely to make them worse: the question is by how much.

A closer trading relationship, and thus a smaller economic impact, would likely mitigate the damage, compared to a 'no deal' scenario. But it is vital to remember that the financial flows between the UK and EU is only one, and not the most important, factor – even though this is what the debate tends to focus on. Ignoring the impacts of Brexit on the economy means missing the main story.







# Immigration after Brexit

By Jonathan Portes

The government's *de facto* decision to accept that there will not be an 'implementation period' immediately after Brexit day, but rather a 'status quo transition', means that the current rules governing free movement will remain in place until at least the end of 2020. The government intends to introduce a registration requirement for new arrivals from the EU during this period, but this will have to be done in a way that is consistent with EU law.

Meanwhile, despite the fact that neither immigration law nor policy towards EU nationals has changed since the Brexit vote, there has already been a sharp fall in net migration from the EU. In the year to June 2016, it was 189,000, whereas in the year to September 2017 (the most recent available data) it fell to 90,000. This has already had consequences for the economy and public services – the sharp reduction in net inflows of nurses from the EU, for example, has aggravated existing staff shortages and helped contribute to the recent NHS winter crisis. Meanwhile, public opinion appears to have shifted somewhat, with immigration both viewed more positively and as a much less salient issue.

There is, however, no clear vision of immigration policy after Brexit, let alone any concrete policy decisions. While the political and economic balance within the cabinet and the country has apparently shifted in a more liberal direction – and this is likely to influence those decisions when they are taken – there has been no substantive discussion either within government or in the country as a whole. The Home Office, in particular, is struggling with the legal and bureaucratic consequences of the need to grant 'settled status' or 'temporary residence' to the more than three million EU citizens currently resident in the UK. It is therefore not in a position to make much progress on policy for future migrants.

Indeed, the two most important decisions taken by the government on future policy have been non-decisions, or rather decisions to 'kick the can down the road' to avoid taking decisions now. First, the government's white paper on immigration policy, originally promised for the summer of 2017, has now been delayed until the end of 2018. And, second, the Home Secretary has asked the independent Migration Advisory Committee (MAC) to report, probably in September 2018, on the economic impacts of EU migration. It is particularly notable that her letter to the MAC pointedly omitted any mention of the government's manifesto commitment to reduce net migration to the 'tens of thousands'.

So the government seems to be slowly backing away from its most high-profile commitment on immigration – and not before time, given that position has been both politically and economically damaging – but without replacing it with any alternative strategy.

The default assumption remains that the post-Brexit system will be a variant of the current system that applies to non-EEA nationals: that is, work permits (or 'certificates of sponsorship') for those moving here to work, and presumably some variant of the current system that applies to non-EU migrants moving here for family or other reasons. This would be quite different from the registration system

for pre-2021 EEA nationals. In other words, EEA nationals after ‘full Brexit’ would be subject solely to UK immigration law, not to the current free movement regime, nor to the agreed arrangements for EU citizens already here (or those arriving during the transition period).

However, this leaves almost all the key questions unresolved. After all, any immigration system that involves neither free movement nor completely closed borders means that some criteria need to be applied to determine who is permitted entry, and under what conditions. The key high-level questions are the following.

- **Will the new system retain any element of ‘European preference’?** It is reported that the government is split between those who think that the new system should apply the same rules to EU citizens as non-EU citizens, as proposed by the Vote Leave campaign, and those who favour a two-tier system, with more liberal rules (relating to salary thresholds and shortage occupations, for example) for EEA nationals.
- **Will there be sector-specific schemes, and if so for what sectors?** Promises have been made to sectors ranging from agriculture to financial services that they will not lose access to EEA nationals. However, sector-based schemes, particularly beyond the small and geographically distinct agricultural sector, add an extra layer of complication. At the moment it seems likely that there will be a sector-based scheme for agriculture, but it is unclear whether there will be any other sectoral preferences.
- **Will there be any geographic variation in the new system?** Both the Scottish government and the Mayor of London have called for the flexibility to apply more liberal policies after Brexit, reflecting both political and economic considerations. The Home Office has always strongly opposed such variation, but the political balance on this issue may have shifted.
- **Will EU students be subject to the same visa rules and charging regime as those from the rest of the world?** This is likely to depend on discussions with the EU27 on cooperation in education, student mobility and research post-Brexit.

Meanwhile, it is unclear how – or even if – the domestic policy process will interact with negotiations with the EU27. Neither the government nor the EU27 has yet taken a clear position on whether labour mobility should form a major part of any agreement on the future relationship. Both the Prime Minister’s recent speech and the Commission’s draft negotiating guidelines suggest that it will be on the agenda, but it will be difficult to include extensive provisions in a free trade agreement. While there are some relevant provisions in, for example, the Canada-EU trade deal, and any future UK-EU deal is likely to cover intra-company transfers at least, going further than this would be politically and legally complex for both sides.

Obviously, before all these decisions are taken, it is impossible to assess the sectoral impact of any new system. However, certain sectors are clearly vulnerable.

- **The NHS.** The proportion of NHS staff who are from other EU countries is fairly close to the national average, but they make up a far higher proportion of recent recruits, as it has become much more difficult for the NHS to recruit from outside the EU. Indeed, the government’s cap on skilled-worker visas is now biting, stopping the NHS recruiting much needed doctors from outside the EU at the same time as the UK becomes less attractive to EU doctors.
- **Agriculture.** Some labour-intensive farming is highly dependent on EU workers. But, although highly visible, this is a small part of the UK economy. Perhaps more importantly, the broader

food processing industry and food supply chain is also reliant on EU workers, some in specialist occupations such as veterinary medicine.

- **Construction.** This is a concern in London in particular, where a large proportion of workers are from the EU, and pressures are already beginning to emerge.
- **Higher education.** The UK higher education sector has expanded rapidly in recent years, with the EU making up a substantial proportion of academic staff recruits. They now make up more than 1 in 6 of all staff. At the same time the sector also relies on EU students, who are treated the same as UK students for fee purposes.

More broadly, there remains an overarching question about just how liberal or restrictive the system will be post-Brexit. The climate of opinion both within government and the country has clearly shifted, particularly since the general election, as the Prime Minister's position has weakened (she is clearly the most anti-immigration member of the cabinet), immigration has fallen, and the consequences for business and key sectors (including the NHS) of reduced access to EU workers has been publicised. So while, as noted, nothing has formally changed in policy terms, internally the mood has clearly shifted.

What will the impact be on the UK economy? Over the medium to long term, the end of free movement is likely to lead to a large reduction in EU migration, which will certainly reduce GDP and tax revenues, and possibly have wider impacts. Indeed, as Thomas Sampson points out in this report, the reduction that has already occurred since the referendum has probably contributed to the marked slowing of growth.

Finally, the analysis above assumes that the current government and its broad approach to the UK's post-Brexit relationship with the EU remain in place — in particular the decision to leave the single market. If this changes, then some significantly different options might become feasible, including an extension of free movement in something much like its current form.

There would, however, be significant challenges, both legal and political, on both sides of the Channel. The EU would have to accept some modifications to the legal framework to give the UK greater control over inflows, while preserving the basic principles of free movement. Meanwhile, the UK would have to implement major administrative and systems changes, and there would be inevitable trade-offs between increased burdens on business and individuals and the degree of extra 'control' afforded by such systems. The negotiability of such changes will depend, crucially, on the political context and on political will both in the UK and in the EU27, but it should not be concluded *ex ante* that they are impossible.





