



## BRIEFING PAPER

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# Brexit Unknowns

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## Summary

So much about the mechanics, the legal effects and the policy consequences of Brexit is unclear or unknown. Article 50 of the *Treaty on European Union* (TEU), which allows Member States to leave the European Union, has never been used before. Its meaning and how it will be used are not entirely clear.

The UK exit negotiation process has not yet started and will not start formally until notice of the intention to leave the EU is given under Article 50 TEU. The Prime Minister, Theresa May, has said this will be done before the end of March 2017. The exit negotiations will last two years, or longer if all the other EU Member States agree an extension.

The biggest 'unknown' is what the withdrawal agreement and any other agreements linked to Brexit will contain. Almost all policy questions depend on the outcome of the exit negotiations and the kind of agreement(s) reached. Most Brexit 'unknowns' are therefore predicated on this main 'unknown'.

We don't know how long the process will take or even when it will start. We can't really calculate the economic impact or say for sure how the Devolved Nations will be affected. We don't know what the withdrawal agreement will look like or what other agreements the UK will negotiate with the EU to settle future relations.

Commons Library Briefing Paper 7213, [Brexit: impact across policy areas](#), 26 August 2016, looked at a range of policy areas that will be affected by Brexit.

Further analysis is also available in Commons and Lords Briefing Papers and Select Committee reports on the Parliament website at [Brexit: the next steps for the UK's withdrawal from the EU](#).

# 1. The Brexit process: legal and constitutional issues

## How long will Brexit take?

This will depend on when the Article 50 process is started and whether it takes longer than the two years prescribed by Article 50 itself. If the process starts by the end of March 2017, it should conclude by the end of March 2019. But by a unanimous agreement of the EU-27, negotiations can be extended.

Uncertainty over Parliament's role in triggering Article 50 and the consequent legal process in the UK and possibly the EU might delay the start of negotiations and prolong the withdrawal process.

## Withdrawal in accordance with "constitutional requirements"

Article 50 TEU provides that a Member State may decide to withdraw from the EU "in accordance with its own constitutional requirements". The present difficulty is that it is not clear what those constitutional requirements are in relation to triggering Article 50 TEU. This will be for the UK Supreme Court to decide.

## The UK Parliament's role in triggering Article 50

The Government has said that it intends to trigger Article 50 under prerogative powers, without any involvement from Parliament. But many consider that some kind of Parliamentary involvement is necessary or at least desirable.

The High Court ruled on 3 November 2016 that the Government could not trigger the Article 50 process without parliamentary approval. The Government will challenge this judgment at the Supreme Court.

## The UK Parliament's role in scrutinising the negotiations and exit agreements

Treaty negotiations are undertaken by the Government under the Royal Prerogative. The UK Parliament has no formal role in scrutinising the negotiation of treaties (although it can delay or even – in the case of the House of Commons – block ratification).

The Government has made some commitments to share information on the negotiations with Parliament, and the Commons has set up a new Select Committee on Exiting the EU.

In his [statement](#) to the Commons on 5 September, David Davis roughly described how the negotiations would be undertaken:

... the Prime Minister will lead the UK's exit negotiations and be supported on a day-to-day basis by my Department. We will work closely with all Government Departments to develop our

objectives and to negotiate new relationships with the EU and the rest of the world. Supporting me is a first-class ministerial team and some of the brightest and best in Whitehall, who want to engage in this national endeavour. The Department now has over 180 staff in London, plus the expertise of over 120 officials in Brussels. We are still growing rapidly, with first-class support from other Departments.

As to the next steps, the Department's task is clear. We are undertaking two broad areas of work. First, given that we are determined to build national consensus, we will listen and talk to as many organisations, companies and institutions as possible—from large plcs to small businesses, and from the devolved Administrations to councils, local government associations and major metropolitan bodies.

