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SPICe Briefing

Pàipear-ullachaidh SPICe

Frequently Asked Questions on the UK's exit from the European Union

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SPICe has compiled answers to frequently asked questions about the UK's exit from the European Union (EU).



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Executive Summary

This briefing provides answers to some frequently asked questions about the UK's exit from the EU.

The overview is a summary of the key questions on the process of the UK leaving the EU.

The remainder of the briefing is organised into three key areas:

- [People](#)
- [Law and institutions](#)
- [Looking ahead](#)

Although this briefing aims to be comprehensive, it is not possible to answer every question on the UK's exit from the EU.

The briefing is intended to stand alone to answer questions on the UK's exit from the EU. As such, the document is cross-referenced to help readers to understand technical references given in answers. Other SPICe briefings which readers may find helpful are also highlighted. Where appropriate, external sources are linked to.

Whilst this briefing aims to be extensive it is not exhaustive. These answers to frequently asked questions provide general information. They should not be seen as definitive advice for individual circumstances which may be complex.

Overview

Key questions on the UK's exit from the EU.

What is Brexit?

Brexit is a term used to describe the United Kingdom's departure from the European Union.

Why is the UK leaving the EU?

On 23 June 2016, the United Kingdom [voted in a referendum](#) to leave the European Union by 52% to 48%.

Why are we leaving when Scotland voted remain?

The referendum on EU membership was UK-wide. Although [Scotland voted by 62% to 38% to remain](#), the UK as a whole voted to leave the EU.

When will Brexit be done?

As [Brexit](#) is the term used to describe the United Kingdom's departure from the European Union, Brexit will be done when the UK leaves the EU on 31 January 2020. However, negotiations will then begin over the arrangements for the [future UK and EU relationship](#).

It is not clear how long these negotiations will take, nor whether they will be completed in time to allow the new relationship to enter into force at the conclusion of the [transition period](#) on 31 December 2020.

What and when is exit day?

Exit day is the day on which the UK leaves the EU. It is the 31 January 2020.

The time the UK leaves the EU on 31 January 2020 is 11pm.

What changes after 31 January 2020?

The UK will no longer be an EU Member State. The UK's membership of the political institutions of the EU (the European Parliament, the European Commission and the European Council) will cease on 31 January 2020.

The [transition period](#) means that the UK will, however, continue to be a member of the [single market](#) and [customs union](#) (meaning that the trading relationship will remain as it is now) until 31 December 2020.

The UK will also be able to attend Council meetings on topics relating to the UK, however it will not have a vote on these matters. The UK will also continue to follow EU law as well as rules and regulations in areas like agriculture and fishing during the transition period, however it will no longer participate in others such as the Common Security and Defence Policy.

Freedom of movement will continue - which means that UK citizens can live, work and travel freely in EU Member States and EU citizens can do the same in the UK.

Will the UK still be a member of the EU after 31 January 2020?

No, the UK will no longer be an EU Member State.

What is the transition period?

After the UK leaves the EU on 31 January there is a 'transition period' until 31 December 2020. The transition period effectively maintains the status quo – it allows the UK to continue as if it were an EU member state, whilst not participating in EU institutions and governance structures.

What is the implementation period?

This is exactly the same as the [transition period](#). The UK Government tends to use the term 'implementation period'.

What does 'no deal' mean?

No deal has been used at various points in the Brexit process to describe a scenario where there is no agreement in place between the UK and the EU at the time of the UK's exit.

After the [Withdrawal Agreement](#) was reached, no deal was a possibility because the UK Parliament had not agreed a Bill to give legal effect to the Withdrawal Agreement.

Now that the [European Union \(Withdrawal Agreement\) Act 2020](#) is law, there is no longer the possibility of a [no deal scenario](#) when the UK leaves the EU on 31 January. Rather, the UK will enter a [transition period](#) until 31 December 2020.

Is there still the possibility of a no deal?

The UK will leave the EU on 31 January 2020 having agreed the terms of its departure in the [Withdrawal Agreement](#). These terms addressed three key issues – citizens' rights, a financial settlement and the Ireland and Northern Ireland border. The Withdrawal Agreement also included provision for a [transition period](#).

There is the possibility of a so called 'no deal scenario' if the UK and EU have not reached agreement on the [future relationship](#) by the end of the [transition period](#) (31 December 2020). This kind of 'no deal scenario' would affect things like trade in goods and services. The [Withdrawal Agreement](#) would, however, still stand meaning that, for example, citizens' rights would be protected.

SPICe has produced [a briefing on preparing for a no deal Brexit](#).

What is the Withdrawal Agreement?

The [Withdrawal Agreement](#) establishes the terms of the UK's withdrawal from the EU. In dealing with the UK's exit, the Agreement addresses many issues which have arisen because the UK has been a member state, for example, the rights of [EU citizens](#) living in the UK. The Agreement does not deal with the [future UK/EU relationship](#).

What is the political declaration?

