

# Brexit Update

Client Alert | January 31, 2020

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At 11 pm GMT, the United Kingdom left the European Union.

## What has changed?

The UK will immediately enter into a transition period which is scheduled to last until December 31, 2020 to provide time for a new relationship between the UK and the EU to be agreed.

During the transition it may seem as if nothing has changed. The UK will remain in the EU Customs Union and Single Market and will continue to apply and be bound by all EU laws. This will include EU laws on free movement of goods, services and capital, competition laws, sanctions laws, worker's rights, environmental protections, etc.

British and EU citizens will continue to benefit from free movement during the transition period. Companies established in the UK will continue to be able freely to sell their goods and services throughout the EU.

The principal changes to the [Withdrawal Agreement](#) negotiated by Prime Minister Johnson related to the position of Northern Ireland, with Northern Ireland becoming in effect a special economic zone from the end of the transition period with largely unrestricted access to both the EU and UK markets. In practice, this will require some form of customs controls between Northern Ireland and the rest of the UK but the extent of the checks to be required is unclear. It has been agreed that there will be no checks on the land border between the Republic of Ireland and Northern Ireland.

The main immediate impacts of tonight's withdrawal are that the UK's ministers will no longer participate in the Council of the EU, it gives up its European Commissioners and there will no longer be any UK members of the European Parliament or UK representatives in any other EU institution. The UK will no longer influence EU law, regulation or policy.

And, critically, negotiations now begin on the future relationship. As the Irish Taoiseach Leo Varadkar said recently, "Brexit is not yet done, it is only half time".<sup>[1]</sup>

## The key issues for negotiation

Alongside the Withdrawal Agreement, the UK and EU agreed a revised [Political Declaration](#) setting out the basis of their future relationship. It explicitly states that it established "...the parameters of an ambitious, broad, deep and flexible partnership ... with a comprehensive and balanced free trade agreement at its core...". The UK and the EU will each publish their negotiating mandates for the new relationship prior to the commencement of negotiations which are expected to begin after February 25, 2020 and it remains to be seen how closely those mandates reflect that ambition.

The fundamental issue for negotiation will be the EU's desire for a regulatory level playing field, particularly in relation to labour, environmental and state aid rules. The UK has made clear its requirement to diverge from EU standards while the EU is saying it wants the UK to maintain "dynamic alignment" with the EU whereby the UK must achieve similar outcomes to EU rules as they evolve in the future.

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[Patrick Doris](#)

[Anne MacPherson](#)

At one level the fact that the UK and EU are currently aligned on trading rules is helpful. But the negotiation over how far the UK can diverge from EU rules and the price it may pay for doing so by way of diminished access to EU markets, combined with the EU's fear that the UK will become a lightly regulated competitor, will be highly controversial. The UK Government has said that it will not seek divergence for the sake of it but that some businesses will be winners and some losers in the new post Brexit world.

Access for coastal EU States to UK fishing waters will also be a highly charged political issue for both sides notwithstanding its relatively small economic importance. Financial services will inevitably be a significant issue given its economic importance to the UK and the extent to which EU businesses will need to have continued access to London's financial capability.

Residency rights for EU citizens in the UK and vice-versa, and the extent of any role for the Court of Justice of the EU in adjudicating on the arrangements will also be contentious.

## **Time line to the next cliff edge**

The terms of the Withdrawal Agreement allow the UK-EU Joint Committee to extend the transition period by up to two years but requires any extension to be agreed before July 1, 2020. Ursula von der Leyen, President of the European Commission, has suggested the negotiations will need to take place in stages, with the transition period being used to prioritise key EU issues such as trade in goods and fisheries. But – for now – Prime Minister Johnson has ruled out this approach and has formally legislated against any extension to the transition period which he can only reverse through new legislation. The new cliff edge is therefore December 31, 2020.

It is clear, not least from the three extensions of the original Article 50 deadline, that both sides want to avoid a “no deal scenario”. If however there is no deal by the end of the transition period, the Withdrawal Agreement will still be in place. This means the UK would still be committed to the financial settlement and Northern Ireland trade would be covered by the protocol. However, from that point, UK-EU trade will be on World Trade Organization terms, there would be no deal on financial services and the UK would have to rely on previous international conventions to which the EU States are party for issues such as co-operation in matters relating to security.

## **The domestic mood**

Prime Minister Johnson's victory in the December General Election gave him a substantial majority in the UK Parliament which has enabled him to press forward with Brexit. While it is likely there will be a number of demonstrations from both sides of the debate, the UK Government is only planning a modest acknowledgement of Brexit today.

Indeed, the UK Government appears to be focusing on domestic issues. There is much emphasis on regional infrastructure projects including the possibility of a new high speed rail line to be built initially from London to Birmingham and then on to link key northern English cities. There has long been talk of the “Northern Powerhouse”, an initiative to boost investment in the north of England, and the Government recently provided support to a failing regional airline as a further indication of its willingness to intervene to protect domestic commercial interests.

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[1] See also the European Commission paper “Questions and Answers on the United Kingdom's withdrawal from the European Union on 31 January 2020” (January 24, 2020).

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This client alert was prepared by Charlie Geffen, Patrick Doris and Anne MacPherson in London.

# GIBSON DUNN

We have a working group in London (led by Patrick Doris, Charlie Geffen, Ali Nikpay and Selina Sagayam) addressing Brexit related issues. Please feel free to contact any member of the working group or any of the other lawyers mentioned below.

Ali Nikpay – Antitrust <a href="mailto:ANikpay@gibsondunn.com">ANikpay@gibsondunn.com</a> Tel: 020 7071 4273	Charlie Geffen – Corporate <a href="mailto:CGeffen@gibsondunn.com">CGeffen@gibsondunn.com</a> Tel: 020 7071 4225	Sandy Bhogal – Tax <a href="mailto:SBhogal@gibsondunn.com">SBhogal@gibsondunn.com</a> Tel: 020 7071 4266
Philip Rocher – Litigation <a href="mailto:PRocher@gibsondunn.com">PRocher@gibsondunn.com</a> Tel: 020 7071 4202	Jeffrey M. Trinklein – Tax <a href="mailto:JTrinklein@gibsondunn.com">JTrinklein@gibsondunn.com</a> Tel: 020 7071 4224	Patrick Doris – Litigation; Data Protection <a href="mailto:PDoris@gibsondunn.com">PDoris@gibsondunn.com</a> Tel: 020 7071 4276
Alan Samson – Real Estate <a href="mailto:ASamson@gibsondunn.com">ASamson@gibsondunn.com</a> Tel: 020 7071 4222	Penny Madden QC – Arbitration <a href="mailto:PMadden@gibsondunn.com">PMadden@gibsondunn.com</a> Tel: 020 7071 4226	Selina Sagayam – Corporate <a href="mailto:SSagayam@gibsondunn.com">SSagayam@gibsondunn.com</a> Tel: 020 7071 4263
Thomas M. Budd – Finance <a href="mailto:TBudd@gibsondunn.com">TBudd@gibsondunn.com</a> Tel: 020 7071 4234	James A. Cox – Employment; Data Protection <a href="mailto:JCox@gibsondunn.com">JCox@gibsondunn.com</a> Tel: 020 7071 4250	Gregory A. Campbell – Restructuring <a href="mailto:GCampbell@gibsondunn.com">GCampbell@gibsondunn.com</a> Tel: 020 7071 4236

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