### **A role for the Devolved Legislatures?**

David Davis said in his September statement that the new Department was already “fully engaged” with the devolved legislatures, and he and ministerial colleagues had “discussed the next steps with a range of organisations”, including with the general secretary of the Trades Union Congress, key business groups, representatives of the universities and the charitable sector, and farming and fisheries organisations (c 40). He would be consulting research institutes, regional and national groups, and businesses, stakeholders from the broadcast, aviation, energy, financial services and automotive sectors.

It remains to be seen how this will work in practice.

### **Can an Article 50 notification be withdrawn?**

Article 50 TEU does not say. It might imply that notification could not be withdrawn, because it has some specific provisions on when the Treaties cease to apply, and how a former Member State could re-join. Parties to the High Court challenge in October-November 2016 assumed that Article 50 is irrevocable, but this is disputed.

Under the 1969 Vienna Convention on the Law of Treaties, a notification of intention to withdraw from a treaty ‘may be revoked at any time before it takes effect’ (Article 68). However, this provision does not override any specific arrangements in a treaty.

Ultimately, it might be for the Court of Justice of the EU to decide whether Article 50 is revocable.

However, politically it is likely that if the UK and other Member States agreed that the notification should be withdrawn, it could happen.

### **Will there be a referendum on the terms of Brexit?**

Legally possible but politically unlikely. The Prime Minister has insisted there will be no second referendum on the terms of the withdrawal agreement or for any other reason in connection with Brexit.

But Parliament can legislate at any time to hold a referendum. An early general election can't be ruled out, and a new government might

decide that another referendum would be in order. Legislation would be needed to provide for a referendum.

## What will happen to EU law in the UK?

The Government intends to introduce a 'Great Repeal Bill' in 2017 to convert the EU *acquis* into UK law but without an EU basis. The Government (and Parliament?) will decide what to keep, repeal or amend.

We don't know:

- to what extent legislation currently in force that gives effect to EU law will be repealed or amended;
- how much European Union law will be transposed into domestic law after the UK leaves the European Union;
- whether the UK will seek to remove to all references to EU institutions from the domestic law;
- where EU legislation is transposed into domestic law, whether the law will be updated in line with any changes made by the EU;
- the extent to which changes to legislation to give effect to Brexit will be set out in primary legislation.
- the extent to which the Government will rely on Henry VIII powers to make changes to legislation to give effect to Brexit?
- whether the 'Great Repeal Bill' will simply transpose EU law into domestic law or include substantive changes to the law to come into force after Brexit;
- whether the Great Repeal Bill will contain powers to facilitate transposition, to ensure that individuals' legal position is maintained or whether it will contain powers to enable changes to be made so as to remove those elements of EU law that the Government wishes to change post Brexit;
- whether the UK courts will continue to rely upon the jurisprudence of the CJEU when interpreting EU law after it has been transposed into domestic law.

## Will UK and EU citizens have any 'acquired rights' other than those contained in Brexit agreements?

General principles of certainty, stability, non-retrospectivity and mutual interest suggest some kind of continuing protection.

But it is far from certain that after the UK leaves the EU, individuals would be able to rely in the courts on an 'acquired right' to stay under EU law, the 1969 Vienna Convention on the Law of Treaties or customary international law.

## 2. Institutional matters

### UK staff in the EU institutions

The UK remains an EU Member State until it leaves, but the fate of UK staff in the EU institutions after Brexit is not clear.

The European Parliament will not support seconded national experts from non-EU States. The [Rules governing the secondment of national experts to the European Parliament](#), set out in an EP Bureau Decision of May 2009, state:

Seconded national experts (SNEs) should chiefly be drawn from the parliaments of the Member States of the European Union, but they may also come from a national, regional or local public authority, or a body treated as such a public authority, in the Member States, the EFTA member countries which form part of the European Economic Area, countries which have applied for accession to the European Union or third countries. They may also come from a public international organisation, provided that they can provide evidence that they are legally employed by that organisation.