The [political declaration](#) sets out the aspirations for the [future relationship](#) between the EU and the UK. Although it has been agreed by both the UK and the EU it is not legally binding.

What is the European Union (Withdrawal) Act 2018?

The [European Union \(Withdrawal\) Act 2018](#) repeals the [European Communities Act 1972](#) which brought the UK into the EU.

The Act also preserves and converts a lot of [EU law](#) into domestic law. Domestic law is the law that applies in the UK. EU law which has been converted into domestic law will apply in the UK after the end of the [transition period](#).

What is the European Union (Withdrawal Agreement) Act 2020?

The [European Union \(Withdrawal Agreement\) Act 2020](#) turns the [Withdrawal Agreement](#) (which is a draft treaty) into UK law.

What is the future relationship?

Future relationship is a term used to describe what arrangements will look like between the UK and EU from 1 January 2021 (i.e. after the end of the [transition period](#)). 'Future relationship' is used in many areas from trade policy and security arrangements to living and working abroad.

What is the backstop? Does it still exist?

The backstop was included in the previous [Withdrawal Agreement](#) to seek to protect the the Good Friday Agreement and to ensure there is no hard border between Northern Ireland and Ireland. It would have come into effect if the arrangements for the [future relationship](#) between the UK and the EU hadn't ensured there would be [no hard border on the island of Ireland](#).

In the [Withdrawal Agreement](#) concluded in October 2019, the backstop was replaced by permanent arrangements which will come into effect at the end of the [transition period](#).

What is the EEA?

The European Economic Area (EEA) is currently made up of the 28 EU Member States and three other countries, Norway, Iceland and Lichtenstein. All EEA countries are part of the [single market](#); however, non-EU EEA countries are not part of the EU [customs union](#). More detail is available in the [SPICe briefing on European Economic Area Membership](#).

What is the Single Market?

The single market (sometimes also called the common market) is used to describe the removal of barriers across the EU and EEA so that there is free movement of goods, people, services and capital from one member state to another.

Within the single market a common framework of regulations means companies across the EU follow the same standards. This ensures that goods made in any member state can be sold across the EU.

What is the EU Customs Union?

The EU is a customs union. This means that EU member states form a single territory for customs purposes. This means that:

- no customs duties (tariffs) are paid on goods moving between EU Member States
- all apply a common customs tariff for goods imported from outside the EU

- goods that have been legally imported can circulate throughout the EU with no further customs checks.

Are we still a European country?

Yes, the UK continues to form part of geographic Europe.

People

Citizens

What does the transition period mean for UK citizens living in the EU?

Opportunities for UK citizens to live, work, study and travel to EU Member States will remain unchanged during the [transition period](#).

The Gov.UK website contains a helpful page of information for [UK citizens living in the EU](#) as the UK prepares to leave the EU.

What does the transition period mean for EU and EEA citizens living in the UK?

During the [transition period](#), freedom of movement is retained. This means that EU citizens and their families who wish to live in the UK will be able to. EU citizens who wish to remain living in the UK after 30 June 2021 (six months after the end of the transition period) will need to apply to the EU Settlement Scheme. EU citizens must be able to show that they have been resident in the UK by December 2020 to apply to the scheme.

Citizens from Norway, Iceland, Liechtenstein ([EEA](#)) and Switzerland can also apply to the scheme.

Applicants to the EU Settlement Scheme will be given either settled status or pre-settled status.

Settled status

Settled status is given to applicants who:

- started living in the UK by 31 December 2020
- lived in the UK for a continuous 5-year period.

Pre-settled status

Pre-settled status is given to applicants who arrive before 31 December 2020 and who have not lived in the UK for a continuous 5-year period. Once a continuous 5-year period has passed, applicants can then apply for settled status. Further information on [applying to the EU Settlement Scheme](#) can be found on the Gov.UK website.

The Citizens Advice Scotland website also has a number of pages offering advice on [staying in the UK after Brexit](#).

What is happening to voting rights?

EU citizens living in an EU member state are able to vote and stand as a candidate in municipal (local) elections and elections to the European Parliament. They are able to do this even if they are not a national of the state they are living in.

After the end of the [transition period](#) (31 December 2020), these mutual voting rights are not certain.

The [Scottish Elections \(Franchise and Representation\) Bill](#) is currently being considered by the Scottish Parliament. The Bill provides for EU citizens to continue to vote in Scottish Parliament and local government elections in Scotland. This would continue the current situation whereby EU citizens living in Scotland can vote at Scottish Parliament and local government elections.

The UK will not take part in any further elections to the European Parliament.

What happens to social security benefits for EU citizens living in the UK, and for UK citizens living in the EU after Brexit?

There are common rules to protect citizens' social security rights when moving within the [EEA](#).

These rules on social security coordination do not replace national systems with a single European one. Countries are free to decide who can receive benefits, which benefits are granted and under what conditions.

The general rules mean that citizens from EEA countries are entitled to the same social security benefits in the country they live as nationals are.