# Trade

By Swati Dhingra and Nikhil Datta

Since the triggering of Article 50, some clarity on Britain's future trading relationships has emerged. For example, Theresa May's statements in February and her [Mansion House speech](#) in March reiterated the government's position that the UK will exit the customs union and pursue trade agreements outside of the EU. Moreover, she expressed a desire to remain part of some EU agencies, thus acknowledging that EU laws and the ECJ will continue to affect the UK.

A lot of headway has been made concerning the terms of a transition period, with [key aspects](#) such as the timeline, citizens' rights and the UK's ability to sign its own trade deals agreed. However, details of what may replace the UK's current trading framework with the EU or plans for new future deals outside of the EU remain unknown. The two position papers indicated the key ideas and goals of the government, but lacked concrete details. The more sombre tone of the Mansion House speech on the other hand, appeared to accept "[tensions between some of our key objectives](#)" of frictionless UK-EU trade, avoiding a hard border in Ireland and being able to operate an independent international trade policy. Most importantly, it went further in recognising that access to the EU single market is going to be less than it is now, despite aiming for the "broadest and deepest possible partnership".

Once outside the customs union (the agreement binding all members to have the same common external tariff), extra costs of trade are likely to emerge for the UK, even with a trade deal in place. Probably the most significant of these are 'rules of origin' checks, to certify that goods being traded are predominantly produced in the free trade area. Compliance is both time-consuming and costly, estimated at 8% of the underlying value of the good. When it comes to products which have complex supply chains, which the UK specialises in, such as cars, such barriers may result in a "considerable amount of work", mostly in compliance costs and paperwork, according to the Association of the British Pharmaceutical Industry.

UK-based businesses are also likely to face additional costs of import declarations, risk of physical inspections and increased waiting times at ports. The last of these is a particular concern for companies operating high productivity 'just-in-time' processes such as Nissan and Jaguar Land Rover, as well as the fresh food industry. The most comprehensive study of rules of origin looks at the case of the US trade agreement with Canada and Mexico (NAFTA) and confirms that purchases of inputs facing these rules are 45% lower, which suggests a substantial cost for businesses operating global value chains. The UK tax office (HMRC) currently operates with approximately one-seventh of the customs staffing that Germany has, leading to questions regarding their ability to deal with the increased work load due to Brexit. In order to mitigate increases in waiting times and deal with additional demands on the customs declaration service, David Davis announced HMRC would be employing up to 5,000 more staff this year.

Some of the aforementioned concerns were addressed in the October customs White Paper, and two possible alternatives to the customs union were presented. The first is a "Highly Streamlined Customs Arrangement" that would continue to waive customs declarations and implement a technology-based solution to ensure seamless movement through ports (for example, using vehicle recognition software).

The second is a new Customs Partnership agreement, which would mirror the current EU customs arrangement for goods to be consumed in the EU. Both are ambitious plans which would mitigate some of the costs of the loss of membership of the customs union. The former would, however, still result in rules of origin costs, while the latter could require a costly enforcement mechanism to ensure compliance. Additionally, both are entirely experimental models that have not been tried elsewhere, and it is unclear whether the EU would be willing to go ahead with either, having stated they would only address them once “sufficient progress on the terms of the orderly withdrawal” had been made.

The main motivation behind wanting to exit the custom union is to negotiate new trade deals with countries outside the EU. The transition deal now looks assured, and the government has made clear that it intends to start negotiating trade agreements with new partners during this time. Both China and the United States have been mentioned as potential new trade partners. Deep trade deals, which go beyond just tariff reduction, can boost trade significantly, and moving ahead with such partners may help in mitigating some of the expected loss to UK trade from Brexit. While the predicted impact for zero tariffs with the US is just 0.1% of UK economic output, the expected gains from a deep trade deal could, on average, double bilateral trade.

It is argued that negotiating trade deals outside of the EU will be quicker and simpler, without the burden of having to accommodate the interests of all EU member states. However, when negotiating trade deals alone the UK would have less bargaining power as a smaller economy. This was Switzerland’s experience when negotiating its trade deal with China, with the Swiss Chamber of Commerce noting the trade agreement “is not very attractive and does not give the companies reasons to gain benefit from it”. Under the Trump presidency the US appears to be taking a more protectionist attitude, pulling out of the Pacific Rim trade pact, renegotiating pre-existing treaties such as NAFTA and introducing new tariffs on steel and aluminium. This stance may make striking a trade deal with the US particularly problematic.

Additionally, deep trade deals which really boost trade generally involve a degree of harmonisation of regulation across their members. Regulatory standards between the UK and the US are currently far apart on a wide array of products and business regulation. This goes beyond widely discussed concerns regarding food regulation. Differences in safety standards, environmental and emission regulations, and competition regulation could mean that the UK may have to adjust its position on some of these areas to achieve the sort of deal it would need to significantly boost trade.

While such deals are likely to have a positive impact on trade, the magnitude is likely to be dwarfed by Brexit losses. This is the prediction at least from the UK government’s own impact assessment that was [leaked](#), which estimated a US-UK trade deal would only improve economic output by 0.2% in the long term. Trade deals with other partners such as China, India, Australia, the Gulf states and nations in south east Asia would also only make a marginal difference, adding an extra 0.1% to 0.4% in the long run. Negative impacts to economic growth, however, were estimated to be 2-8% of economic output depending on the ‘hardness’ of the Brexit, which placed them in a similar region as those from [the Treasury](#) and the [Centre for Economic Performance](#). These estimates, additionally, do not consider the loss to real wage growth, which stood at 1.2% in August 2017, that was caused by inflationary pressures resulting from the immediate depreciation of sterling following the referendum.

The Confederation of British Industry has stated that Brexit-related uncertainty is damaging for UK businesses and the wider economy. The transition agreement is likely to mitigate some short to medium term costs of the referendum related uncertainty and sterling depreciation. In the longer term, attempting to achieve a trade deal with the EU that minimises regulatory divergence from the status quo would help to achieve the government’s goal of trade that is “as frictionless as possible”.



# Regional and sectoral impacts of Brexit

By Chloe Billing, Philip McCann, and Raquel Ortega-Argilés

Both before and after the referendum, a powerful narrative took hold that the major beneficiaries of Britain's EU membership were the 'metropolitan elites' of London and the south east, while the majority of the population had been 'left behind'.

There are still genuine debates regarding the likely regional outcomes, with [some research pointing to greater impacts on London and its hinterland](#), while various other papers point in the opposite direction. In particular, our own recent analyses suggest that the 'metropolitan elite' argument is empirically incorrect. London is the part of the UK economy least economically dependent on the EU for its prosperity, and it is therefore the least exposed region to Brexit. In marked contrast, Leave-voting regions are [between 10% and 50% more dependent on EU markets](#) than London.

Moreover, we can expand this argument to examine how each UK region is exposed to all of the potential trade-related risks of Brexit. We do this by considering all of the UK-EU global value-chains, in which goods and services cross borders numerous times, as well as those trade linkages connected via third countries. For example, British firms sell services and components to German automobile firms who then sell cars to China and India.

For many UK firms, not only EU but also broader markets are at risk from Brexit. Again, we see that [regions which voted Leave typically tend to be more exposed to Brexit trade-related risks](#) than the regions which voted Remain. Indeed, the scale of the exposure to Brexit for Leave-voting regions is typically some 25–50% higher than their direct dependence on EU markets for their prosperity.