### Will the UK participate in the 2019 European Parliament elections?

If the UK Government triggers Article 50 by the end of March 2017, in theory the two years of negotiations should end by the end of March 2019.

EP elections will be held in May or June 2019, so the UK would no longer be a member of the EU if the two-year deadline is maintained. But if the negotiations continue beyond March 2019 following a unanimous decision to extend them, or because triggering Article 50 is delayed beyond March 2017, the UK might still be in the EU at the time of the elections, and eligible, if not required, to participate in them.

It seems unlikely that the UK would do so if it was very close to leaving the EU, but the situation is unclear. There is no Treaty provision for a Member State not participating in the EP elections.

## 3. Money matters

### When will the UK stop contributing to the EU budget?

The UK will remain a Member of the EU until its departure and will continue to contribute to the EU budget at least until this point.

Following a negotiated departure, the UK may still make contributions to the EU Budget. Any future contributions will depend on the arrangements agreed for the UK's future relationship with the EU. For example, members of the European Economic Area (EEA) contribute to the EU Budget, as does Switzerland; so if the UK negotiates a similar relationship with the EU it is likely to pay into the EU Budget. If there is a 'hard Brexit' it is unlikely that there would be a UK contribution.

### The economic impact of the referendum result and Brexit

Broadly speaking we can divide this into possible short- and long-term effects. As of early October, the referendum result, in the [words](#) of the Office for National Statistics, "appears, so far, not to have had a major effect on the UK economy". Most economists expect GDP growth to slow in 2017 due to a forecast reduction in business investment (due to uncertainty from the Brexit vote) and slowing consumer spending. The decline in the value of the pound (it is around 12% lower in early October compared with just before the referendum) makes imports more expensive which, in turn, will likely feed through to higher inflation and a decline in the purchasing power of consumers.

In the longer term, the UK's new trading and investment relationships with the EU and rest of the world will be important in determining Brexit's impact on the economy. As economic theory and academic literature show a link between an economy's degree of openness to foreign trade and investment and its long-term growth rates, the end result of the changes to the UK's trading arrangements will be crucial in determining Brexit's impact.

Given the importance of UK-EU links in trade and investment, a large majority of economists believe that the final post-Brexit settlement will leave the UK economy less open and therefore with lower long-term growth rates compared to a scenario where the UK had stayed in the EU. (For more on the potential long-term economic impact of Brexit see section 6 of Commons Briefing Paper 6492, [Productivity in the UK](#), 21 October 2016)

### What will happen to the UK's structural funds?

The UK stands to lose the funding that it receives from the EU through various channels. The Treasury has guaranteed full funding for structural and investment fund projects signed before the 2016 Autumn

Statement and has urged British businesses and universities to continue to bid for competitive EU funds.

In his Conference speech, the Chancellor announced that beyond the Autumn Statement, the Treasury will offer a guarantee to bidders whose projects “meet UK priorities and value for money criteria”. It is unclear as to what these priorities and criteria will entail and to what extent these will cover projects currently funded by the EU.

There have been mixed messages in the local government world regarding whether regions (and more pertinently devolution deals) will be compensated in full for any loss of funding in the 2014-20 round following Brexit.

### **Agriculture funding**

The biggest area of uncertainty is the level of support after 2020 and access to the Common Market /trade model. More information is expected in the Autumn Statement on support for Pillar 2 grants for this current Common Agricultural Policy (CAP) period, as some of these span long time frames, e.g. five years.

## 4. Future relations with the EU

### Trade relations between the UK and the EU after Brexit

We do not yet know what the trade arrangements between the UK and the EU will be after Brexit. The Government has made some general comments, such as it “will seek the best possible deal” and “a deal that works for Britain”. The Government has also ruled out some options, rejecting the Norway model (membership of the European Economic Area) and the Swiss model (lots of bilateral agreements with the EU).

