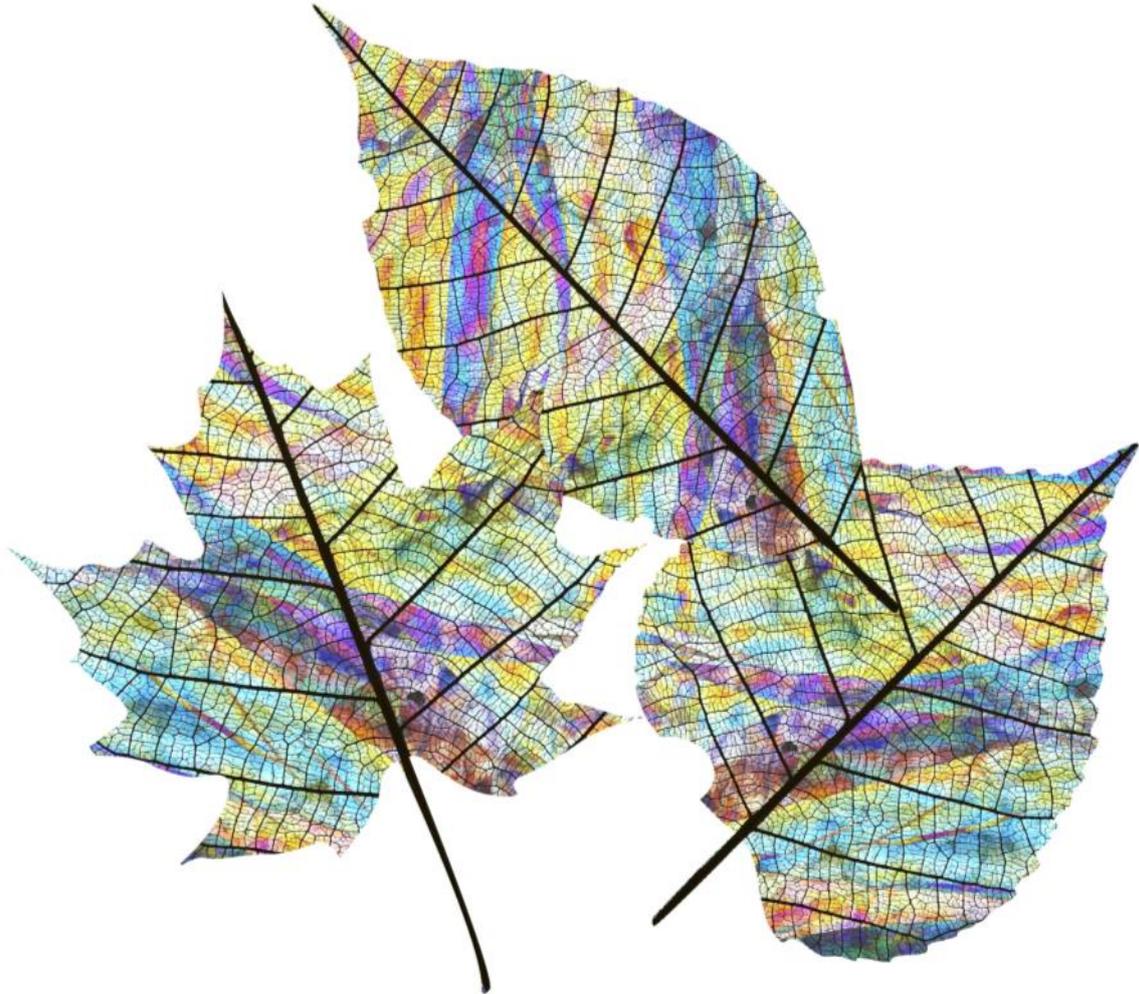


# ALLEN & OVERY

---

GLOBAL LAW INTELLIGENCE UNIT

---



## A Brexit Act in 19<sup>3</sup>/<sub>4</sub> pages

30 August 2016, First edition



The A&O Global Law Intelligence Unit is a think-tank which expresses independent views which are not necessarily the views of the firm.

# Brexit Act

## Introduction

This paper discusses the coverage of the transition legislation governing the departure of the UK from the European Union. The best way to describe something expressing invisible concepts of the legal imagination like a law is to set out what it says.

While anchored alongside the European continent as a member of the EU fleet, the UK has many ropes, chains and hawsers tying it to the continent. When the UK leaves this harbour to sail out into the open seas on its own, it will be necessary to unravel those links which it is considered should be untied.

EU law is deeply entrenched and embedded in the law of the UK in intricate ways. One of the chief features of the EU is that it is a gigantic legal harmonisation project, melding together the three main broad legal families on the planet, all stemming from Western Europe and influencing at least 280 of the world's 320 jurisdictions.

Unpicking and disentangling these closely woven threads could be done with strokes of the scalpel or a huge swipe of the scimitar. The extent of the severance remains to be decided.

Apart from being a highly successful country, the UK is one of the greatest law-givers the world has ever seen. The laws of England form the basis of the laws of about 40% of the world's jurisdictions. How it handles this transition will be a test of how well the country deploys its skills in law to celebrate the future as well as the past.

The purpose of attempting a Brexit Act in less than 20 pages is to help participants get above the detail and see the wider landscape, to view a list of the main points involved in the transition in one single short piece. Naturally we do not aim at the legal forms of statutory drafting which are a matter for the skills of parliamentary draftsmen. We intend the piece to be thought-provoking and hope that it will help strategic planning. Since it is a lean and laconic sketch, we omit detail (the firm has provided and will produce detailed studies of particular areas). An actual Brexit Act could cover many hundreds or even thousands of pages.

Still, our Brexit Act compresses into its compass over 500 distinct points spread over about 100 main topics, many of which are in themselves large fields.