The [Withdrawal Agreement](#) provides for social security co-ordination to continue to apply after the end of the [transition period](#) for citizens who are protected under the Withdrawal Agreement. This means that EEA citizens living in the UK prior to 31 December 2020 and UK citizens living in EEA countries prior to 31 December 2020 will continue to receive benefits as if they were a national of that country.

It is unclear what arrangements will be in place for people who move to the UK from an EEA country or from the UK to an EEA country after 31 December 2020.

Travel

Is the European Health Insurance Card (EHIC) still valid?

An in-date EHIC card will be valid for UK citizens who require medical treatment in EU Member States and other reciprocating countries during the [transition period](#).

After the end of the transition period, the EHIC card may not be valid. It will be for the UK and EU to agree what arrangements are in place from 1 January 2021.

The EHIC application website answers a number of helpful [FAQs on the EHIC card and Brexit](#).

Do I need to change my passport because the UK is leaving the EU?

If you have a UK passport there is no need to renew it simply because the UK is leaving the EU.

British passports have been burgundy and have had 'European Union' on the cover.

From autumn 2019, the UK began to issue blue passports without 'European Union' on the cover. Both passport designs will continue to be valid post Brexit, so long as they have sufficient time until the passport's expiry date.

It is often advised that you have at least six months on your passport before it expires to travel.

A note on passports issued prior to September 2018

UK passports are valid for ten years, but before September 2018, people renewing their passports prior to the expiry date, were granted credit of up to nine months. This means that some passports issued before September 2018 will be valid for up to 10 years and nine months.

It is important to note is that after 31 December 2020 (the end of the [transition period](#)), any months of credit will not count as a valid period for travel in the [Schengen area](#).

The UK Government has created an [online tool](#) where people are able to check whether their passport is valid for travel in Europe after Brexit.

Will transport be affected by the UK leaving the EU?

The [transition period](#) means that there is more certainty around what arrangements will be in place from [exit day](#) until 31 December 2020.

Because of the transition arrangements in place flights, trains and ferries should continue to operate as normal.

Travel arrangements after the end of the transition period are subject to negotiation.

Will arrangements for travelling with a pet change?

Until the end of the [transition period](#), procedures for travelling with a pet to from the UK to EU member states and vice versa will remain the same.

The [EU Pet Travel Scheme](#) allows residents in EU Member States (and those from the UK during the transition period) to travel freely with their cats, dogs and ferrets within the EU.

There are requirements which must be met to use the scheme, such as requiring pets to be microchipped and up to date on rabies vaccinations.

After the end of the transition period, arrangements for pet travel may change. This is something which would be agreed between the UK and EU during negotiations on the [future relationship](#).

Will there be changes to using a mobile phone abroad?

Mobile roaming will remain unchanged for the duration of the [transition period](#). This means mobile phone users can continue to make calls and send texts whilst visiting EU member states without incurring additional charges.

From 1 January 2021 (after the end of the transition period), rules on mobile roaming may change. This is a decision for mobile phone providers.

Is travel insurance needed?

People should have appropriate travel insurance in place before taking any trip. This was the case prior to the UK leaving the EU and remains the case after the UK has left.

A European Health Insurance Card (EHIC) gives access to state-provided healthcare if you are resident in the UK. It is important to remember that not all EU countries operate a healthcare system equivalent to the NHS. As such, an EHIC card is not the same as travel insurance. The card does not cover all medical costs or the cost of repatriation to the UK in the event of a medical emergency.

For information on the EHIC card see '[Is the European Health Insurance Card still valid?](#)'

Will I need a visa to travel to the EU after Brexit?

UK citizens are able to continue to travel to EU members states freely until the end of the [transition period](#) (31 December 2020).

Likewise, EU citizens can continue to travel freely to the UK until the end of the transition period (31 December 2020).

From 1 January 2021 there may be new rules in place and travel to the EU.

There has already been some discussion about travel arrangements after the transition period. In November 2019 the European Commission proposed a two-way deal to provide visa-free travel for UK passport holders for short stays in EU member states and vice versa for EU nationals visiting the UK.

The European Commission has outlined the [European Travel Information and Authorisation System](#) (ETIAS). ETIAS is a visa waiver system which requires online travel registration. ETIAS is anticipated to come into force in 2021.

Travel arrangements will be discussed and agreed by the UK and the EU as part of negotiations on the [future relationship](#).

Students

Will UK students continue to be able to study in the EU and will EU students be able to continue to study in the UK?

During the [transition period](#), UK students will be able to begin studies at EU universities and EU students will be able to study at UK universities.

The Scottish Government [has confirmed](#) that EU students beginning courses in 2020-21 will continue to be entitled to free university tuition.

It is not clear what study arrangements will be from 1 January 2021 (i.e. after the end of the transition period). It is likely that the UK and EU will negotiate about what future arrangements will be during the transition period.

Pensioners

Will UK pensioners living abroad still receive their UK pension?