In her speech at the 2016 Conservative Party conference, the Prime Minister gave some indication of the Government’s approach to relations with the EU after Brexit:

[...] we will seek the best deal possible as we negotiate a new agreement with the European Union. I want that deal to reflect the kind of mature, cooperative relationship that close friends and allies enjoy. I want it to include cooperation on law enforcement and counter-terrorism work. I want it to involve free trade, in goods and services. I want it to give British companies the maximum freedom to trade with and operate in the Single Market – and let European businesses do the same here. But let me be clear. We are not leaving the European Union only to give up control of immigration again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.

As ever with international talks, it will be a negotiation, it will require some give and take, and while there will always be pressure to give a running commentary on the state of the talks, it will not be in our best interests as a country to do that. But make no mistake: this is going to be a deal that works for Britain.<sup>1</sup>

Several commentators have argued that these comments indicate that the UK is likely to exit the single market. In its report on the speech, the *Financial Times* said that this was the clearest sign yet that the Government wants a break with the EU single market.<sup>2</sup> Open Europe said the speech was “the clearest signal yet that Britain will not seek to remain within the single market” and that, while not explicitly stated, the Government’s aim was likely to be a free trade agreement with the EU.<sup>3</sup>

For further information, see Commons Briefing Paper 7694, [Brexit: trade aspects](#), 8 September 2016.

### UK expats and EU citizens

The position of British citizens in other EU Member States and of EU citizens in the UK remains uncertain. For a discussion, see Commons

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<sup>1</sup> [Prime Minister’s speech on Brexit](#), Conservative Party Conference, 2 October 2016, Politics Home website

<sup>2</sup> “May sets Brexit course with hint of clean break from the single market”, *Financial Times*, 3 October 2016

<sup>3</sup> Stephen Booth, [We’re getting a little clearer on what Brexit means but there’s much we still don’t or cannot know](#), Open Europe, October 2016

Briefing Paper 7525, [Leaving the EU: How might people currently exercising free movement rights be affected?](#) 27 June 2016.

### What will happen to EU and UK students?

In the higher education sector EU membership provides support to EU students studying in the UK and access to European research funding. EU membership also gives UK students access to European student mobility schemes such as *Erasmus+*. The UK has also signed the [Bologna Declaration](#), which started a process to create a European higher education area through the harmonisation of systems across the EU in matters such as comparability of degrees, and by promoting academic mobility.

Universities are mainly concerned about the impact of Brexit on students and research. In August 2016 the Government [said](#) that successful bids for EU research funding made while the UK is still an EU Member would be guaranteed by the Treasury. The Government also confirmed in October that qualifying EU students applying to HE or FE institutions in the UK for the 2017-18 academic year would still be eligible for home student fees and tuition fee support for the duration of their courses.

But the longer term outlook for UK students abroad and EU students in the UK is uncertain.

### The UK and Ireland

Brexit will mean a geographical EU border between the UK and Ireland, but whether there would be a physical border is not known. Northern Ireland is the only region of the UK to share a land border with another EU Member State and Brexit could mean that an external border of the EU will run through the island of Ireland.

The report of the Houses of the *Oireachtas* Joint Committee on European Union Affairs, '[UK/EU Future Relationship: Implications for Ireland](#)', June 2015, stated that in the event of a vote to leave the EU, "a key objective for Ireland should include the retention of the Common Travel Area (CTA) between Ireland and the UK".

This would be subject to agreement between the UK and Ireland, and probably not part of the Brexit negotiations.

## 5. The Devolved Administrations

### **Will any repatriated powers go directly to the Devolved Administrations?**

The argument would be that the 'reserved powers' model reserves only specific powers to Westminster, whilst any other powers are devolved by default.

The SNP believes that this would happen. The legislation isn't clear – arguments could be made both ways and the outcome will likely be politically influenced.

### **The 'Great Repeal Bill' and the Devolved Administrations**

The proposed 'Great Repeal Bill' may have to make changes to the Devolution Acts, which will probably require a Legislative Consent Motion (under which it is recognised that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the devolved legislature).

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