Using similar techniques, [we also analyse the Brexit-related risks for 54 UK sectors](#). Again, we find that the likely adverse impacts of Brexit are not consistent with those that are most prominent in the public debate. Sectors such as professional, technical, or scientific occupations, legal services, computer programming, and architecture are far more exposed to Brexit in both relative and absolute terms than financial services.

These analyses raise three key issues. First, a key characteristic of many of the UK's economically weaker regions is that they display a much more limited ability to adjust to economic shocks. Our evidence suggests that it is precisely these regions which will be most adversely affected by Brexit.

Many of these Leave-voting regions display much lower levels of diversity, skills and connectivity than more prosperous regions, and for much of the last 30 years of globalization their weaker ability to respond to shocks has been evident. In contrast, many of the Remain-voting regions have been able to more successfully adjust and adapt their economies. This implies that Brexit will aggravate, not reduce, interregional imbalances. Local government officials in London and the south east are less pessimistic about Brexit than those in other regions, and our research suggests that this is justified.

Second, the fact that many of the Leave-voting regions are also likely to face the most severe post-Brexit challenges also means that in the long run there is likely to be a profound mismatch between public expectations and economic outcomes. Exactly why this is the case is something of a conundrum, and the reasons why people in more vulnerable places voted for Brexit are complex. It is in part related to the attractiveness of the narrative or perceived plausibility of the message, and the ‘metropolitan elites’ argument appears to have been persuasive.

It is also likely to be related to the fact that the types of complex trading relationships inherent in the UK’s global value-chain relationships with the EU are little understood by either the general public or even by much of the mainstream media. (This lack of understanding is reflected in the widespread repetition of mercantilist arguments regarding the potential effects of EU-UK trade surpluses and deficits on the likely final negotiated UK-EU trade deal.) Similarly, the idea that we are nowadays operating in a post-geography trading environment goes against almost everything we know from international economics. The fact that these narratives have resurfaced in the Brexit debates implies a profound lack of understanding of the complexities of the nature of modern trade even at the highest levels, as well as more generally within society.

Third, local government now has to find ways to respond to the post-Brexit landscape. Much of the thinking underpinning city-regional policy-making follows ideas emerging internationally about [place-based decision – and policy-making](#). Yet, it is still early days. Many of the recently constituted city-regions are still searching for their role and mission, while most Local Enterprise Partnerships have no real capacity to design or effect post-Brexit strategies. Moreover, the movements towards new devolved institutions and powers, especially around the ‘Northern Powerhouse’ and ‘Midlands Engine’ agendas, appear to have largely stalled during the last year, in large part because Brexit has overwhelmed the ability of central government to act.

The result is that there are a range of different and somewhat disparate responses on the part of different parts of the country. Some regions have set up local task-forces, commissions and inquiries to try to examine the local impacts of Brexit and to consider potential local policy responses to limit the possible adverse impacts. But the ability of many localities to seriously consider or respond to these issues is limited. While some of the major city-regions may have the capacity to undertake these initiatives, most do not.

[Sub-state government](#) in the UK is struggling to respond to Brexit and make its voice heard at the national level. It is only at the level of the three devolved administrations that any discussions about sub-national governance have any traction in national government discussion about Brexit. Except for London (and in particular the City), the rest of the UK’s cities and regions are largely operating almost entirely outside of the key Brexit decision-making sphere. Ironically, the fact that those regions and sectors which are most exposed to Brexit have little or no representation in the national government Brexit debates, while the regions and sectors which are least exposed have the most, means that UK sub-national governance is currently little more than an observer, dependent on decisions taken elsewhere.

# What's next for UK agriculture?

By Andrew Moxey, Carmen Hubbard, David Harvey, Anne Liddon and Michael Wallace

Despite representing less than 1% of the UK economy, agriculture sits at the foundation of the social fabric of our countryside. It supplies 60% of domestic food demand and supports downstream and upstream industries which contribute over £100 billion to the economy. The industry also shapes landscapes, habitats and biodiversity, and has considerable political importance.

Our [preliminary modelling](#) shows the sector could be particularly sensitive to the effects of Brexit. There are potential impacts on production and farmgate prices, and even more crucially on public funding. Trade negotiations with the EU and the rest of the world will be paramount, and the impact of trade agreements on the sector will be conditioned by the degree of trade competitiveness (relative tariffs) and openness. It also depends on the status of the sub-sector concerned – whether it is a net importer or exporter – and varies across different types of farm, with some more affected than others.

Even a relatively 'soft' Brexit – a free trade agreement with the EU close to current arrangements – would lead to small producer price changes. Adoption by the UK of the current EU schedule of World Trade Organisation (WTO) tariffs would lead to bigger shifts. In both cases, prices would rise for net import commodities such as beef and fall for net export commodities such as lamb. A unilateral decision to remove agricultural import tariffs would see more domestic farmgate prices fall markedly. In turn, each of these effects would have an impact (positive or negative) on prices for UK consumers.

However, the impact of Brexit will be far from uniform. UK agriculture is highly diverse in terms of farming systems and structures, embracing not only a range of farm types but also different sizes and varying in the intensity with which chemicals are used and/or livestock are grazed. This partly reflects variation in land quality and climatic conditions, but also regional cultural and policy differences.

Our preliminary analysis confirms this: cereal and dairy farms will be relatively unaffected by post-Brexit changes to farmgate prices, while many beef and sheep farms will be more vulnerable. If current farm support payments, principally the Basic Payment Scheme (BPS), are to be removed under future UK agricultural policy, then pressure for structural and land-use change, including agricultural land abandonment, will increase.

The devolved administrations of Northern Ireland, Scotland and Wales currently have responsibility for their own agricultural policies within the framework of the EU's Common Agricultural Policy (CAP). This has resulted in some variation across the UK in how farm support payments (so-called Pillar 1, intended to bolster farm incomes) and environmental and rural development support (so-called Pillar 2, targeted at specific activities) have been implemented. For example, average payment rates per hectare differ markedly. Some parts of the UK have capped maximum payments and the balance of total expenditure varies across different policy targets. There are also some differences in how 'Greening criteria' – EU regulations, which require some farming land to be used for ecological purposes – are applied.



Equally, the design and emphasis of Pillar II schemes varies, perhaps most notably with Scotland alone retaining explicit support for farms within Less Favoured Areas (i.e. areas with a natural handicap or steep terrain). However, the extent to which such variation will be permitted post-Brexit is uncertain, with the UK government indicating agricultural policy powers and budgets will, at least in the first instance, be repatriated from Brussels to London rather than to Belfast, Cardiff and Edinburgh.

The nature of any 'common framework' between the devolved and central governments remains unspecified, as does the basis for funding any support measures. For example, UK government ministers have indicated a preference for abolishing all Pillar 1-type support and focusing instead upon Pillar 2 support, particularly agri-environmental schemes. This is potentially problematic for beef and sheep farms, which tend to be more common in the devolved administrations than in England, and more dependent upon Pillar 1 farm support than other farm types. The scope for Pillar 2 measures to sustain such farms appears limited, unless payment rates can be increased while still observing WTO rules regarding income forgone and costs incurred.