## EU Treaty provisions on withdrawing member states

Article 50 of the Lisbon Treaty provides that any member state may decide to withdraw from the EU "in accordance with its own constitutional requirements". A member state which decides to withdraw shall notify the European Council of its intention and the EU will negotiate and conclude an agreement with the withdrawing state, setting out the arrangements for its withdrawal. The agreement is concluded by the European Council, acting by a qualified majority after obtaining the consent of the European Parliament.

The EU treaties cease to apply to the withdrawing state from the date of entry into force of the withdrawal agreement or, failing that, two years after the above notification, unless the European Council, in agreement with the withdrawing state, unanimously decides to extend this period.

## Sovereign break-ups

The break-away of sovereign states has been very common in history and so there is much precedent. It has happened perhaps around 100 times since 1900, including de-colonisation in the middle of the last century and more recently we have had the break-up of the USSR, of Czechoslovakia and of Yugoslavia. Others, though much smaller, include Hong Kong, Sudan and East Timor.

But the UK departure from the EU is by far the biggest break-up the world has ever seen by a colossal margin and has much more momentous consequences. It totally dwarfs everything which comes before. It is “the biggest demerger in history” (Richard Cranfield).

This area is commonly known as the law of state succession which is a huge field under public international law – strictly the break-up of states rather than a loose confederation and customs union. But many of the principles will be similar. There are two international Vienna conventions on strict state succession, one not in force. The biggest problems have included the allocation of state assets, such as investments and gold, the allocation of liability for sovereign debt, and succession to treaties. All these issues are relevant in the present case.

## Comments on Brexit Act

A Brexit Act could approve and bring into force the terms of the withdrawal agreement and then deal with other relevant matters. The draft Brexit Act below reproduces the possible terms of the withdrawal agreement in the statute itself plus other transition provisions so that the whole thing can be seen in one place.

One of the main decisions is for the UK to decide which parts of EU law the UK will retain after Brexit. Technically the UK will have implemented EU directives but EU regulations have direct effect without implementation and so would have to be expressly preserved by UK statute if desired. Some think that even secondary legislation would disappear if the UK repealed the European Communities Act 1972. In any event, we list most of the material areas of legislation, regardless of whether or not technically they would remain in force since we should flag areas of EU law which on Brexit the UK would be free to pursue or delete.

The actual terms of a Brexit Act would depend on what is negotiated. We focus attention on some of the things which would have to be dealt with, without necessarily indicating how they will in fact be dealt with. All of our suggestions are just one of a range of possibilities and not necessarily a policy we favour.

Naturally too, there could be lots of separate pieces of legislation coming into force at different times instead of the single omnibus format we adopt below coming into force with a single clap of thunder. We have inserted some things which would not appear in a formal statute.

Some of the provisions in the Act appear to bind third parties, such as the EU. Obviously a UK statute cannot bind third parties. The provisions would have to be located in agreements between the UK and those third parties and they are inserted in our Act as a fiction so that the reader does not have to read the main points in two places at once.

We in the Intelligence Unit do not favour complicated law. We think that the law should as far as possible be simple and accessible. A statute like this should be cool, measured and rational, without any marks of rancour.

We believe that the law is the major ideology underpinning our societies. It expresses our civilisation and credentials.

Would a Brexit Act look like ours? No. But so what, we hope this is still a good way to think about the issues in one single place.

## **Brexit Act 2019**

### **An Act to exit the European Union**

Be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and the authority of the same, as follows:

#### **1. Brexit**

Subject to the following provisions of this Act, with effect on the Brexit Date the United Kingdom shall cease to be a member of the European Union and shall cease to be a party to the treaties constituting the EU and the European Communities Act 1972 shall be repealed.

On the Brexit Date the terms of the withdrawal agreement between the United Kingdom and the European Union for the withdrawal of the UK from the EU set out in the schedule shall come into force. Provisions in this Act purporting to bind the EU and other parties stem from agreements between the UK and those parties which are ratified by this Act.

The Brexit Date is [●] months from the date of enactment of this Act.

#### **2. EU agencies and bodies**

On the Brexit Date, the UK and its representatives shall cease to be a member of or eligible for or entitled to the benefits or subject to the obligations of the agencies and bodies of the EU, including those specified below in this section:

- **List of EU main agencies and bodies:**
  - European Commission
  - Council of Ministers
  - European Parliament
  - Court of Justice of the European Communities
  - European Court of Auditors
  - Council of the European Union
  - European Investment Bank
  - European Investment Fund
  - European Data Protection Supervisor
  - European Ombudsman
  - European Economic and Social Committee
  - Committee of the Regions

Education, Audiovisual and Culture Executive Agency  
 Consumers and Health, Executive Agency  
 Research Executive Agency  
 Executive Agency for Small and Medium-sized Businesses  
 Innovation and Networks Executive Agency  
 European Research Council Executive Agency  
 Community Plant Variety Office  
 Eurojust  
 European Agency for Safety and Health at Work  
 European Agency for the Management of Operational Cooperation at the External Borders  
 European Aviation Safety Agency  
 European Agency for the Operational Management at large-scale IT systems in the area of freedom  
 security and justice (EU-LISA)  
 European Asylum Support Office  
 European Banking Authority  
 European Centre for Cooperation of Energy Regulations  
 European Centre for the Development of Vocational Training  
 European Centre for Disease Prevention and Control  
 European Chemicals Agency  
 European Environment Agency (includes EEA and Turkey)  
 European Fisheries Control Agency  
 European Food Safety Authority  
 European Foundation for the Improvement of Living and Working Conditions  
 European GNSS Supervisory Authority (Galileo satellites)  
 European Institute for Gender Equality  
 European Institute of Innovation and Technology  
 European Insurance and Occupational Pensions Authority  
 European Maritime Safety Agency (includes Norway and Iceland)  
 European Medicines Agency  
 European Monitoring Centre for Drugs and Drug Addiction  
 European Network and Information Security Agency  
 European Office for Harmonisation in the Internal Market (Trade Marks and Designs)  
 European Railway Agency  
 European Securities and Markets Authority  
 European Training Foundation  
 European Union Agency for Fundamental Rights  
 European Police College  
 Europol  
 Fusion for Energy (ITER)  
 Office for the Body of European Regulators for Electronic Communication  
 Translation Centre for Bodies of the European Union  
 Statistical Office of the European Communities (Eurostat)

