

# THE UK'S INTERNATIONAL AGREEMENTS POST-BREXIT

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# Background

- The UK is a party to or enjoys the benefits of over 1000 international agreements with third countries and international organisations by virtue of its membership of the European Union (**EU**). They cover a range of subject matters, including air services, fisheries, insurance, nuclear cooperation, (political) association, mutual recognition, trade and land transport.
- The draft Withdrawal Agreement makes arrangements for the continuation of international agreements during the implementation period.
- To prepare for the end of the implementation period or a 'no deal' scenario, the UK Government has been working to identify which international agreements need to be retained on exit, and to put in place arrangements with third countries to replicate the effects of the current agreements.
- The Government has been publishing details of the status of its programme of replication on gov.uk, and details of the programme more widely [here](#).

# International agreements in a ‘deal’ scenario – the UK vis-à-vis the EU

- The draft Withdrawal Agreement makes provision for a “transition or implementation period” (**IP**), which commences on the date the Withdrawal Agreement enters into force and ends (initially at least) on 31 December 2020 (Article 126).
- The UK will cease to be a Member State on exit day but, in the event that the Withdrawal Agreement enters into force, Union law shall continue to be applicable to and in the UK during the IP (Article 127(1)).
- “Union law” is defined as including international agreements to which the EU is party and those concluded by Member States on behalf of the EU (Article 2(a)(iv)).
- During the IP, the UK shall continue to “be bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly” (Article 129(1)).

# International agreements in a ‘deal’ scenario – the UK/EU vis-à-vis third countries

- The footnote to Article 129(1) provides that the EU will “notify the other parties to these agreements that during the transition period the United Kingdom is to be treated as a Member State for the purposes of these agreements.” (Emphasis added).
- If the IP is extended, the EU will notify other parties to international agreements of such extension (Article 132(1) footnote). In this way, the UK will “continue to be covered by EU international agreements” during the IP (gov.uk).
- At the end of 2018, the European Council published a draft notification (in the form of a letter and a note verbale) that it intends to use to notify third countries of the UK’s status pursuant to Article 129(1). (The draft no longer appears to be online.)

# International agreements in a 'deal' scenario – the UK's freedom to negotiate new treaties

- During the IP, the UK will continue to have, as it does now, the ability to negotiate, sign and ratify international agreements in areas of exclusive Member State competence.
- During the IP, the UK may negotiate, sign and ratify international agreements entered into in its own capacity in areas of exclusive competence of the EU, provided that those agreements do not enter into force or apply during the IP (Article 129(4)).
- The draft Withdrawal Agreement is silent as to the UK's freedom to negotiate during the IP agreements dealing with matters of shared competence.

# The status of international agreements in a ‘no-deal’ scenario

- In a no-deal scenario, the UK will no longer be covered by:
  - EU-only bilateral or multilateral international agreements (i.e., those that are not ratified by the UK in its own right).
  - “Mixed” bilateral agreements (i.e., those between the EU and its Member States on the one hand, and a third party on the other).
- The UK will, however, remain a party to most mixed multilateral agreements after exit day, where it is already a party in its own right.
- (Mixed agreements are those that cover areas of both Union and Member State competence and is an agreement to which both the EU and some, or all, of its Member States are party.)

# The status of international agreements in a ‘no-deal’ scenario – Government’s approach to rolling over international agreements

- The Government is working to identify agreements that will no longer apply to the UK in a no-deal scenario and which need to be transitioned for exit day (in the case of bilaterals), or to which the UK will need to accede in its own right (in the case of multilaterals).
- In doing so, the UK has adopted a general policy of continuity of effect, i.e., to mirror to the extent possible existing provisions of international agreements.
- “Treaties” that are subject to “ratification” (in the sense of Section 25 of the Constitutional Reform and Governance Act) must be laid before both Houses of Parliament for scrutiny for 21 sitting days prior to ratification. Once laid, such treaties are published in the FCO’s “Country Series” (available [here](#)) or the “Miscellaneous Series” (available [here](#)). They are listed in one place [here](#).
- For agreements that will not be in force for exit day, the Government is relying on “mitigations” or “bridging mechanisms” like provisional application and Memoranda of Understanding.

# Other issues relating to international agreements post-Brexit

- **Intra-EU treaties:** the status of international agreements between the UK and other EU Member States will need to be clarified (special considerations apply re intra-EU BITs).
- **Territorial application:** in line with the Government's policy of continuity of effect in relation to international agreements, continuity agreements apply to the Overseas Territories or Crown Dependencies to the same extent as they did in relation to their predecessor agreements. For Gibraltar, this broadly means all provisions but those relating to goods. For the Crown Dependencies, this broadly means those relating to customs and trade in agricultural products.
- **Parliamentary scrutiny of treaties:** Brexit has caused unprecedented parliamentary interest in treaty-making. Two parliamentary committees have live inquiries on the subject (the Joint Committee on Human Rights and the Constitution Committee). The UK's domestic treaty-making framework (Part 2 of the Constitutional Reform and Governance Act) is under the spotlight. The House of Lords EU Select Committee is reporting on all new Brexit-related IAs.

# How can we help?

- We are specialists in public international law and can offer advice on a range of international law issues arising out of Brexit, particularly those relating to treaty law and interpretation, including as to:
  - The status of the EU’s international agreements vis-à-vis the UK in the event of a “deal” scenario.
  - The status of international agreements to which the UK is (or has been) party in a “no deal” scenario.
  - The interpretation of provisions of treaties, including for example those that appear to rely on the UK being an EU Member State.
  - The nature of treaty relations established by “bridging mechanisms” such as provisional application and memoranda of understanding.