Other differences are also emerging with respect to regulatory controls. For example, UK ministers have indicated a desire to ban live exports and [to embrace GM technology, prompting some opposition from the devolved administrations](#). Funding arrangements are also politically contentious, with suggestions that agricultural budgets could be rolled into the Barnett formula, causing some concerns at the implied redistribution across the UK. Others have called for a ring-fence, or that current levels should be retained with only future changes to be subject to Barnett rules. Additionally, the uncertainty regarding the Irish border has made businesses on both sides anxious about their future.

Regardless of the funding mechanism, it is likely that future UK agricultural policy will be subject to greater domestic scrutiny than previously, as the trade-offs with competing demands for public funding become more transparent than has been the case under the CAP.





# Aviation in the Brexit negotiations

By Hussein Kassim

In terms of aviation, the EU is unique. Outside the EU, governments decide which airlines can operate services, where they can fly, and what fares they charge. Typically, each government designates its own leading airline and allows only one from its partner country to operate services between the two. Since competition is limited, there is no downward pressure on fares and passengers pay high prices.

In the EU single aviation market, which extends beyond the EU28 to eight neighbouring countries in the European Civil Aviation Area (ECAA), the ability of governments to impose constraints on designation, market access, fares, regulation and ownership has been removed. Airlines from any EU member country are free to fly to, from, between, and within the territory of any other EU member state, provided they have a licence issued by their national authority.

Common safety standards applied by the European Air Safety Agency (EASA) and competition rules, including control of state aid, enforced by the European Commission and the Court of Justice of the European Union (CJEU) ensure a level playing field. The EU's common air transport policy covers security, air traffic management and consumer protection, and importantly includes external relations.

As the UK government has said it will leave the single market, the UK will no longer be part of the regional multilateral system created by the EU. Provided that a transition period is agreed in the negotiations, the status quo will continue for a fixed period, which will minimize disruption. Once the transition period expires, however, the UK will become a third country.

There are three major areas that need to be addressed to ensure the smooth continuation of traffic beyond the transition period.

## **Services between the UK and the EU**

When the transition period expires, licences issued by the UK regulator to UK airlines will cease to be recognised by EU members. This is why some UK airlines have sought to create companies elsewhere in the EU that are majority-owned and controlled by EU nationals. UK airlines will lose the extensive traffic rights they enjoy within the EU, and EU airlines will be similarly affected in the UK. Unless an agreement is struck, air services between the EU and the UK will have no framework within which to continue.

The options to avoid this are limited. First, ECAA membership – which would give operators the level of rights they currently enjoy – is only possible provided that the UK continues to comply with EU rules, as well as the CJEU's interpretation of EU law, which the UK appears to have ruled out. It would also require the unanimous agreement of the member states. Second, unlike trade, there is no 'WTO option' for aviation, as it is regulated by the Chicago Convention – an international agreement of almost 200 countries setting out the core principles of civil aviation. Third, the bilateral agreements the UK had with EU countries for aviation before it became a member are now considered to be null and void, so cannot be revived.

This leaves three possibilities. First, the UK and EU could sign a ‘neighbourhood agreement’, offering limited rights to UK airlines, with partial application of EU rules. Second, they could sign an ‘overseas agreement’ similar to that which the EU has in place with the US and Canada. Under such an agreement, the UK would be likely to face attempts from the EU27 to divert particularly transatlantic traffic away from Heathrow. The third option is no deal. This would prevent UK and EU airlines operating to and from the UK. The EU27 have, however, signalled their willingness to be helpful in the latest version of their negotiating guidelines.

### **UK services to non-member states**

Moreover, once the UK leaves the EU, UK airlines will no longer possess the traffic rights under the 114 agreements negotiated by the EU, nor will the airlines of non-member states have an agreement with the EU under which they can operate services to the UK.

Recent reports of an attempt by the UK to negotiate a post-Brexit air service agreement with the US illustrate some of the challenges that it is likely to confront. The talks broke up reportedly due an unwillingness on the part of the US to offer the UK better terms than the current EU–US agreement. In future, the UK will have less leverage in negotiating with third countries than it enjoyed collectively as part of the EU.

Ownership rules are also likely to be a problem. The UK’s future bilateral agreements will only grant traffic rights to UK airlines that are majority owned by UK nationals (as opposed to EU agreements, where the requirement is majority ownership and control by EU nationals). Early reports suggest major UK airlines do not fulfil this criterion.

### **Safety**

Licences issued by the UK Civil Aviation Authority (CAA) will no longer be valid for operating in the EU when the UK ceases to be an EU member state, and the mutual recognition of certificates and approvals will end. It appears unlikely that the UK will be able to remain affiliated to EASA, so the CAA will assume responsibility for certifying aircraft and parts, and licensing pilots and maintenance engineers. However, the CAA has explicitly refused to make any plans for assuming the functions of EASA, on the publicly stated grounds that “it would be misleading to suggest [that] that’s a viable option” – which is an astounding position for a UK government agency to take.

The stakes for aviation in the negotiations are high. The most likely scenario is that market access will be lost by both sides, and that UK industry and consumers will be hit especially hard.

It is hard to see any outcome that will benefit UK airlines or consumers, airlines from abroad that serve the UK, or the employees in firms that depend on air transport.





# Environment

By Charlotte Burns,  
Viviane Gravey and Andrew Jordan

The environment barely featured in the 2016 referendum campaign, despite being [one of the areas most affected by the EU](#). When she became Prime Minister, the early indications were that Theresa May had little, if any, interest in environmental issues. However, in June 2017 Michael Gove was appointed Secretary of State for Environment, Food and Rural Affairs (DEFRA), which led to a step-change in the attention and media profile of environmental issues. Mr Gove has engaged in a charm offensive to bring onside non-governmental organisations and promised the [delivery of a 'green' Brexit](#).

A key risk raised by Brexit is the that of lower environmental standards. The government has suggested that the EU (Withdrawal) Bill ensures that EU policies will be copied and pasted onto the UK statute book, mitigating this risk. However, Andrea Leadsom, a former environment secretary, [acknowledged that a third of the EU environmental rules would be difficult to copy over](#). Crucially, the [environmental principles enshrined in the EU treaties \(such as the polluter pays, and precautionary and prevention principles\) will not be transferred](#).

There is also concern that environmental and food standards will be subject to downward pressure under new trade agreements: [the threat of hormone-laden beef and chlorinated chickens entering the UK market](#) has featured extensively in [media discussions](#). Mr Gove sought to assuage such fears by claiming that [Brexit would not result in lower standards](#), but it remains to be seen whether – and how – this promise can be kept.

Moreover, although the government published its long-awaited [25 year environment plan \(YEP\) in January 2018](#), with some headline commitments on plastics, the plan is [short on detailed commitments and appears to water down existing targets](#). Whilst it is laudable that the government is taking a long-term perspective with its 25-year timeframe, interim targets will be needed to ensure it remains on track, but these have not yet been provided.

The second key challenge relates to [the governance gap](#). The UK will no longer have access to structures for creating, implementing and enforcing EU policy. The expertise and data-gathering capacity of the European Commission, the European Environment Agency and pooling of knowledge across EU states will no longer be available. Moreover, currently the UK has to monitor environmental quality and report its position in relation to a whole host of standards and regulations to the European Commission, and that information is routinely made publicly available. Where the UK fails to meet the standards it can be taken to court, [as in the Client Earth case on failing to implement air quality regulations](#).

This governance gap has featured extensively in lobbying around the EU (Withdrawal) Bill and in parliamentary reports. [Mr Gove has responded](#) to these concerns by announcing the creation of

a new environmental watchdog that will give “nature a voice” and hold the government’s “feet to the fire”. However, the exact powers and functions of this new body will only be decided following a consultation. Moreover, the watchdog is likely only to cover England, as the environment is a devolved matter.