If you live abroad you may be able to claim a UK state pension if you have been a UK taxpayer and have paid enough in National Insurance contributions to qualify. The UK's exit from the EU does not affect this. The UK Government has stated that UK nationals living in an [EEA](#) state or Switzerland will continue to have their pensions uprated for as long as they continue to live there and meet the qualifying conditions.

If you plan to retire to an EU country after the [transition period](#) ends, it is not clear if you may be able to receive a UK state pension. These rights will be the subject of the UK-EU negotiations on a [future relationship](#).

Health

Will UK citizens living in EEA countries be able to access health care?

At the moment, all UK citizens in the [EEA](#) and Switzerland are entitled to state-provided healthcare in the country they live, on the same terms as the nationals of that country. These citizens' rights are preserved in the [Withdrawal Agreement](#). This means that even after 1 January 2021 these individuals will be able to use the healthcare system in the country in which they live as they do at the moment.

It is not clear what the healthcare rights of UK citizens moving to the EU, EEA and Switzerland after the [transition period](#) ends will be. These rights will be determined in negotiations on the [future relationship](#).

Will UK citizens visiting an EEA country be able to access health care?

UK citizens visiting an EEA country (and Switzerland) are able to access emergency medical care if they have an [EHIC card](#). When the UK leaves the EU on 31 January 2020, UK citizens will continue to be able to access state healthcare in EEA countries (and Switzerland) through the [transition period](#).

The UK Government's ambition is to secure the continuation of current reciprocal healthcare arrangements after the end of the transition period. The UK intends to do this by way of a future agreement with the EU, [EEA countries](#) and Switzerland. However, the UK could also enter into bilateral agreements with individual countries.

Will EEA citizens living in the UK be able to use the NHS?

[EEA](#) and Swiss citizens who already live in the UK or who move here prior to 31 December 2020 and obtain [settled or pre-settled status](#) will be able to access free NHS treatment. These citizens' rights are preserved in the [Withdrawal Agreement](#). This means that even after 1 January 2021 these individuals will be able to use the NHS as they do at the moment.

Will EEA citizens visiting the UK be able to use the NHS?

Until the end of the [transition period](#), [EEA](#) and Swiss citizens are entitled to use state-provided emergency medical treatment if they travel to the UK and have the necessary documentation.

After 1 January 2021 the arrangements for accessing healthcare for EEA and Swiss citizens travelling to the UK may change.

The UK Government's ambition is to secure the continuation of current EEA reciprocal healthcare arrangements after the end of the transition period. The UK intends to do this by way of a future agreement with the EU, [EEA countries](#) and Switzerland. However, the UK could also enter into bilateral agreements with individual countries.

Can UK citizens living in another EEA country use the NHS for free?

Until the end of the [transition period](#), UK citizens are entitled to a [European Health Insurance Card](#) (EHIC), which enables them to use state-provided emergency medical treatment if they travel to another EU country (or Switzerland, Norway, Iceland and Liechtenstein). The EHIC covers pre-existing medical conditions and routine maternity care as well.

If you are a UK citizen and permanently resident in the EEA or Switzerland, you need an EHIC card to access NHS treatment for free. There are exemptions to this and the following groups do not need an EHIC for free NHS treatment in the UK:

- UK pensioners living in the EU/EEA
- UK students in the EU/EEA (for example, doing a year abroad)
- "posted workers" - UK workers sent by their UK employer to work in the EU/EEA.

There may be different arrangements in place from 1 January 2021.

Are there concerns about the supplies of medicines after the UK leaves the EU?

It is not anticipated that there will be supply issues now that the UK and EU have agreed the [Withdrawal Agreement](#) which contains a [transition period](#). The transition period means that goods will continue to move between the EU and the UK in the same way as they did prior to the UK leaving the EU. As such, people do not need to take any special action to keep getting their medicines and medical products after the UK leaves the EU.

These transition arrangements are in place until 31 December 2020.

The UK Government had established a [Medicines Supply Contingency Planning Programme](#) to consider the smooth and continued flow of medicines into the UK in the event of a [no deal](#).

Law and Institutions

EU law

What is EU law?

EU legislation is divided into primary, secondary and tertiary.

The treaties (primary legislation) are the basis or ground rules for all EU action.

Secondary legislation which includes regulations, directives and decisions is derived from the principles and objectives set out in the treaties. Regulations and decisions become binding automatically throughout the EU on the date they come into force. Directives must be incorporated by EU countries into their national legislation.

Tertiary legislation consists of delegated and implementing acts. This is legislation which supplements, amends or implements the rules set out in directives, regulations and decisions.

UK Ministers and Scottish Ministers have domestic powers to make regulations (secondary legislation) to implement EU law. Domestic regulations implementing EU law cover various issues, for example, workers' rights and the labelling of food.

At the end of the [transition period](#), the UK will be able to change the policy provided for in both EU secondary and tertiary legislation and in domestic regulations implementing EU law.

See [When can the UK start changing its laws?](#) for further information.

How has EU law been brought into effect in Scotland to date?

