



Brexit: two months to go

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The UK is due to leave the European Union in just eight weeks' time. The Government's deal has been emphatically rejected, the EU appears unwilling to budge, and Parliament is struggling to find an outcome it can support.

If nothing changes, the UK will be walking away from over 40 years of EU membership without a deal in place. The legal basis for the UK–EU relationship will fall away.

This paper looks at the UK Government's progress in preparing to leave the EU without a deal. It assesses the status of Brexit legislation and the practical preparations required for day one outside the EU.

Summary

The UK leaving the EU without a withdrawal agreement on 29 March 2019 – and therefore without a transition period – would be the biggest change in relationship in the shortest possible period of time. Even if the Government had been preparing for no deal from the day after the referendum in 2016, under three years would have been a much more compressed timetable than was required for other major (though much simpler) programmes like Universal Credit, Automatic Pension Enrolment or the 2012 Olympics. But the Government did not start preparing for no deal from day one – the actual timelines have been much shorter.

The problems facing the Government in being ready for a no deal Brexit are largely a reflection of the sheer scale and complexity of the task. But the Government's approach to no deal preparations – being unwilling to talk publicly about plans and developing an adversarial relationship with Parliament – has caused further problems. It is not just the Government that needs to be ready – business and citizens need to know how the changes will affect them and what they need to do: the Government only started its communication effort late in 2018.

The Prime Minister is heading back to Brussels to try and reopen negotiations on the Withdrawal Agreement. The EU is so far standing firm and attempts from MPs to try to request an extension of Article 50 have failed. The default outcome remains the same: a no deal Brexit.

Legislation

- The Government may have won a formal confidence vote but is struggling in both the Commons and the Lords to control parliamentary business. That means it cannot, as governments normally do, rely on its Commons majority to get its business through.
- It looks increasingly unlikely that the Prime Minister will be able to get the six outstanding Brexit bills* through Parliament in time. Some of the major bills still have not started their Lords stages – where the Government does not control time. Any piece of legislation can become a target for people wanting to frustrate the Government's intentions.
- The Government is also behind on secondary legislation. Despite a major push from government departments, only around 100 of the 600 statutory instruments required for a no deal Brexit have made their way through Parliament.¹ Almost half are yet to be tabled.

* The Trade Bill, Agriculture Bill, Fisheries Bill, Immigration Bill, Healthcare (International Agreements) Bill and the Financial Services Bill.

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- Legislation can theoretically be rushed through Parliament, but that would bypass important scrutiny and, most importantly, require a stable majority – something the Government cannot currently bank on. That means there is a very significant risk that the laws that need to be in place for a no deal Brexit will not be on the statute book.

Implementation

- The even bigger risk to readiness is having the new processes, new systems and new staff in place by March 2019 to avoid disruption. The Government has not had enough time to begin with to do everything required, but has made its problems worse by refusing to openly engage and keeping its plans secret.
- Business will need to be ready to use new systems and operate under new rules – but was told about plans too late (and has been outspoken about the lack of preparedness). The UK has still not said what tariff regime it would operate with the EU after Brexit. Business is normally given years to prepare for these kinds of changes, but in this case has had just a few months – with ‘technical notices’ released by the Government only in August 2018. For some businesses, mainly the bigger ones, contingency plans have been in place or activated since the end of last year. But for many there is simply no work being done to prepare.²
- The Government is also seeking to roll over existing trade deals and other EU agreements with countries around the world that the UK has access to as a member state. While some progress has been made, particularly on air services agreements, the Government has not said how many replacement agreements are outstanding.
- There are limits to how far the UK can be ready for no deal. What happens also depends on the EU. The EU has said that in the event of no deal it will not negotiate a ‘managed no deal’ with the UK but will put in place unilateral contingency measures. It has already taken some action on some aspects of financial services and on flights between the UK and individual member states. But its aim will be to minimise disruption for EU citizens and businesses – not soften the blow for the UK.

Legislation: readiness for no deal

In Table 1, a green rating indicates where a bill is likely to receive Royal Assent in time for an exit from the EU without a deal; amber means that this is uncertain; and red means that the Government will face major challenges in passing the required legislation before March 2019.