- **List of main EU joint ventures:**

Single European Sky ATM Research Joint Undertaking  
 Fuel Cells and Hydrogen and Joint Undertaking  
 Clean Sky 2 Joint Undertaking  
 Innovative Medicines 2 Joint Undertaking  
 ECSEL Joint Undertaking  
 Bio-based Industries Joint Undertaking

- **Excluded bodies** For the avoidance of doubt, the UK does not withdraw from the following:

The Council of Europe  
Western European Union  
Organization for Security and Co-operation in Europe  
European Bank for Reconstruction and Development  
European Space Agency  
The European Organisation for Nuclear Research (CERN)  
North Atlantic Treaty Organization.

- **European Investment Bank** Cessation of UK membership and investment.

### 3. Finance

- **Cessation of UK financial contributions to the EU.** On the Brexit Date the following provisions shall come into force in relation to the cessation or phasing out of payments by the UK to the EU:

- **VAT** (0.3% of the VAT base of the UK). Timing
- **Customs duties** collected by the UK, less 20% collection costs. Timing
- **Budget contributions** Any exclusions from potential UK involvement in EU budget spending plans until 2020
- **Agricultural rural and fisheries support** Any new policies and timing

[**Comment** This support is about 40% of EU budget of around EUR150bn. In 2015 UK farmers received about EUR2.1bn in direct subsidies and about EUR600m in rural development payments. The direct payments made up 55% of farmers' incomes]

- **Regional development** in the EU in lesser developed areas, such as broadband, transport, start-ups, roads, railways, hospitals, etc. (about 40% of the EU Budget). Any continuing responsibility for existing projects in the EU and UK
- **Internal EU projects** (about 7% of the EU budget) such as Galileo navigation satellites, Copernicus earth observation programme, experimental fusion reactor, infrastructure (roads, grids, pipelines, digital networks etc), financing small and medium-sized companies, the Erasmus student exchange, and scientific research including the EUR80bn Horizon 2020 fund. Any continuing responsibility for existing projects and research in the UK

- **International payments** such as foreign aid or in respect of armed conflicts and humanitarian and epidemic crises (about 5% of the EU budget). Any new policies
- **Security and citizenship** such as justice, home affairs, border protection, immigration, asylum, anti-terrorism, public health, consumer protection, culture, information and communications, and disaster aid (less than 2% of the EU budget). Any new policies and timing
- **Pensions** Responsibilities of the UK or EU for the employment, remuneration and pensions of EU civil servants and UK members of the European Parliament

[**Comment** Brussels has estimated total EU pension liabilities are about EUR60bn, with a current total annual payments of EUR1.4bn. There is no pension fund and liabilities are covered out of the annual EU budget. Administrative expenses, mainly pensions and salaries, are about 6% of the EU budget]

- **Loans and guarantees** Losses and liabilities for existing commitments charged to the EU budget in respect of the matters below shall be allocated as specified below:
  - bonds issued by the EU or EU guarantees of bonds issued by EU bodies. Specify allocation of losses and liabilities, as between EU and UK
  - losses on loans made or guarantees of loans granted by the EU to EU businesses, such as small and medium-sized enterprises, or EU member states, including non-eurozone states. Specify allocation
  - any protection given by the EU to the European Investment Bank and the European Investment Fund for losses, including in respect of loans to third countries. Specify allocation. Repayment of UK investment in EIB
  - loans made or guarantees of loans granted by the EU to third countries. Specify allocation
  - similar liabilities of the EU or any of its agencies or bodies. Specify allocation.
- **Future EU commitments** Except as expressly stated in this Act, the UK will have no liability, direct or indirect, for any commitments entered into or losses or liabilities incurred by the EU or any of its agencies or bodies on or after the Brexit Date, and the EU will hold the UK harmless against the same. Specify any exceptions

- **EU assets** Any entitlement of the UK to the fair value on the Brexit Date of its share of any EU existing assets to which the UK has contributed, except fixed land, buildings and equipment within the EU and the other assets specified here. If so, identification, valuation, timing of payments, set-off
- **Declarations regarding bail-outs** The UK declares that it has no responsibility regarding bail-outs or financial support for:
  - the euro
  - credit to EU member states via the European Stability Mechanism or the European Financial Stability Facility
  - banks or insurers whose centre of main interests is in an EU member state
  - deposit protection of persons resident in or whose centre of main interests is in an EU member state.

#### 4. **Brexit Transition Commission**

On the Brexit Date, the regulations set out below in this section establishing a Brexit Transition Commission having the constitution and jurisdiction prescribed below shall come into force

Regulations governing the constitution and jurisdiction of the Brexit Commission

The Brexit Commission deals with transition issues of a technical and administrative nature.