Section 53 of the Scotland Act 1998 gives Scottish Ministers powers to make regulations (secondary legislation) in devolved areas (those which are not reserved to the UK Parliament under the Scotland Act) for the purpose of giving effect to [EU law](#).

Section 57(1) of the Scotland Act 1998 also gives UK Ministers powers to make regulations for the purpose of giving effect to EU law in devolved areas.

Will EU laws still apply to the UK after 31 January 2020?

Yes. The [Withdrawal Agreement](#) Article 127 states that:

“ Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period. ”

Section 1 of the [European Union \(Withdrawal Agreement\) Act 2020](#) delays the revocation of key elements of the [European Communities Act 1972](#) (which brought the UK into the

EU) until the end of the [transition period](#) to give effect to this element of the Withdrawal Agreement.

When can the UK start changing its laws?

Some areas of law have always been determined at a UK level. For areas of law which were previously derived from the EU, the UK must be compliant with EU law until the end of the [transition period](#) (31 December 2020).

From 1 January 2021 the UK has no obligation to conform to EU law.

Who can make new laws in Scotland after the UK leaves the EU?

After the UK leaves the EU, policy for areas which were previously covered by [EU law](#) will be decided at UK level by the UK Government and the Scottish Government.

Scottish Ministers will continue to have powers in devolved areas and the Scottish Parliament will continue to be the primary legislature (the law making body) for Scotland. The UK Parliament has always had the power to make laws for Scotland in devolved areas and it will continue to have that power. The UK Parliament will not normally legislate in devolved areas without seeking the consent of the Scottish Parliament.

Some UK legislation, like the [European Union \(Withdrawal Agreement\) Act 2020](#) does, however, give UK Ministers the power to make regulations (secondary legislation) in devolved areas. The effect of these regulations may be to change policy. UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. That agreement is a legal requirement in some cases, but not in all.

Does the UK leaving the EU affect the powers that Scottish and UK Ministers have?

The [European Union \(Withdrawal Act\) 2018](#) gives Scottish Ministers powers to amend the law in devolved areas by regulation (secondary legislation) so that Scottish laws work effectively after the UK leaves the EU and the [transition period](#) is complete.

UK Ministers have powers under the [European Union \(Withdrawal Act\)](#) to adjust the laws in the UK, including Scottish laws, so that they work effectively after the UK leaves the EU. UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. That agreement is a legal requirement in some cases, but not all.

The [European Union \(Withdrawal Agreement\) Act 2020](#) gives UK and Scottish Ministers a suite of new powers in devolved areas that go beyond correcting deficiencies. These powers have been conferred concurrently, meaning that either UK Ministers or Scottish Ministers can act. The suite of concurrent powers includes:

- powers to implement long term obligations for the recognition of citizens' rights under the [Withdrawal Agreement](#)
- powers to deal with separation issues such as the regulation of goods placed on the market, and
- powers to implement the Ireland/Northern Ireland protocol.

There are other powers created or amended in the [deficiencies correcting instruments](#) and also powers in other Brexit related legislation, such as the Direct Payments to Farmers Bill.

How is legal continuity being achieved?

Many of the laws in the UK come from having been part of the EU. These laws cover issues from workers' rights to the labelling of food.

The UK leaves the EU on 31 January. However, EU law will continue to apply during the [transition period](#).

At the end of the transition period a snapshot of EU law will be taken that will become 'retained EU law'.

This adoption of EU law as retained EU law will make sure that the UK has the laws it needs after the end of the transition period. This could include, for example, the law on the nutrition and health claims made on food or on ensuring environmental protection in marine areas.

The creation of a new category of UK law called 'retained EU law' was one of the jobs of the [European Union \(Withdrawal\) Act 2018](#).

The UK will be able to amend the policy underlying retained EU law after the end of the transition period.

How has EU law been 'adopted'?

If EU law as it was written was simply copied and pasted into UK law it wouldn't make sense. The result would be gaps, errors and ultimately unintended consequences. Together these gaps, errors and unintended consequences are known as 'deficiencies'.

A great deal of work has already been done to make sure that UK laws work properly at the end of the [transition period](#). In some cases, the changes are very small – removing references to EU institutions, for example. In other cases they are more significant - such as changes in regulatory requirements.

How are 'deficiencies' being fixed?

Because so many laws needed to be changed in a relatively short period of time, UK Government Ministers and Scottish Government Ministers have been given [special](#)

[temporary powers](#) which allow them to change the law to correct 'deficiencies' (gaps, errors, unintended consequences).

These special powers which Ministers have come from the [European Union \(Withdrawal\) Act 2018](#).

UK and Scottish Ministers change the law through [secondary legislation](#). Secondary legislation made by UK Ministers are known as statutory instruments (SIs). Secondary legislation made by Scottish Ministers are Scottish statutory instruments (SSIs).

In some cases where the UK Government and the Scottish Government wish to pursue the same policy objective, the Scottish Government can ask the UK Government to lay statutory instruments that include proposals relating to devolved areas of responsibility. UK Ministers will not normally make such regulations in devolved areas without the consent of the Scottish Ministers. That agreement is a legal requirement in some cases, but not in all.