This leads on to the third challenge – future intra-UK environmental policy coordination. As long as the UK has been a member of the EU, the combined effects of devolution and the EU’s constitutional settlements has meant that there are common minimum standards, although states can adopt higher standards if they want to. Under this system, Scotland and Wales have developed different approaches on, for example, climate change, land use and waste.

The adoption of the EU (Withdrawal) Bill has, however, raised a series of issues about the allocation of competence for environmental policy post-Brexit. The original wording of the bill envisaged the UK government retaining all environmental policy competence and deciding which aspects of policy should be devolved. This approach has been condemned as a [power grab by Scotland and Wales](#). There is an ongoing [dispute over how the common frameworks to govern these areas will be decided and administered](#). This is hugely significant from a constitutional perspective, but it is also central to the future development of environmental governance. For example, any English environmental watchdog will have to coordinate its work with similar agencies or watchdogs in the devolved regions and nations, and there is a strong case for a pan-UK body. However, agreement on this issue currently remains elusive.

Overall then, there has been a good deal of movement in this policy sector driven in part by need, as Brexit has created a significant workload for DEFRA. However, the shift in emphasis is also down to Mr Gove, who has brought some much needed drive and energy to the environmental policy field. Yet there is still much to do. Whilst the commitments that have been promised are laudable, there is still limited policy detail and some intractable political issues that raise questions about how post-Brexit environmental policy will be coordinated and managed.





# Financial services

By John-Paul Salter

Despite the long list of problems resulting from the 2007/08 crisis, the financial sector remains an important part of the UK economy. It employs around 1.2 million people, constitutes a large part of the country's exports, and contributed around £72bn to the Treasury's coffers in 2016-17. Since before the referendum, various commentators and industry leaders have stressed the challenges to the sector posed by Brexit. However, only recently has any clarity emerged. This is not because the underlying issues have changed, but because the government finally seems to have settled on a position about the UK's future membership of the single market and customs union.

There are three interconnected issues to consider. First, there is the question of continued market access after Brexit. The EU-wide market in financial services rests on a common regulatory framework and the system of 'passporting'. Once a firm has obtained authorisation in any member state, it is able to conduct business in all others without needing further authorisation. British financial firms such as banks, insurance companies and securities dealers currently use this system to sell services to clients in the EU. Furthermore, many firms from 'third countries', including the US, Japan, South Africa, Switzerland and China, have made London the base for their EU operations.

However, passporting rights are only available to firms domiciled in an EU or EEA member state. As Theresa May made clear in her recent speech, the UK intends to leave the first and not join the second. As a result, all firms based in London will lose their automatic access to EU markets and will need to establish a new presence somewhere in the EU to continue offering their services to European clients.

One possible solution could emerge from a post-Brexit trade deal with the EU, which could, in theory, contain financial services provisions. In practice, though, this is highly unlikely: such agreements rarely cover services in great depth, and anyway the EU has long opposed a sector-by-sector deal.

Alternatively, there is an existing legal mechanism which could facilitate market access. The EU can judge the regulatory regimes of third countries as equivalent to its own, and allow their firms access to European markets. The US, Australia, Canada, Switzerland and Bermuda have already been granted this status for certain areas of business. Since on Brexit day the UK and EU's regimes will be perfectly aligned, the decision on equivalence ought to be straightforward.

But the key difficulty is that equivalence is nowhere near as uniform as passporting: it does not cover the full range of services currently sold by UK-based firms into the EU, nor the full range of clients. Most troubling for the City, and also for the Treasury, is the fact that banking services could not be offered under an equivalence regime.

The second issue concerns the trajectory of regulatory policy in the two jurisdictions. Whether access is granted as part of a free trade agreement, or under existing legislation (which is more likely), its long-term future rests on the continued judgement – on the part of the EU – that the two regimes

remain equivalent. Were the UK to decide to significantly diverge from the EU, the Commission could revoke access at only 30 days' notice. In recent years, London has argued strongly against certain regulatory changes that were favoured by the rest of the EU—such as a cap on bonuses paid to bankers—which indicates that regulatory preferences are likely to diverge.

Providing a stable model to enable long-term access for UK-based firms to European markets, then, will place significant pressure on British regulators and politicians to keep as closely aligned as possible with the EU's regulatory regime. This may well become politically difficult to sustain with time.

Third, even putting aside policy convergence, considerable effort will be needed to foster cooperation between the two at the institutional level. British regulators are currently represented in the many venues in which EU financial policy is made: in the working groups under the Commission and Council, and in the technical committees convened by the European Banking Authority. This will end with Brexit, but it will be in neither side's interests for the UK to be frozen out altogether. Thus, new channels of communication will need to be established to protect the otherwise potentially fragile status of the two sides' regulatory equivalence.

This will have to extend far beyond policy and take in cooperation over supervision: as firms shift their operations around the EU to make use of whatever licencing arrangements are available to them, the resulting complexity in their structures will start to pose systemic risk, which both British and European regulators will want to monitor closely. Both currently have experience in cooperating over the supervision of cross-border firms, but this will become more delicate after Brexit.

Clearly, then, much remains to be done if British financial services firms, and foreign firms based in London, are to continue to enjoy anything like the current levels of access. New access provisions will need to be negotiated, which in turn will rely on a delicate judgement of the continued alignment of regulatory policy. The catch is that all this will require considerable clarity on the part of the British government on its priorities, and for it to embrace a difficult set of trade-offs: either alignment and market access, or divergence, sovereignty and a rough ride for the financial sector.





# Fisheries

By Craig McAngus and Christopher Huggins

In addition to the EU (Withdrawal) Bill, the UK government has announced it will table a separate fisheries bill that would apply as the UK leaves the Common Fisheries Policy (CFP). This would allow the UK to exercise full control over its Exclusive Economic Zone (EEZ) – the area around the UK’s coastline over which it has exclusive jurisdiction. This fisheries bill was due to appear in autumn 2017, along with a White Paper from the government to set out its key aims. As of March 2018, there is still no sign of either.

Fisheries management is a complex and technical policy area, but this has not caused the delay. Despite fisheries being a devolved policy area in terms of administration and day-to-day management, the international negotiations required to negotiate Total Allowable Catches (TACs) and quotas of different species is a competence reserved by the UK government. The UK and devolved governments need to cooperate in a post-CFP environment and agree on a so-called ‘common framework’.

These frameworks are essential (and will likely apply in other policy areas too, such as agriculture and the environment) because they will outline the responsibilities and obligations of the different levels of government when it comes to fisheries policy. However, no agreement has yet been forthcoming regarding these frameworks. This has undoubtedly held up the publication of the white paper.

The UK government had stated that the CFP ought not to apply during the transition period and that the UK should, at this point, take on full, independent coastal state status. However, recent developments have resulted in a draft agreement whereby the CFP will effectively apply until the end of the transition period at the end of 2020.

Aside from the potential administrative capacity issues regarding becoming a coastal state, it is not yet clear what price the EU would demand for withdrawal from the CFP after 2020. The waters around the UK, currently part of the EU’s EEZ, are extremely valuable to the fishing industries of other EU countries, especially Spain and France. With the UK seeking to secure a bespoke trading arrangement with the EU post-Brexit, it is not difficult to imagine fisheries becoming something that the UK can ‘trade-off’ given the relative unimportance of the fishing industry to the UK economy.