#### 5. **Movement of people**

- After the Brexit Date, the provisions of this section shall apply to (1) the movement of EU persons into the UK and (2) the movement of UK persons into EU member states, including in each case existing rights, rights of families and dependants, rights to work, rights to welfare and rights to citizenship. [**Comment** Net annual migration to the UK is about 330,000, half from the EU (mostly skilled jobs). 11% of City employees (more than 38,000) come from continental EU]
- Existing rights of EU persons and their families and dependants to remain and work in the UK and their rights to UK welfare and to UK citizenship [**Comment** There are about 3.6m EU citizens in the UK, many of whom would not meet UK non-EU immigration rules]

- Any quotas or criteria, such as education, salary and shortages, as to whether EU persons and their families and dependants require immigration visas and work permits for the UK and their rights to UK welfare and to UK citizenship. Investors, entrepreneurs, high-earners, sponsored employees, inter-company transfers, skilled persons, shortages, construction, retail, hospitality, students, tourists, etc. Residence and permanent residence. Periods of residence required for citizenship
- Existing rights of UK persons and their families and dependants to remain and work in the EU and their rights to welfare in the applicable EU member state and to EU citizenship [**Comment** About 1.2m British expatriates live in the EU]
- Any quotas or criteria as to whether UK persons and their families and dependants require immigration visas and work permits for EU member states and their rights to welfare in the applicable EU member state and EU citizenship.
- Any impact on rights of UK citizens to own property in the EU and vice versa
- Rights of persons seeking asylum in the UK

## 6. Movement of goods

- **Scope** On and after the Brexit Date, the provisions of this section shall apply to (1) the movement of goods between the EU and the UK, and (2) the movement of UK goods into EU member states
  - **Free trade and customs union** There shall be free trade and a customs union allowing free movement of goods between the UK and EU without formality or tariffs. Country of origin rules. The UK may opt to have the benefit of free trade agreements and customs unions entered into by the EU with third countries. Rules as to whether UK is able to impose different tariffs for third countries and to negotiate free trade agreements with them [**Comment** Contentious if a customs union is also a free trade area]
- or**
- **World Trade Organisation rules** For UK exports into the EU, the EU's WTO general, most favoured nation and general scheme of preference tariffs shall apply as the UK customs tariff, subject to such amendments as are specifically identified. For EU imports into the UK, the UK's WTO most favoured nation tariffs shall apply. [**Comment** For other countries reciprocal imports are subject to tariffs at "most-favoured nation" rates, i.e. rates applied to imports from all

developed country members other than those with which the territory in question has a free trade agreement]

**or**

- **Intermediate** Some regime which is intermediate between the above shall apply.

## 7. Movement of services

- **Services** As from the Brexit Date, the provisions of this section shall apply to (1) the movement of services between the UK and EU member states, (2) the movement of UK services into EU member states, excluding in both cases the financial services specified in section 9, and (3) freedom of establishment, such as businesses, agencies, branches and subsidiaries. Services include:
  - regulated professions, e.g. lawyers, accountants, engineers, surveyors
  - retail and wholesale
  - construction
  - business-related, e.g. office maintenance, management, consultancy, events
  - debt recovery
  - advertising
  - recruitment
  - tourism
  - leisure and sport
  - craftsmen
  - equipment installation and maintenance
  - information, e.g. web, news agency, publishing, computer programming
  - hotels, restaurants, catering
  - training and education
  - rental, e.g. cars
  - leasing
  - real estate
  - certification
  - household support, e.g. cleaners, nannies, gardeners
- **Status of movement of services and rights of establishment**
  - Rights of existing EU establishments and EU service providers to continue in the UK and whether any **existing** authorisations remain in force
  - Rules on **future** establishment and provision of services by EU persons in the UK. Rules on UK authorisations for regulated service businesses from the EU. Any permissions for equivalent regimes

- Rights of **existing** UK establishments and UK service-providers to continue in the EU, and whether existing EU authorisations remain in force. Any permissions for equivalent regimes
- Rules on rights of **future** establishment and provision of services by UK persons in the EU. Rules on EU authorisations for regulated service businesses from the UK. Any permissions for equivalent regimes
- Any continued reciprocal mutual recognition of professional qualifications of UK/EU persons, and their rights of establishment, e.g. doctors, nurses, dentists, vets, pharmacists, architects and lawyers. Nexus with any restrictions on free movement of people. [**Comment** There are about 800 regulated professions in the EU]
- Extent of future reciprocal mutual recognition of professional qualifications of UK/EU persons and their rights of establishment.

## 8. Movement of capital

- After the Brexit Date, the provisions of this section shall apply to (1) the movement of capital between EU member states and the UK and (2) the movement of the capital of UK persons into EU member states
- After the Brexit Date, all restrictions on the movement of capital and on payments both ways between the UK and EU member states are prohibited except as set out below (generally consistent with the current provisions of the EU treaties).

## 9. Financial services

- **Continuance of EU/UK regulatory regimes** All regulations and other laws in effect in the UK on the Brexit Date covering the financial services areas specified below in this section shall continue to apply in the UK after the Brexit Date as they apply before the Brexit Date. However, these laws shall be amended by any changes specified below in this section and by any corrections which are manifestly necessary to reflect the transition. Changes include deletions, simplifications, shortenings and removal of red-tape. Status of guidelines and the like.

Subject to the above, where the EU law expressly requires mutual recognition, reciprocity or cooperation, the UK will comply as if it were an EU member state for these purposes only.