The changes made by these kind of regulations are often technical and are there to achieve [legal continuity](#). These powers are in many cases, time limited.

How many deficiencies have had to be fixed?

Hundreds of UK SIs have been laid to fix deficiencies. Any SIs which have been made by UK Ministers in devolved areas, and which Scottish Ministers have given their consent to, are listed on the [Delegated Powers and Law Reform Committee's webpage](#).

Do parliaments have a role in secondary legislation?

Secondary legislation (also known as subordinate legislation and regulations) are called Statutory Instruments if they are made by UK Ministers and laid before the UK Parliament and Scottish Statutory Instruments if they are made by Scottish Ministers and laid before the Scottish Parliament.

At both the UK Parliament and the Scottish Parliament there are two main procedures for secondary legislation. The procedures are affirmative and negative.

Secondary legislation which is subject to the affirmative procedure is laid before the relevant Parliament in draft and requires the approval of Parliament to become law.

Secondary legislation which is subject to the negative procedure is made (signed by a Minister) before being laid in parliament. There is an objection period of 40 sitting days during which the relevant parliament can object to an SI (UK Parliament) or an SSI (Scottish Parliament) which has been made. During the objection period, the Parliament can vote on a motion to annul, which either stops the SI or SSI from being law or from becoming law.

Does the Scottish Parliament have a role in scrutinising Statutory Instruments which make law in devolved areas?

The Scottish Parliament cannot scrutinise secondary legislation laid at the UK Parliament. It can, however, scrutinise the decision of Scottish Ministers to consent to the regulations being made by UK Ministers in devolved areas.

The process for this is the [statutory instrument protocol](#) agreed between the Scottish Government and the Scottish Parliament.

Will the UK still need to comply with the European Convention on Human Rights (ECHR)?

Yes. The [European Convention on Human Rights](#) is an international treaty. It sets out rights and guarantees for people. Any state which has signed up to ECHR commits to respect the rights and guarantees which it contains.

Members states of the [Council of Europe](#) have signed the ECHR. The UK is one of those countries. In the UK, rights under the ECHR are protected by the Human Rights Act 1998.

The European Court of Human Rights (ECtHR) hears cases related to the ECHR. When the UK leaves the EU, the relationship to the ECtHR will not change.

Will the UK be bound by the Charter of Fundamental Rights?

The [Charter of Fundamental Rights of the European Union](#) sets out the fundamental rights of everyone living in the EU.

After the end of the [transition period](#), the UK will no longer be bound by the Charter. However, any rights found in the Charter that become [EU retained law](#) because of their existence elsewhere can still be relied upon.

What is the Court of Justice of the European Union?

The [Court of Justice of the European Union](#) ensures that EU countries and institutions abide by EU law. It does this by making sure that EU law is interpreted and applied consistently in every EU country.

The Court of Justice of the European Union is made up of the Court of Justice and the General Court.

Whilst the Court will not have a direct role in the UK on a day-to-day basis after the end of the transition period, the [Withdrawal Agreement](#) does specify that UK courts can refer questions about the EU law referred to in the Citizens' rights part of the agreement to the Court of Justice of the European Union for eight years following the end of transition.

EU Institutions

What is the Council of Europe and will the UK still be a member after it leaves the EU?

The [Council of Europe](#) brings together governments from across Europe and beyond. It is an entirely separate organisation to the European Union.

The Council agrees minimum legal standards in many areas, particularly in relation to human rights; democracy and the rule of law. The Council monitors how well countries apply the standards that they have agreed.

The Council of Europe includes [47 member states](#). The UK will continue to be a member after it leaves the EU.

Will the UK still elect Members of the European Parliament?

No. The UK will no longer elect MEPs to sit in the European Parliament. MEPs elected at the last European Parliament election on 23 May 2019 will no longer be MEPs after the UK leaves the EU on 31 January.

Differentiated Relationship

What is a differentiated relationship?

Differentiated relationship is a term used to describe one nation of the UK having a different relationship with the EU than other nations in the UK.

Why is Northern Ireland getting a 'differentiated relationship'?

Throughout the negotiations on the terms of the UK's exit from the EU, both the UK Government and the EU recognised the distinctive issues on the island of Ireland caused by Brexit.

The [Withdrawal Agreement](#) includes a Protocol which includes measures to protect the Good Friday Agreement and to ensure there is no hard border between Northern Ireland and Ireland.

Could Scotland have a differentiated relationship?

In December 2016, the [Scottish Government suggested](#) that the UK Government should explore where a differentiated relationship with the EU would be possible which would allow Scotland, as part of the UK, to remain within the European Single Market when the UK as a whole leaves the EU.

The UK Government rejected this proposal stating that it would negotiate "as one United Kingdom, taking due account of the specific interests of every nation and region of the UK as we do so".