This has worried some in the fisheries industry and led to calls, particularly from the catching sector, for the government not to use fisheries policy as a bargaining chip. However, while desired by some, the complete closure of British waters to foreign fishing vessels is unlikely. This is due to the wider relationship being negotiated with the EU, as well as international obligations to allow other coastal states access where there are surplus stocks. This highlights how fisheries is entangled in the UK’s wider diplomatic relations, both with the EU and its non-EU neighbouring coastal states.

Any post-Brexit trading arrangement will be crucial for the fishing industry itself. Although the catching sector appears enthusiastic about leaving the CFP, there will almost certainly be tariffs and other

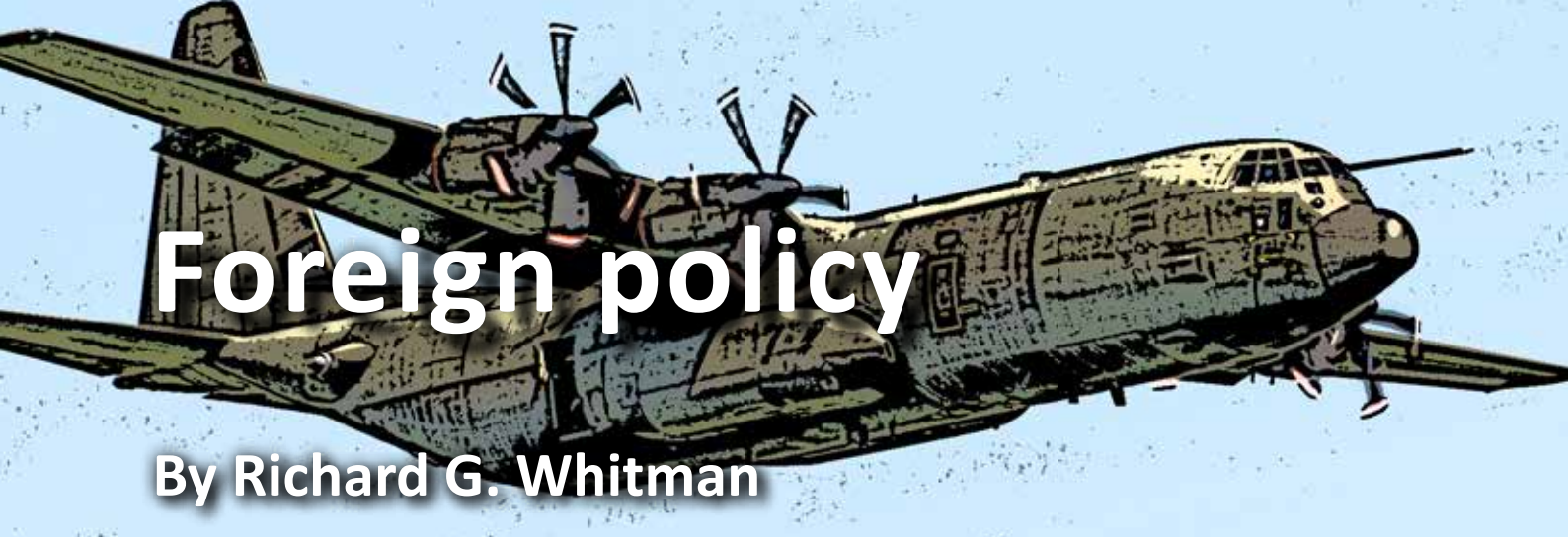


costs for businesses that export seafood into the EU market. Norway, for example, is inside the single market but outside the CFP. Fisheries is not covered in its EEA agreement and Norwegian exporters therefore face tariffs and charges when sending seafood into EU markets. There is no reason why this would not apply to the UK once it leaves the CFP. Non-tariff barriers are also an area of concern, especially given fish and seafood are perishable products and depend on not being delayed in transit.

The CFP is not without its critics. Leaving the CFP affords the UK a unique opportunity to shape a more sustainable fisheries management regime which meets its needs. Coastal states that border the UK, namely Norway and Iceland, have developed effective fisheries management schemes which promote both ecological sustainability and sectoral profitability. While the UK has outlined some guiding principles for post-Brexit fisheries management in its 25 Year Environment Plan, including a commitment to sustainability and scientific evidence to inform decisions, the absence of a fisheries white paper means these commitments remain vague at best. Furthermore, the absence of a fisheries bill means certainty of, and legislative commitment to, these principles is still lacking.

Overall, the issues around what part fisheries will play in an overall EU-UK deal, as well as tariffs and other charges for exporters, mean that the future for the UK fishing industry is uncertain. The future will not be plain sailing.





# Foreign policy

By Richard G. Whitman

Foreign and security policy are areas in which the UK government has offered considerable detail as to what it wants from a future relationship with the EU. Two of the major speeches that the Prime Minister has delivered since invoking Article 50 (the Florence and Munich Security Conference speeches) devoted a significant amount of attention to the EU-UK post-Brexit foreign and security policy relationship.

The centrepiece of the Florence speech was the proposal for “a new relationship on security” between the EU and the UK, underpinned by a “Security Treaty”. Detailed UK government ambitions for the broader foreign policy, security and defence policy relationship had been published 10 days earlier in [two ‘future partnership’ papers](#). Both [position papers](#) stressed the degree of shared values, objectives and threat perception between the UK and the EU. The thrust of the argument was that the UK has much to lose from being more detached from the EU.

May’s Munich Security Conference speech was a further high-profile reinforcement of the message that the UK government is seeking a degree of post-Brexit security integration that retains a relationship as close as possible to the current one.

The complex distribution of EU security policy – operating on the basis of different degrees of integration between the member states, pursued across different institutions (with differing roles for the European Commission, other EU agencies and member states) and based upon different EU treaty articles – throws up similar complexities to those involved in negotiating a future trade relationship.

For the UK to seek the closest possible relationship with the EU and its member states on internal security, and especially on issues of crime, terrorism and borders, [creates a significant negotiating challenge](#). This is because it conflicts with the government’s red line on a post-Brexit UK being outside the jurisdiction of the Court of Justice of the European Union (CJEU). The EU would likely find it impossible to agree arrangements for the exchange of information for policing and judicial cooperation that would not be covered by EU law and CJEU oversight. Moreover, because additional elements of the UK’s external relations such as the environment, food security, energy and development policy – all of which contain security dimensions – are currently intertwined with EU policies, the scope of an EU-UK security treaty could be impressively broad.

Foreign and defence policy cooperation present less formidable institutional and legal barriers. The member states retain a pre-eminent role in foreign and defence cooperation. But the recent evolution of Brussels-based decision-making and implementation structures of the EU’s Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) present a ‘docking problem’ for a non-member state. Only member states are members of the EU’s key foreign, security and defence decision-making bodies such as the Foreign Affairs Council and the Political and Security

Committee. Non-member states have been granted a range of formats to share views and to facilitate collaboration on foreign policy issues and security missions outside of these decision-making bodies. But none of these arrangements are likely to prove attractive to the UK as they do not allow for sufficient influence on EU policy formation (via direct participation in key institutions). They only allow for signing up to EU foreign policy positions and security and defence operations after decisions on content, scope and action have already been determined. This is essentially participation and partnership on a 'take it or leave it' basis.