- **Scope of financial services** Financial services areas include regulated financial businesses, such as banks (retail, corporate, mortgages), investment banks, issuers of credit cards, leasing businesses, insurers, collective investment schemes and other funds, dealers in securities, investment managers (private wealth and portfolio), investment advisers, custodians of securities, dealers in derivatives, regulated exchanges and markets, credit rating agencies, securities settlement systems, payment systems, central counterparties, depositories, securitisations and covered bonds. The laws concerned cover authorisation, capital, liquidity, conduct of business, transparency, clearing, market infrastructure, short selling, benchmarks, wire transfer, mortgage credit, consumer credit, distance marketing, electronic money, packaged retail investment products, securities financing transactions, market abuse, regulatory powers and cooperation and the like
- **UK/EU passporting** All financial services businesses of institutions with their home state in the UK shall be passported into the EU, and all financial services businesses of institutions with their home state in the EU shall be passported into the UK so long as their respective applicable regulatory regimes are substantially consistent. Any exclusions and qualifications. The UK and the EU member states confirm that the regimes now meet this requirement. Protections for the stability and maintenance of consistency. Any amendments to UK regime  
  
**or**  
  
A regime based on WTO principles for services  
  
**or**  
  
Any intermediate regime.
- **Passporting of prospectuses**
- **Miscellaneous** Deposit and investor protection schemes. EU bank structural reforms and ring-fencing Status of EU proposals for capital markets union and securitisations. Eligible collateral. Status of euro clearings
- **Third country access** Rules as to third country access to UK market for financial services and reciprocity. Co-operation agreements with third country regulators.

## 10. EU regulatory law (excluding financial services)

- **Continuance of other EU regulatory law** All EU regulatory and other law (including secondary legislation) in effect in the UK on the Brexit Date covering the areas specified below in this section by virtue of EU directives, regulations, or other binding legal acts shall continue to apply in the UK after the Brexit Date as they apply before the Brexit Date. However, these laws shall be amended by any corrections specified below in this section and by any changes which are manifestly necessary to reflect the transition. Changes include deletions, simplifications, shortenings and removal of red-tape, status of guidelines and the like. This section excludes the financial services covered by section 9.

Subject to the above amendments, where the EU law expressly requires mutual recognition, reciprocity or cooperation, the UK will comply as if it were an EU member state for these purposes only.

- **Public procurement**, including public contracts, utilities, concessions and remedies.
  - Any changes
- **Telecoms and media**, including network access, universal service, user's rights, data retention and government interception
  - Net neutrality
  - Audio-visual content and distribution regulation versus internet streaming
  - Any changes
- **Competition (antitrust) law**, including cartels, abuse of dominant position, and mergers. [Comment UK business must in any event comply with foreign competition (antitrust) law, e.g. that of U.S., EU or Japan, if their conduct has effects there]
  - Any changes, e.g. s60 of the UK Competition Act 1998 which requires that UK competition law must be dealt with consistently with EU competition law, and continuation of EU block exemption regulations
- **State aid**, including restrictions on government support for private business in order to preserve a market economy and a level playing-field
  - Any changes

- **Environmental law**, water, atmospheric pollution, prevention of noise, the conservation of wild flora and fauna, waste management, the control of chemicals and energy policy (e.g. specifications for fuels), environmental impact assessments for large projects, the monitoring and reduction of greenhouse gas emissions and a system of trading carbon emissions. Proposals for widening liability for damage caused by environmental violations. [**Comment** More than 300 EU legislative acts (most of UK environmental law is EU-derived)]
  - Any changes
  - Post-Brexit status of existing registrations under EU regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
  - Future REACH-type registrations
  - Status in the UK of EU emissions trading scheme
- **Data protection** – protection of personal data
  - Any changes
  - Status of proposed General Data Protection Regulation to apply from 2018.
  - Any requirements to ensure UK benefits from an adequacy decision by European Commission to enable free movement of personal data from EU to UK
  - Adequacy status of third country data protection
- **Public health and safety**, including medicinal products, medical devices, biotechnology, dangerous substances, pesticides, the quality of drinking and bathing water, bans on smoking and health warnings on tobacco packages and labelling, and rules whereby no medicinal product may be placed on the market without a prior authorisation either from a member state or the European Commission (controls on pricing are national)

Any changes, e.g. appointment of UK regulators in place of EU regulator.
- **Employee protection**, including a prohibition on age, sex and race discrimination, equality for men and women (equal pay for equal work and equal treatment in relation to e.g. access to employment, training, promotion, working conditions and dismissal), rights to maternity and parental leave and information and consultation, employee representation, protection in the event of the transfer of an undertaking or employer insolvency, and rules on health and safety and working time

- Any changes
- **Occupational and personal pensions** a substantial proportion of the legislation and regulation governing the provision of occupational and personal pension flows from EU directives, covering, for example, how pensions are funded, how pension arrangements are governed, how individuals' rights are preserved, and how they are protected in the event of employer failure
  - Any changes
  - If not enacted into UK legislation before the Brexit Date, status beyond mid-1918 of the Institutions for Occupational Retirement Provision 2 Directive, with dispensation for extended time for implementation
  - Status of existing cross-border pension schemes authorised under IORP Directive after the Brexit Date, and applicability of amended funding requirements under IORP 2 Directive
  - Any new UK provision in relation to status of non-UK pension schemes used to comply with automatic enrolment duties
- **Consumer protection**, including directives on health and safety, misleading advertisements, unfair commercial practices, cooling off periods for contracts negotiated away from business premises, distance contracts, electronic commerce, consumer credit, product liability, unfair terms in consumer contracts, package tours and combatting late payment in commercial transactions
  - Any changes
- **Transport (roads, rail, air, sea, waterways)**, covering access to the market, interoperability, safety, qualifications, open skies and other matters
  - Any changes
- **Energy**, including regulation on such matters as access, rights of transit and the ideal of a single European network
  - Any changes
- **Governing law of contracts and non-contractual obligations (Rome I and II)**, mainly codifying existing law on freedom of choice and scope of governing law
  - Any changes
- **Company law**, including public takeovers, cross-border mergers, shareholder rights, capital, financial reporting, disclosure and accounting standards