Looking Ahead

Transition Period

Why is there a transition period?

The [transition period](#) gives the UK and the EU time to try to decide on its [future relationship](#). The [political declaration](#) has already outlined the UK and EU's aspirations for the future, but the declaration is non-binding.

It is anticipated that throughout the transition period the UK and the EU will undertake negotiations to try to decide and agree on what, for example, future trade arrangements may be or what rules will govern the ability of UK and EU citizens to live and work away from their home country. The transition period is relatively short and it may be difficult to negotiate future arrangements in this time-frame.

The UK government may also use the transition period to negotiate with countries outside of the EU on matters like trade. No agreements can come into force until the end of the transition period.

Bilateral negotiations and agreements (those between the UK and another country) are also expected. The UK and Spanish governments did, for example, reach [agreement on reciprocal healthcare](#) in the event of a [no-deal Brexit](#).

When will the transition period end?

The [transition period](#) ends on 31 December 2020. This date is set out in the [Withdrawal Agreement](#).

Can the transition period be extended?

The [Withdrawal Agreement](#) allows for the [transition period](#) to be extended once by one or two years so long as a request for extension is made by 1 July 2020.

The [European Union \(Withdrawal Agreement\) Act 2020](#) does, however, contain a section which prohibits the UK Government from seeking an extension to the transition period.

Will the UK have an influence in EU decision-making during the transition?

No, after the UK leaves the EU on 31 January, the UK will not have any say in how the EU operates or makes decisions. The UK may be present at Council discussions on topics relating to the UK during the transition period, however it will not have a voice or a vote.

The UK will not (after 31 January) have representation or voting rights in EU bodies, such as the European Parliament. During the [transition period](#), the UK will continue to contribute financially to the EU.

Could the UK still leave the EU in a no-deal scenario?

The UK will leave the EU on 31 January having agreed the terms of its departure in the [Withdrawal Agreement](#). These terms addressed three key issues – citizens' rights, a financial settlement and the Ireland and Northern Ireland border. The Withdrawal Agreement also included provision for a [transition period](#).

If at the end of the transition period (31 December 2020), the UK and EU have not finalised an agreement on the [future relationship](#), it could lead to an effective [no-deal](#) in relation to trade in goods and services and security cooperation.

Future Relationship

What happens at the end of the transition period?

Much of the EU law which was in place prior to exit day has been adopted into UK law (as '[retained EU law](#)'). This means that people and businesses will have broadly the same rights and responsibilities immediately after the end of the [transition period](#) as they did before.

Through the transition period, the UK will continue to respect the legal decisions and judgements made by the [European Court of Justice](#). The UK must also make sure that any laws it passes are compatible with EU law during the transition period.

After the end of the transition period (31 December 2020) the UK has no obligation to conform to EU law.

When will the negotiations on the future UK and EU relationship begin?

The European Commission is yet to publish a draft mandate for the negotiations. The Head of the [Task Force for Relations with the United Kingdom](#), Michel Barnier, has indicated that the European Commission hopes to propose the negotiating mandate at the start of February.

This would mean that negotiations are likely to begin towards the end of February or early March. Michel Barnier has stated that the aim is "making as much progress as possible by June 1" when EU27 and UK leaders will meet.

What will be discussed during the negotiations on the future relationship?

The [future relationship](#) between the UK and the EU will focus on two pillars, an economic partnership and a security partnership. More detail is available in the [SPICe briefing on the future relationship negotiations](#).

What are trade deals?

A trade deal exists when two or more countries agree to reduce or, in some cases remove altogether, trade barriers between them, allowing goods to circulate freely across the countries.

Modern trade deals typically also involve commitments such as regulatory alignment or mutual recognition of standards. More detail is available in the [SPICe briefing on the Anatomy of modern Free Trade Agreements](#).

Will the United Kingdom be able to continue to participate in the Eurovision song contest?

Yes. The [Eurovision Song Contest](#) is organised annually by the European Broadcasting Union (EBU). There is no link between the EBU and membership of the EU.

Could the UK rejoin the EU?

The UK could apply to rejoin the EU at some point in the future. If a decision was made to apply for EU membership, the procedure for considering a country's application is set out in [Article 49 of the Treaty on European Union](#).

Could Scotland join the EU as an independent country?

In the event Scotland becomes an independent country and wishes to join the EU it could apply for membership. The procedure for considering a country's application is set out in [Article 49 of the Treaty on European Union](#).

EU Funding

Will the UK continue to participate in EU funding programmes?

During the [transition period](#), the UK will continue to participate in EU funding programmes such as structural funds, Horizon 2020 and Erasmus.

Following the end of the transition period, the UK Government will need to negotiate with the EU if it wishes to continue to participate in these EU funding programmes.

SPICe has produced a briefing on [Access to EU funding as a non-member state](#)

Fisheries and Agriculture

Fisheries

Will the UK continue to participate in the EU's Common Fisheries Policy after the UK leaves the EU?