Table 1: Legislative readiness for no deal

| Legislation | Description | Readiness for no deal | Why? |
|------------------------|---|-----------------------|---|
| EU Withdrawal Act | Repeals the European Communities Act 1972 and ensures legal continuity | Green | Received Royal Assent in July 2018. |
| Sanctions Act | Gives power to create sanctions regimes and keep anti-money laundering measures updated | Green | Received Royal Assent in May 2018. |
| Road Haulage Act | Ensures that UK hauliers can continue operating internationally | Green | Received Royal Assent in July 2018. |
| Nuclear Safeguards Act | Creates a framework for a domestic nuclear safeguards regime to replace the EU's | Green | Received Royal Assent in June 2018. |
| Customs Act | Gives the UK powers to run its own customs regime | Green | Received Royal Assent in September 2018. |
| Trade Bill | Gives the UK powers to implement trade deals | Red | Passed third reading in the House of Commons. In committee stage in the House of Lords but Peers have said it will not progress to report stage until more information on the process for making trade agreements and involving Parliament is provided by the Government. |
| Agriculture Bill | For the creation of a domestic agricultural regime | Red | Passed committee stage in the House of Commons in November but report stage is still yet to be scheduled. Remaining Commons and all Lords stages must be passed within two months. |

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| Fisheries Bill | For the creation of domestic fisheries policy | | Passed committee stage in the House of Commons in November but report stage still yet to be scheduled. Remaining Commons and all Lords stages must be passed within two months. |
| Immigration Bill | Brings EU citizens living in the UK under domestic immigration law. Gives powers to modify retained EU law on social security coordination. | | The Immigration Bill passed second reading this week but must now pass all remaining Commons stages and all Lords stages in two months. |
| Healthcare (International Arrangements) Bill | For maintaining and agreeing healthcare arrangements with other countries | | Passed third reading in the House of Commons in January, with second reading in the Lords on 5 February. Moved quickly through the Commons. |
| Financial Services Bill | Gives powers to implement EU financial services regulations | | Introduced into the House of Lords, passing report stage in January. Must complete final Lords stages before entering the Commons. |
| Secondary legislation | Implements the detail of the above and makes other changes to existing legislation to ensure continuity after exit | | As of 25 January, only 100 of around 600 statutory instruments have completed their passage through Parliament. Only around half have begun their passage, with over 250 yet to be introduced. Around 80% of the time available for making these changes has now elapsed. ³ |

Implementation: readiness for no deal

Table 2 assesses the Government's readiness for no deal. A green rating implies that the Government will be ready for a no deal in the relevant area; amber means there is uncertainty as to whether the Government will be ready; and red suggests that the Government will not be able to mitigate fully the major negative impacts of no deal in 2019.

Table 2: Government's readiness for no deal implementation

| Policy area | Ready for March 2019? | Why? |
|---|-----------------------|---|
| <p>The border</p> <p>Preparing for a new customs regime and regulatory requirements</p> | | <p>A customs and regulatory border would be introduced between the UK and the EU under no deal. The legal basis for free movement of goods would disappear – tariffs, paperwork and checks on standards would be required by law.</p> <p>The UK Government has said it will do what it can to minimise change on goods coming in, waiving checks. But it has not yet said what the UK tariff regime will be – a critical part of its policy.</p> <p>The EU has said it will apply checks to UK goods as required under EU law. That will put major demands on traders. The Government – particularly HM Revenue and Customs – has begun to communicate with businesses about the new processes they will need to comply with, but not all businesses are aware of the changes they will face. The National Audit Office has said that, as of last autumn, 10 of 12 new border IT systems were either red or amber/red.⁴</p> <p>Past changes, significantly smaller in scale, have taken considerably longer.</p> |
| <p>Citizens and migration</p> <p>Preparing for a new immigration regime and providing certainty to EU citizens already in the UK</p> | | <p>No deal would mean no agreement on the rights of EU citizens living in the UK and vice versa. It would also require the UK to put in place arrangements for EU immigration by March 2019 for those that arrive after Brexit.</p> <p>The UK has made a unilateral offer to EU citizens. They can gain settled status as they would if there was a deal – but there will be fewer rights for them in areas such as family reunification and it would only be on offer to those in the UK on or before 29 March 2019. The Home Office has already done significant work to prepare the system – it is in a final, public trial.</p> <p>The Home Office is putting in place a registration scheme for EU citizens who arrive after March 2019, which would in effect see EU citizens able to come to the UK as now for a period.</p> <p>The rights of UK citizens in EU countries are the responsibility of each individual member state – some have prepared legislation to protect these, some are yet to do so.</p> |