- Any changes
- **Disclosure of large shareholdings**
  - Any changes
- **Finality in settlement systems for money and securities**, granting legal certainty for these systems
  - Any changes
- **Financial collateral**, including directives improving the legal certainty of financial collateral
  - Any changes
- **Family law**, including jurisdiction and recognition of family judgments (children, divorce, etc)
  - Any changes

## 11. **Reciprocal laws**

The EU reciprocal laws (including secondary legislation) dealing with the fields specified below shall continue to apply in the UK on and after the Brexit Date as they apply before the Brexit Date except as set out in this section

For the purposes of mutual recognition and reciprocity (but not for other purposes) the UK will be treated as if it were an EU member state. The laws shall be amended by any changes specified below in this section and by any corrections which are manifestly necessary to reflect the transition

- **Jurisdiction in civil and commercial matters and judgments (Brussels Recast Regulation)**, providing for free express choices, otherwise for rules on ascertainment of jurisdiction, and easy EU-wide recognition and enforcement of EU judgements. Any changes. Join updated Lugano Convention? Any recognition of European Court of Justice rulings, including ban on anti-suit injunctions. UK ratifies Hague Convention on Choice of Court Agreements 2005 (exclusive jurisdiction clauses)
- **EU regulation on insolvency proceedings**, generally giving insolvency jurisdiction to the member state where the debtor's centre of main interests is located (although parallel secondary proceedings in other member states are permitted, though limited) and providing that the applicable law is generally that of the opening state, subject to important exceptions. Any changes. Status of recent

regulation coming into force in 2017 and of insolvency proposals under the Capital Markets Union proposal. [**Comment** The popular UK scheme of arrangement is not affected by EU insolvency regulations]

- **Reorganisation and winding-up of credit institutions (regulation)**, setting out rules for EEA home state jurisdiction whose law applies in most cases, with important exceptions. Any changes
- **Insolvency of insurers (regulation similar to credit institutions)**. Any changes
- **Bank resolution (directive)**, influenced by Basel. Living wills. Status of article 55 contractual recognition of bail-in requirements. Status of deposit and investor protection. Any changes
- **EU arrest warrants**. Any changes
- Regulations on **the modernised coordination of social security systems**, which provide for reciprocity of treatment of persons in relation to e.g. the receipt of social security benefits. Any changes. [**Comment** In the pensions context this is relevant to acquiring qualifying years for entitlement to the UK state pension during periods of working in an EU Member State; entitlement to state pension increases, etc]

## 12. EU courts and tribunals

All EU supranational courts and tribunals having jurisdiction over UK persons and matters, including those in relation to EU continued laws and the Court of Justice of the European Union, shall cease to have jurisdiction after the Brexit Date in relation to proceedings commenced after the Brexit Date. Status of Unified Patent Court

Proceedings in those courts and tribunals existing on the Brexit Date may be continued

The relevant revoked EU jurisdiction shall be transferred to the UK courts and tribunals specified below in this section or, if not so specified, as the Brexit Commission may direct

Existing decisions of the EU courts and tribunals shall be persuasive in UK courts and tribunals, but not necessarily binding.

### 13. Assumption by the UK of specialised EU functions

On and after the Brexit date, the UK will assume responsibility for the following activities previously carried out by the EU in relation to the UK, but only to the extent specified below (if at all):

- Agricultural, rural and fisheries support
- Regional development projects in the UK, such as infrastructure, originally provided by the EU and the European Investment Bank
- Participation in Galileo, Copernicus and the nuclear fusion reactor
- Student exchanges
- Scientific research
- Foreign and humanitarian aid
- Border protection, immigration, asylum and cooperation in security and anti-terrorism
- The work of any specialist EU agencies and bodies, such as the European Chemicals Agency and the European Medicines Agency (currently located in London). Grandfathering of existing authorisations for medicines. [**Comment** UK has the Medicines and Healthcare Products Regulatory Agency. Hence there could be both centralised and national approvals. Note international mutual recognition agencies]
- Defences against dumping
- Any others decided by Parliament

Specify in each case the UK policies for the future of the above on and after the Brexit Date.

### 14. EU treaties

- **Free trade agreements and customs union with the EU** Possible UK succession to these agreements on exchange of diplomatic notes? If not, the UK may enter into free trade agreements and customs unions with the following countries on the lines of the existing free trade agreements or customs unions between the EU and those countries, with such changes as may be agreed:

- Albania
- Algeria
- Andorra
- Antigua
- Barbados
- Barbuda
- Belize
- Bosnia
- Chile
- Colombia
- Costa Rica
- Dominica
- Dominican Republic
- Egypt
- El Salvador
- Faroes
- Georgia
- Grenada
- Guernsey
- Guyana
- Haiti
- Honduras
- Iceland (EEA)
- Isle of Man
- Israel
- Jamaica
- Jersey
- Jordan
- Kosovo
- Lebanon
- Liechtenstein (EEA)
- Macedonia
- Madagascar
- Mauritius
- Mexico
- Moldova
- Monaco
- Montenegro
- Morocco
- Nicaragua
- Norway (EEA)
- Palestinian Authority
- Panama
- Papua New Guinea
- Peru
- San Marino
- Serbia
- Seychelles
- South Africa
- South Korea
- Suriname
- Switzerland
- Syria
- Trinidad and Tobago
- Tunisia
- Turkey
- Zimbabwe
- St Kitts & Nevis
- St Lucia
- St.Vincent and the Grenadines

- There are many other EU agreements, provisional or in the course of negotiation including with:
  - Brazil
  - Canada
  - China
  - India
  - Japan
  - Singapore
  - U.S.
  - Vietnam
  - Other countries in Africa, Asia, Latin America and elsewhere, but not most countries in the Middle East, nor Russia, nor most of the former USSR, except as stated above. Note, for example, the Regional Convention on pan-Euro Mediterranean preferential rules of origin.