Ultimately, and as with much else in the Brexit debate, the government needs to make a determination as to what form of cooperation with the EU can be combined with an increase in the UK's ability to take its own decisions on foreign and security policy. But, just as importantly, if the government's ambition for a new post-Brexit 'Global Britain' is to emerge, it needs to define a new strategically ambitious UK foreign and security policy: one that will make the UK no less secure through a high degree of cooperation with the EU, but also allows it to increase its international influence through greater control of its own foreign and security policy.





# Health and the NHS

By Tamara Hervey and Sarah McCloskey

A year after Article 50 was triggered, the promises on the Leave campaign's [big red bus](#) live on in the public debate. Amidst sustained pressure on resources, some [have taken to the streets](#) demanding more funds for a struggling NHS. Challenges from Brexit threaten to further strain the NHS and the health and social care sector as a whole.

If the withdrawal agreement enters into force, an immediate staffing crisis for the NHS and social care is likely to be avoided. Future rights for EU27 citizens already working in the UK were [agreed in principle](#) in mid-March. But the NHS has never trained enough doctors for its own needs: NHS England [alone](#) depends on 10,000 doctors and 20,000 nurses from the EU27. Even if these staff remain in the UK, there is currently insufficient capacity planning for the future. The end of free movement after the transition period may mean fewer NHS and social care staff from EU27 countries, and might have a deterrent effect on [life sciences research](#).

Granted, the [EU \(Withdrawal\) Bill](#) provides some legal continuity. An [Immigration Bill](#) could recognise the needs of the health and social care sector. But the UK [is committed](#) to ending free movement. It envisages that EU27 citizens resident in the UK will be required to apply for a new residence status. The original proposal of a two-year grace period has been cut significantly to just six months in the draft withdrawal agreement. And a promised white paper on immigration has been [delayed](#). This lack of clarity is [already affecting](#) health professionals.

Depending on its design, a new immigration system could have deeply damaging effects on the NHS. Free movement between the UK and the EU27 has been highly advantageous to the health sector. The operation of the NHS and life sciences research are predicated on career-long fluidity of movement, protected by EU rights enforceable by law.

In other areas, potential problems seem to have been successfully avoided. The withdrawal agreement stipulates that the reciprocal healthcare arrangements covering the [190,000](#) British pensioners living in the EU27 are to be [continued](#). But other reciprocal healthcare arrangements – in particular, the European Health Insurance Card (EHIC) – will end at the end of transition. This is despite the UK's [avowed commitment](#) to retain the current system of reciprocal healthcare, which has now been [left to the next phase](#) of the negotiations, where agreement will be procedurally much more difficult.

Regulatory change, and a loss of international regulatory sway, also promise to be problematic for the NHS. While the government has [recently conceded](#) that shared regulatory standards are highly advantageous to market access, the combination of its ongoing commitment to '[taking control of our own laws](#)' and the removal of legally automatic [mutual recognition](#) of standards unless divergence is justified means that this political position remains highly uncertain. As the Health Secretary put it, '[the right to choose to diverge](#)' from the EU post-Brexit remains. Divergence would raise significant

problems in a host of areas relevant for the NHS, including medical devices; pharmaceuticals; blood, tissues and organs; clinical trials; and data protection. Little wonder that stakeholder evidence to the [House of Commons Health Committee](#) gave a “consistent and repeated message” calling for as close regulatory alignment as possible.

The UK’s influence on future regulation is also at risk. The European Medicines Agency (EMA) is relocating to Amsterdam. As its seat is only currently secured as part of the EU delegation, the UK may [lose its voice](#) in the International Conference on Harmonisation (for pharmaceuticals) and the International Medical Device Regulators Forum (for medical devices). These organisations work towards global regulation and hold significant weight in major markets such as the EU, the US and Japan. To retain a place in these international forums, the UK needs to start lobbying existing members now to secure membership post-Brexit.

UK trade policy will also pose questions for the future of the NHS. What happens in trade negotiations with the EU and other countries will indicate what to expect for the post-Brexit health sector. Negotiation of these agreements will be very telling in terms of what the UK government values. For example, it will demonstrate the level of its commitment to preserving shared regulation, and the free movement of professional and research staff.

More broadly, it will illustrate how much value the government places on the NHS as a public entity, still largely not open to private investors. For some people, the ‘[best possible deal for the United Kingdom](#)’ in such trade agreements may include changes to NHS England to allow access for foreign investors. The need for explicit reservations to prevent this was recognised by the EU and member states during negotiations with the US over the Transatlantic Trade and Investment Partnership (TTIP), but it is unclear whether the UK will be able to or want to negotiate similar terms. The ‘devolved’ have not gone down this route for the NHS, but it remains unclear how ‘repatriated’ powers to Westminster to conclude trade deals will affect powers over health and social care policy in Scotland, Wales and Northern Ireland.

If the withdrawal agreement enters into effect, ‘cliff edge’ concerns about disruptions to medical supply chains will not arise. Post-transition, the question is whether the UK will remain sufficiently aligned in terms of product standards to be an attractive market for novel pharmaceuticals and the like. The role of the UK within structures for medicines approvals, pharmacovigilance, and clinical trials all remains uncertain. The EU27 staff who currently work in the NHS will be able to stay, though will have to comply with new UK rules about immigration status. Future capacity planning will have to take place within those as yet uncertain rules. UK trade deals with other countries may involve elements that affect the NHS, or the NHS may be explicitly excluded from their effects.





# Higher education

By Ludovic Highman, Simon Marginson,  
William Locke and Vassiliki Papatsiba

## What's happened since triggering Article 50?

There has been little clarity offered to the UK higher education sector on the nature of the future EU-UK relationship. Student mobility may be affected, there is still work to do on clarifying the position of non-UK EU staff in UK institutions, and access to the European Research Area (ERA) – crucial for the majority of UK universities – is far from guaranteed.

Agreeing on a new EU-UK partnership in higher education, research and innovation is [government policy](#). However, the negotiations for an agreement have been slow and narrowly focussed on the hard sciences, revealing the sector's vulnerability. There are still bottlenecks – particularly regarding immigration and free movement – which affect staff, students and research collaboration.

A positive outcome for the rights of EU citizens currently living in the UK was confirmed in the phase one negotiations in December, and the UK has now conceded that the same will apply to those arriving in the transition period. But this does not remove the long-term threat: the UK remains committed to 'taking back control of its borders' and ending free movement. This means, inevitably, new controls and reduced rights for EU staff and students. But, [as Jonathan Portes explains in this report](#), we have little or no idea as yet what form these will take.

Non-UK EU and international student [applications for 2018 entry were up by 3.4% and 11%, respectively](#). However, this short-term increase does not guarantee that EU student flows will be sustained in the medium term. Non-UK EU students may be keen to enrol while there remains a degree of uncertainty, not least to pre-empt any possible change in the fees charged to EU students.

There is consensus in the sector on maintaining full access to the ERA, in particular Horizon 2020 and its successor programme, at least as an associate country (albeit that this would not grant voting rights). The EU's Framework Programmes are the most effective multilateral funding schemes in the world and are therefore a practical and efficient way to support excellence in international collaboration. As yet, the government has failed to properly think through the implications of Brexit for the UK's current leadership role in European research. Over several decades, EU programmes have grown to become an integral part of the UK funding system, accounting for 11% of UK universities' research income in 2015/16. From 2007 to 2013 the UK received €8.8 billion of direct EU funding for research, which was a significant return on an estimated contribution of €5.4bn. The UK should also take into account the non-financial benefits of the Framework Programmes. In the last decade the UK's output with EU co-authorship has gone up to include over 30% of all UK papers.