The UK will become an independent coastal state on [exit day](#), but will continue to be a member of the EU [Common Fisheries Policy](#) during the [transition period](#).

After the transition period ends, the UK will have control over access to its waters and will set the conditions granting access to foreign fishing vessels.

UK access to EU waters and EU access to UK waters will form part of the negotiations of the [future UK and EU relationship](#).

Will foreign vessels still be able to fish in UK waters?

Yes. The current rules which allow access for foreign vessels to UK waters and vice versa will remain in place during the [transition period](#). During the transition period the UK will remain under the rules and regulations of the [EU Common Fisheries Policy](#).

In 2020, the UK and the EU will negotiate a new agreement on fisheries which will determine future access for foreign vessels in UK waters and access for UK vessels in foreign waters. It is unlikely that foreign vessels will be banned from fishing in UK waters in the future. This is because UK vessels also fish in foreign waters and the UK has international obligations to jointly manage fish stocks - such as mackerel - that migrate between different countries' waters.

Agriculture

What is the Common Agricultural Policy?

The Common Agricultural Policy (CAP) sets common rules and regulations for agriculture and rural development and provides financial assistance to farmers. This purpose of the CAP is to support farming and allow farmers across the EU to compete on a [level playing field](#).

Broadly, there are two key elements to the CAP: [Direct payments schemes \(pillar 1\)](#) and [rural development policy \(pillar 2\)](#).

What are direct payment schemes/Pillar 1?

These are payments made to farmers based on the land they own, rather than the amount they produce. Direct payment schemes include:

- the basic payment, which is meant to provide income support to farmers;
- the greening payment, which requires farmers to take up environmental interventions;
- payments for young farmers; and
- in Scotland, additional coupled support for the beef and sheep sectors.

Under the [Common Agricultural Policy](#), this suite of schemes is known as Pillar 1. Whilst the UK was a member of the EU, funding for direct payments came from the EU to national governments. National governments then made the payments to farmers.

What is rural development policy/Pillar 2?

Under the [Common Agricultural Policy](#), the suite of schemes and regulations for rural development is known as Pillar 2. In Scotland, rural development policy is delivered under the Scottish Rural Development Programme, which includes schemes:

- to improve environmental performance (known as agri-environment schemes);
- to support food marketing;
- to foster innovation;
- to support rural communities; and
- to assist new entrants to farming.

What does 'level playing field' mean?

The EU is a [single market](#). All EU member states operate to a set of common rules and standards. The rules and standards operate across many different areas from agriculture to trade. By creating these rules and standards EU member states operate in a similar environment known as the level playing field.

Will Direct Payments to farmers in Scotland continue after the UK leaves the EU?

[Direct payments](#) will continue for 2020 scheme year (the scheme year runs 1 January 2020 to 31 December 2020 and is paid in 2021). Instead of the payments coming from the EU, these will be paid by the UK Government. The [Direct Payments to Farmers \(Legislative Continuity\) Bill](#) has been introduced in the UK Parliament. The Bill provides for the payments to be made to UK farmers for the 2020 scheme year. On 16 January 2020

the Scottish Parliament agreed a legislative consent motion. This means that the Scottish Parliament agreed that the Bill should also provide for the continuation of payments to Scottish farmers.

After the end of the [transition period](#), the UK government and devolved administrations in Scotland, Wales and Northern Ireland will decide the extent to which funding to support direct payments to farmers continues. The current [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#) enables payments to continue to be made to Scottish farmers after 2020.

Will rural development schemes continue after the UK leaves the EU?

EU regulations governing [Pillar 2 \(rural development\)](#) of the EU [Common Agricultural Policy](#) will continue to apply until the end of the [transition period](#) (31 December 2020). From 1 January 2021, the UK and devolved legislatures will be able to make changes as it will be for them to develop new policies and schemes for agriculture and rural development.

If changes are not made then the same rules will continue to apply. This is because much of the law in this area will be adopted into domestic (UK and Scottish law) as [retained EU law](#). The ability to make changes beyond 2020 is provided for under the [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#).

Will the UK continue to participate in the Common Agricultural Policy after the UK leaves the EU?

The answer to this question assumes that the legislation currently passing through the Scottish Parliament and the UK Parliament is passed.

In practical terms, [direct payments](#) and [rural development schemes](#) will continue until the end of the [transition period](#). From 1 January 2021, the UK will no longer be part of the EU [Common Agricultural Policy](#) (CAP) and will not need to follow any of its rules.

Given much of the law in this area will become domestic law (as part of [retained EU law](#)) the same rules will continue to apply until the UK and devolved legislatures decide to make new laws to change the rules. The UK Government has already introduced legislation giving powers to change the rules in England after the end of the transition period on 31 December 2020.

The Scottish Government has introduced legislation (the [Agriculture \(Retained EU Law and Data\) \(Scotland\) Bill](#)) which would enable the Scottish CAP legislation to be improved and simplified. The Scottish Government has committed to further legislation to set out longer-term agricultural policy, though the timeline for this legislation is unclear.

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