- **Non-EU free trade agreements** Ratification of non-EU free trade agreements (if any) with other countries, such as:

- Australia
- Brazil
- Canada
- China
- India
- Indonesia
- Malaysia
- Nigeria
- Singapore
- Other Commonwealth countries
- United States
- Others

- **WTO status** Status of UK membership of the World Trade Organisation, if applicable, and the filing of a schedule of commitments
- **Other treaties (excluding non-free trade agreements)** The UK declares that it is willing to succeed to all rights and obligations under the treaties (other than free trade agreements) entered into by the EU for the benefit of member states and specified below in this section or, if not so specified, as directed by the Brexit Commission, so far as they are applicable to the EU or a member state, except to the extent incompatible with the purposes of the treaty and except as specified in this section. [**Comment** Numerous treaties, e.g. on aviation, fisheries, sugar, grains and other matters]

Where agreed with EU, the UK will confirm this succession by an exchange of diplomatic notes or otherwise as appropriate.

## 15. Taxation

On the Brexit Date, UK tax laws shall be amended as set out in this section

- **Value Added Tax** Repeal of provisions concerning the acquisition of goods from and the despatches of goods to other EU member states, and their treatment instead as imports and exports respectively so that they attract import VAT (often recoverable)

Repeal of EC Sales Lists and Intrastat filings provisions, and any replacement regime

Any provisions for equal treatment of supplies of financial and insurance services between the UK and the EU, including dealing with recovery of input tax on supplies from UK businesses both to EU and to UK customers and treatment of supplies from the EU into the UK which have benefitted from full input tax recovery

Any provisions for equal treatment of travel in the UK and in the EU under the tour operators margin scheme

Any additional zero-rated supplies not currently permitted under EU law

- **Other EU-related taxes** Any continued application of the Parent-Subsidiary Directive and the Interest and Royalties Directive so that interest, dividends and royalties can continue to be paid

intra-group and within the EEA without withholding taxes. Any renegotiation of bilateral member state tax treaties to eliminate withholdings, e.g. Germany, Italy

[**Comment** The UK has a bilateral tax treaty with all EU member states, most but not all of which provide full relief from withholding tax on dividends. UK has a wide treaty network outside the EU which benefits the location of holding companies in the UK. No withholding on dividends paid by U.S. companies to UK parents under the U.S./UK tax treaty. The UK doesn't levy withholding tax on dividends. UK tax treaties usually but not always provide relief on interest and royalties by UK companies]

Any provisions concerning those areas of UK tax law that have been found to be contrary to EU law, including rules governing controlled foreign companies, transfer pricing and certain corporate distributions, putting on a statutory footing the disapplication of provisions that have ceased to be applied under EU law but are still part of the UK tax code (such as 1.5% stamp duty on UK shares in clearing systems), and repealing any EU specific exemptions from UK tax provisions (such as anti-avoidance) to the extent it is decided that they should no longer apply

Any provisions concerning application of income tax and inheritance tax reliefs in relation to the EEA, such as gift aid to EEA charities and agricultural property inheritance tax relief for EEA farmland

- **UK tax incentives** Any tax reductions or exemptions to improve investment in the UK and the continued use of UK holding companies (subject to any retained state aid objections)
- **Tax avoidance** Any measures to combat aggressive tax planning on lines of proposals by OECD, G7 and recent EU tax avoidance directive.

## 16. Intellectual property

- Any continuation in the UK of EU intellectual property laws and any amendments: patents, trade marks, copyright, designs. Any ban on use of IP rights to block free movement of goods (“exhaustion of rights”)
- Status of existing EU-wide rights (automatic or fresh grant of equivalent UK trademarks and registered designs?) Preservative use of UK trade marks in the EU? Status of unregistered designs
- Status of future European Unitary Patent and the Unified Patents Court (planned to come into effect in 2017)

- Status of Supplementary Protection Certificates for patents
- Future UK use of pan-European injunctions
- Future of copyright law, including cross-border portability of content in context of Digital Single Market initiative
- Future of EU database rights.

## 17. **Human rights**

Any amendments to the UK application of European Convention on Human Rights. [**Comment** This is not an EU statute]

## 18. **Intelligence and defence**

The UK may continue to cooperate with the EU and member states on counter-intelligence and on security and defence matters to the extent agreed between the UK and the EU or applicable EU governments.

## 19. **Acquired rights**

- Any special protection of or derogation from acquired rights, e.g. existing rights of UK persons or EU persons
- Interpretation of contracts referring to EU territory, e.g. restrictive covenants, intellectual property licences? [**Comment** No artificial neutering of material adverse change, termination or event of default clauses triggering on Brexit]

## 20. **Brexit regulations and implementation**

Where constitutional, Parliament may make subordinate regulations implementing the detail of matters covered by this Act or correcting manifest errors or manifest gaps in the transition legislation

The Brexit Commission may implement the matters contemplated by this Act to the extent technical and administrative, subject to ultimate control by Parliament.

## 21. **Application of Act to EEA and EFTA**

Provisions concerning the EEA (EU plus Iceland, Liechtenstein and Norway) and EFTA (Iceland, Liechtenstein, Norway and Switzerland)

## 22. **Application of this Act to Scotland, Northern Ireland and other UK territories**

- Scotland
- Northern Ireland
- Isle of Man
- Channel Islands
- Gibraltar
- Other UK territories

## 23. **Miscellaneous**

Definitions

This Act comes into force on the designated date

This Act may be cited as the Brexit Act.