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| <p>Agriculture, fisheries and food</p> <p>Implementing new systems for managing agriculture and fisheries, ensuring supply chains are maintained</p> | | <p>The UK's agricultural policy, fisheries policy and continental supply chains for food and drink are all based on membership of the EU. Without a deal, there is a policy gap and a raft of new checks required for goods going to the EU.</p> <p>The UK has guaranteed current funding for farmers until the end of the current payment cycle.</p> <p>There is no clarity over the UK's approach to fishing quotas after Brexit.</p> <p>UK exporters would need to get approval before being able to export any product of animal or plant origin to the EU. After that, they will face greater checks than now and will have to pass through a border inspection post. There will also be problems exporting animal products to other countries if current EU agreements have not been replaced.</p> <p>The Department for Environment, Food and Rural Affairs has already recognised that it will not be ready for no deal in critical areas such as enforcement of fishing rights and export health certificates.⁵</p> |
| <p>Health</p> <p>Creating new testing regimes and ensuring supply chains are maintained</p> | | <p>No deal would mean the legal basis for medical testing and authorisations would fall away and complex pharmaceutical supply chains would face disruption. Additional costs of trade would have a major effect on the NHS, which buys a massive volume of equipment and drugs from the EU.</p> <p>The UK Government will continue EU authorisations and approvals for medical products. The EU has said that UK companies would need to re-register in the EEA.</p> <p>For medicines/medical devices with complex supply chains, there could be major disruption as the EU is unlikely to take the same approach.</p> <p>The Government has requested that pharmaceutical companies stockpile six weeks' worth of medicines and is even securing capacity on alternative trade routes. Manufacturers are concerned about readiness and patient associations are suggesting patients do their own stockpiling.</p> |
| <p>Transport</p> <p>Creating new databases, new infrastructure and ensuring cross-border travel continues uninterrupted</p> | | <p>Increased border checks at EU ports will potentially cause traffic delays in Kent. Flights to the EU and many other countries around the world are governed by EU agreements, which the UK will no longer have access to. UK hauliers and coach companies will no longer be able to serve the EU market.</p> <p>The EU has said it will unilaterally allow some UK-EU flights to continue for 12 months after a no deal exit, subject to the UK reciprocating. The UK has struck replacement flight agreements with some countries, including the US and Canada.</p> |

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| <p>Transport (continued)</p> <p>Creating new databases, new infrastructure and ensuring cross-border travel continues uninterrupted</p> | | <p>The EU has said it will unilaterally allow UK hauliers to serve the EU market until the end of 2019. If there is no deal by then, they will fall back on a permit system, with limited numbers of permits being issued.</p> |
| <p>Services</p> <p>Preparing for changes to regulatory regimes and terms of access to the EU market</p> | | <p>If there is no deal, then UK services firms will not be able to sell their services to the EU as they do currently.</p> <p>The UK Government has committed to unilateral actions to minimise financial disruption in a no deal scenario, including a temporary permissions regime allowing EU financial services firms to continue operating in the UK for a limited period while seeking UK authorisation. The EU has committed to a similar temporary permissions regime for some key financial services sectors, for a very short time, on a unilateral basis.</p> <p>For non-financial services like telecoms and broadcasting, firms may need to re-register their services in an EEA country.</p> |
| <p>Energy and environment</p> <p>Creating a new nuclear safeguards regime, replacing other functions currently carried out by EU agencies</p> | | <p>The UK will no longer be bound by EU regulations in these areas, making trade more complicated. It will also lose access to EU regulators and systems governing these areas.</p> <p>The Office for Nuclear Regulation will take over some EU functions and is in the process of procuring a new IT system, training new inspectors and has secured funding for its increased role.</p> <p>The UK has promised a new environmental watchdog to replace EU functions. However, this will not be in place until 2021 at the earliest.</p> <p>Exporters in highly regulated sectors, such as chemicals, face major challenges after Brexit. Chemical exporters may need to register in an EEA country to ensure they can continue to export.</p> <p>Security of electricity supply for Northern Ireland in the case of no deal is a major risk. The UK and Irish Governments are both seeking to maintain the all-island Single Electricity Market, but there is no clarity on progress to date.</p> |
| <p>Competition, tax and data</p> <p>Securing an “adequacy” decision to allow data flows to continue, beefing up the Competition and Markets Authority, implementing new tax regimes and creating new trade policy</p> | | <p>It will not be possible for bodies inside the EU to send personal data to the UK after a no deal Brexit, until its data protection regime has been found “adequate” by the European Commission.</p> <p>This process takes several months and cannot start until after the UK has left. UK firms will have to rely on alternative means of data transfer, such as contractual clauses – but this could be particularly costly for small- and medium-sized enterprises (SMEs).</p> |