The Treasury has guaranteed to underwrite applications submitted before March 2019, but collaborative bids can take 18 months to complete. However, some UK researchers are hesitant to bid for grants given the uncertainty around their future eligibility or ability to lead projects after Brexit.

### **Learning from precedent**

Freedom of movement is just as much a red line for the EU as it is for the UK. Switzerland provides a precedent for the consequences of restricting freedom of movement for EU nationals following a national referendum. In this case, the reaction of the EU was unequivocal. Switzerland was expelled from parts of Horizon 2020 and the Erasmus Plus programme from 2014 to January 2017, notwithstanding its extensive contribution to European and global science and its long tradition of multi-country collaboration.

Thousands of Swiss students whose degrees included a year abroad risked being stranded, which forced the Swiss government to launch an emergency ‘Swiss-European Mobility Programme’ for both outgoing Swiss-based students and incoming European students, entirely funded by the Swiss taxpayer. The consequences for Swiss higher education and research were **disastrous**, particularly in research intensive universities, of which **two rank in the world’s top 12**. For example, as a result of the referendum, the École Polytechnique Fédérale de Lausanne (EPFL) says it missed two European Research Council (ERC) application deadlines in 2014. It also estimated that around ten starting and so-called consolidator grants, for young and mid-career researchers, were lost. Some scientists were also forced to rush into submitting applications earlier than they would have liked, almost certainly reducing their chances of success. It also lost access to a range of MSc and researcher mobility schemes, while the country as a whole lost the opportunity to define the future shape of EU research funding.

The EU-UK relationship does not exist in a political vacuum. Should the EU depart from the Swiss precedent and allow the UK to limit the freedom of movement while retaining similar access as now, the Swiss themselves would demand concessions – a domino effect the EU is keen to avoid.

### **What might happen next?**

It is likely the number of UK-based applications for EU grants will slowly diminish, unless an independent agreement regarding higher education, research and innovation is reached before the final deal. Cherry-picked sectoral deals are unlikely to precede any final arrangement and could be subject to immediate suspension should the UK breach its obligations in any other area, as happened in the Swiss case.

It is unlikely a mobility scheme for students will be funded nationally. There is a real risk that the full cost of studying abroad will be transferred to students. UK universities are taking it upon themselves to strengthen informal European networks, but face time and money constraints. New relationships require both top-down and bottom-up efforts, and individual UK universities do not currently have the resources to single-handedly replace a pan-European mobility scheme.

Tampering with the potential of UK academics to compete for research funding has already had damaging effects, indicated by system-level evidence. The proportion of EU projects coordinated by British research teams fell sharply after the referendum, from 16.9% in 2016 to 12.6% of all funding in 2017, dropping behind Germany. Ongoing participation to the end of Horizon 2020 and full participation in the 9th Framework Programme need to be secured as soon as possible to give researchers the certainty they need to submit quality bids. The fate of mobility exchanges under Erasmus Plus must also be addressed, allowing universities time to prepare and provide suitable arrangements. The government cannot single-handedly negotiate an optimal deal without the experience in European collaboration of its universities. They must work hand in hand to explore new opportunities, while not being afraid of voicing the many challenges lying ahead.



# Pharmaceuticals

By Jean McHale

One year on since Article 50 was triggered, many uncertainties remain regarding the regulation of medicinal products. This is unsurprising given that it was not slated to be addressed in the first stages of the negotiations and that it is an area where there would need to be a specific sectoral deal if there is going to be an agreement.

Nonetheless, this lack of clarity is a legitimate concern for the public, the NHS and the pharmaceutical industry. In July 2017 in a letter to the *Financial Times* the Secretary of State for Health Jeremy Hunt and the Business Secretary Greg Clark set out their hopes for the position post-Brexit. They emphasised the need to place patient safety at the heart of regulation and stressed the necessity for “certainty and long-term stability”. They were concerned to facilitate cross-European initiatives related to developing new products, facilitating big data, genomics and supporting medical research. They also indicated that the Medicines and Healthcare Products Regulatory Agency (MHRA) intended to work with “all types of innovators, ensuring new medicines can reach patients quickly”. Moreover, in a global market the government intended to continue working with the European Medicines Agency (EMA), as well as other “international partners”.

They went onto say that:

“Whatever the outcome of Brexit negotiations... we will set up a regulatory system that protects the best interests of patients and supports the UK life science industry to go from strength to strength. We will seek to process licences as quickly as possible, certainly no more slowly than at present. Our fee pricing will be competitive with current levels. However, our door will always be open to a deep and special relationship with the EU which remains the best way to promote improved patient outcomes both in Europe and globally”.

Eight months on, the specifics of such a relationship and how precisely it can be achieved are still unclear. One certainty is that the EMA will move from the UK to the Netherlands. In her recent Mansion House speech, the Prime Minister indicated, however, that the government intended to continue working with EU agencies such as the EMA as an associate member. However, this may prove simply aspirational. It has been suggested that the legal instruments establishing the EMA may make associate membership impossible, although [there is provision](#) for “representatives of international organisations with an interest in the harmonisation of regulations applicable to medicinal products to participate as observers”.

In terms of drug approval processes, while the MHRA has indicated that domestic approvals can still continue for drugs, the UK will be operating outside the EU’s central drug approval system. The MHRA will need to develop its own drug approval processes in areas such as orphan drugs. While this may be possible, clearly it will need sufficient resources. Some assurances in this regard have been given. In [evidence to the Health Select Committee](#) Lord O’Shaughnessy, Parliamentary Under Secretary of Health and Social Care commented that, “I think the MHRA does about a fifth of the



EMA’s pharmacovigilance work, so...we do have domestic capacity.”

If this is the case in the short term, for the long term such resourcing must be maintained. Lord O’Shaughnessy also said the UK would be “well capable” of drawing up a new licensing framework by March 2019. It is unclear what progress has been made with this framework at present. What is clear is that such forward planning is critical given the limited time frame before the Article 50 period ends. Further [evidence to the Health Select Committee](#) from the pharmaceutical industry emphasised the need for clarity as early as possible to ensure that they could make necessary changes.

There is also a very real concern that the UK may in future be regarded as a ‘[second priority launch market](#)’ for pharmaceuticals, with consequent delays to patients in receiving drugs. In evidence to the House of Commons Health Select Committee in January 2018 it was suggested that it might be possible for the UK to streamline and become more attractive to pharmaceutical companies, but nonetheless [the UK is still likely to be behind the US and the EU](#).

The UK is due to implement a new EU Clinical Trials Regulation in 2019, after leaving the EU. If there is a transition agreement, then the UK will have to fully implement the Regulation. Once the UK leaves the EU, as matters stand currently in relation to the negotiations, the UK will no longer have access to EU infrastructure, including the new EU Clinical Trials database which is an integral part of the operation of the Regulation. Again, unless there are specific agreements, the UK will be excluded from the EU pharmaco-vigilance networks, which enable information on suspected serious adverse reactions to drugs to be transferred across the EU, and this appears mandated by Article 7 of the draft UK-EU withdrawal agreement.

While there have been some reassurances in the past year, there remains a fundamental lack of detail and clarity as to how processes will operate post-Brexit. There are real concerns that without future assurances there may be pressure to reduce some regulatory standards in the future in favour of commercially driven considerations.





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