## **Schedule 1 – Withdrawal Agreement**

Text of Withdrawal Agreement.



## Acknowledgements

We are grateful to Ceris Gardner, partner in the City law firm Maurice Turnor Gardner, for advice on UK immigration law. In addition to those listed in Contacts below, contributions from many lawyers in A&O are gratefully acknowledged, including:

Karen Birch

Trevor Borthwick

David Broadley

Andrew Castle

Nick Clarke

Carolyn Conner

Neville Cordell

Jeanette Cruz

Thomas Cusworth

Felicity Gemson

Michael Green

Oonagh Harrison

Emma Lancelott

Tom Levine

Dominic Long

Mark Mansell

Jodi Norman

Nigel Parker

Jeremy Parr

Helen Powell

Nigel Pritchard

Jason Rix

Sian Rowlands

Linda Roxburgh

Mark Sterling

Louise Tolley

Alistair Tyrrell

Elizabeth Wall

Nick Williams

Charles Yorke

This paper was written by Philip Wood, CBE, QC (Hon), Head of the Allen & Overy Global Law Intelligence Unit, with much help from others. The contributors and contacts are not responsible for the contents of this paper, which are the responsibility of the author alone.

## Contacts



**Richard Cranfield**  
Partner – Corporate  
Tel +44 20 3088 3200  
[richard.cranfield@allenoverly.com](mailto:richard.cranfield@allenoverly.com)



**Daniel Shurman**  
Partner – Derivatives  
Tel +44 20 3088 2855  
[daniel.shurman@allenoverly.com](mailto:daniel.shurman@allenoverly.com)



**David Campbell**  
Partner – Banking  
Tel +44 20 3088 4758  
[david.campbell@allenoverly.com](mailto:david.campbell@allenoverly.com)



**Damian Carolan**  
Partner – Financial Services Regulatory  
Tel +44 20 3088 2495  
[damian.carolan@allenoverly.com](mailto:damian.carolan@allenoverly.com)



**Lydia Challen**  
Partner – Tax  
Tel +44 20 3088 2753  
[lydia.challen@allenoverly.com](mailto:lydia.challen@allenoverly.com)



**Angela Clist**  
Partner – Securitisation  
Tel +44 20 3088 2437  
[angela.clist@allenoverly.com](mailto:angela.clist@allenoverly.com)



**Nicola Dagg**  
Partner – Litigation  
Tel +44 20 3088 3871  
[nicola.dagg@allenoverly.com](mailto:nicola.dagg@allenoverly.com)



**Jane Finlayson-Brown**  
Partner – Data Protection  
Tel +44 20 3088 3384  
[jane.finlayson-brown@allenoverly.com](mailto:jane.finlayson-brown@allenoverly.com)



**Sarah Garvey**  
Counsel – International Law  
Tel +44 20 3088 3710  
[sarah.garvey@allenoverly.com](mailto:sarah.garvey@allenoverly.com)



**Matthew Hartley**

Partner – International Capital Markets  
Tel +44 20 3088 2824  
[matthew.hartley@allenoverly.com](mailto:matthew.hartley@allenoverly.com)



**Sarah Henchoz**

Partner – Employment  
Tel +44 20 3088 4810  
[sarah.henchoz@allenoverly.com](mailto:sarah.henchoz@allenoverly.com)



**Etay Katz**

Partner – Financial Services Regulatory  
Tel +44 20 3088 3823  
[etay.katz@allenoverly.com](mailto:etay.katz@allenoverly.com)



**Michael Reynolds**

Of Counsel – Antitrust  
Tel +32 2 780 29 50  
[michael.reynolds@allenoverly.com](mailto:michael.reynolds@allenoverly.com)



**Maria Stimpson**

Partner – Pensions  
Tel +44 20 3088 3665  
[maria.stimpson@allenoverly.com](mailto:maria.stimpson@allenoverly.com)



**Kate Sumpter**

Partner – Financial Services Regulatory  
Tel +44 20 3088 2054  
[kate.sumpter@allenoverly.com](mailto:kate.sumpter@allenoverly.com)



**Amanda Thomas**

Partner – International Capital Markets  
Tel +44 20 3088 2821  
[amanda.thomas@allenoverly.com](mailto:amanda.thomas@allenoverly.com)



**Matthew Townsend**

Partner – Environmental & Regulatory Law  
Tel +44 20 3088 3174  
[matthew.townsend@allenoverly.com](mailto:matthew.townsend@allenoverly.com)



**Richard Tredgett**

Partner – Derivatives  
Tel +44 20 3088 2467  
[richard.tredgett@allenoverly.com](mailto:richard.tredgett@allenoverly.com)



**Helga Van Peer**  
Partner – Public Law  
Tel +32 2780 2467  
[Helga.VanPeer@allenovery.com](mailto:Helga.VanPeer@allenovery.com)



**Bob Penn**  
Partner – Banking  
Tel +44 20 3088 2582  
[bob.penn@allenovery.com](mailto:bob.penn@allenovery.com)



Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | [www.allenoverly.com](http://www.allenoverly.com)

In this document, Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings.

Allen & Overy LLP or an affiliated undertaking has an office in each of: Abu Dhabi, Amsterdam, Antwerp, Bangkok, Barcelona, Beijing, Belfast, Bratislava, Brussels, Bucharest (associated office), Budapest, Casablanca, Doha, Dubai, Düsseldorf, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, Istanbul, Jakarta (associated office), Johannesburg, London, Luxembourg, Madrid, Milan, Moscow, Munich, New York, Paris, Perth, Prague, Riyadh (cooperation office), Rome, São Paulo, Seoul, Shanghai, Singapore, Sydney, Tokyo, Warsaw, Washington D.C., and Yangon. | MKT:5923342.2