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| <p>Competition, tax and data (continued)</p> <p>Securing an “adequacy” decision to allow data flows to continue, beefing up the Competition and Markets Authority, implementing new tax regimes and creating new trade policy</p> | | <p>The Competition and Markets Authority is expanding to handle an increase in the volume and complexity of its cases, as it takes on the responsibilities of the European Commission in monitoring state aid and other competition policy in the UK.</p> |
| <p>Law and justice</p> <p>Finding replacements for EU tools allowing cooperation law enforcement</p> | | <p>With no deal the UK will not be able to access EU databases on missing and wanted people, DNA and fingerprints and other crime-related information. It will also be much harder to extradite wanted people between the UK and EU.</p> <p>The UK cannot recreate the EU’s existing cooperation mechanisms on its own: it will have to rely on outdated or less secure methods to work with EU counterparts.</p> <p>The Government could try to negotiate bilateral agreements with individual member states, but these will not be ready for 29 March.</p> |
| <p>EU programmes and funds</p> <p>Ensuring current beneficiaries do not lose out and benefits are maintained</p> | | <p>The UK will lose access to EU funding for research, infrastructure and agricultural subsidies, among other areas.</p> <p>The Government has guaranteed that UK beneficiaries of EU funds will continue to receive funding until the end of 2020 – this will be funded by HM Treasury.</p> <p>Many of the payment mechanisms exist already; it will just be the source of funding that changes. Others can be established fairly quickly.</p> |
| <p>International agreements</p> <p>Rolling over existing EU agreements with other countries around the world</p> | | <p>With no deal, the UK loses access to the EU’s agreements with countries around the world covering trade, flights, nuclear cooperation and other issues.</p> <p>The Government plans to sign ‘rolled over’ trade agreements with a number of countries, including Switzerland, Chile and the Faroe Islands, “imminently”. It has confirmed that it has rolled over agreements on aviation services with a number of key countries, including the US, Canada and Brazil.</p> <p>However, we do not know how many agreements the Government is seeking to roll over and what, if any, concessions it is having to make to other countries to secure these rolled over agreements.</p> |

References

- 1 Hansard Society 'Westminster Lens: Brexit Statutory Instruments Dashboard', 28 January 2019, www.hansardsociety.org.uk/blog/westminster-lens-brexit-statutory-instruments-dashboard
- 2 Confederation of British Industry '8 out of 10 businesses say Brexit hits investment as speed of talks outpaced by reality firms face on ground', 2018, www.cbi.org.uk/news/8-out-of-10-businesses-say-brexit-hits-investment-as-speed-of-talks-outpaced-by-reality-firms-face-on-ground
- 3 Hansard Society, 'Westminster Lens: Brexit Statutory Instruments Dashboard', 29 January 2019, www.hansardsociety.org.uk/blog/westminster-lens-brexit-statutory-instruments-dashboard
- 4 Comptroller and Auditor General, *The UK Border: preparedness for EU exit*, National Audit Office, 2018, www.nao.org.uk/report/the-uk-border-preparedness-for-eu-exit
- 5 Comptroller and Auditor General, *Department for Environment, Food and Rural Affairs: Progress in Implementing EU Exit*, National Audit Office, 2018, www.nao.org.uk/report/department-for-environment-food-and-rural-affairs-progress-in-implementing-eu-exit

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